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Non-Lawyer Judges in Devalued Courts

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Sara Sternberg Greene & Kristen M. Renberg, [Judging Without a J.D.](#), 122 *Colum. L. Rev.* 1287 (2022).

Recent legal scholarship has shed needed light on the vast universe of litigation that occurs without lawyers. Large majorities of civil litigants lack representation, even in weighty matters such as eviction and termination of parental rights, raising a host of issues worthy of scholarly attention. For example, one recent article has examined [racial and gendered effects](#) of the lack of constitutionally guaranteed counsel in civil matters, and another has shown that judges [tend not to reduce the complexity](#) of the proceedings for the benefit of unrepresented parties.

In *Judging Without a J.D.*, Sara Greene and Kristen Renberg add an important dimension to this discussion by examining the phenomenon of judges who have no legal training before they take the bench. Thirty-two states allow a person without a law degree to become a judge, including seventeen that allow non-lawyer judges to adjudicate eviction cases. Because of the high rates of pro se litigation, many litigants in these states “experience a courtroom in which often no one, not even the judge, is aware of the law.” Worse, some find that “the one person in the courtroom who is aware of the law is the attorney for the more powerful party (such as a landlord).”

Non-lawyer judges preside over low-level state courts, which helps to explain why Greene and Renberg’s essay is the first piece of legal scholarship since the 1980s to focus on them. “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, high-level state courts.” For many of us in the academy, our knowledge of this issue comes not from legal scholarship (or personal experience) but from journalism: A 2006 [New York Times investigation](#) into New York’s town and village courts and a 2019 [ProPublica investigation](#) into South Carolina’s magistrates cast public attention on lay judging.

Greene and Renberg begin their essay with a concise but illuminating history of lay judging in America. In the colonial courts of the seventeenth century, few judges were lawyers; justice and religion were linked, and colonists often viewed lawyers as impious outsiders. Although roles of courts and judges evolved, distrust of lawyers persisted; it was not until the nineteenth century that legal training became a presumptive requirement for higher-court judicial positions. “It took longer for lower courts to transition, and many did not transition at all, particularly in rural areas.”

By the twentieth century, “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.” The latter were—and remain—the courts where non-lawyers serve as judges. This alignment is not a coincidence: While lay judging originated in a distrust of lawyers and a belief that “local custom and piousness should pervade the law,” the current reality flows from “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.”

That is a provocative conclusion, but the authors amply support it, in part through a comprehensive survey of state laws governing lay judging. States assign cases to non-lawyer judges not because of the complexity of the legal issues or the extent to which they would benefit from an understanding of community norms, but because of the amount of money at stake. Of course, one need not have a J.D. to grasp complex legal issues, and one can learn the law without attending law school. But as the authors demonstrate, many of the states that allow non-lawyers to become judges do little to ensure that they possess sufficient legal knowledge to adjudicate the cases that come before them. Qualifications and training requirements vary widely. Some states require only that non-lawyer judges be over a certain

age (usually twenty-one) and reside within the state's geographical boundaries at the time they take the bench; the irregular timing of magistrate training programs "can result in magistrates adjudicating cases for half a year or more with no legal or administrative training at all."

In addition to the fifty-state survey, Greene and Renberg provide a granular view through a case study of non-lawyer judges in North Carolina. Magistrate judges in that state adjudicate civil and criminal matters, over 80% without a law degree. They may adjudicate cases for up to six months without any training; by the six-month mark, they must receive forty hours of initial training, and they must complete twelve hours of continuing education per year thereafter. Unsurprisingly, magistrates made "clear procedural errors," including "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."

Greene and Renberg find that judicial salaries "put a price tag on these courts, and the lack of high valuation is evident." North Carolina magistrates make between \$42,630 and \$68,072 per year, depending on how long they have been on the job. By contrast, all federal judges earn more than \$200,000 per year, and "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." These salary differentials show "states' lack of willingness to invest in making magistrate positions (or their equivalent) attractive to lawyers as a career path."

A fascinating part of the North Carolina case study explores the degree to which the state's lay judges have a background in law enforcement. Law enforcement is one of magistrates' most common previous careers; in the county where the authors conducted interviews, all but one of the fifteen sitting magistrates were former probation officers. The situation is a far cry from the idealized model of the lay judge as wise community member, steeped in local norms but presumably neutral. Instead, the person overseeing an individual's criminal punishment one day may preside over their eviction case on a later day—without any legal training. That path is troubling when viewed against the racial dynamics of law enforcement and the over-policing of minority neighborhoods.

This essay is beautifully written and elegantly structured. Each of its three sections—the history of non-lawyer judges, the comprehensive survey of state laws about judicial qualifications, and the case study of non-lawyer judges in North Carolina—is worth reading on its own and could work well as a supplemental reading in a Civil Procedure course. Together, they make for a gripping and thought-provoking read. I came away thoroughly convinced of the authors' argument for "an increased focus on who staffs low-level state court judgeships and what type of training they receive."

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