

JUDGING FEDERAL DEFENSE SYSTEMS: DOES THE TYPE OF COUNSEL REPRESENTING DEFENDANTS INFLUENCE OUTCOMES IN FEDERAL DISTRICT COURT?

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I. INTRODUCTION

The Sixth Amendment to the U.S. Constitution guarantees the accused the right to be represented by counsel in serious criminal prosecutions.¹ Supreme Court (SCOTUS) decisions in *Powell v. Alabama*,² *Johnson v. Zerbst*,³ *Gideon v. Wainwright*,⁴ and *Argersinger v. Hamlin*⁵ have required federal and state jurisdictions to provide representation to defendants who are unable to afford an attorney. In 1964, the Criminal Justice Act (CJA) established a system for appointing and compensating attorneys to represent defendants charged with federal crimes who were financially unable to retain counsel.⁶ In 1970, the CJA was amended to authorize federal judicial districts to establish the federal defender services.⁷ Together, these measures formalized the constitutional right to counsel in federal courts and created the modern system of eighty-two authorized federal defender organizations, which serve ninety-one of the ninety-four federal judicial districts, and CJA appointed or panel attorneys, which are available in all districts.⁸

The majority of people prosecuted in the federal criminal justice system today are represented by federal public defenders (FPDs),⁹ which include government-run public defenders and non-profit community defender organizations, and CJA panel attorneys or private lawyers who are qualified to accept CJA assignments.¹⁰ CJA panel attorneys serve in districts without a federal defender

¹ See U.S. CONST. amend. VI.

² *Powell v. Alabama*, 287 U.S. 45, 71 (1932) (ruling that assistance of counsel must be provided for indigent defendants who are charged with a capital crime).

³ *Johnson v. Zerbst*, 304 U.S. 458, 465 (1938) (ruling that for all indigent defendants in federal criminal cases appointment of counsel is a requirement).

⁴ *Gideon v. Wainwright*, 372 U.S. 335, 342 (1963) (ruling that the Sixth Amendment right to counsel applies for indigent defendants charged with state felonies). This decision resulted in the number of public defender organizations increasing dramatically. See Sejal H. Patel, *Sorry, That's Classified: Post-9/11 Surveillance Powers, The Sixth Amendment, and Niebuhrian Ethics*, 23 B.U. PUB. INT. L.J. 287, 309 (2014).

⁵ *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972) (ruling that indigent defendants must be afforded counsel if imprisonment is a possible punishment post-conviction). The number of public defender organizations increased again after this decision. See Sheldon Portman, *Gideon's Trumpet Blows for Misdemeanants—Argersinger v. Hamlin, the Decision and Its Impact*, 14 SANTA CLARA L. REV. 1, 29–30 (1973).

⁶ Criminal Justice Act of 1964, Pub. L. No. 88-455, 78 Stat. 552 (codified as amended at 18 U.S.C. § 3006A).

⁷ Act of Oct. 14, 1970, Pub. L. No. 91-447, 84 Stat. 916 (1970); see also *Defender Services*, ADMIN. OFF. OF U.S. CTS., <https://www.uscourts.gov/services-forms/defender-services> [https://perma.cc/VU6A-BT82].

⁸ *Defender Services*, *supra* note 7.

⁹ *Id.*

¹⁰ *Id.*

organization, as well as in other districts, due to conflicts of interest or inadequate defender office resources.¹¹ A recent report from the Urban Institute reveals that over three-quarters (~77%) of federal defendants in 2018 were represented through one of these options;¹² the other roughly 22% of defendants retained private attorneys to represent them in federal district court.¹³ Despite the importance of public defense in the U.S. Constitution and criminal justice system, much remains unknown about the true impact of these distinct forms of legal representation on defendant outcomes, particularly for federal criminal cases.

A large corpus of research over the past four decades has uncovered important determinants of criminal court decision-making practices.¹⁴ Studies of judicial decision-making in particular have demonstrated that the legally relevant factors of offense seriousness and criminal history are the most consistent predictors of court outcomes,¹⁵ while extra-legal defendant factors (race and ethnicity; gender; and citizenship) and case-processing factors (pretrial detention status, plea agreements, charge reductions, and departures) also influence these outcomes.¹⁶ Recent research has

¹¹ JON WOOL, K. BABE HOWELL & LISA YEDID, *IMPROVING PUBLIC DEFENSE SYSTEMS: GOOD PRACTICES FOR FEDERAL PANEL ATTORNEY PROGRAMS* 3 (Vera Inst. of Just. 2003), https://www.vera.org/downloads/publications/Improving_public_defense.pdf [<https://perma.cc/A8QE-W355>].

¹² KELLY ROBERTS FREEMAN, BRYCE PETERSON & RICHARD HARTLEY, *COUNSEL TYPE IN FEDERAL CRIMINAL COURT CASES, 2015-18*, at 13 tbl.3 (Urb. Inst. 2022), <https://bjs.ojp.gov/library/publications/counsel-type-federal-criminal-court-cases-2015-18> [<https://perma.cc/E4DD-FJ7Q>].

¹³ *Id.*

¹⁴ See generally Eric P. Baumer, *Reassessing and Redirecting Research on Race and Sentencing*, 30 JUST. Q. 231, 231–32 (2013) (highlighting the history of research on race and sentencing since the early 1980s); Jeffery T. Ulmer, *Recent Developments and New Directions in Sentencing Research*, 29 JUST. Q. 1, 3–24 (2012) (providing a comprehensive survey of sentencing research and contributions to the literature from advances in availability of sentencing data, expansion of explanatory theoretical frameworks, and the study of other social contexts which may condition sentencing outcomes).

¹⁵ CASSIA C. SPOHN, *HOW DO JUDGES DECIDE? THE SEARCH FOR FAIRNESS AND JUSTICE IN PUNISHMENT* 83–88 (2002).

¹⁶ See, e.g., Jill K. Doerner & Stephen Demuth, *Gender and Sentencing in the Federal Courts: Are Women Treated More Leniently?*, 25 CRIM. JUST. POL'Y REV. 242, 245–48 (2014) (outlining the fairly consistent finding that females are treated more leniently than males in studies of criminal court outcomes); Cassia Spohn & David Holleran, *The Imprisonment Penalty Paid by Young, Unemployed Black and Hispanic Male Offenders*, 38 CRIMINOLOGY 281, 281–84 (2000) (providing empirical evidence that race and ethnicity also interacts with other variables such as age, gender, and employment status to produce the harshest sentencing outcomes for young Black and Hispanic unemployed males); Brian D. Johnson & Sara Betsinger, *Punishing the "Model Minority": Asian-American Criminal Sentencing Outcomes in Federal District Courts*, 47 CRIMINOLOGY 1045, 1045–49 (2009) (a study of outcomes in federal court finding that Asian American defendants are punished more similarly to white defendants compared with Black and Hispanic defendants); Richard D. Hartley, Sean Maddan & Cassia C. Spohn, *Prosecutorial*

also examined inter-district differences in decision-making, net of case-level factors.¹⁷ As such, scholars have argued that the result is a cumulative disadvantage for defendants with certain constellations of characteristics.¹⁸

Growing attention is being paid in recent empirical research to the type of attorney representing the defendant as one factor that may shape case outcomes.¹⁹ Despite this, measures of the type of attorney representing the defendant are often absent from examinations of criminal court decision-making practices; this is especially true in studies of federal court outcomes.²⁰ In an adversarial system of justice, the defense attorney is not only an important counterweight to the prosecutor, but also a necessary legal advocate at major criminal justice system stages.²¹ Although under the law, the type of attorney representing the defendant is not supposed to have an impact on case-processing or final decision-making outcomes,²² the complexities with which cases move from initial stages to concluding dispositions necessitate the examination of the influence that type of counsel might exert on key court decisions.

Discretion: An Examination of Substantial Assistance Departures in Federal Crack-Cocaine and Powder-Cocaine Cases, 24 JUST. Q. 382, 387–88, 394, 404–05 (2007) (concluding that case-processing factors such as departures are influential on federal sentencing outcomes).

¹⁷ Jeffery T. Ulmer & Brian Johnson, *Sentencing in Context: A Multilevel Analysis*, 42 CRIMINOLOGY 137, 137 (2004) (empirical study using hierarchical linear modeling revealing that county-level factors or “local contextual features—such as court organizational culture, court caseload pressure, and racial and ethnic composition—affect sentencing outcomes, either directly or in interaction with individual factors”); see also Brian D. Johnson, Jeffery T. Ulmer & John H. Kramer, *The Social Context of Guidelines Circumvention: The Case of Federal District Courts*, 46 CRIMINOLOGY 737, 737–69 (2008) (a study employing multi-level modeling to examine inter-district variation in downward departures from the federal sentencing guidelines and found differences in departure rates to be a cause for racial and ethnic disparities in federal sentencing practices).

¹⁸ See Besiki Luka Kutateladze, *Tracing Charge Trajectories: A Study of the Influence of Race in Charge Changes at Case Screening, Arraignment, and Disposition*, 56 CRIMINOLOGY 123, 130, 145 (2018) (studying prosecutorial decisions in New York County finding “that prosecutors make charging decisions differently at arraignment (where there is greater judicial oversight) than at screening, and in a way that disadvantages Black and Latino defendants”); see also Megan C. Kurlychek & Brian D. Johnson, *Cumulative Disadvantage in the American Criminal Justice System*, 2 ANN. REV. CRIMINOLOGY 291, 291–92 (2019) (providing a comprehensive overview of the concept of cumulative disadvantage, a review of “evidence on the development of cumulative disadvantages across stages of the criminal justice system” and an appraisal of “empirical research on policing, prosecution, and the courts” demonstrating how these areas of scholarship are inherently connected).

¹⁹ See *infra* notes 26–30 and accompanying text.

²⁰ See SPOHN, *supra* note 15, at 80–81.

²¹ Richard D. Hartley, Holly V. Miller & Cassia Spohn, *Do You Get What You Pay For? Type of Counsel and Its Effect on Criminal Court Outcomes*, 38 J. CRIM. JUST. 1063, 1063 (2010).

²² James M. Anderson & Paul Heaton, *How Much Difference Does the Lawyer Make? The Effect of Defense Counsel on Murder Case Outcomes*, 122 YALE L.J. 154, 156 (2012).

Most of the commentary surrounding whether there are differences in outcomes based on the type of counsel representing a defendant revolve around the notion that defendants with financial resources to hire a private attorney will get a higher quality of representation and, therefore, receive more lenient outcomes (i.e., be less likely to be convicted and receive more lenient punishments).²³ Public sentiment is also generally of the opinion that you get what you pay for²⁴ and that “equal justice is not available to rich and poor alike.”²⁵

Previous state-level studies have compared case-processing outcomes (e.g., conviction rates, guilty pleas, sentence length, and incarceration decisions) among defendants represented by public defenders, appointed or assigned attorneys, and private counsel.²⁶ By and large, these studies have found little difference in the impact of the type of counsel on relevant outcomes.²⁷ A handful of studies, however, reveal that court-appointed attorneys receive less favorable outcomes for their clients compared to both public defenders²⁸ and private counsel.²⁹ A few studies have also found that defendants with private attorneys are less likely to receive terms of incarceration and receive shorter overall sentences than those with public defenders.³⁰

These existing studies have produced mixed findings, perhaps due to the jurisdiction where the data was gathered and the resources of public defenders in those locales.³¹ As such, additional research is

²³ See generally Roger A. Hanson & Brian J. Ostrom, *Indigent Defenders Get the Job Done and Done Well*, in THE CRIMINAL JUSTICE SYSTEM: POLITICS AND POLICIES 264, 265 (George F. Cole & Marc G. Gertz eds., 7th ed. 1998); Hartley et al., *supra* note 21, at 1063; Marian R. Williams, *A Comparison of Sentencing Outcomes for Defendants with Public Defenders Versus Retained Counsel in a Florida Circuit Court*, 23 JUST. SYS. J. 249, 249 (2002).

²⁴ Hartley et al., *supra* note 21, at 1063.

²⁵ Joyce S. Sterling, *Retained Counsel Versus the Public Defender: The Impact of Type of Counsel on Charge Bargaining*, in 18 SAGE CRIMINAL JUSTICE SYSTEM ANNUALS: DEFENSE COUNSEL 151, 166 (William F. McDonald ed., 1983).

²⁶ See, e.g., Hartley et al., *supra* note 21, at 1065; Williams, *supra* note 23, at 249; David Willison, *The Effects of Counsel on the Severity of Criminal Sentences: A Statistical Assessment*, 9 JUST. SYS. J. 87, 87 (1984); Anderson & Heaton, *supra* note 22, at 159.

²⁷ See generally Hanson & Ostrom, *supra* note 23, at 283–84; Hartley et al., *supra* note 21, at 1068–69 (in Cook County, Chicago, Illinois); Williams, *supra* note 23, at 249–57 (in a northern Florida county); Willison, *supra* note 26, at 87–101 (in Columbus, Ohio).

²⁸ See, e.g., Anderson & Heaton, *supra* note 22, at 178–87; Thomas H. Cohen, *Who Is Better at Defending Criminals? Does Type of Defense Attorney Matter in Terms of Producing Favorable Outcomes*, 25 CRIM. JUST. POL'Y REV. 29, 44–49 (2014).

²⁹ See, e.g., Cohen, *supra* note 28, at 48; John C. Beck & Robert Shumsky, *A Comparison of Retained and Appointed Counsel in Cases of Capital Murder*, 21 LAW & HUM. BEHAV. 525, 525–38 (1997); Dean J. Champion, *Private Counsel and Public Defenders: A Look at Weak Cases, Prior Records, and Leniency in Plea Bargaining*, 17 J. CRIM. JUST. 253, 253–63 (1989).

³⁰ See Hanson & Ostrom, *supra* note 23, at 281; Morris B. Hoffman, Paul H. Rubin & Joanna M. Shepherd, *An Empirical Study of Public Defender Effectiveness: Self-Selection by the “Marginally Indigent”*, 3 OHIO STATE J. CRIM. L. 223, 230–33 (2005).

³¹ See, e.g., Cohen, *supra* note 28, at 52–53; Champion, *supra* note 29, at 255–56.

necessary to elucidate the implications of counsel type on important case-processing stages. Moreover, most of these previous studies have used county-level data from state court systems, with very little work examining the impact of the different types of defense counsel in the federal criminal justice system.³² The federal court system is a much more uniform system with public defender offices being more comparable across federal districts, as well as federal public defenders and CJA attorneys having better resources at their disposal than their state and county court counterparts.³³ Indeed, the federal system is often heralded as the “gold standard” in the field of public defense because of the highly skilled FPDs and extensive network of CJA attorneys.³⁴ The question that still remains unanswered, therefore, is whether the quality or effectiveness of the attorney representing defendants influences outcomes in the federal system.

The current study, therefore, aims to examine the effects of the type of counsel representing a defendant on case-processing outcomes in federal district court. Are there differences in the quality of representation as indicated by significantly different outcomes for indigent defendants represented by CJA appointed counsel as opposed to federal public defender organizations? Further, do defendants represented by private attorneys receive more lenient outcomes than their indigent counterparts? Finally, are there differences in court outcomes based on the availability of counsel, as measured by the percentage of cases at the district level represented by FPDs, CJA attorneys, or privately retained attorneys?

We are not aware of existing research that has comprehensively examined the effect of type of counsel on multiple decision-making stages in the federal criminal courts across multiple years. Recent descriptive statistics on convictions from 2015 to 2018 in federal district courts found differences in incarceration rates and sentence lengths by the type of attorney representing the defendant.³⁵ Those represented by CJA panel attorneys had the highest incarceration percentages (93%) and average sentence lengths at seventy-four months, compared to the percentage of those sentenced to prison who were represented by public defenders (91%) and who retained private

³² See FREEMAN ET AL., *supra* note 12, at 3.

³³ See *id.* at 4.

³⁴ Paul Hazlehurst, *A Federal Public Defender's Perspective*, FED. LAW., Mar. 2015, at 50, 51; see also FREEMAN ET AL., *supra* note 12, at 4.

³⁵ See FREEMAN ET AL., *supra* note 12, at 13 tbl.3, 16 tbl.5.

attorneys (84%);³⁶ average sentence lengths for those represented by private attorneys and public defenders were lower at sixty-six and sixty-two months respectively.³⁷ Once legally relevant and other case-processing factors and defendant characteristics were controlled for, those defendants with private or CJA panel attorneys had greater incarceration odds than those represented by public defenders;³⁸ likewise, defendants represented by public defenders had lower average sentence lengths (those represented by private or CJA panel attorneys had 8% and 4% longer average sentences).³⁹

The current study proposes to expand on recent research in examining the effect of the type of counsel (public defenders, i.e., federal public defender organizations and community defender organizations; appointed counsel, i.e., CJA panel attorneys; and private attorneys) on federal criminal court outcomes. More specifically, this research employs multilevel regression modeling to analyze the influence of these types of counsel on three important federal court decision-making stages—pretrial detention, incarceration, and sentence length—net of relevant legal, case-processing, defendant, and district-level controls using five years of Federal Justice Statistics Program (FJSP) data. By linking court and sentencing data from the FJSP to create measures of counsel type at the individual and district level, this study advances the prior literature in examining the influence of the type of counsel in the federal criminal court context.

II. FEDERAL INDIGENT DEFENSE

Since enactment of the CJA and the formation of federal defender organizations, indigent defendants in federal court would be represented by either a public defender's office, equipped with staff and necessary legal and investigative resources, or an appointed attorney, who is compensated for their time and effort.⁴⁰ Congress believed that these provisions of counsel to indigent federal defendants were necessary to mount an adequate defense against federal prosecutors under our adversarial system of justice, and to fulfill SCOTUS interpretations of Sixth Amendment requirements of

³⁶ *See id.* at 12 & tbl.2.

³⁷ *See id.*

³⁸ *See id.* at 2.

³⁹ *Id.* at 22.

⁴⁰ *See Defender Services, supra* note 7.

the right to counsel.⁴¹ Each federal district is charged with implementing indigent defense services, and under the CJA, districts can tailor a program that suits their own needs.⁴² Since the CJA was enacted over fifty years ago, roughly eighty-two federal defender organizations have been established, serving ninety-one of the ninety-four federal districts and employing almost 4,000 attorneys, investigators, and support staff.⁴³ Federal defender organizations are made up of federal public defender organizations or community defender organizations.⁴⁴

Federal public defender organizations are federal government offices overseen by a chief federal public defender appointed by the court of appeals of a particular circuit to a four-year term.⁴⁵ Their attorneys and staff are salaried federal employees whose full-time job is to represent indigent defendants.⁴⁶ Community defender organizations are non-profit organizations supervised by a board of directors and receive funding in the form of grants from the federal judiciary for their operations.⁴⁷ Appointed panel (CJA) attorneys are assigned to represent indigent defendants in the districts without public defender organizations but, since the CJA mandates that panel attorneys be appointed in a “substantial proportion of cases,” they also represent defendants in districts with public defender organizations.⁴⁸ They are private attorneys who pass district-specific qualification criteria, such as a certain number of years of court experience, and are then placed on a “panel” with other qualified attorneys to be randomly assigned cases.⁴⁹

Persons accused of crimes who do not qualify for indigent defense, or do not want to use those services, usually hire a private attorney

⁴¹ See AD HOC COMM. TO REV. THE CRIM. JUST. ACT, 2017 REPORT OF THE AD HOC COMMITTEE TO REVIEW THE CRIMINAL JUSTICE ACT 12–13 (2018), <https://cjastudy.fd.org/sites/default/files/public-resources/Ad%20Hoc%20Report%20June%202018.pdf> [<https://perma.cc/7R6D-VXFZ>] [hereinafter CARDONE REPORT]; see also Criminal Justice Act of 1964, Pub. L. No. 88-455, 78 Stat. 552, 552 (codified as amended at 18 U.S.C. § 3006A) (describing the purpose of the Act as “promot[ing] the cause of criminal justice by providing for the representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the United States”).

⁴² WOOL ET AL., *supra* note 11, at 3.

⁴³ See *Defender Services*, *supra* note 7.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Radha Iyengar, *An Analysis of the Performance of Federal Indigent Defense Counsel* 7 (Nat’l Bureau of Econ. Rsch., Working Paper No. 13187, 2007), https://www.nber.org/system/files/working_papers/w13187/w13187.pdf [<https://perma.cc/BX88-AGD8>].

⁴⁷ *Defender Services*, *supra* note 7.

⁴⁸ WOOL ET AL., *supra* note 11, at 3.

⁴⁹ *Id.* at 1, 8.

of their choice to assist them in federal court.⁵⁰ These attorneys are paid by the defendant rather than by the federal government (i.e., through funding appropriated by the Criminal Justice Act).⁵¹

III. THEORETICAL FRAMEWORK

Much of the criticism of indigent defense counsel stems from their lack of resources to mount an adequate defense⁵² or their membership in the courtroom workgroup.⁵³ Ever since the landmark SCOTUS decision in *Gideon v. Wainwright*,⁵⁴ critics have argued that indigent defense systems are overburdened and woefully under-resourced.⁵⁵ In many jurisdictions, economic resources devoted to prosecution dwarfs what is appropriated for indigent defense, which leads to inequality in the justice system.⁵⁶ The American Bar Association has stressed the importance of necessary resources—such as investigators, paralegals and support staff, as well as resources for technology, access to forensic services and expert witnesses—in order to provide effective assistance of counsel.⁵⁷ Other commentators point to the high caseloads and low pay that characterize many public defender offices as reasons for their comparatively poor performance⁵⁸ and insufficient time to prepare cases, high stress, and

⁵⁰ See Champion, *supra* note 29, at 254.

⁵¹ See *id.*; see also *Defender Services*, *supra* note 7.

⁵² See AM. BAR ASS'N, *GIDEON'S BROKEN PROMISE: AMERICA'S CONTINUING QUEST FOR EQUAL JUSTICE* 1–62 (2004); see, e.g., Marian R. Williams, *Effectiveness of Public Defenders in Four Florida Counties*, 41 J. CRIM. JUST. 205, 206, 211 (2013) (a study of four counties in Florida citing that public defenders lack adequate resources to hire investigators and expert witnesses, have excessive caseloads, and low salaries).

⁵³ See Abraham S. Blumberg, *The Practice of Law as Confidence Game: Organizational Cooptation of a Profession*, 1 LAW & SOC'Y REV. 15, 19, 23 (1967) (arguing that “organizational goals and discipline impose a set of demands and conditions of practice on the respective professions in the criminal court, to which they respond by abandoning their ideological and professional commitments to the accused client, in the service of these higher claims of court organization”); see also JAMES EISENSTEIN, ROY B. FLEMMING & PETER F. NARDULLI, *THE CONTOURS OF JUSTICE: COMMUNITIES AND THEIR COURTS* 22–53 (1987); Peter F. Nardulli, *'Insider' Justice: Defense Attorneys and the Handling of Felony Cases*, 77 J. CRIM. L. & CRIMINOLOGY 379, 380–89 (1986) (describing public defenders as “insiders” who know the system and can manipulate it to the benefit of their clients as well as “cop-out artists” whose close ties to the court community harm their clients); Rodney J. Uphoff, *The Criminal Defense Lawyer: Zealous Advocate, Double Agent, or Beleaguered Dealer?*, 28 CRIM. L. BULL. 419, 419–56 (1992) (describing the sometimes-distrustful view of criminal defense lawyers as co-opted by the court system to serve the interests of the organization over those of their clients).

⁵⁴ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁵⁵ See, e.g., AM. BAR ASS'N, *supra* note 52, at 38–40.

⁵⁶ See *id.* at 13–14.

⁵⁷ See *id.* at 10.

⁵⁸ See *id.* at 9–10, 17–18; see also Peter A. Joy, *The Ethical and Professional Battles of Public Defenders: Ensuring the Ethical Representation of Clients in the Face of Excessive Caseloads*, 75 MO. L. REV. 771, 777–83 (2010) (describing the crisis that excessive caseloads are part of

job burnout.⁵⁹ It has even been documented that indigent defendants themselves often have negative views of the public defenders representing them.⁶⁰

Legal and empirical scholars have criticized public defenders as being too cozy with prosecutors and judges because they are members of the so-called courtroom workgroup.⁶¹ The courtroom workgroup consists of prosecutors, defense attorneys, and judges who work together day in and day out at the local courthouse.⁶² This perspective purports that court outcomes are a product of both formal and informal case-processing norms.⁶³ Prosecutors and public defenders attempt to resolve cases quickly through plea negotiations to minimize their workload and the uncertainty that comes with going to trial.⁶⁴ More cooperative relationships among members of the courtroom workgroup can facilitate negotiation and efficient case resolution.⁶⁵

Because one of the goals of criminal courts, in addition to seeking justice, is to efficiently process cases through the system,⁶⁶ public defenders, as members of the courtroom workgroup, might be more likely to cooperate or bargain with the prosecution than oppose or challenge them.⁶⁷ In this sense, public defenders might be seen as “double agents” because, although they are representing their clients, they are also co-opted by the state or jurisdiction that employs

the reason for low quality of public defense); Ronald Weitzer, *Racial Discrimination in the Criminal Justice System: Findings and Problems in the Literature*, 24 J. CRIM. JUST. 309, 313 (1996) (noting that minority defendants are more likely to be unable to afford a private attorney and therefore will be represented by a public defender and receive a lower quality of defense due to high caseloads).

⁵⁹ See Charles J. Ogletree, Jr., *An Essay on the New Public Defender for the 21st Century*, 58 LAW & CONTEMP. PROBS. 81, 85–89 (1995) (describing the challenges faced by public defenders such as lack of institutional support, criticism from both the public and their clients, and the stress and emotional strain associated with the position).

⁶⁰ See Christopher Campbell, Janet Moore, Wesley Maier & Mike Gaffney, *Unnoticed, Untapped, and Underappreciated: Clients' Perceptions of Their Public Defenders*, 33 BEHAV. SCI. & L. 751, 761–64 (2015) (describing results from focus group interviews with clients of public defenders); JONATHAN D. CASPER, *AMERICAN CRIMINAL JUSTICE: THE DEFENDANT'S PERSPECTIVE* 105 (1972).

⁶¹ See Hartley et al., *supra* note 21, at 1064.

⁶² FREEMAN ET AL., *supra* note 12, at 3–4.

⁶³ See Joachim J. Salvesberg, *Law that Does Not Fit Society: Sentencing Guidelines as a Neoclassical Reaction to the Dilemmas of Substantivized Law*, 97 AM. J. SOCIO. 1346, 1346–50 (1992) (providing a discussion of sentencing guidelines as an attempt to move from formal to substantive rationality in criminal court decision-making).

⁶⁴ See FREEMAN ET AL., *supra* note 12, at 3–4.

⁶⁵ See Christi Metcalfe, *The Role of Courtroom Workgroups in Felony Case Dispositions: An Analysis of Workgroup Familiarity and Similarity*, 50 LAW & SOC'Y REV. 637, 640 (2016).

⁶⁶ Blumberg, *supra* note 53, at 22, 39.

⁶⁷ Hartley et al., *supra* note 21, at 1064; see also EISENSTEIN ET AL., *supra* note 53, at 22–23 (discussing the concept and creation of a courtroom community).

them.⁶⁸ Qualitative interviews similarly find that clients mistrusted their court-appointed attorneys because they were seen as being part of the system, not being paid enough, having too many cases to be able to provide quality assistance, or as being too friendly with the prosecutor and pushing clients to take pleas.⁶⁹ In another qualitative study, clients described public defenders as being “conduits of prosecutors’ last-minute plea offers.”⁷⁰

On the other hand, cases involving private attorneys might be more adversarial and more likely to compel prosecutors and judges to adhere to procedural laws affording due process rights to their defendants.⁷¹ Echoing the want for similar advocacy from public defenders, a qualitative study found that participants wanted public defenders who would effectively communicate with them, listen to their side of the story, investigate the facts, and stand up for their rights in court.⁷² This study also found that clients distinguished the efforts of their attorneys from deficits of the broader system;⁷³ clients expressed overall satisfaction with their public defender while simultaneously reporting mistrust of the public defense and criminal court processes.⁷⁴ Previous research has indicated that the larger goal of system efficiency, coupled with the individual public defender’s need to manage high caseloads, means that public defenders might not spend time listening to their clients and investigating facts⁷⁵ and, therefore, might be too quick to convince them to accept a plea bargain.⁷⁶

⁶⁸ Hartley et al., *supra* note 21, at 1064; see Blumberg, *supra* note 53, at 19, 30–31.

⁶⁹ Matthew Clair, *Being a Disadvantaged Criminal Defendant: Mistrust and Resistance in Attorney-Client Interactions*, 100 SOC. FORCES 194, 204 (2020) (finding a common theme of mistrust and skepticism of court-appointed attorneys from in-depth interviews with fifty-two defendants).

⁷⁰ Janet Moore, Vicki L. Plano Clark, Lori A. Foote & Jacinda K. Dariotis, *Attorney-Client Communication in Public Defense: A Qualitative Examination*, 31 CRIM. JUST. POL’Y REV. 1, 35 (2019) (one of many of the issues expressed by the twenty-two public defender clients in this study of attorney-client communication).

⁷¹ See Hartley et al., *supra* note 21, at 1064.

⁷² Heather Pruss, M. Sandys & S.M. Walsh, *Listen, Hear My Side, Back Me Up: What Clients Want from Public Defenders*, 43 JUST. SYS. J. 6, 14–16 (2022) (results from a thematic analysis of interviews with 120 persons represented by public defenders in a rural jurisdiction).

⁷³ *Id.* at 19.

⁷⁴ *Id.* at 18–19.

⁷⁵ See Geoffrey P. Alpert, *Inadequate Defense Counsel: An Empirical Analysis of Prisoners’ Perceptions*, 7 AM. J. CRIM. L. 1, 5–6, 20 (1979); see generally David Sudnow, *Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office*, 12 SOC. PROBS. 255, 271–74 (1965) (describing the normative process of the interactions between the public defender and prosecutor in typical cases).

⁷⁶ Nancy Albert-Goldberg & Marshall J. Hartman, *The Public Defender in America*, in 18 SAGE CRIMINAL JUSTICE SYSTEM ANNUALS: DEFENSE COUNSEL, *supra* note 25, at 67, 67 (William F. McDonald ed., 1983).

Others argue that public defenders, due to their close ties with prosecutors and judges, may be able to secure better deals than privately retained counsel.⁷⁷ Private attorneys, as opposed to public defenders, are not able to build, or be concerned about maintaining, close relationships with judges and prosecutors and, therefore, are not as concerned with quick and efficient case-processing.⁷⁸ Defendants who retain private attorneys, however, may also eventually plead guilty, or be found guilty at trial, and receive harsher punishments than those with public defenders because prosecutors were less likely to extend favorable offers of leniency.⁷⁹

Private attorneys also vary in their skill sets and levels of criminal court experience; some may even mostly practice civil law and only take on a few criminal cases a year for the extra income.⁸⁰ Compared to these less experienced private attorneys, public defenders may fare better because of their superior negotiating skills, vast courtroom experience, and first-hand knowledge of the types of cases that prosecutors are willing to plead to a lesser charge, or those where judges often hand out lenient sentences.⁸¹ It has also been argued that indigent defendants benefit from more established relationships because, in order to keep the wheels of justice turning, the members of the courtroom workgroup often exchange favors with one another.⁸² In other words, public defenders are in a better position than other types of attorneys to secure more lenient outcomes for their clients due to their close working relationships with prosecutors and judges.⁸³

Indeed, some research indicates that close working relationships can benefit defendants in terms of more lenient case outcomes.⁸⁴ A more recent study likewise found that relationships and

⁷⁷ See Jerome H. Skolnick, *Social Control in the Adversary System*, 11 CONFLICT RESOL. 52, 62 (1967); Robert V. Stover & Dennis R. Eckart, *A Systematic Comparison of Public Defenders and Private Attorneys*, 3 AM. J. CRIM. L. 265, 272 (1975).

⁷⁸ See Hartley et al., *supra* note 21, at 1064.

⁷⁹ See Skolnick, *supra* note 77, at 63.

⁸⁰ See Cohen, *supra* note 28, at 32.

⁸¹ See Hartley et al., *supra* note 21, at 1064.

⁸² See PAUL B. WICE, *CHAOS IN THE COURTHOUSE: THE INNER WORKINGS OF THE URBAN CRIMINAL COURTS* 24, 60 (1985).

⁸³ See Stover & Eckart, *supra* note 77, at 280–81.

⁸⁴ Marc G. Gertz, *The Impact of Prosecutor/Public Defender Interaction on Sentencing: An Exploratory Typology*, 5 CRIM. JUST. REV. 43, 46 (1980) (discussing the beneficial case outcomes that result from a cooperative relationship between the prosecutor and public defender); Stacy H. Haynes, Barry Ruback & Gretchen Ruth Cusick, *Courtroom Workgroups and Sentencing: The Effects of Similarity, Proximity, and Stability*, 56 CRIME & DELINQ. 126, 154–56 (2010) (discussing the findings that courtroom workgroup factors, specifically, similarity, proximity, and stability, all had influential effects on the decision to incarcerate, and impose fines or restitution).

characteristics of the courtroom workgroup affected case-processing practices.⁸⁵ Previous empirical research has also reported variations in federal sentences due to the combinations of prosecutor and judge assigned to the case.⁸⁶

Less well theorized and understood is the impact of type of counsel on court outcomes at the federal level. Public defenders in the federal criminal justice system are often characterized as the “gold standard” of public or indigent defense, and many of the criticisms levied at indigent defense systems (i.e., lack of resources, low pay, inexperience) do not necessarily apply to federal public defender organizations (FPDOs).⁸⁷ As opposed to those at the state or county level, federal public defenders tend to be well-paid, have a great deal of courtroom experience, and are more likely to have graduated from a top-tier law school.⁸⁸

There are, however, criticisms of federal public defenders that are unique to the federal system.⁸⁹ Congressional appropriation of financial support for federal public defense has placed FPDOs under judicial control, and the worry is that they would serve the system rather than client interests.⁹⁰ This issue was brought out in the Report of the Attorney General’s Commission on Poverty and the Administration of Federal Criminal Justice, referred to as the Allen Report.⁹¹ The Allen Report was influential in FPDOs not being organized at the district level but rather at the circuit level under control of the judicial council.⁹² Roughly thirty years later, a similar report, referred to as the Prado Report,⁹³ after its chairman, Judge Edward Prado of the U.S. District Court for the Western District of

⁸⁵ See Metcalfe, *supra* note 65, at 665–67 (In this study, familiarity between the prosecutor and judge increased the likelihood of a plea, and familiarity of the defense attorney to the courtroom workgroup more often resulted in the case going to trial.).

⁸⁶ Byungabae Kim, Cassia Spohn & E.C. Hedberg, *Federal Sentencing as a Complex Collaborative Process: Judges, Prosecutors, Judge-Prosecutor Dyads, and Disparity in Sentencing*, 53 CRIMINOLOGY 597, 615–17 (2015).

⁸⁷ Hazlehurst, *supra* note 34, at 51–52, 55.

⁸⁸ Iyengar, *supra* note 46, at 28.

⁸⁹ See John J. Cleary, *Federal Defender Services: Serving the System or the Client?*, 58 LAW & CONTEMP. PROBS. 65, 69–70 (1995).

⁹⁰ *Id.* at 65–66 (arguing, therefore, that federal public defenders are not independent and serve the system rather than the client).

⁹¹ ATT’Y GEN.’S COMM. ON POVERTY & ADMIN. OF FED. CRIM. JUST., REPORT OF THE ATTORNEY GENERAL’S COMMITTEE ON POVERTY AND THE ADMINISTRATION OF FEDERAL CRIMINAL JUSTICE (1963), <https://cjastudy.fd.org/sites/default/files/public-resources/Allen%20Committee%20Report%20%281963%29.pdf> [<https://perma.cc/FZH2-RYDF>] [hereinafter ALLEN REPORT].

⁹² See Cleary, *supra* note 89, at 67.

⁹³ See *id.* at 69.

Texas, also recommended that FPDOs be independent.⁹⁴ The report specifically stated that Congress should “require that the selection of the federal defender in each jurisdiction be done by an independent board or commission.”⁹⁵ The importance of an independent federal public defender organization, therefore, has been raised both prior to and subsequently to the passing of the Criminal Justice Act of 1964.⁹⁶ In order to “have true parity, both with their adversary, the federal prosecutors, and with the courts before which they practice,” FDPOs must be seen as independent of the judiciary.⁹⁷ Federal public defender offices, however, may be more independent than CJA appointed attorneys.⁹⁸ CJA panel attorneys are more likely to be former federal prosecutors, and as such, they may not be perceived as independent from the federal prosecutors and judiciary.⁹⁹ CJA panel attorneys are beholden to the very judges overseeing their cases for their appointments and compensation.¹⁰⁰ Indeed, the Cardone Report revealed that many CJA panel attorneys reported that federal judges hearing their cases often denied requests for reimbursement for hours worked or for services needed to represent their clients.¹⁰¹

Federally, there are ninety-four district courts operating under a uniform federal sentencing guidelines structure.¹⁰² Practically, however, federal law is applied across these districts by local courtroom workgroups.¹⁰³ Because of the high volume of cases represented by federal public defenders across federal district courts annually, they may be more enmeshed in these local courtroom workgroups than either CJA appointed, or privately retained, attorneys.¹⁰⁴ That is, they may spend comparatively more time, and have better working relationships, with prosecutors and judges

⁹⁴ *Id.*

⁹⁵ COMM. TO REV. CRIM. JUST. ACT PROGRAM, CR-CJAREV-MAR 93, REPORT OF THE COMMITTEE TO REVIEW THE CRIMINAL JUSTICE ACT 29 (1993), <https://cjastudy.fd.org/sites/default/files/Previous-CJA-Studies/Prado%20Committee%20Report%20%28Jan%201993%29.pdf> [<https://perma.cc/P5A-RJQE>] [hereinafter PRADO REPORT].

⁹⁶ See ALLEN REPORT, *supra* note 91, at 12–15; PRADO REPORT, *supra* note 95, at 29.

⁹⁷ Cleary, *supra* note 89, at 70–71.

⁹⁸ David E. Patton, *The Structure of Federal Public Defense: A Call for Independence*, 102 CORNELL L. REV. 335, 353–54 (2017).

⁹⁹ See Edward C. Prado, *Process and Progress: Reviewing the Criminal Justice Act*, 58 LAW & CONTEMP. PROBS. 51, 54 n.15 (1995); Patton, *supra* note 98, at 373 n.222.

¹⁰⁰ Patton, *supra* note 98, at 353–54.

¹⁰¹ CARDONE REPORT, *supra* note 41, at 118–19.

¹⁰² *About*, U.S. SENT’G COMM’N, <https://www.ussc.gov/about-page> [<https://perma.cc/6C8C-R3NL>].

¹⁰³ See, e.g., Hartley et al., *supra* note 21, at 1064.

¹⁰⁴ See *id.*

owing to their regular interaction with them.¹⁰⁵ A study using qualitative interviews found that a majority of federal judges and attorneys agreed that the local environment had an effect on district court outcomes.¹⁰⁶ To the extent that federal public defenders have closer working relationships with federal prosecutors and judges, they might be able to obtain better outcomes for their defendants or be more likely to cooperate with prosecutors to secure lenient sentences.¹⁰⁷

Federal public defenders are also likely more experienced and skilled at negotiating the complex calculations that determine the type and length of sentence under the federal sentencing guidelines grid, which may also result in more favorable outcomes as compared to those represented by CJA appointed or private attorneys.¹⁰⁸ Other studies have found that sentences were influenced by negotiations over plea agreements and presentence report findings, as well as what relevant conduct went into calculating the final offense level for a particular defendant.¹⁰⁹ Moreover, experienced public defenders often can exploit the guidelines in their client's favor and, because this is their full-time job, they can secure shorter sentences than private attorneys who accept "occasional ad hoc court appointments."¹¹⁰ Finally, the experience that federal public defenders acquire in working on a variety of cases within the federal sentencing guidelines system makes them better able to arrive at a favorable outcome for their clients.¹¹¹ An assistant federal public defender exemplifies this by stating: "I doubt any other law firm can

¹⁰⁵ See *id.*

¹⁰⁶ Scott Harris, *In Their Words: The Sentencing Decisions of Federal District Court Judges According to Judges and Attorneys*, 19 CRIMINOLOGY, CRIM. JUST., L. & SOC'Y 50, 63 (2018) (Many of the judges and attorneys agreed that local practices explained differences in sentencing outcomes across districts.).

¹⁰⁷ See Kim et al., *supra* note 86, at 616.

¹⁰⁸ Melissa Hamilton, *McSentencing: Mass Federal Sentencing and the Law of Unintended Consequences*, 35 CARDOZO L. REV. 2199, 2243 (2014) (noting that varying knowledge and experience across defense attorneys in guideline application may be reason for inconsistencies in sentences where federal defenders are able to arrive at lower sentences compared to private defense attorneys).

¹⁰⁹ Jeffery T. Ulmer, *The Localized Uses of Federal Sentencing Guidelines in Four U.S. District Courts: Evidence of Processual Order*, 28 SYMBOLIC INTERACTION 262, 262–63 (2005) (discussing how five key features of the U.S. Sentencing Guidelines (relevant conduct, substantial assistance, acceptance of responsibility, pre-sentence investigation reports, and resentencing under Federal Rule 35) resulted in inter-district variation in sentencing practices across four federal districts).

¹¹⁰ Stephanos Bibas, *Federalism: Regulating Local Variations in Federal Sentencing*, 58 STAN. L. REV. 137, 144–45 (2005) (discussing how districts which use federal defender offices for indigent defense in a majority of their cases, therefore, might have lower average sentences as a result).

¹¹¹ See Hamilton, *supra* note 108, at 2243.

match the breadth of our practice. From driving offenses to large-scale drug conspiracies, racketeering to environmental crimes, homicide to political corruption, complex fraud cases to terrorism, the office does it all.”¹¹²

Other research has confirmed that public defenders provide higher quality representation than CJA panel attorneys.¹¹³ In interviews with panel attorneys and federal public and community defenders, these authors report that having a federal public defender office “elevates a district’s defense practice” and, more specifically, panel attorneys reported that they were “disadvantaged in relation to defenders . . . with respect to advances in technology-based legal resources which they are often not able to afford.”¹¹⁴ Federal public defender organizations, however, also assist in providing resources to CJA panel attorneys via the provision of information and training on various topics of federal case-processing procedures to better prepare them to effectively represent the federal defendants appointed to them.¹¹⁵ To date, however, there has been little empirical research regarding the nature of legal representation for people prosecuted and sentenced in the federal justice system and the impact these varying types of representation have on relevant case-processing outcomes.

A. Previous Research

Several landmark SCOTUS decisions regarding the Sixth Amendment right to counsel, along with the Criminal Justice Act of 1964 and its progeny, have ensured that indigent defendants accused of federal crimes are afforded representation by counsel at all critical stages in the justice system.¹¹⁶ Given the constitutional importance of the right to counsel, however, there has been relatively little empirical scholarship examining the effect of the type of counsel representing a defendant on criminal court outcomes. Furthermore, the majority of studies that do exist focus on state and local courts, and many of these studies are quite dated (i.e., over two decades old).¹¹⁷

¹¹² Hazlehurst, *supra* note 34, at 52.

¹¹³ WOOL ET AL., *supra* note 11, at 15.

¹¹⁴ *Id.* at 15–16.

¹¹⁵ Hazlehurst, *supra* note 34, at 52.

¹¹⁶ *See id.*

¹¹⁷ *See generally* Beck & Shumsky, *supra* note 29, at 525; Champion, *supra* note 29, at 253; Floyd Feeney & Patrick G. Jackson, *Public Defenders, Assigned Counsel, Retained Counsel: Does the Type of Criminal Defense Counsel Matter?*, 22 RUTGERS L.J. 361, 364 (1990); Hanson & Ostrom, *supra* note 23, at 6–8.

In general, the findings from these studies are mixed regarding which type of counsel is more effective at securing favorable outcomes for their clients.¹¹⁸ Many of the studies find little to no difference in the effects of types of counsel across various court outcomes such as pretrial detention;¹¹⁹ judicial decisions to grant bail or to release defendants on their own recognizance;¹²⁰ conviction;¹²¹ guilty pleas;¹²² plea agreements and charge reductions;¹²³ incarceration;¹²⁴ and sentence length.¹²⁵

Other studies have found some significant differences regarding type of counsel, but results vary depending on the types of attorneys included and the decision-making stage examined.¹²⁶ For example, one study found that public defenders got better outcomes than court-appointed attorneys regarding conviction rates and length of prison terms.¹²⁷ Other research finds that those represented by public defenders are more likely to plead guilty,¹²⁸ and have higher likelihoods of incarceration,¹²⁹ as well as lengthier sentences¹³⁰ than those with private attorneys. The few studies that have included assigned counsel in these comparisons demonstrate that they fare worse than both public defenders¹³¹ and private attorneys.¹³²

¹¹⁸ See, e.g., K.B. Turner & James B. Johnson, *The Relationship Between Type of Attorney and Bail Amount Set for Hispanic Defendants*, 29 HISP. J. BEHAV. SCI. 384, 396 (2007).

¹¹⁹ See *id.*

¹²⁰ See Hartley et al., *supra* note 21, at 1066; Williams, *supra* note 52, at 210–11.

¹²¹ See Cohen, *supra* note 28, at 39; Hanson & Ostrom, *supra* note 23, at 280; Gerald R. Wheeler & Carol L. Wheeler, *Reflections on Legal Representation of the Economically Disadvantaged: Beyond Assembly Line Justice: Type of Counsel, Pretrial Detention, and Outcomes in Houston*, 26 CRIME & DELINQ. 319, 325 (1980); CAROLINE WOLF HARLOW, U.S. DEP'T OF JUST., NCJ 179023, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT: DEFENSE COUNSEL IN CRIMINAL CASES (2000), <https://bjs.ojp.gov/content/pub/pdf/dccc.pdf> [<https://perma.cc/HE7P-EVY9>].

¹²² See Nardulli, *supra* note 53, at 414–15.

¹²³ See Bin Liang, Michael A. Long & Wendy Brame, *Is It Legal Representation or Clients?: An Empirical Testing of Clients' Performance and Their Legal Representation in Tulsa County Drug and DUI Programs*, 37 AM. J. CRIM. JUST. 544, 558 (2012); Hartley et al., *supra* note 21, at 1066.

¹²⁴ See Cohen, *supra* note 28, at 42; Hartley et al., *supra* note 21, at 1067; Williams, *supra* note 52, at 210–11.

¹²⁵ See Hartley et al., *supra* note 21, at 1067; Williams, *supra* note 52, at 210.

¹²⁶ See Anderson & Heaton, *supra* note 22, at 182; Champion, *supra* note 29, at 258.

¹²⁷ See Anderson & Heaton, *supra* note 22, at 179–87.

¹²⁸ See Champion, *supra* note 29, at 258.

¹²⁹ See Hanson & Ostrom, *supra* note 23, at 58–59.

¹³⁰ See Hoffman et al., *supra* note 30, at 241.

¹³¹ See Anderson & Heaton, *supra* note 22, at 178–79; Cohen, *supra* note 28, at 33; Iyengar, *supra* note 46, at 14; Michael A. Roach, *Indigent Defense Counsel, Attorney Quality, and Defendant Outcomes*, 16 AM. L. & ECON. REV. 577, 584, 600–03 (2014) (finding that assigned counsel get less favorable outcomes for their clients than public defenders in a study of felony defendants in large urban counties).

¹³² See Beck & Shumsky, *supra* note 29, at 532, 535–36; Champion, *supra* note 29, at 262.

As stated earlier, a large percentage of defendants prosecuted for federal crimes (roughly 66% annually) are represented by either a federal public defender or an appointed panel attorney.¹³³ Although both types of attorneys are viewed as being very effective,¹³⁴ in a study comparing their performances, federal public defenders fared better; defendants represented by CJA panel attorneys had greater likelihoods of being found guilty and received longer prison sentences.¹³⁵ More nuanced findings were also present in this study, where CJA panel attorneys fared better when they had higher caseloads and their compensation was closer to the market-level wage in the district.¹³⁶ The author concludes that this is evidence that increased resources and courtroom experience, or exposure to the members of the courtroom workgroup, improves outcomes for defendants.¹³⁷ To the extent that federal public defenders are more knowledgeable and adept at the intricacies involved in arriving at an appropriate punishment, their clients may receive more lenient outcomes.¹³⁸ A report using data merged from the Administrative Office of U.S. Courts (AOUSC) and the United States Sentencing Commission (USSC) for the years 2015-2018 included cases represented by private attorneys and found that those represented by private attorneys or CJA panel attorneys had significantly greater odds of incarceration than those represented by federal public defenders, net of other legal and case-processing characteristics.¹³⁹ The authors report similar findings regarding sentence length decisions;¹⁴⁰ defendants represented by private attorneys and CJA panel attorneys had 8% and 4% longer average sentences, respectively, than those represented by public defenders.¹⁴¹

Although the above research has advanced knowledge on the effect of type of counsel on criminal court outcomes, the overall conclusions from these studies are somewhat inconsistent;¹⁴² the effect of type of counsel on court outcomes is dependent on the different types of counsel included in the study as well as the type of outcomes examined.¹⁴³ Most of this research is also limited by the fact that it

¹³³ See HARLOW, *supra* note 121, at 1.

¹³⁴ See *id.* at 1–3.

¹³⁵ See Iyengar, *supra* note 46, at 11–14.

¹³⁶ See *id.* at 25–26.

¹³⁷ See *id.* at 28.

¹³⁸ See *id.*

¹³⁹ FREEMAN ET AL., *supra* note 12, at 17–18.

¹⁴⁰ *Id.* at 20.

¹⁴¹ *Id.* at 21.

¹⁴² See Hartley et al., *supra* note 21, at 1064; FREEMAN ET AL., *supra* note 12, at 5.

¹⁴³ See Hartley et al., *supra* note 21, at 1065.

is outdated, and only compares public defenders to private attorneys on selected outcomes of interest.¹⁴⁴ Further, only a handful of studies have attempted to examine the impact of type of counsel on federal court decision-making practices.¹⁴⁵ These mixed empirical findings, coupled with a general paucity of knowledge at the federal level, suggest that questions remain about the quality of indigent defense representation in the American criminal justice system.

B. Current Study

The current study attempts to build upon the previous literature by assessing the effects of three different types of counsel (public defenders, assigned CJA panel attorneys, and privately retained attorneys) across three different federal court outcomes (pretrial release, incarceration, and sentence length) using the recent available data from FJSP (2012 to 2016) while controlling for individual case and district-level factors. Based on the idea that federal public defender organizations are considered the gold standard of public defense, as well as the empirical research on courts-as-communities perspective with notions of organizational efficiency and courtroom workgroup culture that characterize the federal criminal court system, the current study tests the following four hypotheses:

H1: Defendants represented by federal public defenders will have greater odds of pretrial release on recognizance (ROR) than those represented by either CJA appointed or privately retained counsel, net of other legal, case-processing, extra-legal (i.e., defendant), and district-level control factors.

H2: For those defendants convicted of a federal crime, those represented by federal public defenders will have lower odds of incarceration than those represented by either CJA appointed or privately retained counsel, net of other legal, case-processing, extra-legal, and district-level control factors.

H3: For convicted defendants sentenced to a term of imprisonment, those represented by federal public defenders will have shorter sentence lengths than those represented by either CJA appointed or privately retained

¹⁴⁴ See *id.* at 1069; Williams, *supra* note 23 at 255; Williams, *supra* note 52, at 210.

¹⁴⁵ See *supra* notes 135–39 and accompanying text.

counsel, net of other legal, case-processing, extra-legal, and district-level control factors.

H4: At the district (L2) level we expect type of counsel will affect outcomes such that districts with a higher percentages of cases represented by federal public defenders will have greater odds of pretrial release, lower odds of incarceration, and shorter sentence lengths, on average, net of other case level legal, and extra-legal factors; we also include a district level measure of judicial caseload pressure (the number of average annual cases at the district level divided by the district's number of judges) to examine if higher caseloads lead to more lenient outcomes. As far as we know, this is the first study to explore whether type of counsel at the district level leads to inter-district variation in punishment outcomes.

C. Methodology

1. Data

Data for the current study comes from the FJSP, obtained through the Inter-University Consortium for Political and Social Research (ICPSR), and combines information from the AOUSC and the USSC. The FJSP data series provides comprehensive and standardized information on individual cases processed in the federal criminal justice system by compiling and converting administrative data from multiple agencies at different stages of case processing into Standard Analysis Files (SAFs).¹⁴⁶ Although personally identifiable information is redacted from the SAFs, it is possible to link records across adjacent stages of case processing through the FJSP paired-agency ("dyad") link files. These files provide a crosswalk between two data sources by matching unique identifiers across agencies and over time (since 1994).

AOUSC data contain information on defendants prosecuted in federal district court, and USSC data contain information on people sentenced in federal district court.¹⁴⁷ To address our research

¹⁴⁶ See Williams P. Adams & Mark Motivans, *Using Data from the Federal Justice Statistics Program (FJSP)*, 16 FED. SENT'G REP. 18, 19 (2003). There are six agencies that contribute data extracts to the FJSP: the Drug Enforcement Administration (DEA), the U.S. Marshals Service (USMS), the Executive Office for U.S. Attorneys (EOUSA), the Administrative Office of the U.S. Courts (AOUSC), the U.S. Sentencing Commission (USSC), and the Federal Bureau of Prisons (BOP). *Id.* at 18.

¹⁴⁷ See *id.*

questions, we use the AOUSC-USSC link file to merge data from the AOUSC, including information on the type of counsel, with the corresponding USSC records. Five years of data, from fiscal year 2012 to 2016, were merged using the full FJSP dyad link file to focus on a more recent period for which data quality and comparability are higher. This data, therefore, contains information on cases prosecuted and sentenced in federal district court across a five-year period. Like previous federal sentencing studies, we exclude cases from the United States Territories, as well as those for which counsel type was missing or the defendant waived their right to counsel. Petty and misdemeanor cases were also removed. After cases missing information on variables of interest were removed using list-wise deletion, the final model Ns are 176,277 for the ROR decision, 176,271 for incarceration decision, and 161,987 for the sentence length decision.¹⁴⁸

2. Dependent Variables

The current study analyzes the merged data described above to examine three main dependent variables (*pretrial release*, the *incarceration* decision, and *sentence length*). Pretrial detention is a dichotomous measure of whether or not the defendant was released on their own recognizance (ROR) as opposed to the judge setting bail or denying bail. Initially, we wanted to assess an effect of whether the defendant was released versus detained to include those released on bail; however, because securing release via bail may be a function of a defendant's ability to pay rather than the effectiveness of the type of attorney representing them, and we had no measures of a defendant's financial resources, we believed this was not appropriate. The pretrial release model is, therefore, an analysis of the predictors of the judicial decision to grant pretrial release without imposing bail and, in particular, whether the type of counsel representing the defendant has any significant effects on this decision, net of controls. The incarceration decision is also a dichotomous dependent measure of whether the defendant was sentenced to a term of imprisonment by the judge. Finally, the sentence length decision is a continuous measure of the number of months of imprisonment ordered for those sentenced to prison and ranges from one day to 470 months. We analyze a log-transformed measure of sentence length due to its

¹⁴⁸ See *infra* Table 1 (The cases included in the final analyses were similar to the fully merged data with all independent and dependent variables, indicating that missingness was not systematic to variables of interest.).

positively skewed nature. After logarithmic transformation, the residuals were normally distributed, and skewness levels were not problematic (skewness = -0.891, kurtosis = 4.877). Roughly 92% of those convicted were sentenced to prison.

3. Independent Variables

The independent variables include two levels of measures at the case (L1) and district (L2) level. The L1 variables are individual predictors and are categorized into case (i.e., legally relevant), case-processing, and defendant (i.e., extra-legal) characteristics. The main variable of interest in the current study is related to the type of counsel representing the defendant. As such, our analytic models include measures of whether the defendant was represented by a federal *public defender* (which includes community defenders), an *appointed* panel attorney (CJA), or a retained *private attorney*; those represented by a public defender serve as the reference group.¹⁴⁹

Legal case variables include the *presumptive minimum sentence* and *criminal history* category for the defendant, as well as the *main offense type* charged. The presumptive minimum sentence is the minimum sentence recommended by the guidelines; it is calculated using a number of factors, including offense seriousness, any aggravating or mitigating factors, the presence of any mandatory minimums, and the criminal history score.¹⁵⁰ Several researchers,

¹⁴⁹ See generally Harlow, *supra* note 121, at 2–4, 3 tbls.2 & 3. We use type of counsel at filing as there is no indicator for counsel type at case termination in the currently available FJSP data. Some defendants, thus, did not have information on counsel type at this early stage. This likely resulted in fewer people being represented by private attorneys in our data (12%), compared to those with private attorneys at case termination (33%). A small percentage of defendants (2%) also waived their right to counsel or represented themselves. These cases, however, were removed from analyses due to the fact that cell sizes in cross tabulations with the dependent and other independent variables were too small to utilize inferential statistics (i.e., 0.01% represented themselves in immigration cases, and 0.01% of Hispanic defendants represented themselves).

¹⁵⁰ See generally Rodney L. Engen & Randy R. Gainey, *Conceptualizing Legally Relevant Factors Under Guidelines: A Reply to Ulmer*, 38 CRIMINOLOGY 1245, 1245–51 (2000). Sentencing scholars have argued that calculating a measure of the presumptive sentence as a proxy for legal factors relevant at sentencing is superior to alternatives because of the nonlinear relationship between offense seriousness, prior criminal history, and sentence length and because it controls for any applicable mandatory minimums that trump the guideline minimum sentence. We calculated the presumptive sentence in the following way: if a case had no mandatory minimum or had a mandatory minimum, but a safety valve provision applied, the presumptive sentence equaled the guideline minimum sentence. Second, if the case had a mandatory minimum, and no safety valve attached, and the mandatory minimum was greater than the guideline minimum, then the presumptive sentence was equal to the mandatory minimum sentence. Third, if the case had a mandatory minimum, and there was no safety valve attached, and the mandatory minimum was less than the guideline minimum, then the presumptive sentence equaled the guideline minimum sentence. This presumptive sentence

however, have noted the importance of including the criminal history score as a separate predictor in regression models due to its independent effect on sentencing outcomes in past research.¹⁵¹ Both the presumptive minimum sentence and criminal history category are included in our analytic models with no collinearity ($r = 0.2355$) resulting. Offense Type includes six dummy variables measuring *violent*, *property*, *public order*, *drug*, *weapons*, and *immigration offenses*; violent offenses serve as the reference category. The *number of counts* is a continuous measure, truncated at seven (99th percentile). We also control for the *year* in which the case was prosecuted via a series of dummy variables for each year between 2013 and 2016, with 2012 as the reference year.

Case-processing characteristics include the defendant's *pretrial status* (included as a predictor in the incarceration and sentence length decision models only) and whether the defendant was convicted at *trial* or pled guilty. Pretrial detention status is measured by three dummy variables (*detained*, which includes those who were denied bail by the judge as well as those who had bail set but could not afford to secure their release; *released ROR*; and *out on bail*; defendants who were detained serve as the reference group). The measure for the plea variable is dichotomous (1 = pled not guilty and was convicted at *trial*; 0 = *pled guilty*). A series of dummy variables were also included to measure if the defendant received a departure from the federal sentencing guidelines (*within range*, *above range*, *government sponsored departure*,¹⁵² and *downward departure*; *within range* sentences serve as the reference group).

Extra-legal, defendant factors include *race/ethnicity*, *age*, *gender*, *citizenship*, *education*, and *number of dependents*. Race/ethnicity is measured by a series of dummy variables (*white*, *Black*, *Hispanic*,

measure, therefore, captures a defendant's presumptive sentence under the guidelines or the minimum sentence that the judge could impose without granting a downward departure.

¹⁵¹ See, e.g., Doerner & Demuth, *supra* note 16, at 11–12; Engen & Gainey, *supra* note 150, at 1249–50; Johnson & Betsinger, *supra* note 16, at 1060–61; Jeffery T. Ulmer, James Eisenstein & Brian D. Johnson, *Trial Penalties in Federal Sentencing: Extra-Guidelines Factors and District Variation*, 27 JUST. Q. 560, 572 (2009) (arguing that criminal history is not “highly correlated” with the presumptive guideline minimum and so its inclusion allows for an examination of how criminal history conditions court outcomes, in this case, trial penalties); Jeffery T. Ulmer, Michael Thomas Light & John H. Kramer, *Racial Disparity in the Wake of the Booker/Fanfan Decision: An Alternative Analysis to the USSC's 2010 Report*, 10 CRIMINOLOGY & PUB. POL'Y 1077, 1080–87 (2011) (providing a detailed discussion regarding the correct specification of legally relevant variables in the presumptive sentencing model).

¹⁵² See 18 U.S.C. app. § 5K1.1 (“Upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense, the court may depart from the guidelines.”).

and *other*;¹⁵³ white defendants serve as the reference group). *Age* is measured by three dummy variables (*25 and under*, *26-40*, and *41 and over*; *25 and under* serves as the reference category). *Gender* is a dichotomous measure where *male* = 1, *female* = 0. *Citizenship* is measured by three dummy variables (*citizen*, *permanent resident*, *noncitizen*; *citizen* serves as the reference category). The defendant's education level was also included and measured with four dummy variables (*less than high school degree*, *high school graduate*, *some college*, and *college graduate*; *less than high school* is the reference group). Finally, the measure of *dependents* is continuous and indicates the number of financial dependents that the defendant supports and is truncated at seven dependents (99th percentile).

Lastly, district level (L2) variation in our dependent variables was controlled by utilizing multilevel models which we discuss with greater specificity below. We also include a measure for the district's *caseload pressure*, calculated as the average number of cases per year in each district divided by the number of judges assigned to the district.¹⁵⁴ Finally, we created level two measures of the average percentage of cases represented by a CJA panel attorney (*percent CJA appointed*) and average percentage of cases represented by private attorneys (*percent private attorney*) across the five years for each district. These aggregate variables will act as a proxy for the size and level of engagement of CJA appointed and private attorney representation in the district.

4. Analytic Strategy

This study employs various analytic techniques, including multi-level modeling, to examine the individual and contextual correlates of federal court outcomes to account for the nested nature of the data. Two-level models are appropriate when data are measured in different aggregation units, as is the case here, with federal criminal cases nested within federal districts.¹⁵⁵ More specifically, we employ univariate, bivariate, and multivariate

¹⁵³ Defendants identified as Asian, Native American, Pacific Islander, or other race/ethnicity were included in this category.

¹⁵⁴ See generally *United States Districts—National Judicial Caseload Profile*, U.S. CTS. (2019) https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0331.2019.pdf [<https://perma.cc/WW8G-RUAS>]. This data provides the number of district court judges in each district across fiscal years 2014-2019. Interestingly, the number of judges in each district was the same across the six years for all districts. Thus, it was not necessary to calculate an average number of judges for each district across these years.

¹⁵⁵ See generally ANTHONY S. BRYK & STEPHEN W. RAUDENBUSH, *HIERARCHICAL LINEAR MODELS: APPLICATIONS AND DATA ANALYSIS METHODS* 1–15 (Diane S. Foster ed., 1992).

analyses to describe the data, explore correlations between our dependent and independent variables, and assess the influence of several empirically relevant independent variables, primarily the three measures of type of counsel, on the dependent variables. Initially, we examine how type of counsel varies across our main dependent variables (pretrial detention, incarceration, and sentence length) and how it is correlated with the independent variables (e.g., type of offense, criminal history, sex, race, ethnicity, citizenship, and education).

Multilevel modeling allows for differentiation between the influence of case level (L1) and district level (L2) variables, producing unbiased estimates of the direct effects of covariates.¹⁵⁶ To accomplish this, we conduct two models per outcome. The first model includes all L1 predictors to assess their direct effects on the outcome; these variables are grand mean-centered with fixed error terms to estimate a baseline model. Model 2 adds the Level 2 predictors to examine contextual effects; L2 variables aggregated from L1 (case level) are group mean centered. We use logistic regression for the models examining the ROR and incarceration decision and ordinary least squares linear regression for the sentence length models.¹⁵⁷

IV. RESULTS

A. Descriptive Statistics

Descriptive statistics across the dependent variables are displayed in Table 1 and indicate that across the five years of federal criminal cases examined here, 48% of defendants were represented by public defenders, 40% were represented by CJA appointed attorneys, and the remaining 12% retained a private attorney. Most defendants were also detained in custody, 80% and 85% of those included in the incarceration decision and sentence length models, respectively. The average presumptive sentence length was about 57 months, and average criminal history category was 2.33. Federal cases were mostly comprised of drug (31%) and immigration (42%) offenses, followed by property (12%), public order (7%), weapons (5%), and violent offenses (3%). Regarding the federal sentencing guidelines, only about half (48%) of defendants were sentenced within the

¹⁵⁶ See *id.* at 24–25.

¹⁵⁷ The ROR and incarceration models exclude the presumptive sentence, the acceptance of responsibility, and the departure variables, which are relevant for sentence length decisions only. An indicator for trial disposition is included in the incarceration and sentence length models to capture the effect of going to trial on sentence severity.

prescribed sentencing range; many defendants received government-sponsored substantial assistance (31%) and downward (19%) departures allowing them to be sentenced below the guideline range. Only 2% of the cases received sentences above the guideline-prescribed maximum. The average number of counts defendants were facing was 1.27, and only 3% were convicted at trial.

Table 1: 2012-2016 Descriptive Statistics Across Dependent Variables

			Released ROR (N=176,277)	In/Out Decision (N=176,271)	Sentence Length (N=161,987)
	Min	Max	Mean	Mean	Mean
Type of Counsel					
Public Defender	0	1	0.48	0.48	0.49
CJA Appointed	0	1	0.40	0.40	0.41
Private Attorney	0	1	0.12	0.12	0.10
Case Characteristics					
Pretrial Detention	0	1	-	0.80	0.85
Presumptive Sentence	0	470	-	-	56.92
Criminal History	1	6	2.33	2.33	2.42
Accept Responsibility	-3	0	-	-	-2.52
Violent Offense	0	1	0.03	0.03	0.03
Property Offense	0	1	0.12	0.12	0.09
Drug Offense	0	1	0.31	0.31	0.32
Public Order Offense	0	1	0.07	0.07	0.06
Weapons Offense	0	1	0.05	0.05	0.05
Immigration Offense	0	1	0.42	0.42	0.44
Within Range	0	1	-	-	0.48
Above Range	0	1	-	-	0.02
Gov't Sponsored Departure	0	1	-	-	0.31
Downward Departure	0	1	-	-	0.19
Number of Counts	1	7	1.27	1.27	1.28
Trial	0	1	-	-	0.03
Defendant Characteristics					
White	0	1	0.17	0.17	0.15
Black	0	1	0.14	0.14	0.14
Hispanic	0	1	0.66	0.66	0.69
Other Race	0	1	0.03	0.03	0.02
Male	0	1	0.88	0.88	0.90
Age	16	89	36.16	36.16	35.79
U.S. Citizen	0	1	0.46	0.46	0.42
Permanent Resident	0	1	0.05	0.05	0.05
Noncitizen	0	1	0.50	0.50	0.53
Less than High School	0	1	0.56	0.56	0.59
High School Graduate	0	1	0.25	0.25	0.24
Some College	0	1	0.13	0.13	0.12
College Graduate	0	1	0.05	0.05	0.04
Number of Dependents	0	7	1.75	1.75	1.78
District Level Variables					
Percent CJA Appointed	0.12	0.75	0.39	0.39	0.39
Percent Private Attorney	0.01	0.40	0.11	0.11	0.11
Caseload Pressure	14	580	288	288	298

Note: The minimum and maximum are the same across all three dependent variables.

Note: Percentages may not sum to 100 for all variables due to rounding to two decimal places.

Regarding defendant characteristics, the majority were male (88%), and roughly two-thirds of the defendants were Hispanic (66%); another 17% and 14% were white or Black, respectively. Only 3% identified as another race (Native American or Asian/Pacific

Islander). Of those sentenced to prison, a slightly higher percentage were male (90%) and Hispanic (69%), while a slightly lower percentage was white (15%). The average age of defendants was around thirty-six but ranged from sixteen to eighty-nine. Regarding citizenship status, 46% of defendants were U.S. citizens, while 50% were noncitizens; only 5% had legal permanent resident status. Finally, over half of the defendants did not have a high school education (56%), and the average number of dependents was 1.75.

The district level (L2) variables indicate that the type of counsel representing the defendants differed widely across the ninety federal districts examined here. For example, the percentage of defendants represented by CJA appointed attorneys in a district ranged from 12% to a high of 75% of cases. The number of cases where a defendant retained private counsel also varied across districts, but not as widely, from a low of only 1% of a district's cases to 40% of the district's caseload. Finally, judicial caseload pressure varied from a low of 14 cases per judge to a high of 580.

Table 2 displays the means and standard deviations of the independent and dependent variables in our models across the three different types of counsel representing the defendant. Regarding our first dependent variable, the release decision, only about 2% of defendants represented by public defenders and 3% represented by CJA appointed attorneys were released on their own recognizance, compared to 12% of defendants represented by private attorneys who were released. Similarly, 95% of defendants with public defenders or CJA appointed attorneys were sentenced to prison, versus only 80% of those with private attorneys. Average sentence lengths, however, reveal that those represented by public defenders received the shortest average sentences at 37 months, whereas those who retained private attorneys received average sentences that were over 20 months longer at 59 months. Those with CJA appointed attorneys also received sentences that were higher than those of their counterparts represented by public defenders at roughly 50 months. From these statistics, it appears that those who retain private attorneys are more likely to be released without bail and less likely to be incarcerated. But, if they are incarcerated, these defendants are likely to receive longer average sentences than those represented by CJA attorneys and especially those represented by federal public defenders.

Table 2: 2012-2016 Bivariate Descriptive Statistics by Type of Counsel

Total N=176,271	Public Defender (N=83,969)		CJA Appointed (N=71,017)		Private Attorney (N=21,285)	
	Mean	S.D.	Mean	S.D.	Mean	S.D.
Dependent Variables						
Released ROR	0.02	0.14	0.03	0.18	0.12	0.33
In/Out Decision	0.95	0.21	0.95	0.22	0.80	0.40
Sentence Length	37.40	54.22	50.35	68.98	59.15	67.65
Case Characteristics						
Pretrial Detention	0.88	0.33	0.84	0.37	0.38	0.48
Presumptive Sentence	43.23	61.91	62.36	82.09	65.98	79.25
Criminal History	2.46	1.54	2.41	1.60	1.55	1.18
Accept Responsibility	-2.48	0.63	-2.52	0.74	-2.59	0.80
Violent Offense	0.04	0.19	0.02	0.15	0.02	0.15
Property Offense	0.08	0.28	0.08	0.27	0.36	0.48
Drug Offense	0.21	0.41	0.43	0.50	0.31	0.46
Public Order Offense	0.06	0.23	0.05	0.21	0.22	0.41
Weapons Offense	0.06	0.23	0.04	0.20	0.04	0.21
Immigration Offense	0.55	0.50	0.37	0.48	0.04	0.20
Within Range	0.54	0.50	0.42	0.49	0.35	0.48
Above Range	0.02	0.14	0.02	0.14	0.02	0.13
Gov't Sponsored Departure	0.23	0.42	0.40	0.49	0.34	0.47
Downward Departure	0.20	0.40	0.16	0.37	0.30	0.46
Number of Counts	1.19	0.71	1.29	0.91	1.55	1.25
Trial	0.02	0.13	0.03	0.18	0.05	0.21
Defendant Characteristics						
White	0.12	0.32	0.14	0.35	0.48	0.50
Black	0.11	0.32	0.17	0.37	0.18	0.39
Hispanic	0.75	0.44	0.67	0.47	0.28	0.45
Other Race	0.02	0.14	0.03	0.16	0.06	0.23
Male	0.90	0.30	0.87	0.33	0.83	0.38
Age	35.79	10.51	34.74	10.25	42.34	12.66
U.S. Citizen	0.34	0.48	0.48	0.50	0.84	0.37
Permanent Resident	0.04	0.20	0.05	0.21	0.07	0.25
Noncitizen	0.62	0.49	0.48	0.50	0.09	0.29
Less than High School	0.64	0.48	0.59	0.49	0.19	0.39
High School Graduate	0.22	0.42	0.26	0.44	0.28	0.45
Some College	0.11	0.31	0.12	0.33	0.29	0.45
College Graduate	0.03	0.17	0.03	0.16	0.24	0.43
Number of Dependents	1.81	1.76	1.76	1.74	1.49	1.59

Note: Percentages may not sum to 100 for all variables due to rounding to two decimal places.

The bivariate descriptive results of case characteristics across types of counsel may help to explain some of the above differences.

For example, a much higher percentage of those with public defenders and CJA appointed attorneys were detained compared to those with private attorneys (88%, 84%, and 38%, respectively), but those with private attorneys and CJA appointed attorneys had much higher presumptive sentences than those represented by public defenders (sixty-six and sixty-two months versus forty-three months). Defendants who retained private attorneys, however, had lower average criminal history scores (1.55 versus 2.46 and 2.41 for public defenders and CJA appointed attorneys). Regarding offense types, public defender caseloads were mainly comprised of people charged with immigration and drug offenses, 55% immigration and 21% drug, while CJA appointed attorney caseloads were comprised of similar cases. Drug offenses made up 43% of their caseloads, followed by immigration at 37%. Public defenders also represent more people charged with violent and weapons offenses than either CJA appointed or privately retained counsel (4% and 6% versus 2% and 4%, respectively). A large percentage of private attorneys' caseloads were those charged with property offenses (36%) and drug offenses (31%), followed by public order offenses (22%). Immigration offenders represent a small proportion of their caseload (4%).

Further, those represented by public defenders have the highest percentage of within-range sentences (54%), followed by CJA appointed attorneys (42%) and private attorneys (35%). Those represented by public defenders also have the lowest percentage of government-sponsored departures (23%), followed by private attorneys (34%) and CJA appointed attorneys (40%). Private attorneys, however, appear to be able to secure the highest percentage of judicial downward departures from the guidelines-based sentence at 30%, followed by public defenders at 20% and CJA appointed attorneys at 16%. The average number of counts was highest for those who retained private attorneys (1.55), followed by CJA appointed attorneys (1.29) and public defenders (1.19). Finally, higher percentages of those represented by private attorneys decided to plead not guilty and go to trial (5% versus 3% and 2%, respectively, of those represented by CJA appointed attorneys and public defenders).

When analyzing the demographic characteristics of defendants represented by the three types of counsel, interesting results emerge. For example, a larger percentage of private attorney caseloads are comprised of white defendants (48% versus only 14% for CJA appointed counsel and 12% for public defenders) and, to a smaller degree, of Black defendants (18% versus 17% and 11% for CJA

appointed attorneys and public defenders, respectively). Hispanics make up a large percentage of public defender cases (75% versus 67% for CJA appointed counsel and 28% for private attorneys). Whether these differences reflect the financial ability of white defendants to be able to retain a private attorney, or they reflect the offense types that make up the attorney caseloads, or both, cannot be determined as these data have no information on a defendant's socioeconomic status. The larger number of Hispanic defendants represented by public defenders and CJA appointed attorneys, however, is likely due to the large percentage of immigration and drug cases that these attorneys represent.¹⁵⁸ This explanation is substantiated by the statistics for citizenship where noncitizens (including permanent residents) comprise 66% and 53% of public defender and CJA appointed attorney caseloads and only 16% of private attorney caseloads.

Regardless of the type of counsel, the majority of the caseloads are made up of male defendants. Females, however, make up a larger percentage of private and CJA appointed attorney caseloads (17% and 13%) than those of public defenders (10%). Again, we cannot say for certain why this is the case other than private attorneys handle a larger percentage of property and public order offenses for which females make up a higher percentage of defendants. Similar results are evident regarding education levels of defendants where public defender and CJA appointed attorney caseloads are much more likely to be made up of defendants with lower levels of education. This is especially pronounced, related to having some college or being a college graduate; only 14% and 15% of defendants represented by public defenders and CJA appointed attorneys have attended college or have a degree versus 53% of private attorney clients. Finally, the number of dependents that people are responsible for varies only slightly across type of counsel (1.81 for public defenders, 1.76 for CJA appointed attorneys, and 1.49 for private attorneys).

¹⁵⁸ See SAM TAXY, JULIE SAMUELS & WILLIAM ADAMS, U.S. DEPT OF JUST., NCJ 248648, SPECIAL REPORT, DRUG OFFENDERS IN FEDERAL PRISON: ESTIMATES OF CHARACTERISTICS BASED ON LINKED DATA (2015), <https://bjs.ojp.gov/content/pub/pdf/dofp12.pdf> [<https://perma.cc/YH6Z-VY8S>].

B. Multilevel Regression Results

Table 3, Model 1 summarizes the multilevel model examining the release decision with L1 predictors only.¹⁵⁹ In line with our first hypothesis, the type of counsel has significant effects on the release decision. However, the differences between federal public defenders, CJA appointed attorneys, and private attorneys on the decision to release a defendant ROR were the opposite of what we hypothesized. Defendants with both CJA appointed attorneys and private attorneys had significantly higher odds of being released on their own recognizance (without bail) than those with federal public defenders, almost 1.2 and 1.7 times higher odds, respectively. These effects, which are net of other legal, case-processing, and extra-legal factors, are in line with the univariate descriptive results, which showed that a higher percentage of CJA appointed attorneys and private attorneys, especially, had their clients released ROR.

Extra-legal variables also significantly predicted the release decision. For example, some of the race/ethnicity variables were significant; Black and Hispanic defendants had significantly lower odds of being released ROR than their white counterparts (9% and 17% lower, respectively). Males likewise had significantly lower odds (36% lower) of being released than females. Citizenship status also affected the release decision, where legal residents and noncitizens both had significantly lower odds of release than citizens; noncitizens were especially less likely to be released; this is likely due to deportation retainers placed on noncitizens charged with federal crimes. Older people and those with increased levels of education were associated with increased odds of being released, but the number of dependents was not significantly associated with release.

Legally relevant variables also exerted influence on the release decision. Those with higher criminal histories and more counts in their cases had decreased odds of being released, 39% and 12% lower, respectively. Finally, all offense types had increased odds of being released as compared to violent offense cases; odds were 2.23 to 6.78 times higher for defendants charged with federal offenses that were other than violent.

¹⁵⁹ Before estimating our main models, we estimated unconditional models for ROR, incarceration, and logged sentence length (available on request). Significant inter-district variation existed among all outcomes, indicating a multilevel model was appropriate.

**Table 3: Multilevel Random Intercept ROR Models
(L1 =176,277; L2 = 90)**

Fixed Effect	Model 1			Model 2		
	Coeff.	S.E.	Odds Ratio	Coeff.	S.E.	Odds Ratio
Intercept	-3.28***	0.19	0.04	-2.91***	0.82	0.05
Type of Counsel						
CJA Appointed	0.16***	0.04	1.18	0.16***	0.04	1.18
Private Attorney	0.55***	0.04	1.74	0.56***	0.04	1.74
Race/Ethnicity						
Black	-0.09*	0.04	0.91	-0.09*	0.04	0.91
Hispanic	-0.17***	0.05	0.84	-0.17***	0.05	0.84
Other	-0.04	0.06	0.96	-0.04	0.06	0.96
Male	-0.45***	0.03	0.64	-0.45***	0.03	0.64
26-40 years old	0.18***	0.05	1.20	0.18***	0.05	1.20
41+ years old	0.41***	0.05	1.50	0.41***	0.05	1.50
Citizenship Status						
Legal Resident	-0.84***	0.07	0.43	-0.84***	0.07	0.43
Noncitizen	-4.01***	0.11	0.02	-4.01***	0.11	0.02
Education						
High School						
Graduate	0.31***	0.04	1.36	0.31***	0.04	1.36
Some College	0.40***	0.05	1.50	0.40***	0.05	1.50
College Graduate	0.47***	0.06	1.59	0.46***	0.06	1.59
Number of Dependents	0.01	0.01	1.02	0.02	0.01	1.02
Criminal History	-0.50***	0.01	0.61	-0.50***	0.01	0.61
Offense Type						
Property	1.91***	0.10	6.78	1.91***	0.10	6.78
Drug	0.80***	0.10	2.23	0.80***	0.10	2.23
Public Order	1.31***	0.10	3.70	1.31***	0.10	3.70
Weapons	1.07***	0.11	2.93	1.07***	0.11	2.93
Immigration	0.98***	0.12	2.68	0.99***	0.12	2.68
Number of Counts	-0.12***	0.01	0.88	-0.12***	0.01	0.88
District Characteristics						
Percent Appointed	-	-	-	1.07	1.42	2.92
Percent Private Attorney	-	-	-	-2.94	2.34	0.05
Caseload Pressure	-	-	-	0.00	0.00	1.00
Random Effect	Var.	SD	X²	Var.	SD	X²
Level 1 - Individual	-	-	-	-	-	-
Level 2 - District	2.01	0.32	9053***	1.96	0.31	7483***

NOTE: *p≤0.05; **p≤0.01; ***p≤0.001.

The full model, including district level predictors, is presented in Table 3, Model 2. These district level variables were included to explore whether the types of counsel a district relies on to represent defendants, or the judge's average caseload, influenced the judicial decisions studied here. Estimates in Model 2 reveal that case level (L1) results are similar to those in Model 1 and that none of the district level variables (L2) reached statistically significant levels. The percentage of cases in a district with CJA appointed or private

attorneys did not significantly affect the ROR decision. This is counter to our fourth hypothesis where we predicted that a higher percentage of district level cases represented by federal public defenders would result in average higher percentages of defendants being released ROR. Likewise, there was no significant effect of caseload pressure on release without bail outcomes.

Table 4, Model 1 displays the results from the multilevel model of the incarceration decision. In this model, the type of counsel again had significant effects. Defendants who have CJA appointed or privately retained attorneys had increased odds of being incarcerated. These multivariate findings are counter to the descriptive statistics which showed that a lower percentage of private attorneys' clients were incarcerated. However, when controlling for other important legally relevant and extra-legal factors, it appears that public defenders are able to get better outcomes for their clients by way of reduced likelihood of incarceration. Defendants with CJA appointed attorneys have 1.19 times higher odds, and those with private attorneys have a more negligible 1.09 times higher odds of being incarcerated than those represented by a public defender. These results support the expectations in our second hypothesis.

**Table 4: Multilevel Random Intercept In/Out Models
(L1 =176,271; L2 = 90)**

Fixed Effect	Model 1			Model 2		
	Coeff.	S.E.	Odds Ratio	Coeff.	S.E.	Odds Ratio
Intercept	2.23***	0.12	9.00	1.96***	0.35	6.86
Type of Counsel						
CJA Appointed	0.18***	0.03	1.19	0.17***	0.03	1.19
Private Attorney	0.09***	0.03	1.09	0.09***	0.03	1.09
Race/Ethnicity						
Black	0.09**	0.03	1.09	0.09**	0.03	1.09
Hispanic	0.29***	0.04	1.34	0.29***	0.04	1.34
Other	-0.17***	0.05	0.85	-0.17***	0.05	0.84
Male	0.60***	0.03	1.83	0.60***	0.03	1.83
26-40 years old	0.13***	0.04	1.14	0.13***	0.04	1.14
41+ years old	0.13***	0.04	1.13	0.13***	0.04	1.13
Citizenship Status						
Legal Resident	0.11*	0.05	1.11	0.11*	0.05	1.11
Noncitizen	0.93***	0.06	2.54	0.93***	0.06	2.55
Education						
High School Graduate	-0.09*	0.03	0.91	-0.09*	0.03	0.91
Some College	-0.04	0.04	0.97	-0.04	0.04	0.96
College Graduate	0.07	0.04	1.07	0.07	0.04	1.07
Number of Dependents	0.01	0.01	1.01	0.01	0.01	1.01
Criminal History	0.52***	0.02	1.68	0.52***	0.02	1.68
Offense Type						
Property	-0.95***	0.09	0.39	-0.95***	0.09	0.39
Drug	0.06	0.09	1.06	0.06	0.09	1.06
Public Order	-0.62***	0.09	0.54	-0.62***	0.09	0.54
Weapons	-0.62***	0.10	0.54	-0.62***	0.10	0.54
Immigration	-1.25***	0.10	0.29	-1.25***	0.10	0.29
Number of Counts	0.41***	0.02	1.51	0.41***	0.02	1.51
Trial	0.78***	0.10	2.19	0.78***	0.10	2.19
Pretrial Detention Status						
Released ROR	-3.03***	0.05	0.05	-3.03***	0.05	0.05
Out on Bail	-2.67***	0.04	0.07	-2.67***	0.04	0.07
District Characteristics						
Percent CJA Appointed	-	-	-	0.90	0.57	2.46
Percent Private Attorney	-	-	-	-0.46	0.95	0.63
Caseload Pressure	-	-	-	0.00	0.00	1.00
Random Effect	Var.	SD	X²	Var.	SD	X²
Level 1 - Individual	-	-	-	-	-	-
Level 2 - District	0.32	0.05	2175** *	0.30	0.05	2080** *

NOTE: *p≤0.05; **p≤0.01; ***p≤0.001.

Similar to the ROR decision, extra-legal variables also influence the incarceration decision. Compared to white defendants, Black and Hispanic defendants have higher odds of incarceration (1.09 and 1.34 times higher, respectively), but other race defendants have lower odds (15% lower) than their white counterparts. Males also have significantly increased odds of being incarcerated compared to

females (1.83 times higher). Legal permanent residents and noncitizens have higher odds of incarceration than U.S. citizens (1.11 and 2.5 times higher, respectively). Education levels also significantly affect incarceration decisions. However, the number of dependents a person supports has no significant effect on their odds of incarceration.

Legally relevant and case-processing factors also have a significant impact on the judicial decision to send a convicted individual to prison. Not surprisingly, those with higher criminal histories have higher odds of receiving a prison sentence, and those convicted of a violent offense have the highest likelihood of being incarcerated. The greater number of counts the defendant is facing also results in increased odds of incarceration and being convicted at trial, with odds of incarceration that are over two times higher (2.19) than those who pled guilty. People who are released ROR and who are out on bail have lower odds of incarceration, and these effects are especially pronounced at 95% and 93% lower than those who are detained in custody. Table 4, Model 2 reports the results of the model, including district level measures. Similar to the ROR model, the district level percentages of cases represented by CJA appointed or private attorneys do not have a significant influence on the incarceration decision.

Our final models summarize the results of the sentence length decision and are presented in Table 5. Model 1 presents the results of the L1 effects and reveals that the type of counsel exerts a significant influence on the length of sentence imposed by the judge. In line with our third hypothesis, defendants represented by either a CJA-appointed or a private attorney have longer average sentences than those represented by federal public defenders (7% and 11% longer, respectively). The race/ethnicity effects are less pronounced in the models of sentence length decisions; Black defendants receive sentences that are 3% shorter than white defendants, but Hispanic and other defendants receive 8% and 5% longer sentences, on average, than their white counterparts, respectively. Male defendants also receive longer average sentences than females, roughly 21% longer. Age is also significant, where older people generally receive longer sentences. Unlike the incarceration model, citizenship has a negligible effect on sentence lengths; legal permanent residents receive sentences that are statistically similar to U.S. citizens, but noncitizens receive sentences that are 12% shorter on average. College graduates have 4% longer average

sentences than those who do not have a high school education. The number of dependents did not affect sentence decisions.

**Table 5: Multilevel Sentence Length Models
(L1 =161,987; L2 = 90)**

	Model 1		Model 2	
Fixed Effect	Coeff.	S.E.	Coeff.	S.E.
Intercept	0.92***	0.03	1.02***	0.23
Type of Counsel				
CJA Appointed	0.07***	0.00	0.07***	0.00
Private Attorney	0.11***	0.01	0.11***	0.01
Race/Ethnicity				
Black	-0.03***	0.01	-0.03***	0.01
Hispanic	0.08***	0.01	0.08***	0.01
Other	0.05***	0.02	0.05***	0.02
Male	0.21***	0.01	0.21***	0.01
26-40 years old	0.08***	0.01	0.08***	0.00
41+ years old	0.14***	0.01	0.14***	0.00
Citizenship Status				
Legal Resident	0.00	0.01	0.00	0.01
Noncitizen	-0.12***	0.01	-0.12***	0.01
Education				
High School Graduate	-0.01	0.01	-0.01	0.01
Some College	0.01	0.01	0.01	0.01
College Graduate	0.04***	0.01	0.04***	0.01
Number of Dependents	0.00	0.00	0.00	0.00
Presumptive Minimum	0.01***	0.00	0.01***	0.00
Criminal History	0.15***	0.00	0.15***	0.00
Offense Type				
Property	-0.28***	0.01	-0.28***	0.01
Drug	0.01	0.01	0.01	0.01
Public Order	-0.01	0.01	-0.01	0.01
Weapons	-0.07***	0.02	-0.07***	0.02
Immigration	-0.54***	0.01	-0.54***	0.01
Departures				
Above Range	0.67***	0.01	0.67***	0.01
Gov't Sponsored Departure	-0.29***	0.01	-0.29***	0.01
Downward Departure	-0.20***	0.01	-0.20***	0.01
Number of Counts	0.05***	0.00	0.05***	0.00
Accept Responsibility	-0.55***	0.00	-0.55***	0.00
Trial	1.47***	0.02	1.47***	0.02
Pretrial Detention Status				
Released ROR	-0.59***	0.01	-0.59***	0.01
Out on Bail	-0.42***	0.01	-0.42***	0.01

District Characteristics						
Percent Appointed	-	-		-0.01	0.22	
Percent Private Attorney	-	-		0.10	0.37	
Caseload Pressure	-	-		0.00	0.00	
Random Effect	Var.	SD	X²	Var.	SD	X²
Level 1 - Individual	0.67	0.00		0.67	0.00	
Level 2 - District	0.05	0.01	33826	0.05	0.01	30596

NOTE: *p≤0.05; **p≤0.01; ***p≤0.001.

Legal variables also exerted significant influence on sentence length in the expected direction. Increases in both the presumptive sentence and criminal history category were associated with increased sentence lengths of 1% and 15%, respectively. Regarding offense type, people convicted of drug and public order offenses received sentences that are statistically similar to those convicted of violent offenses. All others received significantly shorter average sentences than those convicted of violent offenses.

The departure variables also exerted considerable influence. Defendants who were given departures above the minimum received sentences that were 67% longer on average than those sentenced within the guideline range. Defendants who received government-sponsored and downward departures got 29% and 20% shorter sentences than those sentenced within range. An increased number of counts also resulted in increased sentence lengths, and defendants who accepted responsibility got 55% shorter sentences than those who did not. People convicted at trial received significantly longer sentences, on average, than those convicted through a guilty plea. Finally, defendants who were released ROR or released on bail received sentences that were 59% and 42% shorter, on average, than defendants who were detained. Table 5, Model 2 presents the results of the model, including the Level 2 variables. Similar to the ROR and incarceration models, none of the district level variables in this model reached significance, showing no support for our expectations in hypothesis four that district level differences would emerge based the percentage of cases in the district represented by federal public defenders.

V. CONCLUSION

Indigent defendants have a right to counsel under the Sixth Amendment of the Constitution.¹⁶⁰ The Supreme Court guaranteed

¹⁶⁰ See *Gideon v. Wainwright*, 372 U.S. 335, 333–34 (1963).

this right for those accused of federal crimes in the case of *Johnson v. Zerbst*.¹⁶¹ It was not until Congress passed the Criminal Justice Act in 1964, and later amended it in 1970, however, that a formalized system for provision of indigent federal defense was set up.¹⁶² Today, federal public defender organizations, authorized to provide counsel for indigent federal defendants in ninety-one of the ninety-four federal districts, are regarded as the “gold standard” of indigent defense.¹⁶³ Despite expanded indigent defense representation due to SCOTUS cases, there are still criticisms that, in our system of justice, those who can afford to hire their own attorneys will receive more favorable court outcomes from prosecutors and judges.¹⁶⁴ To this end, questions have been raised about the quality of legal representation provided by public defenders.¹⁶⁵ Empirical research examining this issue, however, has been relatively sparse, especially regarding outcomes in the federal court system.¹⁶⁶ The existing studies report that public defenders are as effective as privately retained attorneys at securing favorable outcomes for clients, due perhaps to their close ties with prosecutors and judges, and knowledge of jurisdictional informal processes and going rates.¹⁶⁷ The current study was an attempt to add to the growing research in this area by examining the effect of type of counsel across three federal court decision-making stages using more recent data.

The findings from our models of these three important decision-making stages in federal criminal courts reveal that outcomes are indeed conditioned by the type of counsel representing the defendant. But the specific effects depend on the outcome examined and the type of attorney being compared to federal public defenders. For example, defendants who are represented by CJA appointed and private attorneys have better odds of being released ROR compared to defendants represented by federal public defenders.¹⁶⁸ Regarding the incarceration decision, however, both CJA appointed and private attorney clients have higher odds of being sent to prison than those represented by federal public defenders.¹⁶⁹ Similar results emerged for the sentence length decision. Individuals

¹⁶¹ See *Johnson v. Zerbst*, 403 U.S. 458, 462–63 (1938).

¹⁶² Criminal Justice Act of 1964, Pub. L. No. 88-455, 78 Stat. 552 (codified at 18 U.S.C. § 3006A(g)(2)(A)).

¹⁶³ See *Defender Services*, *supra* note 7, at 1; Hazlehurst, *supra* note 34, at 51.

¹⁶⁴ See Hazlehurst, *supra* note 34, at 52.

¹⁶⁵ See *id.*

¹⁶⁶ See *supra* note 144 and accompanying text.

¹⁶⁷ See Skolnick, *supra* note 77, at 62.

¹⁶⁸ See *supra* Table 2.

¹⁶⁹ See *id.*

represented by CJA appointed and private attorneys received significantly longer average sentences than those represented by federal public defenders.¹⁷⁰

These results support the idea that federal public defenders, as integrated members of the federal courtroom workgroup, may have more expertise in federal criminal case processing and familiarity with federal judges and Assistant United States Attorneys that enable them to be better positioned to obtain more favorable sentencing outcomes for their clients. Their disadvantage compared to CJA appointed and especially private attorneys at the ROR decision, however, is interesting and may have to do with the types of clients or cases that the public defender offices represent. Private attorneys are more likely to represent those charged with property and public order offenses as opposed to public defenders whose caseloads are largely made up of drug and immigration cases.¹⁷¹ Also, in the federal system, the bail decision is usually made by a magistrate judge based on information gathered from a federal pretrial service officer.¹⁷² The prosecution also makes bail recommendations, usually in negotiation with defense counsel, and these decisions are perhaps, therefore, more discretionary than incarceration and sentence length decisions, which are structured by guidelines.¹⁷³ It appears then that private attorneys, and to some extent CJA panel attorneys, are better able to convince magistrate judges that their clients are either not at risk of absconding, not a threat to public safety, or able to successfully fulfill the bail conditions set and, therefore, can be released pending trial. It could also be that, due to caseloads, public defenders spend less time on arraignments and bail hearings to focus more on negotiating a plea deal with the prosecutor for a more favorable incarceration or sentencing outcome.

Regarding our district level measures of attorney type and judicial caseload, however, no significant differences emerged.¹⁷⁴ This was counter to our expectations in the fourth hypothesis that there would be district level differences in the outcomes studied here based on the percentage of cases represented by public defenders in the district. Although there is variation at the district level in the proportion of

¹⁷⁰ See *id.*

¹⁷¹ See *id.*

¹⁷² See Hazlehurst, *supra* note 34, at 53.

¹⁷³ See Hartley et al., *supra* note 16, at 386–87; *An Overview of the Federal Sentencing Guidelines*, U.S. SENT'G COMM'N, https://www.ussc.gov/sites/default/files/pdf/about/overview/Overview_Federal_Sentencing_Guidelines.pdf [<https://perma.cc/SU82-HZKU>].

¹⁷⁴ See *supra* Table 3.

cases represented by the three types of counsel that were the focus of this research, these Level 2 measures do not significantly affect any of the criminal court outcomes examined in the current study. In other words, no matter the composition of attorney types representing defendants across federal districts, there are no significant differences in the district's likelihood of releasing a defendant ROR, the district's incarceration rates, or average sentence lengths.¹⁷⁵

There are also limitations of our study that must be considered. Our multilevel analytic strategy included two levels, nesting individual cases within federal district courts. When examining federal judicial decision-making, constructing a three-level model to include nesting cases within individual judges would be preferable. Federal Justice Statistics Program data, however, does not allow for nesting of cases within individual judges. Because of this limitation, we are not able to draw any conclusions about whether the effect of type of counsel is conditioned by the individual judge in the case. Another limitation relates to the federal sentencing data itself. Although we were able to merge different federal data sets to capture more measures of potential determinants of court outcomes across various stages, the data utilized in this study are still somewhat limited in the number and types of variables available to predict outcomes (such as income or another measure of defendants' financial means). Unlike most other studies of federal sentencing outcomes, however, we were able to include a measure of the type of counsel representing the defendant.¹⁷⁶ Our results demonstrate that attorney type is a significant predictor of federal court outcomes at the case level. Very few scholars include a variable measuring type of attorney in models of judicial decision-making practices, and future researchers should include it as a predictor in studies of court decision-making practices to limit the amount of misspecification in their models.

In conclusion, this study found that federal public defenders, with one exception (being released ROR), are able to secure better outcomes for their clients than either CJA appointed, or privately retained, attorneys. Though these findings are in line with two of our three case-level hypotheses, in the United States legal system the type of attorney representing a defendant is not supposed to have an effect on court outcomes. Despite this, our findings provide support

¹⁷⁵ *See id.*

¹⁷⁶ *See discussion supra* Section III.B.

for notions that federal public defender organizations are effective in providing legal defense for indigent defendants at the federal level. These conclusions, however, also mean that in districts where federal public defender organizations are set up to represent indigent cases, these defendants might receive more favorable outcomes. Likewise, in districts that rely more heavily on CJA appointed attorneys to represent indigent defendants because public defender organizations are not as well established, indigent defendants may fare worse on specific outcomes. Although our district level analyses revealed no significant differences in outcomes based on the percentage of cases represented by the differing types of attorneys, and eighty-two federal defender organizations are authorized to serve most federal judicial districts (ninety-one of ninety-four), this may be a continued cause for inter-district disparities in federal sentencing outcomes.

It is conceivable that these positive findings for federal public defenders are due to the relationships that they can establish with prosecutors and judges as part of the courtroom workgroup, or because public defenders tend to be more experienced in the complexities of the guidelines and sentencing calculations and more well-versed in the nuances of guideline application. Similar to previous research, however, these findings also mean that indigent defendants are not disadvantaged compared to those who can afford to retain a private attorney and, in fact, despite not being able to pay for services, they receive sentencing outcomes that are more favorable. Our overall conclusions demonstrate that, compared to defendants with appointed and private attorneys, those represented by federal public defenders have significantly lower odds of incarceration and reduced sentence lengths.

Finally, the Criminal Justice Act of 1964 set up a system for appointing and compensating attorneys to represent indigent defendants charged with federal crimes.¹⁷⁷ The amendments added in 1970 gave federal judicial districts authorization to establish the federal defender services.¹⁷⁸ Together, these policies formalized the constitutional right to counsel in federal court, and provided both financial and personnel resources toward ensuring those accused of criminal offenses have adequate representation and parity with that of federal prosecutor offices.¹⁷⁹ Despite calls that more resources are necessary to ensure adequate representation in the federal criminal justice system, since the CJA was passed more than fifty years ago,

¹⁷⁷ See CARDONE REPORT, *supra* note 41, at 12–13.

¹⁷⁸ See *id.* at 13.

¹⁷⁹ See *Defender Services*, *supra* note 7, at 1.

all ninety-four federal districts have access to public defender or CJA appointed attorney services, and all indigent defendants in the federal system have representation.¹⁸⁰ Our results support the idea that federal public defenders are effective and valuable to the many indigent defendants they represent in federal district court, and that they are able to secure more favorable outcomes than their appointed or privately retained counterparts at some decision-making stages, namely regarding incarceration and sentence length. Furthermore, despite the fact that our measures of caseload pressure at the district level had no significant influences on outcomes, expanding indigent defense systems in all jurisdictions across the country may ensure even more fair and just outcomes in our adversarial system of justice.

¹⁸⁰ *See id.*