

JUDGING WITHOUT A J.D.

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One of the most basic assumptions of our legal system is that when two parties face off in court, the case will be adjudicated before a judge who is trained in the law. This Essay begins by showing that, empirically, the assumption that most judges have legal training does not hold true for many low-level state courts. Using data we compiled from all fifty states and the District of Columbia, we find that thirty-two states allow at least some low-level state court judges to adjudicate without a law degree, and seventeen states do not require judges who adjudicate eviction cases to have law degrees. Since most poor litigants are unrepresented in civil legal cases, this sets up an almost Kafkaesque scene in courtrooms across the country: Legal cases that have a profound effect on poor families, such as whether they will lose their home to eviction, are argued in courtrooms where either no one knows the law or only one party—the attorney for the more powerful party—does.

Considering data collected from a case study of North Carolina, where over 80% of magistrates do not have J.D.s, this Essay argues that allowing a system of nonlawyer judges perpetuates long-standing inequalities in our courts. It further argues that the phenomenon of lay judges is a symptom of a much larger problem in our justice system: the devaluation of the legal problems of the poor, who are disproportionately Black and Latinx. This devaluation stems in part from an enduring cultural history in the United States of blaming the poor for their poverty and its associated problems. A change is in order, one that intentionally considers the expertise of judges and adopts creative solutions to incentivize specially qualified adjudicators to serve as low-level state court judges.

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INTRODUCTION

Maya, a single mother of two, spent hours preparing for her court date in a rural county of North Carolina.¹ Even before court, Maya knew the stakes were high—she would find out whether she would be evicted from the apartment she had lived in for six years, the apartment her children called home. She did not have an attorney, but, after conducting online research, she felt relatively confident that her landlord had violated the “implied warranty of habitability” he owed her family, and thus, she believed she would prevail and avoid eviction.

1. In order to protect the identity of respondents, Maya’s experience is based on a combination of experiences. Greene conducted both a qualitative research project in the summer of 2019 that studied the Eviction Diversion Program in Durham, North Carolina and a case study of North Carolina magistrate courts in 2020 and 2021 for this project. The first study included one-to-two-hour interviews with fifty respondents who had been evicted or were at risk of eviction and had either inquired about or received help from the Eviction Diversion Program. The second study, a case study of North Carolina magistrate-run courts, involved interviews with a diverse panel of key informants on the North Carolina magistrate court system. For further explanation and details about these key informant interviews, see *infra* Part III.

Maya lost her case. About two weeks later, her possessions were removed from the apartment, and she was evicted. Maya was confused after court and wondered if she had not quite understood the law. What Maya assumed, of course, was that she was the one who was confused about the law. What Maya did not know was that the magistrate judge she had just appeared before might also have been confused about the law. In fact, the judge was in his first six months on the job and had received exactly zero hours of legal training of any kind: no webinar, no training session, nothing.

Low-level state court judges like the one Maya appeared before wield substantial power over the lives of millions of people, people who are disproportionately poor and disproportionately Black and Latinx.² Indeed, these judges, often called magistrate judges or justices of the peace (depending on the state), decide critical issues such as whether families are evicted, whether someone owes a debt collector thousands of dollars, and whether someone's car is repossessed. These judges make profoundly important decisions that alter the life courses of millions of Americans each year.³ Yet a little recognized fact is that the judge's lack of

2. See Tonya L. Brito, *Producing Justice in Poor People's Courts: Four Models of State Legal Actors*, 24 *Lewis & Clark L. Rev.* 145, 147 (2020) (noting that state civil court cases include a disproportionate number of socioeconomically disadvantaged litigants); Anna E. Carpenter, Colleen F. Shanahan, Jessica K. Steinberg & Alyx Mark, *Judges in Lawyerless Courts*, 110 *Geo. L.J.* 509, 512 (2022) [hereinafter Carpenter et al., *Judges in Lawyerless Courts*] (noting that issues in state civil trial courts are typically "deeply connected to fundamental human needs such as safety, intimate relationships, housing, and financial security" and that "[m]any people . . . pulled into civil court . . . are already suffering the consequences of America's frayed"—or nonexistent—"social and economic safety nets"); Anna E. Carpenter, Jessica K. Steinberg, Colleen F. Shanahan & Alyx Mark, *Studying the "New" Civil Judges*, 2018 *Wis. L. Rev.* 249, 257–59 [hereinafter Carpenter et al., *Studying the "New" Civil Judges*] (detailing how legally sophisticated individuals and corporations generally bypass the civil justice system, rendering the docket of these courtrooms to be primarily concerned with "low-value" contract disputes and family law disputes); Elizabeth L. MacDowell, *Reimagining Access to Justice in the Poor People's Courts*, 22 *Geo. J. on Poverty L. & Pol'y* 473, 493–94 (2015) (discussing how Black men and women are disproportionately represented in "poor people's courts" and how they are disadvantaged in these courts); Lauren Sudeall & Darcy Meals, *Every Year, Millions Try to Navigate US Courts Without a Lawyer*, *The Conversation* (Sept. 21, 2017), <https://theconversation.com/every-year-millions-try-to-navigate-us-courts-without-a-lawyer-84159> [https://perma.cc/6DMM-KF8G] (detailing how millions of litigants, often unrepresented, interact with the civil justice system each year).

3. In 2018, there were 16.4 million nontraffic related civil cases filed in state civil courts. Ct. Stats. Project, *State Ct. Adm'rs & Nat'l Ctr. for State Cts., State Court Caseload Digest: 2018 Data*, at 7 (2020), https://www.courtstatistics.org/__data/assets/pdf_file/0014/40820/2018-Digest.pdf [https://perma.cc/5RXH-VVTJ]. Many studies have noted the importance of low-level state court issues in the lives of people who have low incomes. See Rebecca L. Sandefur, Am. Bar Found., *Accessing Justice in the Contemporary USA: Findings From the Community Needs and Services Study* 9–10 (2014), https://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf [https://perma.cc/QMY6-A85D] (discussing findings regarding civil justice's impact on social inequality); Carpenter et al., *Judges in*

credentials in Maya's case is not unusual.⁴ In well over half of the states, judges are making at least some of these decisions without a law degree and sometimes with no legal training at all.⁵

This fact is counter to one of the most basic assumptions of our legal system—when two parties go to court, the case will be adjudicated before a judge who is trained in the law. Legal scholars have long been interested in whether specific characteristics of judges—such as political views, implicit biases, gender, or religion, among others—might affect

Lawyerless Courts, *supra* note 2, at 512–13 (noting the importance of the issues at stake in state civil courts for lower-income Americans); Sara Sternberg Greene, Race, Class, and Access to Civil Justice, 101 Iowa L. Rev. 1263, 1271 (2016) (“Investigations into access-to-justice issues for different groups can provide a lens into how our civil legal institutions may aid in the perpetuation of inequality and how different groups are integrated into—and excluded from—public institutions.”).

4. A few recent articles have noted the phenomenon of judges without J.D.s in passing, but the analysis of the issue of nonlawyer judges in much of this scholarship is very limited since the articles focus on other important topics. See Alexandra Natapoff, Criminal Municipal Courts, 134 Harv. L. Rev. 964, 979 (2021) (offering the first comprehensive analysis of the municipal court phenomenon and noting that the majority of states with municipal courts do not require municipal judges to hold law degrees and that the training requirements for such judges vary significantly); Lauren Sudeall & Daniel Pasciuti, Praxis and Paradox: Inside the Black Box of Eviction Court, 74 Vand. L. Rev. 1365, 1385 n.93 (2021) (studying rural and urban eviction courts in Georgia—showing that law is highly localized—and noting that Georgia law does not require magistrate judges to have law degrees and some of the judges in the study did not have law degrees); Justin Weinstein-Tull, The Structures of Local Courts, 106 Va. L. Rev. 1031, 1053–55 (2020) (examining the relationship between local court systems and administrative bodies within state judicial branches, reevaluating theories of judicial federalism in light of local courts, and noting that “a surprising number of states and jurisdictions permit people with no legal training to serve as local-court judges”). Professor Weinstein-Tull’s article uses data collected by the National Center on State Courts to find that twenty-six states allow nonlawyer judges in low-level state courts. *Id.* at 1053 n.95. However, our more recently collected data after an exhaustive search of state statutes and websites finds that thirty-two states allow nonlawyer judges at some level of court, including some differences (both inclusions and exclusions) with Weinstein-Tull’s data. See *infra* Appendix. A 2018 student note by Jason Neal focuses on nonlawyer magistrate judges. It is the only recent article or note we know of to focus on this topic, but it does not take a national perspective and instead focuses only on West Virginia. See Jason Neal, Note, Who Decides Justice: The Case for Legally Trained Magistrate Judges in West Virginia, 121 W. Va. L. Rev. 727, 729–30 (2018). Further, he focuses on the constitutional issues surrounding nonlawyer judges in West Virginia, analyzing both West Virginia’s constitution and federal cases on the issue. *Id.* In contrast to Neal’s note, our Essay takes empirical, national, and access-to-judge lenses when analyzing the issue. Additionally, Professor Cathy Lesser Mansfield has written a comprehensive article that focuses on lay judges. Cathy Lesser Mansfield, Disorder in the People’s Court: Rethinking the Role of Non-Lawyer Judges in Limited Jurisdiction Court Civil Cases, 29 N.M. L. Rev. 119, 133–34 (1999). However, Mansfield’s piece is over twenty years old and focuses only on civil jurisdiction for lay judges. Finally, thirty-five years ago, in 1986, Professor Doris Marie Provine took up the issue of nonlawyer judges in the book *Judging Credentials*, arguing against requiring judges to have law degrees. Doris Marie Provine, *Judging Credentials: Nonlawyer Judges and the Politics of Professionalism* 168–70, 177–81 (1986). Our study of course considers more contemporary access to justice and inequality issues and provides recent data on the issue of nonlawyer judges.

5. See *infra* section II.B.

outcomes.⁶ Indeed, numerous articles consider whether judges consistently (and fairly) apply the law.⁷ But the underlying assumption is that judges know the law—the question is usually how they interpret and apply it and why.⁸

This Essay begins by showing that empirically, the assumption that most judges have legal training does not hold true for low-level state courts in many states. Using data compiled from all fifty states and the District of Columbia, this survey finds that thirty-two states allow at least some low-level state court judges to adjudicate without a law degree, and indeed, there are hundreds of magistrates and justices of the peace in these states wielding substantial legal authority who have never been trained in the law.⁹ In seventeen states, judges with no law degree are permitted to adjudicate eviction cases.¹⁰

At first glance, it may appear that this system of noncredentialed judges is efficient, or even necessary, given the limited resources of the judiciary. But allowing a system of nonlawyer judges perpetuates long-standing inequalities in how litigants experience courts. This Essay rejects efficiency justifications and argues that the phenomenon of judges without J.D.s is a symptom of a much larger problem in our justice system: the devaluation of the legal problems of the poor, who are disproportionately

6. See Stuart Minor Benjamin & Kristen M. Renberg, *The Paradoxical Impact of Scalia's Campaign Against Legislative History*, 105 *Cornell L. Rev.* 1023, 1027 (2020) (analyzing the role that political party and timing of judicial nomination played in circuit judges' use of legislative history); Pat K. Chew & Robert E. Kelley, *Myth of the Color-Blind Judge: An Empirical Analysis of Racial Harassment Cases*, 86 *Wash. U. L. Rev.* 1117, 1141 (2009) (finding that, even after controlling for political affiliations, federal judges of different races rule on racial harassment cases differently—and these differences are statistically meaningful); Justin D. Levinson, Mark W. Bennett & Koichi Hioki, *Judging Implicit Bias: A National Empirical Study of Judicial Stereotypes*, 69 *Fla. L. Rev.* 63, 68 (2017) (detailing a series of empirical tests that demonstrate how negative implicit biases manifest in both state and federal judges); Jennifer L. Peresie, Note, *Female Judges Matter: Gender and Collegial Decisionmaking in the Federal Appellate Courts*, 114 *Yale L.J.* 1759, 1776–79 (2005) (detailing empirical findings on the direct and indirect impact a judge's gender has on their decisionmaking and collegial behavior on appellate panels).

7. Chew & Kelley, *supra* note 6; Levinson et al., *supra* note 6; Peresie, *supra* note 6.

8. See *supra* note 7. One interesting consideration for further study is the comparative perspective. Lay judging is common in several countries around the world, with different countries employing very different systems and configurations of judges. Sanja Kutnjak Ivković, Shari Seidman Diamond, Valerie P. Hans & Nancy S. Marder, *Introduction in Juries, Lay Judges, and Mixed Courts: A Global Perspective* 2–11 (Sanja Kutnjak Ivković, Shari Seidman Diamond, Valerie P. Hans & Nancy S. Marder eds., 2021). In future work, we hope to compare and contrast these different systems to that in the United States in order to better understand how culture and history contribute to different judicial structures concerning lay judges.

9. See *infra* Appendix, tbls.1 & 2.

10. Connecticut, Idaho, Indiana, Iowa, New Hampshire, and Washington are not included in this count, even though they technically allow lay judges in certain circumstances. See *infra* note 146 and accompanying text and Appendix.

Black and Latinx.¹¹ We argue that this devaluation stems in part from an enduring cultural history of blaming the poor for their poverty and the associated problems of poverty.¹² Many of the legal problems of the poor that end up in low-level courts are problems of poverty (such as eviction and debt collection), and inadequate resources are devoted to courts that address them. The implication is that these problems of poverty do not deserve access to well-run and well-resourced institutions. In other words, an overriding response to the problems of the poor throughout American history—whether legal problems or otherwise—has been that the State should not, and cannot, devote substantial resources to these problems and the institutions meant to address them, in part due to a cultural narrative around the “undeserving poor” that implicates those who are poor in the problems of poverty.¹³

Consider the message that is sent to both poor litigants and those who bring them to low-level state courts, such as landlords and debt collectors. The types of cases state courts hear have obvious gravity on the lives of millions of poor Americans each year; indeed, a litigant can lose their home in an eviction case or be subject to wage garnishment in a debt collection case. Despite the weight of these cases on the lives of poor litigants, however, the State has deemed such cases unworthy of the necessity of a legally trained adjudicator. This reality is experienced by thousands of poor Americans each day, as well as by thousands of powerful landlords and debt collectors. The symbolic nature of such a determination by the State should not be lost. Allowing judges to adjudicate without J.D.s illustrates the degree to which low-level state courts do not even pretend to engage with the legal rights of the poor, let alone enforce such rights. Instead, these institutions are in fact designed so that those with power and resources can, and do, prevail.¹⁴

11. John Creamer, *Inequalities Persist Despite Decline in Poverty for All Major Race and Hispanic Origin Groups*, U.S. Census Bureau (Sept. 15, 2020), <https://www.census.gov/library/stories/2020/09/poverty-rates-for-blacks-and-hispanics-reached-historic-lows-in-2019.html> [<https://perma.cc/V43J-5AP2>] (last updated Dec. 9, 2021) (“Blacks and Hispanics continue to be over-represented in the population in poverty relative to their representation in the overall population.”).

12. See, e.g., Maia Szalavitz, *Why Do We Think Poor People Are Poor Because of Their Own Bad Choices?*, *Guardian* (July 5, 2017), <https://www.theguardian.com/us-news/2017/jul/05/us-inequality-poor-people-bad-choices-wealthy-bias> (on file with the *Columbia Law Review*) (discussing how perceptions and cultural phenomena intersect and lead to the belief that the poor deserve what they get).

13. See Joel F. Handler & Yeheskel Hasenfeld, *Blame Welfare, Ignore Poverty and Inequality* 151–52 (2007) (detailing the long history in America of blaming the poor for their condition and conceiving of poverty as a “moral fault”).

14. See Alexandra Natapoff, *Punishment Without Crime: How Our Massive Misdemeanor System Traps the Innocent and Makes America More Unequal* 4–5 (2018) (noting that the misdemeanor system in the United States “often violates basic legal principles of justice and fairness,” leaving those without resources particularly vulnerable); Marc Galanter, *Why the Haves Come Out Ahead: Speculation on the Limits of Legal*

This situation is even more concerning when considered in light of a related critical issue that Professors Anna Carpenter, Alyx Mark, Colleen Shanahan, Jessica Steinberg, and others have identified: Low-level state courts are essentially pro se courts, where the vast majority of litigants appear before the court with no attorney to represent them because there is no right to counsel in civil cases.¹⁵ These scholars and others have explored, sometimes empirically, the dynamic between judges and unrepresented litigants in state courts, studying judges' behavior in pro se courts, noting important problems, and suggesting blueprints for reform.¹⁶ They have found that the phenomenon of pro se courts leads to

Change, 9 *Law & Soc'y Rev.* 95, 97–101 (1974) (detailing how “repeat players” (those who have resources and anticipate engaging in repeat litigation of the same type in the legal system) are able to shape the development of law in their favor, as opposed to “one-shotters” (those who have infrequent dealings with the legal system and less resources)); Nicole Summers, *The Limits of Good Law: A Study of Housing Court Outcomes*, 87 *U. Chi. L. Rev.* 145, 190–91 (2019) (finding that the majority of tenants with a meritorious warranty of habitability claim do not prevail in court).

15. See *Turner v. Rogers*, 564 U.S. 431, 448 (2011) (finding that the Due Process Clause does not automatically guarantee a right to counsel in a civil contempt hearing, even if the individual is ultimately imprisoned); *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 24–25 (1981) (finding that a “presumption” of the right to appointed counsel exists only in cases where litigants may lose their physical liberty as a result of losing the litigation). Because of a lack of resources, legal aid and other such organizations do not have the capacity to provide a lawyer to all (or even close to all) litigants who want or need one. Legal Servs. Corp. (LSC), *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans* 13 (2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf> [<https://perma.cc/B55X-4YWZ>] (“In 2017, low-income Americans will approach LSC-funded legal aid organizations for help with an estimated 1.7 million civil legal problems . . . but are expected to receive enough help to fully address their legal needs for only 28% to 38% of them.”). Of the problems low-income Americans bring to LSC grantees, “[m]ore than half (53% to 70%) . . . will receive limited legal help or no legal help at all.” *Id.*

16. See Carpenter et al., *Judges in Lawyerless Courts*, *supra* note 2, at 512–13. Several other scholars have also examined different dimensions of the importance of lawyers in low-level state court proceedings, though few have specifically focused on the role of judges. See Lauren Sudeall Lucas, *Am. Const. Soc'y*, *Deconstructing the Right to Counsel 2* (2014), https://www.acslaw.org/wp-content/uploads/2014/08/Lucas_-_Deconstructing_the_Right_to_Counsel.pdf [<https://perma.cc/43SF-QP8L>] (introducing “an organizational framework for evaluating the proposals emerging from the access to civil justice debate” in order to examine the right to counsel and explore why it is needed in both criminal and civil contexts); D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 *Yale L.J.* 2118, 2121–22 (2012) (studying the difference that an offer, and actual use, of legal representation made to low-income clients in civil cases); Peter A. Holland, *Junk Justice: A Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers*, 26 *Loy. Consumer L. Rev.* 179, 182, 185–87 (2014) (examining litigation outcomes for junk debt plaintiffs and finding that defendants represented by a lawyer achieved far better outcomes than those without representation); Cassandra Wolos Pattanayak, D. James Greiner & Jonathan Hennessy, *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 *Harv. L. Rev.* 901, 906–07 (2013) (examining “whether limited legal assistance is sufficient to approximate a

an “ethically ambiguous” role for judges.¹⁷ Judges are faced with two different paths: They can either maintain their traditionally passive and neutral role while leaving unrepresented litigants to figure things out for themselves, which is often very difficult for them to do; or, they can take a much more active role in cases, such as “simplifying courtroom procedures, filling information gaps for unrepresented people, actively developing the factual record in trials, [and] identifying legal issues.”¹⁸ In their recent work studying domestic violence courts, where the judges were all legally trained, Carpenter, Mark, Shanahan, and Steinberg found that judges almost universally lean toward the first path—“judges exercised process control and wielded legal jargon in ways that maintained legal and procedural complexity in their courtrooms.”¹⁹

We build on this existing work but consider a different set of related problems: those that arise in courts where judges themselves are not legally trained, yet preside over cases with mostly unrepresented litigants. In such cases, the judge is often unable to “fill[] information gaps for unrepresented people, actively develop[] the factual record in trials, [and] identify[] legal issues,”²⁰ or “maintain[] legal and procedural complexity in their courtrooms”²¹ because the judge does not know the law or legal procedures.

The situation is Kafkaesque: In such courtrooms, sometimes no one has in-depth knowledge of the law or, often even more problematic, sometimes only one attorney for one party, the more powerful and

traditional attorney-client relationship in summary eviction proceedings”); Kathryn A. Sabbeth, *Simplicity as Justice*, 2018 *Wis. L. Rev.* 287, 288–89 (arguing that seeking to simplify proceedings to obviate the need for legal representation can carry potential downsides and unintended consequences); Sudeall & Pasciuti, *supra* note 4, at 1368 (studying suburban and rural eviction courts in Georgia and finding that applying and enforcing laws is a highly localized process).

17. See Carpenter et al., *Studying the “New” Civil Judges*, *supra* note 2, at 279–82.

18. See Carpenter et al., *Judges in Lawyerless Courts*, *supra* note 2, at 513. Several scholars have focused reform suggestions on the role of judges in *pro se* courts, most arguing that judges should take a more active role in proceedings to ensure fairness. See Anna E. Carpenter, *Active Judging and Access to Justice*, 93 *Notre Dame L. Rev.* 647, 653, 686–87 (2017) (discussing findings regarding variation in active judging and exploring why and when judges use active judging); Russell Engler, *And Justice for All—Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 *Fordham L. Rev.* 1987, 2029–31 (1999) (arguing judges should take an active role in helping unrepresented litigants develop a factual record and with matters of procedural and substantive law); Russell G. Pearce, *Redressing Inequality in the Market for Justice: Why Access to Lawyers Will Never Solve the Problem and Why Rethinking the Role of Judges Will Help*, 73 *Fordham L. Rev.* 969, 970, 977–78 (2004) (arguing that judges should be required to play an active role in ensuring justice in cases with unrepresented litigants).

19. Carpenter et al., *Judges in Lawyerless Courts*, *supra* note 2, at 513.

20. *Id.* at 513.

21. *Id.* at 516, 539.

resourced party, has such knowledge.²² This attorney, of course, is ready to school the (untrained) judge on why his client should prevail. The inequality of the situation is glaring. There is no real illusion of a fair legal process, as those who experience courts with these dynamics know all too well.²³

This Essay proceeds as follows: Part I traces the history of lay judging in the United States back to the colonial era, when it was common for nonlawyer justices of the peace to preside over legal cases.²⁴ Following state law and practice changes over time, including challenges to the constitutionality of nonlawyer judges, we note key moments of potential reform and why they failed. We also trace the long history of this country's neglect of the poor and the institutions that serve them, providing a roadmap to understanding how a similar trajectory has played out in the court system. In Part II, we define the scope of judging without a J.D. based on our data, describing our data-gathering process and sharing details of our survey findings. In Part III, we consider the prognosis of nonlegally trained judges, in part by exploring a case study of North Carolina and key informant interviews that we gathered. This part discusses some of the arguments for lay judging but also explores the pitfalls of the practice and how these problems play out for litigants involved in the courts. We also show how the practice is consistent with U.S. historical patterns of devaluing the problems of the poor and underresourcing institutions that serve them, ultimately perpetuating inequalities in our justice system. Finally, this Essay concludes by offering thoughts about a potential roadmap to begin the process of reform while being mindful of economic pressures on state court systems.

22. See Heidi Schultheis & Caitlin Rooney, *Ctr. for Am. Progress, A Right to Counsel Is a Right to a Fighting Chance: The Importance of Legal Representation in Eviction Proceedings* 1 (2019), <https://americanprogress.org/wp-content/uploads/2019/10/Right-To-Counsel.pdf> [<https://perma.cc/SEZ6-WE9G>] (“When it comes to evictions, tenants are set up to fail. In eviction lawsuits nationwide, an estimated 90 percent of landlords have legal representation, while only 10 percent of tenants do.”); Editorial Board, *Opinion: In Our System, Landlords Have Lawyers. Tenants Often Don’t. So Tenants Lose.*, *Wash. Post* (Apr. 22, 2021), <https://www.washingtonpost.com/opinions/2021/04/22/tenants-eviction-cases-lawyers-cleveland-euclid/> (on file with the *Columbia Law Review*).

23. See Barbara Bezdeck, *Silence in the Court: Participation and Subordination of Poor Tenants’ Voices in Legal Process*, 20 *Hofstra L. Rev.* 533, 534–35 (1992) (illustrating that Baltimore’s rent court systematically excludes litigants who are members of socially subordinated groups from legal protections); Summers, *supra* note 14, at 205 (demonstrating through empirical research that tenants with meritorious warranty of habitability claims and representation were at least nine times more likely to prevail than unrepresented tenants with meritorious warranty of habitability claims).

24. Alexis de Tocqueville observed the trend of nonlawyer judges in colonial America and defended the practice, remarking: “A justice of the peace is a well-informed citizen, though he is not necessarily versed in the knowledge of the laws. His office simply obliges him to execute the police regulations of a society, a task in which good sense and integrity are of more avail than legal science.” Alexis de Tocqueville, *Democracy in America* 93 (1898).

I. HISTORY OF NONLAWYER JUDGES

There is an extensive history of lay adjudicators in the United States.²⁵ This Part summarizes this history, focusing specifically on the aspects that are important to the current lay-judge scheme in the United States. Thus, we devote particular attention to lower-level state court judges. In addition, we provide an overview of how our country has long neglected to invest in the poor and the institutions that serve them, and we begin to connect this history to the court system.

A. *Seventeenth-Century Colonial America*

There were few lawyers in seventeenth-century colonial New England.²⁶ The court system of the colonies mirrored those in England, relying almost entirely on laymen. In the early-to-mid-1600s, courts that functioned in the same manner as English justice of the peace courts developed in many colonies, though the specifics varied from colony to colony. The Colony of Virginia, for example, was divided into counties in 1634, and the local government was administered by a board of commissioners who functioned almost identically to justices of the peace in England. By 1661, these commissioners were officially given the title “justice of peace” and broad jurisdiction to hear all civil cases with no monetary restrictions and all but capital criminal cases.²⁷ Similarly, in Massachusetts, “Inferior Quarter Courts” were held in various towns by magistrates and assistants, and by 1648 were being called “county courts” and hearing all civil cases and most criminal cases.²⁸

Throughout all of the colonies, religion dominated and Puritan clergy and magistrates held significant power over the colonists. Not surprisingly, this religious influence infiltrated the courts.²⁹ Magistrates in Massachusetts were directed to adjudicate cases “as neere the law of God [or of Moses] as they can.”³⁰ Citations to scripture were common in legal arguments, to the point where “it was said that the early Massachusetts courts occasionally resembled a heated theological disputation where an opinion allegedly voiced by Moses or the Prophets counted infinitely more than a decision of the Lord High Chancellor.”³¹ Magistrates saw themselves as accountable to God, and thus believed that their actions

25. See Larry M. Boyer, *The Justice of the Peace in England and America From 1506 to 1776: A Bibliographic History*, 34 Q.J. Libr. Cong. 315, 322 (1977).

26. *Id.* at 323 (“In the new land lawyers were scarce, and the few that were available were largely mistrusted.”).

27. *Id.* at 322.

28. *Id.*

29. Anton-Hermann Chroust, *The Rise of the Legal Profession in America* 7 (1965) (explaining how in colonial America Puritan clergy and magistrates held considerable power and colonists believed that religious principles should dominate how magistrates decided cases).

30. *Id.*

31. *Id.* at 8.

needed to have Biblical authority.³² Those who worked in courts as judges or other court personnel were typically “wealthy merchants, clergymen, governors or governor’s deputies, politicians, favorites,” and, more generally, influential people.³³

There is certainly some debate among historians as to just how much influence religion versus the laws of England had on legal outcomes in early colonial America.³⁴ There is no doubt that there was some influence from the laws of England, but overall the Puritans did not see the English common law as binding on the colonial courts, even though it may have influenced some of their procedures and laws.³⁵ Indeed, there were many settlers who wanted relief from the strict and formal laws (and courts) of England, which were “profoundly distrusted” by the settlers who had been dissenters punished by such laws and courts.³⁶ The colonies were seen as a fresh start—a new society that needed its own laws and procedures.³⁷

This anti-English law sentiment was relatively easy for colonial courts to carry out during the early colonial era because there was little direction from England, who governed the colonies with a “light hand.”³⁸ For the most part, England stayed out of colonial legal arrangements, and whatever similarities were present, such as a reliance on lay justices of the peace and magistrates, occurred simply because colonists borrowed those aspects of the English legal system as they created their new colonial system.³⁹

Part of the fervor of colonists to distinguish themselves from England and establish a new start included a suspicion and, indeed, sometimes outright hostility toward lawyers.⁴⁰ In his history of colonial America, Professor and historian Daniel Boorstin noted that the “[d]istrust of lawyers became an institution.”⁴¹ In Massachusetts, Thomas Lechford arrived in Boston in 1638 and practiced law in the colony as a courtroom attorney and documents draftsman. His “attempts to practice law won him no friends among the magistrates,” and he “was made quite uncomfortable in the colony, and eventually went back to England.”⁴² About fifteen years later, Article 26 of the Massachusetts Body of Liberties of 1641 explicitly

32. *Id.*

33. *Id.* at 26.

34. *Id.* at 10.

35. *Id.* at 10–11.

36. *Id.* at 11–12.

37. *Id.* at 12.

38. Provine, *supra* note 4, at 4.

39. *Id.*

40. See Lawrence M. Friedman, *A History of American Law* 81 (1973) (noting that “[t]he first years of the colonial experience were not friendly years for lawyers” and documenting various actions taken against lawyers in the colonies).

41. *Id.* (quoting Daniel J. Boorstin, *The Americans: The Colonial Experience* 197 (1958)).

42. *Id.* at 82.

prohibited anyone from accepting a fee to assist another person in court.⁴³ And in 1663, the legislature enacted a provision prohibiting anyone from joining the legislature who “is an usual and Common Attorney in any Inferior Court.”⁴⁴ Several other colonies also explicitly prohibited lawyers from their courts, like Virginia in 1645 and Connecticut soon after.⁴⁵ The Fundamental Constitutions of the Carolinas, dated 1669, stated that it was “a base and vile thing to plead for money or reward.”⁴⁶ Overall, lay judges with a strong religious backing prevailed, particularly because lawyers were scorned.

B. *Early Eighteenth Century—A Time of Transition*

After many years of being hands-off, England became more interested in colonial legal proceedings in the 1700s as the economy in the colonies grew.⁴⁷ England’s new interest in the colonial legal system included judicial appointments, and some judges began serving “upon the pleasure of the crown.”⁴⁸ However, similar to Justices of the Peace in England, English-appointed judges in the colonies were not generally lawyers. In fact, in several respects colonial courts (both those controlled by England and those not) leaned more in the direction of lay justice than even English courts. First, in England, lay justices of the peace established the practice of hiring law-trained clerks to assist them, but this did not happen in the colonies.⁴⁹ Additionally, lay judges in the colonies ultimately heard both criminal and civil cases, whereas in England they heard only criminal cases.⁵⁰

Courts in the colonies remained lay-judge-based throughout the early 1700s, but during that time lawyers practicing law became more common. This change was due in part to the fact that emerging legal questions and procedures were increasingly complex as the colonies began to prosper in the 1700s and the economy grew. This meant the need for lawyers became more urgent despite some remaining opposition.⁵¹ Trained lawyers from England began moving to the Northeast colonies to take advantage of the increased economic opportunities for lawyers.⁵² At the same time, colonial men began to consider legal careers in higher numbers, either traveling to Europe for training or becoming an apprentice with an already

43. John M. Murrin, *The Legal Transformation: The Bench and Bar of Eighteenth-Century Massachusetts*, in *Colonial America: Essays in Politics and Social Development* 415, 417 (Stanley Katz ed., 1971).

44. *Id.*

45. Friedman, *supra* note 40, at 81.

46. *Id.*

47. Provine, *supra* note 4, at 5.

48. *Id.*

49. *Id.* at 27.

50. *Id.* at 28.

51. In two New Jersey counties, mobs rioted against lawyers in 1769 and 1770. Friedman, *supra* note 40, at 83.

52. Provine, *supra* note 4, at 5.

successful colonial lawyer.⁵³ Lawyers began gaining wealth and social power, and the bar as an institution began to develop as well.⁵⁴

A combination of English policies and this newfound influence of lawyers led to protective policies in certain colonies meant to safeguard lawyers and restrict legal practice to “trained” lawyers.⁵⁵ During this time, as lawyers began to defend their own profession, there was also a new movement to restrict judging only to trained lawyers. James Otis Jr., a member of the Massachusetts Provincial Assembly and a practicing lawyer in Boston, said that one could take “all the Superior Judges and every Inferior Judge in the Province, and put them all together, and they would not make one half of a Common Lawyer.”⁵⁶

Prior to the Revolution, despite some urging toward lawyer-judges, most judges (at all levels of courts) remained laymen. For example, of the eleven men who served as justices of the superior court of Massachusetts between 1760 and 1774, nine had never practiced law and six had never studied law.⁵⁷ All eleven justices were, however, prominent and wealthy.⁵⁸ Lower court judges were even more likely to be laymen, and their backgrounds varied considerably.

C. *Post-Revolution and the Nineteenth Century*

Contempt for lawyers resurfaced after the Revolution in part because many lawyers had been loyalists.⁵⁹ Ultimately, however, the Revolution brought more opportunities for lawyers and over time their status rose exponentially in early America. Lawyers, like other high-status and high-wealth occupations such as doctors, were disproportionately represented in the Continental Congress, the Federal Constitutional Convention, the First Congress, and state Legislatures.⁶⁰

As the status of lawyers continued to rise, they used their influence to professionalize the judiciary. State by state, lawyers began attempting to push nonlawyer judges out of the judiciary with varying degrees of success.⁶¹ Massachusetts enacted education requirements for judges as early as 1782, and the legislature also raised judicial salaries in order to encourage lawyers to become judges.⁶² Other states followed, but states

53. *Id.* at 6.

54. *Id.*

55. *Id.*

56. *Id.* at 7.

57. Friedman, *supra* note 40, at 109–10.

58. *Id.* at 110.

59. *Id.* at 265.

60. Provine, *supra* note 4, at 9.

61. *Id.* at 11–12. For an interesting history of how the Framers initially determined state versus federal jurisdiction, see Diego A. Zambrano, *Federal Expansion and the Decay of State Courts*, 86 *U. Chi. L. Rev.* 2101, 2113–16 (2019) (“The Framers instead placed the burden of judicial work in the new nation on state courts, expecting they would hear most state *and* federal claims.”).

62. Provine, *supra* note 4, at 10–11.

with small bars were holdouts, keeping laymen as judges for longer, even in higher courts.⁶³

Throughout the early 1800s, there was an emerging consensus that only lawyers should hold high judicial offices. Even reformers attempting to curtail judicial power by advocating for judicial elections and less judicial power did not challenge the idea of a legally qualified judiciary.⁶⁴ This transition came in part due to arguments for an independent judiciary and the separation of powers, as a legally trained judiciary provided a rationale for independent judicial power.⁶⁵

Higher court judicial positions became increasingly reserved for lawyers only, but it took longer for lower courts to transition, and many did not transition at all, particularly in rural areas where “a more tradition-based vision of the role of courts and law continued to prevail.”⁶⁶ In many of these rural areas, the idea of community justice was appealing. There was a sense that nonlawyer, community-member judges were better than schooled lawyers because community judges understood the dynamics, customs, and culture of their community and were less constrained by formal law.⁶⁷

Indeed, there was great tension in many states between traditionalists wanting to preserve this community justice model and those wanting to move forward. In post-Revolution Virginia, for example, historian A.G. Roeber noted that “in many respects, not much had changed since the old days of the Court-Country battle, when country justices resented Williamsburg Lawyers and General Court orders that integrated with the running of country life.”⁶⁸ He continued:

Part of the burden that fell on republican lawyers had been to argue that more professional law would actually help the moral tenor of society by expediting debt causes and securing predictable, rational, scientific procedures to deal with the chaotic disorder of the 1780s. They had succeeded in establishing a streamlined court system, and the luster of the superior court bench bar had attracted large numbers of young Virginians to seek their fortunes in the practice of law. But the lawyers had not quite succeeded in convincing Virginia farmers and planters that the older, moral vision of law rooted in concepts of natural justice had survived the rise of the legal profession.⁶⁹

63. *Id.* at 11–12 (“The political prominence of lawyers in post-Revolutionary politics was not sufficient to win over judicial offices in every state . . . Especially where the bar was small, as in New Hampshire, Maine, and Rhode Island, nonlawyers continued to be appointed to top judicial posts into the early 1800s.”).

64. *Id.* at 17.

65. *Id.* at 21.

66. *Id.*

67. See Mansfield, *supra* note 4, at 142.

68. A.G. Roeber, *Faithful Magistrates and Republican Lawyers* 252 (1981).

69. *Id.* at 255.

The question was whether “a modern judicial system could be easily reconciled with the Country traditions of the past.”⁷⁰ Ultimately, federal courts and high-level state courts took the form of a more modern and formal judicial system where judges were lawyers.⁷¹ In contrast, lower-level state and local courts, particularly those in rural areas, remained less formal and controlled by laymen. In many ways, the architecture of these courts continued to mirror the English justice of the peace courts which they were originally modeled after, although their names evolved and they were called many different things (including, for example, magistrate court, orphan court, and common pleas court).⁷² Borrowed from England, many of these courts continued to maintain a fee system, where the judge position was not salaried, but instead the judge was paid based on fees he collected via cases before him.⁷³ This fee system became a point of contention in the twentieth century and indeed was ultimately found unconstitutional in 1927 by the Supreme Court in *Tumey v. State of Ohio*.⁷⁴

D. *Twentieth Century Court Reform Movement*

Efforts to reform and study nonlawyer courts in the twentieth century have been well-documented by others.⁷⁵ This section summarizes the key voices and arguments for reform. One of the earliest twentieth-century calls for reform was from Professor Simeon Baldwin, who called nonlawyer justices of the peace “the weakest point in this system of judicial organization” in his 1906 book on the American judiciary.⁷⁶ In the same year, Professor Roscoe Pound, who eventually became dean of Harvard Law School, argued in a speech to the American Bar Association that “the notion that anyone is competent to adjudicate the intricate controversies

70. *Id.* at 257.

71. It was during this transition that jurisdictional tensions between state and federal courts grew. Before this era, state courts dominated and federal courts were allowed only very limited jurisdiction. See Zambrano, *supra* note 61, at 2113–16. But beginning in 1875, when the Reconstruction Congress granted federal courts the plenary power to hear all cases involving federal law, tensions mounted between those supporting state court power and “Republican disenchantment with state courts” due to the belief that “local judges were trying to thwart national policy.” *Id.* at 2116–17 (citing William M. Wiecek, *The Reconstruction of Federal Judicial Power, 1863–75*, 13 *Am. J. Legal Hist.* 333, 333 (1969)). For further details about the fight for federal verses state jurisdiction from 1875 to 1980, see *id.* at 2116–24.

72. Provine, *supra* note 4, at 25.

73. *Id.* at 33–34.

74. 273 U.S. 510, 531 (1927) (finding Ohio’s fee system to support its limited jurisdiction courts, where judges received “costs” only if they found defendants guilty, a violation of the Due Process Clause and thus unconstitutional).

75. Mansfield, *supra* note 4, at 136–41; Provine, *supra* note 4, at 24–26, 30–60.

76. See Mansfield, *supra* note 4, at 136 (citing Simeon Baldwin, *The American Judiciary* 129 (1906)).

of a modern community contributes to the unsatisfactory administration of justice in many parts of the United States.”⁷⁷

Throughout the early 1900s, there were further calls from academics to reform the justice of the peace and magistrate systems. Most of these arguments were for the abolition of nonlawyer judges.⁷⁸ The arguments were strikingly similar, recognizing the class implications of the court system that had developed as it was reformed in the 1800s. Recall that higher-level state courts and federal courts were ultimately dominated almost entirely by judges who were lawyers, while many lower-level state courts and municipal courts continued to rely on lay judges.⁷⁹ As the judicial system developed, amount-in-controversy rules along with diversity jurisdiction requirements in federal courts (currently set at \$75,000) meant that federal courts and high-level state courts ended up primarily with cases involving businesses and people with higher incomes, while the legal problems of the poor were primarily allocated to low-level state courts.⁸⁰ This system persists today, but it was well-formed by the 1900s, and reformers began highlighting the inequalities of the system. For example, in his well-known 1929 book *Principles of Judicial Administration*, W.F. Willoughby argued that lay judges were “moved in the performance of their duties by political and other improper considerations” and that by allowing such a system to persist, the government was discriminating against the poor, who were entitled to the same level of adjudication as “those better provided with the goods of this world.”⁸¹

Reformers’ calls for change also revolved around the notion that most of the early justifications for nonlawyer judges were moot given new technology and infrastructure such as roads and automobiles.⁸² Some reformers noted that these arguments held in all but “the remotest rural communities.”⁸³ Chicago was the first city to heed the suggestion for change, and in 1906 it replaced more than two hundred justice of the peace and specialized courts with a united metropolitan court system that employed full-time lawyer-judges.⁸⁴

77. Roscoe Pound, *The Causes of Popular Dissatisfaction With the Administration of Justice*, Address at the Twenty-Ninth Annual Meeting of the American Bar Association (Aug. 29, 1906), reprinted in 46 *J. Am. Judicature Soc’y* 55, 58 (1964).

78. Mansfield, *supra* note 4, at 136; see also Austin W. Scott, *Small Causes and Poor Litigants*, 9 *ABA J.* 457, 457–58 (1923); Reginald Heber Smith, *Denial of Justice*, 3 *J. Am. Judicature Soc’y* 112, 112 (1919); Milton Strasburger, *A Plea for the Reform of the Inferior Court*, 22 *Case & Comment* 20 (1915).

79. Provine, *supra* note 4, at 21.

80. Kathryn A. Sabbeth, *Market-Based Law Development*, *The L. & Pol. Econ. Project* (July 21, 2021), <https://lpeproject.org/blog/market-based-law-development/> [<https://perma.cc/5UQ8-BRZT>] [hereinafter Sabbeth, *Market-Based Law Development*].

81. Provine, *supra* note 4, at 32 (quoting W.F. Willoughby, *Principles of Judicial Administration* 304 (1929)).

82. Chester H. Smith, *The Justice of the Peace System in the United States*, 15 *Calif. L. Rev.* 118, 118 (1927).

83. *Id.*

84. Provine, *supra* note 4, at 30.

By the 1930s, organizations and commissions such as the National Commission on Law Observance and Enforcement, the American Bar Association, and later the American Judicature Society called for the abolition of nonlawyer judges, and indeed several major cities began to eliminate nonlawyer judges from their municipal courts.⁸⁵ At the state level, it was harder to entirely eliminate nonlawyer judges in part because most states listed justices of the peace in their state constitutions, so a constitutional amendment, rather than simply a statute, would be necessary to eliminate the position.⁸⁶ Overall, change was uneven, with some states eliminating nonlawyer judges completely and others adopting a mix of rules depending on the amount in controversy or the subject matter at hand, or in some cases the population of a given district.⁸⁷

Throughout the twentieth century, the issue of the constitutionality of lay judges came before courts numerous times. The 1960s saw a particular surge of such cases.⁸⁸ Some have theorized this surge came because of the Warren Court's general concern with due process in a variety of contexts.⁸⁹ All of the legal cases challenging lay judges involved criminal issues, rather than civil issues, and courts at all levels almost uniformly upheld the constitutionality of lay judges.⁹⁰ The most notable case, and one that ultimately came before the Supreme Court, was *North v. Russell*.⁹¹

North v. Russell was a Kentucky case. At that time, Kentucky had a two-tier court system, where the police courts (first tier) heard misdemeanor cases, but a defendant had a right to appeal a police judge's decision to the circuit court (second tier), where a trial de novo would take place.⁹² Kentucky law stated that in cities of less than a certain population, police court judges need not be lawyers, but in larger cities (and all circuit courts), judges must be lawyers.⁹³

In *North*, the defendant, Lonnie North, was arrested and charged with driving while intoxicated in a city that did not require lawyer-judges due to population size.⁹⁴ North appeared before a police court judge who was not a lawyer and pleaded not guilty. North requested a jury trial, and the judge denied this request, even though North was entitled to a jury trial upon request under Kentucky law. North was found guilty and sentenced to thirty days in jail, a fine of \$150, and revocation of his driver's license.⁹⁵

85. Id. at 33.

86. Id. at 34.

87. Id. at 34–36.

88. Id. at 63.

89. Id.

90. Id. at 65–71.

91. 427 U.S. 328, 329 (1976).

92. Id. at 331.

93. Id. at 330.

94. Id. at 329–30.

95. Id. at 330.

North did not appeal the police court decision, but instead brought a writ of habeas corpus, arguing that the fact that his judge was not a lawyer was unconstitutional.⁹⁶ After a series of lower court opinions and remands, the case ended up before the Supreme Court, where the issues were: (1) whether an “accused, subject to possibly imprisonment, is denied due process when tried before a nonlawyer police court judge with a later trial *de novo* available under a State’s two-tier court system”; and (2) whether “a State denies equal protection by providing law-trained judges for some police courts and lay judges for others, depending upon the State Constitution’s classification of cities according to population.”⁹⁷

In its analysis of the due process claim, the Court said it recognized the “wide gap between the functions of a judge of a court of general jurisdiction, dealing with complex litigation, and the functions of a local police court judge trying a typical ‘drunk’ driver case or other traffic violations.”⁹⁸ The Court noted, however, that when jail time is involved, the process deserves a review with scrutiny.⁹⁹

On the due process claim, North had argued that the right to counsel established in other Court cases was essentially meaningless if one did not have a lawyer-judge to understand the arguments of counsel, and he also argued that the complexity of substantive and procedural criminal law requires lawyer-judges so that they could “rule correctly on the intricate issues lurking even in some simple misdemeanor cases.”¹⁰⁰ The Court rejected both claims.¹⁰¹ The Court discussed the various justifications for nonlawyer-led tribunals, including the “interest of both the defendant and the State, to provide speedier and less costly adjudications” than those provided in courts “where the full range of constitutional guarantees is available.”¹⁰² The Court also noted that “state policy takes into account that it is a convenience to those charged to be tried in or near their own community, rather than travel to a distant court where a law-trained judge is provided, and to have the option, as here, of a trial after regular business hours.”¹⁰³

Ultimately, the Court was persuaded that there were no due process violations because defendants are guaranteed a *de novo* trial before a lawyer-judge if they so desire. The Court said it “assumed[d] that police court judges in Kentucky recognize their obligation” to inform defendants of this right.¹⁰⁴ The Court further noted that if a defendant really wants to

96. *Id.* at 331–32.

97. *Id.* at 329.

98. *Id.* at 334.

99. *Id.*

100. *Id.*

101. *Id.* at 339.

102. *Id.* at 336.

103. *Id.*

104. *Id.* at 335 (“The appellee judge testified that informing defendants of a right to counsel was ‘the standard procedure.’”).

bypass a lay judge and have an initial trial before a lawyer-judge, he can “plead[] guilty in the police court, thus bypassing that court and seeking the de novo trial, ‘erasing . . . any consequence that would otherwise follow from tendering the [guilty] plea.’”¹⁰⁵

The Court also rejected *North*'s equal protection claim involving the issue that based on population only some cities are required to have lawyer-judges.¹⁰⁶ The Court noted that “all people within a given city and within cities of the same size are treated equally.”¹⁰⁷ The Court further explained that the State's reasons for requiring lawyer-judges in certain cities with larger populations but not those with smaller populations appropriately justified the statute.¹⁰⁸ These reasons included that: (1) the greater volume of court business in larger cities meant a need for lawyer-judges who could enable courts to run more efficiently and expeditiously (though not necessarily with more fairness and impartiality); (2) larger cities would have more access to lawyers to staff judge positions; and (3) larger cities would have more economic resources to draw upon in order to pay personnel, including lawyer-judges.¹⁰⁹

Even after *North*, calls for reform by lawyer organizations, academics, and politicians continued into the 1980s, when Professor and political scientist Doris Provine wrote a book about nonlawyer judges providing a detailed history of their existence and a study of such judges in New York.¹¹⁰ Provine argued in favor of maintaining nonlawyer judging.¹¹¹ Since Provine's book, there have been a small number of articles taking up the issue of nonlawyer judges,¹¹² but overall, attention to the matter has significantly waned over the last forty years as the legal academy and bar associations have focused more on federal courts and, to a lesser degree,

105. Id. at 337.

106. Id.

107. Id. at 338.

108. Id. at 338–39 (referencing *Ditty v. Hampton*, 490 S.W.2d 772 (Ky. 1972), appeal dismissed, 414 U.S. 885 (1973), a Kentucky Court of Appeals case that articulated the reasons for differing qualifications of judges).

109. Id. at 328–29. Lisa Pruitt has written extensively about how courts consider the rural—urban justice division and justify different resource allocations among such courts. See Lisa R. Pruitt, *The Rural Lowscape: Space Tames Law Tames Space*, in *The Expanding Spaces of Law: A Timely Legal Geography* 190, 206 (Irus Braverman, Nicholas Blomley, David Delaney & Alexandre Kedar eds., 2014) (“Courts have lamented the practical limits of rural justice systems, but they have rarely shown sensitivity to equal protection arguments based on county-to-county variations of either funding levels or justice system amenities.”); Lisa R. Pruitt & Beth A. Colgan, *Justice Deserts: Spatial Inequality and Local Funding of Indigent Defense*, 52 *Ariz. L. Rev.* 219, 230–31 (2010) (describing disparities in funding and delivery of indigent defense in Arizona based on population and noting more generally that “[c]ourts have typically been deferential to state and local governments by holding that differences between rural and urban places justify different justice systems”).

110. Provine, *supra* note 4.

111. See id. at 190 (“To eliminate nonlawyer judges, however, is to institutionalize the very self-doubts that rob the laity of political power, for the elimination of nonlawyer judges suggests the incapacity of lay persons to comprehend the rules they must live by.”).

112. See *supra* note 4.

high-level state courts.¹¹³ In the next Part, we describe our study, a survey that provides an up-to-date profile of lay judging in the United States. But first, in the next section, we detail why the issue of nonlawyer judges has been relatively dormant for the last forty years.

E. *Disregard for the Problems of the Poor*

As detailed above, lay judging emerged and persisted because there was a belief that to have a professional legal class was to introduce an inherently corrupting force into the body politic, an organized group whose self-interest lay in obscurity, and that local custom and piousness should pervade the law. The current reality, however, relies on no such true Protestant faith in the power of the citizenry to interpret the sacred text themselves, but rather on a long history of blaming the poor for their problems and then underresourcing institutions that serve people who are poor and disproportionately Black and Latinx.¹¹⁴

Going all the way back to the sixteenth- and seventeenth-century Poor Laws of England that many of the American colonies adopted,¹¹⁵ “[p]overty was perceived not as a social or economic problem but as an individual problem.”¹¹⁶ In colonial America, blaming the poor and denying them material relief prevailed. As Professors Joel Handler and Yeheskel Hasenfeld note: “During the Colonial period, several themes are noted that will endure throughout welfare history. Despite significant

113. See Carpenter et al., *Studying the “New” Civil Judges*, *supra* note 4, at 251 (“The state court knowledge deficit is no secret; a smattering of scholars have identified and bemoaned it over the past thirty years. Yet legal scholarship continues to focus almost exclusively on federal courts, federal judges, and a particular judicial function in those courts: decision making in appellate cases.” (citations omitted)); Annie Decker, *A Theory of Local Common Law*, 35 *Cardozo L. Rev.* 1939, 1943–44 (2014) (citing the lack of empirical studies about local courts); Ethan J. Leib, *Localist Statutory Interpretation*, 161 *U. Pa. L. Rev.* 897, 898–99 (2013) (“[L]egal scholars have almost universally ignored the law in local courts, favoring the study of federal courts and state appellate courts.”); Weinstein-Tull, *supra* note 4, at 1034 (“Despite these massive stakes, despite the place of local courts at the heart of the justice system . . . we know very little about them.”).

114. Roughly half of all Americans believe that people who are poor are poor because they do not work hard enough. Pew Rsch. Ctr., *Emerging and Developing Economies Much More Optimistic Than Rich Countries About the Future* 5 (2014), <https://www.pewresearch.org/global/2014/10/09/emerging-and-developing-economies-much-more-optimistic-than-rich-countries-about-the-future/> [<https://perma.cc/WK6M-C7HS>] (“Fifty-seven percent of Americans *disagree* with the statement ‘Success in life is pretty much determined by forces outside our control,’ a considerably higher percentage than the global median of 38%.”); Roberto A. Ferdman, *One in Four Americans Think Poor People Don’t Work Hard Enough*, *Wash. Post* (Oct. 9, 2014), <https://www.washingtonpost.com/news/wonk/wp/2014/10/09/one-in-four-americans-think-poor-people-dont-work-hard-enough/> (on file with the *Columbia Law Review*).

115. Juliet M. Brodie, Clare Pastore, Ezra Rosser & Jeffrey Selbin, *Poverty Law, Policy, and Practice* 63 (2d ed. 2021).

116. William P. Quigley, *Backwards Into the Future: How Welfare Changes in the Millennium Resemble English Poor Law of the Middle Ages*, 9 *Stan. L. & Pol’y Rev.* 101, 103 (1998).

adverse structural conditions—wars, depression, accidents, disease, sickness—the poor were judged as morally blameworthy.”¹¹⁷ While some relief was granted to widowed women with children, people of color were excluded from relief and deemed the “undeserving” poor—women of color “were not deserving of relief; it was denied or they were expelled from the community.”¹¹⁸

Throughout the eighteenth, nineteenth, and early twentieth centuries, notions of the “deserving” and “undeserving” poor persisted. By the late nineteenth century “welfare work had become more of a private or voluntary matter than a public one.”¹¹⁹ Assistance that was available to the poor was provided through localities, and it was doled out based on notions of “deserving” versus “underserving” recipients.¹²⁰ And similar to the colonial period, with few exceptions “African Americans were simply excluded from welfare. They were the most underserving of the undeserving poor.”¹²¹

The Great Depression and the New Deal that followed was a time of some degree of transition. As the Great Depression persisted, the federal government increased investment in programs and institutions for the poor through the Social Security Act of 1935,¹²² largely because localities ran out of money to support aid programs and called on the federal government for help.¹²³ The Social Security Act created a national pension system and a national unemployment system (partnered with states).¹²⁴ It also created a federal program, then called Aid to Dependent Children (ADC), that provided aid to poor mothers and their children.¹²⁵ The goal was to provide for children whose fathers were deceased, absent, or unable to work.¹²⁶

An array of other federal welfare programs was passed as part of the New Deal, and for some poor Americans, there was significant (though

117. Handler & Hasenfeld, *supra* note 13, at 154.

118. *Id.* at 154–55.

119. Walter I. Trattner, *From Poor Law to Welfare State: A History of Social Welfare in America* 214 (1998).

120. Ezra Rosser, *Holes in the Safety Net 2* (2019) (“Until the New Deal, assistance to the poor was traditionally a local matter. . . . [T]he colonies, and later the states, distinguished between the deserving and undeserving poor and provided different forms of relief depending on that classification.”).

121. Joel F. Handler, “Constructing the Political Spectacle”: The Interpretation of Entitlements, Legalization, and Obligations in Social Welfare History, 56 *Brook. L. Rev.* 899, 913 (1990).

122. Social Security Act of 1935, Pub. L. No. 74-271, 49 Stat. 620.

123. Kathryn J. Edin & H. Luke Shaefer, *\$2.00 a Day: Living on Almost Nothing in America* 11 (2015).

124. Social Security Act §§ 1–2, 201, 301–303; Rosser, *supra* note 120, at 2.

125. Social Security Act §§ 401–402; Rosser, *supra* note 120, at 2.

126. Susan W. Blank & Barbara B. Blum, *A Brief History of Work Expectations for Welfare Mothers*, 7 *Future Child.* 28, 29 (1997).

temporary) improvement in their situation.¹²⁷ Similar to earlier aid programs, however, some states—in this case, Southern states—carved out exceptions that excluded Black people from coverage.¹²⁸ As Professor Ezra Rosser notes, these states were “concerned that generous socioeconomic rights would undermine the Jim Crow economic structure of the South,” thus while “[t]he New Deal might have created federal welfare rights,” the “benefited population largely did not include poor African Americans, Latinos, or Native Americans.”¹²⁹

The American appetite for serious investment in the poor was short-lived, particularly for targeted aid programs such as ADC. Backlash soon emerged, particularly as welfare numbers grew.¹³⁰ President Ronald Reagan popularized the infamous, though disproven, concept of the “welfare queen” into the American consciousness. Welfare queens were portrayed primarily as single Black women who took advantage of the welfare system, bringing in a large amount of money to buy luxury goods without working.¹³¹ During this time, support for programs that aided the poor and the institutions they frequented waned. ADC (renamed Aid to Families and Dependent Children (AFDC) in 1968) was ultimately reformed in 1996.¹³² The heart of the new program, Temporary Assistance to Needy Families (TANF), was an emphasis on “personal responsibility” and “self-sufficiency.”¹³³ Cash welfare was no longer an entitlement for poor families, and time limits and other barriers were put into place to exclude families from aid.¹³⁴

Just as the United States has limited aid programs for the poor, it also has limited support for the institutions that serve the poor. The government has, in fact, allowed such institutions to struggle with

127. Rosser, *supra* note 120, at 2 (listing various New Deal programs and noting that “[t]he New Deal changed things, to a point”).

128. *Id.* (“Southern states . . . were allowed—through carve outs for agricultural and domestic workers, as well as through deference to state administration—to exclude blacks from coverage.”).

129. *Id.* In the early years of the ADC program, for example, states had significant discretion to determine eligibility, and they would decide that only children living in “suitable homes” would receive benefits. Some states used this discretion to exclude families deemed “undesirable,” such as Black families and children of never-married women. Blank & Blum, *supra* note 129, at 30.

130. ADC numbers grew from only a few hundred cases in the late 1930s to 3.6 million cases by 1962. Edin & Shaefer, *supra* note 123, at 11.

131. *Id.* at 15; Martin Gilens, *Why Americans Hate Welfare: Race, Media, and the Politics of Antipoverty Policy* 1–32 (2000) (detailing how the media contributed to the negative public perception of welfare).

132. Linda Gordon & Felice Batlan, *Aid to Dependent Children: The Legal History*, VCU Librs. Soc. Welfare Hist. Project, <https://socialwelfare.library.vcu.edu/public-welfare/aid-to-dependent-children-the-legal-history/> [https://perma.cc/TV3F-CHTP] (last visited Feb. 25, 2022).

133. Remarks on Signing the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and an Exchange With Reporters, 2 Pub. Papers 1328 (Aug. 22, 1996).

134. Edin & Shaefer, *supra* note 124, at 15.

inadequate funding, contributing to poverty and inequality. Consider the trajectory of funding for the Legal Services Corporation. The Legal Services Corporation grew out of President Lyndon B. Johnson's "war on poverty" and the creation of the Office of Economic Opportunity (OEO) in 1964.¹³⁵ The OEO worked on establishing local legal services offices around the country to serve the legal needs of the poor for free, and by 1966 federal funding for this program hit \$25 million.¹³⁶ In 1974, President Richard Nixon signed a law creating the Legal Services Corporation (LSC), which formalized funding for these neighborhood legal service organizations.¹³⁷

Beginning in the late 1970s, however, funding for LSC was almost constantly under fire, and LSC suffered significant budget cuts several times.¹³⁸ At some points the entire budget for LSC was threatened, most recently under President Donald Trump in 2018 and 2019.¹³⁹ Even though LSC was ultimately funded in 2019, its funding levels are well below where they were when LSC was started. The 2021 appropriation for LSC was 55% below its 1979 level (accounting for inflation).¹⁴⁰

Governmental disregard and neglect of institutions that serve the poor is widespread. This phenomenon has been well studied and documented as it relates to institutions such as housing and neighborhoods¹⁴¹

135. Our History, Legal Servs. Corp., <https://www.lsc.gov/about-lsc/who-we-are/our-history> [<https://perma.cc/4ZWB-JAAR>] (last visited Feb. 3, 2022).

136. Alan Houseman & Linda E. Perle, Ctr. for L. & Soc. Pol'y, *Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States* 14 (2018), https://www.clasp.org/sites/default/files/publications/2018/05/2018_securingequaljustice.pdf [<https://perma.cc/3DH9-HXEN>].

137. See Legal Servs. Corp., *supra* note 135.

138. See Houseman & Perle, *supra* note 136, at 29–30.

139. *Id.* at 50–51.

140. David Reich, *Additional Funding Needed for Legal Service Corporation*, Ctr. on Budget & Pol'y Priorities (Feb. 1, 2021), <https://www.cbpp.org/blog/additional-funding-needed-for-legal-service-corporation> [<https://perma.cc/62G3-UHUC>] (“[T]he LSC is chronically underfunded. . . . [T]he LSC’s budget peaked in 1979 Later years brought several rounds of big budget cuts, followed by only a partial rebuilding of funding. In inflation-adjusted terms, the 2021 appropriation is 55 percent below its 1979 level.”).

141. See Matthew Desmond, *Evicted* 301–03 (2016) (discussing how American social policy and a lack of investment in affordable housing has led to mass evictions and instability for poor families); Eva Rosen, *The Voucher Promise* 236–37 (2020) (noting that “[t]he federal government—unable (or unwilling) to fund public housing at a level sufficient to maintain its upkeep—outsourced the problem of housing the poor to private landlords through housing vouchers” and discussing the pitfalls of such a policy); Patrick Sharkey, *Stuck in Place: Urban Neighborhoods and the End of Progress Toward Racial Equality* 117–18 (2013) (discussing how both political decisions and social policies have led to disinvestment from Black neighborhoods, which in turn led to persistent segregation and declining opportunities for Black families, and showing how these political decisions have resulted in multigenerational inequality for Black families); William Julius Wilson, *The Truly Disadvantaged* (1987) (detailing how American social policy on poverty led to deteriorating conditions and a lack of employment and other opportunities in American inner-city ghettos, ultimately resulting in persistent poverty in these neighborhoods).

and schools.¹⁴² Yet we are much further behind when it comes to understanding the specific ways in which the government has financially neglected courts¹⁴³—and specifically the very courts that primarily serve poor people, who are disproportionately people of color.¹⁴⁴ Despite the calls for change beginning in the early 1900s as our stratified system of judging became apparent, following in the footsteps of so many other calls for investment and change when it comes to the poor, there was only minimum movement and the stratified system of judging for the most part persisted. In the next two Parts, we document this aspect of neglect of courts that serve the poor, showing where the system currently stands.

II. SURVEY STUDY METHODS, SCOPE, AND FINDINGS

A. *Survey Methods and Scope*

We conducted a comprehensive survey of low-level courts in each state. We sought to answer the following questions through our survey:

1. Does the state allow any level of judge to adjudicate without legal credentials?
2. If the state allows some, but not all, judges to adjudicate without legal credentials, which judges fall into each category, and what types of cases do they hear?
3. Which court in each state adjudicates eviction cases, and does that court require legal credentials?

In order to answer these questions, we engaged a variety of sources, including state statutes, state judicial webpages, and other sources (that varied for each state) that provided information on judge credentials for the particular state.

142. See Bruce D. Baker, *Educational Inequality and School Finance: Why Money Matters for America's Students* 3–4 (2021) (noting the historical and persistent relationship between school funding and inequality in schools across the United States); Ivy Morgan & Ary Amerikaner, *The Educ. Tr., Funding Gaps: An Analysis of School Funding Equity Across the U.S. and Within Each State* 2018, at 2, 6, 10 (2018), https://edtrust.org/wp-content/uploads/2014/09/FundingGapReport_2018_FINAL.pdf [<https://perma.cc/DN49-45NX>] (finding that in twenty-seven states, districts with the highest poverty rates do not receive more funding to account for that increased need and in fourteen states, districts with the most students of color get less funding than districts with the lowest percentage of students of color); Barbara T. Bowman, James P. Comer & David J. Johns, *Addressing the African American Achievement Gap: Three Leading Educators Issue a Call to Action*, 73 *Young Child* 14, 15 (2018) (presenting several findings on the relationship between educational opportunities and school performance with future opportunities).

143. Some scholars have certainly begun to study low-level courts and the lack of government investment in them. See generally Sabbeth, *Market-Based Law Development*, *supra* note 80 (detailing the variable funding within court systems and its impact on the development of law and equitable outcomes).

144. See *supra* notes 2–3.

We of course found significant variation in the judicial systems of each state, particularly in their lowest-level courts. When statutes and other information did not clearly answer our questions, we supplemented our searches with emails to legal aid organizations in order to clarify state practices. We decided to contact legal aid organizations because their attorneys disproportionately practice in low-level state courts.

B. *State Survey Findings*

The upper-level courts of each state are fairly consistent, at least in name (most states have district courts, for example), but particularly among low-level courts, each state integrates its own unique court system with different names, jurisdictions, and procedures. The first question we sought to answer was how many states allow any level of judge to adjudicate without a J.D. Overall, thirty-two states allow lay judges at some level of court.¹⁴⁵ Five states, Connecticut, Idaho, Indiana, Iowa, and Washington, passed statutes requiring all judges to be lawyers, but lay judges who were judges at the time of the statutory change were allowed to continue in their jobs until they resigned or lost a judicial election.¹⁴⁶ Further, New Hampshire technically allows lay judges at any level of judgeship in the state, but in practice, due to the nomination and appointment process for judges, all judges in the state are members of the bar.¹⁴⁷ Thus, we did not

145. These states include Alabama, Alaska, Arizona, Colorado, Delaware, Georgia, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming. For a chart detailing the requirements for each state, see *infra* Appendix, tbl.1.

146. In Connecticut, as of January 5, 2011, all probate judges elected must be attorneys admitted to practice law in Connecticut. Conn. Gen. Stat. §§ 45a-18(e) (2021). In Idaho, as of July 1, 2019, magistrates were required to be active or judicial members of the bar and be a lawyer or hold judicial office for the five years preceding appointment. Idaho Code § 1-2206 (2021). Lay magistrates who did not meet these requirements at the time the statute was changed, however, have been allowed to continue in their magistrate positions. *Id.* In 2015, a state law in Indiana was passed requiring all judges in the state to be licensed attorneys. Ind. Code § 33-35-5-7 (2021). However, town and city judges who were serving in 2015 but were not attorneys were allowed to continue in their jobs. They are allowed to serve until they resign or lose an election for their post. *Id.* § 33-35-5-7.5. As of April 1, 2009, all judges in Iowa were required to be attorneys licensed to practice law in the state. Iowa Code § 602.6404 (2021). Those who were lay judges currently sitting as of that date, however, were allowed to be reappointed for subsequent successive terms. *Id.* Washington State previously allowed lay judges to serve as district judges for districts with populations under 5,000 people if the judges took qualifying examinations with the state supreme court. 2002 Wash. Sess. Laws 552. In 2002, however, that rule was phased out (beginning in 2003), but existing lay judges were grandfathered in and allowed to continue in their jobs. *Id.*

147. Paul J. Kline, *Judges*, John W. King N.H. L. Libr. (June 1, 2020), <https://courts-state-nh-us.libguides.com/c.php?g=1045296> [<https://perma.cc/YLE7-YCND>] (noting that the New Hampshire Judicial Selection Commission compiles a list of qualified candidates and that although judges in New Hampshire need not have a law degree nor be a member of the New Hampshire Bar Association, in current practice, all judges are members of the Bar Association).

include Connecticut, Idaho, Indiana, Iowa, Washington, or New Hampshire in our count.

Among the states that do not require a J.D. degree or admission to the bar, there is significant variation in the requirements for judges. In Alaska, for example, the only requirements for magistrate judges are that they need to be at least twenty-one years of age, citizens of the United States and the State of Alaska, and residents of Alaska for at least six months immediately preceding the appointment.¹⁴⁸ Thus, in Alaska, magistrate judges are not even required to have a high school diploma. Delaware has similar requirements for its justices of the peace, only requiring that they be twenty-five years of age or older and a resident of Delaware.¹⁴⁹ Several other states have only age (usually twenty-one) and residency requirements.¹⁵⁰ A few of these states put additional restrictions on the type of jobs magistrates can have. In Virginia, for example, there are restrictions on jobs not only for magistrate candidates themselves but also for the parents, children, spouse, and siblings of the candidates (these restrictions focus on affiliations with courts).¹⁵¹

Georgia has a few more requirements for their magistrates: They must be twenty-five years of age and must have earned a high school diploma or a general educational development (GED) diploma.¹⁵² In addition, they must be registered to vote, have been a resident of the county where they are going to serve for two years preceding the term and remain a resident of that county throughout their service, and finally be a citizen of the United States.¹⁵³

148. Alaska Stat. § 22.15.160(b) (2021). The statute notes that additional requirements may be imposed by the State Supreme Court, but we did not find any additional requirements imposed, and a current job announcement for State Magistrates does not list any additional requirements. See, e.g., Magistrate Judge II (Alaska Court System 41-8401), Workplace Alaska: State of Alaska Online Recruitment Sys., <https://agency.governmentjobs.com/alaska/default.cfm?action=jobbulletin&JobID=692861> [<https://perma.cc/7WD6-TXYV>] (last visited Feb. 4, 2022).

149. Magistrate Screening Committee, Del. Cts., <https://courts.delaware.gov/jpcourt/screening.aspx> [<https://perma.cc/6XXD-D3ZW>] (last visited Feb. 4, 2022).

150. See *infra* Appendix, tbl.1.

151. Va. Code § 19.2-37(C) (2021). A person is ineligible for appointment as a magistrate judge:

- (a) [I]f such person is a law-enforcement officer; (b) if such person or his spouse is a clerk, deputy or assistant clerk, or employee of any such clerk of a district or circuit court, provided that the Committee on District Courts may authorize a magistrate to assist in the district court clerk's office on a part-time basis; (c) if the parent, child, spouse, or sibling of such person is a district or circuit court judge in the magisterial region where he will serve; or (d) if such person is the chief executive officer, or a member of the board of supervisors, town or city council, or other governing body for any political subdivision of the Commonwealth.

Id.

152. Ga. Code Ann. § 15-10-22(a) (2021).

153. *Id.*

Some states, such as West Virginia, restrict people with criminal backgrounds from being magistrates: Magistrates must never have been convicted of a felony or a misdemeanor involving “moral turpitude.”¹⁵⁴ The requirements in West Virginia are not otherwise high. Magistrate candidates must be at least twenty-one years of age, must have a high school education or its equivalent, must reside in the county of their election, and must not be an immediate family member of another magistrate in the county.¹⁵⁵ Notably, West Virginia’s state constitution prohibits requiring magistrates to be attorneys, stating:

[T]he Legislature shall not have the power to require that a magistrate be a person licensed to practice the profession of law, nor shall any justice or judge of any higher court establish any rules which by their nature would dictate or mandate that a magistrate be a person licensed to practice the process of law.¹⁵⁶

In a few states, lay people are allowed to be magistrate judges, but the requirements for the job are otherwise quite high. In Massachusetts, for example, magistrates are not required to have a J.D., but they must have an undergraduate education or at least fifteen years of experience.¹⁵⁷ Further, non-bar magistrate candidates are required to demonstrate at least five years of experience in the court applied for, five years of experience in a court of comparable jurisdiction, or five years of relevant experience.¹⁵⁸

There are at least five states (Colorado, Nevada, New Mexico, Oklahoma, and Utah) that determine legal training requirements for judges based on the population size of specific counties within the state. In higher population areas of these states, judges are required to have J.D.s, but in lower population areas, J.D.s are not required. The exact population requirements vary significantly by state. In Colorado, for example, qualifications for county court judges depend on what “class” is assigned to the county where the judge serves.¹⁵⁹ Counties can be assigned to a class ranging from A to D. All counties with a population of less than 30,000 people are either Class C or D counties. In Class A or B counties, county court judges must be admitted to the practice of law in the state. In Class C or D counties, county court judges do not need to have J.D.s and in fact only need to have a high school diploma or equivalent.¹⁶⁰ There is,

154. W. Va. Code Ann. § 50-1-4 (LexisNexis 2021).

155. *Id.*

156. W. Va. Const. art. VIII, § 10.

157. Mass. Exec. Order No. 558, § 2.2 (Feb. 5, 2015), <https://www.mass.gov/executive-orders/no-558-reconstituting-the-judicial-nominating-commission-and-establishing-a-code-of-conduct-for-commission-members-and-nominees-to-judicial-office> [<https://perma.cc/2AK5-93RJ>] (amending the Judicial Nominating Commission and establishing a Code of Conduct for Commission members and nominees to judicial office).

158. *Id.*

159. Colo. Rev. Stat. § 13-6-203 (2021).

160. *Id.*

however, a requirement of attendance at a training institute for nonlawyer Class C and D county judges.¹⁶¹

In Nevada, the system for determining whether a county has a J.D. requirement is a bit different—a population of 100,000 is the cutoff, where justices of the peace are not required to have J.D.s in counties with a population over 100,000,¹⁶² however, justices of the peace must be licensed attorneys admitted to practice law for not less than five years preceding their ascension to the bench.¹⁶³ In New Mexico, the cutoff is even higher. Lay judges are allowed to serve in judicial districts (also referred to as magistrate districts) with a population below 200,000.¹⁶⁴ But in districts with a population over 200,000, a magistrate must be a member of the New Mexico Bar and licensed to practice law.¹⁶⁵ These population-based schemes are significant in the context of historical concerns about the ability of rural areas to staff judgeships if a law degree is required, as discussed further in Part III.

All states have some kind of training requirement for lay judges, but these vary considerably. In Georgia, for example, magistrate judges who are not members of the bar must complete eighty hours of training during their first two years after becoming a magistrate.¹⁶⁶ Further, all nonlawyer magistrates must complete “orientation activities” conducted under the supervision of someone experienced, such as a mentor magistrate or judge.¹⁶⁷ The statute also notes that additional training hours may be required each year.¹⁶⁸ Nebraska, on the other hand, requires only eight hours of training annually,¹⁶⁹ and Tennessee requires only three hours of training annually.¹⁷⁰ And in Colorado, whenever an individual who is not licensed to practice law in the state becomes a county court judge, they must attend “an institute on the duties and functioning of the county court to be held under the supervision of the supreme court, unless such attendance is waived by the supreme court.”¹⁷¹ As we discuss further below in Part III, the timing of training programs for magistrates can result in magistrates adjudicating cases for half a year or more with no legal or administrative training at all.¹⁷²

161. *Id.*

162. Nev. Rev. Stat. § 4.010 (2021).

163. *Id.* § 4.010(3).

164. N.M. Stat. Ann. § 35-2-1 (West 2021).

165. *Id.* § 35-2-1(C)–(D).

166. Ga. Code Ann. § 15-10-137 (2021).

167. *Id.*

168. *Id.*

169. Neb. Sup. Ct. R. § 1-503; see also Neb. Rev. Stat. § 24-508(3) (2021) (“A clerk magistrate shall comply with the Supreme Court judicial branch education requirements as required by the Supreme Court.”).

170. Tenn. Code Ann. § 16-18-309 (2021).

171. Colo. Rev. Stat. § 13-6-203(5) (2021).

172. See *infra* Part III.

There is also significant variation in the types of cases states allow lay judges to adjudicate. As part of our survey, we collected data specifically on which states allow lay judges to adjudicate landlord–tenant disputes (including eviction cases). Of the thirty-two states that allow non-J.D. judges, seventeen allow such judges to adjudicate eviction cases.¹⁷³ In most of these states, the power to hear eviction cases stems from a statutory allowance for magistrate judges to hear civil cases that involve amounts in controversy below a certain amount of money. Appendix Tables One and Two detail the requirements for each state that allow lay judges to adjudicate eviction cases. Other common civil matters handled by lay judges involve contract disputes and debt collection cases.

As evidenced in the Appendix, most states that allow lay judges allow them to handle limited criminal matters such as issuing search warrants, issuing arrest warrants, handling simple misdemeanors, handling traffic-related violations, and setting bail. In some states, such as Mississippi, lay judges (there called county judges) can handle preliminary hearings in felony criminal cases.¹⁷⁴

III. DISCUSSION AND NORTH CAROLINA CASE STUDY

This Part discusses the implications of a lay-justice system—a system the survey results show is alive and well in many lower-level state courts in the United States. It begins by painting a picture of key differences between federal court and high-level state court judgeships on the one hand, and low-level state court judgeships on the other hand. With these factors at the ready, it then considers some of the main arguments for lay judging and also provides a discussion of existing scholarship relevant to assessing the potential upsides, as well as the pitfalls, of lay judging. Weaved into these discussions are findings from a case study of North Carolina, which is taken up in depth at the end of this Part. The case study provides a lens into how a system that relies heavily upon lay judging functions and identifies some of the problems of such a system. North Carolina was an ideal case study because it is a state that employs a large number of lay magistrates to adjudicate both civil and criminal issues: Currently, over 80% of magistrate judges in North Carolina do not have

173. These states include Arizona, Colorado, Delaware, Georgia, Kansas, Louisiana, Montana, Nevada, New Mexico, New York, North Carolina, Pennsylvania, South Carolina, Texas, Virginia, West Virginia, and Wyoming. Idaho, Indiana, Iowa, and Washington also allow lay judges to oversee eviction cases if they were already judges when the state passed legislation requiring all judges to be lawyers. Further, New Hampshire technically allows lay judges to oversee eviction cases, but in practice all judges in the state are admitted to the bar. See *supra* note 145 and accompanying text.

174. About the Courts, State of Miss. Judiciary, <https://courts.ms.gov/aboutcourts/aboutthecourts.php> [<https://perma.cc/WY7E-VE7H>] (last visited Feb. 4, 2022); see, e.g., Justice Court, Adams Cnty. Miss., <https://www.adamscountymiss.net/justice-court> [<https://perma.cc/MA2B-X6VV>] (last visited Feb. 5, 2022).

law degrees,¹⁷⁵ and up until January 2022, the only requirement for magistrate judges was that by the six-month mark of their judgeship they receive forty hours of training.¹⁷⁶ As of January 2022, they must also complete twelve hours of continuing education each year after their first year of service.¹⁷⁷ As discussed in section III.E.1, we interviewed several key informants, attended meetings about the low-level court system in North Carolina, and visited two different courthouses, one with primarily lay judges and one with primarily lawyer-judges.

A. *What Does It Mean to Be a “Judge” in the United States?*

In order to frame the discussion around arguments for and against lay judging in the United States, it is useful to consider the contrast between higher-level state courts and federal courts, on the one hand, and lower-level state courts on the other hand. To begin, consider the credentials required for different types of judges. As discussed in Part II, several states that allow lay judges require only a high school diploma and state citizenship to serve.¹⁷⁸

Contrast this with what it takes to get appointed to a federal judgeship or elected or appointed (depending on the state) to a high-level state judgeship. Serving as such a judge is considered an honor generally reserved for only the highest-credentialed lawyers in the country. When presidents nominate people to serve as federal judges, the credentials of those nominated are considered newsworthy by the media.¹⁷⁹ Competition is fierce, and the rewards are high. Federal judges generally command much respect, are well-compensated, and are provided many resources to do their jobs well, such as law clerks, who are some of the top recent law school graduates in the country.¹⁸⁰ Judgeships for top state court positions

175. E-mail from Lori Cole, Ct. Mgmt. Specialist, N.C. Jud. Branch, to Charles Holton, Supervising Att’y, Civ. Just. Clinic at Duke Univ. Sch. of L. (June 3, 2020) (on file with authors) (noting that only 120 of the 669 (18%) North Carolina magistrates in the 2019–2020 fiscal year have law degrees and only 105 of the 120 with J.D.s are licensed to practice law).

176. N.C. Gen. Stat. § 7A-177 (2021).

177. *Id.* § 7A-171.2(c).

178. See *infra* Appendix, tbl.1.

179. See, e.g., Ariane de Vouge & Betsy Klein, Biden Unveils First Slate of Judicial Nominees Featuring Diverse and History-Making Selections, CNN (Mar. 30, 2021), <https://www.cnn.com/2021/03/30/politics/joe-biden-judicial-nominees/index.html> [<https://perma.cc/8UY9-NKRF>] (“‘This trailblazing slate of nominees draws from the very best and brightest minds of the American legal profession,’ Biden said in a statement.”).

180. See Mark C. Miller, Law Clerks and Their Influence at the US Supreme Court: Comments on Recent Works by Peppers and Ward, 39 *Law & Soc. Inquiry* 741, 742 (2014) (reviewing *In Chambers: Stories of Supreme Court Law Clerks and Their Justices* (Todd C. Peppers & Artemus Ward eds., 2012) (“Today, the clerks at the Supreme Court are almost always recent law school graduates from the best law schools in the country who have already spent a year clerking, usually on one of the US Courts of Appeals.”); see also Todd C. Peppers, *Couriers of the Marble Palace: The Rise and Influence of the Supreme Court Law*

(usually state supreme courts and the courts of appeals immediately below the state supreme court) are also coveted positions that usually enjoy many of the perks of high-level federal judgeships, though many of these judgeships are elected, rather than appointed.¹⁸¹

B. *Judging Financials*

Connected with the discussion above about differences in the credentials required for judges of different levels, it is also important to consider the financial aspects of judging in different types of courts in the United States. This consideration helps to paint a fuller picture of the contrast between low-level state courts and other courts in the United States. For the past several decades, all court systems in the United States have been under financial pressure during a time of increasingly high caseloads.¹⁸² Indeed, Supreme Court Justices have testified before

Clerk 1–2 (2006) (noting that “the best and brightest law school students” are given the opportunity to serve as Supreme Court law clerks); Artemus Ward & David L. Weiden, *Sorcerers’ Apprentices: 100 Years of Law Clerks at the United States Supreme Court* 55 (2006) (describing “a portrait of Supreme Court law clerks as a relatively homogeneous legal elite who matriculate at top law schools, secure prestigious clerkships with prominent judges and justices, and embark on careers of power and reward”).

181. See Kristen M. Renberg, *The Impact of Retention Systems on Judicial Behavior: A Synthetic Controls Analysis of State Supreme Courts*, 41 *Just. Sys. J.* 292, 295–96 (2020); *Choosing State Court Judges*, Brennan Ctr. for Just., <https://www.brennancenter.org/issues/strengthen-our-courts/promote-fair-courts/choosing-state-court-judges> [<https://perma.cc/R5XM-NWHC>] (last visited Feb. 25, 2022) (reporting that thirty-eight states select their supreme court justices through a public election). Even between federal and state courts (generally), there is a well-documented perception, since at least 1980, that state courts are inferior to federal courts. See Zambrano, *supra* note 61, at 2145–46 (documenting scholarly articles that suggest that federal courts had higher competence due to “higher caliber judges and a better institutional setting” and also that litigant surveys show that “litigants consider federal courts to be more competent than state courts”).

182. Chief Justice John Roberts wrote that the “impact of the sequester was more significant on the courts than elsewhere in the government, because virtually all of their core functions are constitutionally and statutorily required Unlike most Executive Branch agencies, the courts do not have discretionary programs they can eliminate or postpone in response to budget cuts.” Tal Kopan, *Roberts: More Money for Courts*, *Politico* (Jan. 1, 2014), <https://www.politico.com/story/2014/01/roberts-calls-for-more-money-for-courts-101656> [<https://perma.cc/MT3V-SD3R>] (internal quotation marks omitted); see also Tal Kopan, *At Sequestration Hearing, Breyer, Kennedy Say Cameras in the Courtroom Too Risky*, *Politico* (Mar. 14, 2013), <https://www.politico.com/blogs/under-the-radar/2013/03/at-sequestration-hearing-breyer-kennedy-say-cameras-in-the-courtroom-too-risky-159328> [<https://perma.cc/A3UK-Z9EC>] (“[T]he 0.2 percent of the federal budget for the . . . third branch of the federal government is more than reasonable. What’s at stake here is the efficiency of the courts, and they are . . . not only part of the constitutional structure, they are part of the economic structure of the country”); Tal Kopan, *87 Federal Judges Write Congress on ‘Devastating’ Sequester Cuts*, *Politico* (Aug. 15, 2013), <https://www.politico.com/blogs/under-the-radar/2013/08/87-federal-judges-write-congress-on-devastating-sequester-cuts-170617> [<https://perma.cc/3FZS-5EA4>] (“In a rare appearance before Congress[,] . . . Supreme Court Justices Anthony Kennedy and

Congress requesting more funds for federal courts, and federal judges have banded together to write to Congress warning of the dire consequences of budget cuts for the federal judiciary.¹⁸³ But the differences between what qualifies as true budgetary constraints for federal versus state courts are stark.¹⁸⁴ While the federal judiciary certainly has budget needs, state courts have been described as “mired in relative decay”¹⁸⁵ and “financially bankrupt,”¹⁸⁶ experiencing “layoffs, hiring freezes and cutbacks in services.”¹⁸⁷ In a few states, courts were even consolidated or closed due to budget issues.¹⁸⁸

Perhaps the most useful metric to consider for this Essay is judicial salary (and benefits), as salary is, of course, an important recruiting measure for any job. All federal judges are paid salaries above \$200,000.¹⁸⁹ In 2021, district court judges made \$218,600, circuit court judges made \$231,800, Associate Justices on the Supreme Court made \$268,300, and the Chief Justice of the Supreme Court made \$280,500.¹⁹⁰ Of course these

Stephen Breyer made a similar plea for the judicial branch, saying courts operate on a minimal budget and consume a small fraction of overall federal spending.”).

183. See *supra* note 182.

184. In an essay for the *Boston Review*, Professor Daniel Wilf-Townsend describes how the state civil court system has suffered significant budgetary struggles, particularly since the 2008 recession. He explains:

The Los Angeles Superior Court system alone faced annual shortfalls between \$80 million and \$140 million; in Florida, court budget shortfalls amounted to more than \$100 million, and almost 300 court staff positions were lost. Waiting times and case backlogs increased; in New York, caseloads grew to an average of 3,500 per judge.

Daniel Wilf-Townsend, *The Urgent Need for Civil Justice Reform*, *Bos. Rev.* (Apr. 21, 2020), <http://bostonreview.net/law-justice/daniel-wilf-townsend-urgent-need-civil-justice-reform> [<https://perma.cc/5JDW-EXX5>]. The National Center for State Courts has documented the cost-cutting measures state courts have taken since March 2020. Twenty-nine states have instituted hiring freezes, thirteen states have instituted salary freezes, eight states enacted furloughs, seven states offered early retirements, four states reduced the hours of their courts, and a few states even closed and consolidated courts and instituted layoffs. Budget Resource Center, Nat’l Ctr. for State Cts., <https://www.ncsc.org/information-and-resources/budget-resource-center> [<https://perma.cc/GVY8-PCGP>] (last updated Nov. 30, 2020).

185. Zambrano, *supra* note 61, at 2103.

186. *Id.* (quoting Don J. Debenedictis, *Struggling Toward Recovery: Courts Hope that Belt-Tightening Lessons From the Recession Will Help Them Make It Through the ‘90s*, 80 *ABA J.* 50, 51 (1994)).

187. *Id.* (quoting Don J. Debenedictis, *Struggling Toward Recovery: Courts Hope that Belt-Tightening Lessons From the Recession Will Help Them Make It Through the ‘90s*, 80 *ABA J.* 50, 50 (1994)). See also *supra* note 184.

188. Zambrano, *supra* note 61, at 2103.

189. Judicial Compensation, U.S. Cts., <https://www.uscourts.gov/judges-judgeships/judicial-compensation> [<https://perma.cc/XGJ7-MUVR>] (last visited Feb. 25, 2022).

190. *Id.*

judges often have other opportunities to make money that stem from their prestigious judgeships, such as book deals.¹⁹¹

State court judge salaries vary significantly by state, but the mean and median salaries for (higher-level) state court judges of general jurisdiction courts, intermediate appellate courts, and courts of last resort are all over \$150,000.¹⁹² In 2021, the median salary for general jurisdiction judges was \$161,829, for intermediate appellate court judges it was \$178,763, and \$183,653 for courts of last resort.¹⁹³ The difference between these salaries and the salaries of magistrate judges (or their equivalents) is significant.¹⁹⁴ Take North Carolina, for example, which pays higher-level state court judges a bit below the median for all states.¹⁹⁵ In 2021, higher-level North Carolina state court judges all made over \$100,000, a generally comfortable salary, even for someone encumbered by significant student loan debt.¹⁹⁶ Specifically in 2021, North Carolina superior court judges made \$142,082, appellate court judges made \$150,184, and supreme court judges made \$156,664.¹⁹⁷

In contrast, North Carolina magistrate judges, whose salaries are set by statute, all make well below \$100,000, no matter how many years they are on the job and whether or not they are lawyers.¹⁹⁸ The entry rate salary for a full-time magistrate (someone who works at least forty hours per week) is \$42,630; step one is \$45,777; step two is \$49,171; step three is \$52,764; step four is \$57,072; step five is \$62,259; and step six is \$68,072.¹⁹⁹ Nonlawyer magistrates enter at the entry-level salary, no matter their past job, and their salaries increase to the next step every two years from steps

191. See, e.g., Stephen Breyer, *The Authority of the Court and the Peril of Politics* (2021); Daniel Lippman, William Barr, Amy Coney Barrett Land Book Deals, *Politico* (Apr. 19, 2021), <https://www.politico.com/news/2021/04/19/bill-barr-amy-coney-barrett-book-deals-483028> [<https://perma.cc/XY4G-5V62>] (reporting on Justice Amy Coney Barrett's \$2 million book deal).

192. Nat'l Ctr. for State Cts., *Survey of Judicial Salaries 1–2* (2021), https://www.ncsc.org/_data/assets/pdf_file/0022/66307/Survey-of-Judicial-Salaries-July-2021.pdf [<https://perma.cc/Z4KD-6BNV>] [hereinafter *Survey of Judicial Salaries*].

193. *Id.*; see also Jeff Welty, *Compensation of North Carolina Judges*, N.C. Crim. L.: A UNC Sch. of Gov't Blog (Mar. 4, 2019), <https://nccriminallaw.sog.unc.edu/compensation-of-north-carolina-judges/> [<https://perma.cc/567N-9X44>].

194. See, e.g., Welty, *supra* note 195 (noting the significant differences in judicial and magistrate salaries).

195. *Survey of Judicial Salaries*, *supra* note 192, at 1–2.

196. See, e.g., Steven Chung, *Public Interest Organizations Must Use Their Surge in Donations to Pay Their Lawyers a Living Wage, Above the L.* (Jan. 8, 2020), <https://abovethelaw.com/2020/01/public-interest-organizations-must-use-their-surge-in-donations-to-pay-their-lawyers-a-living-wage/> [<https://perma.cc/M2SH-Y2YP>] (noting how the salary of public interest lawyers, which is similar to the salary of magistrates in North Carolina, is usually not enough to cover basic living expenses and other student loan repayment plans).

197. *Survey of Judicial Salaries*, *supra* note 192, at 1–2.

198. See Welty, *supra* note 193.

199. 2021 N.C. Sess. Laws 522 (to be codified as amended at N.C. Gen. Stat. § 7A-171.1 (2021)).

one through three, and then every four years (from date of appointment) for increases from steps four through six.²⁰⁰ Lawyers who start as magistrates start at a step four salary, \$57,072, but their opportunity for growth is no more than a non-J.D. magistrate (capped at step six).²⁰¹ One magistrate said of the starting magistrate salary, “[Y]ou can go . . . work [as] . . . a manager of most, any fast food restaurant and make more than that.”²⁰²

Not only are North Carolina magistrates paid significantly less than other state court judges (and, of course, federal court judges), but they also do not accrue paid vacation time or get retirement benefits, something most professionals have come to expect. Magistrates only get vacation time if the resident superior judge they work under gives it to them.²⁰³ As the same magistrate interviewee said when describing magistrate salaries and benefits, “[W]e’re the lowest . . . person on the totem pole.”²⁰⁴ In addition, the hours magistrates are expected to work are nontraditional and vary, with all magistrates on the criminal side having to take overnight shifts of “night court” at the local jail.²⁰⁵ Magistrates also often have to work weekends, holidays, and evenings.²⁰⁶ In section III.C below, we discuss why these differing salaries and benefits matter.

C. *Considerations in Support of Lay Judging*

So why are these pay and benefit differences relevant to the conversation about lay judges? The answer lies in arguments in support of lay judging: One of the key historical arguments that persisted throughout much of the twentieth century against requiring magistrate judges to have a law degree (particularly in rural areas) is that states would not be able to fill the positions. Indeed, this is why some states have different credential requirements for magistrates depending on county population, as discussed in Part II.²⁰⁷

But what the salary and benefits differentials show is states’ lack of willingness to invest in making magistrate positions (or their equivalent) attractive to lawyers as a career path. High-level judgeships come not only with prestige but also with a sizable salary and benefits package that is lacking for magistrates. It is no wonder, then, that those with law degrees might not be attracted to the magistrate job and might not be willing to

200. *Id.*

201. *Id.*

202. Telephone Interview with Magistrate C (Nov. 23, 2021).

203. *See id.*

204. *Id.*

205. Telephone Interview with Magistrate A (Nov. 2, 2021).

206. *See* Job Listing: Magistrate, State of N.C., https://agency.governmentjobs.com/northcarolina/job_bulletin.cfm?jobID=1008793&sharedWindow=0 [<https://perma.cc/GXG6-H3BN>] (last visited Feb. 4, 2022) (“Must be able to work irregular hours including nights, weekends, and holidays.”).

207. *See supra* section II.B.

move to rural areas for the job. Indeed, a starting salary in the mid-\$50,000s with a growth opportunity only up to the mid-\$60,000s might be very difficult for a lawyer with significant law school student loan debt to comfortably take on.²⁰⁸ This lack of investment by states in making magistrate jobs appealing, in contrast to higher-level judgeships, is a commentary on how states value the people and the types of cases that go through their lowest-level courts. These salaries put a price tag on these courts, and the lack of high valuation is evident. Of course, budgets are tight, but how governments allocate budgets largely showcases the degree to which governments value (or don't value) certain institutions and programs.

Some may argue that there is no need to raise salaries and make magistrate judgeships more attractive because it is in fact preferable for cases in these low-level courts to be adjudicated by connected and known (nonlawyer) community members, rather than by trained lawyers. As Professor Cathy Lesser Mansfield wrote in her 1999 article, "One of the images that underlies much of the non-lawyer judge discourse is that of the wise and experienced member of the community, unrestrained by the formality of court rules, and informed by his knowledge of local custom, and perhaps even the knowledge of individuals before him."²⁰⁹

There are two problems, however, with this argument. First, while this is a romantic notion of what community justice might look like, a notion that might have some historical truth,²¹⁰ the notion of a "community" is complex on the ground in 2021. In North Carolina, for example, one of the most common careers prior to a magistrate judgeship is law enforcement.²¹¹ Indeed, in the rural county where the magistrates we interviewed worked, all of the sitting magistrates (roughly fifteen total) with the exception of one were former probation officers (at the time of the interviews).²¹²

Police and probation officers have unique positions in the community, but they do not necessarily fill the romantic notions of wise and trusted community members. There are significant power differentials between citizens and these officers, and the notion that it is in fact a plus that a former police or probation officer might even have "knowledge of individuals before him"²¹³ is problematic, delegitimizing, and likely harmful for some community members. Given recent empirical research

208. See Chung, *supra* note 196 (noting how the salary of public interest lawyers, which is similar to the salary of magistrates in North Carolina, is usually not enough to cover basic living expenses).

209. Mansfield, *supra* note 4, at 142.

210. See *id.* ("James A. Gazell commented that "[t]he persons elected as justices of the peace, however, were usually the most trusted members in frontier communities." (citation omitted)).

211. Telephone Interview with Key Informant 3 (June 4, 2021).

212. *Id.*

213. Mansfield, *supra* note 4, at 142.

about law enforcement and Black communities, a judge with a background as a police or probation officer is unlikely to be perceived as a reassuring presence or an impartial adjudicator who understands and appreciates the local community and culture.²¹⁴ Such research has shown that law enforcement personnel engage in racial profiling and stereotyping²¹⁵ and disproportionately subject Black and low-income communities to proactive policing practices, including heightened criminal surveillance, stop-and-frisks, and traffic stops.²¹⁶ These practices, combined with a slow response to Black neighborhoods when assistance via 911 is called,²¹⁷ fosters a common belief in Black communities that law enforcement merely “operates to protect the advantaged.”²¹⁸ Further, “feelings of distrust and fear of the police . . . have become cultural norms” in Black communities.²¹⁹

The second problem with the community ties argument for lay judges is the assumptions such an argument makes about the legal issues that come before magistrate judges. For a community-based system to work, it must be that the matters of law adjudicated are simple enough that a lay judge could effectively and efficiently understand and work through these

214. See *infra* notes 215–219 and accompanying text.

215. See Dorothy E. Roberts, Foreword: Abolition Constitutionalism, 133 *Harv. L. Rev.* 1, 80 n.477 (2019) (citing numerous empirical sources showing that Black men are more likely than white men to be stopped or killed by police).

216. See Monica C. Bell, Police Reform and the Dismantling of Legal Estrangement, 126 *Yale L.J.* 2054, 2060–61 (2017) [hereinafter Bell, *Legal Estrangement*] (highlighting scholarship that shows stop-and-frisk tactics led to higher incarceration of Black men even though there was not necessarily an increase in actual crime); Monica C. Bell, Situational Trust: How Disadvantaged Mothers Reconcile Legal Cynicism, 50 *Law & Soc’y Rev.* 314, 318 (2016) (“In the early and mid-twentieth century, widely accepted, disproportionate police harshness in predominantly black communities contributed to blacks’ greater likelihood of being arrested, charged, and sentenced more severely for crimes than whites.” (citing Chicago Commission on Race Relations (1922))); Aziz Z. Huq, The Consequences of Disparate Policing: Evaluating Stop and Frisk as a Modality of Urban Policing, 101 *Minn. L. Rev.* 2397, 2413–14 (2017) (showing that advocates of stop-and-frisks openly recognize that minority communities will be affected disproportionately by the policy’s implementation); Tracey Meares, The Legitimacy of Police Among Young African-American Men, 92 *Marq. L. Rev.* 651, 654 (2009) (“No one is surprised to learn that black men have long faced a higher arrest probability than white men.”); L. Song Richardson, Implicit Racial Bias and Racial Anxiety: Implications for Stops and Frisks, 15 *Ohio St. J. Crim. L.* 73, 87 (2017) (“Empirical evidence consistently demonstrates that Black individuals bear the brunt of stops and frisks and other similar investigatory proactive policing practices.”).

217. See Huq, *supra* note 216, at 2425 (“In Chicago, for example, African-American and Hispanic neighborhoods are subject to [stop-and-frisk] on the one hand, but on the other hand experience substantially longer delays than non-minority neighborhoods when seeking police aid via 911 calls.”).

218. Bell, *Legal Estrangement*, *supra* note 216, at 2071 (quoting Tom R. Tyler & Yuen J. Huo, Trust in the Law: Encouraging Public Cooperation With the Police and Courts 108–09 (2002)).

219. Mikah K. Thompson, A Culture of Silence: Exploring the Impact of the Historically Contentious Relationship Between African-Americans and the Police, 85 *UMKC L. Rev.* 697, 698 (2017).

legal issues.²²⁰ Consider eviction as an example. The most common basis for eviction in North Carolina is “nonpayment of rent.”²²¹ The legal requirements for failure to pay rent are fairly simple—demand plus a ten-day waiting period before a landlord can file suit.²²² However, there are several defenses to nonpayment of rent, such as insufficient demand, retaliatory eviction, and habitability claims.²²³ Each of these defenses require the interpretation of language and legal principles.

For example, under insufficient demand, a landlord must make a “clear, unequivocal statement, either oral or written” for rent—an indirect expression of a desire to have a tenant catch up on rent is insufficient.²²⁴ Another example is a landlord’s duty to deliver and maintain “fit and habitable” premises.²²⁵ This duty involves complying with applicable building codes, and thus a magistrate must interpret such codes. Further, there is a statute protecting tenants from retaliatory evictions.²²⁶ There are several “good faith” actions on the part of a tenant that are protected, such as a request for repairs or a complaint to a government agency about a landlord’s violation of any health or safety law, building code, or any other applicable regulation.²²⁷ Interpretations of each of these clauses are complex and may involve case and statutory interpretation—something trained lawyers learn during their three years in law school.

Ultimately, the very notion that the types of cases heard before low-level state courts are somehow conducive to community judging is more of a value judgment about the types of issues that come before low-level courts than a true assessment of the complexity of the legal issues at hand. Many, if not most, of these issues stem from consequences of poverty, and thus are largely legal problems of the poor (eviction,²²⁸ debt collection,²²⁹

220. As discussed in *supra* section I.C, there has long been advocacy for the idea of community justice in the United States.

221. North Carolina Eviction Process, Nat’l Evictions, <https://nationalevictions.com/home/welcome/states-eviction-process/north-carolina-eviction-process/> [<https://perma.cc/3682-TP25>] (last visited Feb. 28, 2022).

222. N.C. Gen. Stat. § 42-3 (2021).

223. See, e.g., *id.* § 42-37.1 (providing an affirmative defense against retaliatory evictions).

224. *Snipes v. Snipes*, 286 S.E.2d 591, 595 (N.C. Ct. App. 1982), *aff’d per curiam*, 293 S.E.2d 187 (N.C. 1982).

225. N.C. Gen. Stat. § 42-42.

226. *Id.* § 42-37.1(a)(1)–(2).

227. *Id.*

228. Desmond, *supra* note 141, at 296 (explaining that eviction is commonplace among people in poverty and also one of the most significant drivers in perpetuating poverty).

229. Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers, The Legal Aid Soc’y, MFY Legal Servs., Neighborhood Econ. Dev. Advoc. Project & Urb. Just. Ctr., Cmty. Dev. Project 1 (2010), <http://mobilizationforjustice.org/wp-content/uploads/reports/DEBT-DECEPTION.pdf> [<https://perma.cc/AT4S-9ETC>] (“Virtually all (95%) of people with default judgments entered against them by debt buyers resided in low- or moderate-income neighborhoods . . .”).

child abuse and neglect cases,²³⁰ and many criminal justice matters²³¹ that come before magistrates).²³² As the data in the Appendix shows, many states base the civil jurisdiction of magistrates on the amount in controversy in a case. Magistrates in these states have jurisdiction if the amount in controversy of the case is below a certain amount. This amount varies but is often somewhere between \$5,000 and \$10,000.²³³ This means that if a contract dispute, for example, falls below this amount of money, the matter is adjudicated before a nonlawyer judge, but if the matter involves a multi-million-dollar deal between two companies, it will most certainly be heard by a legally credentialed judge.

The key issue is the amount of money involved, rather than the complexity of the legal issue. There is an inherent value judgment in this way of doling out legal expertise: Contracts between two companies generally should not be subjected to nonlawyer magistrates because matters that involve a lot of money are somehow more worthy of legal expertise than matters involving smaller dollar amounts.

Should the importance of legal issues come down to the money involved? Consider the implications of a landlord–tenant contract dispute resulting in an eviction for the life course of an individual.²³⁴ The stakes,

230. Maren K. Dale, Addressing the Underlying Issue of Poverty in Child-Neglect Cases, A.B.A. (Apr. 10, 2014), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2014/addressing-underlying-issue-poverty-child-neglect-cases/> (on file with the *Columbia Law Review*) (“While poverty can lead to increased rates of actual maltreatment, poverty itself is often mistaken for neglect, resulting in increased rates of child-maltreatment reports.”).

231. Poverty and Debt, Prison Pol’y Initiative, <https://www.prisonpolicy.org/poverty.html> [<https://perma.cc/ELK2-ZJUG>] (last visited Feb. 25, 2022) (“Far from offering people a ‘second chance,’ our criminal justice system frequently punishes those who never had a *first* chance: people in poverty. By focusing law enforcement on low-level offenses and subjecting criminal defendants to money bail and other fees, our country effectively punishes people for being poor.”).

232. See Russell Engler, Connecting Self-Representation to Civil *Gideon*: What Existing Data Reveal About When Counsel Is Most Needed, 37 *Fordham Urb. L.J.* 37, 40–41 (2015) (exploring the unmet legal needs of the poor and noting that many of such unmet needs involve housing, family, and consumer issues); MacDowell, *supra* note 2, at 475 (defining “poor people’s courts” as state civil courts that serve large numbers of poor people, such as “family, housing, and small claims and other consumer courts”); see also *infra* Appendix, tbl.1.

233. See *infra* Appendix, tbl.1 (reporting that the “Amount in Controversy Cutoff?” can range between \$3,000 and \$25,000).

234. See Robert Collinson & Davin Reed, The Effects of Evictions on Low-Income Households 3 (2018), https://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf [<https://perma.cc/R8L7-F4UB>] (finding that those who are evicted are more likely to become homeless); see also Matthew Desmond & Rachel Tolbert Kimbro, Eviction’s Fallout: Housing, Hardship, and Health, 94 *Soc. Forces* 295, 295–96, 299 (2015) (noting that prolonged periods of homelessness can follow eviction, that there is a correlation between housing uncertainty and depression along with other negative health outcomes, and that “the blemish of an eviction can significantly influence one’s experiences on the housing market”); Barbara Kiviat & Sara Sternberg Greene, Opinion, Losing a Home Because of the Pandemic Is Hard

in many ways, could not be higher. Evictions uproot families, causing them to lose most of their possessions. Children who are evicted often must change schools and sleep in unstable and even unsafe conditions.²³⁵ Further, being evicted has been shown to cause long-term health problems.²³⁶

Yet in many states, North Carolina included, evictions are heard in small claims courts. Evictions are deemed “small claims,” and they are treated as such—unimportant and incidental. The symbolic nature of this term should not be lost. The term “small claims” inherently implies a small, relatively unimportant matter. Being evicted, however, is anything but small for the families involved. The decision to evict someone is not inherently less important than a seven-figure contract deal between two companies. Instead, by using amount in controversy as a proxy for determining importance, our legal system has embedded judgments about importance within it, valuing money over health, safety, and children’s life courses.

Another justification often made in favor of lay judging, including in *North v. Russell* (discussed in Part II), is that litigants usually have the right to a de novo trial or appeal before a lawyer-judge. Indeed, in *North v. Russell*, the majority relied in part on the fact that the defendant had a right to a de novo appeal of the decision by the nonlawyer judge to rule that lay judging is constitutional.²³⁷ At first glance, this argument appears to have validity, particularly given the volume of cases lower-level state courts hear (roughly sixteen million filings annually).²³⁸ Perhaps relying on a litigant to appeal if she wants her case heard before a legally credentialed judge is prudent. In theory, such a process is efficient, economical for strapped state judicial budgets, and potentially fair. In practice, however, such a system is anything but fair. To start, recall that the vast majority of litigants in low-level state courts are unrepresented.²³⁹ Now, consider the example of evictions in North Carolina again. Once a magistrate rules against a tenant, the tenant can appeal to the district court for a trial de novo if the notice of appeal is filed within ten days of the magistrate’s judgment.²⁴⁰ The tenant must post a rent bond if they wish to

Enough. How Long Should It Haunt You?, N.Y. Times (Jan. 7, 2021), <https://www.nytimes.com/2021/01/07/opinion/eviction-records-crisis.html> (on file with the *Columbia Law Review*).

235. See Desmond, *supra* note 141, at 299 (noting several health and developmental challenges for young children experiencing eviction); *supra* note 234 and accompanying text.

236. See Desmond & Kimbro, *supra* note 234, at 300–01 (noting the correlation between housing uncertainty and depression along with other negative health outcomes).

237. See 427 U.S. 328, 329 (1976).

238. Ct. Stats. Project, *supra* note 3.

239. See Schultheis & Rooney, *supra* note 22.

240. Landlord/Tenant Issues, N.C. Jud. Branch, <https://www.nccourts.gov/help-topics/housing/landlordtenant-issues> [<https://perma.cc/Z8JF-7SJ2>] (last visited Feb. 3, 2022).

remain in the property during the appeal process unless they file a form to be found indigent.²⁴¹

First, the appeals process assumes that tenants know they have the right to appeal. While magistrates are supposed to inform tenants of this right, our interviews with attorneys suggest that not all magistrates do. The attorneys we interviewed noted that in their experience, magistrates who are not lawyers are generally less familiar with the appeals procedure and thus are less likely to advise litigants of their appellate rights.²⁴² Since the majority of tenants before magistrates do not have an attorney, without a magistrate informing them of their right to appeal, they may never know.

Even if all magistrates always inform tenants of their right to appeal, the unrepresented tenant faces an upward, almost impossible, battle on the appeal. A ten-day window to file an appeal is quite short, particularly for someone who concurrently has to prepare to be kicked out of their home, potentially left homeless. During the ten-day process, the tenant must file the appropriate paperwork for appeal, including providing the other party with notice of the appeal. These steps require time, literacy, and procedural knowledge.

There are also fees associated with filing an appeal, though tenants may file an additional form to be found “indigent,” and thus unable to pay the appeals fee (and back rent due).²⁴³ However, in order to remain in their home during the appeals process, they still must sign and file an undertaking “Bond to Stay Eviction,” “agreeing to pay the tenant’s share of contract rent as it becomes due.”²⁴⁴ Further, “in actions based upon alleged nonpayment of rent where the magistrate’s judgment is entered more than five business days before the next rent due date, a tenant is also required to pay prorated rent under the terms of the undertaking.”²⁴⁵ If a tenant fails to pay prorated rent during the appeals process, the tenant can be evicted before the appeal is even heard.²⁴⁶

Most tenants brought to court for an eviction proceeding are in crisis, where money is short, and they need time to potentially plan for a new living arrangement, increase work hours to try to cover rent, and more. Even if the tenant manages to successfully file all needed paperwork to appeal, to obtain bonds and other necessary money to stay in their home during the appeals process, and to provide notice of appeal to the other party, the tenant will need to be able to take time off from work or potentially find childcare for the new trial at the district court. And the tenant has no say in when this trial will be held. The tenant will simply be mailed a notice of when that trial is and then must appear ready to litigate

241. *Id.*

242. Videoconference Interview with North Carolina Attorneys (June 2, 2020). The interview was conducted with both attorneys present.

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.*

in front of the district court judge at the assigned time.²⁴⁷ This can be difficult for low-income litigants, since low-wage service sector jobs are notorious for difficult and last-minute work schedules and provide few opportunities for employees to adjust their schedules.²⁴⁸

Given these procedural and practical hurdles with an appeal, it is not surprising that the rate of appeals for eviction cases is extremely low.²⁴⁹ The right to a *de novo* trial is theoretically important, but in practice is futile in promoting equity.

D. *Existing Research and the Consequences of Judging Without a J.D.*

Scholars have only just begun to document the consequences of the unequal state and local court systems, making important headway on the consequences of fines and fees in low-level courts²⁵⁰ as well as the conse-

247. N.C. Super. & Dist. Cts. R. 2.

248. See Maria E. Enchautegui, *Nonstandard Work Schedules and the Well-Being of Low-Income Families* 6 (2013), <https://www.urban.org/sites/default/files/publication/32696/412877-Nonstandard-Work-Schedules-and-the-Well-being-of-Low-Income-Families.PDF> [<https://perma.cc/H8MK-22BQ>] (discussing the commonality of nonstandard hours in the U.S. workforce, particularly among low-wage workers); Charlotte Alexander, Anna Haley-Lock & Nantiya Ruan, *Stabilizing Low Wage Work*, 50 *Harv. C.R.-C.L. L. Rev.* 1, 8 (2015) (discussing the prevalence of nonstandard hours in the workforce, especially in the service industry); Julia R. Henly, H. Luke Schaefer & Elaine Waxman, *Nonstandard Work Schedules: Employer- and Employee-Driven Flexibility in Retail Jobs*, 80 *Soc. Serv. Rev.* 609, 610 (2006) (“The growth of the U.S. service economy has fueled an increasing demand for evening, weekend, and variable-hour workers . . .”). See generally Sara S. Greene, *Working to Fail*, 27 *Duke J. Gender L. & Pol’y* 167 (2020) (detailing how low-wage jobs often require nonstandard work hours and make it difficult for workers to adjust their schedules).

249. See, e.g., Riley B. Foster, *Eviction Diversion: A Community-Based Approach to Addressing High Rates of Eviction in Durham County, North Carolina* 56–58 (Apr. 2018) (B.A. thesis, University of North Carolina at Chapel Hill) (on file with the *Columbia Law Review*) (noting that the number of evictions in Durham County averaged about 460 per month between 2015 to 2017, and, on average, about seventeen of these evictions were appealed each month, implying that less than 5% of evictions are appealed).

250. One area of the state court system that contributes to inequality and has been recently studied is that of fines and fees. The imposition of mandatory fines and fees on the indigent, regardless of an individual’s ability to pay, has become a subject of mounting judicial, legislative, and public concern. Brandon L. Garrett, Sara S. Greene & Marin K. Levy, *Fees, Fines, Bail, and the Destitution Pipeline*, 69 *Duke L.J.* 1463, 1464 (2020). The Ferguson Report, released by the U.S. Department of Justice in 2015, sparked national attention for these issues through its documentation of a particular county courthouse’s unreasonable methods of criminalizing poverty through fines and fees. See, e.g., William E. Crozier & Brandon L. Garrett, *Driven to Failure: An Empirical Analysis of Driver’s License Suspension in North Carolina*, 69 *Duke L.J.* 1585, 1589–90 (2020) (“What makes these findings particularly relevant, however, is not just the scale of the driver’s license suspensions, but that they are disparately imposed on minorities and poorer communities.”). Over time, court-imposed fines and fees can multiply, resulting in intensifying debt. In turn, individuals may lose their employment, driver’s license, housing, and public assistance. Katherine Beckett & Alexes Harris, *On Cash and Conviction: Monetary Sanctions as Misguided Policy*, 10 *Criminology & Pub. Pol’y* 509, 516 (2011) (“It thus appears that tens of millions of U.S. residents have been assessed financial penalties by

quences of having primarily pro se litigants.²⁵¹ Further, Professor Kathryn Sabbeth's recent essay on lower-level courts and the civil justice system made an important point: The lack of investment in state lower courts has resulted in what she calls the "underdevelopment of poor people's law."²⁵² The idea is that because resources are not spent on poor people's legal issues, justified by a notion that these issues are not legal in nature or are simple, the legal doctrine related to these issues is not well-developed. She argues that "[w]ithout lawyers to support them, time to prepare, or the opportunity to participate in defining the scope of issues before the court," poor litigants are denied the "benefits of law development."²⁵³ Ultimately, her larger argument is that "[a]ssumptions about whose cases

the courts and other criminal justice agencies."); Garrett et al., *supra*, at 1464; Sandra G. Mayson, *Detention by Any Other Name*, 69 *Duke L.J.* 1643, 1645 (2019) (noting how unaffordable bail functionally detains thousands each year); Megan T. Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, 34 *J.L. Econ. & Org.* 511, 534–35 (2018) (detailing empirical findings suggesting that required pretrial detention and fees lead to an increased overall length of incarceration and nonbail fees owed); see also Monica Bell, Stephanie Garlock & Alexander Nabavi-Noori, *Toward a Demosprudence of Poverty*, 69 *Duke L.J.* 1473, 1475–76 (2019) (describing substantive policy implications underlying the criminalization of poverty).

251. See Carpenter et al., *Judges in Lawyerless Courts*, *supra* note 2, at 512–13 (detailing how a lack of social and economic safety nets leaves many pro se litigants vulnerable under current civil justice systems and leads to inequitable access to justice); Colleen F. Shanahan, *The Keys to the Kingdom: Judges, Pre-Hearing Procedure, and Access to Justice*, 2018 *Wis. L. Rev.* 215, 217–18 (detailing the role of judges in low-level courts and their relationship with pro se litigants while identifying ways that judges may facilitate access to justice); Jessica K. Steinberg, *Demand Side Reform in the Poor People's Court*, 47 *Conn. L. Rev.* 741, 749 (2015) (finding that in some states 80 to 90% of those who appear in the "people's court" are unrepresented and challenged with navigating a complex legal system in order to successfully access the courts); Jessica K. Steinberg, Anna E. Carpenter, Colleen F. Shanahan & Alyx Marks, *Judges and the Deregulation of the Lawyer's Monopoly*, 89 *Fordham L. Rev.* 1315, 1315–16 (2020) (identifying how courts have come to rely on a "shadow network of nonlawyer professionals" as a substitute for traditional legal counsel and discussing how this impacts the substantive and procedural information provided to many pro se litigants); Sudeall & Meals, *supra* note 2 (describing how millions of unrepresented litigants interact with the civil justice system each year).

252. Sabbeth, *Market-Based Law Development*, *supra* note 80. Others have also long voiced the concern about state courts losing their ability to shape law, although courts are not necessarily focused on shaping law for low-income individuals specifically. See Myriam Gilles, *The Day Doctrine Died: Private Arbitration and the End of Law*, 2016 *U. Ill. L. Rev.* 371, 413 ("Put simply: law cannot grow in the darkness with which arbitration shrouds its activities, and when law ceases to grow, it stagnates and eventually ceases to be (or be relevant)."); Samuel Issacharoff & Catherine M. Sharkey, *Backdoor Federalization*, 53 *UCLA L. Rev.* 1353, 1419–20 (2006) (describing how the CAFA (Class Action Fairness Act) will cease nonfederal courts from shaping substantive law); Owen M. Fiss, *Comment, Against Settlement*, 93 *Yale L.J.* 1073, 1085 (1984) (describing how increases in settlements have detracted from courts' ability to shape the law); see also Zambrano, *supra* note 61, at 2176–80 ("Federal Monopolization of state claims also removes the ability of state courts to shape the common law.").

253. Sabbeth, *Market-Based Law Development*, *supra* note 80.

are worthy of attention legitimize the simplification of entire bodies of law and de-legalization of lower status courts.”²⁵⁴

Sabbeth focuses on the development of doctrine, and it seems likely that the issue we focus on in this Essay, nonlawyer judges, further perpetuates the underdevelopment of doctrine for poor people’s law. But this Essay suggests, in addition to Sabbeth’s point, that the existing doctrine is already quite complicated—to the extent that allowing lay judges to adjudicate cases involving the existing doctrine delegitimizes the legal process and, as discussed below, potentially leads to unjust outcomes.

Past research about procedural justice is also important to the problem of nonlawyer judging. Procedural justice scholars have found that when people perceive a lack of procedural justice, they are less likely to view the law as legitimate and as something that should be obeyed.²⁵⁵ On the flip side, when people experience procedural justice and are treated with respect, they view the law and legal authorities as more legitimate and entitled to be obeyed.²⁵⁶ In turn, people increase their self-regulation, taking on personal responsibility to follow social rules.²⁵⁷

Research suggests that different factors are important in shaping procedural justice judgments: perceptions of justice in the quality of the decisionmaking procedures (neutrality) and perceptions of justice in the treatment people receive in the process (status recognition).²⁵⁸ Professors Tom Tyler, Steven Blader, and Yuen Huo have argued that when people believe they have experienced these forms of justice, they tend to accept social rules and voluntarily engage in self-regulatory behavior.²⁵⁹

There is no doubt that many litigants who appear before lay judges may be unaware their judge is not a lawyer, and thus the experience may not feel inherently unjust. But regardless of whether poor litigants are aware of the credentials of the judge they appear before, there are important reasons procedural justice concerns still come into play. First, as we discuss below, both magistrates and attorneys who practice in their courts in North Carolina told us of clear procedural errors in magistrate

254. *Id.*

255. See, e.g., Tom R. Tyler & Yuen J. Huo, *Trust in the Law: Encouraging Public Cooperation With the Police and Courts* 49–51 (2002); Tom R. Tyler & Robert J. Bies, *Beyond Formal Procedures: The Interpersonal Context of Procedural Justice*, in *Applied Soc. Psych. & Organizational Settings* 77, 78 (John S. Carroll ed., 1990).

256. See Tyler & Bies, *supra* note 255, at 78.

257. Tom R. Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 30 *Crime & Just.* 283, 283–84 (2003).

258. See Tom R. Tyler and Steven L. Blader, *Cooperation in Groups: Procedural Justice, Social Identity, and Behavioral Engagement* 8–10 (2000) (detailing how procedural justice causes people to evaluate their statuses and values which, in turn, leads to self-regulatory behavior); Tyler & Huo, *supra* note 255, at 52 (describing a model to help evaluate how procedural justice correlates to self-regulation of behavior).

259. Tyler & Huo, *supra* note 255, at 175–76; see also Tyler & Blader, *supra* note 258, at 8–10 (discussing the role of the perception of fair outcomes and fair processes in self-regulation).

courts, errors that litigants would feel and experience and may affect their perceptions of the justice system.²⁶⁰ These errors, among others, include failing to tell litigants of their right to appeal, failing to consider legal issues in eviction cases, incorrectly revoking a litigant's driver's license, setting inappropriate bail, and incorrectly issuing warrants.²⁶¹ A case study of South Carolina magistrates found similar (and even more substantial) procedural problems, as did an older study of lay judges in New York State.²⁶² Second, putting aside noticeable procedural problems, the inherent underlying message of a system of nonlawyer judges for the poor is one of disregard, unimportance, and blame. Even if poor people are unaware of the injustices they are experiencing or only have some sense of injustice rather than concrete knowledge of the injustice, this does not justify an inequitable system.

It is also important to note that in some cases, those coming before magistrates may very much know their judge is not a lawyer. For example, in North Carolina, those coming before magistrates on the criminal side may, in fact, recognize the magistrates as former police officers or even probation officers the community member may have interacted with. In such cases, it is difficult to imagine litigants would feel the process is fair, neutral, and legitimate, though further research on this point is needed.

E. *North Carolina Case Study and the Problems of Judging Without a J.D.*

1. *Case Study Methods.* — North Carolina was an ideal case study because it is a state that relies heavily on lay magistrate judging. Thus, studying North Carolina provided a window into better understanding the workings of a low-level judicial system where the majority of the adjudicators are not legally trained but also allowed for some degree of comparison since it has some lawyer-judges. As previously noted, North Carolina has a large percentage of lay magistrates—over 80% of current sitting magistrates (civil and criminal combined) do not have law degrees,²⁶³ and up until January 2022, the only requirement for magistrate judges was that by the six-month mark of their judgeship they receive forty hours of training.²⁶⁴ As of January 2022, they must also complete twelve hours of continuing education each year after their first year of service.²⁶⁵

260. See *infra* section III.E.

261. See *infra* section III.E.

262. See *infra* section III.F and note 331.

263. E-mail from Lori Cole to Charles Holton, *supra* note 175 (noting that only 120 of the 669 (18%) North Carolina magistrates in the 2019–2020 fiscal year have law degrees and only 105 of the 120 with J.D.s are licensed to practice law).

264. N.C. Gen. Stat. § 7A-177 (2021).

265. *Id.* § 7A-171.2(c).

As part of our case study, we attended meetings and conferences about the eviction system in North Carolina,²⁶⁶ we reviewed and conducted a content analysis of statutes, websites, and blogs geared toward magistrate judges in the state,²⁶⁷ and we visited the courthouses of two different counties in North Carolina—one where the majority of magistrates have a J.D. (Durham County) and the other where few of the magistrates have a J.D. (Alamance County). We randomly sampled (and then photocopied) recent eviction case files at each courthouse, which allowed us to compare orders of lawyer and nonlawyer magistrates.²⁶⁸

We also interviewed a variety of informants involved in the low-level court system in North Carolina. Because we were not trying to study a particular group of people, but rather an institutional system, constructing a representational sample did not make sense.²⁶⁹ Instead, we created a “panel of informants” by conducting interviews with key informants who could bring forth different perspectives on the lower-level court system in North Carolina, providing us with an overview of the factual and practical ways the system works.²⁷⁰

A key informant can be “a knowledgeable insider willing to serve as an informant on informants[,] . . . a retiree, a person who has a career’s experience with the system and now has time to reminisce,” or an “informed insider.”²⁷¹ In order to get key informants to “comfortably be candid” with an interviewer, it is often useful for the interviewer to be “vouched for by a mutual acquaintance.”²⁷²

With these methodological considerations in mind, we sought out interviews using our networks based on past research Greene has done on eviction in North Carolina. We interviewed the Executive Director of Legal Aid of North Carolina, who supplied us with important factual and observational information about lower-level courts in North Carolina. We

266. Greene attended the Statewide Summary Ejectment Roundtable on June 14, 2019 at the North Carolina Judicial Center. She also attended several other informal meetings with key eviction stakeholders across the state.

267. See, e.g., Archive of Blog Posts by Dona Lewandowski, On the Civil Side: A UNC Sch. of Gov’t Blog, <https://civil.sog.unc.edu/contributors/> [<https://perma.cc/QG66-23UJ>] (last visited Feb. 23, 2022).

268. Renberg visited the Alamance County Courthouse on October 12, 2021 and the Durham County Courthouse on November 12, 2021.

269. Robert S. Weiss, *Learning From Strangers: The Art and Method of Qualitative Interview Studies* 20 (1994) (describing representational samples as useful when “we want to interview not a panel of people in peculiarly good positions to know but, rather, a sample of people who together can adequately represent the experiences of a larger group”). Our research was also additionally informed by a different study Greene conducted in the summer of 2019, which involved interviewing fifty respondents who had been evicted or were at risk of eviction in North Carolina. For a further description of this project, see *supra* note 1.

270. For a further description of the interviewing methods used to construct the sample panel of informants, see Weiss, *supra* note 269, at 18–20.

271. *Id.* at 20.

272. *Id.*

also connected with a magistrate judge in a rural county in North Carolina.²⁷³ We then used snowball sampling to interview two more magistrate judges (one who was currently a judge and one who had recently left a judgeship) from the same county.²⁷⁴ Further, using our contacts, we interviewed two attorneys who were able to provide a broad perspective, having both practiced in low-level courts across the state and also both having been involved in state-wide access to justice and court and law reform efforts. For further background and perspective, we also interviewed a former chief justice of the North Carolina Supreme Court, those involved with the training of magistrate judges in North Carolina, and individuals who are part of access to justice efforts across the state.²⁷⁵ Overall, combining all of the information our key informants provided along with the additional research conducted, we were able to develop a deep understanding of the magistrate system in North Carolina (and also determine areas ripe for further study).

2. *Case Study Findings.* — Our case study of North Carolina provides insight into how the system works through the eyes of personnel who work within it. We found that those we interviewed who work in the system and are legally trained believe that procedural justice is disrupted by nonlawyer judges. One of the attorneys we interviewed emphasized that his experiences with nonlawyer judges were different from his experiences

273. To protect the identity of our magistrate respondents, we use gender-neutral pronouns when referring to them and only provide general information about the county where they served as judges. In the county where these three magistrates served, there are currently about fifteen magistrate judges and the vast majority of the magistrates do not have law degrees. Most are former police or probation officers. See Telephone Interview with Magistrate A, *supra* note 205.

274. By using snowball sampling, a standard qualitative research technique, we gained the trust of our participants and access to further magistrate interviews. See Michèle Lamont & Patricia White, Workshop on Interdisciplinary Standards for Systematic Qualitative Research 10 (2005), https://www.nsf.gov/sbe/ses/soc/ISSQR_workshop_rpt.pdf [<https://perma.cc/YEF6-WTTZ>]. Professor Michèle Lamont and sociologist Patricia White explain:

Since the purpose of a qualitative study is to acquire new, more detailed knowledge on a topic, selection methods and interviewing styles need to be suited to that purpose. Snowball sampling allows the researcher to enter into networks of individuals and identify respondents that they might not otherwise be able to identify. However, participants tend to be more honest and willing to divulge personal information to researchers who have been validated by someone they know, enabling the researcher both to gather more accurate data and speak to individuals who otherwise may have declined to participate in research with a complete stranger. Furthermore, particularly in the case of expert and elite interviews, referrals can help the researcher pinpoint those participants who are most appropriate for the study at hand.

Id.

275. We interviewed these individuals in their professional capacities and designed questions to glean factual information about how the North Carolina lower-level court system works.

with lawyer-judges.²⁷⁶ He noted that in his experience, magistrates without law degrees frequently fail to inform tenants of their rights and also that nonlawyer magistrates are less comfortable applying appropriate legal remedies, such as rent abatement (which requires legal analysis).²⁷⁷ In a similar vein, both attorneys noted that in their experience nonlawyer magistrates are less likely to rule in favor of tenants on implied warranty of habitability claims, again because legal analysis is required.²⁷⁸ Further, the attorneys said that because there are more magistrates without law degrees in rural areas, it tends to be in those areas specifically that tenants have the most difficulty succeeding with legal claims.²⁷⁹ The attorneys said they believe these differences are due to untrained magistrates simply not understanding legal claims and assuming the legal argument can be hashed out on appeal, if the tenant so desires.²⁸⁰ Yet the attorneys noted that lay magistrates also appear to be less familiar with appellate procedure and often do not advise litigants of their right to appeal.²⁸¹

The views of these two attorneys were, of course, based only on their experiences and perceptions, but they were consistent with what we heard from magistrates themselves as well as others involved in magistrate-led courts in North Carolina. One nonlawyer magistrate we interviewed, Lay Magistrate C, began their²⁸² term in August of one year and did not have any training until February of the next year, since the trainings run only every six months.²⁸³ In North Carolina, magistrates are required to attend what is called “Basic School” within the first six months of their appointment. Basic School is “a course of basic training of at least forty hours in the civil and criminal duties of a magistrate.”²⁸⁴

What this means is that the magistrate we interviewed, and many other magistrates, began adjudicating with no training at all. In fact, magistrates may adjudicate for over five months with no training. As one key informant involved in magistrate training said, “[T]here’s no training. It’s just on-the-job training . . . until they come to basic school.”²⁸⁵ They called the training situation “scarily insufficient” and said, “My metaphor really is, it’s like asking someone to decorate a tree when they don’t have a tree. And you’re lobbing ornaments at them. And they don’t know where to put them. So, they’re just trying to hold ‘em while they figure [it] out.”²⁸⁶

276. Videoconference Interview with North Carolina Attorneys, *supra* note 242.

277. *Id.*

278. *Id.*

279. *Id.*

280. *Id.*

281. *Id.*

282. As noted previously, we use gender-neutral pronouns when discussing the magistrates we interviewed in order to protect their identity. See *supra* note 273.

283. Telephone Interview with Magistrate C, *supra* note 202.

284. N.C. Gen. Stat. § 7A-177 (2021).

285. Telephone Interview with Key Informant 3, *supra* note 211.

286. *Id.*

Aside from the potential goodwill of fellow magistrates to informally help, guide, and advise, new magistrates are given only two resources when they start their jobs: one book for civil cases and one for criminal cases. Attorney Magistrate B described these books:

[T]here's a big book that's nicknamed the Crimes Book, the NC Crimes Book. It's about 4 or 500 pages long and it breaks down crimes by element and issues There's a book called North Carolina Small Claims Law that's written by the Institute of Government and that's available as well [for civil issues].²⁸⁷

Once magistrates finally attend Basic School, they do have to pass a test, which is open book and untimed.²⁸⁸ We were told that the objective is for magistrates to pass and that it is not a particularly hard test.²⁸⁹ Magistrates are allowed to take the test multiple times, and they are even allowed to repeat Basic School classes in order to try to pass the test.²⁹⁰

What we learned through our key informant interviews is that during training, trainers emphasize to magistrates that their lack of legal training is not a problem, in part because it is possible to correct almost anything they do. Lay Magistrate C said that “the best thing they tell magistrates when you begin, is that most nine times out of ten, there's nothing you can do to screw up that can't be corrected at the courthouse.”²⁹¹ This magistrate further noted, “[Y]ou're gonna make mistakes, and I've sure made some mistakes. But there's not a mistake that's gonna cost anybody their life or anything, so . . . (laughs).”²⁹²

The stakes of mistakes, however, are of course very high in both civil and criminal cases. Civil cases such as evictions can result in homelessness, job loss, instability for children, and health problems.²⁹³ In criminal cases, an extra night in jail can mean being fired from one's job, having one's children taken into state custody, and a host of other issues. Lay Magistrate C gave an example of a mistake a magistrate might make—inappropriately revoking someone's driver's license due to a lack of understanding of the laws that govern driver's license revocation. Lay Magistrate C did not deem this mistake important because it could later be cleared up. They said, “[W]hen you take . . . somebody's license for a civil revocation for thirty days . . . and in fact, they shouldn't have had their license taken, um, you know, you can make that mistake. But then, the Clerk's Office will give it back to them . . . at the courthouse.”²⁹⁴

287. Telephone Interview with Magistrate B (Nov. 22, 2021).

288. Telephone Interview with Key Informant 3, *supra* note 211.

289. *Id.*

290. *Id.*

291. Telephone Interview with Magistrate C, *supra* note 202.

292. *Id.*

293. See generally *supra* note 234 and accompanying text (describing the relationship between eviction and homelessness).

294. Telephone Interview with Magistrate C, *supra* note 202.

While Lay Magistrate C is correct that this mistake could eventually be cleared up, they underestimate the effects such a mistake could have on someone. As a person waits to “clear up” the mistake, there are a myriad of potential collateral consequences of losing her license: She may not be able to get to work (which sometimes results in job loss); she may not be able to pick her children up from school or bring them to daycare; and she may not be able to go to the store to get food. Thus, the collateral consequences of these seemingly small mistakes are in fact quite significant.

Our interviews also revealed another hidden consequence of lay judges for defendants, one that we did not anticipate but came up organically in our interviews: the inappropriate influence of district attorneys (DAs) and law enforcement. How this plays out is somewhat different for DAs than for law enforcement. Regarding DAs, we learned that some magistrates view DAs as a resource for times when they are confused. Indeed, one of the questions in our interview guide for magistrates asked what they do when a tricky case or issue comes up. Lay Magistrate C responded without any hesitation saying, “I’ll call the district attorney.”²⁹⁵ But of course the DA is the attorney for the state—not the defendant—and the judge is seeking advice from him. In fact, this magistrate notes that another magistrate was related to a DA, and, “[s]o, I won’t hesitate to call [that DA].”²⁹⁶

While this lay magistrate did not seem to view law enforcement as a resource for complex legal problems, several of the magistrates suggested that police officers have close relationships with nonlawyer magistrates and often try to take advantage of these relationships. Attorney Magistrate B said that in “some of the areas . . . law enforcement are very much accustomed to just telling magistrates what . . . they want us to do.”²⁹⁷ They went on to explain, “[I]f you don’t do what they want to do they will, they will find a way to complain and to make your life difficult.”²⁹⁸

The magistrate then gave an example of a situation where police were clearly engaging in illegal conduct to avoid being subpoenaed.²⁹⁹ Attorney Magistrate B, in their capacity as an attorney, went to the Chief District Court Judge to complain about the practice, saying it was “not lawful” and that “we really shouldn’t be doing this as the favor of people who just don’t want to be subpoenaed.”³⁰⁰ Eventually, the practice was stopped, but as Attorney Magistrate B said, “[We] also, in smaller or more rural counties, have a lot of magistrates who are former policeman or probation officers. And I think sometimes they have a hard time separating their positions

295. *Id.*

296. *Id.*

297. Telephone Interview with Magistrate B, *supra* note 287.

298. *Id.*

299. *Id.*

300. *Id.*

from one another, what they used to do from what they currently do.”³⁰¹ Attorney Magistrate A, from the same rural county said, “I would say that the majority, if not the vast majority [of their colleagues], were some kind of law enforcement.”³⁰² Following up on that point, they said, “I would say that, without hesitation, I would say that . . . they’re far too willing to believe the police Um, far too unwilling to believe anything someone who . . . is wearing handcuffs has to say.”³⁰³ Further, Attorney Magistrate A noted that “[v]ery few questions were asked of the police and they didn’t like it when you did ask questions.”³⁰⁴

On the civil side, Attorney Magistrate A said, “[W]hen it came to sort of the inequities of a case . . . they were almost always gonna land on the landlord’s side I think a lot of that just comes down to a relationship. They see the landlords every day.”³⁰⁵ Another key informant was quite direct about how nonlawyer magistrates can disadvantage tenants in small claims court. They noted that “landlords, in particular, tend to be . . . locally influential . . . and have political power . . . Chief District Court Judges and clerks are both elected locally.”³⁰⁶ The implication is that the Chief District Court Judge and the clerks are incentivized to keep landlords happy. This key informant noted that they have heard that “the high volume landlord attorneys are extremely and, I believe, very deliberately intimidating.”³⁰⁷ They went on to explain the problem with this dynamic in the context of lay judges: “And that is a place . . . where not being a lawyer does matter because magistrates are acutely aware that . . . they’re not attorneys. So, if they have an attorney who is aggressive about . . . ‘I know the law, and you don’t[,]’ [m]any of them will back down.”³⁰⁸

This informant described a situation where a magistrate did not rule in the attorney’s favor, and “[t]he attorney left the courtroom, went directly to chief district court judge . . . with a complaint about how the magistrate was conducting court She wasn’t reappointed the next time.”³⁰⁹ Further, they noted that “if landlords are filing complaints against [magistrates], um, . . . It’s not true in all counties, but in a lot of counties, they’re not gonna get reappointed.”³¹⁰ Magistrates are well aware of this dynamic, and as Key Informant 3 noted, magistrates are sometimes “summoned to the chief district court judge’s office to explain their ruling against a landlord.”³¹¹

301. *Id.*

302. Telephone Interview with Magistrate A, *supra* note 205.

303. *Id.*

304. *Id.*

305. *Id.*

306. Telephone Interview with Key Informant 3, *supra* note 211.

307. *Id.*

308. *Id.*

309. *Id.*

310. *Id.*

311. *Id.*

The magistrates and key informants we interviewed are of course not the first to recognize that repeat players in courts are often influential and disproportionately likely to succeed in their local state court.³¹² Others have also suggested that judges are subject to political influence and “can be seen as laborers who seek to maximize their popularity, prestige, and reputation.”³¹³ None of these other considerations of influence on judges have yet to contemplate the additional dimension of the degree to which powerful repeat players may particularly be able to influence nonlawyer judges.

A particularly troubling aspect about the commentary on complaints and the power of landlords and their attorneys is that we were told of at least one chief district court judge who intentionally creates barriers meant to prevent less powerful parties from complaining about magistrate judges. Lay Magistrate C told us that the Chief District Court Judge in their district requires that all complaints about magistrates and the process be made in writing.³¹⁴ As Lay Magistrate C said, “That knocks down 99% of them.”³¹⁵ They further noted that the Chief District Court Judge was explicit with the magistrates that he implemented this complaint procedure to make it more cumbersome for litigants to complain.³¹⁶ Given potential literacy issues, language barriers, and the like, the litigants for whom writing a complaint would be a barrier are often going to be the least powerful litigants. Powerful repeat players see their complaints potentially block the reappointment of magistrate judges, while poor litigants experience significant, purposeful roadblocks preventing them from even filing a complaint.

Issues of race also came up in our interviews, and further exploration of these issues is warranted. Attorney Magistrate A was always met with dismissal when they raised concerns about racial issues related to magistrate judging. They said:

What bonds do I give to Hispanic people? But any indication of different treatment between Black people, Hispanic people, white people, men, women, older, younger, whatever. Any—any sort of, you know, ‘Hey, you gave that white guy a \$50,000 bond, you gave \$100,000 to the Black guy’ ‘They seemed like the

312. See, e.g., Lauren B. Edelman & Mark C. Suchman, When the “Haves” Hold Court: Speculations on the Organizational Internalization of Law, 33 *Law & Soc’y Rev.* 941, 942–43 (1999) (detailing a theory of how “repeat players” have internalized areas of the legal system in distinct ways that have allowed them to become structurally privileged actors in the system); Galanter, *supra* note 14, at 119–21 (identifying the ways in which underlying procedures within the legal system can act as limitations for those who wish to use the legal system as a venue for systemically equalizing change).

313. Zambrano, *supra* note 61, at 2159 (citing William M. Landes & Richard A. Posner, *Adjudication as a Private Good*, 8 *J. Legal Stud.* 235, 236–40 (1979)).

314. Telephone Interview with Magistrate C, *supra* note 202.

315. *Id.*

316. *Id.*

same crime.’ . . . ‘What’s going on?’ Was met with absolute resistance.³¹⁷

Attorney Magistrate A said of race that “it was very much not talked about . . . and bringing it up was very much frowned upon. . . [b]y the magistrates, by the cops, by whoever.”³¹⁸ They further said this type of data is very purposefully not recorded (disparities in bond, for example), and when they pushed to try to document such data, they were met with resistance.³¹⁹ As they said, race “definitely was an off-limits topic to talk about.”³²⁰

On the criminal side, magistrates are given a sheet from the Chief District Court Judge with recommended bond amounts for their district, but magistrates are under no obligation to follow these recommendations.³²¹ Lay Magistrate C said, “[W]e give high bonds in [our] County . . . ‘cause we have a lot of gang activity down here.”³²²

In contrast, Lay Magistrate C also said that there are a group of (private) attorneys who frequently work in their court.³²³ This group, Lay Magistrate C explained, will sometimes ask judges to make special exceptions for their clients, which usually involves asking for an unsecured bond.³²⁴ Lay Magistrate C said that they “try to work with them” when one of these attorneys is involved because “bond is to just make sure they go to court and . . . [t]hey’re represented by an attorney . . . so you know they’re gonna go to court most of the time. Some of them don’t, but . . . most [of the] time they do.”³²⁵ The implication should not be lost: Those with “gang activity” require high bonds, while those who have hired an attorney can be given unsecured bonds, because somehow, the fact that they had the money to hire an attorney implies they are less of a flight risk.

Ultimately, both of the attorney magistrates we interviewed said if there was one thing they would change about the system, it would be for there to be an attorney requirement for magistrates.³²⁶ Attorney Magistrate B said, when asked what she would change about the whole magistrate judging system (separately on the civil and criminal side): “I would say that

317. Telephone Interview with Magistrate A, *supra* note 205.

318. *Id.*

319. *Id.*

320. *Id.*

321. Telephone Interview with Magistrate C, *supra* note 202.

322. *Id.*

323. We asked the magistrates about their experiences with public defenders, but public defenders almost never appear before magistrates because of the nature of the issues magistrates adjudicate—it is too early in the criminal process for a public defender to be appointed to these matters. Magistrates issue arrest warrants, set bail, and deal with preliminary issues in criminal cases. *Id.*

324. *Id.*

325. *Id.*

326. Telephone Interview with Magistrate B, *supra* note 287; Telephone Interview with Magistrate C, *supra* note 202.

magistrates need to be attorneys.”³²⁷ They said this held for both the civil and criminal sides.³²⁸

Taken together, this panel of experts, along with the other data we collected, provides an important first step in helping to understand the magistrate system in North Carolina. Of course, the interviews conducted were limited in number, and generalizations about any subjective experiences of the interviewees cannot be made. The interviews, however, provide many factual insights that apply to the magistrate system as a whole in North Carolina, as well as other provocative insights into the lay judging system in North Carolina that can serve as a basis for a comprehensive, mixed-methods empirical study of low-level state courts that employ lay judges, not only in North Carolina, but across the country.³²⁹ Existing research already suggests the North Carolina experience does not rest alone, as detailed below.³³⁰

F. *It's Not Just North Carolina—A South Carolina Inquiry*

One of the difficult parts of studying low-level state courts is that local legal culture is different in each state. While there are no extensive, recent studies of magistrate courts in a large number of other states,³³¹ a recent study of South Carolina’s magistrate court system found similar concerns to those raised in our North Carolina case study—and some even more troubling concerns. ProPublica, together with The Post and Courier (collectively “the investigators”), conducted this investigation into magistrates in South Carolina, a state which also utilizes magistrate judges without a J.D. requirement in lower-level courts.³³² Similar to North

327. Telephone Interview with Magistrate B, *supra* note 287.

328. *Id.*

329. Greene and Guy-Uriel Charles have begun to design such a study, which will systematically study a number of different actors involved in lower-level state court systems in the United States.

330. See, e.g., Neal, *supra* note 4, at 729–30 (detailing similar issues within the West Virginia court system).

332. In 2006, after conducting a one-year investigation, the *New York Times* published an extensive story about New York’s 1,250 town and village courts, otherwise known as justice courts. The *Times* found that three-quarters of judges on these courts were not lawyers and many had a limited education (several with only high school diplomas). The story documented egregious violations of legal rights in these courts, as well as overt racism and sexism by the judges. While the article is sixteen years old and we are unsure if there have been subsequent reforms since publication, it is further evidence that the problems associated with lay judging extend well beyond North Carolina. William Glaberson, In Tiny Courts of N.Y., Abuses of Law and Power, *N.Y. Times* (Sept. 25, 2006), <https://www.nytimes.com/2006/09/25/nyregion/25courts.html> (on file with the *Columbia Law Review*).

332. S.C. Bar, Your Guide to Magistrate’s Court 4 (2016), https://www.sbar.org/media/filer_public/9c/29/9c290707-9ff2-4780-a78e-6928b9f57a22/magistrate_court_guide_2016.pdf [https://perma.cc/B29U-9743] (detailing the scope of a magistrate’s responsibilities, including conducting civil hearings in landlord–tenant disputes).

Carolina, “[t]hese courtrooms, the busiest in the state, dispose of hundreds of misdemeanor criminal cases and civil disputes each year.”³³³ Also, like North Carolina, magistrates in South Carolina are appointed through a political process, emphasizing connections rather than credentials.³³⁴ Magistrates in South Carolina, three-quarters of whom do not have law degrees, come from a variety of professions such as construction workers, pharmacists, and insurance agents, and they receive minimal training.³³⁵

The investigation found instances of “serious judicial errors or misconduct in thirty of the state’s forty-six counties.”³³⁶ Over the past two decades, the investigation found magistrates have “accepted bribes,” “flubbed trials,” and “mishandled even the most basic elements” of the criminal cases before them.³³⁷ The investigative project developed a profile of all 319 South Carolina magistrates, and the results show that more than a dozen of the sitting magistrates had been disciplined for misconduct.³³⁸ Further, since 2005 there had been over thirty magistrates from South Carolina that were reprimanded, suspended, or removed entirely.³³⁹ However, magistrates are not required to disclose their offenses when seeking a new term, and few do so.³⁴⁰ This has resulted in many magistrates with misconduct offenses on their records nonetheless being reappointed for additional terms.³⁴¹

The investigation focused primarily on criminal matters handled by magistrates, and the offenses documented by the investigators were troubling. South Carolina allows magistrates to hear misdemeanor cases, and in one case, a magistrate did not ask a defendant whether she wanted an attorney appointed, even though she was entitled to one (the ACLU has filed a suit, arguing this violated the defendant’s constitutional rights).³⁴² The judge also did not allow the defendant to defend herself, another violation of the defendant’s rights.³⁴³ This offense appears to stem from a lack of legal knowledge—others are simply corrupt.

333. Joseph Cranney, *These Judges Can Have Less Training Than Barbers but Still Decide Thousands of Cases Each Year*, ProPublica (Nov. 27, 2019), <https://www.propublica.org/article/these-judges-can-have-less-training-than-barbers-but-still-decide-thousands-of-cases-each-year> [https://perma.cc/44VS-BW5M].

334. *Id.*

335. *Id.*

336. *Id.*

337. *Id.*

338. *Id.*

339. *Id.*

340. *Id.* (detailing how the South Carolina Supreme Court’s Disciplinary Office has commented that it is keeping a close eye on the state’s magistrates).

341. *Id.* (noting how this gap in the law has allowed magistrates who have abused their position to continue on in their career).

342. *Id.*

343. See *id.* (“In an April 12, 2016, hearing, Brown tried explaining her situation to Adams, but the judge cut her off in an exchange captured by courtroom microphones.”).

For example, the investigators found that one magistrate was accused of forging a title to a Rolls Royce for a fellow judge, and another once threatened to beat up a defendant who had questioned his veracity in court.³⁴⁴ The situation in South Carolina was dire enough that from 2014 to 2015, a team of attorneys from the ACLU and the National Association of Criminal Defense Lawyers observed cases in South Carolina's local courts.³⁴⁵ They reported that "magistrates blocked people's right to counsel and shuttled unwitting defendants through an assembly line of guilty pleas."³⁴⁶

The investigation also detailed many other problems with the magistrate process similar to those we found in North Carolina. First, the appointment of magistrates is largely determined by political connections rather than qualifications. State senators control the process and have "stocked the courts with friends, political allies and legal novices."³⁴⁷ The investigators noted that the state's criminal codes have grown increasingly complex, yet the magistrate system has not adjusted in light of the increased complexity. Another problem, similar to North Carolina, is the lack of training for magistrates. As the investigators said, "Once selected, [magistrates] undergo fewer hours of mandated training than the Palmetto State requires of its barbers, masseuses and nail salon technicians."³⁴⁸ One of the requirements for South Carolina magistrates is for them to pass a competency exam. The exam requires a sixth-grade reading level and a basic knowledge of mathematics, how to tell time, and days of the week.³⁴⁹ The investigators found that out of a sample of thirty-one sitting magistrates, three took the test multiple times in order to pass,³⁵⁰ and separately, another four also required multiple attempts.³⁵¹ The investigators noted there may be more magistrates who required multiple attempts, but this information was not released to them.

CONCLUSION

The historical arguments for lay judges are out of touch with current reality, but they can and do serve as a convenient cover for the need to transform lower-level courts in order to promote legitimacy, fairness, and equality. The intention of the existing system in many states does not appear to be legitimacy, fairness, or equality. Instead, poor people's

344. *Id.*

345. *Id.*

346. *Id.*

347. *Id.*

348. *Id.*

349. *Id.*; see also S.C. App. Ct. R. 510(b)(1).

350. Cranney, *supra* note 333.

351. See *id.* (citing Michael Smith, Doubts Cast on Transparency and Legality of Magistrate Selection Process, *The Voice of Blythewood & Fairfield Cnty.* (June 13, 2019), <https://www.blythewoodonline.com/2019/06/doubts-cast-on-transparency-and-legality-of-magistrate-selection-process/> [<https://perma.cc/WF9D-WD8H>]).

problems are simply dismissed, deemed unimportant and unworthy of legal expertise. The two-tiered court system has persisted for long enough that any expectation of equality has been essentially forgotten. Justifications, such as a lack of funding, start to seem reasonable, with inequalities between different types of courts largely forgotten.

To be clear, the purpose of this Essay is not to provide an empirical assessment of adjudicative outcomes of lay judges as compared to lawyer-judges, and the Essay does not provide the data to support such an assessment.³⁵² Instead, this Essay argues that the message states are sending by allowing lay judging in low-level state courts—the very courts that poor people, who are disproportionately people of color, are most likely to interact with³⁵³—is one of disregard, unimportance, and blame. There is a sense, as there has been throughout history, that poor people’s problems are problems of their own making, and thus true investment in such problems is not the responsibility of the State.³⁵⁴ Instead, the State does the minimum necessary to mechanically process and dispose of such problems.³⁵⁵

Shifting the cultural norms and conversation around the problems of the poor is of course not easy. Calling attention to the problems of lower-level courts generally,³⁵⁶ and in the case of this Essay specifically the problem of lay judging, can lead to a resurgence of conversation around this issue—an important first step.

But taking a broader view, how we staff magistrate-led courts (and their equivalent) needs to be rethought. As the case study of North Carolina showed, currently many lay magistrates come from law enforcement and probation, careers that (by design) at times treat citizens they interact with in an adversarial way. These norms may pervade how magistrates then act on the bench. Part of the problem with the lay magistrate system is that there is a pretense of an impartial, formal, and rule-bound system of justice. Yet lay judges are not schooled in that system of law. Litigants are left to experience a courtroom of supposed “law,” but they do not actually experience the law. Instead, they experience a courtroom in which often no one, not even the judge, is aware of the law, or the one

352. The authors believe that this question and others, such as how litigants experience lay-judge courtrooms versus lawyer-judge courtrooms, are important and ripe for further empirical study. Indeed, as noted in *supra* note 329, Greene is undertaking such a study with Professor Guy-Uriel Charles.

353. See *supra* note 2.

354. See *supra* note 232.

355. See generally Desmond, *supra* note 141, at 304 (“The principle of due process has been replaced by mere process: pushing cases through Every housing court would need to be adequately funded so that it could function like a court, instead of an eviction assembly line: stamp, stamp, stamp.”); Wilf-Townsend, *supra* note 184 (detailing the recent financial troubles of state courts and detailing how the system fails to serve those that frequent it).

356. *Columbia Law Review’s* 2022 Symposium “The Other 98%: Racial, Gender, and Economic Injustice in State Civil Courts” is an important contribution to raising awareness of these problems.

person in the courtroom who is aware of the law is the attorney for the more powerful party (such as a landlord).

This system cannot and should not persist. There needs to be an increased focus on who staffs low-level state court judgeships and what type of training they receive. Creative solutions to consider how states might attract a particularly qualified new crop of judges who could best serve the needs of the poor are needed.³⁵⁷ One idea is for law schools to invest in joint social work and J.D. programs, which may spur interest and increase the availability of law graduates uniquely trained to work within the social contexts of low-level state courts. In order to incentivize enrollment in such programs (and graduates choosing state court work), a state court job corps program could be created at the federal level. Such a program could provide funding, training, and housing, among other resources, to participants who agree to work in certain types of state courts throughout the country.³⁵⁸ Of course, for

357. Other solutions also may help relieve some of the problems of lay judging. For example, Professors Shanahan and Carpenter have argued that many of the problems state courts hear may be better addressed in a more holistic, social service, problem-solving way (through both increased funding to solve problems of poverty outside of courthouses and through a more problem-solving approach within courthouses). See Colleen F. Shanahan & Anna E. Carpenter, *Simplified Courts Can't Solve Inequality*, 148 *Daedalus* 128, 132–34 (2019). Professor Steinberg has argued that adopting a problem-solving framework on the civil side may help combat many of the inequities seen in low-level civil courts. See Jessica K. Steinberg, *A Theory of Civil Problem-Solving Courts*, 93 *N.Y.U. L. Rev.* 1579, 1581–82 (2018). But all of these problem-solving focused solutions depend on the availability of qualified judges and that is what our solution is aimed at addressing. Another potential solution may involve videoconferencing, which the COVID-19 pandemic brought into the mainstream for courts. See, e.g., *The Pew Charitable Trs., How Courts Embraced Technology, Met the Pandemic Challenge, and Revolutionized Their Operations* 7–9 (2021), <https://www.pewtrusts.org/-/media/assets/2021/12/how-courts-embraced-technology.pdf> [<https://perma.cc/LA4B-BDXG>] (detailing how the adoption of technology and other remote digital tools in civil courts during the pandemic significantly improved access to courts for thousands of litigants); Colleen F. Shanahan, Alyx Mark, Jessica K. Steinberg & Anna E. Carpenter, *COVID, Crisis, and Courts*, 99 *Tex. L. Rev. Online* 10, 17 (2020) (arguing that the nimbleness state courts displayed during the COVID-19 pandemic can be used to innovate in the long term).

358. South Dakota has piloted a program that seeks to incentivize more law graduates to practice in rural areas (with populations below 10,000). The program pays lawyers \$13,000 on top of their salaries if they practice in such areas. The funding for the program is split between local governments, the South Dakota Bar Foundation, and the state. As of 2019, twenty-four lawyers were involved with the program. April Simpson, *Wanted: Lawyers for Rural America*, *The Pew Charitable Trs.* (June 26, 2019), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/06/26/wanted-lawyers-for-rural-america> [<https://perma.cc/5T7C-GSE2>]. The problem of the dearth of lawyers available in rural areas has been well-documented by others. See generally Lisa R. Pruitt, Amanda L. Kool, Lauren Sudeall, Michele Statz, Danielle M. Conway & Hannah Haksgaard, *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 *Harv. L. & Pol'y Rev.* 15, 120–28 (2018) (detailing the problems many states have in providing attorneys to poor litigants due to the lack of attorneys in rural areas and discussing potential solutions); Lisa R. Pruitt & Bradley E. Showman, *Law Stretched Thin: Access to Justice in Rural America*, 59 *S.D. L. Rev.* 466 (2014) (discussing the lack of rural attorneys across America and South

there to be the will to fund such programs,³⁵⁹ there needs to be a better understanding among state and federal policymakers about how low-level states courts fit into the broader historical story of neglecting institutions that serve the poor. We need to acknowledge how that neglect has led to inequities in the legal system and the perpetuation of inequality in our justice system.

Ultimately, if change can be made in the court system, perhaps that reform can be an important step in tackling, more broadly, the structures and institutions in our society that promote inequality.

Dakota in particular, describing the challenges rural attorneys face, and examining existing and potential programs to increase access to justice in rural communities). To the extent that lay judging is more common in rural areas, a focus on location may be necessary. Our proposal, however, focuses on staffing all low-level court positions with qualified individuals, irrespective of whether the positions are in rural areas. The salaries of all magistrates in, for example, North Carolina are low, no matter the population of the county. See *supra* section III.B.

359. Others have advocated for general federal funding of state courts as a means to generally relieve state court budgets. See Judith Resnik, *Revising Our “Common Intellectual Heritage”: Federal and State Courts in Our Federal System*, 91 *Notre Dame L. Rev.* 1831, 1866–67 (2016); Zambrano, *supra* note 61, at 2189 (“Increased federal funding for state courts may help remedy the overburdened and underfunded nature of state judiciaries.”). While federal money funds hundreds of millions of dollars toward state criminal justice programs each year, money for state court civil justice improvement is limited to roughly \$5 million per year—an almost undetectable amount when it is split between states. Wilf-Townsend, *supra* note 184. The program we suggest would provide specific funding to attract lawyers to judgeships that are often hard to fill due to salary, location, or both.

APPENDIX

TABLE 1: STATES THAT ALLOW NON-J.D.S TO SERVE AS JUDICIAL OFFICERS

Jurisdiction	Amount in Controversy Cutoff?	Prerequisites, Initial Training, and Continuing Education Requirements
Alabama		
District Court Magistrate Jurisdiction: ³⁶⁰ <ul style="list-style-type: none"> • Issue arrest warrants and set bail in accordance with the discretionary bail schedule • Receive guilty pleas in minor misdemeanors (where there is a fines schedule) Probate Court Jurisdiction: ³⁶¹ <ul style="list-style-type: none"> • Probate of wills • Grant, administration, and repeal or revocation of letters testamentary • All controversies in relation to the right of executorship or of administration • Settlement of accounts of executors and administrators • Sale and disposition of the real and personal property belonging to and the distribution of intestate's estates • Appointment and removal of guardians for minors and persons of unsound mind • All controversies as to the right of guardianship and the settlement of guardians' accounts • Allotment of dower in land in the cases provided by law 	N/A	District Court Magistrate Training: ³⁶² <ul style="list-style-type: none"> • Must enroll in a magistrates' orientation and certification program approved by the Administrative Office of Courts within twelve months of taking office Probate Judge Prerequisites: ³⁶³ <ul style="list-style-type: none"> • Citizen of Alabama • Resided in county for one year preceding election or appointment Probate Training and Continuing Education Requirements: ³⁶⁴ <ul style="list-style-type: none"> • Six-hour orientation program for new probate judges in first twelve months in office • Twelve credits in approved judicial education each calendar year thereafter³⁶⁵

360. Ala. R. Jud. Admin. 18; see also Ala. Code § 12-17-251 (2021).

361. Ala. Code § 12-13-1.

362. Ala. R. Jud. Admin. 18.

363. Ala. Code § 12-13-31; see also Alabama Appellate Courts, Ala. Jud. Sys., <https://judicial.alabama.gov/Appellate/JudgeQualification> [<https://perma.cc/N97F-QLTC>] (last visited Feb. 26, 2022) (“All justices and judges, with the exception of judges of the probate courts, must be licensed to practice law in the state of Alabama.”).

364. Ala. Mandatory Jud. Educ. R. 4(2)(b) (“Judicial-education credits shall be earned by attending conferences or courses approved by or offered through the ALI, the APJA, and the National Probate Judges Association (‘the NPJA’). Each calendar year, all probate judges must earn a minimum of six judicial-education credits at courses offered by the ALI.”).

365. Ala. Mandatory Jud. Educ. R. 4(2)(b)–(c) (“When a probate judge earns more than 12 judicial-education credits in a year, a maximum of 8 of those credits may be carried

Alabama (cont.)		
<ul style="list-style-type: none"> • Partition of lands within their counties • Chief election official of their counties • May issue show cause orders and attachment for contempts offered to the court or its process by any executor, administrator, guardian, or other person and may punish the person by a maximum fine of \$20 and/or imprisonment for at most twenty-four hours³⁶⁶ 		
Alaska		
<p>Magistrate Civil Jurisdiction:³⁶⁷</p> <ul style="list-style-type: none"> • Issue a protective order in cases involving domestic violence or stalking • Review the revocation or refusal to issue a driver's license • Referee all actions referred to the magistrate with powers over contempts, bench warrants, and witnesses <p>Magistrate Criminal Jurisdiction:³⁶⁸</p> <ul style="list-style-type: none"> • Issue writs of habeas corpus • Issue warrants of arrest, summons, and search warrants • Set, receive, and forfeit bail • Order temporary detention of a minor 	\$10,000 ³⁶⁹	<p>Magistrate Prerequisites:³⁷⁰</p> <ul style="list-style-type: none"> • Citizen of the United States • At least twenty-one years old • Resident of Alaska for at least six months immediately preceding appointment <p>Training and Continuing Education Requirements:³⁷¹</p> <ul style="list-style-type: none"> • Initial training and ongoing education are not specified in statute • There is a training judge assigned to each district to inspect, train, and report on the magistrates³⁷²

forward and applied toward that probate judge's judicial-education requirements for the following year.").

366. *Id.* § 12-13-9. Where a probate judge is a licensed attorney in Alabama, the power to punish for civil contempt is equivalent to that of a circuit court judge. *Id.*

367. Alaska Stat. § 22.15.100 (2021); see also *id.* § 22.15.040 (small claims actions); *id.* § 22.15.110(a) (noting additional duties of magistrates). Graduation from an accredited law school and active membership in the Alaska Bar Association are preferred but not required for appointment as a magistrate. Alaska Court System Class Specification: Magistrate Judge IV, Alaska Ct. Sys., <https://courts.alaska.gov/hr/classspecs/4106.pdf> [<https://perma.cc/LVF8-A9EW>] (last visited Feb. 4, 2022).

368. Alaska Stat. § 22.15.100. Magistrates may give judgment without action upon the confession of the defendant during misdemeanor criminal proceedings; hear, try, and enter judgment upon agreement in writing by the defendant for misdemeanors that are not minor offenses, and provide post-conviction relief in specified cases. *Id.* § 22.15.120(a). A minor offense is a statutory offense which cannot result in incarceration, loss of a valuable license, or a fine greater than \$300; an offense classified as an infraction or violation; or an offense for which a bail forfeiture amount is authorized by statute and established by the supreme court. *Id.* § 22.15.120(c).

369. *Id.* § 22.15.120.

370. *Id.* § 22.15.160(b). Notably, district judges need not have a J.D. either. After seven years, a magistrate is eligible for appointment to a district judge position. *Id.* § 22.15.160(a).

371. See *id.* § 22.15.160; see also Alaska R. of Admin. 19.2 (2017).

372. Alaska R. of Admin. 33.

Arizona		
<p>Justice Court Civil Jurisdiction:³⁷³</p> <ul style="list-style-type: none"> • All civil actions when amount in controversy does not exceed \$10,000 (including forcible entry and detainer) • Forcible entry • Hear civil traffic, domestic violence, and harassment cases • Issue orders of protection and injunctions prohibiting harassment <p>Justice Court Criminal Jurisdiction:³⁷⁴</p> <ul style="list-style-type: none"> • Petty offenses, misdemeanors, and criminal offenses punishable by fines not exceeding \$2,500 and/or imprisonment in county jail not exceeding six months • Assault or battery • Felonies only for purposes of issuing warrants and conducting preliminary hearings <p>Municipal Court Jurisdiction:³⁷⁵</p> <ul style="list-style-type: none"> • Municipal court judges hear civil traffic cases, violations of city ordinances and codes, and issue search warrants • Municipal court judges hear misdemeanor criminal traffic offenses where no serious injuries occur and issue search warrants 	<p>\$10,000³⁷⁶</p>	<p>Justice of the Peace Prerequisites:³⁷⁷</p> <ul style="list-style-type: none"> • At least eighteen years old • Resident of Arizona • Qualified voter in precinct where duties are performed • Read and write English <p>Municipal Court Judge Prerequisites:³⁷⁸</p> <ul style="list-style-type: none"> • Qualifications established on a local basis by city charters or ordinances <p>Training Requirements:³⁷⁹</p> <ul style="list-style-type: none"> • All full-time judges required to complete at least sixteen credit hours of judicial education including: <ul style="list-style-type: none"> ◦ Ethics ◦ Computer and network security ◦ Live training

373. Ariz. Rev. Stat. § 22-201 (2021). In Arizona, “magistrate” refers to any court officer with the power to issue a warrant for arrest of individuals charged with a public offense and includes “justices of the supreme court, judges of the superior court, judges of the court of appeals, justices of the peace and judges of a municipal court.” Id. § 1-215(18).

374. Id. § 22-301.

375. Municipal court judges do not hear civil lawsuits. Limited Jurisdiction Courts, Ariz. Sup. Ct., <https://www.azcourts.gov/guidetoazcourts/Limited-Jurisdiction-Courts> [<https://perma.cc/C8PU-WEJ8>] [hereinafter Ariz. Limited Jurisdiction Courts] (last visited Feb. 4, 2022).

376. Id. § 22-201. The Arizona judicial system also includes a small claims division which has concurrent jurisdiction with the justice court in specified matters where the amount in controversy does not exceed \$3,500. Id. § 22-503. In landlord–tenant disputes, justice courts have no jurisdiction over disputes involving greater than \$10,000 and also lack jurisdiction in matters regarding title to (as opposed to possession of) real property. For disputes involving damages between \$5,000 and \$10,000, jurisdiction is concurrent with superior courts, see Ariz. Limited Jurisdiction Courts, *supra* note 375.

377. Ariz. Limited Jurisdiction Courts, *supra* note 375.

378. Id. Some cities do not require municipal court judges to be attorneys. Id.

379. Ariz. Rev. Stat. § 1-302.

Colorado		
<p>(Small) County Court Civil Judges:³⁸⁰</p> <ul style="list-style-type: none"> • Concurrent jurisdiction with district courts in civil actions, including: <ul style="list-style-type: none"> ○ Actions to foreclose liens ○ Cases seeking rent or damages for injury to property and unlawful detention ○ Petitions for change of name ○ Temporary and permanent civil restraining orders • Original jurisdiction in hearings concerning the impoundment of motor vehicles <p>(Small) County Court Criminal Judges:³⁸¹</p> <ul style="list-style-type: none"> • Concurrent jurisdiction in criminal matters in: <ul style="list-style-type: none"> ○ Misdemeanors and petty offenses (other than those involving children) ○ Issuing warrants and bindover orders ○ Conducting preliminary examinations and dispositional hearings ○ Admitting bail in felonies and misdemeanors <p>Municipal Court Judges:</p> <ul style="list-style-type: none"> • Jurisdiction over municipal ordinance violations only³⁸² 	<p>\$25,000³⁸³</p>	<p>Smaller County and Municipal Judge Requirements:³⁸⁴</p> <ul style="list-style-type: none"> • High school graduate or equivalent • Some counties require a judge to be a qualified elector of the municipality or county in which the judge presides <p>Training Requirements:³⁸⁵</p> <ul style="list-style-type: none"> • County judges not admitted to the practice of law must attend an institute on the duties and functions of the court

380. Colo. Rev. Stat. § 13-6-104 (2021).

381. Id. § 13-6-106.

382. Id. § 13-10-104.

383. Id. § 13-6-104(2).

384. Id. § 13-6-203(4). In Class C and D counties only, county judges may be appointed with a high school equivalency and without license to practice law in Colorado. Id. But preference is to be given to the appointment of a municipal judge who is licensed to practice law in Colorado or trained in the law. Id. § 13-10-106(2).

385. Id. § 13-6-203(5). The obligation to attend an institute for judicial training may be waived by the state supreme court. Id.

Delaware		
Justice of the Peace Civil Jurisdiction: ³⁸⁶ <ul style="list-style-type: none"> • Contractual disputes • Replevin actions • Negligence cases (not involving physical injury) • Landlord–tenant cases³⁸⁷ 	\$25,000 ³⁹⁴	Justice of the Peace Eligibility Requirements: ³⁹⁵ <ul style="list-style-type: none"> • Resident of Delaware • At least twenty-five years old • Resides in county in which the justice of the peace serves
Justice of the Peace Criminal Jurisdiction: ³⁸⁸ <ul style="list-style-type: none"> • All criminal misdemeanor cases unless specifically excluded by law³⁸⁹ • Most traffic offenses not involving physical injury or death³⁹⁰ • Violations of any “ordinance, code or regulation of the governments of their respective counties and municipalities”³⁹¹ • Truancy cases³⁹² • For all criminal offenses:³⁹³ <ul style="list-style-type: none"> ○ Issue summonses and search warrants, based upon finding of probable cause, and issue and execute capiases ○ Conduct initial appearances to set bond and bond review hearings 		Justice of the Peace Training and Education Requirements: ³⁹⁶ <ul style="list-style-type: none"> • Basic legal education program • Minimum of thirty hours of actual instruction in approved continuing legal education over each two-year period of service, including at least two hours of instruction on judicial or legal ethics

386. In Delaware, Justices of the Peace are also called “magistrates.” Magistrate Screening, Delaware.gov: Div. of Prof. Reg., <https://dpr.delaware.gov/boards/magistrate/> [<https://perma.cc/T8ZA-B583>] (last visited Mar. 2, 2022). Jurisdiction extends only where amount in controversy does not exceed \$25,000. Del. Code tit. 10, § 9301 (2021).

387. Jurisdiction in landlord–tenant cases includes summary proceedings for possession for which jury trials are authorized and appeals to special courts consisting of a three-judge panel. Justice of the Peace Court: Jurisdiction, Del. Cts., <https://courts.delaware.gov/jpcourt/jurisdiction.aspx> [<https://perma.cc/NWY3-U88A>] [hereinafter Del. Justice of the Peace Court: Jurisdiction] (last visited Feb. 4, 2022).

388. *Id.*

389. The Delaware Code provides: “The Justice of the Peace Court shall have original jurisdiction to hear, try and finally determine all misdemeanors created in Chapter 5 of this title, and any attempt, conspiracy or solicitation to commit such misdemeanors unless such jurisdiction is excluded by subsection (b) of this section or is otherwise excluded by law.” Del. Code tit. 11, § 2702.

390. Del. Justice of the Peace Court: Jurisdiction, *supra* note 387.

391. Del. Code tit. 11, § 5917.

392. *Id.* tit. 14, § 2733; see also *id.* tit. 10, § 921 (“Justice of the Peace Court shall have original and exclusive jurisdiction over truancy matters . . .”). In other cases, Justices of the Peace have only limited jurisdiction over juvenile offenses. Del. Justice of the Peace Court: Jurisdiction, *supra* note 387.

393. Del. Justice of the Peace Court: Jurisdiction, *supra* note 387 (noting that capiases are bench or arrest warrants issued by a judge for a defendant who has failed to appear for arraignment, trial, or sentencing or who has failed to pay a court-ordered fine).

394. Del. Code tit. 10, § 9301.

395. Magistrates need not know the law, and the Delaware magistrate screening examinations do not include questions on Delaware law. Magistrate Screening Committee, Del. Cts., <https://courts.delaware.gov/jpcourt/screening.aspx> [<https://perma.cc/6XXD-D3ZW>] (last visited Feb. 4, 2022) (“Legal knowledge is not tested.”); see also Del. Code tit. 10, § 9206 (stating that judges must reside in county in which the justice of the peace sits).

396. Del. Just. Peace Ct. Civ. R. 108.

Georgia		
Magistrate Court Jurisdiction: ³⁹⁷	\$15,000 ³⁹⁹	Magistrate Eligibility: ⁴⁰⁰
<ul style="list-style-type: none"> • Civil claims including garnishment and attachment, unless exclusive jurisdiction vested in superior court • Issuing arrest and search warrants • Issuing subpoenas to compel attendance of witnesses and for the production of documentary evidence before the magistrate court • Holding of courts of inquiry • Violations of “county ordinances and penal ordinances of state authorities” • Punishment of contempt with fines not greater than \$200 and/or imprisonment not exceeding ten days • Granting bail, unless power to do so is “exclusively committed to some other court or officer” • Foreclosure of liens on abandoned mobile homes and animals • Trial and sentencing of misdemeanor violations in certain cases concerning marijuana possession, shoplifting, alcohol violations relating to minors, and criminal trespass³⁹⁸ 		<ul style="list-style-type: none"> • Citizen of the United States • Resident of the county in which the individual seeks the office of judge of the probate court for at least two years prior to qualifying for election and throughout term of office • Registered voter • At least twenty-five years old • High school graduate or equivalent <p>Magistrate Judge Training Requirements:⁴⁰¹</p> <ul style="list-style-type: none"> • Complete eighty hours of training specified by the Georgia Magistrate Courts Training Council “concerning the performance of his or her duties” within two years of becoming a magistrate⁴⁰² • Complete “a program of orientation activities” supervised by an experienced magistrate or judge within the first year of office • Complete a minimum number of continuing education training hours annually after the first year of service as a magistrate

397. Ga. Code Ann. § 15-10-2 (2021).

398. Id. § 15-10-260. Jurisdiction only exists where the misdemeanor violation occurred in the “unincorporated area of the county” in which the magistrate sits and where the defendant has “waive[d] in writing a trial by jury.” Id. §§ 15-10-260, -261.

399. Id. § 15-10-2.

400. Id. § 15-10-22 (“Additional qualifications for the office of chief magistrate or magistrate or both may be imposed by local law.”).

401. Id. § 15-10-137.

402. Any magistrate who is also an active member of the State Bar of Georgia is not required to complete these eighty hours of training as a condition to certification for office. Id. § 15-10-137(d).

Georgia (cont.)	
<p>Probate Court Judge Civil Jurisdiction:⁴⁰³</p> <ul style="list-style-type: none"> • Probate of wills • Administration of estates • Traffic cases • Appointment of guardians and conservators of minors and incapacitated adults <p>Probate Court Judge Criminal Jurisdiction:⁴⁰⁴</p> <ul style="list-style-type: none"> • Violations of game and fish laws • Criminal commitment hearings • Miscellaneous misdemeanors • Traffic and truancy in some counties • Holding of courts of inquiry • Issuance of search and arrest warrants in some cases 	<p>Probate Court Judge Eligibility:⁴⁰⁵</p> <ul style="list-style-type: none"> • Same qualifications as magistrates • Must never have been convicted of “a felony offense or any offense involving moral turpitude” contrary to federal law or the laws of any state <p>Probate Judge Training Requirements:⁴⁰⁶</p> <ul style="list-style-type: none"> • New judge orientation training course and yearly additional training prescribed by the Probate Judges Training Council and the Institute of Continuing Judicial Education of Georgia

403. Id. § 15-9-30.

404. Id.; see also id. §§ 17-7-20, 17-7-72, 17-10-3.

405. In counties with populations greater than 90,000, no person can be appointed as a probate court judge unless that person has been admitted to practice law for seven years preceding the election, is “a member in good standing with the State Bar of Georgia,” and is at least thirty years of age. Id. § 15-9-4. Notwithstanding these requirements, probate court judges “holding such office on or after June 30, 2000, shall continue to hold such office and shall be allowed to seek reelection for such office.” Id.

406. Id. § 15-9-1.1.

Kansas		
District Magistrate Civil Jurisdiction: ⁴⁰⁷ <ul style="list-style-type: none"> • All civil actions (concurrent with district judges), unless explicitly excluded • Uncontested actions for divorce District Magistrate Criminal Jurisdiction: ⁴⁰⁸ <ul style="list-style-type: none"> • Violations of state laws or rules and regulations adopted thereunder • Cigarette or tobacco infractions or misdemeanors • Felony first appearance hearings, preliminary examination of felony charges, and misdemeanor or felony arraignments Municipal Jurisdiction: ⁴⁰⁹ <ul style="list-style-type: none"> • Jurisdiction over violations of city ordinances⁴¹⁰ • Administration of matters relating to sentencing, parole, and release on probation 	\$10,000 ⁴¹¹	District Magistrate and Municipal Judge Eligibility: ⁴¹² <ul style="list-style-type: none"> • High school or secondary school graduate or equivalent • Resident of the county “for which elected or appointed to serve at the time of taking the oath of office and shall maintain residency in the county while holding office” • Either admitted to practice law in Kansas, or certified by the Supreme Court as qualified to serve as a district magistrate judge or municipal judge⁴¹³ District Magistrate and Municipal Judge Training and Continuing Education: <ul style="list-style-type: none"> • Thirteen hours of continuing judicial education credit each calendar year, including a minimum of two hours accredited for judicial ethics credit⁴¹⁴

407. Kan. Stat. Ann. § 20-302b (West 2021) (stating that district magistrates have no jurisdiction over the following actions: against state officers, contested divorce and custody of minor children, habeas corpus, receiverships, declaratory judgments, mandamus and quo warranto, injunctions, class actions, and certain real estate actions).

408. *Id.*

409. *Id.* § 12-4104.

410. Municipal judges have concurrent jurisdiction to hear and decide cases concerning ordinance violations with the same elements of enumerated state statutes, which would constitute and be punished as a felony if charged in district court: (1) driving under the influence; (2) domestic battery; (3) theft; (4) writing a worthless check; and (5) marijuana possession. *Id.*

411. Applies as to the jurisdiction of district magistrate judges. *Id.* § 20-302b.

412. *Id.* § 20-334 (district magistrate judge qualifications); *id.* § 12-4105 (municipal judge qualifications).

413. A district magistrate judge, who has not been regularly admitted to practice law in Kansas, will be granted a temporary certification to hold a temporary certificate permitting them to hold office, conditioned that such district magistrate passes an exam to ensure the judge “possesses the minimum skills and knowledge necessary to carry out the duties of such office” within eighteen months of the date that judge takes office. *Id.* § 20-337 (district magistrate judge alternative to licensed attorney requirement); *id.* § 12-4114 (municipal judge alternative to licensed attorney requirement). However, in “first class” cities, a municipal judge must be an attorney regularly admitted to practice law in the state of Kansas. *Id.*

414. Kan. Ct. R. 501 (requiring continuing judicial education for appellate and district judges). Municipal court judges who are also district magistrate judges are governed by Rule 501. Kan. Ct. R. 502(a)(1). Municipal court judges who are not licensed to practice law are governed by the same annual continuing education requirement to complete thirteen credit hours (including two credit hours of judicial ethics). Kan. Sup. Ct. R. 502(a)(2).

Louisiana		
<p>Justice of the Peace Civil Jurisdiction:⁴¹⁵</p> <ul style="list-style-type: none"> • Concurrent jurisdiction with parish or district courts in certain civil matters, including suits: <ul style="list-style-type: none"> ○ Over the ownership or possession of movable property, of a manufactured home not exceeding \$5,000 in value⁴¹⁶ ○ By landowners or lessors for the eviction of occupants or tenants of: <ul style="list-style-type: none"> ▪ Leased commercial premises or farmlands, where monthly rent does not exceed \$5,000 ▪ Leased residential premises, “regardless of the amount of monthly or yearly rent or the rent for the unexpired term of the lease” • Original jurisdiction over the enforcement and collection of garnishments, debtor examinations, and the issuance of writs to enforce its judgments 	<p>\$5,000⁴¹⁷</p>	<p>Justice of the Peace and Constable Eligibility:⁴¹⁸</p> <ul style="list-style-type: none"> • “Good moral character” • Qualified elector⁴¹⁹ • Resident of “the ward and district from which elected” • English literacy • High school or secondary school graduate or equivalent <p>Justice of the Peace and Constable Training and Continuing Education:⁴²⁰</p> <ul style="list-style-type: none"> • Attend the first Justice of the Peace training course available after appointment • Attend the training course once every two years thereafter

415. La. Stat. Ann. § 13:2586 (2021). Local ordinances in certain parishes expand or contract the jurisdiction of justice of the peace courts. See *id.* A justice of the peace court has jurisdiction over actions where “a title to real estate is involved, when the state or any political subdivision is a defendant, or in successions or probate matters.” JP-C Duties and Requirements, Att’y Gen. Jeff Landry: La. DOJ, <https://www.ag.state.la.us/Article/178/> [<https://perma.cc/T265-EGQY>] (last visited Feb. 4, 2022).

416. La. Stat. Ann. § 13:2586; La. Code Civ. Proc. Ann. art. 4911–4912 (2021). The jurisdiction of a justice of the peace court is limited by the amount in controversy and the nature of the proceeding and does not extend to actions involving: title to immovable property; civil or political rights arising under the federal or state constitutions; annulment, divorce, separation, child support, or child custody; “adoption, tutorship, emancipation, or partition proceeding”; a “succession, interdiction, receivership, liquidation, habeas corpus, or quo warranto proceeding”; cases against state or local government, or other political corporations; executory proceedings; nor an in rem or quasi in rem proceeding. La. Code Civ. Proc. Ann. art. 4913.

417. La. Code Civ. Proc. Ann. art. 4911.

418. La. Stat. Ann. §§ 13:2582–:2583.

419. Constables must be an “elector and resident of the ward or district from which elected.” *Id.* § 13:2583.

420. *Id.* § 49:251.1.

Louisiana (cont.)		
<p>Justice of the Peace Criminal Jurisdiction:⁴²¹</p> <ul style="list-style-type: none"> • Criminal jurisdiction as magistrates within parish that the justice of the peace holds office • Power to bail or discharge in noncapital cases • Concurrent jurisdiction with district court over state and local ordinances concerning the prosecution of litter violations⁴²² and of “removal, disposition, or abandonment” violations⁴²³ <p>Constable Powers and Duties:⁴²⁴</p> <ul style="list-style-type: none"> • Carry out the orders of, and serve citations ordered by, the Justice of the Peace Court • Enforce evictions and garnishments ordered by the Justice of the Peace Court 		
Maryland		
<p>Orphans’ Court Jurisdiction:</p> <ul style="list-style-type: none"> • Power to “secure the rights of a minor whose estate is being administered by a guardian under its jurisdiction”⁴²⁵ 	N/A	<p>Orphans’ Court Judge Eligibility:⁴²⁶</p> <ul style="list-style-type: none"> • Citizen of Maryland • Residency in the jurisdiction where the judge sits for twelve months preceding taking office <p>Orphans’ Court Judge Training and Continuing Education:⁴²⁷</p> <ul style="list-style-type: none"> • Attend an orientation program for new Orphans’ Court judges • Register for and attend annually one or more courses with an aggregate scheduled length of twelve hours

421. La. Stat. Ann. § 13:2586.

422. Id. § 13:2587.1.

423. Id. § 13:2586.

424. Id. § 13:2154.

425. Md. Code Ann., Est. & Trusts §§ 13-106, 2-101 to -105 (West 2021). Jurisdiction exists only where expressly conferred by law, according to which orphans’ courts are authorized to: conduct judicial probate; direct a personal representative; summon witnesses; and issue orders necessary in the administration of a decedent’s estate or trust. Id.

426. Frequently Asked Questions, Maryland Courts: Maryland Orphans’ Court, <https://mdcourts.gov/orphanscourt/faqs> [<https://perma.cc/6TZ8-43GC>] (last visited Feb. 4, 2022).

427. Administrative Order on Continuing Education of Judges, Magistrates, and Commissioners (Md. Ct. App. June 6, 2016), <https://mdcourts.gov/sites/default/files/admin-orders/20160606continuingedofjudgesmagistratescommissioners.pdf> [<https://perma.cc/6PBW-ABJ7>].

Massachusetts		
<p>Clerk-Magistrate Civil Jurisdiction:⁴²⁸</p> <ul style="list-style-type: none"> • Grant uncontested continuances • Hear and rule on uncontested nonevidentiary motions • Gauge trial readiness and set trial date via pretrial conferences • Mediate actions • Receive citations and hold hearings related to the operation of vehicles by nonresidents, vehicle registrations, and license suspensions and revocations⁴²⁹ • Receive petitions and review orders relating to nuisance and dangerous dogs⁴³⁰ • Small claims court⁴³¹ <p>Clerk-Magistrate Criminal Jurisdiction:⁴³²</p> <ul style="list-style-type: none"> • Issue warrants, search warrants, and summonses⁴³³ • Hold preliminary hearings to determine probation violations • Set bail on arraignments when a justice is unavailable • Determine probable cause for detention after a warrantless arrest via ex parte proceedings⁴³⁴ 	<p>Claim Depend -ent⁴³⁵</p>	<p>Clerk-Magistrate Eligibility:⁴³⁶</p> <ul style="list-style-type: none"> • Resident of Massachusetts • Citizen of the United States • Education: <ol style="list-style-type: none"> (1) Graduate of an accredited undergraduate institution; or (2) Demonstrate fifteen years of experience in the court applied for or comparable court • Experience: <ol style="list-style-type: none"> (1) Membership in the Massachusetts Bar for at least three years preceding application; or (2) Nonattorney applicants must have at least five years of experience in the court applied for or comparable court, or five years of otherwise “relevant experience” <p>Training and Continuing Education Requirements:⁴³⁷</p> <ul style="list-style-type: none"> • Initial training and ongoing education are not specified in statute • Receive trainings from the Trial Court’s Judicial Institute and Association of Magistrates and Assistant Clerks of the Trial Courts of Massachusetts⁴³⁸

428. Mass. Gen. Laws Ann. ch. 221, § 62C (West 2021).

429. Id. ch. 90, § 3.

430. Id. ch. 140, § 157.

431. See id. ch. 218, §§ 21–25.

432. Clerk-magistrates are distinct from “special magistrates.” Special magistrates have broader criminal jurisdiction with authority to assign counsel, preside at arraignments, mark up pretrial motions, and perform some fact-finding. Mass. R. Crim. P. 47. Because of these “quasi-judicial responsibilities,” special magistrates are meant to “be at the least attorneys admitted to practice before the bar and preferably . . . be retired judges.” Id.

433. Mass. Gen. Laws Ann. ch. 218, § 33.

434. See id. ch. 218, § 34; Mass. R. Crim. P. 3.1(b) (reporter’s notes).

435. Mass. Gen. Laws Ann. ch. 218, § 21. Small claims jurisdiction extends over actions arising in contract and tort (other than slander and libel) in which a plaintiff claims \$7,000 or less. Id. A city or town may bring an action to collect “unpaid taxes on personal property” or an action “which shall not exceed \$15,000.” Id. The jurisdictional amount does not apply to actions for property damage caused by a motor vehicle. Id.

436. Mass. Exec. Order No. 558, § 2.2 (Feb. 5, 2015), <https://www.mass.gov/executive-orders/no-558-reconstituting-the-judicial-nominating-commission-and-establishing-a-code-of-conduct-for-commission-members-and-nominees-to-judicial-office> [<https://perma.cc/2AK5-93RJ>].

437. Id.

438. Anne Johnson Landry, The Appointment and Training of Clerk Magistrates and Assistant Clerk Magistrates (Nov. 1, 2018), <https://willbrownsberger.com/the-appointment-and-training-of-clerk-magistrates-and-assistant-clerk-magistrates/> [<https://perma.cc/K7UL-BFG4>].

Michigan		
<p>Nonattorney District Court Magistrate Civil Jurisdiction:⁴³⁹</p> <ul style="list-style-type: none"> • In civil infraction actions:⁴⁴⁰ <ul style="list-style-type: none"> ◦ Hear and preside over admissions ◦ Conduct informal hearings ◦ Impose sanctions in traffic, municipal, and state civil infractions • Perform marriages⁴⁴¹ • Suspend payment of court fees by indigent parties in civil, small claims, or summary proceedings actions, until after judgment has been entered⁴⁴² • Administer oaths and affirmations and take acknowledgments in writing⁴⁴³ <p>Nonattorney District Court Magistrates Criminal Jurisdiction:⁴⁴⁴</p> <ul style="list-style-type: none"> • Conduct arraignments and sentence upon guilty plea or nolo contendere for specified violations⁴⁴⁵ • Accept guilty or nolo contendere pleas and impose sentences for misdemeanor or ordinance violations punishable by only fines⁴⁴⁶ • Issue search and arrest warrants and summonses⁴⁴⁷ • Conduct probable cause conferences • Fix bail and accept bond in all criminal cases • Conduct first appearances of defendants in criminal and ordinance violation cases⁴⁴⁸ • Approve and grant petitions for the appointment of attorneys to represent indigent clients accused of misdemeanors 	N/A	<p>Nonattorney District Court Magistrate Prerequisites:⁴⁴⁹</p> <ul style="list-style-type: none"> • Registered elector in the county in which appointed • Take a “constitutional oath of office and file a bond with the treasurer of a district funding unit of that district in an amount determined by the state court administrator” <p>Training and Continuing Education Requirements:</p> <ul style="list-style-type: none"> • Initial training and on-going education are not specified⁴⁵⁰ • District court magistrate cannot conduct an informal hearing in a civil infraction action involving a traffic or parking violation until successful completion of a special traffic law adjudication training course⁴⁵¹

439. See Mich. Jud. Inst., *District Court Magistrate Manual—Revised Edition* (2022), <https://mjudeducation.mi.gov/documents/benchbooks/421-dcmm/file> [<https://perma.cc/5FT6-SYBH>]; Mich. State Ct. Admin. Off., *Model Local Administrative Order 3a—Appointment of Non-Attorney Magistrate* (2021). Although district court magistrates are judicial officers and perform limited judicial functions, “they are not judges for purposes of Const 1963, art 6, § 19 (requiring ‘judges of courts’ to be licensed attorneys).” Mich. Jud. Inst., *supra*, at 2-16. A district court magistrate “may only exercise the jurisdiction expressly provided by law and authorized by the chief judge of the district or division.” *Id.* at 1-4; Mich. Ct. R. 4.401(B).

440. Mich. Comp. Laws Ann. §§ 600.8512, .8719, .8819 (West 2021). A district court magistrate may only conduct informal hearings involving traffic and parking civil infractions upon successful completion of a “special training course in traffic law adjudication and sanctions.” *Id.* § 600.8512(2).

441. *Id.* § 600.8516.

442. *Id.* § 600.8513(2)(b).

443. *Id.* § 600.8517.

444. See generally Mich. Jud. Inst., *supra* note 439 (describing the role).

445. Mich. Comp. Laws Ann. § 600.8511(a)–(d).

446. *Id.* § 600.8512a(b).

447. *Id.* § 600.8511.

448. *Id.* § 600.8513.

449. *Id.* § 600.8507(1).

450. See *id.* § 600.8507; see also *id.* § 600.8512.

451. *Id.* § 600.8512(2).

Mississippi		
<p>Justice Court Jurisdiction:⁴⁵²</p> <ul style="list-style-type: none"> • All civil actions small claims cases involving amounts not exceeding \$3,500 • Misdemeanor criminal cases • Certain traffic offenses • First appearance felony cases⁴⁵³ <p>Municipal Court Jurisdiction:⁴⁵⁴</p> <ul style="list-style-type: none"> • Misdemeanor crimes • Municipal ordinances and city traffic violations • Conduct “initial appearances in which defendants are advised of the charges being filed, as well as bond hearings and preliminary hearings”⁴⁵⁵ 	<p>\$3,500⁴⁵⁶</p>	<p>Justice Court Judge Eligibility:⁴⁵⁷</p> <ul style="list-style-type: none"> • High school graduate or equivalent • Resident of county in which the justice court judge serves for two years preceding election to office <p>Justice Court Judge Training and Continuing Education:</p> <ul style="list-style-type: none"> • Successfully complete, within six months of election to office: a basic course of “training and education conducted by the Mississippi Judicial College of the University of Mississippi Law Center”; and “a minimum competency examination administered by the Mississippi Judicial College of the University of Mississippi Law Center”⁴⁵⁸ • Each year thereafter complete a course of continuing education conducted by the Mississippi Judicial College⁴⁵⁹ <p>Municipal Court Judges Eligibility (in municipalities with populations under 10,000):⁴⁶⁰</p> <ul style="list-style-type: none"> • Qualified elector of the county where the municipality is located

452. Miss. Code Ann. § 9-11-9 (2021).

453. See, e.g., Justice Court, Adams Cnty. Miss., <https://www.adamscountymiss.net/justice-court> [<https://perma.cc/MA2B-X6VV>] (last visited Feb. 5, 2022).

454. Miss. Code Ann. §§ 21-23-3, -5, -7. Among other powers and duties, municipal court judges have jurisdiction to: (1) hear and determine, without a jury or record of testimony, all cases concerning violations of municipal ordinances, city traffic offenses, and state misdemeanors; (2) conduct preliminary hearings in all violations of Mississippi state criminal laws occurring within the municipality over which the judge presides; and, in certain circumstances, sentence defendant; (3) “solemnize marriages, take oaths, affidavits and acknowledgments, and issue orders, subpoenas, summonses, citations, warrants for search and arrest upon a finding of probable cause”; and (4) expunge records in certain cases of misdemeanors, where charges were dropped, or where the person was found not guilty at trial. See *id.* § 21-23-7.

455. Municipal Court, State of Miss. Judiciary, <https://courts.ms.gov/trialcourts/municipalcourt/municipalcourt.php> [<https://perma.cc/NPF4-KRAF>] (last visited Feb. 5, 2022).

456. Miss. Code Ann. § 9-11-9.

457. Miss. Const. art. VI, § 171 (West 2022); see also Miss. Jud. Coll. & Univ. of Miss., Manual for Mississippi Justice Courts 2021 (2021), <https://mjc.olemiss.edu/wp-content/uploads/sites/134/2020/06/Manual-for-Mississippi-Justice-Courts-2021.pdf> [<https://perma.cc/DJJ7-762K>].

458. Miss. Code Ann. § 9-11-3. The basic “Justice Court Judge Training Course” consists of eighty hours of training. *Id.* § 9-11-4.

459. *Id.* § 9-11-4. The “Continuing Education Course for Justice Court Judges” consists of twenty-four hours of training. *Id.*

460. *Id.* §§ 21-23-3, -5. In general, justice court judges in counties with a population of over 10,000 must be attorneys at law. *Id.*

Missouri		
<p>Municipal Judge:⁴⁶¹</p> <ul style="list-style-type: none"> • Hear and determine violations of municipal ordinances • Issue warrants⁴⁶² • Administer oaths, enforce orders, and punish contempt to the same extent as a circuit judge⁴⁶³ • Certain traffic offenses⁴⁶⁴ • Grant and set conditions of parole or probation⁴⁶⁵ 	N/A	<p>Municipal Judge Eligibility (in municipalities with populations under 7,500):⁴⁶⁶</p> <ul style="list-style-type: none"> • Resident of Missouri⁴⁶⁷ • At least twenty-one years old and younger than seventy-five years old <p>Municipal Judge (Nonattorney) Training and Continuing Education:⁴⁶⁸</p> <ul style="list-style-type: none"> • Complete instructional course prescribed by the Missouri Supreme Court within six months of selection for office • Complete “New Municipal Judge Orientation”⁴⁶⁹ • Annually earn and report fifteen hours of continuing legal education, including three credit hours of Judicial Ethics and Professionalism⁴⁷⁰

461. Mo. Ann. Stat. § 479.020(1) (West 2021).

462. Id. § 479.100.

463. Id. § 479.070.

464. See id. §§ 479.050, .172.

465. Id. § 479.190.

466. Id. § 479.020. In municipalities with a population of 7,500 or greater, municipal judges must be licensed to practice law in Missouri. Id. § 479.020(3).

467. A municipal judge need not be resident of the municipality or circuit in which the judge serves (unless an ordinance or charter provides otherwise). Id. § 479.020(4).

468. Id. § 479.020(8).

469. This requirement applies for both lawyer and nonlawyer municipal judges. Municipal Judge Education, Mo. Cts., <https://www.courts.mo.gov/page.jsp?id=1805> (on file with the *Columbia Law Review*) (last visited Feb. 5, 2022).

470. Id.; see also Mo. Sup. Ct. R. 18.05(a)(2) (“[A]t least one of the three ethics credit hours required under Rule 18.05(a)(1) must be devoted exclusively to explicit or implicit bias, diversity, inclusion, or cultural competency.”). Lawyer municipal judges need only complete five hours of continuing education annually. Mo. Sup. Ct. R. 18.05(b).

Montana		
<p>Justice of the Peace Civil Jurisdiction:</p> <ul style="list-style-type: none"> • In civil actions where amount in controversy does not exceed \$15,000 in the following actions:⁴⁷¹ <ul style="list-style-type: none"> ○ Contract actions ○ Damages for personal injury or injury to personal property⁴⁷² ○ Actions to recover personal property ○ In certain actions for a fine, penalty, or forfeiture ○ Actions upon bonds or undertakings • Take and enter judgment for recovery of money upon confession of defendant • Issue temporary restraining orders and orders of protection⁴⁷³ • Issue orders relating to the restoration of streams (within monetary jurisdiction)⁴⁷⁴ • Concurrent jurisdiction with district courts in actions of “forcible entry, unlawful detainer, rent deposits, and residential and residential mobile home landlord–tenant disputes”⁴⁷⁵ <p>Justice of the Peace Criminal Jurisdiction:⁴⁷⁶</p> <ul style="list-style-type: none"> • All misdemeanors punishable by imprisonment not exceeding six months and/or fines not exceeding \$500 • Fish and game statute misdemeanor offenses punishable by imprisonment not exceeding six months and/or fines not exceeding \$1,000 • Preliminary hearings in criminal cases • Certain vehicle offenses⁴⁷⁷ • Misdemeanor violations relating to livestock markets and dealers⁴⁷⁸ 	<p>Justice Court: \$15,000⁴⁷⁹</p>	<p>Justice of the Peace Eligibility:⁴⁸⁰</p> <ul style="list-style-type: none"> • Citizen of the United States • Resident of county in which justice’s court is held for at least one year preceding election or appointment <p>Justice of the Peace Training and Continuing Education:⁴⁸¹</p> <ul style="list-style-type: none"> • As soon as practical following election, complete a course of study under supervision of Montana Supreme Court • Annually attend two mandatory training sessions

471. Mont. Code Ann. § 3-10-301 (West 2021).

472. But justices of the peace have no jurisdiction in actions for “false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction” or where issues are raised involving title to or possession of real property. Id. § 3-10-301(1)(b)–(c).

473. Id. § 3-10-301(1)(i).

474. Id. § 3-10-301(1)(j).

475. Id. § 3-10-302.

476. Id. § 3-10-303.

477. Id. §§ 3-10-303(1)(f), 61-10-107.

478. Id. §§ 3-10-303(1)(g), 81-8-2.

479. Id. § 3-10-301.

480. Id. § 3-10-204.

481. Id. § 3-10-203.

Montana (cont.)		
<p>City Court Jurisdiction:</p> <ul style="list-style-type: none"> • Concurrent jurisdiction with justice court of misdemeanors and for preliminary hearings in felony cases⁴⁸² • Civil and criminal violations of city or town ordinances⁴⁸³ • Actions for collections of license fees • Within monetary jurisdiction of \$9,500, actions when city or town is party or “is in any way interested”:⁴⁸⁴ <ul style="list-style-type: none"> ○ Breach of official bonds or contracts ○ Damages ○ Enforcement of forfeited recognizances ○ Collection on bonds ○ Recovery of personal property (belonging to city or town) ○ Collection of money due to city or town ○ Collections of taxes or assessments on certain cases 	<p>City Court: \$9,500⁴⁸⁵</p>	<p>City Judge Eligibility:⁴⁸⁶</p> <ul style="list-style-type: none"> • Meet qualifications of justice of the peace <p>City Judge Training and Continuing Education:⁴⁸⁷</p> <ul style="list-style-type: none"> • Annually attend two mandatory training sessions
Nebraska		
<p>Clerk Magistrate Jurisdiction:⁴⁸⁸</p> <ul style="list-style-type: none"> • Conduct proceedings based on: <ul style="list-style-type: none"> ○ Misdemeanors ○ Traffic infractions ○ Violations of city or village ordinances ○ State law infraction or traffic violation (except where the defendant pleads not guilty) • Issue warrants for arrest, searches, or seizure when no district judge is available • Adjudicate nonfelony proceedings (including determining probable cause or release on bail) • Determine temporary custody of juvenile • Determine noncontested proceedings relating to decedents’ estates, inheritance tax matters, and guardianship or conservatorship⁴⁸⁹ • Entering orders for hearings and trials (including for garnishment) 	<p>N/A</p>	<p>Clerk Magistrate Eligibility:⁴⁹⁰</p> <ul style="list-style-type: none"> • High school graduate or equivalent <p>Clerk Magistrate Continuing Education:</p> <ul style="list-style-type: none"> • Annually earn at least eight judicial branch credits⁴⁹¹

482. Id. § 3-11-102.

483. Id. § 3-11-103.

484. Montana city courts have no jurisdiction in civil actions that “might result in a judgment against the state for the payment of money.” Id. § 3-11-104.

485. Id. § 3-11-103.

486. Id. § 3-11-202.

487. Id. § 3-11-204.

488. Neb. Rev. Stat. § 24-519 (2021).

489. But clerk magistrates have no jurisdiction for matters relating to construction of wills and trusts, determining title to real estate, or authorizing sale or mortgaging of real estate. Id. § 24-519(5).

490. Id. § 24-508.

491. Neb. Sup. Ct. R. § 1-503; see also Neb. Rev. Stat. § 24-508(3) (“A clerk magistrate shall comply with the Supreme Court judicial branch education requirements as required by the Supreme Court.”).

Nevada		
Justice Courts: ⁴⁹² <ul style="list-style-type: none"> • Nontraffic misdemeanors • Traffic cases • Small claims disputes and other civil matters less than \$15,000 • Temporary protective orders against domestic violence • Evictions and other landlord–tenant proceedings 	\$15,000 ⁴⁹³	Justice of the Peace Eligibility (in townships of 100,000 or less): ⁴⁹⁴ <ul style="list-style-type: none"> • Qualified elector • Resident of township • Never removed or retired from judicial office • High school graduate or equivalent Justice Court Training and Continuing Education Requirements: ⁴⁹⁵ <ul style="list-style-type: none"> • Two-week initial training session • Complete thirteen hours of ongoing training

492. Justice Courts, Sup. Ct. of Nev. & Nev. Ct. of Appeals, https://nvcourts.gov/Find_a_Court/Justice_Courts/ [https://perma.cc/57EW-WY3N] (last visited Feb. 4, 2022).

493. Nev. Rev. Stat. § 4.370 (2021).

494. Id. § 4.010. In counties with a population of at least 100,000, a justice of the peace must, at the time of election or appointment to office, be an attorney who is licensed and admitted to practice law in Nevada and have been licensed and admitted to practice law in a U.S. jurisdiction for at least five years preceding election or appointment. Id.

495. Id. § 4.035; see also Sup. Ct. of Nev.: Admin. Off. of the Cts., Judicial Education Overview, https://nvcourts.gov/AOC/Programs_and_Services/Judicial_Education/Overview/ [https://perma.cc/E6JW-HHCJ] (last visited Feb. 4, 2022).

New Mexico		
<p>Magistrate Judge Civil Jurisdiction:</p> <ul style="list-style-type: none"> • Civil actions in contract, quasi-contract, and tort (with limited exceptions) where amount in controversy does not exceed \$10,000⁴⁹⁶ • Administer oaths and affirmations and take acknowledgements of instruments in writing⁴⁹⁷ • Solemnize marriages⁴⁹⁸ <p>Magistrate Judge Criminal Jurisdiction:⁴⁹⁹</p> <ul style="list-style-type: none"> • Misdemeanors and petty misdemeanors • Violations of county and municipal ordinances (including issuing subpoenas and warrants and punishing contempt) • Conduct preliminary examinations in criminal actions • In actions beyond criminal jurisdiction, a magistrate “may commit to jail, discharge or recognize the defendant to appear before the district court” <p>Municipal Court Jurisdiction:⁵⁰⁰</p> <ul style="list-style-type: none"> • All offenses and complaints under municipal ordinances • Issue subpoenas and warrants and punish contempt • Certain traffic violations • Criminal DUI cases 	<p>\$10,000⁵⁰¹</p>	<p>Magistrate Eligibility (districts with populations of less than 200,000):⁵⁰²</p> <ul style="list-style-type: none"> • Elector and resident of district in which appointed • High school graduate or equivalent <p>Magistrate Training and Continuing Education:</p> <ul style="list-style-type: none"> • Within forty-five days of election or appointment attend a qualification training program conducted by the administrative office of the courts⁵⁰³ • Annually attend at least one magistrate training program (“designed to inform magistrates with reference to judicial powers and duties and to improve the administration of justice”)⁵⁰⁴ <p>Municipal Judge Training and Continuing Education:⁵⁰⁵</p> <ul style="list-style-type: none"> • Annually attend a judicial training program

496. N.M. Stat. Ann. § 35-3-3 (West 2021). Magistrates have no jurisdiction in civil actions for malicious prosecution, libel, or slander; against public officers for misconduct in office; specific performance in the sale of real property; in which title or land-boundaries are disputed; affecting domestic relations; or to grant injunctive relief or habeas corpus. *Id.* § 35-3-3(c).

497. *Id.* § 35-3-1.

498. *Id.* § 35-3-2.

499. *Id.* § 35-3-4.

500. *Id.* § 35-14-2.

501. *Id.* § 35-3-3.

502. *Id.* § 35-2-1. In districts with a population greater than 200,000, magistrates must either be a member of the New Mexico Bar and licensed to practice law in New Mexico or have held office as a magistrate continuously since the publication of the federal decennial census. *Id.*

503. *Id.* § 35-2-3.

504. *Id.* § 35-2-4.

505. *Id.* § 35-14-10. Qualifications otherwise vary by municipality. *Id.* § 35-14-3.

New York		
<p>Town and Village Court Civil Jurisdiction:⁵⁰⁶</p> <ul style="list-style-type: none"> • Traffic cases • Small claims • Landlord–tenant matters including eviction proceedings⁵⁰⁷ • Summary proceedings⁵⁰⁸ • Certain statutory violations⁵⁰⁹ <p>Town and Village Court Criminal Jurisdiction:⁵¹⁰</p> <ul style="list-style-type: none"> • Misdemeanors and violations committed within the jurisdiction of the town or village • Vehicle and traffic law misdemeanors and felony infractions • Arraignments and preliminary hearings in felony matters 	<p>\$3,000⁵¹¹</p>	<p>Town and Village Judge Eligibility:⁵¹²</p> <ul style="list-style-type: none"> • Resident within the town or village in which elected • Town judges must be electors of town at time of election and throughout term of office • Never been convicted of felony • Citizen of the United States • At least eighteen years old <p>Town and Village Judge (Nonattorney) Training and Continuing Education:</p> <ul style="list-style-type: none"> • Attend first available certification course after appointment or election⁵¹³

506. City, Town & Village Courts, NYCourts.gov, <https://www.nycourts.gov/courts/townandvillage> [<https://perma.cc/E395-CJUK>] (last visited Feb. 3, 2022).

507. N.Y. Real Prop. Acts. Law § 701 (McKinney 2021).

508. See N.Y. Const. art. VI, §§ 15(a), 16, 17(a); N.Y. Uniform Just. Ct. Act § 204 (McKinney 2021); N.Y. Real Prop. Acts. Law § 701.

509. See, e.g., N.Y. Agric. & Mkts. Law § 123 (McKinney 2021) (including proceedings to destroy or securely confine dangerous dogs); N.Y. Env't Conserv. Law § 71-0513 (McKinney 2021); N.Y. Gen. Bus. Law § 271 (McKinney 2021); N.Y. Mental Hyg. Law § 9.43 (McKinney 2021).

510. N.Y. Crim. Proc. Law § 10.30 (McKinney 2021); N.Y. Uniform Just. Ct. Act § 2001.

511. N.Y. Uniform Just. Ct. Act § 201. There is no limitation on monetary jurisdiction in landlord–tenant actions. *Id.* § 204.

512. N.Y. Town Law § 23 (McKinney 2021); N.Y. Village Law § 3-300 (McKinney 2021). The requirements apply unless a village has a population of less than 3,000 and allows for justices to reside in the county in which the village is located. See N.Y. Village Law § 3-300(2)(b).

513. N.Y. Uniform Just. Ct. Act § 105; see also N.Y. Town Law § 31(2).

North Carolina		
<p>Magistrate Civil Jurisdiction:⁵¹⁴</p> <ul style="list-style-type: none"> • Perform marriages • Hear small claims cases⁵¹⁵ • Enter orders for summary ejection (evictions) • Determine involuntary commitment • Administer oaths • Conduct hearings for driver's license revocations⁵¹⁶ <p>Magistrate Criminal Jurisdiction:⁵¹⁷</p> <ul style="list-style-type: none"> • Hear certain infractions, misdemeanors, and statutory offenses • Conduct initial proceedings • Set conditions of release (noncapital offenses) • Issue arrest and search warrants • Issue subpoenas 	\$10,000 ⁵¹⁸	<p>Magistrate Eligibility:⁵¹⁹</p> <ul style="list-style-type: none"> • Must have <ol style="list-style-type: none"> (1) four-year college degree; or (2) eight years of experience as clerk of superior court; or (3) two-year associate degree and four years of experience "in a job related to the court system, law enforcement, or other public service work" <p>Magistrate Required Training and Continuing Education:⁵²⁰</p> <ul style="list-style-type: none"> • Must complete courses in basic training and annual in-service training to be eligible for renomination • Must annually complete at least twelve hours of training in civil and criminal areas, including, but not limited to, subjects on conditions of pretrial release, impaired driving laws, issuing criminal processes, issuing search warrants, technology, and orders of protection

514. The Important Role of the North Carolina Magistrate, N.C. Jud. Branch: Gen. Ct. of Just. 2 (2018), https://www.nccourts.gov/assets/documents/publications/Magistrates_FactSheet_2018.pdf?qsTgXG13Z8LM68un15bwTNR.fjVlvcsw#:~:text=While%20magistrates%20are%20not%20under,the%20same%20mandatory%20retirement%20age [https://perma.cc/3FQQ-65H8].

515. N.C. Gen. Stat. § 7A-210 (2021).

516. Id. § 20-16.5.

517. Id. § 7A-273.

518. Id. § 7A-210.

519. Id. § 7A-171.2.

520. 2021 N.C. Sess. Laws 146.

North Dakota		
Municipal Court Jurisdiction: ⁵²¹ <ul style="list-style-type: none"> • Violations of municipal ordinances 	N/A	Municipal Judge Eligibility (only in cities with populations under 5,000): ⁵²² <ul style="list-style-type: none"> • Need not be resident of the city nor licensed to practice law in North Dakota Municipal Judge Required Training and Continuing Education: ⁵²³ <ul style="list-style-type: none"> • Orientation within first three months of office⁵²⁴ • Eighteen hours of approved coursework over each three-year period in office⁵²⁵
Oklahoma		
Municipal Court Jurisdiction: ⁵²⁶ <ul style="list-style-type: none"> • Violations of any ordinance of the municipality in which the court sits • Traffic offenses (including prescribing bail or arrests in misdemeanor violations of traffic ordinances)⁵²⁷ • Issue arrest warrants⁵²⁸ • Make arraignments⁵²⁹ • Set terms of sentence⁵³⁰ • Punish contempt⁵³¹ 	N/A	Municipal Court Judge Eligibility: <ul style="list-style-type: none"> • Resident of county in which municipality is located⁵³² Municipal Court Training and Continuing Education Requirements: ⁵³³ <ul style="list-style-type: none"> • Annually complete twelve hours of continuing education

521. N.D. Cent. Code § 40-18-01 (2021).

522. *Id.* In cities with populations greater than 5,000, municipal judge must be licensed to practice law “unless no person so licensed is available in the city.” *Id.*

523. *Id.* § 40-18-22.

524. N.D. Sup. Ct. Admin. R. 36.4(b).

525. N.D. Cent. Code § 40-18-22.

526. Okla. Stat. tit. 11, § 27-103 (2021).

527. *Id.* § 27-117.1.

528. *Id.* §§ 27-113–117.

529. *Id.* § 27-116.

530. See *id.* §§ 27-122.1–122.2.

531. *Id.* § 27-125.

532. *Id.* § 27-104. In general, a municipal court judge must be licensed to practice law in Oklahoma. *Id.* § 27-104(A). In municipalities with a population of less than 7,500, however, such judges may be “any suitable person who resides in the county in which the municipality is located or in an adjacent county.” *Id.* § 27-104(B). Similarly, in municipalities with a population greater than 7,500 but where no attorney licensed to practice law in Oklahoma who is willing to accept appointment as judge resides in the county or an adjacent county, a municipality may appoint as judge “any suitable and proper person.” *Id.* § 27-104(C).

533. *Id.* tit. 5, ch. 1, app. 4-B, r. 4 (2021).

Oregon		
<p>Justice Court Civil Jurisdiction:⁵³⁴</p> <ul style="list-style-type: none"> • Civil actions where amount in controversy does not exceed \$10,000 • Judgment without action upon confession of defendant • Small claims jurisdiction <p>Justice Court Criminal Jurisdiction:⁵³⁵</p> <ul style="list-style-type: none"> • Concurrent jurisdiction with circuit court over criminal and traffic offenses committed and triable within the jurisdiction (except felony trials) <p>Municipal Court:⁵³⁶</p> <ul style="list-style-type: none"> • Concurrent jurisdiction with circuit and justice courts over violations and misdemeanors committed and triable in city where court is located (except felonies and drug-related misdemeanors) 	<p>\$10,000⁵³⁷</p>	<p>Justice of the Peace Eligibility:⁵³⁸</p> <ul style="list-style-type: none"> • Citizen of the United States • Resident of Oregon for at least three years preceding appointment or candidacy • Resident in peace district in which justice court located <p>Municipal Judge and Justice of the Peace (Nonattorney) Required Training and Continuing Education:⁵³⁹</p> <ul style="list-style-type: none"> • Within twelve months of appointment or election complete a course “on courts of special jurisdiction offered by the National Judicial College” or an equivalent course • Annually complete thirty hours of continuing education⁵⁴⁰

534. Or. Rev. Stat. § 51.080 (2021).

535. Id. § 51.050.

536. Id. § 221.339.

537. Id. § 51.080.

538. Id. § 51.240.

539. Id. §§ 51.240 (justices of the peace), 221.142 (municipal judges).

540. Id. § 51.245.

Pennsylvania		
<p>Magisterial District Judges:⁵⁴¹</p> <ul style="list-style-type: none"> • Civil claims where amount of controversy does not exceed \$12,000⁵⁴² • Summary offenses • Matters arising under the Landlord Tenant Act of 1951⁵⁴³ • Preside at arraignments • Issue warrants and accept bail in noncapital offenses • Hear certain DUI cases <p>Traffic Court:⁵⁴⁴</p> <ul style="list-style-type: none"> • Offenses arising under the Motor Vehicle Code and related ordinances 	<p>Magisterial District Court: \$12,000⁵⁴⁵</p>	<p>Magisterial and Traffic Judge Eligibility:⁵⁴⁶</p> <ul style="list-style-type: none"> • Citizen of Pennsylvania • At least twenty-one years old • Resident of district in which appointed for at least one year preceding election or appointment and throughout term of office <p>Magisterial District Judge Required Training and Continuing Education:</p> <ul style="list-style-type: none"> • Minimum forty-hour training in “civil and criminal law, including evidence and procedure, summary proceedings, motor vehicles and courses in judicial ethics”⁵⁴⁷ • Annually complete thirty-two hours of continuing education courses, including one course in matters related to children and child abuse⁵⁴⁸ <p>Traffic Court Required Training and Continuing Education:⁵⁴⁹</p> <ul style="list-style-type: none"> • Minimum twenty-hour training on “summary proceedings and laws relating to motor vehicles”⁵⁵⁰

541. 42 Pa. Cons. Stat. § 1515 (2021).

542. Magisterial district judge jurisdiction extends only to cases: (1) in assumpsit, unless involving real contract where title to real property comes into question; (2) in trespass; and (3) for fines and penalties by any government agency. Id. § 1515(a)(3). Jurisdiction does not extend to claims against a Commonwealth party. Id.

543. 68 Pa. Cons. Stat. §§ 250.101–.602 (2021).

544. 42 Pa. Cons. Stat. § 1302.

545. Id. § 1515. However, plaintiffs may waive a portion of their claim to bring the claim within monetary jurisdiction. Id.

546. Id. § 3101.

547. Id. § 3113(b); 201 Pa. Code § 601 (2021).

548. Every six years the course “shall include the identification of mental illness, intellectual disabilities and autism and the availability of diversionary options for individuals with mental illness, intellectual disabilities or autism.” 42 Pa. Cons. Stat. § 3118.

549. Id. § 3101.

550. Id. § 3113(b).

South Carolina		
Magistrate Court Civil Jurisdiction: ⁵⁵¹	\$7,500 ⁵⁵⁹	Magistrate Eligibility: ⁵⁶⁰
<ul style="list-style-type: none"> • Concurrent jurisdiction in actions:⁵⁵² <ul style="list-style-type: none"> ○ Arising on contracts ○ For damages for injury to rights to person or real property ○ For penalty, fine, or forfeiture ○ Upon surety bond taken by them ○ Commenced by property attachment ○ Upon a bond for payment of money ○ To take and enter judgment upon the confession of defendant ○ To recover personal property ○ Of interpleader arising from real estate contracts ○ Regarding landlord–tenant matters 		<ul style="list-style-type: none"> • Citizen of the United States and South Carolina • Resident of South Carolina for at least five years • At least twenty-one years old and younger than seventy-two years old⁵⁶¹ • High school graduate or equivalent • Received a four-year bachelor's degree⁵⁶²
Magistrate Court Criminal Jurisdiction:		Magistrate Required Training and Continuing Education:
<ul style="list-style-type: none"> • Exclusive jurisdiction in all criminal cases charging offenses committed in which punishment does not exceed thirty-day imprisonment or fine of \$100⁵⁵³ • Admit bail, conduct bond hearings, and determine conditions of release⁵⁵⁴ • Issue search warrants in gambling offenses⁵⁵⁵ • Issue arrest warrants⁵⁵⁶ • Examine into treasons, felonies, grand larcenies, high crimes, and misdemeanors⁵⁵⁷ • Expunge criminal records in certain cases⁵⁵⁸ 		<ul style="list-style-type: none"> • Must complete training program and pass certification exam within one year of taking office⁵⁶³ and recertification exam every eight years thereafter⁵⁶⁴ • Two-year continuing education program providing “extensive instruction in civil and criminal procedures”⁵⁶⁵

551. S.C. Code Ann. § 22-3-10 (2021). Magistrates have no civil jurisdiction in actions in which the state is a party (unless for a penalty not exceeding \$100), or when title to real property comes into question (with limited exceptions). *Id.* § 22-3-20.

552. *Id.* § 22-3-10.

553. *Id.* § 22-3-540. However, criminal jurisdiction is abolished in all counties in which a county court is established. *Id.* § 22-3-510. In these counties, magistrates are to issue warrants and hold preliminary examinations. *Id.* § 22-5-710. In criminal matters beyond their jurisdiction to try, magistrates have jurisdiction to examine, commit, discharge, and (except in capital cases) recognize individuals charged with such offenses. *Id.* § 22-3-310.

554. *Id.* § 22-5-510.

555. *Id.* § 22-5-10.

556. *Id.* §§ 22-5-110(A)(1), -150.

557. *Id.* § 22-5-110(A)(2).

558. *Id.* §§ 22-5-910 (general), 22-9-520 (youth offenders), 22-5-930 (first offense drug convictions).

559. *Id.* § 22-3-10.

560. *Id.* § 22-1-10.

561. See *id.* §§ 22-1-10, -25.

562. Applies only to magistrates appointed on and after July 1, 2005. *Id.* § 22-1-10(B)(2). Magistrates appointed on and after July 1, 2001 must have a two-year associate degree. *Id.*

563. *Id.* §§ 22-1-10(C), 22-2-5.

564. *Id.* § 22-1-10(D).

565. *Id.* § 22-1-17; see also S.C. App. Ct. R. 510(b)(1) (noting that of the required eighteen continuing education hours at least six shall be devoted to civil law issues, six shall be devoted to criminal law issues, and two shall be devoted to ethical issues).

South Carolina (cont.)	
<p>Both civil and criminal:</p> <ul style="list-style-type: none"> • Punish contempt⁵⁶⁶ • Issue summonses⁵⁶⁷ • Take testimony de bene esse⁵⁶⁸ • Grant new trials for cases tried in the magistrate's court⁵⁶⁹ <p>Municipal Court:⁵⁷⁰</p> <ul style="list-style-type: none"> • All cases arising under municipal ordinances • Equivalent powers in criminal cases conferred upon magistrates • Punish contempt • No jurisdiction in civil matters <p>Probate Court:⁵⁷¹</p> <ul style="list-style-type: none"> • Issue marriage licenses • Perform duties of clerk of court in certain proceedings in eminent domain • Adjudicate matters concerning involuntary commitment of people suffering from "mental illness, intellectual disability, alcoholism, drug addiction, and active pulmonary tuberculosis" 	<p>Municipal Eligibility:⁵⁷²</p> <ul style="list-style-type: none"> • Need not be resident of municipality in which holds office <p>Municipal Required Training and Continuing Education:⁵⁷³</p> <ul style="list-style-type: none"> • Complete training program and pass certification exam upon first appointment • Annually attend specified number of continuing education hours in criminal law and other relevant subject hours as required by Supreme Court of South Carolina⁵⁷⁴ <p>Probate Eligibility:⁵⁷⁵</p> <ul style="list-style-type: none"> • Citizen of the United States and South Carolina • At least twenty-one years old • Qualified elector in county in which office is held • Four-year bachelor's degree from accredited institution or four years' experience as employee in probate judge's office

566. S.C. Code Ann. § 22-3-950.

567. Id. § 22-3-930.

568. Id. § 22-3-940.

569. Id. § 22-3-990.

570. Id. § 14-25-45.

571. Id. § 14-23-1150.

572. Id. § 14-25-25.

573. Id. § 14-25-15.

574. S.C. App. Ct. R. 510(b)(1) (noting that of the required eighteen continuing education hours at least six shall be devoted to civil law issues, six shall be devoted to criminal law issues, and two shall be devoted to ethical issues).

575. S.C. Code Ann. § 14-23-1040.

South Dakota		
<p>Clerk Magistrate Civil Jurisdiction:⁵⁷⁶</p> <ul style="list-style-type: none"> • Concurrent jurisdiction with circuit courts in civil actions or noncontested small claims proceedings within monetary jurisdiction⁵⁷⁷ • Solemnize marriages⁵⁷⁸ • Administer oaths and take acknowledgments and depositions⁵⁷⁹ <p>Clerk Magistrate Criminal Jurisdiction:</p> <ul style="list-style-type: none"> • Concurrent jurisdiction with circuit courts to: <ul style="list-style-type: none"> ○ Commit and conduct preliminary hearings⁵⁸⁰ ○ Issue summonses, warrants of arrest, and warrants for searches and seizures⁵⁸¹ ○ Fix bonds or take personal recognizance⁵⁸² ○ Adjudicate matters concerning petty offenses if the punishment does not exceed a fine of \$500 and/or thirty-day imprisonment⁵⁸³ ○ Forfeiture of bonds for violations of any ordinance, bylaw, or other police regulation⁵⁸⁴ 	\$12,000 ⁵⁸⁵	<p>Clerk Magistrate Eligibility:⁵⁸⁶</p> <ul style="list-style-type: none"> • High school graduate or equivalent <p>Clerk Magistrate Training and Education:⁵⁸⁷</p> <ul style="list-style-type: none"> • Complete training on evidence-based practices • Annually attend judicial conference

576. A clerk magistrate need not be licensed to practice law but has more limited jurisdiction than a magistrate judge who must be licensed to practice law in South Dakota. See S.D. Codified Laws § 16-12A-1.1 (2021).

577. Id. § 16-12C-13.

578. Id. § 16-12C-5.

579. Id. § 16-12C-6.

580. Jurisdiction is concurrent with circuit courts to commit where informed waiver of preliminary hearing is given and is concurrent to conduct preliminary hearings unless defendant expressly demands hearing be conducted before a magistrate or circuit judge. Id. § 16-12C-9.

581. Id. § 16-12C-7.

582. Id. § 16-12C-10.

583. Id. § 16-12C-11.

584. Id. § 16-12C-12.

585. Id. § 16-12C-13.

585. Id. § 16-12C-5.

586. Id. § 16-12C-2. While a magistrate judge must be licensed to practice law, a clerk magistrate need not be. Id. § 16-12A-1.1.

587. Id. § 16-14-4.

Tennessee		
City (or “Municipal” ⁵⁸⁸) Court Jurisdiction: ⁵⁸⁹ <ul style="list-style-type: none"> • Laws and ordinances of the municipality⁵⁹⁰ • Traffic violations 	N/A	City Judge Eligibility: ⁵⁹¹ <ul style="list-style-type: none"> • At least thirty years old • Resident of Tennessee for five years preceding election • Resident of circuit or district in which office is held for one year preceding election City Judge Training and Continuing Education: ⁵⁹² <ul style="list-style-type: none"> • Annually attend three hours of training or continuing education courses approved by the administrative office of courts consisting of material concerning issues, procedures, and new developments relevant to city judges⁵⁹³

588. A municipal court is also called a “city court.” Tenn. Code Ann. § 16-18-301(2) (2021); see also About Municipal Courts, TNCourts.gov, <https://www.tncourts.gov/courts/municipal-courts/about> [<https://perma.cc/74WE-B2EE>] (last visited Feb. 5, 2022).

589. Tenn. Code Ann. § 16-18-302. In municipalities with a population greater than 150,000, jurisdiction also extends to additional enumerated misdemeanors and other offenses. Id. § 16-18-302(b).

590. This power includes jurisdiction over municipal laws and ordinances that duplicate or incorporate the language of state criminal statutes that are Class C misdemeanors with a maximum penalty of a civil fine not more than \$50. Id. § 16-18-302(a)(2).

591. Id. § 16-18-202; Tenn. Const. art VI, § 4. In cities with a population of more than 160,000, city judges must be lawyers authorized to practice law in Tennessee. Tenn. Code Ann. § 17-1-106(d).

592. Id. § 16-18-309.

593. If a municipal judge is an attorney authorized to practice law in Tennessee then such judge may complete three hours of training required for practicing attorneys instead. Id. § 16-18-309(a)(4).

Texas		
Justice Courts: ⁵⁹⁴ <ul style="list-style-type: none"> • Civil matters where amount in controversy does not exceed \$20,000⁵⁹⁵ • Cases relating to forcible entry and detainer⁵⁹⁶ • Enforce deed restrictions⁵⁹⁷ • Issue writs of sequestration, garnishment, and attachment⁵⁹⁸ • Foreclosure of mortgages and enforcement of liens on personal property⁵⁹⁹ • Conduct hearings relating to driver's license suspensions⁶⁰⁰ • Issue arrest and search warrants • Conduct court for minor misdemeanor offenses • Examine witnesses regarding labor act violations⁶⁰¹ • Concurrent civil jurisdiction with municipal court for minor misdemeanors (Class C) • Marriage ceremonies⁶⁰² • Ex officio notary public • Conduct justice court • Variety of civil process • Judge of small claims court⁶⁰³ • Administer and certify oaths and affidavits⁶⁰⁴ 	Justice: \$20,000 ⁶⁰⁵	Justice of the Peace Eligibility: ⁶⁰⁶ <ul style="list-style-type: none"> • No specific requirements Justice of the Peace Required Training and Continuing Education: Initially: <ul style="list-style-type: none"> • Within one year of election, an "eighty-hour course in the performance of the justice's duties"⁶⁰⁷ • Eight-hour initial training course in criminal case matters⁶⁰⁸ Annually: <ul style="list-style-type: none"> • Twenty-hour judicial course including at least ten hours of instruction on "substantive, procedural, and evidentiary law in civil matters"⁶⁰⁹ • Two-hour continuing education course relating to criminal matters⁶¹⁰

594. See generally Tex. Gov't Code § 27 (2021) (justice courts); David B. Brooks, Tex. Ass'n of Counties, 2021 Guide to Texas Laws for County Officials 1 (2021), <https://www.county.org/TAC/media/TACMedia/Legal/Legal%20Publications%20Documents/2021/2021-Guide-to-Laws-for-County-Officials.pdf> [<https://perma.cc/D9LN-64SQ>] ("This guide is a compilation of current statutes affecting the administration and operation of the principal county offices . . . [I]t is primarily intended to provide . . . a convenient reference source for questions regarding the scope of their individual duties.").

595. Tex. Gov't Code § 27.031(a).

596. *Id.*

597. *Id.* § 27.034.

598. *Id.* § 27.032.

599. *Id.* § 27.031.

600. Tex. Transp. Code §§ 521.291–.320 (2021).

601. Tex. Rev. Civ. Stat. Ann. art. 5202 (West 2021).

602. Tex. Fam. Code § 2.202 (2021).

603. Tex. Gov't Code § 27.060.

604. *Id.* § 602.

605. *Id.* § 27.031.

606. See Judge Qualifications and Selection in the State of Texas, Tex. Cts., https://www.txcourts.gov/media/48745/Judge-Qualifications-6_26_14.pdf [<https://perma.cc/QTb9-4PXP>] (last visited Feb. 5, 2022).

607. Tex. Gov't Code § 27.005.

608. Tex. Code Crim. Proc. Ann. arts. 17.024, 17.0501 (West 2021).

609. Tex. Gov't Code § 27.005.

610. Tex. Code Crim. Proc. Ann. arts. 17.024, 17.0501.

Texas (cont.)		
<p>Constitutional County Courts:⁶¹¹</p> <ul style="list-style-type: none"> • Concurrent jurisdiction with justice courts where amount in controversy is greater than \$200 and less than \$20,000⁶¹² • Juvenile jurisdiction⁶¹³ <p>Municipal Courts:⁶¹⁴</p> <ul style="list-style-type: none"> • Violations of city ordinances • Search and arrest warrants • Airport-related matters • Concurrent jurisdiction with justice courts in criminal cases: <ul style="list-style-type: none"> ◦ Punishable only by fines ◦ Arising under the Alcoholic Beverage Code • Judgment of all bail and personal bonds in criminal cases 	<p>County: \$20,000⁶¹⁵</p> <p>Municipal: \$500⁶¹⁶</p>	<p>County Judge Eligibility:⁶¹⁷</p> <ul style="list-style-type: none"> • Citizen of the United States • Resident of Texas for at least twelve consecutive months • Resident of county for at least six consecutive months • Qualified voter in county • Never have been convicted of felony • Not have been determined to be mentally incapacitated <p>County Judge Required Training and Continuing Education:⁶¹⁸</p> <ul style="list-style-type: none"> • Thirty credit hours in first twelve months • Sixteen hours annually thereafter <p>Municipal (Nonattorney) Judge Required Training and Continuing Education:⁶¹⁹</p> <ul style="list-style-type: none"> • Thirty-two hours of continuing judicial education within one year of appointment or election • Annually attend regional seminar

611. See Brooks, *supra* note 594, at 64–72.

612. Tex. Gov't Code § 26.042.

613. Id. § 23.001.

614. Tex. Gov't Code § 29.003.

615. Id. § 26.042. Civil jurisdiction is concurrent with justice courts between \$200 and \$20,000 and concurrent with district courts between \$500 and \$5,000. Id.

616. The municipal court jurisdictional amount is \$500 generally; \$2,000 in matters relating to fire safety, zoning, or public health and sanitation; and \$4,000 in matters concerning dumping of refuse. Id. § 29.003(a)(2).

617. Tex. Const. art. V, § 15 (amended 1954); Tex. Elec. Code § 141.001 (2021).

618. Texas County Judge, Tex. Ass'n of Counties, <https://www.county.org/About-Texas-Counties/About-Texas-County-Officials/%e2%80%8bTexas-County-Judge> [<https://perma.cc/7QZ2-UCFG>] (last visited Feb. 5, 2022).

619. Judges, Tex. Mun. Ct. Educ. Ctr., <https://www.tmcec.com/programs/judges/> [<https://perma.cc/M6VJ-K9MM>] (last visited Feb. 26, 2022).

Utah		
Justice Court Criminal Jurisdiction: ⁶²⁰ <ul style="list-style-type: none"> • Class B and C misdemeanors • Violations of ordinances • Infractions Justice Court Civil Jurisdiction: ⁶²¹ <ul style="list-style-type: none"> • Small claims when either defendant resides or debt arose within territorial jurisdiction of justice court 	\$11,000 ⁶²²	Justice Court Judge Eligibility: ⁶²³ <ul style="list-style-type: none"> • Citizen of the United States • At least twenty-five years old and younger than seventy-five years old • Utah resident for a minimum of three years immediately preceding appointment • Resident of county in which court located for a minimum of six months immediately preceding appointment • Qualified voter in county in which judge resides • A high school graduate or equivalent⁶²⁴ Justice Court Judge Training and Education: ⁶²⁵ <ul style="list-style-type: none"> • Attend the first designated orientation program upon taking office⁶²⁶ • Be certified as meeting the continuing education requirements of judicial council including instruction regarding: <ul style="list-style-type: none"> ◦ Understanding of constitutional provisions ◦ Laws relating to the jurisdiction of the court ◦ Rules of evidence ◦ Rules of civil and criminal procedure

620. Utah Code § 78A-7-106 (2021). In general, justice court jurisdiction extends only to offenses committed within the justice court's territorial jurisdiction by offenders ages eighteen and older. Id. Jurisdiction also extends to the following offenses committed within the justice court's territorial jurisdiction by individuals ages 16 and 17: certain offenses relating to the Driver Licensing Act, Wildlife Resources Code, Motor Vehicle Act, Traffic Code, Financial Responsibility of Motor Vehicle Owners and Operators Act, Off-Highway Vehicles, State Boating Act, Boating—Litter and Pollution Control, Water Safety, and Financial Responsibility of Motorboat Owners and Operators Act. Id. § 78A-7-106(2).

621. Id. § 78A-7-106(5). Small claims actions are civil actions where amount in controversy does not exceed \$11,000. Id. § 78A-8-102.

622. Id. § 78A-8-102.

623. Id. § 78A-7-201.

624. As of May 10, 2016, this only applies in third, fourth, fifth, or sixth class counties; in first and second class counties a judge must have a degree from a law school and be bar eligible in any state. Id. § 78A-7-201(2). Justice court judges in first and second class counties holding office on May 10, 2016, who did not have a J.D., were grandfathered in and were allowed to continue to hold office until they resign, retire, or are removed from office or not reelected in a subsequent election. Id. § 78A-7-201(7).

625. Id. § 78A-7-205. Justice court judges must complete thirty hours of preapproved education annually. Utah Code Jud. Admin. R. 3-403(3).

626. Utah Code Jud. Admin. R. 3-403(3).

Virginia		
Magistrate Civil Jurisdiction: ⁶²⁷ <ul style="list-style-type: none"> • Issue civil warrants • Administer oaths and take acknowledgments • Act as conservators of the peace • Issue attachment summonses, distress warrants, and detinue seizure orders⁶²⁸ • Issue emergency custody orders⁶²⁹ • Issue emergency protective orders⁶³⁰ • Issue subpoenas duces tecum⁶³¹ Magistrate Criminal Jurisdiction: ⁶³² <ul style="list-style-type: none"> • Issue search warrants • Issue process of arrest • Issue warrants and subpoenas⁶³³ • Admit bail • Issue temporary detention orders⁶³⁴ • Conduct probable cause and bail hearings and issue warrants for federal criminal cases⁶³⁵ 	N/A	Magistrate Eligibility: ⁶³⁶ <ul style="list-style-type: none"> • Citizen of the United States • Resident of Virginia • Bachelor's degree from accredited institution⁶³⁷ Magistrate Training and Continuing Education: <ul style="list-style-type: none"> • Complete minimum training standards established by the Committee on District Courts within nine months of appointment⁶³⁸ • Annually obtain twenty continuing legal education credits⁶³⁹

627. Va. Code § 19.2-45 (2021).

628. Id. §§ 8.01-54, 8.01-114, 55-230, 55-232.

629. Id. §§ 19.2-182.9, 37.2-808, 37.2-913.

630. Id. §§ 16.1-253.4, 19.2-152.8.

631. Id. §§ 16.1-69.25, 19.2-45.

632. Id. § 19.2-45.

633. “The same power to issue warrants and subpoenas as is conferred upon district courts and as limited by the provisions of §§ 19.2-71 through 19.2-82.” Id. § 19.2-45(4).

634. Id. §§ 19.2-182.9, 37.2-808, 37.2-913; see also Off. of the Exec. Sec’y, Dep’t of Magistrate Servs., Magistrate Manual: Introduction to the Magistrate System of Virginia 14 (2021),

<https://www.vacourts.gov/courtadmin/aoc/mag/resources/magman/chapter01.pdf> [<https://perma.cc/48FD-YYE8>] [hereinafter Va. Magistrate Manual].

635. Va. Code § 2.2-2801(A) (21); see also Va. Magistrate Manual, supra note 634, at 14 (“Va. Code § 2.2-2801 specifically allows Virginia magistrates to perform acts and functions with respect to United States criminal proceedings.”).

636. Va. Code § 19.2-37. An individual is ineligible for appointment as a magistrate if that person is a law enforcement officer; is on any governing body for any political subdivision of Virginia; “if such person or his spouse is a clerk, deputy or assistant clerk, or employee of any such clerk of a district court or circuit court”; or if such person’s parent, child, spouse, or sibling is a district or circuit court judge in the region in which that person would be appointed. Id.

637. A bachelor’s degree is not required for magistrates appointed and continuing to hold office since July 1, 2008. Id. § 19.2-37(B).

638. Id. § 19.2-38.1.

639. Va. Magistrate Manual, supra note 634, at 11–12.

West Virginia		
<p>Magistrate Civil Jurisdiction:⁶⁴⁰</p> <ul style="list-style-type: none"> • All civil actions where amount in controversy does not exceed \$10,000 • Eviction-related matters • Administer oaths or affirmation • Take affidavits or depositions <p>Magistrate Criminal Jurisdiction:⁶⁴¹</p> <ul style="list-style-type: none"> • All misdemeanor offenses • Conduct preliminary examinations on warrants charging felonies and probation violations • Issue arrest warrants in all criminal matters and warrants for search and seizure (in cases not involving capital offenses) • Set and admit bail⁶⁴² • Suspend sentences and impose unsupervised probation⁶⁴³ <p>Municipal Court Jurisdiction:⁶⁴⁴</p> <ul style="list-style-type: none"> • Cases involving municipal violations 	<p>\$10,000⁶⁴⁵</p>	<p>Magistrate Eligibility:⁶⁴⁶</p> <ul style="list-style-type: none"> • At least twenty-one years old • High school graduate or equivalent • Never convicted of felony or misdemeanor involving “moral turpitude” • Resident in county in which elected <p>Magistrate Training and Continuing Education:⁶⁴⁷</p> <ul style="list-style-type: none"> • Attend and complete course instruction on “rudimentary principles of law and procedure” • Attend courses of continuing education “as may be required by supervisory rule of the Supreme Court of Appeals” <p>Municipal Judge Training and Continuing Education:⁶⁴⁸</p> <ul style="list-style-type: none"> • Must “attend and complete the next available course of instruction in rudimentary principles of law and procedure” • Annually attend a course “for the purpose of continuing education”

640. W. Va. Code Ann. § 50-2-1 (LexisNexis 2021).

641. Jurisdiction extends only over misdemeanors and felonies committed within the county and over probation violations “upon order of referral from the circuit courts.” Id. § 50-2-3 (LexisNexis).

642. Id. (“[I]n cases punishable only by the fine, such bail or recognizance shall not exceed the maximum amount of the fine and applicable court costs permitted or authorized by statute to be imposed in the event of conviction.”).

643. This jurisdiction is limited for certain offenses including offenses for which the penalty includes mandatory incarceration. Id. § 50-2-3a (LexisNexis).

644. Id. § 8-10-2 (LexisNexis).

645. Id. § 50-2-1 (LexisNexis).

646. Id. § 50-1-4 (LexisNexis).

647. Id.

648. Training and continuing education requirements do not apply to “attorneys admitted to practice in this state.” Id. § 8-10-2(c) (LexisNexis).

Wisconsin		
<p>Municipal Judge Jurisdiction:⁶⁴⁹</p> <ul style="list-style-type: none"> • Cases concerning traffic offenses and ordinance violations⁶⁵⁰ • Issue subpoenas, inspection warrants, and, in certain cases, civil warrants⁶⁵¹ • Issue summonses cases concerning municipal ordinance violations⁶⁵² • Order payments of restitution in violations of nontraffic ordinances⁶⁵³ • Punish contempt of court⁶⁵⁴ • Concurrent jurisdiction with juvenile court of children in certain cases⁶⁵⁵ • Perform marriages⁶⁵⁶ • Preside over depositions in certain cases⁶⁵⁷ 	N/A	<p>Municipal Judge Eligibility:⁶⁵⁸</p> <ul style="list-style-type: none"> • Qualified elector at time of election or appointment • Resident of jurisdiction during term <p>Municipal Judge Training and Continuing Education:⁶⁵⁹</p> <ul style="list-style-type: none"> • Immediately following appointment or election, new municipal judges must attend the Municipal Judge Orientation and Institute • Earn four credits each year at a “municipal judge orientation institute, review institute or graduate institute developed by the judicial education office”

649. Wis. Stat. § 755.045 (2021); see also Wis. Sup. Ct., Dir. of State Cts. & Off. of Jud. Educ., Wisconsin Municipal Judge Benchbook 1-7 to 1-9 (2020), <https://www.wicourts.gov/publications/guides/docs/munibenchbook.pdf> [<https://perma.cc/W5Z3-GCGC>] [hereinafter Wis. Municipal Judge Benchbook].

650. Jurisdiction is exclusive when the penalty is a forfeiture. Wis. Stat. § 755.045(1).

651. Id. §§ 755.045(2), 800.02(5), 885.04.

652. Id. § 800.02(4).

653. This power applies where ordinances prohibit the same or similar conduct to state statutes which are punishable by a fine and/or imprisonment. Id. §§ 755.045(3), 800.093.

654. Id. § 800.12.

655. This jurisdiction is concurrent with children twelve years or older who allegedly violated a municipal ordinance and children of any age alleged to be “habitually truant.” Id. § 938.17(2)(a).

656. Id. § 765.16(1m)(f).

657. Id. §§ 13.24(1), 887.20, 887.23.

658. Wis. Municipal Judge Benchbook, *supra* note 649, at 1-10.

659. Wis. Stat. § 755.18; Wis. Sup. Ct. R. 33.04; Wis. Municipal Judge Benchbook, *supra* note 649, at 1-10.

Wyoming		
Circuit Court Magistrate Civil Jurisdiction: ⁶⁶⁰ <ul style="list-style-type: none"> • Administer oaths • Acknowledge deeds and mortgages • Perform marriages • Subpoena witnesses and mandate appearances • Handle eviction matters⁶⁶¹ and all civil actions where the jurisdictional amount is \$5,000 or less⁶⁶² • Try actions concerning “any instrument payable in installments” or disposal of an abandoned vehicle • Issue attachments, executions, and garnishments of debtors in certain cases, and executions on judgments rendered by the magistrate⁶⁶³ 	\$5,000 ⁶⁶⁸	Circuit Court Magistrate Eligibility (Full-Time): ⁶⁶⁹ <ul style="list-style-type: none"> • Full-Time: Qualified elector and resident in county • Part-Time: Qualified elector and resident in “district within which the circuit is located”⁶⁷⁰
Circuit Court Magistrate Criminal Jurisdiction: ⁶⁶⁴ <ul style="list-style-type: none"> • Issue warrants or summonses • Set bail⁶⁶⁵ • Arraign, try, and sentence defendants for misdemeanors punishable by one year or less of imprisonment, regardless of any fine imposed⁶⁶⁶ • Correct an illegal sentence or reduce sentences • Hear and issue orders in peace bond, stalking, and domestic violence cases 		Municipal Judge Eligibility: <ul style="list-style-type: none"> • Qualified elector of Wyoming⁶⁷¹
Municipal Court Judge Jurisdiction: <ul style="list-style-type: none"> • All offenses arising under municipal ordinances⁶⁶⁷ 		Magistrate and Municipal Judge Training and Continuing Education: <ul style="list-style-type: none"> • Annually complete at least fifteen hours of accredited continuing judicial or legal education⁶⁷²

660. Wyo. Stat. Ann. § 5-9-208 (2021). A full-time magistrate, authorized to practice law in Wyoming, enjoys broader jurisdiction and with limited exception may exercise “all of the powers of a circuit court” as authorized by law or with consent of all parties. *Id.*

661. *Id.* § 5-9-208(c)(v) (“Try the action for forcible entry and detainer . . .”). A magistrate not licensed to practice law may preside over cases against tenants “holding over their terms or . . . fail[ing] to pay rent for three (3) days after it is due,” and renters who are not “current on all payments required by the rental agreement” or fail to comply “with all lawful requirements of the rental agreement.” *Id.* §§ 1-21-1002(a)(i), 1204, 1205.

662. Within the jurisdictional amount, powers include entering judgments by default, on the pleadings, and on a confession of a party, as well as summary judgment, setting aside default judgments, and issuing any order a circuit judge can enter. *Id.* § 5-9-208(c)(xiii).

663. Magistrates can also try the rights of claimants to property taken in execution, garnishment, or attachment. *Id.* §§ 5-9-208(c)(vii), (viii), (ix), (xii), (xiv).

664. *Id.* § 5-9-208.

665. This includes the power to set bail for witnesses. *Id.* § 5-9-208(c)(xvi).

666. This includes the power to: (1) accept pleas; (2) order examinations of defendants who claim mental illness, and order presentence investigations, substance abuse evaluations, and pretrial conferences; (3) impose sentences and terms of probation; (4) issue orders to show cause and conduct related hearings; and (5) enter other orders within the power of circuit judges when the judge is unavailable, recused, or disqualified. *Id.* § 5-9-208(c)(xviii).

667. *Id.* § 5-6-101.

668. *Id.* § 5-9-208(c)(x).

669. *Id.* §§ 5-9-201(a), 5-9-206.

670. *Id.* §§ 5-9-201(b)(2), -210.

671. *Id.* § 5-6-103 (“Municipal judges . . . shall be qualified electors of the state *unless otherwise provided by ordinance.*”) (emphasis added).

672. Wyo. R. for Continuing Jud. Educ. 2.

TABLE 2: SUMMARY OF STATES THAT ALLOW NON-J.D.S TO SERVE
AS JUDICIAL OFFICERS

State	Are lay judges required to complete, or are they provided with, some sort of training?	Are lay judges authorized to hear eviction cases?	Are lay judges authorized to hear criminal cases?
Ala.	YES (initial orientation program required within the first twelve months of taking office and continuing education requirement)	NO	YES (district court magistrate judges may issue arrest warrants and set bail amounts)
Alaska	YES (not specified in statute; a training judge is assigned to each judicial district to inspect, train, and report on the magistrates)	NO	YES (jurisdiction includes issuing writs of habeas corpus; issuing arrest warrants, summons, and search warrants; and can set, receive, and forfeit bail)
Ariz.	YES (must complete at least sixteen hours of judicial education in ethics, technology training, and live training)	YES	YES (justice court judges have jurisdiction over petty offenses, misdemeanors, and criminal offenses punishable by fines not exceeding \$2,500 and/or imprisonment in jail not exceeding six months)

Colo.	YES (nonlawyer county judges must attend a state-run institute on duties and function of court system)	YES	YES (county court judges have jurisdiction over misdemeanors and petty offenses (other than those involving children); issuing warrants and bindover orders; conducting preliminary examinations and dispositional hearings; and setting bail in felonies and misdemeanors)
Del.	YES (required to attend a basic legal education program and must complete thirty hours of continuing legal education and training every two years)	YES	YES (jurisdiction over all criminal misdemeanor cases (except for those specifically excluded by law); issue summonses and warrants, and search warrants, based upon finding of probable cause, and issue and execute capiases; and conduct initial appearances to set bond and conduct bond review hearings upon request)
Ga.	YES (must complete an orientation program within the first year of office and eighty hours of training specified by the Georgia Magistrate Courts Training Council within two years of becoming a magistrate, along with other continuing education requirements)	YES	YES (jurisdiction over violations of game and fish laws; criminal commitment hearings; miscellaneous misdemeanors; and traffic and truancy in some counties; and issuance of search and arrest warrants in some cases)

Kan.	YES (must complete at least thirteen hours of continuing legal education annually, with at least two hours concerning judicial ethics)	YES	YES (jurisdiction over violations of state law, cigarette or tobacco infractions or misdemeanors; and first appearance hearings in felonies, preliminary examination of felony charges, and misdemeanor or felony arraignments)
La.	YES (required to attend an initial training course and an additional training course once every two years thereafter)	YES	YES (jurisdiction over setting bail or discharge in noncapital cases; and concurrent jurisdiction with district court over specified state and local ordinances concerning the prosecution of litter violations and of “removal, disposition, or abandonment” violations)
Md.	YES (must attend an orientation program for new judges and obtain at least twelve hours of continuing education annually)	NO	NO
Mass.	YES (not specified in statute; magistrates receiving training through a collaboration between the Trial Court’s Judicial Institute and Association of Magistrates and Assistant Clerks of the Trial Courts of Massachusetts)	NO	YES (jurisdiction to issue warrants, search warrants, and summonses; hold preliminary hearings to determine probation violations; set bail on arraignments when a justice is unavailable; and conduct an ex parte proceeding to determine probable cause for detention after a warrantless arrest)

Mich.	YES (not specified in statute; must successfully complete a special training course in traffic law adjudication and sanctions prior to overseeing these claims)	NO	YES (jurisdiction to issue search warrants, and arrest warrants and summonses; conduct probable cause conferences; fix bail and accept a bond in all criminal cases; conduct first appearances of defendants in criminal and ordinance violation cases; and approve and grant petitions for the appointment of attorneys to represent indigent clients accused of misdemeanors)
Miss.	YES (must complete a basic training course and a competency exam within six months of election and annually complete a continuing education course thereafter)	NO	YES (jurisdiction over misdemeanor crimes, municipal ordinances, and city traffic violations; and can oversee initial appearances as well as bond hearings and preliminary hearings and first appearances in felony cases)
Mo.	YES (must complete an instructional course within six months of becoming a magistrate and complete at least fifteen hours of continuing legal education annually)	NO	YES (jurisdiction to hear and determine violations of municipal ordinances; issue warrants; certain traffic offenses; and grant and set conditions of parole or probation)

Mont.	YES (must complete an initial training course as soon as possible after obtaining position and attend two training sessions each year thereafter)	YES	YES (justices of the peace have jurisdiction over all misdemeanors punishable by imprisonment not exceeding six months and/or fines not exceeding \$500; preliminary hearings in criminal cases; and certain vehicle offenses)
Neb.	YES (must earn at least eight hours of judicial education credits annually)	NO	YES (jurisdiction to adjudicate nonfelony proceedings, including determining probable cause or release on bail; determining temporary custody of juvenile; determining noncontested proceedings relating to decedents' estates, inheritance tax matters, and guardianship or conservatorship; and entering orders for hearings and trials)
Nev.	YES (must complete a two-week long initial training session and must complete thirteen hours of continuing education annually)	YES	YES (jurisdiction over criminal, traffic, and nontraffic misdemeanors)

N.M.	YES (must attend a training program within forty-five days of initial appointment and attend at least one training program annually)	YES	YES (magistrate judge jurisdiction includes misdemeanors and petty misdemeanors; violations of county and municipal ordinances (including issuing subpoenas and warrants and punishing contempt); and conducting preliminary examinations in criminal actions)
N.Y.	YES (must attend the first available certification course after initial appointment)	YES	YES (jurisdiction over misdemeanors and violations committed within the jurisdiction of town or village; vehicle and traffic law misdemeanors and felony infractions; arraignments and preliminary hearings in felony matters)
N.C.	YES (must complete courses in basic training and annual in-service training in order to be eligible for renomination and must annually complete at least twelve hours of training in civil and criminal law)	YES	YES (jurisdiction to hear certain infractions, misdemeanors, and statutory offenses; conduct initial proceedings; set conditions of release (noncapital offenses); issue arrest, search warrants, and subpoenas)
N.D.	YES (must attend orientation within the first three months of initial appointment and earn eighteen hours of credit in judicial education classes every three years)	NO	YES (jurisdiction over violations of municipal ordinances)

Okla.	YES (must complete at least twelve hours of continuing education annually)	NO	YES (jurisdiction over traffic offenses (including prescribing bail or arrests in misdemeanor violations of traffic ordinances); issue arrest warrants; make arraignments; set terms of sentence; and punish contempt)
Or.	YES (must complete an orientation course within the first twelve months of appointment and annually complete thirty hours of continuing education)	NO	YES (justice courts have concurrent jurisdiction with circuit court over criminal and traffic offenses committed or triable within the jurisdiction (except felony trials))
Pa.	YES (must complete an initial forty-hour course on civil and criminal law and annually complete at least thirty-two hours of continuing education courses including a course related to children and child abuse)	YES	YES (issue warrants and accept bail in noncapital offenses and has jurisdiction to hear certain DUI cases)

S.C.	YES (must attend an initial training program and pass certification exam within twelve months of taking office; also must attend a continuing education program along with passing a recertification exam every eight years thereafter)	YES	YES (exclusive jurisdiction in all criminal cases charging offenses committed within magistrate's jurisdiction, in which punishment does not exceed thirty-day imprisonment or fine of \$100; admit bail, conduct bond hearings, and determine conditions of release; issue arrest warrants; examine treasons, felonies, grand larcenies, high crimes, and misdemeanors)
S.D.	YES (must complete training program on evidence-based practices and attend annual judicial conferences thereafter)	NO	YES (conducts preliminary hearings; concurrent jurisdiction with circuit court to issue summonses, warrants of arrest, and warrants for searches and seizures; fix bonds or take personal recognizance; and adjudicate matters concerning petty offenses if the punishment does not exceed a fine of \$500 and/or thirty-day imprisonment)

Tenn.	YES (must attend three hours of training or continuing education courses annually)	NO	YES (jurisdiction over the laws and ordinances of the municipality; and in municipalities with a population greater than 150,000, jurisdiction also extends to additional enumerated misdemeanors and other offenses)
Tex.	YES (county judges must earn thirty credit hours of judicial education in the first twelve months of appointment and must attend sixteen hours of continuing education training annually thereafter)	YES	YES (justice courts can issue arrest and search warrants and can hear minor misdemeanor offenses)
Utah	YES (must attend orientation program upon taking office and obtain certification in several areas via continuing education course)	NO	YES (jurisdiction over Class B and C misdemeanors; violations of ordinances and other infractions)
Va.	YES (must complete minimum initial training standards as established by state's committee within nine months of appointment and obtain at least twenty hours of continuing legal education annually)	YES	YES (can issue search warrants, process of arrest, warrants and subpoenas; may also admit bail; issue temporary detention orders; and conduct probable cause and bail hearings and issue warrants for federal criminal cases)

W. Va.	YES (must attend annual course on principles of law and procedure; and must attend any additional judicial education courses as required by the Supreme Court of Appeals)	YES	YES (jurisdiction over all misdemeanor offenses; conduct preliminary examinations on warrants charging felonies and probation violations; issue arrest warrants in all criminal matters, and warrants for search and seizure (in cases not involving capital offenses); and set and admit bail)
Wis.	YES (must attend orientation program immediately following appointment and must earn at least four credits each year through judicial education programs)	NO	YES (oversee cases concerning traffic offenses and ordinance violations; issue subpoenas, inspection warrants and, in certain cases, civil warrants; issue summonses for cases concerning municipal ordinance violations)
Wyo.	YES (must annually complete at least fifteen hours of continuing legal education)	YES	YES (jurisdiction to issue warrants or summonses; set bail; arraign, try, and sentence defendants in misdemeanor cases punishable by not more than one year imprisonment, regardless of any fine imposed)