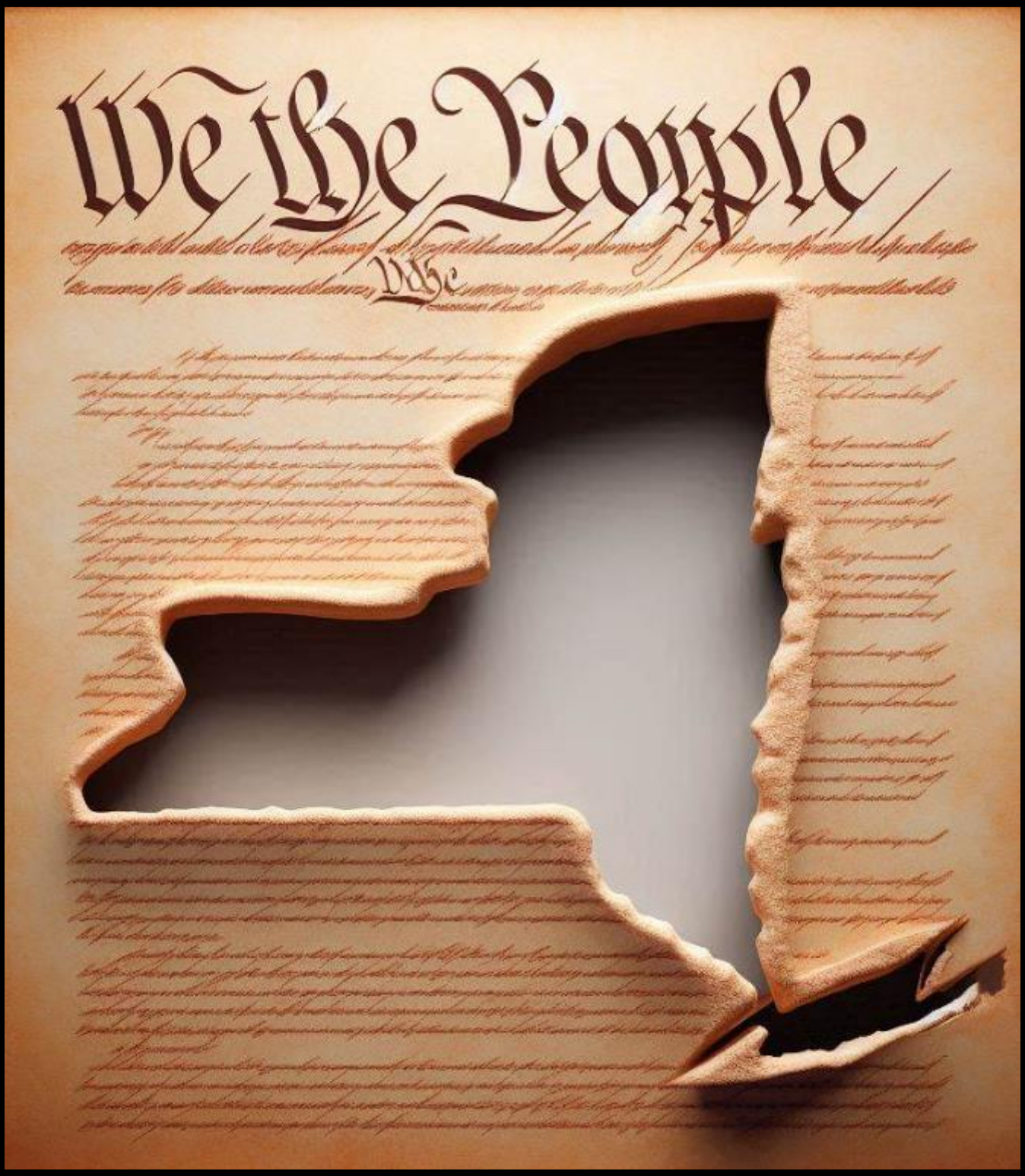
Unprotected:

Analyzing Judicial Protection of Constitutional Rights



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Executive Summary

State court judges play a crucial role in upholding constitutional protections that safeguard individuals from abuses such as unlawful stop-and-frisk, coerced interrogations, and warrantless searches. However, judges' interpretations and applications of these rights vary significantly, affecting both individual defendants and the broader community's interactions with law enforcement.

This report introduces a new metric for assessing judges: Failure to protect constitutional rights against law enforcement overreach. We analyze appellate decisions to identify cases where trial court judges ruled that officers acted constitutionally in obtaining evidence, but were overturned by higher courts. Using examples from suppression reversals and other sources, we suggest that some suppression reversals not only indicate a pattern of failing to protect constitutional rights, but may also reveal a trial court judge's bias toward law enforcement.

Our new analysis enhances transparency in the judicial system, empowers New Yorkers with crucial insights about the judges serving their communities, and provides decision-makers with valuable information.

Key Findings:

1. Ninety-five judges had multiple suppression decisions reversed between 2007 and 2023.
2. Approximately 38% of the reversals (153 cases) were dismissed because of a finding that the trial court judge erred in denying suppression, suggesting that some New Yorkers may have been wrongfully incarcerated due to unconstitutionally obtained evidence.
3. An additional 69 cases were overturned due to judicial errors that limited or prevented constitutional scrutiny of law enforcement actions.

Recommendations:

1. New York's court system should increase transparency by releasing all trial court judges' suppression rulings along with hearing transcripts.
2. New York's court system should publish annual reports containing summary data on suppression proceedings, outcomes, and other pertinent information.

CONTENTS

Introduction

State judges play a crucial role in upholding the protections provided by both federal and state constitutions against law enforcement overreach. These protections, enshrined in the Fourth, Fifth, and Sixth Amendments as constitutional rights, safeguard against abuses such as stop-and-frisk, coerced interrogation, and unlawful searches. State judges are tasked with safeguarding these rights to protect individuals from law enforcement overreach and, importantly, to deter law enforcement from unconstitutional actions. This responsibility is essential for maintaining balance between government power and individual liberties, and it impacts not only individual defendants who have been subjected to constitutional violations, but all civilians who could potentially interact with law enforcement.

Judges' interpretations and applications of constitutional rights vary significantly. Some judges provide greater protections through expansive readings of these rights, while others offer less protection with narrower interpretations. Organizations like the Federalist Society have exploited this variance to shape judiciaries to limit certain rights while expanding others. Recent United States Supreme Court decisions have brought this issue into public focus as never before.

Unlike federal judges who enjoy life tenure, state judges in the vast majority of states must secure reelection or reappointment to continue presiding from the bench. Voters and decision-makers can make more informed decisions about judicial candidates when they know a candidate's past interpretations of constitutional questions and how these have impacted individuals appearing before that judge. Moreover, because few cases are appealed, a trial court judge's ruling is often the final word on these constitutional matters. This substantial influence underscores the essential need for transparency and public oversight of judicial constitutional rulings.

In this report, we scrutinize New York judges' constitutional rulings. We introduce a new metric for assessing judges: Failure to protect constitutional rights against law enforcement overreach. Trial court judges oversee "suppression" hearings to decide if evidence obtained by law enforcement may be admitted at trial or must be *suppressed*—meaning it may not be presented to the jury in a trial and must otherwise be kept out of the case record—based on whether law enforcement officers' actions violated constitutional rights. If a trial court judge denies suppression, allowing the evidence in question to be admitted, and the defendant is

convicted, the ruling can be appealed. When appellate judges reverse the denial of suppression, they indicate that the trial judge made a significant constitutional error. These reversals can also suggest a judge's pro-police bias, as discussed in detail below.

As with our previous reports on metrics for assessing judicial decisions and impacts, we propose recommendations to increase the transparency of the court system. Reforms toward transparency would be a vital step toward progress, allowing New Yorkers to effectively and substantively learn about and evaluate their judiciary.

Background: Violation of Constitutional Rights by Law Enforcement

The federal and state constitutions alike are celebrated for the protection they provide against law enforcement overreach. Enshrined in the Fourth, Fifth, and Sixth Amendments, these constitutional rights guard against various forms of law enforcement overreach, such as stop-and-frisk, coerced interrogation, or searches within the home. The New York Court of Appeals, the state's court of last resort, has often upheld broader protections for individual rights under the New York Constitution than federal law guarantees under the United States Constitution in cases of law enforcement overreach.[1]

Suppression: Exclusion of Evidence Obtained in Violation of Constitutional Rights

When law enforcement violates a defendant's constitutional rights, the evidence obtained is deemed "suppressible," meaning it is inadmissible in court. This rule, known as the "exclusionary rule,"[2] aims to deter constitutional rights violations by law enforcement[3] and functions, in practice, as an immediate remedy for defendants. The exclusionary rule applies to a wide range of evidence, including physical evidence like DNA

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[1] *See, e.g.*, *People v. Torres*, 74 N.Y.2d 224, 228 (1989) ("[T]his court has demonstrated its willingness to adopt more protective standards under the State Constitution 'when doing so best promotes "predictability and precision in judicial review of search and seizure cases and the protection of the individual rights of our citizens." ' Accordingly, we have in recent years carved out an independent body of principles to govern citizen-police encounters in a number of specific areas…") (citations removed).

[2] For a general discussion of the exclusionary rule and the federal cases that established it, *see* *exclusionary rule*, Legal Information Institute - Cornell Law School (2024).

[3] *See generally* *People v. McGrath*, 46 N.Y.2d 12, 21 (1978); *People v. Payton*, 51 N.Y.2d 169, 175 (1980).

or drugs, statements made by defendants to prosecutors or police officers, and witness identifications of the defendant.

The legal process to review the constitutionality of law enforcement conduct begins with a suppression motion. Defense attorneys file this motion to ask the judge to exclude evidence from trial or to hold a hearing where law enforcement witnesses testify about how they obtained the evidence. The judge may deny the motion without a hearing if the defense attorney does not meet the required bar of factual or legal allegations.[4] Typically, the judge grants a hearing, where one or more law enforcement officers testify about what they did to obtain the evidence in question. After the hearing, the judge decides if these actions violated the defendant's constitutional rights. If the judge grants suppression, the evidence is inadmissible at trial. If the judge denies suppression, the evidence is admissible.

Suppression Decisions Often Determine Case Outcomes

The trial court judge's decision on suppression significantly impacts case outcomes. In some cases, suppression of evidence is dispositive, meaning the criminal case is dismissed because the evidence is suppressed. For instance, if police officers stop a defendant on the street, frisk him, and find drugs in his pocket, suppression of the drugs will result in the dismissal of the entire case. In non-dispositive cases, suppression of evidence can still significantly decrease the prosecutor's ability to secure a conviction. For example, in an assault case in which the main evidence is a witness's testimony, suppression of the defendant's confession could weaken the prosecutor's case.

Although no public data is available from the New York court system, many criminal cases do not have a suppression hearing because the defendant pleads guilty or the case is dismissed beforehand. At times, prosecutors condition a plea offer on the defendant's waiver of a suppression hearing: They state that the plea offer will expire once the suppression hearing begins. This practice further decreases the number of suppression hearings conducted.

[4] C.P.L. § 710.60(3).

Appellate Judges Have the Authority to Overturn Trial Judges' Suppression Denial

If a trial court judge denies suppression or summarily denies a suppression motion (*i.e.*, denies suppression without conducting a hearing), and the defendant is later convicted, the ruling may generally be appealed. On appeal, appellate judges review the suppression hearing testimony and the trial court judge's ruling. If the appellate judges find an error, they can overturn the trial court's suppression ruling. When the appellate court determines that the evidence should have been suppressed and that evidence is crucial to the case, the reversal generally leads to the dismissal of the case. Otherwise, the reversal usually results in the conviction being vacated, the evidence being suppressed, and the case being sent back to the trial court judge for further proceedings without the suppressed evidence.

Appellate suppression reversals are crucial for correcting judicial errors and for protecting New Yorkers' constitutional rights. They ensure fair and just legal processes, acting as a vital mechanism for upholding individuals' constitutional protections against unlawful law enforcement practices.

Metric: Suppression Reversals Indicate Judicial Errors and Potential Pro-Police Bias

When suppression of evidence is involved in an appeal of a criminal case, a panel of three to five appellate judges assesses the trial court judge's denial of suppression. When the appellate judges decide to reverse a suppression denial, they determine that the trial court judge erred in interpreting and applying the most crucial area of the law: The protection of constitutional rights.

Our analysis detects these errors in protecting constitutional rights against law enforcement overreach through their appearance in appellate decisions. The methodology of using appellate decisions to identify such errors carries important consequences for the interpretation of our results.

Suppression Reversals Represent Severe Judicial Errors

The conservative and deferential nature of appellate review makes reversals rare, highlighting the significance of such outcomes when they do occur.

Appellate judges rarely question trial court judges' assessments of the facts underlying a suppression denial. This deference extends particularly to findings of law enforcement witness credibility at suppression hearings, with appellate courts treating such determinations with "great deference" and overturning them only when "clearly unsupported by the record."[5]

Various legal doctrines also encourage deference in appellate review. The "harmless error" doctrine, for example, permits appellate judges to uphold an erroneous suppression denial if they deem the error insufficiently prejudicial.[6] As another example, the "preservation" doctrine permits appellate judges to uphold a trial court judge's erroneous suppression denial merely because the defense attorney failed to raise a legal issue before the trial court.[7]

Together, these doctrines set a high bar for suppression reversals. As a result, an error must be stark and severe for a trial court judge's suppression decision to be overturned.

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[5] *People v. Benbow*, 193 A.D.3d 869 (2d Dep't 2021).

[6] *See, e.g., People v Ashley*, 189 A.D.3d 1694 (2d Dep't 2020) (Judge Edward T. McLoughlin's failure to suppress statements ruled harmless); *People v. Smith*, 187 A.D.3d 944 (2d Dep't 2020) (Judge Ira H. Margulis's failure to suppress physical evidence ruled harmless). For an overview of the harmless error doctrine, *see* Daniel Epps, *Harmless Errors and Substantial Rights*, 131 Harv. L. Rev. 2117 (2018).

[7] *See, e.g.*, *People v Simpson*, 173 A.D.3d 1617 (4d Dep't 2019) ("Because defendant failed to raise that specific contention at the suppression hearing or in her motion papers, however, it is unpreserved for appellate review…and we decline to exercise our power to review it as a matter of discretion in the interest of justice."); *People v Morman*, 145 A.D.3d 1435 (4d Dep't 2016) ("Defendant's contention is not preserved for our review inasmuch as he failed to raise that specific contention either as part of his omnibus motion seeking suppression [or at the suppression] hearing."). For an overview of the preservation doctrine in New York, *see* Matthew Bova, *A Sufficiency-of-the-Evidence Exception to the New York Appellate Preservation Rule*, 19 CUNY L. Rev. 1 (2015).

Indicators of Potential Pro-Police Bias

A suppression reversal does not only reveal a judicial failure to protect constitutional rights—it can, at times, reveal a trial court judge's bias toward law enforcement.

Consider now-retired Judge Steven W. Paynter, who has had the most suppression reversals in the data we analyzed. His judicial record was the subject of a detailed *New York Law Journal* article titled, "Observers Say Repeated Reversals of One Queens Judge Reveal Unfair, Insular Culture."[8] Alvin Bragg, then a New York Law School professor and now the Manhattan District Attorney, was interviewed:

> Bragg said [Judge] Paynter's apparent readiness to allow police and prosecutors to forge ahead with evidence the appellate courts later found inadmissible suggested the possibility of broad acquiescence to law enforcement's judgment and authority.[9]

Another professor and former prosecutor, Bennet Gershman, had a similar view of Judge Paynter's record:

> The pattern of suppression reversals appear to support concerns that defendants before [Judge] Paynter were at a disadvantage when it comes to proper scrutiny of evidence presented against them… . "He was a Queens ADA [*i.e.*, prosecutor] for 12 years, so it's clear that he has some, you might say, bias in favor of law enforcement," Gershman said. … "[Judge Paynter] basically said, 'The ends justify the means … Since the defendant's clearly guilty, and the officers found the evidence of guilt, I'll just take a shortcut, and say, well, they did the right thing.' "[10]

The shortcut, in this case, is to rubber stamp the police's violation of New Yorkers' constitutional rights. Bragg and Gershman were not the only one to interpret Judge Paynter's suppression reversal record as exhibiting bias:

> This same sentiment [expressed by Bragg] was reflected in conversations some attorneys who practice before [Judge] Paynter in Queens had with the Law Journal. Speaking on the condition

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[8] Colby Hamilton, *Observers Say Repeated Reversals of One Queens Judge Reveal Unfair, Insular Culture*, New York Law Journal (2019).

[9] *Id*.

[10] *Id*.

> of anonymity over fears of reprisals by court officials including [Judge] Paynter, the litigators said the judge's reputation of hostility towards defendants was well-known. "He's a suppression-denial machine," one such attorney told the Law Journal. "Appearing before him is not a pleasant experience. You feel like you've lost before you entered the courtroom."[11]

Judge Paynter's ruling in *People v. Maiwandi*,[12] a case involving drug possession, further illustrates the concerns that Alvin Bragg and others raised to the *New York Law Journal*. In a unanimous decision, the appellate court overturned Judge Paynter's suppression denial, where an officer testified that:

> [L]ooking through his rearview mirror and the defendant's front windshield ... he saw the defendant pass the woman an object that was ... eight inches long by two inches wide, and that based on the packaging, he believed the object was the prescription drug Suboxone. When asked how high the defendant held the object when he passed it to the woman, [the officer] testified, inter alia, "[e]nough for public view."[13]

Notably, this testimony conflicted with that of another police witness, Detective Katris, who stated that "the Suboxone recovered upon the arrest of the front-seat passenger was two inches long and one inch wide."[14] Despite these discrepancies, Judge Paynter accepted the officer's account and denied suppression.

The appellate court, however, found this testimony "incredible," noting that "common experience dictates that the dashboard of the defendant's vehicle would have obscured [the officer's] view of a hand-to-hand transaction."[15] Moreover, the significant size difference between the object described by the officer and the one described by Detective Katris "cast[] significant doubt" on the officer's testimony.[16] The appellate judges went so far as to

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[11] *Id*.

[12] *People v. Maiwandi*, 170 A.D.3d 750 (2nd Dep't 2019).

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*.

find that the officer's testimony was "patently tailored to meet constitutional objections," an attempt to retroactively justify an unconstitutional search.[17] While the appellate judges saw this officer's testimony as "strain[ing] credulity and def[ying] common sense,"[18] Judge Paynter accepted it as credible evidence.

Similar concerns about pro-law enforcement bias have been publicly raised regarding Queens judge Michael B. Aloise, who has the second-most suppression reversals in our dataset. A 2019 City Limits article noted that "questions raised about [Judge] Aloise's impartiality are not new":

> [Judge] Aloise's overturned cases show him to have repeatedly made erroneous rulings in favor of the prosecution. … "Judge Aloise has never met a criminal defendant he didn't want to put away—unless that person had a badge," says veteran criminal defense attorney Ron Kuby, who represented a defendant in a notable Aloise case that reached the Court of Appeals.
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> [Judge] Aloise indeed made headlines last year when he rejected Queens prosecutors' request for a six-month jail sentence for Kevin Desormeau, a former NYPD officer convicted of lying under oath about his role in planting evidence in a drug arrest. Despite the perjury verdict, Aloise declared that sentencing Desormeau to jail would feed the "false narrative that police officers are not to be trusted and their testimony is not to be believed."...
>
> [Judge] Aloise has a daughter and a son-in-law who work as assistant district attorneys in the Queens DA's office. He has also been photographed hanging out at CitiField with the Queens Assistant District Attorney's Association.[19]

Pro-police biases are at times highlighted by appellate judges reversing a suppression denial. Consider the example of *People v. Miller*,[20] where a young black man was stopped and frisked by a police officer near the location of a robbery. In "admonish[ing]" Judge Thomas E. Moran for his erroneous suppression ruling, three appellate judges stressed:

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[17] *Id*.

[18] *Id*.

[19] Theodore Hamm, *Judge in Jogger Murder Trial has a History of Having Rulings Overturned*, City Limits (2019).

[20] *People v. Miller*, 191 A.D.3d 111 (4th Dep't 2020).

> It must be plainly stated—the law does not allow the police to stop and frisk any young black man within a half-mile radius of an armed robbery based solely upon a general description.[21]

"The law," in this case, did not permit the police officers to stop and frisk Mr. Miller; Judge Moran did. While few reversal decisions are as explicit as *Miller*, their details—both those explicitly stated and those that can be found in the transcripts and appellate briefs—may signal a trial court judge's bias in favor of law enforcement, to the detriment of New Yorkers' constitutional rights.

As another example, consider the suppression reversal decision in *People v. Harris*.[22] After Judge Ronald D. Hollie denied suppression, Mr. Harris pled guilty to possession of a forged instrument. On appeal, Mr. Harris challenged the constitutionality of the stop of the car he was in by police officers. Noting that "great weight" is ordinarily given to the trial court judge's credibility determination, a unanimous appellate court found the testimony in Harris incredible:

> '[C]redibility would be strained beyond the breaking point were we to accept' both [police witnesses's accounts] as true, as [Judge Hollie] did here. …Most egregious was Sergeant Ruiz's testimony that he could read the numbers on the card on the center console and see a *stack of cards inside an envelope inside the defendant's pocket*, all while standing outside of Richards' vehicle. This testimony, on its face, was 'so improbable as to be unworthy of belief.'[23]

In contrast, Judge Hollie had found Sergeant Ruiz's improbable testimony credible and denied suppression.

Appellate judges rarely override the credibility determinations of trial court judges while reversing a suppression decision. When they do, as they did in *Harris* and *Maiwandi*, their decision to do so suggests pro-police bias from the trial court judge.

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[21] *Id*.

[22] *People v. Harris*, 192 A.D.3d 151 (2nd Dep't 2021).

[23] *Id*. (emphasis added).

Methodology Underestimates the Prevalence of Constitutional Errors

Some judicial errors that fail to protect constitutional rights from police overreach are made undetectable by appeal waivers. These waivers, typically included as a condition of guilty pleas, require defendants to relinquish their right to appeal any suppression denial in their cases, effectively shielding these judicial decisions from appellate review—even in instances where the suppression denial was erroneous.[24] The use of appeal waivers as a condition of pleas is widespread, with prosecutors commonly requiring them for negotiated felony plea deals.[25] Moreover, prosecutorial use of waivers can incentivize judges to side with the prosecution on suppression issues.[26] Consequently, some erroneous suppression decisions—without data, it is not possible to assess how many—never face appellate scrutiny. These practices result not only in miscarriages of justice; they also limit our ability to measure the prevalence of constitutional errors.

The underestimation of constitutional errors is further exacerbated by the low rate of appeals in criminal cases. Only about 7.5% of felony convictions are appealed,[27] leaving the vast majority of cases unexamined by higher courts. While some of these unappealed cases involve appeal waivers, others are not be appealed for various other reasons, such as lack of resources or strategic decisions by defense attorneys. In these unappealed cases, suppression denials may have occurred, but any errors in these

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[24] Appellate review of suppression determinations is waived by appeal waivers. *People v. Kemp*, 94 N.Y.2d 831, 833 (1999) ("We hold that, in this case, defendant's waiver of his right to appeal encompassed the suppression ruling."). Absent a waiver, suppression determinations are reviewable on appeal. Criminal Procedure Law § 710.70(2). For an illuminating discussion of appeal waivers, *see People v. Thomas*, 34 N.Y.3d 545, 587-599 (2019) (Wilson, J., dissenting in part, concurring in part). *See also* Legal Aid Society et al., *Letter to Gov. Kathy Hochul* (2023).

[25] In one survey of defense attorneys, 68% of the responses mentioned appeal waivers as impacting defendants' cases. *See* New York State Association of Criminal Defense Lawyers and National Association of Criminal Defense Lawyers, *The New York State Trial Penalty: The Constitutional Right to Trial Under Attack* (2021). *See also* Sean Nuttal, *Hochul's veto on 'appeal waiver' bill is a blow to police accountability*, Times Union (2024).

[26] Judges likely understand that denying suppression can pressure defendants into taking plea deals, and with an appeal waiver included in the plea, the judge's suppression decision becomes unreviewable, thus avoiding the risk of being reversed. *See* Brief for Amicus Curiae, *People v. Thomas*, 144 N.E.3d 970 (N.Y. 2019) (No. 2018-00094), 2019 WL 5680795 ("Moreover, the court's obligation would do nothing to prevent a judge who has issued an erroneous suppression ruling from approving a plea on condition of an appeal waiver in order to avoid the possibility of reversal.").

[27] *Excessive Sentencers*, Scrutinize and NYU Law's Center on Race, Inequality, and the Law (2024).

denials do not appear in our dataset, since they are also undetectable.[28]

Opacity in Judicial Data Inhibits Accurate Reversal Rate Estimates

The limited data made publicly available by the New York Unified Court System (UCS) restricts our ability to estimate judges' suppression reversal rates. In our Findings section, we present two reversal rates for each judge: One specific to suppression appeals and another across all appeals, both based on a judge's total suppression reversals divided by the number of appellate decisions reviewing their cases. These rate estimates are limited for the following reasons:

- UCS claims not to track the number of suppression hearings each judge presides over,[29] complicating comparisons when these hearings are unevenly distributed.

  For example, former Queens Judge Steven W. Paynter used to preside in a courtroom "almost exclusively" dedicated to suppression hearings,[30] likely resulting in Judge Paynter making many more suppression decisions than other judges. Such specialization underscores the difficulty in making comparisons without comprehensive data.

- UCS does not make public, and perhaps does not maintain, data on how many of a judge's suppression decisions are appealed but not reversed. Since New York's criminal courts do not use an e-filing system, electronic access to defense appellate filings is not possible. Therefore, we can only identify suppression claims when they are explicitly discussed in appellate decisions.

  Appellate decisions sometimes dismiss additional claims without detail, using phrases like "The defendant's remaining contentions

[28] Furthermore, the pressure to accept plea bargains, often driven by the threat of harsher sentences if convicted at trial, may lead defendants to forgo potentially valid suppression claims, further obscuring the true prevalence of constitutional violations (as opposed to constitutional errors by judges).

[29] *Freedom of Information Request (untitled)*, MuckRock (2024) ("The Office of Court Administration has conducted a diligent search of available records and has not located any records responsive to your request.").

[30] Hamilton, *Observers Say Repeated Reversals of One Queens Judge Reveal Unfair, Insular Culture*, *supra* note 22.

are without merit."[31] Consequently, we cannot identify all cases where a suppression claim was raised by the defense and denied by the appellate court.

Despite these limitations, our estimation of a judge's rate of suppression reversal provides a general sense of their error rate and how they compare to other judges. This estimation offers insight into patterns of judicial behavior and highlights judges who may consistently fail to protect New Yorkers' constitutional rights.

Moreover, as with our previous analysis of excessive sentences,[32] the total number of suppression reversals per judge (rather than rate) holds significant value as a metric. A useful analogy is the use of excessive force by police officers. Knowing an officer's total number of public interactions would enable computation of their excessive force rate, and comparing it with peers' rates would contextualize the officer's performance, but even without these broader perspectives, the seriousness of a finding of excessive force provides substantial information about the officer's conduct and approach to law enforcement.

The same holds true for our data on suppression reversals. Each reversal signifies that, despite various doctrines discouraging such findings, multiple appellate judges concluded that a trial court judge failed to safeguard a New Yorker's constitutional rights against law enforcement overreach. Multiple reversals of individual judges highlight those judges who repeatedly err in protecting these rights.

Findings: Repeated Judicial Errors in Protecting New Yorkers' Constitutional Rights

Our dataset includes appellate decisions issued by all Appellate Divisions and Appellate Terms from 2007 to 2023, covering all intermediate appellate decisions in New York State. These appellate decisions are publicly accessible via a variety of legal databases.

We identify reversals for failing to protect constitutional rights from police overreach using analysis of decisions' text with algorithms. We exclude

[31] *See, e.g.*, *People v. Scott*, 199 A.D.3d 721 (2nd Dep't 2021) ("The defendant's remaining contention is without merit."); *People v. Price*, 197 A.D.3d 1182 (2nd Dep't 2021) ("The defendant's remaining contentions, including those raised in his pro se supplemental brief, are without merit.").

[32] *Excessive Sentencers*, *supra* note 27

reversals based on prosecutor or defense attorney error, statutory or procedural issues. As a result, we include only cases where multiple appellate judges determined that a trial court judge incorrectly denied suppression despite a violation of an individual's constitutional rights by law enforcement. A detailed methodology is provided in the Appendix.

We group our data by lower court judge and calculate the number of suppression reversals each judge has. Additionally, we calculate two rates of reversals to allow comparative analysis across judges:

- Suppression Reversal Rate (Specific to Suppression Appeals): Calculated by dividing a judge's total number of suppression reversals by the total number of appellate decisions that reference suppression and in which the trial court judge is listed as handling the case at the trial level.[33]
- Suppression Reversal Rate (Across All Appeals): Calculated by dividing a judge's total number of suppression reversals by the total number of appellate decisions listing the trial court judge as handling the case at the trial level.

We identify 403 appellate decisions overturning a trial court judge's suppression ruling, with the following details:

- 212 judges were reversed at least once, with 53 of these judges still presiding in New York State courts.
- 95 judges were reversed more than once, with 26 of these judges still presiding in New York State courts.

[33]Specifically, we keep decisions that include either the word 'suppress' or the words 'warrant' and 'controvert' in the text. Note that the word 'suppress' is used most commonly to refer to suppression of evidence, but it can also be used to discuss suppression of exculpatory evidence by the prosecution.

A searchable table is available at www.scrutinize.org

Table 1: Suppression Reversals and Rates by Judge

Judge	Suppression Reversals	Suppression Reversal Rate (Specific to Suppression Appeals)	Suppression Reversal Rate (Across All Appeals)	Procedural Errors	Summary Denials	County	Status
Steven W. Paynter	18	26%	17%	0	0	Queens	Retired
Michael B. Aloise	7	13%	4%	0	1	Queens	Active
Kelly S. McKeighan	6	21%	3%	0	0	Washington; Warren	Active
Stephen J. Dougherty	6	19%	5%	0	0	Onondaga	Retired
Thomas A. Demakos	6	19%	18%	0	0	Queens	Retired
Alex R. Renzi	5	7%	2%	1	1	Monroe	Active
Francis A. Affronti	5	12%	2%	1	0	Monroe	Retired
John J. Brunetti	5	7%	2%	1	0	Onondaga	Retired
Joseph D. Valentino	5	14%	4%	0	0	Monroe	Retired
Joseph E. Fahey	5	12%	3%	0	0	Onondaga	Retired
Joseph Grosso	5	11%	7%	1	0	Queens	Retired
Lewis Bart Stone	5	11%	3%	0	0	New York	Retired
Richard L. Buchter	5	16%	2%	0	0	Queens	Retired
Thomas A. Farber	5	7%	2%	0	2	New York	Retired
Thomas E. Moran	5	12%	4%	1	1	Monroe	Active

Additional 215 rows not shown.

Suppression Reversal Rate (Specific to Suppression Appeals): calculated by dividing a judge's total number of suppression reversals by the total number of appellate decisions referencing suppression where the trial judge is listed as handling the case at the trial level.

Suppression Reversal Rate (Across All Appeals): calculated by dividing a judge's total number of suppression reversals by the total number of appellate decisions where the trial judge is listed as handling the case at the trial level.

Source: Scrutinize • Created with Datawrapper

153 Dispositive Reversals Highlight Potential Wrongful Incarceration Due to Judicial Errors

Based on our analysis, we identified 153 (38%) dispositive reversals: appellate decisions that explicitly dismiss entire criminal cases because of a finding that the trial court judge erred in denying suppression. In these cases, the proceedings would have ended at the hearing stage without any sentence imposed if the judges had protected the defendants' constitutional rights.[34]

[34]Other suppression reversals may still lead to dismissal after being remitted to the trial court, even if the appellate judges do not dismiss the case explicitly in their decision. Therefore, the 153 dispositive reversals represent the lower bound of the total number of such reversals.

Dispositive reversals in felony cases may indicate instances in which defendants spent time in prison due to a trial court judge's constitutional error. Since appeals occur after sentencing, defendants who faced felony charges and were sentenced to prison would litigate their appeals while incarcerated. Suppression reversal decisions rarely mention the sentence imposed on the defendant, so we were unable to rely on them to obtain an estimate of the number of defendants who served prison time due to convictions that were later overturned.[35]

69 Additional Judicial Errors Highlight Gaps in Procedural Safeguards for Constitutional Scrutiny

In addition to the 403 suppression reversals, we identified 69 more cases overturned on grounds related to suppression:

- **Summary denials:** In 42 cases, trial court judges were reversed for denying a motion to suppress without holding a hearing, thereby permitting the admission of evidence without examining the constitutionality of the underlying law enforcement conduct.
- **Procedural errors:** In 27 cases, trial court judges were reversed because of various issues related to suppression, such as refusing to reopen a suppression hearing when new evidence emerged,[36] failing to address suppression issues raised by the defendant,[37] or denying suppression based on legal grounds not raised by the prosecution.[38]

These errors are not constitutional in nature—a judge's summary denial of a suppression motion, for example, is a legal issue governed by state statute and case precedent[39]—so they are not included in our suppression metric. Instead, these errors demonstrate how trial court judges failed in their role as gatekeepers tasked with determining whether constitutional scrutiny should be applied and, if so, to what extent.

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[35]Similarly, incarceration details are not available on the New York Department of Corrections' website, presumably because dispositive cases are dismissed, resulting in the erasure of the incarceration record from the website. *Incarcerated Lookup*, Department of Corrections and Community Supervision (2024).

[36]*See, e.g.*, *People v Velez*, 39 A.D.3d 38 (2d Dep't 2007).

[37]*See, e.g.*, *People v. Thomas*, 167 A.D.3d 1050 (2d Dep't 2018).

[38]*See, e.g.*, *People v. Hatchett*, 196 A.D.3d 431 (1st Dep't 2021).

[39]*See, e.g.*, C.P.L. § 710.60(3).

Recommendations: Increase Court Transparency

Trial court judges' constitutional interpretations and their outcomes are of public interest and play a crucial role in assessing candidates seeking new judicial terms. Given the need for enhanced transparency into judicial records, this section makes two recommendations to shed more light on judicial decisions regarding New Yorkers' constitutional rights and law enforcement. These recommendations aim to equip the public with the information necessary to promote a more open and accountable judicial system.

1. New York's court system should increase its transparency by releasing all trial court judges' suppression rulings along with hearing transcripts.

   The Unified Court System should require all trial court judges to write and publish their suppression decisions, along with the corresponding hearing transcripts, after redacting private and identifying information. Making this information accessible will enable decision-makers and the public to evaluate how judges interpret their fellow New Yorkers' constitutional rights.

2. New York's court system should publish annual reports containing summary data on suppression proceedings, outcomes, and other pertinent information.

   The New York court system should publish an annual report documenting suppression proceedings. These reports should include, among other things, the number of suppression hearings conducted by each judge; their outcomes; the number of appeals filed challenging these outcomes; the results of those appeals; and the names of the law enforcement witnesses who testified.

Conclusion

In this report, we introduce a new metric for assessing judges: suppression reversals. This metric focuses on one of the judiciary's most sacred duties: protecting the constitutional rights of individuals from law enforcement overreach. A suppression reversal not only indicates that a trial court judge failed to properly interpret and apply the constitution; it may also signal potential bias in favor of law enforcement.

Unlike our previous reports on excessive sentences and reassigned reversals,[40] this report incorporates suppression reversal rates alongside the total number of suppression reversals for each judge. Suppression reversals more directly implicate a judge's view of the constitution, analysis of facts, and application of law. Therefore, the frequency of suppression reversals is valuable in interpreting a judge's record.

These rate metrics offer valuable insights, yet there remains potential for further refinement. Without more comprehensive public data, rate estimates based on appellate decisions will capture only limited information. Our Freedom of Information request, filed during the research phase of this report, revealed a significant gap in the court system's data collection practices.[41] Notably, the court system claims to lack records on one of the most fundamental types of court proceedings, involving direct constitutional interpretation. Such lack of transparency and data practices leave much to be desired from a branch of government. Our recommendations aim to begin rectifying this transparency deficit.

Protection of constitutional rights must be a cornerstone of our justice system. By embracing transparency and enabling public oversight, New York's courts can lead by example, reinforce public trust in the rule of law, and help build a robust democracy with public interest in, and oversight over, the judiciary.

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[40] *Excessive Sentencers*, *supra* note 27; *Reverse and Reassign*, Scrutinize (2024).

[41] *Freedom of Information Request (untitled)*, *supra* note 28.

Appendix: Data and Methodology

Our dataset includes appellate decisions issued by the Appellate Divisions and the Appellate Terms from 2007 to 2023. As such, the data covers all intermediary criminal appeals originating in New York State. These appellate decisions are publicly accessible via a variety of legal databases.

Appellate decisions provide relevant information for our analyses, including:[42]

1. The **date** of the appellate decision;
2. The **name(s)** of the lower court judge(s) whose decisions are reviewed;
3. The appellate court's analysis of the suppression claim, including its **ruling** and whether it agreed with the lower court.

We obtain judges' statuses (active or retired) through the New York State Unified Court System's Judicial Directory.[43] We consider judges with profiles on that website to be currently active and those without profiles to be retired.[44]

Our initial dataset includes 49,830 appellate decisions issued between 2007 and 2023. We filter these decisions based on the following criteria:

1. **The defendant stands to benefit from the appeal.** Either the defendant, or both the defendant and the prosecution, appealed. This removes 1,108 decisions in which only the prosecution appealed, leaving us with 48,722 decisions.
2. **The lower court outcome is overturned.** The appellate court's decision results in a reversal, remittal, or modification. This removes 41,096 decisions, leaving us with 7,626 decisions.
3. **The appellate decision discusses suppression.** The decision's text either includes the word "suppress" or the words "controvert" and "warrant" appear in the text.[45] This removes 6,435 decisions, leaving us

[42] In a few decisions, some of this information was not available as part of the decision itself. In those instances, we collected the missing information from appellate briefings and other sources.

[43] *Judicial Directory*, New York State Unified Court System (2024).

[44] In some instances, when we know a judge is retired but their profile still exists in the Judicial Directory, we mark that judge as retired.

[45] We also searched for other terms, such as "probable cause," "warrantless search," and "CLSI," without the occurrence of the word "suppress," but determined that these words did not identify decisions discussing the suppression of evidence.

with 1,191 decisions.

For this report, our goal is to identify appellate decisions overturned due to errors in trial court judges' suppression rulings. Not all 1,191 decisions are pertinent: Some mention "suppress," affirm the trial court judge's ruling, or overturn it on different grounds. We therefore review each decision, labeling it as "suppression critical" if the appellate judges overturned the case based on the trial court judge's suppression ruling.

For each decision marked "suppression critical," we also log the following information manually:

1. Whether the appellate decision dismissed the charging instrument (indictment, misdemeanor information), if stated explicitly in the decision.
2. The trial court judge who handled the suppression ruling, if multiple judges are mentioned in the appellate decision.
3. For cases in which Judicial Hearing Officers conducted the suppression hearing, we list the judicial officer.[46] If we are able to identify the name of the trial court judge who adopted the Hearing Officer's findings,[47] we list that judge as well for the case.

Because we focus on overturned cases in which the trial court judge specifically failed to protect individuals' constitutional rights from law enforcement overreach, our final classification of cases as "suppression critical" excludes the following types of errors:

1. **Summary denial:** The trial court judge erred in denying suppression on the motions, without holding a hearing, and was overturned on appeal.[48]
2. **Deprivation of counsel:** The appellate court remanded the case for a new suppression hearing based on deprivation of counsel during part

[46] *See* Rules of the Chief Administrative Judge, *Part 122, Judicial Hearing Officers*, New York State Unified Court System (2024).

[47] *See* C.P.L. § 255.20(4) (requiring Judicial Hearing Officer to file "a report with the court setting forth findings of fact and conclusions of law," which the trial court judge may then adopt or reject as they consider the hearing record).

[48] *See, e.g.*, *People v McGee*, 136 A.D.3d 580 (1st Dep't 2016).

of the original suppression hearing.[49]

3. **Procedural issues:** Includes various issues, including a trial court judge's failure to state their reason for denying suppression[50] or failure to reopen a suppression hearing.[51]
4. **Prosecutor's error:** The appellate judges overturned the case based on an error committed by the prosecution, such as failing to provide the defense with C.P.L § 710.30 notice.[52]
5. **Harmless error:** The appellate judges found error in the trial court judge's suppression ruling, but declined to overturn the case based on this error under the harmless error doctrine.[53]

All told, we identify 403 suppression critical decisions. Cases excluded from our suppression reversals but falling into one of the five categories above are instead classified as summary denials (for the first category) or procedural errors (for categories 2-5).

We do not examine whether the Appellate Division or Term suppression reversals were later reversed by the Court of Appeals (affirming the trial court judge's suppression denial), or whether their affirmances of suppression denials were overturned by the Court of Appeals (reversing the trial court judge's suppression denial). This is because it is challenging to determine whether the Court of Appeals' decisions indicate that the trial court judge misapplied the law or whether the Court of Appeals effectively

[49] *See, e.g.*, *People v. Strothers*, 87 A.D.3d 431 (1st Dep't 2011). While these cases implicate a defendant's constitutional right to counsel—and, as in *Strothers*, may implicate the trial court judge's conduct—they nevertheless do not implicate the trial court judge's ruling on the constitutional rights involved in law enforcement overreach.

[50] *See, e.g.*, *People v Thomas*, 167 A.D.3d 1050 (2d Dep't 2018). Specifically, where the appellate court remands a case for the trial court judge to clarify their reasoning on a suppression ruling without finding explicit error, the case is not categorized as suppression critical, as in *Thomas*. In contrast, where the appellate court finds that the trial court judge erred in their ruling on one suppression claim and remits the case for the trial court judge to rule on an unaddressed suppression claim, the case is categorized as suppression critical. *See, e.g.*, *People v. Vinson*, 161 A.D.3d 493 (1st Dep't 2018).

[51] *See, e.g.*, *People v. John*, 38 A.D.3d 568 (2d Dep't 2007).

[52] *See, e.g.*, *People v. Ermmarino*, 60 Misc 3d 50 (App. Term 2d 2018); *People v. Porter*, 192 A.D.3d 222 (2d Dep't 2020). *See also* C.P.L § 710.30. Note that not only the prosecutor, but also the judge, erred in *Ermmarino*. We do not categorize such errors as "suppression critical" since they implicate a statutory, rather than constitutional, right.

[53] *See, e.g.*, *Ashley*, 189 A.D.3d 1694; *Smith*, 187 A.D.3d 944. We do flag as 'suppression critical' cases where the appellate court (a) reverses for a non-suppression issue; (b) finds that the trial court judge erred on suppression; and (c) does not explicitly state whether the suppression error would have justified reversal on its own. *See, e.g.*, *People v. Miller*, 191 A.D.3d 111 (4d Dep't 2020).

changed the law through reinterpretation. The Court of Appeals rules highlight this tension. According to 22 N.Y.C.R.R. 500.27, the Court of Appeals has the authority to address certified questions from other courts, particularly when no controlling precedent exists. This enables the Court of Appeals to reinterpret or establish new legal standards, effectively changing the application of the law in future cases. This process underscores the difficulty in distinguishing whether a Court of Appeals reversal of a trial court judge's decision signifies the trial court judge's error or a shift in legal interpretation by the higher court.