

Black Lives Matter in the Courtroom: Judges, Discretion, and Responsiveness to Protest^{*}

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The Black Lives Matter (BLM) movement has drawn public attention to racial disparities in exposure to, and treatment by, the criminal justice system. BLM protests have spurred public conversations as well as position-taking by elected officials. But have they also led to changes in courtroom behavior? Judges in state court systems often have some discretion over conviction and sentencing; we ask whether judges used this discretion to reduce racial sentencing disparities (or sentence length overall) in the wake of BLM protests. We use several years of sentencing data from one large state district court system to test whether sentencing behavior shifted after major waves of BLM protest. Preliminary results indicate that judges' behavior changed after the protests, suggesting another avenue by which protest could influence public policy.

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INTRODUCTION

Do protests work? This simple question has sparked a wealth of social science research focused on shifts in political attitudes, voter behavior, and public policy (Lohmann 1993; Andrews 1997; Chenoweth and Stephan 2012; Gillion 2012; Madestam et al. 2013; Branton et al. 2014; Biggs and Andrews 2015; Andrews, Beyerlein, and Farnum 2016; Wasow 2017; Enos, Kaufman, and Sands 2017; Mazumder, *Forthcoming*). Yet this literature tends to overlook key protester demands aimed at the day-to-day functioning of government. Research has focused on whether protest can change policy (through, for example, the passage of legislation), but protesters often seek to change not only policies on the books, but also how *existing* policy gets implemented by front-line government workers. Civil rights protesters of the 1950's and 1960's did not solely advocate for new federal legislation; they often pressed for enforcement of existing laws in ways that would protect them from extralegal violence. Similarly, Black Lives Matter (BLM) protesters in 2014 and 2015 demanded passage of new anti-police-brutality legislation, but they also made a simpler request: that local prosecutors use existing laws to prosecute police officers that killed unarmed Black men. And beyond these immediate cases, BLM protesters sought to draw attention to racial bias in the daily functions of local police forces and court systems. Their demands were often as much about *how* laws were implemented (and by whom) as they were about what laws were on the books.

Research on street-level bureaucrats and other government officials charged with implementing policy demonstrates that these front-line workers have a great deal of discretion in how they do their jobs, and that this discretion can help to produce or reduce racial disparities in policy implementation (Lipsky 1980; Keiser, Mueser, and Choi 2004; Gelman, Fagan, and Kiss 2007; White, Nathan, and Faller 2015; Arnold, Dobbie, and Yang 2018). Here, we ask whether protests can change this discretionary behavior, focusing on the case of lower-court judges in Philadelphia.

Local judges are a particularly interesting set of actors for the question we pose; like legislators, many judges are elected, but unlike legislators, they are not tasked with creating policy. Rather, like street-level bureaucrats, they interpret and apply existing policy, but they have a significant amount of discretion in how they do so, and the decisions they make have enormous impacts on the lives of the citizens who come before them.

Using fine-grained administrative data on sentencing outcomes within the Philadelphia Court of Common Pleas, we explore whether local criminal conviction and sentencing responded to BLM protests. We present extremely preliminary results suggesting that BLM protests in summer and fall 2014 may have led to changes in courtroom behavior that yielded lower numbers of Black convictions and smaller racial disparities in incarceration rates than would otherwise have existed. Further, it appears that responsiveness to protest differs across judge characteristics like race and electoral exposure.

If supported by further tests, our findings could present a new understanding of the political impacts of protest, highlighting an under-theorized way that activists can change the workings of government. Though much of the work on protest focuses on its impact on higher level political processes such as public opinion and legislation, our work parallels others in sociology that investigate how protest and activism can also influence decision-making of “on-the-ground” actors within corporations (King and Soule 2007). They also contribute to our understanding of judicial behavior in lower courts, noting that judges may respond to expressions of public opinion beyond its “traditional” forms.

THEORETICAL PERSPECTIVES

JUDGE RESPONSIVENESS TO PROTEST

Do judges respond to public protest? We can imagine several mechanisms that might lead (elected or unelected) judges in lower courts to respond to protests that happen near them, and we discuss each of them in turn here.

First, there is evidence that protests can shift public opinion (Madestam et al. 2013; Branton et al. 2014; Andrews, Beyerlein, and Farnum 2016; Wasow 2017; Mazumder, *Forthcoming*; Collingwood, Lajevardi, and Oskooii 2018). In addition to their professional roles, judges are also members of the public who might be sensitive to protest activity. If BLM protests successfully convinced judges that racial disparities in criminal conviction and sentencing were pressing matters that ought to change, these judges could potentially change their behavior to try to reduce those disparities (Clair and Winter 2016). Similar mechanisms have been posited for Supreme Court justices' apparent "responsiveness" to public opinion (Giles, Blackstone, and Vining 2008).

Next, while much of the literature on the relationship between public opinion and judicial behavior focuses on the Supreme Court, more recent work on state court judges suggests that they, like legislators (Gillion 2013), might respond to protest as a signal of electorally-important public opinion (Canes-Wrone, Clark, and Semet 2018). In their analysis of abortion cases across different types of judicial retention systems, Canes-Wrone, Clark, and Park (2010) find that state supreme court judges retained in nonpartisan, uncontested retention races—the type the judges in this study face—are responsive to public opinion in their decisionmaking. Counter to the generally accepted belief that these judges are insulated from the pressures of public opinion, their decisions on "hot-button issues" are sensitive to the public's stance, because rather than comparing judges to challengers, citizens evaluate judges' decisions on election day. Though the authors do not focus on protests, specifically, they note the

importance of judges' likely perception of issue salience (which may result from the involvement of interest groups) as a condition for response.

Hot-button issues include those related to criminal justice. Canes-Wrone, Clark, and Kelly (2014) find that state supreme court judges retained in nonpartisan elections are responsive to public opinion on the death penalty when deciding capital punishment cases, and the authors find similar, though less robust, effects for state supreme court judges in retention election systems. Importantly, the authors note that public opinion only affects judges' decisions after interest groups begin targeting judges. Especially relevant for this study, Nelson (2014) finds that state judges and prosecutors change their sentencing behavior in response to public opinion about marijuana legalization. This previous work might lead us to expect that judges, especially those who are reelection-minded (Huber and Gordon 2004), will take protests targeting disparities in the criminal justice system as a signal of public opinion, and alter their behavior to diminish those disparities.

Finally, judges might feel obligated to respond to public pressure even in the absence of electoral pressure. For example, the behavior of unelected local "street-level bureaucrats" often reflects local public opinion, despite a lack of any direct electoral mechanism for accountability (Fording, Soss, and Schram 2007; Keiser and Miller 2010). Further, some judges might feel responsible to specific constituencies. Judges of color, for example, could feel intrinsically motivated to reduce racial disparities that affect the communities they come from, even if there were not a strong electoral incentive to do so (Mansbridge 1999; Broockman 2013).¹

¹ Alternatively, given that in some contexts Black judges have been shown to sentence Black defendants more harshly, we might wonder whether certain "tough on crime" Black judges would either be non-responsive to BLM protests, or show backlash.

POSSIBLE RESPONSES TO BLM

Given these reasons that judges might respond to public protest, what do we expect them to actually do? This study focuses on BLM protests in 2014, which formed in response to police killings of unarmed Black men. But despite the immediate focus on policing, BLM activists also sought to draw attention to institutional racism in many forms, particularly within the criminal legal system. As early as summer 2014, the group Ferguson Action called for “the cessation of mass incarceration and the eradication of the prison industrial complex all together” (*Demands* 2014). In Philadelphia, activists broadened the conversation from police violence to include the entire criminal legal system. The group “Philly Coalition for REAL (Racial, Economic, and Legal) Justice” organized rallies and town halls demanding justice for “victims of racist police *and courts*” (emphasis added), and marchers held signs demanding an end not just to police violence, but also to mass incarceration.

Some activist demands would require legislative action: implementing restorative justice on a large scale, for example, might require new or revised policies. But other demands could be satisfied with changes to the implementation and enforcement of existing laws; this is where court personnel (such as lower-court judges) enter the picture. Unlike the legislators that are often the subject of studies of protest, judges and prosecutors cannot change laws. But they have a great deal of discretion in how they enforce laws in the courtroom.

There is mounting evidence that the level of discretion that judges and prosecutors exercise can yield racial disparities in case outcomes. Judges setting bail in several court systems appear to treat Black defendants more strictly (denying bail more often, setting higher bail amounts) in ways that are not justified by re-offense rates (Ayres and Waldfogel 1994; Arnold, Dobbie, and Yang 2018). And individual judges have dramatically different levels of racial disparity in their incarceration decisions, suggesting that individual judges exercise discretion in ways that either exacerbate or ameliorate

racial disparities in the courtroom (Abrams, Bertrand, and Mullainathan 2012; Cohen and Yang, *Forthcoming*). Courtroom actors, like many other front-line government workers, can incorporate their own racial biases into their discretionary decisions (Lipsky 1980; Gelman, Fagan, and Kiss 2007; White, Nathan, and Faller 2015); and there is a large, though somewhat inconclusive, literature addressing the role of individual bias in criminal sentencing (Welch, Combs, and Gruhl 1988; Spohn 1990, 2009; Harris and Sen 2018).

Within the Pennsylvania Courts of Common Pleas, judges are the final decision-makers when it comes to whether to accept the plea deals proposed in most criminal convictions and in determining the resulting sentences. Judges also preside over trials, whether or not there is a jury at hand (trials are rare in this system, and most that do occur are “bench trials” with no jury). Though there are state sentencing guidelines that establish the range of allowable sentences for classes of crimes, judges can depart from the guidelines, especially if the judge perceives aggravating or mitigating circumstances. This system gives judges a great deal of control over who is convicted of a crime and the sentences convicted people receive.

Judges concerned about racial disparities in the criminal legal system could take a variety of actions. First, they could scrutinize their own decisions for racial disparity and try to standardize outcomes across comparable defendants. This could involve adjusting their likelihood of dismissing cases for members of a given racial group, or changing the leniency with which they sentence people who are convicted (this might consist of how often they give sentences close to the top or bottom of the sentencing guidelines, or even how often they depart upward or downward from the guidelines).²

Judges concerned about racial disparities could also take a more active role in

² We note that this kind of scrutiny would not necessarily mean more lenient outcomes for Black defendants. Judges could “level down” Black defendants to receive similar case outcomes to comparable White defendants, but historically attempts to address racial disparity in the US legal system have resulted in a “leveling up” of everyone else to match the harshness experienced by Black defendants (Gottschalk 2008).

changing courtroom dynamics more broadly, scrutinizing the behavior of prosecutors and police and pressing them to change biased practices (Clair and Winter 2016). They could, like some northeastern judges interviewed by Clair and Winter, ask prosecutors about charging patterns in which defendants of color appear to be charged with more serious crimes than White defendants in similar circumstances, or refuse to accept plea deals they believe to be discriminatory.³

Our data do not allow us to distinguish between “interventionist” or “non-interventionist” courtroom behaviors as described by Clair and Winter, but they do allow us to observe case outcomes for a range of cases and courtrooms over the time period studied. This allows us to observe, first, whether overall racial disparities in conviction and sentencing appear to shift over the protest period, and second, whether judges facing different electoral pressures respond differently to protest.

DATA

We use data from the Criminal Section of the Trial Division of the Courts of Common Pleas (CCP) in Philadelphia County, Pennsylvania. Each of Pennsylvania’s 67 county-based judicial districts includes a municipal court and a CCP. The CCPs are split into three divisions: Trial, Family, and Orphans’ Court. The Criminal Section of the Trial Division handles the cases of all felonies originating in the county, ranging from drug and property crimes to homicides, as well as some misdemeanor charges that are linked to felony cases. Our dataset contains all Philadelphia County CCP cases that resulted in a criminal conviction between 2010 and 2015, with information on the type of charge and the defendant’s criminal history, the disposition of the case, the sentencing judge, and any sentence imposed.

³ It is also possible that prosecutorial behavior could change over the time we study, either because of the DA’s office anticipating judicial responses to protest or because prosecutors are themselves affected by the protests; we discuss this further in the results section.

We observe almost 65,000 convictions between 2010 and 2015, with over half of those convictions meted out to Black defendants. These individual offenses are nested into over 31,000 “judicial proceedings.” These judicial proceedings are the level at which individuals’ cases are assigned to judges, and judges appear to make conviction and sentencing decisions on these “bundles” of cases, so we focus our analyses on the level of the judicial proceeding.

In more than half of these proceedings, judges gave out custodial (jail or prison) sentences, with maximum sentences ranging from a few weeks to a lifetime. The median custodial sentence was about two years. The criminal cases being handled in the CCP courtrooms of Philadelphia are meaningful, and they carry penalties that can be lifechanging. We next ask whether judges appear to change their sentencing behavior (overall or by race) in response to BLM protests that drew public attention to racial disparities throughout the criminal legal system.

First, we take a descriptive look at convictions (by race) over time. Because our dataset is limited to cases with convictions, we cannot directly assess whether conviction rates change, as we do not know how many cases were filed without yielding convictions.⁴ However, we note that annual reports from the CCP and the Unified Judicial System of Pennsylvania do not indicate a dramatic reduction in case filings over the period we study, so we think that the raw number of convictions over time is a fairly good proxy for conviction rates. We hope to have a more precise estimate once we receive data on all cases filed. For now, Figure 1 presents weekly counts of convictions by race for the years 2013-2015. Each red point in the figure represents a weekly count of convictions of Black defendants, and the thick solid lines represent smoothed (loess) curves.⁵

⁴ We are waiting for data on all cases filed in these courts, but do not yet have it.

⁵ It is worth noting that there appear to be some missing data from 2011 that may lead us to understate the total number of convictions from that year, and the missingness is such that we cannot be sure what the racial breakdown of missing observations is. As such, we check that the results presented later in the paper are robust to omitting data from 2010-2011.

If judges were prompted to action by BLM protests, we might expect that conviction patterns would shift, with fewer convictions of Black defendants occurring after the major waves of protest in August and November/December 2014. The predictions for White convictions are less clear; judges might attempt to close racial disparities by treating White defendants more harshly (becoming more likely to convict them), or they might attempt to reduce the overall harshness of the system, becoming less likely to convict White defendants as well Black defendants.

The conviction patterns shown in Figure 1 are broadly consistent with a story about judges responding to BLM protests. There is a fairly clear inflection point in the red curve (representing convictions among Black defendants) in late 2014, with convictions steeply dropping from this point on. The raw counts of white convictions also drop over this time period, but less precipitously, such that the curves grow slightly closer together over the year following the protests.

Next, we look at a simple measure of sentencing “harshness”: whether, once convicted, people are sentenced to either jail or prison.⁶ Here, we again would expect judge “responsiveness” to protest to yield reductions in the incarceration rate among Black defendants convicted of crimes, while predictions for White incarceration rates are less clear (judges might increase White incarceration probabilities in order to reduce racial disparities, or they might try to reduce incarceration across the board). Figure 2 presents weekly incarceration rates by race. Incarceration rates also appear to be broadly consistent with judicial responsiveness; Black incarceration rates decrease from late 2014 into 2015 (though we note that they were decreasing somewhat even before the protests), rebounding slightly after the beginning of 2015, while White incarceration rates begin to increase, with the curves nearly intersecting each other in late

⁶ All analyses of sentencing are currently plagued by concerns about post-treatment bias, as we only observe sentencing conditional on a conviction (and we don’t observe cases without convictions). We should be able to address these concerns once we have full data on case dispositions. However, our suspicion is that the bias here would lead us to be conservative in our estimates of decreasing racial disparities.

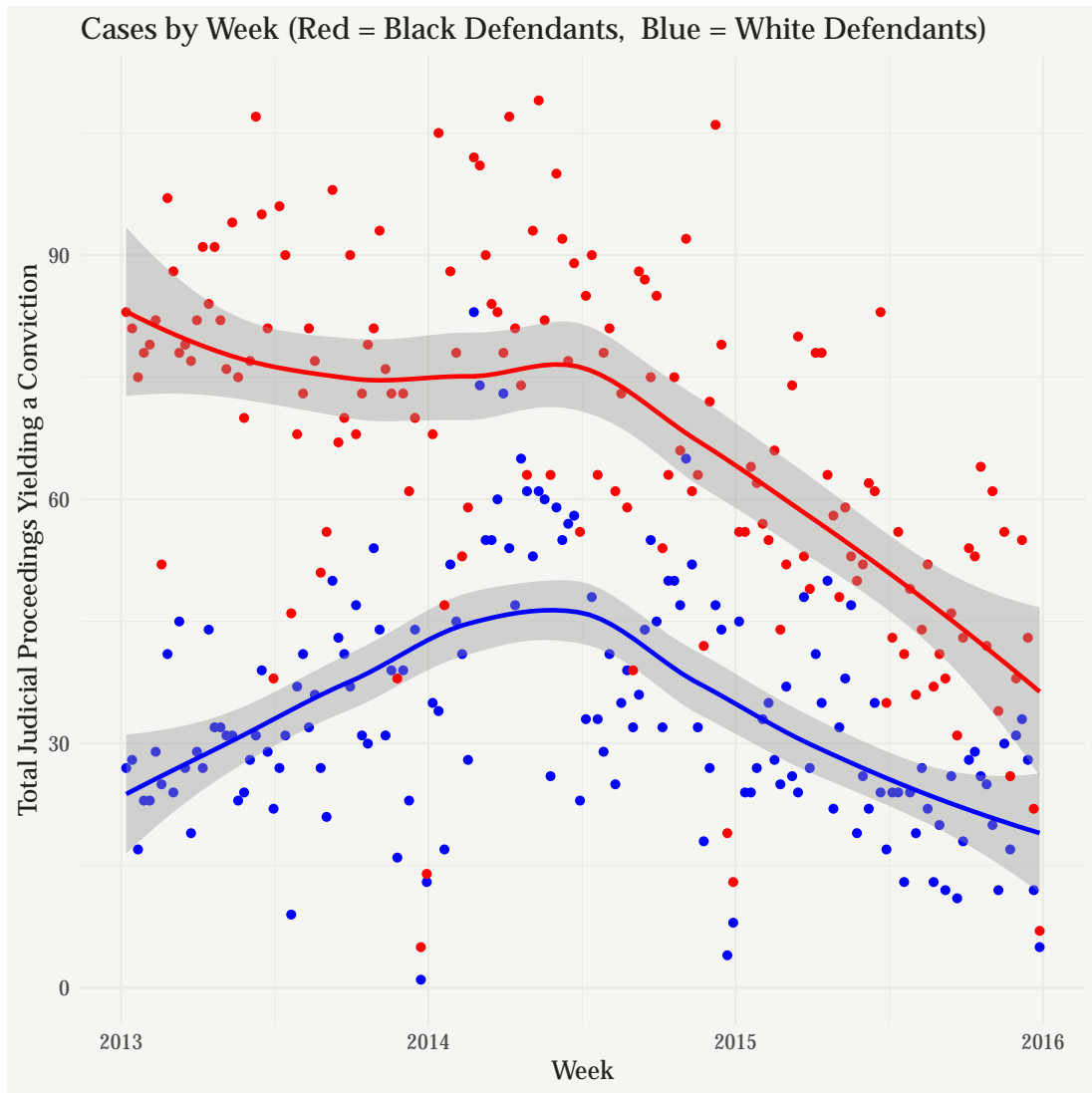


Figure 1: Counts of convictions per week, by race

2015. The racial disparity in incarceration rates (among people convicted of crimes) in these courtrooms nearly closes within a year of the protests.⁷

These figures provide suggestive evidence that judges might be responding to pressure from BLM activists and changing their discretionary courtroom behavior. In the next section, we test more rigorously for changes in these measures that correspond to the timing of protests.

CHANGE OVER TIME: DIFFERENCE-IN-DIFFERENCES ANALYSES

SIMPLEST DIFFERENCE-IN-DIFFERENCES

We first present simple analyses at the level of the judicial proceeding (the bundle of charges faced by a single defendant in a given courtroom on a given date). Here we examine the difference-in-differences by race and period: we are interested in whether judges' behavior after the protests is different from their behavior before the protests, and we are particularly interested in whether the racial disparity in defendant outcomes shrinks after the protests.

Table 1 begins by presenting several specifications focused on incarceration: does the person receive any sentence of incarceration in this judicial proceedings?⁸ The first three columns consider the periods before and after the August 2014 wave of protests. Column 1 presents the simplest specification: it regresses incarceration (0 or 1) onto an indicator for whether the case was sentenced before the August 2014 protests⁹, an indicator for whether the defendant is Black, and the interaction between

⁷ We should acknowledge that these weekly incarceration rates do not adjust for any case characteristics, so we are making a fairly loose comparison across race. Any thorough analysis of the magnitude of racial sentencing disparities should consider background factors (such as past convictions, the severity of charges, etc.). But we are mainly interested in the trends in these measures, so barring large shifts in case characteristics over time, we think our approach is a reasonable one for the question at hand.

⁸ We would also like to address conviction rates, or whether a given case yielded a conviction, but we cannot address that with our current dataset (it contains only the cases that yielded convictions).

⁹ We use the date of Philadelphia's first large demonstration in solidarity with Ferguson: August 14, 2014.

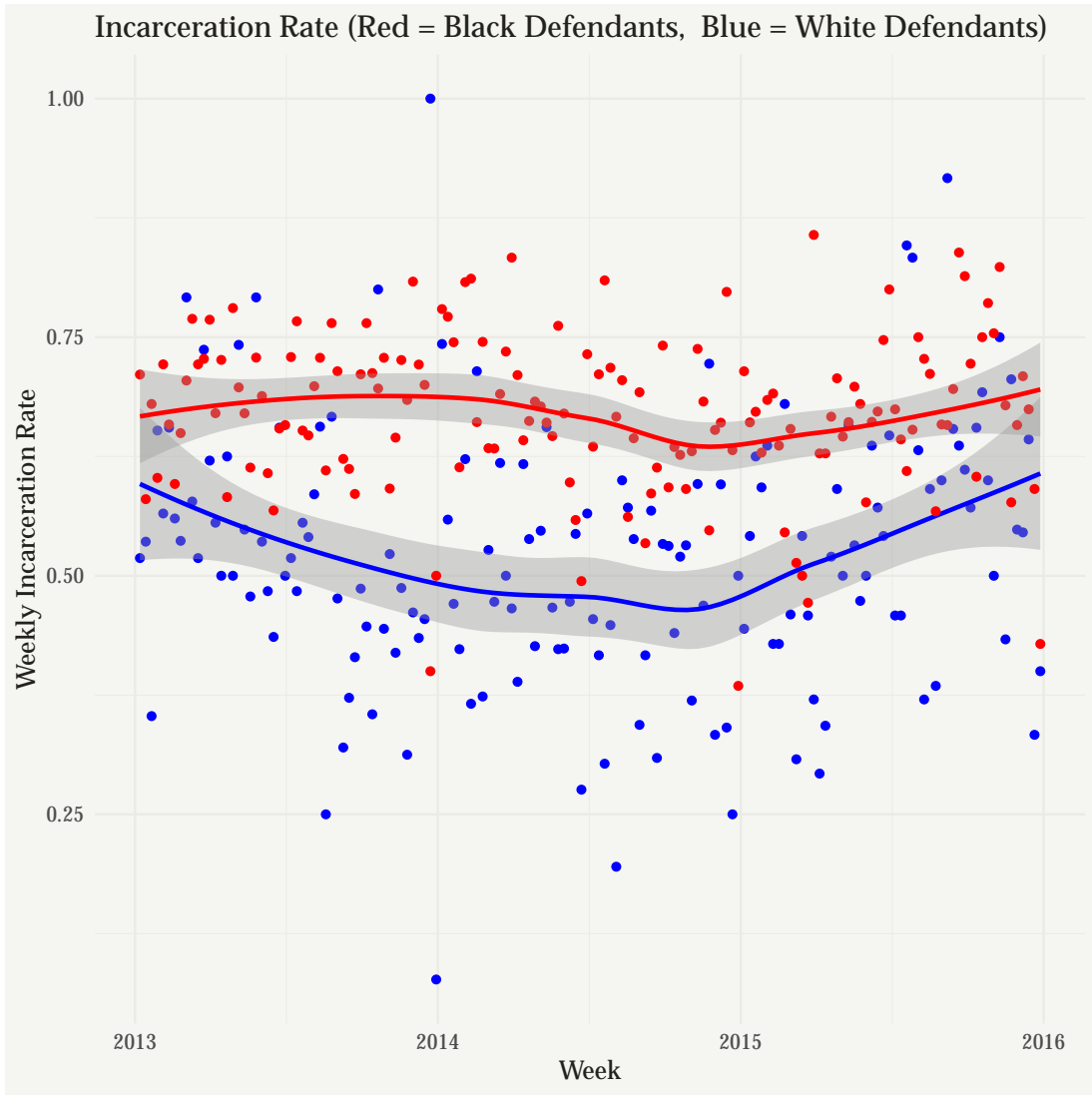


Figure 2: Weekly incarceration rates by race

those two variables. We are particularly interested in the interaction here: does the incarceration “premium” for Black defendants appear to be larger before the protests than afterwards? A positive coefficient here would suggest that sentencing showed smaller racial disparities after the protests, consistent with judge responsiveness to protest (though we acknowledge that this pattern could also be caused by other factors). The second column adds in two judicial-proceeding-level variables, the seriousness of the charges and the defendant’s prior record score, to increase precision. The third column adds in month-of-year and calendar-year fixed effects. The last three columns of the table then repeat this exercise, but focusing on cases before and after the Autumn 2014 protests.¹⁰ We cluster standard errors by race and year in the models with time fixed effects.

The estimates in Table 1 are consistent with a story about judicial responsiveness to protest. Black defendants are more likely than other defendants to be incarcerated, in both periods. But the positive sign on the interaction term indicates that the racial disparity in incarceration rates was higher before the 2014 Black Lives Matter protests. These estimates are robust to inclusion of case characteristics and time fixed effects.

In Appendix A, Table 4 repeats this exercise for sentence length (in days), rather than the binary outcome of being incarcerated. The estimates there, though noisier and subject to caution in interpretation¹¹, again suggest that Black defendants consistently receive more severe sentences. The interaction coefficients here (indicating how much longer the Black-White sentencing difference was in the pre-protest period than afterwards) are also positive, consistent with judicial responsiveness to protest, but they vary in whether they are statistically significant at conventional levels.

The estimates in this section are consistent with the idea that judges responded

¹⁰Here, we use November 25, 2014, the date of the first Philadelphia protest about the non-indictment of Darren Wilson, as our cutpoint.

¹¹In particular, we are worried that the sentence-length measures currently available to us may not accurately incorporate concurrent sentences (that is, when a person is sentenced to multiple terms of incarceration but allowed to serve them at the same time).

Table 1: Incarceration Difference-in-Differences, Both Protest Waves

	<i>Dependent variable:</i>					
	Any Incarceration					
	August (Ferguson) Protests			Nov/Dec (Garner) Protests		
	(1)	(2)	(3)	(4)	(5)	(6)
Before August Protests	-0.050*	-0.054*	-0.004			
	(0.011)	(0.010)	(0.018)			
Before Nov/Dec Protests				-0.071*	-0.063*	-0.013
				(0.012)	(0.015)	(0.023)
Black	0.139*	0.057*	0.057*	0.127*	0.049*	0.049*
	(0.012)	(0.010)	(0.010)	(0.015)	(0.007)	(0.007)
Most Serious Offense Grade		0.100*	0.100*		0.100*	0.100*
		(0.002)	(0.002)		(0.002)	(0.002)
Prior Record Score		0.051*	0.051*		0.051*	0.051*
		(0.002)	(0.002)		(0.002)	(0.002)
Before August Protests * Black	0.020	0.036*	0.035*			
	(0.014)	(0.014)	(0.014)			
Before Nov/Dec Protests * Black				0.032*	0.043*	0.041*
				(0.016)	(0.013)	(0.012)
Constant	0.520*	-0.086*	-0.165*	0.541*	-0.075*	-0.154*
	(0.010)	(0.028)	(0.035)	(0.011)	(0.030)	(0.033)
Year & Month FE's	No	No	Yes	No	No	Yes
Observations	34,191	32,626	32,626	34,191	32,626	32,626
R ²	0.025	0.203	0.205	0.025	0.203	0.205
Adjusted R ²	0.025	0.203	0.205	0.025	0.203	0.205

Note:

*p<0.05

to BLM protests, as it seems that racial disparities in incarceration and sentencing were smaller after the protests than before. However, this pattern of findings could potentially be generated by other factors, including longer-term trends in sentencing behavior. If this change in sentencing behavior were really being driven by judicial responsiveness to protest, we might imagine that some judges ought to be more responsive to protests than others. In the next section, we explore whether the changes in judicial sentencing disparities over time vary with judge characteristics in ways that are consistent with responsiveness to protest.

INCORPORATING JUDGE CHARACTERISTICS

Next, we go beyond the simple before-after comparison of racial sentencing disparities to ask whether different judges respond to protest in different ways.

First, judges facing an election soon might be more responsive to protest as a signal of electorally-relevant public opinion (Gillion 2012). Court of Common Pleas judges may be elected via partisan elections or appointed by the governor and then elected by a partisan election at the end of the partial term they were appointed for, but after reaching the bench they all face retention elections every ten years. These elections are staggered based on when judges reached the bench, such that a portion of sitting judges face elections every odd year (2011, 2013, 2015, etc.). We expect that sitting judges facing elections in 2015 will be more concerned about public opinion (and thus potentially more responsive to 2014 protests) than judges with a longer election timeframe.

We test this proposition by adding an additional interaction into the specifications from Table 1, interacting an indicator for whether a judge was due for re-election in 2015 with the measures of whether a case fell before a protest wave, whether the defendant in the case was Black, and the interaction of the two. The coefficient on the triple interaction term, then (“Judge Facing Election x Black x Before Protests“”)

tells us whether judges facing election changed the racial disparities in their sentencing habits *more* than other judges did in the wake of Black Lives Matter protests. By one measure, it tells us whether judges facing election were more responsive to protest than other judges.

Table 2 presents these models for the two waves of protest (Ferguson-related events in August 2014, Garner-related protests in December 2014). Again, we present specifications with and without year and month fixed effects, and their inclusion makes little difference for the substantive interpretation of the estimates.

For both waves of protest, the positive coefficient on the triple interaction indicates that election-facing judges were somewhat more responsive than other judges to BLM protests (their racial sentencing gaps shrank more). The large and statistically-significant coefficient for the August wave of protests, .108 in Model 1, suggests that election-pressured judges were far more responsive to protest than their colleagues. Other judges' racial sentencing disparities shrank by several percentage points (.026 in Model 1, .025 in Model 2), while the judges up for election saw their racial sentencing disparities shrink by roughly 13 percentage points. The estimates from the second wave of protest are also negative, though smaller and not significant

These estimates are consistent with other research suggesting that elected legislators are responsive to protest as an indicator of public opinion (Gillion 2012), and suggest judges might be subject to the same sorts of electoral pressure. However, we present these results with some caution, as they are quite preliminary: we next need to address the plausibility of the parallel-trends assumption implicit in these models (that election- and non-election-facing judges would have followed similar trends in the absence of the upcoming 2015 election), and explore why judges up for election in 2015 had such high racial disparities in sentencing in the pre-protest period compared to their colleagues.

Next, we undertake a similar exercise for judges' own race: do Black judges respond less to Black Lives Matter protests, because they already had smaller racial disparities

Table 2: Protest Responsiveness by Judges' 'Up-for-election' Status

	<i>Dependent variable:</i>			
	Any Incarceration			
Before August Protests	-0.055*	0.007		
	(0.011)	(0.017)		
Before Nov/Dec Protests			-0.063*	0.003
			(0.013)	(0.027)
Black	0.064*	0.065*	0.052*	0.053*
	(0.014)	(0.014)	(0.016)	(0.016)
Judge Facing Election	-0.022	-0.015	-0.022	-0.015
	(0.023)	(0.023)	(0.030)	(0.031)
Most Serious Offense Grade	0.100*	0.100*	0.100*	0.100*
	(0.001)	(0.001)	(0.001)	(0.001)
Prior Record Score	0.051*	0.051*	0.051*	0.051*
	(0.001)	(0.001)	(0.001)	(0.001)
Judge Facing Election x Before Aug Protests	-0.069*	-0.117*		
	(0.035)	(0.035)		
Judge Facing Election x Before Nov/Dec Protests			-0.020	-0.067
			(0.036)	(0.037)
Black x Judge Facing Election	-0.021	-0.025	0.002	-0.002
	(0.029)	(0.029)	(0.037)	(0.037)
Black x Before Aug Protests	0.026	0.025		
	(0.015)	(0.015)		
Judge Facing Election x Black x Before Aug Protests	0.108*	0.114*		
	(0.045)	(0.045)		
Black x Before Nov/Dec Protests			0.039*	0.037*
			(0.017)	(0.017)
Judge Facing Election x Black x Before Nov/Dec Protests			0.015	0.021
			(0.046)	(0.046)
Constant	-0.083*	-0.175*	-0.072*	-0.170*
	(0.013)	(0.021)	(0.014)	(0.030)
Year & Month FE's	No	Yes	No	Yes
Observations	32,124	32,124	32,124	32,124
R ²	0.203	0.205	0.202	0.205
Adjusted R ²	0.203	0.204	0.202	0.204

Note:

*p<0.05

in sentencing (perhaps because they were already attuned to and responsive to concerns about racial disparities in the legal system)? Or do they respond more strongly to protests, perhaps out of a sense of obligation to represent Black interests?

Table 3 presents similar triple-interaction models to explore whether judges' race predicts their responsiveness to BLM protests. Here, the coefficient on the triple interactions between defendant race, judge race, and before/after protest waves ("Bl. Judge x Bl. Def. x Bef. Aug./Nov/Dec") indicates whether Black judges were less responsive to BLM protests than their colleagues. Negative coefficients on these triple interactions (-.075 in Model 2) indicate that Black judges changed their behavior less at the time of the protests than did other judges. We note that this could be because Black judges already had a smaller racial gap in the probability of sentencing people to incarceration in the pre-protest period (a 6-percentage point gap compared to 11.5 percentage points for other judges, according to Model 2). These estimates also remain preliminary, as we conduct robustness tests and interrogate the parallel-trends assumption.

Finally, in Appendix B, we explore whether judges' partisanship appears to predict their responsiveness to protests. We note that there is not an obvious electoral mechanism for partisanship to matter, as only a judge's first election is partisan. It is not the case that Republican judges, for example, would anticipate having a marker of "Republican" on the ballot in the next election and thus receiving mainly Republican votes (and perhaps not needing to worry about their constituents being sympathetic to BLM). The retention elections that judges face every ten years are non-partisan, so all judges face all the voters, and we anticipate that very few voters come in with enough background knowledge to know judges' partisanship. However, we might still wonder whether the types of judges who would run on a Democratic ticket or be appointed by a Democratic governor would tend to be more responsive to BLM protests than Republican judges. As such, we run another interactive case-level model, interacting the partisanship of the judge (collected from their initial election results from sites like

Table 3: Protest Responsiveness by Judges' Race

	<i>Dependent variable:</i>			
	Any Incarceration			
Before August Protests	-0.050*	0.021		
	(0.015)	(0.019)		
Before Nov./Dec. Protests			-0.066*	0.005
			(0.017)	(0.031)
Black	0.052*	0.054*	0.039	0.042*
	(0.017)	(0.017)	(0.020)	(0.020)
Black Judge	-0.090*	-0.093*	-0.083*	-0.085*
	(0.023)	(0.023)	(0.027)	(0.027)
Most Serious Offense Grade	0.095*	0.095*	0.095*	0.095*
	(0.002)	(0.002)	(0.002)	(0.002)
Prior Record Score	0.046*	0.045*	0.046*	0.045*
	(0.001)	(0.001)	(0.001)	(0.001)
Bl. Judge x Before Aug. Protest	-0.080*	-0.078*		
	(0.025)	(0.025)		
Bl. Def. x Before Aug. Protest	0.063*	0.061*		
	(0.019)	(0.019)		
Bl. Judge x Before Nov./Dec. Protests			-0.087*	-0.082*
			(0.029)	(0.029)
Bl. Def. x Before Nov./Dec. Protests			0.072*	0.070*
			(0.022)	(0.022)
Bl. Judge x Bl. Def.	0.025	0.020	0.006	0.004
	(0.029)	(0.029)	(0.034)	(0.034)
Bl. Judge x Bl. Def. x Bef. Aug.	-0.082*	-0.075*		
	(0.032)	(0.032)		
Bl. Judge x Bl. Def. x Bef. Nov./Dec.			-0.056	-0.052
			(0.037)	(0.037)
Constant	-0.025	-0.104*	-0.008	-0.091*
	(0.016)	(0.025)	(0.018)	(0.035)
Year & Month FE's	No	No	Yes	No
Observations	22,476	22,476	22,476	22,476
R ²	0.227	0.232	0.227	0.231
Adjusted R ²	0.227	0.231	0.226	0.231

Note:

*p<0.05

Ballotpedia) with the race of the defendant and the timing of the case. Table 5 in Appendix B presents the results of this analysis; there, the tiny and non-significant coefficients on the triple interaction indicate that Democratic judges are no more likely to respond to the protests (by reducing racial sentencing disparities) than their Republican colleagues.

DISCUSSION

This paper presents suggestive evidence that state court judges reacted to pressure from Black Lives Matter protesters. Aggregate patterns of conviction and sentencing shift at about the time of the first wave of protests, and case-level analyses suggest that the racial disparities in exposure to incarceration shrink after the protests. Further, it appears that judges with a particular reason to be responsive to protests (those facing retention in the next election) are especially likely to reduce racial sentencing disparities, while Black judges (who might have been responsive to concerns about bias even before BLM protests) had smaller pre-protest racial sentencing disparities than their colleagues and did not change those disparities much in the wake of protests.

These findings suggest a different path by which public protest could shape government actions: not by generating entirely new legislation, but by changing the implementation of existing policy by front-line workers such as criminal court judges. These judges have a great deal of discretion in how they apply legal sanctions like incarceration, and the results presented here suggest that they can use that discretion to respond to public concerns about racial bias.

We thank readers for their patience with an early draft of this paper. We have several next steps in mind for this project, and we welcome feedback on them as well as other suggestions.

- First, we will incorporate case dispositions data once we receive it; this will allow us to examine all charges filed in the court system, not only those that yielded

convictions, and avoid concerns about post-treatment bias. We consider all results presented here preliminary until we incorporate disposition data.

- We are also working on setting up interviews with judges in this court system, both to get a sense of how plausible our story about judicial responsiveness to protest is, and to see whether other testable predictions emerge from our interviews.
- Relatedly, we are thinking about scope conditions. The analyses presented here focus on criminal cases heard in a large urban area that hosted sizeable BLM protests. We are still thinking about whether this level of proximity to protest is necessary in order for judges to respond. There was nationwide news coverage of the BLM protests studied here, so it may be reasonable to expect judges in counties that did not host large protests to respond. If so, we are considering which factors other than proximity to protest might be most important, including demographics of the defendant pool, judicial demographics, and the extent of racial disparities in conviction and sentencing. We have access to sentencing data from other counties in Pennsylvania, and analyses of these data might be a first step to understanding the scope of the theory presented here. We are also collecting sentencing data from several other places' criminal court systems (including Cook County Illinois and Harris County Texas), in order to get a sense of whether we see similar patterns there.

APPENDIX A: SENTENCE LENGTH

Table 4: Sentence Length Difference-in-Differences, Both Protest Waves

	<i>Dependent variable:</i>					
	August (Ferguson) Protests			November/December (Garner) Protests		
	(1)	(2)	(3)	(4)	(5)	(6)
Before August Protests	-97.499 (103.581)	-160.121 (149.270)	-92.514 (158.353)			
Before Nov/Dec Protests				-271.408* (116.920)	-302.056 (327.667)	-253.861 (340.020)
Black	588.342* (114.236)	191.805 (130.820)	186.971 (129.279)	529.850* (132.467)	123.817 (112.519)	123.386 (112.338)
Most Serious Offense Grade		775.373* (48.554)	774.816* (48.254)		775.150* (48.507)	774.928* (48.254)
Prior Record Score		57.549* (17.305)	57.854* (17.042)		57.423* (17.286)	57.898* (17.022)
Before August Protests * Black	67.891 (127.724)	166.946 (123.655)	178.698 (122.277)			
Before Nov/Dec Protests * Black				130.753 (143.575)	235.712* (104.379)	242.191* (104.234)
Constant	1,767.591* (92.826)	-2,843.912* (253.376)	-2,941.403* (259.239)	1,921.311* (108.104)	-2,712.780* (307.128)	-2,777.618* (343.302)
Year & Month FE's	No	No	Yes	No	No	Yes
Observations	19,309	18,023	18,023	19,309	18,023	18,023
R ²	0.008	0.155	0.156	0.009	0.155	0.157
Adjusted R ²	0.008	0.155	0.155	0.008	0.155	0.156

Note:

*p<0.05

APPENDIX B: JUDGE PARTISANSHIP

Table 5: Protest Responsiveness by Judges' Partisanship

	<i>Dependent variable:</i>			
	Any Incarceration			
Before August Protests	-0.075*	-0.056*		
	(0.020)	(0.022)		
Before Nov/Dec Protests			-0.053*	-0.031
			(0.025)	(0.034)
Black	0.071*	0.068*	0.075*	0.074*
	(0.024)	(0.024)	(0.030)	(0.030)
Democratic Judge	0.089*	0.086*	0.121*	0.120*
	(0.021)	(0.022)	(0.027)	(0.027)
Most Serious Offense Grade	0.099*	0.099*	0.099*	0.099*
	(0.001)	(0.001)	(0.001)	(0.001)
Prior Record Score	0.050*	0.050*	0.050*	0.050*
	(0.001)	(0.001)	(0.001)	(0.001)
Democratic Judge x Before Aug Protests	0.078*	0.081*		
	(0.023)	(0.023)		
Democratic Judge x Before Nov/Dec Protests			0.038	0.040
			(0.029)	(0.029)
Black x Democratic Judge	-0.013	-0.009	-0.023	-0.022
	(0.028)	(0.028)	(0.034)	(0.034)
Black x Before Aug Protests	0.030	0.033		
	(0.025)	(0.025)		
Democratic Judge x Black x Before Aug Protests	-0.007	-0.011		
	(0.030)	(0.030)		
Black x Before Nov/Dec Protests			0.024	0.025
			(0.031)	(0.031)
Democratic Judge x Black x Before Nov/Dec Protests			0.004	0.002
			(0.036)	(0.036)
Constant	-0.151*	-0.176*	-0.168*	-0.196*
	(0.020)	(0.025)	(0.025)	(0.036)
Year & Month FE's	No	Yes	No	Yes
Observations	32,014	32,014	32,014	32,014
R ²	0.224	0.224	0.223	0.224
Adjusted R ²	0.224	0.224	0.223	0.223

Note:

*p<0.05

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