

Can Racial Diversity Among Judges Affect Sentencing Outcomes?

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Abstract

Racial disparities in the U.S. criminal justice system are well-documented, as is scholarly and practitioner interest in how different types of diversity within government institutions can alter institutional performance. Using felony case data from a large court system, I explore the relationship between racial diversity among the judges comprising a court and individual judges' sentencing decisions. I find that as the proportion of Black judges in a courthouse increases, White judges are more likely to render incarceration sentences in cases with White defendants and slightly less punitive in cases with Black defendants. Black judges are less likely to render incarceration sentences in cases with Black defendants. This only occurs when judges work in close proximity to their Black colleagues. Judges' responses to racial diversity decrease the Black-White gap in the probability of incarceration by up to fifteen percentage-points, greatly improving equity in sentencing.

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Most residents of the United States will never meet their congressional or state representatives, but many will have contact with public officials in the criminal justice system at some point. The environment in which these public officials work, from the building to employee policies to their colleagues, must influence how they approach their jobs, which, in turn, affects the lives of the countless individuals they interact with. This paper examines how the composition of a judge's group of colleagues can influence her sentencing decisions in criminal cases and how this influence differs based on a judge's own personal characteristics.

Millions of people are arrested in the U.S. every year, and the vast majority of these individuals appear, are convicted, and receive their sentences in state, rather than federal, courts.¹ For example, the Illinois circuit courts² hear almost as many felony cases in one year as all of the federal district courts combined (*Illinois Courts* 2013; *U.S. Federal Courts* 2013). State trial court judges' sentencing decisions have far-reaching political consequences for the lives of those accused (Weaver and Lerman 2010; Lerman and Weaver 2014; White N.d. *b*) and also for their families and communities (Burch 2013; Walker 2014; Walker and García-Castañón 2017; White N.d. *a*).

The majority of defendants are people of color; and people of color (specifically Blacks and Latinos) are more frequently incarcerated than Whites in the U.S. (Carson 2018). The citizens who appear most in the largest state criminal courts are those for whom the criminal justice system is likely their primary, if not only, contact with government, influencing their opinions and decisions to participate (Lerman and Weaver 2014). How does the racial composition of the judiciaries they stand before affect their fates? While some research suggests that individual judges' sentencing decisions may vary with their personal characteristics and that federal judges' decisions may vary with the racial make-up of their group of colleagues, we do not know whether state trial judges' decisions are sensitive to the level of racial diversity within their group of colleagues.

I argue that increasing the representation of Black judges on the bench increases

¹Over ten million people were arrested in the U.S. in 2016 according to the FBI Unified Crime Reporting Program- <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/persons-arrested>.

²These are the state's general jurisdiction trial courts.

fairness in felony sentencing, not because of Black judges' behavior, but because their presence alters their peers' behavior. These shifts in individual judges' behavior increase the court's ability, as a whole, to provide equitable sentences to defendants across racial groups. Political scientists and criminologists have shown that the context in which a state criminal trial judge works can influence her sentencing decisions (Eisenstein, Fleming and Nardulli 1988; Ulmer and Johnson 2004). And the representative bureaucracy literature demonstrates that the level of descriptive or "passive" representation within the government workforce influences how policies are implemented and administered, especially as those policies relate to women and people of color (including: Meier 1993; Meier, Wrinkle and Polinard 1999; Riccucci and Meyers 2004; Riccucci and Van Ryzin 2017; Meier 2018). The resulting changes in the organization's performance may not be due solely to the behavior of minority-group member bureaucrats; majority-group member bureaucrats may change their behavior as well (Lim 2006; Hong 2017).

A significant literature in judicial politics, largely focused on federal courts, examines how judges' decisions differ with their racial identities. However, we know relatively little about how changes in descriptive representation on the bench affect sentencing outcomes for defendants in the nation's busiest courts or about how judges' racial identities affect their colleagues' behavior. This paper makes the novel contribution that group composition can influence solitary state trial judges. This is important because state trial courts hear so many more criminal cases than federal courts and most individuals will never stand before a federal judge. Additionally, focusing on state trial judges who hear felony cases in one courthouse, allows me to consider the mechanisms underlying the relationship between racial diversity on the bench and individual judges' sentencing decisions more carefully than studies of entire federal districts comprising multiple courthouses and types of cases.

I find that as the proportion of Black judges in a courthouse increases, White judges are more likely to render incarceration sentences in cases with White defendants and slightly less punitive in cases with Black defendants; and Black judges are less likely to render incarceration sentences in cases with Black defendants. These shifts in judi-

cial behavior shrink the Black-White gap in the probability of an incarceration sentence by up to fifteen percentage-points. I suggest potential mechanisms for these different responses. For Black judges, having Black colleagues may alleviate pressures associated with tokenism,³ while White judges might update their beliefs about racial disparities in sentencing or face pressure not to appear discriminatory as they gain Black colleagues.

The findings in this paper have important policy implications. First, they suggest that increasing racial diversity on the bench may help decrease racial disparities in sentencing. Second, since Black defendants appear in criminal court and are sentenced to incarceration more frequently than White defendants, increasing racial diversity among judges may lead to less incarceration. Finally, the findings highlight the potential impact of policies geared toward improving descriptive representation in government institutions.

Theoretical Grounding: Racial Diversity among Judges

Most scholarship investigating the implications of racial diversity within the judiciary has focused on how an individual judge's racial identity influences her behavior. These studies are typically interested in how non-White judges differ from White judges. When it comes to Black judges, specifically, scholars have shown that they rule more "liberally" than White judges in cases related to race, including affirmative action, Voting Rights Act, and racial discrimination cases (Including: Sen 2017; Boyd 2016; Kastlelec 2013; Cox and Miles 2008*a*). There is less consensus about the relationship between judicial characteristics and case outcomes in criminal courts (Grossman et al. 2016; Abrams, Bertrand and Mullainathan 2012; Spohn 2009). In older studies, Uhlman (1978) finds little difference in Black and White judges' rulings, but Welch, Combs and Gruhl (1988) find that Black judges are more equitable in their decisions to incarcerate Black and White defendants than their White Counterparts. Spohn (1990), on the other hand, finds that Black judges' rulings are somewhat harsher than White judges'.

Differences in behavior between non-White and White judges is only one way that shifts in racial diversity among judges might affect case outcomes. Studies of three-judge

³As having more women colleagues did for women judges in Collins et al. (2010).

Courts of Appeals panels show that one judge's characteristics can affect how the other two judges vote and, ultimately, the panel's final decision. These studies find that adding a Black judge to a panel with two non-Black members, increases the likelihood that the panel will decide in favor of affirmative action or the Voting Rights Act, because Black judges vote differently than non-Black judges, and because non-Black judges' alter their votes when they are deciding on panels with Black judges (Cox and Miles 2008*a*; *b*; Kastellec 2013).⁴ The panel effects studies offer important contributions to our understanding of the relationship between racial diversity and judging, but there are relatively few Black appellate court judges, so these studies do not evaluate how Black judges' behavior (in addition to White judges') might change based on the racial identities of the judges with whom they serve on panels.

The identities represented on the bench are a contextual component of the "court-house community", and scholars have shown the importance of context for explaining state criminal trial court outcomes (Eisenstein, Flemming and Nardulli 1988; Ulmer and Johnson 2004). In federal trial courts, Schanzenbach (2005) considers the importance of racial diversity, specifically. He measures the proportion of Black, as well as women, and Democratic-appointed judges in each of the federal judicial districts to assess impacts on sentencing. He interacts the proportion of Black judges with a measure of defendants' race to identify the relationship between the level of racial diversity among a district's judges and sentencing based on a defendant's race. He finds that as the proportion of Black judges in a district increases, there is not much change in how Black defendants are sentenced (Schanzenbach 2005).

With a focus on gender rather than racial diversity among judges, Collins et al. (2010) usefully incorporate critical mass theory into their analyses of gender and decision making. The authors analyze outcomes in different types of district court cases, and argue that the extent to which women judges will behave differently than men is a function of how many other women they count as colleagues, which measures their ability to escape

⁴Grossman et al. (2016) identify similar panel effects on criminal appellate courts in Israel, where they find that having at least one Arab judge on an otherwise all Jewish panel decreases the likelihood of incarceration and sentence severity for Arab defendants.

the pressures of tokenism (Kanter 1977). The authors model the ideological direction of a judicial decision based on whether the judge is a woman and the number of other women judges working in close proximity. The authors find that as women's representation in a particular district location increases, women are less likely to decide against defendants in criminal cases (Collins et al. 2010).

This study differs from those of Schanzenbach (2005) and Collins et al. (2010) in three important ways. First it is an analysis at the level of the individual judge, uncovering how individual judges' decisions are related to racial diversity within their group of colleagues. Second, it analyzes this relationship in state trial courts, where the vast majority of criminal defendants' cases are heard and sentenced. Third, this study incorporates the locations of the judges hearing cases included in the data to identify the importance of judges' proximity to their colleagues.

Drawing from the concepts of social pressure, tokenism, and critical mass theory, I argue that proximity to one's colleagues allows for racial diversity among those colleagues to affect an individual judge's decisions, even when that judge decides cases alone. I focus on Black and White judges in this paper, due to their levels of representation in the data. However, I believe the theory presented below can apply to other groups, as well, under certain conditions, which I discuss in the conclusion. Critical mass theory is a useful concept for thinking through the mechanism that could drive Black judges' response to gaining more Black colleagues, but it is not as helpful for evaluating White judges' response to increases in Black judicial representation. The scholarship addressing appellate court panel composition discusses some of the mechanisms that might drive the shift in non-Black judges' votes when they serve on panels with a Black colleague, including the possibility that the mere presence of a Black judge may alter White judges' behavior (Boyd, Epstein and Martin 2010; Kastlelec 2013). However, Black judges are not randomly present or absent in trial courthouses.⁵ All judges are present hearing cases in their courtrooms and interacting with one another professionally outside of their courtrooms. Therefore, this study carefully considers how Black judges' presence might

⁵Panel studies typically leverage the generally accepted random assignment of judges to panels on the U.S. Courts of Appeals.

lead to changes' in White judges' decision making in a trial court setting.

I present two potential mechanisms for explaining why White judges might respond to the level of racial diversity among their colleagues and one potential mechanism to explain why Black judges might respond below. The analyses presented later in this paper cannot definitively identify the mechanisms underlying the relationship between racial diversity among judges and individual judges' sentencing decisions. However, they do provide some evidence that certain mechanisms might be at work.

Contact. White judges' opinions of and behavior towards Black defendants may change as they come into contact with more Black colleagues. The environment in which judges do their work, from the courthouse's organizational structure to their relationships with colleagues, influences state trial judges' sentencing decisions (Eisenstein, Flemming and Nardulli 1988; Ulmer and Johnson 2004). The identities of the judges comprising the bench represent an important contextual factor in shaping judges relationships. Scholars have found that inter-group contact can often lead to negative outcomes, including "exclusionary attitudes" and discrimination toward out-group members (Forbes 1997). However, repeated, long-term, and positive inter-group contact may lead to more positive outcomes, including decreasing out-group prejudice (Allport 1979; Enos 2014; Selvanathan et al. 2017).

Most judges have repeated contact with their colleagues, and these interactions are likely positive, at least when compared with the negative sentiments they are more likely to associate with defendant interactions. For example, in the court system from which the data for this paper come, criminal trial judges interact with other judges on their assigned judicial teams where they review team members' progress through case assignments and receive information from the presiding judge. Colleagues might also chat after parking in the judges' parking lot or while enjoying their morning coffee in the presiding judge's chambers before heading to their respective courtrooms (Bogira 2005, pp. 33).⁶ If repeated positive contact with Black colleagues underlies the relationship between Black judges' representation within a court and White judges' behavior, I would

⁶Staff at the court that provided data told me about the parking lot and the judicial teams during conversations.

expect to observe White judges becoming less punitive toward Black defendants as they gain Black colleagues, but only when they work in close enough proximity to come into contact and have positive interactions with their Black colleagues. However, there is no clear implication for their behavior toward White defendants if this mechanism underlies the relationship.

Social Pressure. Institutional factors may create social pressures that lead White judges to alter their sentencing decisions. As I mentioned above, courts often track trial judges' productivity. The court under study in the analyses that follow shares reports on the court's and each of its judge's progress through cases with all of the court's judges. So, each judge is aware of other judges' sentencing records and aware that her colleagues are aware of her record.⁷ As they gain Black colleagues, White judges, knowing that their colleagues could become aware of their case records, may feel pressure to alter their sentencing behavior so as not to appear discriminatory against Black defendants and preferential toward White defendants in front of their Black colleagues.

Fear of appearing biased in front of one's colleagues may encourage sentencing decisions perceived to be more socially acceptable to a group of colleagues that has become more racially diverse. I expect that, for judges, the knowledge that they will have to see and interact with their colleagues may also be an important factor for this potential mechanism. Fear of her colleagues reviewing a discriminatory sentencing record will be much more salient to a judge if she has to see those colleagues in person on a regular basis. A social pressure mechanism should lead White judges to render decisions that do not appear to be discriminatory and that do appear to be fair. The empirical implications of this mechanism would be greater leniency in White judges' sentencing of Black defendants and, potentially, increased harshness in their sentencing of White defendants, if they were to adjust their sentencing of White defendants to match that for Black defendants. Again, this should only occur when White judges work in close proximity with their Black colleagues.

Alleviation of Tokenism. When there are low levels of Black judicial representation

⁷According to court staff, criminal trial judges in Cook County receive this information during meetings with their assigned judicial teams, composed of five to six judges each.

the Black judge(s) on a court may experience tokenism. In these circumstances, Black judges may feel pressure to conform to White judges' typical behavior, which is more punitive toward Black defendants (Asch 1956; Steffensmeier and Britt 2001). Tokenism pressures occur due to the scrutiny and visibility that come with being a member of an extreme minority group (Cook and Glass 2015; Yoder 1991; Kanter 1977).

However, the pressures of tokenism may subside as more Black judges join the bench and Blacks become less of an extreme minority group. As the pressures alleviate, Black judges may feel less scrutinized and more able to sentence Black defendants less harshly. If the alleviation of tokenism is the mechanism underlying the relationship between racial diversity on the bench and Black judges' sentencing decisions, then the expectation would be that Black judges should become less punitive toward Black defendants as they gain Black colleagues. The alleviation of tokenism does not suggest that Black judges' behavior toward non-Black defendants should change as they gain more Black colleagues, since tokenism, if it is an important factor, is unlikely to make them feel that their behavior towards non-Black defendants is scrutinized in the same way as their behavior towards Black defendants.

The Circuit Court of Cook County, Criminal Division

The data used in this paper come from the Circuit Court of Cook County in Illinois, which is one of the largest unified court systems in the U.S. The Circuit is composed of six municipal districts, with the First Municipal District covering the entire city of Chicago. A chief judge presides over the Circuit, which includes non-judicial offices and the judiciary. The Criminal Division, responsible for hearing all of the county's felony cases, resides in the County Department, one of the three departments comprising the judiciary.

The judges of the Criminal Division hear cases in three courthouses: the George N. Leighton Criminal Court Building in Chicago, the Skokie Courthouse, and the Bridgeview Courthouse. Skokie and Bridgeview are municipalities in suburban Cook County. Felonies

originating (occurring in) the city of Chicago are heard in the city's Leighton Criminal Building, and felonies originating outside of the city limits are heard by a Criminal Division judge in either Skokie or Bridgeview. Since 1995, cases have been randomly assigned to judges in Chicago's Leighton Building,⁸ but the suburban courthouses do not use this assignment process. The judges in the suburbs share courthouses with the other judges of their municipal districts who hear civil, traffic, ordinance violation, and misdemeanor cases. The Division's presiding judge and 32 trial judges have courtrooms in Chicago's Leighton Building, and there are usually three to six Criminal Division trial judges with courtrooms in the Skokie and Bridgeview courthouses.

The most common way that Cook County Circuit Court judges earn their seats on the bench is through partisan elections; elected judges are referred to as Circuit Judges. Historically, these have been county-wide elections, but in 1992 the Illinois General Assembly established residential subcircuits for the election of judges.⁹ There are currently both county- and subcircuit-elected judges serving on the Circuit Court of Cook County. Circuit judges serve six-year terms and at the end of each term they run in county-wide uncontested nonpartisan retention elections.

There is significant variation in judicial selection and retention methods across the states. However, in many other ways, Cook County's Criminal Division is similar to other lower-level state felony trial courts. In most states, a circuit or district court serves as the original jurisdiction for felony criminal cases. Felony cases are typically assigned to a trial judge who has their own courtroom in a criminal courthouse. This is common in counties with large cities like Chicago, including Philadelphia, Harris (Houston, TX), and Los Angeles, for example. Therefore, in many ways, the theory developed here can apply to other criminal trial courts, especially those serving locations in which members of a minority group are over-represented among potential defendants and underrepresented among the judiciary, which is the case in most American cities.

⁸This was confirmed by Circuit Court staff and verified in (Abrams, Bertrand and Mullainathan 2012).

⁹See: The Illinois Compiled Statutes- 705 ILCS 50 and 705 ILCS 35/0.01.

Data

The Cook County, IL Criminal Division data used for this project include just over 444,000 felony cases heard from 1995 through 2013 in which the defendant was *not* found not guilty.¹⁰ The court would not release data for cases where the defendant was found not guilty, so the data technically do not represent the universe of the county’s felony cases. However, very few defendants are found not guilty. For example, in 2013 only three percent of all of Cook County’s 32,000 felony defendants were found not guilty.

Each case is identified by a case number, and includes the following information: initiation date; defendant’s last name, date of birth, race, and sex; judge’s name; statute under which the offense fell; description of charge; the class of the original charge; final disposition and date it was rendered; length of minimum and maximum sentence; court-house and number of the courtroom where the case was heard. The defendant in the vast majority of these cases— just under 76 percent— was Black, while White and Latino defendants were charged in 11 and 12 percent of cases, respectively. The data include a variety of offenses with respect to type and severity.¹¹

As the left-side panel of Figure 1 shows, there has been a decrease in incarceration sentences over time. It is also important to note that the frequency of incarceration varies with defendant race. Cases with Black defendants end with incarceration sentences far more frequently than those with either Latinx or White defendants, and cases with Latinx defendants end with incarceration sentences slightly more frequently than those with White defendants (see the left-side panel of Figure 2).

There were a total of 79 Criminal Division judges during this period, with 38-40 judges serving in the Division each year. The number of cases per judge varies from around 170 to 14,000 with an average of 3,900 cases per judge. Each judge has their own courtroom. In Chicago’s Leighton Building, felony cases are randomly assigned to

¹⁰This does not include murders, which are excluded from the analyses. See online appendix for more information on the data and cleaning process.

¹¹In Illinois, judges’ discretion with respect to sentencing is generally limited within the terms established by the Illinois General Assembly’s “Penalties for Crimes in Illinois”, the state’s sentencing guidelines. See: <http://www.ilga.gov/commission/lru/2005PFC.pdf> for details on felony classes and sentencing guidelines in Illinois.

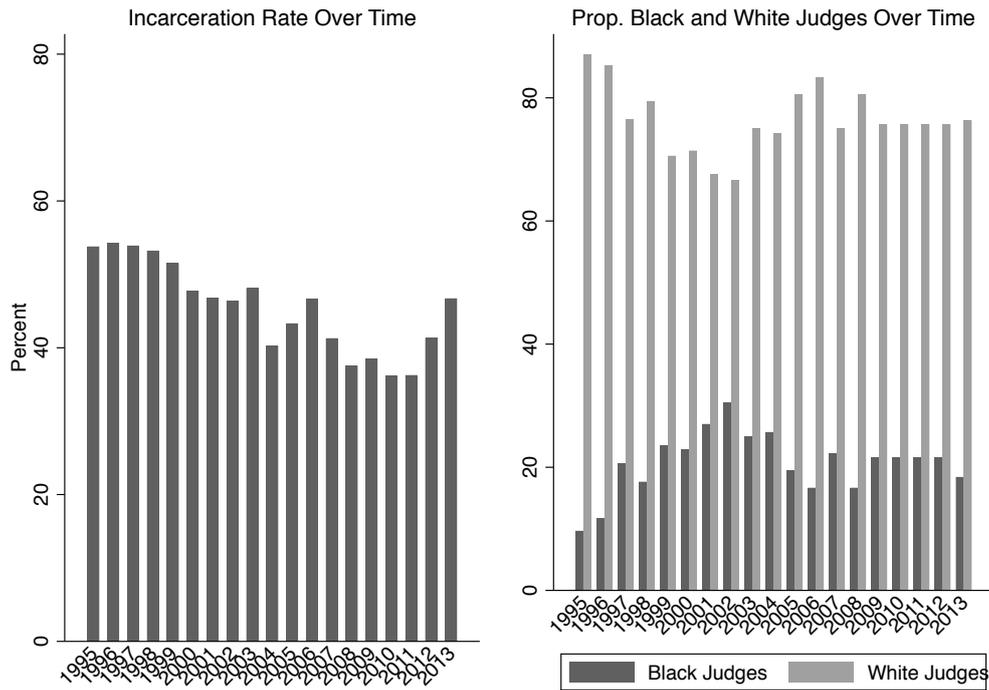


Figure 1: Annual Incarceration Rates and Judicial Representation

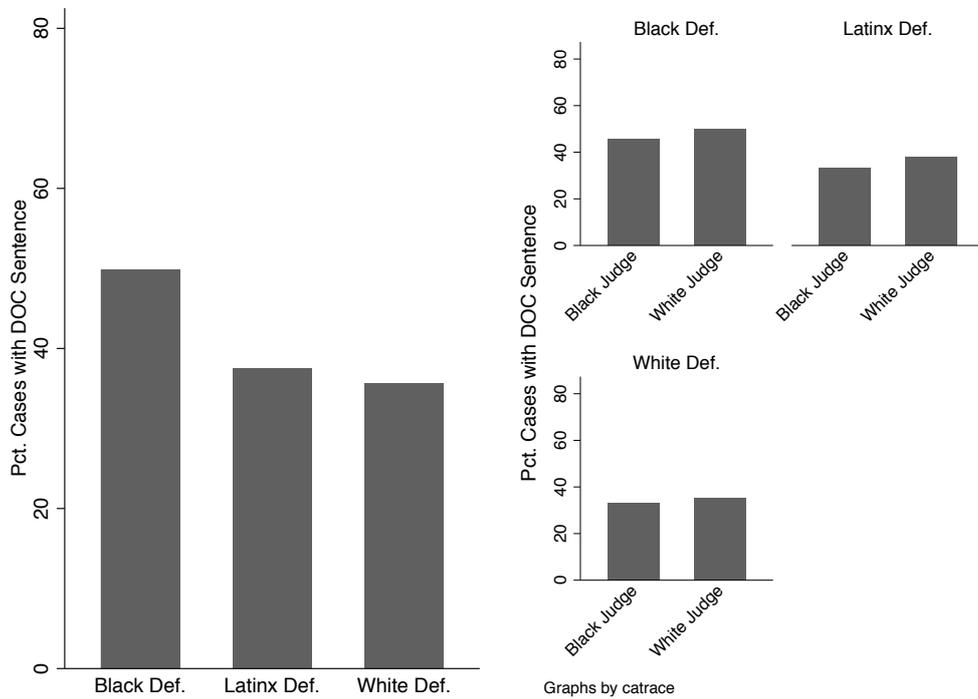


Figure 2: Incarceration Rates by Defendant and Judge Race

trial courtrooms, and therefore judges, after defendants are formally charged. I used the judges' names to merge the case data with biographical information provided by local

legal organizations, including Chicago Applesseed and Chicago Council of Lawyers. I also conducted Internet searches to identify judges' race and gender when necessary and possible. The vast majority of judges are male (84 percent) and White (71 percent). However, the racial composition of the Criminal Division bench has fluctuated over time.

I measure racial diversity on the bench as the proportion of Black judges in the Criminal Division (monthly and yearly). Black judges are not the only judges who contribute to the court's racial diversity. However, Black judges make up the second largest racial group in the Criminal Division, and they are an important group when considering racial disparities in sentencing.¹² The proportion of Black judges on the bench each year, shown in right panel of Figure 1, rose fairly steadily from 1995 through 2002 and then decreased through 2008, after which it increased and leveled off, but never reached the level it did in 2002. As Figure 2 shows, Black and White judges appear to differ in their sentencing behavior. Black judges have lower rates of incarceration when sentencing in cases with Black, White, and Latinx defendants. However, both Black and White judges incarcerate Black defendants more frequently than White and Latinx defendants.

Racial Diversity Among Judges and Sentencing

This section includes the results of analyses of the relationship between judges' colleagues' characteristics and judges' decisions to render incarceration sentences in felony cases. I use the data described above to estimate a series of logistic regression models, the first of which is the following:

$$incarceration_{ij} = \beta_0 + \beta_1(prop\ bl\ j_{ij}) + \beta_2(bl\ def_{ij}) + \beta_3(prop\ bl\ j_{ij} \times bl\ def_{ij}) + \beta_4 Z_{ij} + W_j + \varepsilon \quad (1)$$

where i and j represent a case and a judge, respectively. The dependent variable is dichotomous, taking a value of one if a defendant in a case is incarcerated to prison or jail and zero otherwise. The main independent variable is the proportion of Black

¹²Similar analyses to those presented below measured diversity using the proportion of judges who were not White men and produced similar results.

judges in Cook County’s Criminal Division—including judges in the Chicago, Skokie, and Bridgeview courthouses— each year.

Equation 1 includes an indicator for when the defendant in a case is Black and interacts the main independent variable with this indicator, such that β_1 represents the relationship between the proportion of Black judges and the likelihood of incarceration in cases with White defendants while $\beta_1 + \beta_3$ represents the relationship for cases with Black defendants. The model is an individual judge model, including judge-level random effects (W_j) to account for unobserved factors affecting an individual judge’s decisions and the likelihood that her decisions across cases may be related. I employ random effects rather than fixed effects because the measure of racial diversity among judges does not vary within a year. Also, there will be little within-unit variation for any judges who only appear in the data for a short period of time, including judges who retired shortly after 1995, for example.¹³ However, the main results are consistent across fixed effects (included in the appendix) and random effects specifications.

Z , in Equation 1, is a set of defendant and case characteristics. These include an indicator for Latinx defendants,¹⁴ age, gender, and whether the defendant has previously been charged with a felony. It also accounts for the seriousness of the charge,¹⁵ measured ordinally from least to most serious class of felony, case length,¹⁶ and case length interacted with felony class. I include case length because it is related to the seriousness of an offense. Court cases for low-level felonies are typically resolved more quickly than those for more serious offenses. Case length is also one way to measure the quality of a defendant’s attorney, which is especially helpful since the data do not include useful measures of this concept. Journalistic and scholarly accounts of the go-

¹³When assessing the effects of variables with little within-unit variation, especially when there is minimal correlation between the variable and unit effects, random effects models are often recommended (Clark and Linzer 2015). Correlation between unit effects and the main independent variable, as well as related interaction terms is below -0.2.

¹⁴There is also an indicator for defendants in an “other” racial category. These are defendants who are identified as non-Black, non-White, and non-Latinx. White defendants are the reference category.

¹⁵The models exclude murder cases, as the judges have the least discretion in sentencing in these cases and they are often not assigned to judges randomly. Removing these cases does not alter the results of the analyses; however, the observed associations are stronger, as should be expected.

¹⁶There may be legitimate concerns about including case length in these models, specifically its relationship to defendant race or potential endogeneity to sentencing decisions. I address these concerns in the appendix.

ings on at the Leighton Criminal Court in Chicago confirm that defense attorneys with heavier caseloads and lower fees are more likely to encourage defendants to accept a plea agreement more quickly than defense attorneys who charge higher fees for their services (Bogira 2005; Van Cleve 2016). Black defendants are more likely to be represented by a public defender or an attorney who charges lower fees, and the data show that Black defendants' cases are shorter than White defendants' (Van Cleve 2016).

The proportion of Black judges in the Criminal Division has not steadily increased over time, as shown on the right side of Figure 1, which provides some evidence to suggest that any observed response to the level of racial diversity on the bench is not merely a reflection of the passing of time. It is important to note that while defendants' cases are randomly assigned to judges, racial diversity on the bench is not randomly assigned across cases. However, the random assignment of defendants' cases to judges should ensure that case assignment is not systematically related to defendant characteristics or any individual judge's sensitivity to the level of racial diversity among their colleagues.

I estimate the model on the full data set and then separately for cases heard in Chicago and cases heard in the suburbs. As the theory presented earlier suggests, I expect racial diversity among judges to be related to sentencing in Chicago where judges work in close proximity with their Black colleagues. I use the analysis of cases in the suburbs as a placebo test. Throughout this entire period, none of the Criminal Division judges in Skokie and only one of the judges in Bridgeview were Black. So, if the suburban judges were to respond to racial diversity in the Criminal Division, as a whole, it would be with respect to colleagues based in Chicago whom they rarely, if ever, see.

Results are included in Table 1. The first column includes the results of a pared-down model, excluding case covariates, run on the full dataset. The coefficient for the main racial diversity measure is negative but not statistically significant, while the coefficient of the interaction term is negative and statistically distinguishable from zero. These results suggest that as the proportion of Black judges in the criminal division increases, judges may alter their sentencing in cases with Black defendants.

The second and third columns of Table 1 present results of the full model (including

all covariates) for cases heard in Chicago (second column) and the suburbs (third column) separately. The coefficient for the racial diversity measure is positive and the coefficient for the interaction term is negative for cases heard in the Chicago courthouse, and both are statistically significant, suggesting that an increase in racial diversity among judges results in an increase in the likelihood of incarceration in cases with White defendants. The magnitude of the negative coefficient on interaction term is nearly twice that of the main term, suggesting that an increase in the proportion of Black judges leads to a decrease in the likelihood of incarceration in cases with Black defendants heard in the city. The second column of Table 1 suggests that there is no relationship between racial diversity among judges and sentencing in the suburban courthouses; the coefficients for neither the racial diversity measure nor the interaction term are statistically significant.

Table 1: Racial Diversity and Sentencing

	(1)	(2)	(3)
	All Courthouses	Chicago	Suburbs
Prop. Black Judges	-0.581 (0.520)	1.286* (0.507)	1.691 (3.639)
Black Def.	0.809*** (0.0795)	0.887*** (0.0773)	0.803 (0.432)
Prop. Bl Js. x Bl. Def.	-1.477*** (0.442)	-2.349*** (0.381)	-1.605 (2.041)
Case Info.		X	X
Judge RE	X	X	X
Observations	416589	281424	69174

Cluster robust standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

These results align with what we should expect if, as I theorize, proximity to one's colleagues drives this relationship.¹⁷ As expected, judges in Chicago who work in the same courthouse as their Black colleagues— and, therefore, have the opportunity for their colleagues' presence to influence them through positive contact or social pressure— are responsive to their Black colleagues' relative representation. Judges in the suburbs who

¹⁷Figures of predicted probabilities of sentencing derived from these models are included in the appendix.

are colleagues with the Division's Black judges, essentially in name only, because they do not work in the same city, do not.

Estimating racial diversity among judges with an annual measure is not ideal, because it does not allow me to control for shifts in sentencing or Black judicial representation over time. The rest of the paper focuses only on cases heard in Chicago, where the first set of analyses showed that judges do respond to the level of racial diversity in their group of colleagues. For these analyses, I estimate Equation 1 and the following:

$$incarceration_{ij} = \beta_0 + \beta_1(prop\ bl\ j_{ij}) + \beta_2(bl\ def_{ij}) + \beta_3(prop\ bl\ j_{ij} \times bl\ def_{ij}) + \beta_4 Z_{ij} + W_j + \zeta + \varepsilon \quad (2)$$

$$incarceration_{ij} = \beta_0 + \beta_1(prop\ bl\ j_{ij}) + \beta_2(bl\ def_{ij}) + \beta_3(prop\ bl\ j_{ij} \times bl\ def_{ij}) + \beta_4 Z_{ij} + W_j + \rho_t + \varepsilon \quad (3)$$

In the remaining analyses, the proportion of Black judges is measured monthly (rather than annually). Equations 2 and 3 are similar to Equation 1. However, Equation 2 also includes ζ , a year trend, and Equation 3 includes ρ , year fixed effects. The year trend and year fixed effects are included in Equations 2 and 3, respectively, to help control for the role of time in the relationship between racial diversity among judges and incarceration.

Shifts in the proportion of Black judges on the bench within a month should capture actual changes in the court's roster of permanent judges, but it is possible that some may capture floating judges filling in for permanent judges during long absences. However, even in this case, the floating judge will likely be around long enough to become part of the professional environment within the Leighton Building.

Table 2 presents results estimated with Equations 1, 2, and 3 using the monthly measure of racial diversity among judges. The model in the first column includes results from Equation 1. Similar to the results in the second column of Table 1, the coefficient for the monthly diversity measure is positive and its interaction with defendant race is negative and both are statistically significant. These results suggest that as the bench

Table 2: Racial Diversity (Monthly) and Sentencing

	(1)	(2)	(3)	(4)	(5)
	All	All	All	Wh. Judges	Bl. Judges
Prop. Black Judges	1.966*** (0.579)	2.422*** (0.467)	2.534*** (0.583)	2.744*** (0.658)	0.895 (1.294)
Black Def.	0.901*** (0.0936)	0.922*** (0.0898)	0.898*** (0.0891)	0.863*** (0.0980)	0.836*** (0.206)
Prop. Bl. Js. x Bl. Def.	-2.666*** (0.508)	-2.784*** (0.500)	-2.718*** (0.482)	-2.584*** (0.512)	-2.413* (1.178)
Year Trend			-0.0182** (0.00680)	-0.0207* (0.00820)	-0.0339** (0.0120)
Case Info	X	X	X	X	X
Judge RE	X	X	X	X	X
Year FE		X			
Observations	283864	283864	283864	187067	54699

Cluster robust standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

becomes more racially diverse, individual judges become more likely to render incarceration sentences in cases with White defendants. The negative sign and magnitude of the coefficient on the interaction term suggest that judges do not increase their punitiveness in cases with Black defendants. Instead the coefficient suggests judges' sentencing, as they gain Black colleagues, is closing the racial gap in incarceration sentences.

Columns 2 and 3 of Table 2 present results estimated using Equations 2 and 3, respectively. Both of these models show a stronger positive relationship between racial diversity among judges and sentencing in cases with White defendants than models that do no control for time and negative coefficients of similar magnitude for the interaction term. A year trend is likely more appropriate than year fixed effects, since there is a general downward trend in incarceration during this period, and because individuals' feelings about and responses to racial diversity in this setting are more likely to change gradually over time than they are to change in response to yearly shocks to the institution. Therefore, throughout the rest of the paper, the results presented are estimated using Equation 3, incorporating a year trend.

The results of interaction logit models are best understood by calculating the marginal effects from those models. The left-side panel of Figure 3 shows the substantive relationship between the proportion of Black judges on the bench and the probability of an incarceration sentence for Black defendants (the gray dashed line) and White defendants (the solid Black line), generated from the model in the third column of Table 2. The vertical bars represent ninety-five percent confidence intervals. As the proportion of Black judges on the bench increases, the probability of incarceration in cases with White defendants increases and the probability of incarceration in cases with Black defendants decreases slightly. At the highest level of Black judicial representation, the probability of incarceration is roughly equivalent for Black and White defendants.

To provide further evidence that the results so far are not merely the reflection of judges' changing attitudes toward race and incarceration over time, I constructed a model that attempts to control for this possibility with a triple interaction between the proportion of Black judges on the bench, defendant race, and the year trend (model not shown). Overall, the results of this model are similar to those presented so far. As the right-side panel of Figure 3 shows, including this triple interaction does not mute the relationship between the proportion of Black judges on the bench and individual judges' decisions to incarcerate. Even when including the triple interaction term, judges' decisions to render incarceration sentences become more equitable as the proportion of Black judges on the bench increases, and this relationship is largely due to judges becoming more punitive in cases with White defendants while their behavior in cases with Black defendants changes relatively little.

The results so far are in line with the theory that racial diversity among judges leads to more equitable treatment of defendants. As expected, this relationship is only present among judges who work in the same building; and as Black judicial representation increases, judges are more likely to render incarceration sentences in cases with White defendants and may be slightly less likely to do so in cases with Black defendants. However, I also argue that Black and White judges are likely to respond differently to variations in Black judicial representation, and I consider this and other factors related

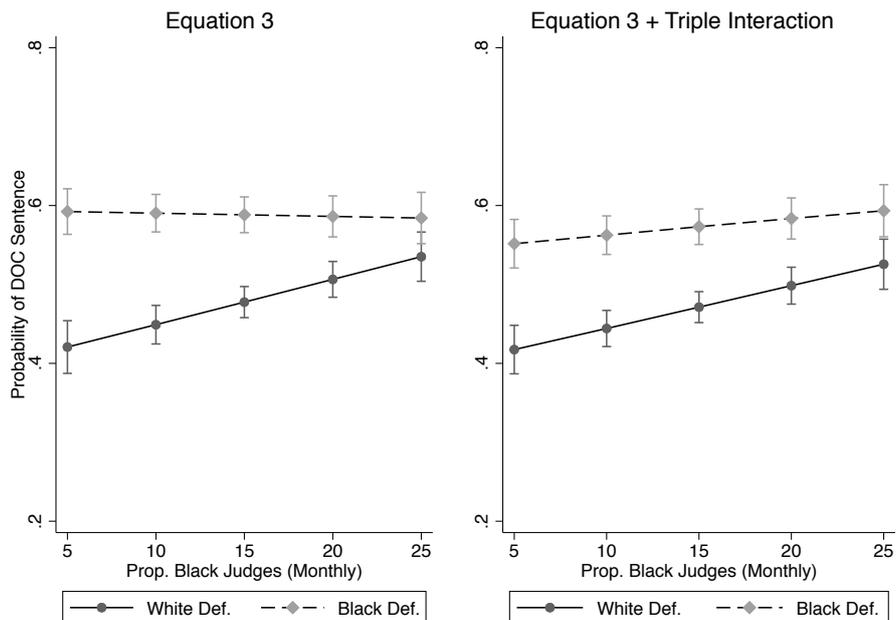


Figure 3: Diversity and Sentencing in Chicago

to potential mechanisms underlying the relationship in the following subsection.

Judges' Racial Identities and Responses to Racial Diversity

The potential mechanisms introduced previously indicate that there is reason to expect that Black and White judges might respond similarly to increased Black judicial representation when rendering sentences in cases with Black defendants, but that there is no reason to expect Black judges to alter their behavior in cases with White defendants. The fourth and fifth columns of Table 2 show the results of models estimated using Equation 3 for just those cases heard by White judges in Chicago and those heard by Black judges in Chicago, respectively.

The coefficient for the proportion of Black judges on the bench is statistically significant in the model of cases heard by White judges (Column 4), but not in the model of cases heard by Black judges (Column 5), and the coefficient for the interaction term is negative and significant in both models. Predicted probabilities generated from these models provide a sense of the substantive impact of growth in Black judicial representation on sentencing, and are included in Figure 4. Both White and Black judges become more

equitable in their sentencing as racial diversity on the bench increases.¹⁸ For White judges this results mostly from increased punitiveness in cases with White defendants. Whereas for Black judges this is largely due to decreased punitiveness in cases with Black defendants.

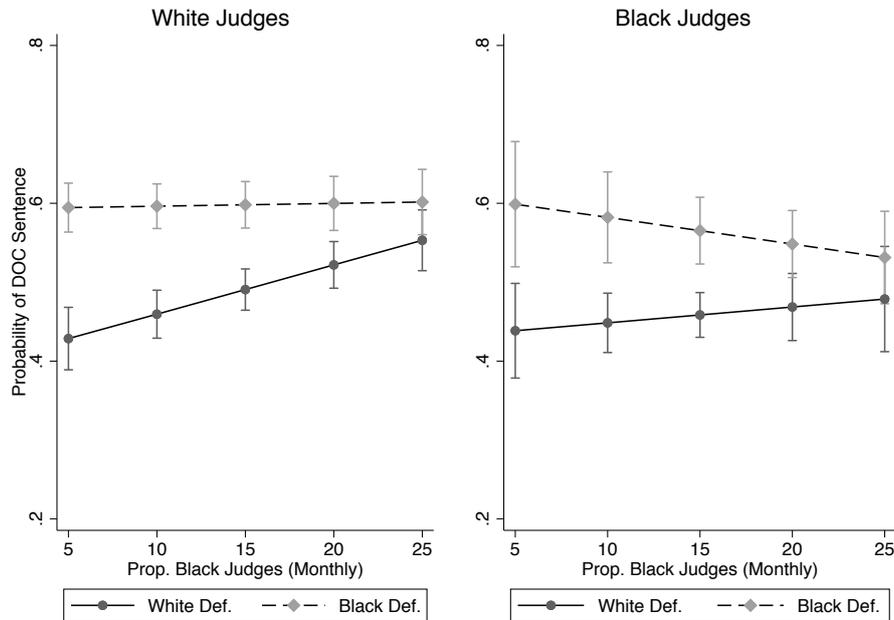


Figure 4: Diversity and Sentencing by Judge Race

White judges' response to racial diversity within their group of colleagues seems more in line with a social pressure mechanism. As they gain Black colleagues, pressure not to appear discriminatory may encourage White judges to sentence more equitably, whether by becoming more lenient toward Black defendants or harsher toward White defendants. However, it may also be that repeated positive contact with Black colleagues results in increased awareness of disparities in criminal sentencing, in general, rather than the treatment of Black defendants, in particular. So it remains possible that the observed relationship could result from White judges' positive interactions with Black colleagues.

Black judges' response to increases in Black judicial representation comports with what we would expect to observe if the alleviation of the pressures of tokenism is the mechanism underlying the relationship. If, when they are members of an extreme minority

¹⁸Logit models run for each individual judge in the data show that over half of the individual White judges and individual Black judges in the data do, in fact, respond in this way.

group, Black judges feel increased pressure to exhibit behavior that is more in line with White judges', that pressure might lead them to sentence Black defendants harshly, even if that harshness is not in line with how they might behave otherwise. However, Black judges may feel less visible and more comfortable showing leniency toward Black defendants as they gain more Black colleagues, but have no reason to change their behavior toward White defendants.

Judges' responses to Black judicial representation in their sentencing decisions are distinct from any direct effect of a judge's race on her sentencing decisions. In fact, judges' racial identities have little impact on incarceration decisions (see appendix). Black judges' racial identities, alone, do not lead to a decrease in the Black-White incarceration gap as does racial diversity among judges.

Considering Mechanisms

The level of detail in and length of time covered by the data allow me to attempt to identify more clearly the mechanisms underlying the relationship between racial diversity among judges and criminal sentencing. The inclusion of judges' courtroom numbers allows me to identify where all judges in the Leighton Building are located in relation to one another. The top three floors of the courthouse hold the most desirable courtrooms. They are larger than those on the lower floors and include some of the original details and materials used to build the courthouse. Judges in these courtrooms often remain there for the duration of their careers in the Criminal Division; the infrequent vacancies on these floors typically go to one of the more senior judges on the lower floors ¹⁹.

Throughout the entire period of study, there were very few non-White judges on the top three floors (fifth through seventh) of the courthouse. In 2010 one of the Division's Black judges moved from a lower-level floor, where he was one of eight judges—four of whom were Black and four of whom were White—to an upper-level floor where he joined three White colleagues and became a minority of one. I constructed a model of the change in this judge's behavior after the floor switch compared with how other

¹⁹I learned this during a tour of the Leighton Building.

judges' behavior changed at the same time. Figure 5 presents predicted probabilities of incarceration generated from that model.

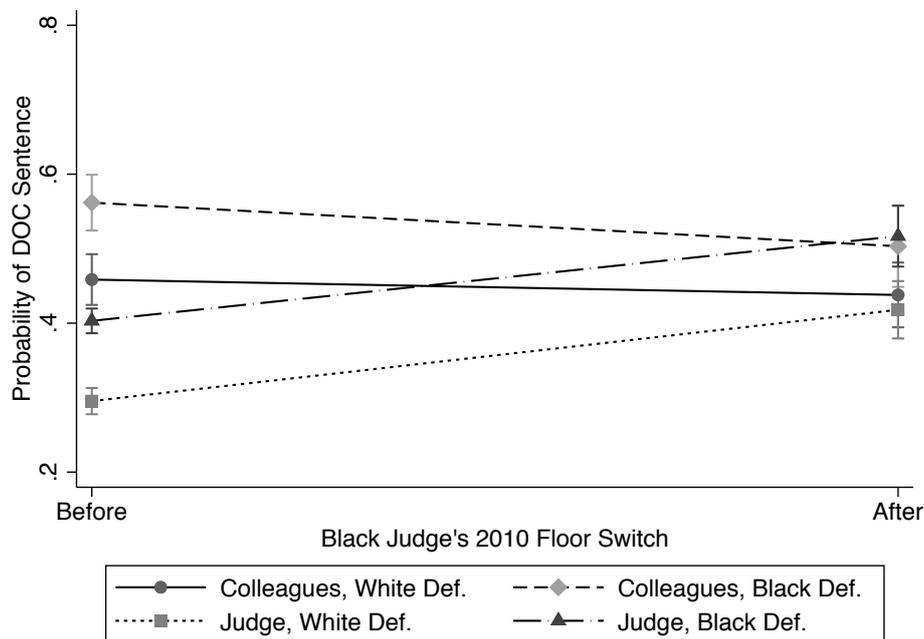


Figure 5: Change in Sentencing After Becoming Minority of One

Figure 5 shows that when this judge went from a floor with the same number of Black and White judges to one where he was a minority of one, his behavior changed to become more in line with the behavior of his colleagues. This particular judge, who was less punitive than his colleagues before his floor switch, became more punitive after moving to an otherwise all-White floor of the courthouse and his sentencing behavior shifted to match the average behavior of his colleagues.

This one example, alone, is not definitive evidence for (the alleviation of) tokenism as the mechanism driving the relationship between racial diversity among judges and Black judges' sentencing behavior. However, it is consistent with the theory, and it comports with the results presented on the right side of Figure 4. We should expect Black judges' behavior to mirror White judges' most closely when Black judges are most underrepresented; and Black judges' should feel less pressure to mirror White judges' behavior when they are better represented within the judiciary. A few White judges moved from lower-level to upper-level courtrooms during this time as well; however, it is unclear how

we should expect a move from a racially diverse to a racially homogeneous environment to affect White judges, especially if it occurs after having adjusted to a more racially diverse environment overall.

With respect to White judges' behavior, if social pressure is responsible for the observed relationship between Black judicial representation and sentencing, we should only expect the effects to last as long as Black judges' representation is high or increasing. As figure 1 shows, the proportion of Black judges in the Criminal Division increased through 2002, after which it declined and leveled off. I am able to use the behavior of White judges who were on the bench during both periods to better illustrate the potential mechanisms underlying the relationship between Black judicial representation and White judges' behavior. I construct models to investigate these judges' behavior both before 2003 when Black judicial representation was increasing and after, when it declined and changed very little. Predicted probabilities of incarceration generated from these models are presented in Figure 6.

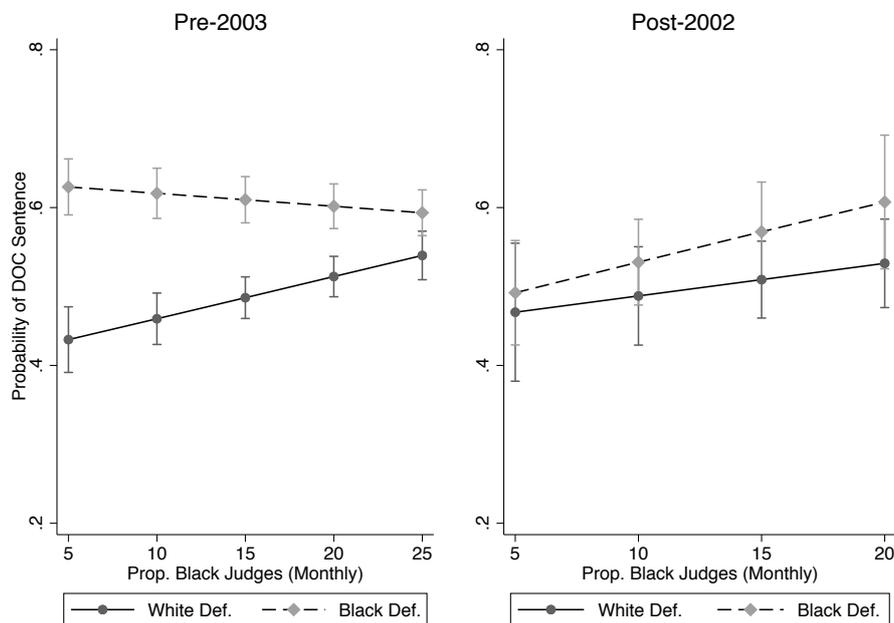


Figure 6: White Judges' Sentencing During and After Periods of Increasing Black Judicial Representation

As the left panel of Figure 6 shows, these judges' sentencing decisions were sensitive to the level of racial diversity within their group of colleagues before 2003, but not

after (when it was no longer increasing). However, the racial gap in the probability of an incarceration sentence did not reappear after 2002. The probability of an incarceration sentence in cases with both Black and White defendants at the highest levels of Black judicial representation in the post-2002 period matches that in the pre-2003 period. These judges' sentencing decisions remained relatively equitable after 2002, suggesting a potentially long-lasting impact of having Black colleagues on White judges' behavior, which is in line with what we might expect to observe if positive and repeated contact, rather than social pressure, underlies the relationship.

Discussion and Conclusion

Diversity with respect to background, ideology, gender, and race can greatly alter any environment, and the analyses presented above show that there is much more at stake when considering racial diversity among trial court judges than scholars typically acknowledge. First, the impact of such diversity extends beyond the behavior of any one judge whose identity might make the bench more racially diverse. The results suggest that the presence of Black judges alters individual judges' behavior, making both Black and White judges more equitable in their sentencing with respect to defendants' race. However, this only occurs when judges work in close proximity with their Black colleagues. Second, racial diversity among members of the judiciary has the potential to do more than instill a sense of institutional legitimacy among those most likely to appear in criminal courts as defendants (Scherer and Curry 2010); it may have the ability to impact the lives and freedom of individuals who interact with the institution directly. Sentencing disparities have been well documented; however, the results of the analyses presented here show that increasing the number of judges who look like the majority of defendants could increase the likelihood that Black and White defendants are sentenced equitably and, in some cases, reduce Black defendants' likelihood of being imprisoned. Finally, these findings have important policy implications as the country continues to struggle to address disparate outcomes for people of color in all phases of the criminal justice process.

This paper moves beyond previous scholarship evaluating the relationship between racial diversity among judges and judicial decision making by providing an individual judge-level analysis of this relationship, understanding that each judge's response will be different and conditioned by her own identity and experiences. I also present separate analyses of White judges' and Black judges' responses to variations in the level of racial diversity present in their group of colleagues, and show that judges responses differ with their race, likely due to different mechanisms underlying their responses. Though the analyses cannot definitively determine the mechanisms, they do provide some support for positive contact with Black colleagues driving White judges' responses and the alleviation of tokenism driving Black judges' responses. Finally, I use data from a state trial court, the type of court where most felony cases are heard.

The data used in this project come from Cook County's criminal trial court, but the factors most likely to contribute to the observed relationship are, by no means, unique to Cook County, Illinois. The theory and potential mechanisms underlying the relationship suggest that a similar relationship between racial (or ethnic) diversity among judges and greater equity in criminal sentencing should emerge in settings where there are large racial disparities in sentencing, and the racial group more frequently imprisoned is relatively underrepresented among the judiciary. These conditions are met in many places throughout the U.S.

Blacks are more frequently incarcerated than Whites in every state in the U.S., with the Black-White imprisonment ratio ranging from a maximum of 12.2 to one in New Jersey and minimum of 2.4 to one in Hawaii.²⁰ The judiciary remains mostly White in every state except for Hawaii and also the District of Columbia. Among non-White judges, Blacks make up the largest group in all states except for New Mexico, Arizona, Hawaii, Oregon, Colorado, Florida, California, Utah, and Texas.²¹

The Black-White incarceration disparity will obviously vary within a state, as

²⁰According to 2016 data from The Sentencing Project and the U.S. Bureau of Justice Statistics: <https://www.sentencingproject.org/criminal-justice-facts/>

²¹According to 2010 data from the American Bar Association: <http://apps.americanbar.org/abanet/jd/display/national.cfm> In Oregon there was one Latino judge, who was the only non-White judge, in 2010, and in Nevada there were two Latino judges and two Black judges.

will Black judicial representation. However, counties where this disparity is greatest and where Black judges are more likely to have and seek seats are those where populations are usually most racially diverse. These might be counties that are more urban rather than rural, for example, and that tend to be more densely populated and have higher crime rates. Such a description applies to very many urban (and some suburban) areas in the in the U.S.

Throughout this article, I have focused on the Black-White sentencing disparity and on Black and White judges. This is an extremely important dichotomy considering Black Americans' increased likelihood of contact with all phases of the criminal justice system, from policing to prison, and Black Americans' general lack of representation on the judiciary compared to Whites (though Blacks are generally better represented in the courts than other non-White racial and ethnic groups). But future research should consider the relationship between Latinx judicial representation and sentencing outcomes for Latinx defendants, especially in settings where there are disparities in sentencing between Latinx and Whites, Latinx judges remain in the minority, and Latinx judges are likely to have and seek seats on the bench. The Latinx-White incarceration disparity is not as stark as that for Blacks, but Latinx are still more frequently incarcerated than Whites throughout the U.S. The three states with the largest Latinx-White incarceration disparities—New Mexico, Arizona, and Colorado—are also three of the states where Latinx judicial representation is greater than that for any other non-White group.²² These are prime examples of states with criminal courts that might produce results similar to those presented here, but for the sentencing of Latinx defendants.

It is incredibly important to understand the many ways that the identities of those on and in front of the bench affect judging, especially in state trial courts. Up to tens of thousands of people stand before judges in each of every state's criminal trial courts each year, and across the country Black and Latinx defendants continue to be incarcerated more regularly than White defendants. Understanding the link between these outcomes

²²According to 2016 data from The Sentencing Project and the U.S. Bureau of Justice Statistics: <https://www.sentencingproject.org/criminal-justice-facts/> and 2010 data from the American Bar Association: <http://apps.americanbar.org/abanet/jd/display/national.cfm>

and judges' characteristics requires more than an investigation of whether judges of color behave differently than White judges. Rather, it requires an evaluation of the composition of the judiciary as a whole (Harris and Sen 2018).

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