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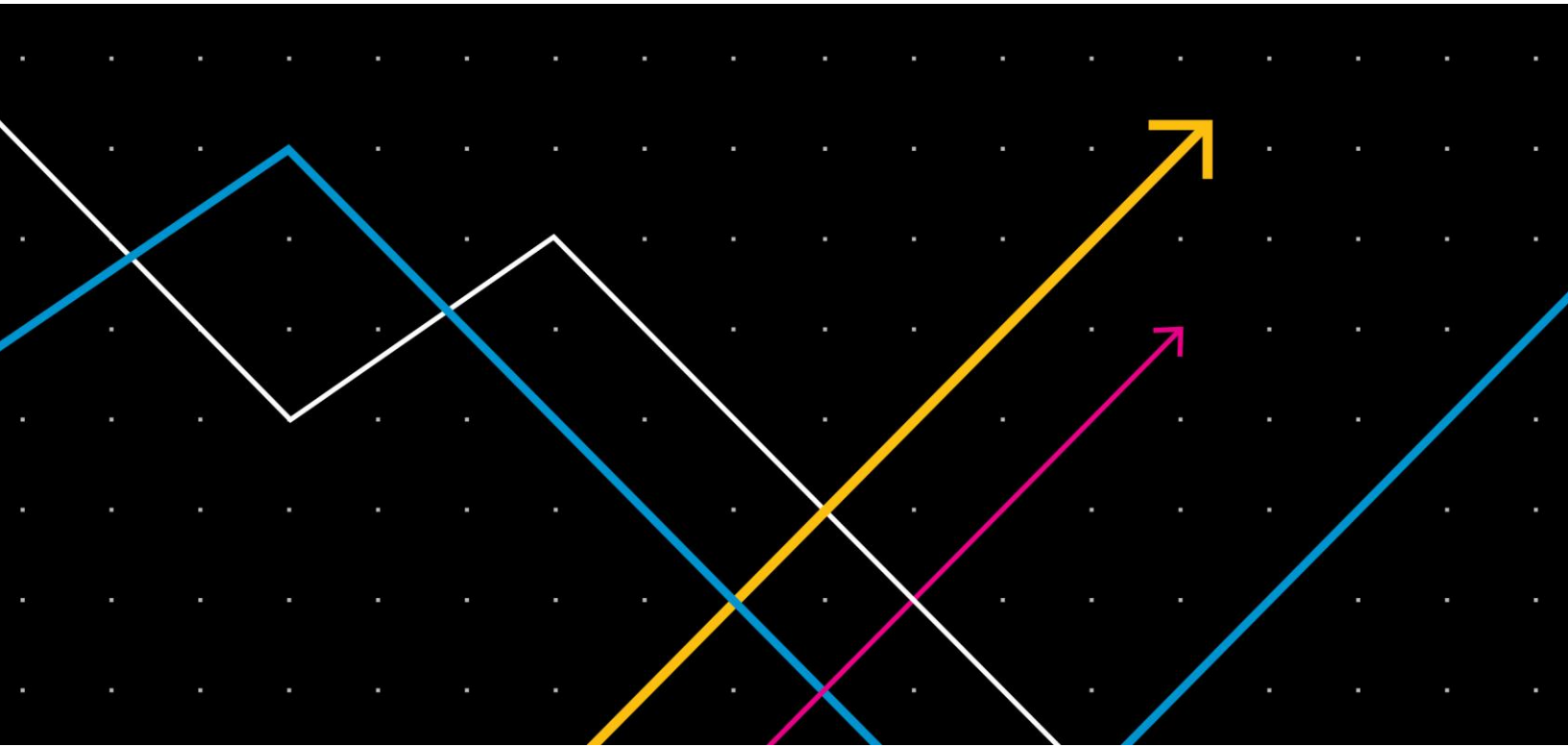
**Abstract:**

This paper examines the role that the type of defense counsel plays in federal justice system outcomes. We begin with a background on federal indigent defense systems and a review of the prior research examining the impact of counsel type on sentencing. We then describe the study and present our descriptive results, which explore the frequency and variation in the use of each type of defense counsel (public defenders, assigned counsel, and private attorneys) and other key variables (disposition, incarceration decision, sentence length, year, district, case, and defendant characteristics). Next, we model the outcomes of incarceration and sentence length to test whether type of counsel significantly impacts these decisions after controlling for legal and extra-legal factors. Lastly, the results are summarized and situated in a broader understanding of the federal justice system.

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RESEARCH REPORT

# Counsel Type in Federal Criminal Court Cases, 2015-18

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*May 2022*

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# Executive Summary

The Sixth Amendment provides for the right to assistance of legal counsel to adequately prepare a defense against criminal prosecution. In addition, a series of Supreme Court cases have expanded the right to counsel under specific circumstances. *Johnson v. Zerbst* (304 U.S. 458 (1938)), for example, established the right to counsel for those accused of federal offenses, and *Gideon v. Wainwright* (372 U.S. 335 (1963)) was a landmark Supreme Court decision that extended the right to legal representation to those charged with a felony in state courts who cannot afford an attorney. The importance of having legal representation for the indigent in less serious cases at both the state and federal level has been further described and supported in *Argersinger v. Hamlin* (407 U.S. 25 (1972)) and *Alabama v. Shelton* (535 U.S. 654 (2002)). Together, these interpretations of the Sixth Amendment right to counsel require that, to safeguard due process rights and guarantee a fair trial, the government appoints an attorney to represent individuals that are financially eligible, or indigent, unless the defendant waives this right.

Under the Criminal Justice Act (CJA) of 1964, federal courts adopted different approaches to provide indigent defense, including federal public defenders (e.g., public defenders and community defenders) and CJA panel attorneys contracted by the government to defend individuals in districts without federal public defenders or to supplement public defenders when there are conflicts of interest or inadequate staff resources (Wool, Howell, & Yedid, 2003). Defendants with the financial means can also choose to privately retain an attorney to represent them in court. The type of counsel representing federal defendants, thus, varies within and across federal court districts. Despite the different methods for providing public defense services, the type of attorney representing a defendant in federal court should not have any effect on the decision to incarcerate or for how long. Still, it is possible that certain types of counsel are more effective than others at securing favorable court outcomes.

This paper examines the role that the type of defense counsel plays in federal justice system outcomes. We begin with a background on federal indigent defense systems and a review of the prior research examining the impact of counsel type on sentencing. We then describe the study and present our descriptive results, which explore the frequency and variation in the use of each type of defense counsel (public defenders, assigned counsel, and private attorneys) and other key variables (disposition, incarceration decision, sentence length, year, district, case, and defendant characteristics). Next, we model the outcomes of incarceration and sentence length to test whether type of counsel significantly impacts these decisions after controlling for legal and extra-legal factors. Lastly, the results are summarized and situated in a broader understanding of the federal justice system.

This report's findings are based on analysis of data obtained through the Bureau of Justice Statistics' Federal Justice Statistics Program (FJSP) from the following two sources:

- the Administrative Office of the U.S. Courts' (AOUSC) Criminal Master File, which collects information about defendants in criminal cases disposed in U.S. district court. Importantly, this data includes information on type of counsel representing the defendant at case termination.
- the U.S. Sentencing Commission's (USSC) Monitoring Database, which contains information on defendants sentenced pursuant to the federal sentencing guidelines, including the type and length of the sentence imposed.

Additionally, the FJSP paired-agency (AO-USSC Out) dyad link file is used to match cases between data sets to produce a comprehensive analytic file containing case characteristics and outcomes.

The key findings of this report include the following:

- Nearly 95% of defendants were convicted over the study period, with CJA panel and private attorneys having a higher share of their cases disposed by trial (3.7%) compared to the share of trial dispositions among public defenders (1.9%).
- Before controlling for case and defendant characteristics, private attorneys appeared to secure slightly more favorable outcomes than federal public defenders and CJA panel attorneys.
  - » Looking descriptively at case outcomes by counsel type, we found that 93% of defendants represented by CJA panel attorneys were sentenced to prison followed by 91% of defendants represented by public defenders and 84% of defendants represented by private attorneys.
  - » Defendants represented by CJA panel attorneys received the longest sentences, on average (74 months), compared to those represented by private attorneys (66 months) and public defenders (62 months).
- After controlling for offense type, criminal history, and other factors, cases represented by private attorneys and CJA panel attorneys had significantly greater odds of incarceration than public defenders.
- Moreover, among cases resulting in incarceration, we found that people represented by private attorneys had 8% longer average sentences than those represented by federal public defenders. Defendants by CJA panel attorneys have 4% longer average sentences than those represented by federal public defenders.

## Federal System of Criminal Defense

The enactment of the Criminal Justice Act (CJA) of 1964 charged the federal district courts with providing indigent defense services tailored to the district needs (Wool, et al., 2003). Today, there are 81 federal defender organizations, including federal public defender offices and community defender organizations,



that serve 91 of the 94 federal districts (U.S. Courts, n.d.a). Federal public defender offices are federal entities with a chief federal public defender appointed to a 4-year term by the U.S. Courts of Appeals. They are comprised of federal employees organized under, and reporting to, the thirteen regional circuits to maintain a degree of independence from the federal district courts in which they operate.

Community Defender Offices are non-profit organizations incorporated under state laws and supervised by a board of directors. Community Defender Offices receive grant funding from the federal judiciary to support their operations. Both Federal Public Defenders Offices and Community Defender Organizations may operate in a given district, as well as appointed panel attorneys. Two U.S. districts (Southern District of Georgia and Eastern District of Kentucky) do not have public or community defender organizations and instead rely on appointed CJA panel attorneys to represent indigent defendants. Districts may also use CJA panel attorneys as a supplement when public or community defender organizations are low on staff resources. Defendants who do not qualify for indigent defense or choose not to use a public defender may instead hire and pay for a private attorney or represent themselves.

## Counsel Type and Sentencing Research

Much of the research on the effect of counsel type on sentencing focuses on indigent defense services provided at the state or local level. Publicly financed legal counsel may include public defenders, appointed counsel, and contract attorneys. Despite the variation in how these services are offered across the United States criticisms have been levied at each of them, often related to 1) a lack of resources to mount an adequate defense (American Bar Association, 2004; Williams, 2013), 2) membership in the courtroom workgroup (or the pressure and cooperation among legal actors to efficiently resolve cases) (Blumberg, 1967; Eisenstein, Fleming & Nardulli, 1987; Nardulli, 1986; Uphoff, 1992), or 3) inadequate experience representing indigent defendants accused of criminal charges (Neubauer & Fradella, 2011).

Chief among these arguments is that indigent defense systems within states are overburdened and under-resourced in terms of funding, staffing, and technology (Taylor, 2011; American Bar Association, 2004; Spangenburg Group, 2009). These constraints are mostly faced by public defenders who often deal with large caseloads, high stress, and low pay. This may compromise a public defender's performance to the extent that there is less time or motivation to sufficiently handle each case in their caseload (Joy, 2010; Weitzer, 1996; Ogletree, 1995).

Another argument has been that public defenders are more likely to cooperate with the prosecution, sometimes referred to as the courtroom workgroup (Eisenstein et al., 1987; Hartley et al., 2010). This workgroup consists of prosecutors, defense attorneys, and judges who regularly work together both in and out of the local courthouse. To efficiently process cases through the system, public defenders might be more inclined to bargain with prosecutors than oppose them. This, coupled with their high caseloads, can make

public defenders more likely to convince their clients to accept a plea bargain, rather than go to trial (Alpert, 1979; Albert-Goldberg & Hartman, 1983; Sudnow, 1965). On the other hand, the close ties between public defenders and other courtroom actors may result in more favorable deals for defendants who plead guilty (Skolnik, 1967; Stover & Eckhart, 1975).

Private attorneys may not be part of the courtroom workgroup, particularly when they do not specialize in criminal defense cases. Moreover, private attorneys may face less pressure to process cases quickly and efficiently and have more time and resources to prepare, which leads to them taking more cases to trial (Kutateladze & Lawson, 2018; Anderson & Heaton, 2012). As a result, defendants who use private attorneys may have a greater chance of being found not guilty (Wolf-Harlow, 2000). However, this could also result in defendants receiving harsher punishments when convicted because of passed opportunities for more lenient plea bargains. A study by Kim (2015) suggests that this “trial penalty” may result in 64% longer sentences for federal defendants who take their cases to trial.

Less studied in the literature is how these perspectives on counsel type hold for the federal system. The federal system of public defense is often heralded as the “gold standard” for the provision of indigent defense (Hazlehurst, 2015). In particular, compared to state and local indigent defense systems, federal public defenders are well paid, have extensive courtroom experience, and are more likely to have graduated from a top-tier law school (Iyengar, 2007). Private attorneys could have less experience in federal criminal court, as some may practice other types of law and maintain only a small criminal caseload. Further, greater familiarity with the federal system’s detailed guideline-based sentencing structure and application makes federal public defenders better equipped to navigate the complex process of determining possible sentences that could result from a criminal conviction.

Because of these factors, federal public defenders are well-positioned to work with prosecutors and judges to receive favorable sentencing outcomes for their clients (Hamilton, 2014). For example, public defenders may be able to exploit federal guidelines to secure shorter sentences for their clients than private attorneys who may only engage in criminal cases through “occasional ad hoc court appointments” (Bibas, 2005, 145). Similarly, CJA panel attorneys have reported feeling that they were at a disadvantage because they often do not have access to the specialized resources and training found in many defender offices (Wool et al., 2003). In fact, CJA panel attorneys often seek help from federal public defender organizations in terms of information and training on topics related to federal case processing and courtroom procedures (Hazlehurst, 2015). Thus, clients of private attorneys may fare worse than those of public defenders since public defenders have more firsthand knowledge of criminal court proceedings and are better positioned to work with prosecutors and judges to secure more lenient punishments for their clients (Hartley et al., 2010).

## Prior Research on the Effect of Counsel Type

Despite the constitutional basis for the right to counsel and its potential impact on important defense outcomes, there is limited research on the matter, particularly at the federal level. Most of the extant scholarship focuses on the differential effects of different types of public counsel, such as public defenders compared to private attorneys (Anderson & Heaton, 2012; Beck & Shumsky, 1997; Champion, 1989; Feeney & Jackson, 1991; Hanson, Ostrom, Hewitt, & Lomvardias, 1992; Hartley et al., 2010; Roach, 2010; Williams, 2002, 2013). These studies were also overwhelmingly conducted using data from state or local courts, with very few studies on the federal system (for exceptions, see Cohen, 2014; Iyengar, 2007). Overall, the findings from these studies are mixed, though many have found no difference in the effectiveness of different types of counsel on outcomes such as pretrial detention (Turner & Johnson, 2007), judicial decisions to grant bail or release defendants on their own recognizance (Hartley et al., 2010; Williams, 2013), conviction (Cohen, 2014; Hanson & Ostrom, 1998; Wheeler & Wheeler, 1980; Wolf-Harlow, 2000), guilty pleas, plea agreements, and charge reductions (Hartley et al., 2010; Liang, Long, & Brame, 2012; Nardulli, 1986), incarceration (Cohen, 2014; Hartley et al., 2010; Spohn & Holleran, 2000; Williams, 2002), and sentence length (Hartley et al., 2010; Williams, 2002).

Other studies have found some significant differences in the case processing outcomes between various types of counsel among state-level systems. For example, some research has found that individuals represented by public defenders fare worse on average than those who retain private attorneys, including higher rates of guilty pleas, sentences to incarceration, and lengthier overall sentences (Williams, 2013; Champion, 1989; Hoffman et al., 2005). Only a few studies have examined the effect of assigned counsel, comparable to the CJA panel attorneys in the federal system. These studies generally indicate that clients with assigned counsel receive worse case processing outcomes than both public defenders and private attorneys (Anderson & Heaton, 2012; Beck & Shumsky, 1997; Champion, 1989; Cohen, 2014; Iyengar, 2007; Roach, 2010).

At the federal level, one study comparing the effectiveness of federal public defenders to CJA panel attorneys found that individuals represented by panel attorneys were more likely to be found guilty and receive longer prison sentences on average than those who worked with a federal public defender (Iyengar, 2007). This study also found that the appointed CJA panel attorneys performed better when they had higher federal criminal caseloads and were more equitably compensated. This supports the notion that increased experience in the courtroom and integration into the courtroom workgroup can help improve outcomes for defendants, though other district-level factors may also matter.

Though there is some research on the effectiveness of public defenders, these studies are outdated and limited in terms of the types of counsel they compare and which outcomes they examine (for a few

exceptions, see Hartley et al., 2010; Williams, 2013, 2017). Further, only a handful of studies have specifically examined federal public defense, which is unique among all systems of indigent defense. Thus, there are important knowledge gaps about the effectiveness of various modalities of federal defense. The current study aims to expand on the extant literature by examining three different types of federal counsel: public defenders, CJA panel attorneys, and privately retained attorneys. Specifically, we will examine how these types of counsel vary across a number of case processing, legal, and extra-legal variables using recent data (2015-2018).

## Current Study

The three counsel types available in the federal system, and the variation in their use across districts, pose a number of questions on whether attorney type is associated with more favorable outcomes for their clients. For example, what share of defendants are represented by each type of counsel during a 4-year period and across districts? To what degree do case characteristics vary across counsel types? How does type of counsel correlate with case disposition (conviction v. non-conviction), receipt of incarceration, and sentence length? How is attorney type associated with the outcomes a defendant receives at sentencing after controlling for relevant case factors? Is representation by a private attorney related to more lenient outcomes compared to public defenders? This work employs both descriptive statistics and multiple regression analyses to address the following aims:

1. Examine the association between type of counsel and key case processing outcomes (i.e., court disposition, decision to incarcerate, and sentence length imposed)
2. Describe the type of counsel present in federal criminal court cases across a 4-year period (2015-2018) and how type of counsel varies by case and defendant characteristics and federal judicial district
3. Assess the unique impact of type of counsel on case processing outcomes (i.e., incarceration and sentence length)

## Methodology

To examine the impact of counsel type on federal sentencing, we utilize data from the Bureau of Justice Statistics' Federal Justice Statistics Program (FJSP), which contains comprehensive information on individual cases adjudicated and sentenced in U.S. district courts. It includes annual data on the workload, activities, and outcomes associated with federal criminal cases. This includes administrative data received annually from the U.S. Marshals Service, Executive Office for U.S. Attorneys, Administrative Office of the U.S. Courts (AOUSC), U.S. Sentencing Commission (USSC), and Bureau of Prisons (USDOJ, n.d.). The FJSP

data series also includes paired-agency, or “dyad,” link files to match records across adjacent stages of case processing (Kelly, 2012). The unit of analysis in the FJSP data is the person-case.

We use the most recent 4 years of data, from fiscal years 2015-2018, to examine cases disposed and sentenced in federal district courts. We first use the AOUSC data to describe the bivariate relationship between case disposition (plea, trial, acquittal, or dismissal) and attorney type. We then utilize the dyad link file to merge corresponding records from the AOUSC and USSC data files. The reason for linking these records is twofold: 1) the AOUSC data contains information on type of defense counsel at case termination, and 2) the USSC data has detailed information on case characteristics and sentencing outcomes for convicted defendants. Because this study uses the USSC data on sentenced defendants, the AOUSC cases that resulted in a dismissal or acquittal do not have corresponding records in the USSC data and were not included in the multivariate analysis of sentencing outcomes.

Data from the AOUSC over our 4-year period had 311,015 records. After removing petty and misdemeanor offenses (N=28,606) and immigration cases (N=86,383) at case filing,<sup>1</sup> those in the U.S. territories (N=5,120), and cases with missing or self-represented/waived counsel type (N=4,455), there were 186,451 cases in 90 districts remaining for the descriptive analysis of case disposition. We next exclude dismissals and acquittals (N=10,176) and link AO cases that resulted in a conviction to the USSC data using the dyad link file. There were 176,275 records, and after excluding non-matching records (N=22,531), there were 153,744 AOUSC records that matched to an associated USSC record, for an 87.2% link rate. Corresponding case and defendant information collected by the USSC were next merged into the study file to create our full dataset of individual defendants in criminal cases convicted and sentenced between 2015 and 2018. Cases with missing information on the variables of interest were removed using list-wise deletion (n=13,538)<sup>2</sup> and resulted in the final model sample size of 140,206 cases for the decision of whether to sentence a defendant to incarceration or not and 124,386 cases for analysis of sentence length, for defendants receiving an incarceration sentence.

## Description of Variables

This paper examines the relationship between type of counsel and two outcomes related to sentencing decisions: *incarceration* and *sentence length*. The incarceration decision is a dichotomous measure of whether

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<sup>1</sup> Immigration cases were removed from the analysis because these cases are processed and defended very differently than other offenses in the federal system. Immigration cases are disproportionately more likely to be represented by public defenders, comprising nearly half of their overall caseload in fiscal year 2018.

<sup>2</sup> The final cases included in the analysis (i.e., cases with non-missing records) were highly similar to the full merged data on all dependent and independent variables analyzed, indicating that missingness was not associated with these variables.

a defendant was sentenced to any term of imprisonment, while sentence length is a measure of the number of months of imprisonment for those receiving a prison term. Ninety percent of those convicted were sentenced to prison. Sentence length was top coded at 470 months to serve as a proxy for life sentences. Any sentence length value greater than 470 months was recoded as 470 months.

Our primary independent variable of interest is the **type of counsel**. In the AO data, counsel type is recorded at case filing and termination. For our study, we use counsel type at case termination because (1) the counsel type reported at filing can be temporary and change as the case proceeds through the adjudication process, and (2) many cases in the AO data are missing information about counsel type at filing. We measured type of counsel as: a federal *public defender* (including community defenders), a *CJA panel attorney*, or a retained *private attorney*.<sup>3</sup> Those represented by a public defender serve as the reference group in the regression models described below.

In addition to counsel type, we examine the extent to which **legal case factors** influence these two outcomes, including the *presumptive minimum sentence* and *criminal history category* for the defendant, as well as the *main offense type*. The presumptive sentence was calculated as the greater of the guideline minimum or applicable mandatory minimum. If the safety valve provision applied, then the presumptive sentence equaled the guideline minimum sentence. This captures a defendant's sentence under the guidelines or the minimum sentence that the judge could impose without granting a downward departure. Though the guidelines take into account criminal history, several researchers have noted the importance of including criminal history score as a separate predictor in regression models due to its independent effect on sentencing outcomes in past research (Doerner & Demuth, 2010; Engen & Gainey, 2000; Johnson & Betsinger, 2009; Ulmer, Eisenstein, & Johnson, 2010; Ulmer, Light, & Kramer, 2011).

The criminal history score in the USSC data is determined by the court. It includes six categories, with one being the lowest level of criminal history and six being the highest, and reflects the frequency and severity of defendants' prior criminal convictions. This score is determined by adding points for prior criminal sentences (i.e., three points added for each prior prison sentence exceeding 1 year and 1 month, two points for each prior sentences of at least 60 days, and one point for sentence less than 60 days). Defendants can also receive another two points if they committed the instant offense while under community supervision or during a previous term of imprisonment. Offense type is based on the most serious charge at case termination. This variable is created by the FSJP for the AO data and includes five dummy variables indicating *violent*, *property*, *public order*, *drug*, and *weapons* offenses, with violent offenses

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<sup>3</sup> A small percentage of defendants 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.

serving as the reference category. We also include the USSC indicator for a *weapons enhancement*, which indicates that a mandatory minimum sentence was imposed for using a firearm during a crime of violence or drug trafficking offense (i.e., the case involved at least one Title 18 U.S.C. § 924(c) conviction charge or special offense characteristic). Lastly, we created a measure of *case processing time*, defined as the number of days from case filing to sentencing.

We include several additional **case-processing measures** in our models, including the *disposition* of the case (AO), the defendant's *pretrial detention status* (USSC), and whether the defendant received a *departure* from the federal sentencing guidelines (USSC). Disposition is measured as whether the case was disposed as a result of a *plea bargain* or *trial*. Trial finding is used as a control variable with plea serving as the reference category. Pretrial status is measured as whether the defendant was *detained* (i.e. denied or did not pay bail) or *released* (i.e., paid bail or released on own recognizance). Dummy variables were used to measure departures from the federal sentencing guidelines (*government-sponsored downward*, *judicial upward*, and *judicial downward*; *within-range* sentences serve as the reference group). Although it is possible that departures could be a function of the attorney type, these are largely driven by prosecutorial and judicial decisions and their use is often predicated on case-level factors, such as counts or charged offenses not resulting in conviction (Shermer & Johnson, 2010). Thus, we included these indicators as independent variables in our models, in line with prior research (see Shermer & Johnson, 2010; Ulmer, Eisenstein, & Johnson, 2010).

We further control for **defendant characteristics using the USSC data**. These include *race/ethnicity*, *age*, *gender*, *education level*, and *number of dependents*. Race/ethnicity is measured as *White*, *Black*, *Hispanic*, and *Other*,<sup>4</sup> with white defendants used as the reference group. *Age* is a continuous measure of the defendant's age at sentencing. Gender is dichotomous, coded *male* and *female* with females as the reference group. Education level is the highest level of education completed by the defendant coded as *less than high school*, *high school graduate*, *some college*, and *college graduate* with less than a high school education serving as the reference category. The number of dependents is a continuous measure, capped at seven.

Finally, we created several variables to account for judicial district variation. First, we created a measure of *judicial caseload pressure* in the analytic models to control for the degree to which judicial caseloads may influence sentencing outcomes. In line with previous research (Ulmer & Johnson, 2004; Ulmer et al., 2010) this variable is defined as the average annual number of federal criminal cases sentenced in a district divided by the number of authorized judgeships in that district (a number that has been stable

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<sup>4</sup> Defendants identified as Asian, Native American, Pacific Islander, multi-racial, or other race/ethnicity were included in this category.

since 2002, see U.S. Courts n.d.b). Also following Ulmer and Johnson (2004), we created a measure of *trial rate*, which is the percentage of cases convicted through bench or jury trial in each district. We further measured the *average case processing times* for each district, which is defined as the average number of days between filing and sentencing for cases processed in the district during the study period. Finally, we included dummy variables for each *district* and *fiscal year*, with Middle District of Louisiana and fiscal year 2015 (October 1, 2014 to September 30, 2015) serving as the reference categories.

## Analytic Strategy

This study employs both descriptive and regression analysis. The descriptive statistics provide information on how type of counsel varies across all the variables described above, while the regression models allow for an examination of the direct effects of the covariates on the two outcome measures: sentence to prison and sentence length.

Because the incarceration decision is a binary outcome (e.g., “prison” or “no prison”), we use logistic regression for these models. Sentence length was measured as the number of months for which a defendant was sentenced to prison. We explored the possibility of using linear regression for the analysis of sentence length but found that it was highly skewed. We also examined the natural log-transformed version of sentence length, which helps reduce heteroskedasticity, but that too suffered from non-normal skewness and kurtosis (K values).<sup>5</sup> Thus, we decided to use a model that more appropriately accounts for the distribution of the outcome and protects against potentially biased estimates that could result from linear regression (Long & Freese, 2006). Poisson and negative binomial models are better suited for regressing count variables—in this case, prison sentence length imposed—because their underlying distributions assume rare events. When the Poisson distribution is true, it can generate only the variance of the error as equal to the mean. We used the likelihood ratio test of the overdispersion parameter in the data to determine that the data were overdispersed (i.e., the conditional means did not equal the conditional variances) and that a negative binomial model was more appropriate than Poisson regression.

For each outcome, we conducted stepwise modeling based on the domains of independent variables, such that model one includes only counsel type, model two incorporates demographic variables, model three adds case factors, and model four adds the independent variables related to the district. A fifth model tests the interaction effect between the *counsel type* and *trial conviction* variables. This approach allows for a determination of the unique contribution of each group of variables and the overall fit of each model. We

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<sup>5</sup> We also plotted the residuals and fitted values from the logged sentence length model and found that the variance for larger fitted values is greater than for smaller fitted values. Further, results from the Breusch-Pagan/Cook-Weisburg test of heteroscedasticity indicated the presence of heteroscedasticity in the logged sentence length variable.



thus examine several fit indices across these five models, including McFadden's pseudo R-square value, the log-likelihood statistic, the Akaike Information Criterion (AIC), and the Bayesian Information Criterion (BIC). Increases in the pseudo R-square value and decreases in the log-likelihood, AIC, and BIC values indicate overall improvements in model fit.

# Results

## Descriptive Statistics

We first present the number of felony defendants in the study sample processed by the federal courts over the 2015-2018 period by counsel type and disposition. Table 1 shows that the majority of defendants were convicted, with 170,443 pleading guilty (91.4%) and 5,832 being found guilty at trial (3.1%). Compared to both CJA panel and private attorneys, cases represented by a public defender resulted in a guilty plea more often than a trial conviction. Moreover, a slightly higher share of cases represented by a private attorney were dismissed and acquitted compared to cases represented by public defenders and CJA panel attorneys. The outcomes are fairly similar across attorney type and the characteristics of the types of cases handled by private attorneys may explain these differences. Before controlling for case and defendant characteristics, cases represented by private attorneys are slightly more favorable than cases represented by federal public defenders and CJA panel attorneys. Dismissals and acquittals are excluded in the remaining analyses as AO conviction records are linked to the USSC sentencing data to augment the information used in regression models.

TABLE 1

**Defendants in cases adjudicated in U.S. district court by type of counsel and mode of disposition, 2015-2018**

	Public Defender		CJA Panel		Private Attorney		Total	
	N	%	N	%	N	%	N	%
<b>Disposition</b>								
Guilty – Plea	150,409	79.2	6,346	81.7	11,404	82.7	8,805	79.4
Guilty – Trial	3,982	2.1	140	1.8	356	2.6	187	1.7
Dismissal <sup>1</sup>	11,375	6.1	491	6.3	561	4.1	763	6.9
Acquittal <sup>1</sup>	2,299	1.2	170	2.2	111	0.8	88	0.8
<b>Total</b>	<b>168,065</b>	<b>88.6</b>	<b>7,147</b>	<b>92.0</b>	<b>12,432</b>	<b>90.2</b>	<b>9,843</b>	<b>88.7</b>

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

<sup>1</sup>Cases that were dismissed and acquitted were removed after linking to the U.S. Sentencing Commission data.

Using the linked data, Table 2 presents the means and standard deviations of the two sentencing decision variables—incarceration and sentence length—across the three different types of counsel. Ninety-three percent of defendants represented by CJA panel attorneys were sentenced to prison, followed by 91% of defendants represented by public defenders and 84% of defendants represented by private attorneys. Defendants represented by CJA panel attorneys received average sentences of 74 months, followed by defendants represented by private attorneys (66 months); defendants represented by public defenders received the shortest average prison sentences (mean of 62 months).

TABLE 2

**Study Sample by Outcome and Counsel Type, 2015-2018**

	Incarceration Decision			Sentence Length Decision			
	N	Mean	S.D.	N	Mean	Median	S.D.
<b>Type of Counsel</b>							
Public Defender	46,751	0.91	0.28	41,937	41,937	61.64	41
CJA Panel	60,667	0.93	0.25	55,322	55,322	73.89	50
Private Attorney	32,788	0.84	0.36	27,127	27,127	65.71	46
<b>Total</b>	<b>140,206</b>	<b>0.90</b>	<b>0.29</b>	<b>124,386</b>	<b>124,386</b>	<b>67.98</b>	<b>46</b>

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

As shown in Table 3, the distribution by type of counsel in federal district courts was fairly constant across years. Roughly a third of defendants were represented by public defenders, about 43% were represented by CJA panel attorneys, and approximately 23% were represented by a private attorney over the study period. From 2015 to 2018, the total number of defendants represented by a public defender increased (10,586 to 12,758) while the number represented by CJA panel attorneys and private counsel remained relatively stable.

TABLE 3

## Type of Counsel by Year, 2015-2018

	Public Defender		CJA Panel		Private Attorney		Total	
	N	%	N	%	N	%	N	%
<b>Sentencing Year</b>								
2015	10,586	31.91%	14,393	43.39%	8,194	24.70%	33,173	10,586
2016	10,987	33.53%	14,120	43.10%	7,656	23.37%	32,763	10,987
2017	12,420	33.42%	16,191	43.56%	8,556	23.02%	37,167	12,420
2018	12,758	34.39%	15,963	43.02%	8,382	22.59%	37,103	12,758
<b>Total</b>	<b>46,751</b>	<b>33.34%</b>	<b>60,667</b>	<b>43.27%</b>	<b>32,788</b>	<b>23.39%</b>	<b>140,206</b>	<b>46,751</b>

The use of type of counsel varied across the judicial district in which the case was disposed. Table 4 highlights patterns across districts, with the three types of counsel representing roughly equal shares in some districts (e.g., Northern New York, Central California, Southern Mississippi, and Southern Ohio) and federal public defenders representing a plurality in others (e.g., districts in Alabama, Montana, South Dakota, and Utah). Of note, only two jurisdictions—Southern Georgia and Eastern Kentucky—do not have federal public defender organizations and were instead entirely represented by CJA panel attorneys or privately retained counsel.

TABLE 4

## Type of Counsel by District, 2015-2018

	Public Defender		CJA Panel		Private Attorney		Total
	N	%	N	%	N	%	N
<b>District Court</b>							
Alabama Mid	255	45.13%	222	39.29%	88	15.58%	565
Alabama North	612	46.47%	427	32.42%	278	21.11%	1,317
Alabama South	426	45.27%	321	34.11%	194	20.62%	941
Alaska	167	51.70%	129	39.94%	27	8.36%	323
Arizona	1,865	29.24%	3,919	61.45%	594	9.31%	6,378
Arkansas East	383	29.62%	608	47.02%	302	23.36%	1,293
Arkansas West	351	41.25%	326	38.31%	174	20.45%	851
California Cent.	888	30.12%	1,132	38.40%	928	31.48%	2,948
California East	412	22.67%	903	49.70%	502	27.63%	1,817
California North	572	33.97%	649	38.54%	463	27.49%	1,684
California South	1,326	29.29%	2,496	55.14%	705	15.57%	4,527
Colorado	446	40.44%	510	46.24%	147	13.33%	1,103
Connecticut	289	24.24%	627	52.60%	276	23.15%	1,192
Delaware	98	37.98%	95	36.82%	65	25.19%	258
Dist. Of Columbia	210	33.33%	245	38.89%	175	27.78%	630
Florida Mid	701	39.29%	567	31.78%	516	28.92%	1,784
Florida North	281	39.91%	273	38.78%	150	21.31%	704
Florida South	340	30.77%	265	23.98%	500	45.25%	1,105
Georgia Mid	105	21.47%	278	56.85%	106	21.68%	489
Georgia North	287	36.33%	301	38.10%	202	25.57%	790
Georgia South	0	0.00%	426	80.08%	106	19.92%	532
Hawaii	164	27.94%	272	46.34%	151	25.72%	587
Idaho	404	45.75%	355	40.20%	124	14.04%	883
Illinois Cent.	421	43.90%	309	32.22%	229	23.88%	959
Illinois North	444	18.73%	1,032	43.54%	894	37.72%	2,370

	Public Defender		CJA Panel		Private Attorney		Total
	N	%	N	%	N	%	N
Illinois South	444	40.55%	422	38.54%	229	20.91%	1,095
Indiana North	337	34.21%	375	38.07%	273	27.72%	985
Indiana South	393	29.20%	629	46.73%	324	24.07%	1,346
Iowa North	475	40.60%	536	45.81%	159	13.59%	1,170
Iowa South	565	42.32%	543	40.67%	227	17.00%	1,335
Kansas	727	42.94%	643	37.98%	323	19.08%	1,693
Kentucky East	0	0.00%	999	74.89%	335	25.11%	1,334
Kentucky West	301	35.92%	192	22.91%	345	41.17%	838
Louisiana East	133	27.42%	183	37.73%	169	34.85%	485
Louisiana Middle	71	31.00%	94	41.05%	64	27.95%	229
Louisiana West	274	34.25%	306	38.25%	220	27.50%	800
Maine	126	18.37%	436	63.56%	124	18.08%	686
Maryland	597	28.36%	1,021	48.50%	487	23.14%	2,105
Massachusetts	373	23.33%	744	46.53%	482	30.14%	1,599
Michigan East	903	32.14%	1,118	39.79%	789	28.08%	2,810
Michigan West	378	33.22%	486	42.71%	274	24.08%	1,138
Minnesota	385	26.48%	762	52.41%	307	21.11%	1,454
Miss. North	284	50.53%	171	30.43%	107	19.04%	562
Miss. South	304	32.17%	317	33.54%	324	34.29%	945
Missouri East	1,241	47.20%	748	28.45%	640	24.34%	2,629
Missouri West	355	43.56%	302	37.06%	158	19.39%	815
Montana	450	52.14%	322	37.31%	91	10.54%	863
N Carolina East	762	41.01%	780	41.98%	316	17.01%	1,858
N Carolina Mid	558	43.97%	504	39.72%	207	16.31%	1,269
N Carolina West	550	32.14%	809	47.28%	352	20.57%	1,711
Nebraska	626	39.65%	551	34.90%	402	25.46%	1,579
Nevada	614	45.28%	439	32.37%	303	22.35%	1,356
New Hampshire	234	49.68%	146	31.00%	91	19.32%	471
New Jersey	481	22.80%	765	36.26%	864	40.95%	2,110
New Mexico	1,379	43.63%	1,406	44.48%	376	11.89%	3,161
New York East	662	27.30%	915	37.73%	848	34.97%	2,425
New York North	302	34.09%	338	38.15%	246	27.77%	886
New York South	817	16.73%	2,850	58.35%	1,217	24.92%	4,884
New York West	415	28.42%	573	39.25%	472	32.33%	1,460
North Dakota	211	38.72%	270	49.54%	64	11.74%	545
Ohio North	452	20.05%	1,145	50.80%	657	29.15%	2,254
Ohio South	462	28.80%	619	38.59%	523	32.61%	1,604
Oklahoma East	165	44.35%	155	41.67%	52	13.98%	372
Oklahoma North	225	38.53%	264	45.21%	95	16.27%	584
Oklahoma West	209	34.32%	248	40.72%	152	24.96%	609
Oregon	464	42.34%	484	44.16%	148	13.50%	1,096
Penn. East	606	27.75%	826	37.82%	752	34.43%	2,184
Penn. Mid	357	30.72%	541	46.56%	264	22.72%	1,162
Penn. West	356	25.27%	671	47.62%	382	27.11%	1,409
Rhode Island	119	34.00%	95	27.14%	136	38.86%	350
South Carolina	841	40.36%	689	33.06%	554	26.58%	2,084
South Dakota	811	55.25%	541	36.85%	116	7.90%	1,468
Tennessee East	821	36.23%	1,148	50.66%	297	13.11%	2,266
Tennessee Mid	266	33.29%	393	49.19%	140	17.52%	799
Tennessee West	640	39.78%	630	39.15%	339	21.07%	1,609
Texas East	627	26.43%	1,002	42.24%	743	31.32%	2,372
Texas North	1,384	32.77%	1,834	43.42%	1,006	23.82%	4,224
Texas South	2,490	35.46%	2,367	33.71%	2,165	30.83%	7,022

	Public Defender		CJA Panel		Private Attorney		Total
	N	%	N	%	N	%	N
Texas West	3,082	34.64%	3,855	43.33%	1,959	22.02%	8,896
Utah	601	44.68%	504	37.47%	240	17.84%	1,345
Vermont	184	31.94%	310	53.82%	82	14.24%	576
Virginia East	773	34.48%	839	37.42%	630	28.10%	2,242
Virginia West	285	27.78%	520	50.68%	221	21.54%	1,026
W Virginia North	417	39.45%	488	46.17%	152	14.38%	1,057
W Virginia South	314	37.70%	394	47.30%	125	15.01%	833
Washington East	415	44.48%	377	40.41%	141	15.11%	933
Washington West	490	39.36%	522	41.93%	233	18.71%	1,245
Wisconsin East	274	31.07%	393	44.56%	215	24.38%	882
Wisconsin West	174	44.50%	163	41.69%	54	13.81%	391
Wyoming	273	41.94%	268	41.17%	110	16.90%	651
<b>Total</b>	<b>46,751</b>	<b>33.34%</b>	<b>60,667</b>	<b>43.27%</b>	<b>32,788</b>	<b>23.39%</b>	<b>140,206</b>

Table 5 displays the bivariate descriptive results of case characteristics across type of counsel. Many of these results help clarify some of the descriptive findings presented in the tables above. For example, individuals represented by panel attorneys (89 months) had lengthier presumptive sentences (i.e., expected sentences based on guidelines) than those represented by private attorneys (77 months) or by public defenders (68 months). Defendants who retain private attorneys have lower average criminal history scores—1.77 on a six-point scale compared to 2.72 among CJA panel attorneys and 2.79 for public defenders—which suggests that private attorneys are dealing with defendants with somewhat less extensive criminal histories. Drug offense is the modal offense type for each of the three types of counsel (35% for public defenders, 62% for CJA panel attorneys, and 43% for private attorneys). Private attorney caseloads were comprised of a greater share of property (28%) and public order (19%) offenses than other types of counsel. Public defenders (24%) represent more people with weapons offenses than either CJA panel attorneys (12%) or privately retained counsel (7%).

Those represented by public defenders have the highest percentage of within-range sentences (46%), followed by CJA panel attorneys (39%) and private attorneys (35%). This means that judges followed the sentence recommended by the guidelines. Those represented by public defenders also had the lowest percentage of government-sponsored departures (23%), followed by private attorneys (34%) and CJA panel attorneys (35%). This includes providing substantial assistance to the government (5K1.1), early disposition (5K3.1) and other government-initiated downward departures from the sentence recommended under the guidelines. Private attorneys have a somewhat higher percentage of judicial downward departures from the guidelines-based sentence at 29%, followed by public (27%) and CJA panel attorneys (24%). Judicial downward departures are initiated for a variety of possible reasons, such as a defendant's youth or old age, mental and emotional conditions, community ties, and more.

We also found that more than three-fourths of defendants represented by public defenders and CJA panel attorneys were detained before trial, while less than half of those with private counsel experienced pretrial detention. The measure of pretrial detention in the USSC data does not differentiate between people who were able to pay their bail and those who were offered bail but could not afford it. In other words, hired counsel may not have been more effective at petitioning judges for bail, but rather defendants who had the means to hire a private attorney may also have been better able to pay for bail when it was offered.

**TABLE 5**  
**Type of Counsel by Case and District Characteristics**

	Public Defender (N=46,751)		CJA Panel (N=60,667)		Private Attorney (N=32,788)		Total (N=140,206)			
	Mean/%	S.D.	Mean/%	S.D.	Mean/%	S.D.	Mean/%	S.D.	Min	Max
<b>Case Characteristics</b>										
Presumptive Sentence	68.3	75.2	89.0	91.2	77.2	83.4	79.4	84.8	0	470
Criminal History	2.8	1.8	2.7	1.8	1.8	1.4	2.5	1.8	1	6
Violent Offense	9.7%		4.4%		3.0%		5.8%		0	1
Property Offense	16.6%		14.2%		27.6%		18.2%		0	1
Drug Offense	35.2%		61.9%		43.3%		48.7%		0	1
Public Order Offense	14.0%		7.8%		18.5%		12.4%		0	1
Weapons Offense	24.5%		11.6%		7.4%		14.9%		0	1
Weapons Enhancement	10.8%		16.5%		10.9%		13.3%		0	1
Within Range	46.2%		39.1%		34.7%		40.4%		0	1
Above Range	3.6%		2.3%		1.8%		2.6%		0	1
Gov't Sponsored Departure	23.3%		34.6%		34.2%		30.7%		0	1
Downward Departure	26.9%		24.1%		29.4%		26.2%		0	1
Trial Conviction	2.4%		4.7%		4.6%		3.9%		0	1
Detained Pretrial	76%		75.8%		47.6%		69.2%		0	1
Case Processing Time	327.3	305.5	457.4	420.1	490.0	503.9	421.6	414.1	0	11,048
<b>District Characteristics</b>										
Avg. Case Processing Time	405.4	135.3	419.1	147.0	444.1	158.2	420.4	146.7	214.2	927.9
Judicial Pressure	82.0	43.3	80.96	43.6	71.6	42.1	79.1	43.3	10.8	179.9
Trial Rate	3.7	1.8	3.8	1.9	4.1	1.9	3.8	1.9	1.5	9.2

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

Table 6 further examines type of counsel by defendant characteristics. We found that a larger percentage of private attorneys' caseloads are white (41%) versus public defenders (31%) and CJA panel attorneys (27%). Hispanics made up about a third of cases among each type of counsel (31% for public defenders and private counsel and 35% for panel attorneys). The majority of the caseloads are made up of male defendants. Females make up a relatively larger percentage of total CJA panel attorneys' caseloads (19%) than those of private attorneys (15%) and public defenders (14%). One possible explanation for this is that private attorneys handle a higher percentage of property and public order offenses, for which females make up a larger share of defendants. Defendants represented by private counsel are also older on average (41 years) compared to defendants represented by public defenders and CJA panel attorneys (36 years).

TABLE 6

## Type of Counsel by Defendant Characteristics

Defendant Characteristics	Public Defender (n=46,751)		CJA Panel (n=60,667)		Private Attorney (n=32,788)		Total (n=140,206)	
	%/Mean	S.D.	%/Mean	S.D.	%/Mean	S.D.	%/Mean	S.D.
White	30.8%		27.3%		41.3%		31.7	
Black	31.9%		32.6%		21.0%		29.7	
Hispanic	30.5%		35.4%		31.4%		32.8	
Other Race	6.7%		4.8%		6.4%		5.8	
Male	86.3%		82.2%		84.6%		84.1	
Age	36.3	11.5	35.7	10.8	40.9	12.6	37.1	11.7
Less than High School	34.3%		38.3%		22.0%		33.2	
High School	39.6%		38.4%		30.1%		36.9	
Some College	21.4%		19.5%		27.7%		22.0	
College Graduate	4.8%		3.8%		20.2%		7.9	
# of Dependents	1.4	1.6	1.45	1.6	1.46	1.6	1.4	1.6

Note: Percentages may not sum to 100 for all variables due to rounding  
S.D. = standard deviation

## Regression Analysis

This section presents the results of the regression models used to estimate the impact of type on counsel on the incarceration and sentence length decisions. This allows us to estimate the effect of counsel type net of legal, case processing, and extra-legal factors that could influence these decisions. Table 7 summarizes the stepwise logistic regression models for the incarceration decision. Logit coefficient estimates from these models have been converted to odds ratios (exponent of the coefficient) for ease of interpretation. Values greater than 1 indicate higher odds of incarceration, whereas values less than 1 indicate reduced odds. Consistent with the descriptive statistics in Table 2 above, model one indicates that the odds of people represented by private attorneys receiving a prison sentence are reduced by 47% compared to those represented by public defenders (Odds Ratio = 0.53), while the odds of those represented by CJA panel attorneys are increased by 27% (Odds Ratio = 1.27). These findings remain consistent when extra-legal defendant characteristics are included (model two).

TABLE 7:

Logistic Regression Analyses: In/Out Decision

	Model 1			Model 2			Model 3			Model 4			Model 5		
	OR	SE	P	OR	SE	P	OR	SE	P	OR	SE	P	OR	SE	P
<b>Counsel Type</b>															
CJA Panel	1.27	0.03	0.00	1.30	0.03	0.00	1.18	0.03	0.00	1.18	0.03	0.00	1.17	0.03	0.00
Private Attorney	0.53	0.01	0.00	0.68	0.02	0.00	1.25	0.04	0.00	1.25	0.04	0.00	1.25	0.04	0.00
<b>Defendant</b>															
Black				1.28	0.03	0.00	1.06	0.03	0.05	1.06	0.03	0.05	1.06	0.03	0.05
Hispanic				1.83	0.06	0.00	1.36	0.05	0.00	1.36	0.05	0.00	1.36	0.05	0.00
Other				0.97	0.04	0.44	0.95	0.04	0.25	0.95	0.04	0.25	0.95	0.04	0.25
Male				3.97	0.08	0.00	1.80	0.04	0.00	1.80	0.04	0.00	1.80	0.04	0.00
Age				0.98	0.00	0.00	1.00	0.00	0.07	1.00	0.00	0.07	1.00	0.00	0.07
High School				0.71	0.02	0.00	0.91	0.03	0.00	0.91	0.03	0.00	0.91	0.03	0.00
Some College				0.50	0.01	0.00	0.97	0.03	0.42	0.97	0.03	0.42	0.97	0.03	0.42
College Grad				0.44	0.02	0.00	1.11	0.04	0.01	1.11	0.04	0.01	1.11	0.04	0.01
Dependents				1.01	0.01	0.23	1.03	0.01	0.00	1.03	0.01	0.00	1.03	0.01	0.00
<b>Case</b>															
Criminal History							1.46	0.02	0.00	1.46	0.02	0.00	1.46	0.02	0.00
Property Offense							0.42	0.03	0.00	0.42	0.03	0.00	0.42	0.03	0.00
Drug Offense							0.90	0.07	0.21	0.90	0.07	0.21	0.91	0.07	0.22
Public Order Offense							0.63	0.05	0.00	0.63	0.05	0.00	0.63	0.05	0.00
Weapon Offense							0.52	0.05	0.00	0.52	0.05	0.00	0.52	0.05	0.00
Weapon Enhancement							2.37	0.16	0.00	2.37	0.16	0.00	2.37	0.16	0.00
Trial Conviction							4.31	0.35	0.00	4.31	0.35	0.00	3.16	0.50	0.00
Detained Pretrial							39.44	1.80	0.00	39.44	1.80	0.00	39.41	1.80	0.00
Case Processing Time							1.00	0.00	0.00	1.00	0.00	0.00	1.00	0.00	0.00
<b>Judicial/District</b>															
Caseload Pressure										0.96	0.03	0.14	0.96	0.03	0.14
Trial Rate										1.67	0.62	0.17	1.66	0.61	0.17
Avg. Processing Time										0.98	0.01	0.08	0.98	0.01	0.08
<b>Interactions</b>															
Trial x CJA													1.61	0.34	0.03
Trial x Private													1.42	0.29	0.08
Pseudo R2	0.048			0.134			0.394			0.394			0.394		
AIC	84519.29			76887.15			53935.53			53935.53			53934.37		
BIC	85455.13			77911.64			55048.68			55048.68			55067.22		
Log-Likelihood	-42164.65			-38339.58			-26854.77			-26854.77			-26852.19		
N	140,206			140,206			140,206			140,206			140,206		

OR = Odds ratio; all models include fixed effects for year and district (not shown)



However, in model three, which adds legal case factors to the model, the effect of private counsel switches. This model now indicates that defendants represented by privately retained counsel have significantly *increased* odds of incarceration compared to public defense. Both private attorneys (1.25) and CJA panel attorneys (1.18) have significantly greater odds that their client will be incarcerated than public defenders, once criminal history, offense type, and other factors are controlled.

The addition of the judicial district factors did not improve our analysis (model four). The fit indices (pseudo R-squared, log-likelihood, AIC, and BIC) values remain the same between models three and four. This is because all models include fixed effects for the district. Still, the judicial district factors do not affect the effect size and significance levels of all other independent variables, which remain unchanged from model three. These findings suggest that model three is the better overall model.

Of note, many of the other independent variables included in model three significantly impacted the incarceration outcomes. Not surprisingly, those with higher criminal histories have 46% greater odds of receiving a prison sentence with each additional increase in their criminal history score. Cases involving property, public order, and weapons offenses all have decreased odds of incarceration compared to violent offenses. Of note, the odds of receiving a sentence of incarceration for a drug offense in model three are slightly lower than for violent offenses, but this difference is not statistically significant. Table 7 also indicates that case processing factors have the greatest impact on the decision to incarcerate. The odds of incarceration were more than four times greater for cases with convictions at trial compared to those that plead guilty. This is consistent with Kim (2015) and other studies of the “trial penalty.” Finally, individuals detained before sentencing had substantially greater odds of being sentenced to prison. The odds of incarceration for these cases were 39 times greater than those who had received bail or other form of pretrial release. The extra-legal factor with the greatest influence on the incarceration decision was gender, with males having 1.8 times greater odds of receiving an imprisonment sentence than females.

To further explore the relationship between counsel type and incarceration, we created an interaction term between the type of counsel and the type of conviction (i.e., whether the defendant pled guilty or was found guilty at trial). A long-held criticism of public defender programs is that they do not have enough resources to adequately represent all the clients on their caseload (Spangenberg & Beeman, 1995). Similarly, public defenders may be uniquely pressured by other members of the courtroom work (e.g., judges and prosecutors) to “emphasize rapid case processing over vigorous criminal defense” (Cohen, 2014, 31). Conversely, private attorneys may be better resourced to mount a strong defense for their clients and feel less pressure to expedite case processing (Cohen, 2014; Hartley et al., 2010). Thus, we wanted to explore whether private attorneys received more favorable incarceration outcomes when they take their cases to trial, even when the trial resulted in a guilty disposition.

This hypothesis was not supported by the findings in model five. Both private and CJA panel attorneys had higher odds of prison sentences when they went to trial compared to instances where public defenders took their cases to trial, though the interaction term with private counsel was only marginally significant. Further, the fit indices do not suggest that model five is a better overall model as the pseudo R-squared remains the same, the BIC is slightly worse, and the AIC and log-likelihood are only slightly improved. While this finding was inconsistent with our expectations, it is perhaps not surprising given the federal context. As noted above, federal public defenders are seen as the “gold standard” of indigent defense and bring specialized knowledge of the federal system and sentencing guidelines (Bibas, 2005; Hamilton, 2014; Hazlehurst, 2015; Wool et al., 2003). Thus, it makes sense that they would be successful when taking their cases to trial. It is also worth noting that the fit indices and main effects of the other independent variables in model five remain unchanged from previous models, further indicating that model three offers the best overall fit.

Our stepwise negative binomial regression models of sentence length are presented in Table 8. Like our use of odds ratios in the logistic regressions, we used incident rate ratios (IRRs) to interpret the negative binomial models. IRR values are interpreted as the percent higher (above 1) or lower (less than 1) sentence a person received. For example, model one suggests that people represented by CJA panel attorneys have 21% longer sentences (IRR = 1.21) and those represented by private attorneys have 6% longer sentences (IRR = 1.06) than those with public defenders. This finding is consistent and is more pronounced across models. Further, we again find that model three offers the best overall fit for our data based on the pseudo R-squared values, log-likelihoods, AICs, and BICs. We will thus focus our discussion in this section on the third model.

Model three indicates that a defendant’s type of counsel significantly influenced the length of the sentence imposed by the judge. Defendants represented by private attorneys have 8% longer average sentences than those represented by federal public defenders. Defendants by CJA panel attorneys have 4% longer average sentences than those represented by federal public defenders. Nearly every other variable in the model significantly affected sentences lengths, though the relative effect sizes of most variables were small. In general, legal relevant case processing variables had the strongest impact on sentence length. For example, compared to those convicted of violent offenses, property offenses resulted in 23% shorter sentences, public order offenses in 6% shorter sentences, and weapons offenses in 2% shorter sentences. Conversely, those convicted of a drug offense had 6% longer sentences than defendants convicted of violent offenses. This underscores the severity of the drug-related cases that are processed in criminal courts, which often include trafficking and other serious offenses.

TABLE 8:

Negative Binomial Analyses: Sentence Length

	Model 1			Model 2			Model 3			Model 4			Model 5		
	OR	SE	P	OR	SE	P	OR	SE	P	OR	SE	P	OR	SE	P
<b>Counsel Type</b>															
CJA Panel	1.21	0.01	0.00	1.24	0.01	0.00	1.04	0.00	0.00	1.04	0.00	0.00	1.04	0.00	0.00
Private Attorney	1.06	0.01	0.00	1.10	0.01	0.00	1.08	0.01	0.00	1.08	0.01	0.00	1.08	0.01	0.00
<b>Defendant</b>															
Black				0.99	0.01	0.09	0.99	0.00	0.15	0.99	0.00	0.15	0.99	0.00	0.17
Hispanic				0.90	0.01	0.00	0.95	0.00	0.00	0.95	0.00	0.00	0.95	0.00	0.00
Other				0.91	0.01	0.00	0.95	0.01	0.00	0.95	0.01	0.00	0.95	0.01	0.00
Male				1.73	0.01	0.00	1.12	0.01	0.00	1.12	0.01	0.00	1.12	0.01	0.00
Age				1.00	0.00	0.00	1.00	0.00	0.00	1.00	0.00	0.00	1.00	0.00	0.00
High School				1.09	0.01	0.00	1.03	0.00	0.00	1.03	0.00	0.00	1.03	0.00	0.00
Some College				0.98	0.01	0.03	1.04	0.00	0.00	1.04	0.00	0.00	1.04	0.00	0.00
College Grad				0.76	0.01	0.00	1.07	0.01	0.00	1.07	0.01	0.00	1.07	0.01	0.00
Dependents				1.00	0.00	0.09	1.00	0.00	0.03	1.00	0.00	0.03	1.00	0.00	0.03
<b>Case</b>															
Presumptive Sentence							1.01	0.00	0.00	1.01	0.00	0.00	1.01	0.00	0.00
Criminal History							1.03	0.00	0.00	1.03	0.00	0.00	1.03	0.00	0.00
Property Offense							0.77	0.01	0.00	0.77	0.01	0.00	0.77	0.01	0.00
Drug Offense							1.06	0.01	0.00	1.06	0.01	0.00	1.06	0.01	0.00
Public Order Offense							0.94	0.01	0.00	0.94	0.01	0.00	0.94	0.01	0.00
Weapon Offense							0.98	0.01	0.02	0.98	0.01	0.02	0.98	0.01	0.03
Weapon Enhancement							1.13	0.01	0.00	1.13	0.01	0.00	1.13	0.01	0.00
Above Range Departure							1.69	0.02	0.00	1.69	0.02	0.00	1.69	0.02	0.00
Gov. Sponsored Depart.							0.64	0.00	0.00	0.64	0.00	0.00	0.64	0.00	0.00
Oth. Downward Depart.							0.73	0.00	0.00	0.73	0.00	0.00	0.73	0.00	0.00
Trial Conviction							1.00	0.01	0.96	1.00	0.01	0.96	1.09	0.02	0.00
Detained Pretrial							1.24	0.01	0.00	1.24	0.01	0.00	1.24	0.01	0.00
Case Processing Time							1.00	0.00	0.71	1.00	0.00	0.71	1.00	0.00	0.74
<b>Judicial/District</b>															
Caseload Pressure										0.99	0.00	0.10	0.99	0.00	0.10
Trial Rate										1.06	0.06	0.31	1.06	0.06	0.29
Avg. Processing Time										1.00	0.00	0.03	1.00	0.00	0.03
<b>Interactions</b>															
Trial x CJA													0.86	0.02	0.00
Trial x Private													0.96	0.02	0.07
Pseudo R2	0.007			0.012			0.116			0.116			0.116		
AIC	1290602			1285128			1150041			1150041			1149970		
BIC	1291536			1286150			1151190			1151190			1151137		
Log-Likelihood	-645205.07			-642459.1			-574902.74			-574902.74			-574864.87		
N	125,750			125,750			124,386			124,386			124,386		

IRR = Incident rate ratio; all models include fixed effects for year and district (not shown)

As expected, sentencing departures exerted a significant influence on sentence lengths. Above-range departures led to nearly 70% longer average sentences, while government sponsored and other downward departures reduced average sentences by about one-third. Cases that involved pretrial detention had 24% longer sentence length outcomes than those that were released before sentencing. Race/ethnicity effects are less pronounced regarding sentence length decisions, though Hispanic defendants receive approximately 5% shorter sentences on average than their white counterparts. Male defendants also receive 12% longer average sentences than females. Finally, the interaction between counsel type and conviction type suggests that CJA panel attorneys who took a case to trial received 14% shorter prison sentences than public defenders who took their case to trial, though there was no significant difference between private attorneys and public defenders.

## Conclusion

The Sixth Amendment guarantees the right to counsel for indigent defendants. While this right was extended to those accused of federal crimes in the Supreme Court's ruling in *Johnson v. Zerbst* (403 U.S. 458 (1938)), the system of federal public defense as we know it today wasn't formalized until the passage of the Criminal Justice Act in 1964 and its later amendments. The current system includes federal public defender organizations, which are widely considered the best example of public defense in the country, yet there are still concerns that defendants who are able to pay for a private attorney will receive more favorable outcomes from prosecutors and judges. The current study sought to address these issues by examining the variation of counsel type across numerous measures related to case processing, legal case characteristics, and extra-legal factors, as well as the relationship between type of counsel and two critical sentencing decisions: incarceration and sentence length.

Our study found that counsel type does vary across several key variables. For example, defendants who utilize federal public defenders had higher rates of accepting a plea deal than those who were provided a CJA panel attorney or who retained a private attorney. However, the findings from our regression models indicate that individuals represented by CJA panel attorneys and private counsel have 18-25% greater odds of being sent to prison once convicted than those represented by a federal public defender, controlling for numerous legal and extra-legal factors. Likewise, individuals represented by private and CJA panel attorneys received 4-8% longer sentences than those who used a public defender. Taken together, these findings suggest that federal public defenders are an important part of the federal courtroom workgroup with specific expertise in federal criminal cases and more familiarity with the judges and prosecutors. As a result, federal public defenders may be more likely to encourage their clients to take plea deals but may also secure their clients favorable sentencing outcomes.

Future research could advance the current study in a few ways. Although indigency status is constant among defendants represented by public defenders and CJA panel attorneys, it would be prudent to include controls for socioeconomic and employment status in future analyses to better isolate the effects across all three counsel types examined here. There were no such measures available for the current analysis, but it may become possible to collect and link these additional data to the FJSP files as they are updated over time. In addition, there are several avenues for examining the impact of attorney type outside of the incarceration and sentence length decisions. For example, researcher could study the impact of counsel type on federal pretrial outcomes (e.g., release, charge dismissals, and case processing time), sentencing departures, and procedural justice outcomes (e.g., self-reported satisfaction with attorney performance or perceptions of fairness). Examining early involvement of counsel and how counsel type shapes pretrial processing could shed light on the ways in which federal defenders can influence later case outcomes. For instance, type of counsel may affect pretrial detention—itsself a strong predictor of conviction and incarceration—to the extent that federal public defenders are more often available at early bail decision points. This would allow researchers to move beyond whether type of counsel matters to understanding how defense counsel matters and in what contexts. Indeed, research has already started moving in this direction at the state court level and it is now ripe for attention at the federal level.

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