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IS YOUR LAWYER A LEMON? INCENTIVES AND SELECTION IN THE PUBLIC  
PROVISION OF CRIMINAL DEFENSE

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### ABSTRACT

Governments in the U.S. must offer free legal services to low-income people accused of crimes. These services are frequently provided by assigned counsel, who handle cases for indigent defendants on a contract basis. Court-assigned attorneys generally garner worse case outcomes than privately retained attorneys. Using detailed court records from one large jurisdiction in Texas, we find that the disparities in outcomes are primarily attributable to case characteristics and within-attorney differences across cases in which they are assigned versus retained. The selection of low-quality lawyers into assigned counsel and endogenous matching in the private market contribute less to the disparities.

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## 1. Introduction

Governments in the U.S. are constitutionally required to provide legal counsel, free of charge, to low-income (i.e., indigent) people accused of crimes. In 2004, nearly 70% of felony defendants in large urban jurisdictions were represented by publicly provided legal counsel rather than defense attorneys they retained on their own. To provide indigent defense services, some jurisdictions use public defenders, who are government employees. Many jurisdictions also rely on private attorneys who elect to serve in an assigned counsel system, in which attorneys generally do not get to choose their clients and face a different incentive structure than in the private market. Past research has shown that defendants represented by assigned counsel are more likely to be convicted and often receive harsher punishments than those represented by either retained counsel or public defenders (Iyengar 2007, Cohen 2014). These disparities in outcomes in the criminal justice system could have far-reaching impacts on recidivism, educational attainment, labor market outcomes, economic mobility, and the well-being of defendants as well as their families and communities (e.g., Pager 2003, Hjalmarsson 2008, Geller et al. 2011, Raphael 2011, Lovenheim and Owens 2013, Aizer and Doyle 2015, Agan and Starr 2018). Inadequate indigent defense is also a potentially important contributor to the persistent racial gap in criminal justice outcomes, as non-white males represent a disproportionate share of people in poverty and in prison.<sup>1</sup>

In this paper, we take advantage of comprehensive data on criminal court cases and attorneys to investigate the mechanisms behind the less favorable case outcomes typically observed among defendants with assigned as opposed to privately retained counsel. Our empirical setting is Bexar County, Texas, home of the racially and ethnically diverse city of San Antonio. Bexar County District Courts have historically used an assigned counsel system in which a third party, with no specific information about the case or lawyer, assigns private attorneys to indigent clients from a pool of lawyers who have registered with the county (formally, via a rotating “wheel”). Unlike in their private practices, attorneys assigned to indigent defendants cannot turn clients’ cases down, and indigent defendants cannot select among attorneys. Assigned attorneys are also not paid market rates; rather, they are compensated based on a court-determined fee schedule. These

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<sup>1</sup> In 2013, 36% of inmates in state or federal prisons were black and 22% were Hispanic, larger than their respective shares of the total population (17% and 13%) (Carson 2014). By comparison, 33% of the incarcerated population and 62% of the total population were white. In large urban jurisdictions in the late 1990s and early 2000s, 65% of black and Hispanic defendants had publicly provided legal defense, compared to 56% of white defendants.

features of the assigned counsel system may affect the composition and incentives of participating lawyers.

We begin by confirming existing research findings in our data. Defendants in Bexar County with assigned counsel are more likely to be found guilty and to be incarcerated, and receive longer sentences and larger fines on average. The differences are statistically significant and economically meaningful; for example, a defendant is 50% more likely to be convicted with assigned relative to retained counsel, and conditional on conviction can expect a sentence that is 11% longer.

There are four reasons why criminal case outcomes might be worse for cases handled by assigned as opposed to retained counsel: (1) Case characteristics: Indigent clients may be harder to defend than non-indigent clients for a variety of reasons, some of which may be unobservable to researchers. (2) Adverse selection: Attorneys who register to serve as assigned counsel may be worse than attorneys who do not. (3) Matching: The mechanism used to assign clients to attorneys in indigent cases may not work as well as the endogenous process in the private market for retained counsel. (4) Moral hazard: Attorneys may exert less effort in cases in which their clients are assigned, relative to cases in which their clients pay them directly.

Previous studies have typically attributed much, if not all, of the disparities in case outcomes for indigent clients to differences in case characteristics and adverse selection in the assigned counsel pool (Iyengar 2007, Roach 2010). Less attention has been paid to the possible matching and moral hazard explanations for the disparities, in part due to data limitations. Our unique administrative court records not only contain rich information about clients and their cases, but also permit us to track individual attorneys across cases and over time. Therefore, we can not only condition on detailed case characteristics, but can also include lawyer-by-year fixed effects, which allow us to examine whether the same attorney in the same year obtains different outcomes in cases in which he or she is assigned as opposed to retained on average. We can thus more precisely quantify the roles of case characteristics and adverse selection among attorneys in the assigned counsel pool in determining case outcomes. We find that differences in observable case characteristics (including client, offense, and court characteristics) can explain between one-third and one-half the disparities in outcomes among cases handled by assigned and retained attorneys; in a series of robustness tests, we show that any unobservable case characteristics likely play only a small role in determining outcomes. Meanwhile, adverse selection explains at most one-third of the disparities in outcomes observed among clients of assigned as opposed to retained lawyers.

Given that large gaps remain in many outcomes even with a rich set of case and attorney controls, we next consider the potential role of client-attorney matching in explaining the relatively worse outcomes observed among indigent defendants. Indigent clients and assigned counsel do not have the ability to choose one another the way non-indigent clients and retained counsel do, but rather are matched by a county employee based largely on when the client was booked and the last time the attorney had an assigned case. We evaluate the extent to which clients who are assigned to attorneys that look like better “matches” can mitigate the assigned counsel penalty. We focus on several observable dimensions along which defendants have a revealed preference in the private market for attorneys: race, gender, distance from residence, and experience. While there are notable differences in the types of attorneys that different clients choose on the private market, we find little evidence that being assigned a lawyer who looks like a better match reduces the assigned counsel penalty.

Finally, we explore the possible role of moral hazard in giving rise to the assigned counsel penalty. Of course, attorney effort in a given case is unobservable. However, quickly resolving cases is particularly incentivized by the assigned counsel fee schedule. We therefore examine the length of court cases, from initial complaint to final adjudication, as a plausible proxy for attorney effort. We find that attorneys resolve their assigned cases 13% faster than their retained cases, consistent with reduced effort. To gain further insight into the potential role of moral hazard, we examine how outcomes changed after the county altered its compensation structure to allow for fixed, non-negotiable compensation for more types of cases. While the evidence is merely suggestive, the county’s move away from forcing attorneys who did not enter guilty pleas to be compensated based on hours worked (which had to be documented and approved by a judge) is associated with slightly improved outcomes for clients, which we interpret as further evidence that lawyer effort is sensitive to expected compensation. Consistent with this interpretation, a 2010 survey of Bexar County lawyers conducted by the Texas Task Force on Indigent Defense reveals that by a variety of measures, attorneys tend to exert less effort for clients whose cases they were assigned as compared to clients who retained them. The self-reported typical number of hearings, motions filed, and hours spent on cases on which lawyers are assigned are consistently lower than on cases on which lawyers are retained.

The results of this paper shed new light on the mechanisms behind well-established disparities in outcomes for defendants with assigned as opposed to retained counsel, and in particular go some

way toward dispelling the idea that such disparities are driven predominately by bad attorneys electing disproportionately into assigned counsel roles. Instead, they suggest that institutional factors that affect attorneys' incentives to provide effective counsel may be key in understanding these disparities. We consider some potential long-run social costs of deficiencies in the assigned counsel system and the policy implications of our findings in the concluding remarks.

## **2. Background**

### *2.1. Indigent Defense in the United States and the Bexar County Context*

In the U.S., there are two ways courts provide legal counsel for indigent defendants: through public defenders or assigned counsel. Public defenders are government employees who exclusively represent indigent clients. Assigned counsel are independent private attorneys who volunteer into a potential selection pool, subject to minimum qualification criteria, and who handle cases on a contract basis. Roughly 79% of jurisdictions have a public defender's office, which are generally supported by an assigned counsel system that handles overflow cases or cases where the public defender's office has a conflict of interest (DeFrances and Litras 2000). In jurisdictions without a public defender, assigned counsel is solely responsible for indigent defense. Bexar County District Courts use an assigned counsel system almost exclusively.<sup>2</sup>

Attorneys may choose to work as assigned counsel for several reasons. Unlike in the private market, attorneys working as assigned counsel do not have to incur the costs of advertising or recruiting clients. In Bexar County, attorneys with at least one year of experience practicing criminal law can request that they be added to the felony assigned counsel list in June and December, and stay on the list as long as they (1) maintain a least ten hours of continuing legal education credit each year and (2) do not turn down cases they are assigned.<sup>3</sup> Another reason to participate in assigned counsel is to gain experience handling criminal cases; this experience can later be advertised to potential clients. Finally, at the conclusion of a case, an attorney representing

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<sup>2</sup> During our sample period (2005-2013), the Bexar County Public Defender's Office only handled cases in which the defendant had severe mental health issues and appeals. The county had no public defender before 2005. In 2014, the Public Defender's Office began handling misdemeanor cases in one court.

<sup>3</sup> To qualify for the state jail felony list, an attorney must have at least one year of experience in criminal litigation as well as experience as lead or co-counsel in at least three criminal jury trials. To qualify for the second and third degree felony list, an attorney must have at least two years of experience in criminal litigation as well as experience as lead or co-counsel in at least two felony jury trials. To qualify for the first degree or 3(g) felony list, an attorney must either be board certified in criminal law or (1) have at least four years of experience in criminal litigation, (2) have experience as a trial counsel in at least four felony jury trials in the last five years (and have served as lead counsel in at least two of those trials), and (3) have completed 12 hours of CLE in criminal law or procedure in the last calendar year.

an indigent client is compensated by the court, which may make payment more certain than when an attorney must collect money from an individual client.

After defendants are booked, they have the opportunity to declare that they are indigent. As in most jurisdictions, in Bexar County the court makes the final determination of indigence based on whether a defendant's net income (i.e., income less certain necessary expenses) is below a certain amount per month.<sup>4</sup> Attorneys in the county's assigned counsel pool are then assigned eligible felony clients in one of two ways, depending on the specific court. Either a Court Coordinator or Pre-Trial Services Officer interviews the client and identifies the set of eligible lawyers, based on the assigned counsel lists ("wheels") maintained by the Criminal District Courts Administration Office. The judge then assigns an eligible lawyer to the case, in some cases based on who is physically present in the courtroom (District Courts 186, 226, and 379) and in other cases based on whoever happens to be at the top of the wheel (District Courts 144, 175, 186, 187, 227, 290, 399, and 437). When a lawyer takes a case off the wheel, that lawyer is moved to the bottom of the wheel. In both systems, attorneys must take on the clients assigned to them, and clients have no say on the attorney to whom they are assigned. Lawyers who have been assigned to a case must contact the defendant by the end of the first working day that they are assigned, and represent the defendant until the conclusion of the case.<sup>5</sup>

The compensation lawyers receive for serving as assigned counsel in Bexar County is a function of the severity of the charge and the disposition of the case.<sup>6</sup> Table 1 shows the assigned counsel fee schedules that were in effect in Bexar County during our sample period (2005-2013).<sup>7</sup> During the entire period, lawyers who resolved a case via a plea bargain or were assigned to a case in which the District Attorney filed a motion to revoke a client's probation (MTR) could choose to be compensated with a flat fee. During the first half of our sample, in cases not resolved via a plea bargain and that were not MTRs, lawyers were restricted to an hourly rate of \$50-\$150,

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<sup>4</sup> The defendant's necessary expenses include rent or mortgage, food/groceries, car payments, and utilities. These expenses are subtracted from the defendant's gross income, including spousal income if applicable. The threshold for qualifying is adjusted annually pursuant to the Federal Poverty Guidelines; in 2015, it was \$980.83 per month. Those eligible for SNAP, Medicaid, TANF, SSI, or public housing are also automatically eligible to receive assigned counsel.

<sup>5</sup> There are only three ways an attorney can be excused from a case he or she is assigned: (1) he or she is actively working on another assigned case, (2) he or she has a legal conflict with the case, or (3) he or she has registered vacation with the court. "Vacation" is a specific term in this context; lawyers must register vacations in advance and swear they are truly on vacation or attending to a family emergency rather than trying to manage their caseload.

<sup>6</sup> See Gross (2013) for a national survey of indigent defense compensation. Most jurisdictions have low hourly rates combined with low maximum caps or have flat fees for assigned counsel.

<sup>7</sup> Beyond adjustments noted in Table 1, the rates have not been adjusted over time (e.g., for inflation).

depending on the severity of the case and how the time was spent.<sup>8</sup> By comparison, on the private market in 2015, the median criminal defense attorney in San Antonio charged \$200 per hour (State Bar of Texas 2016). In July 2009, flat fees became an option for lawyers who resolved cases via dismissal, and the fee for representing clients facing MTRs increased. Finally, for cases resolved after November 2015 (6% of our sample), attorneys could request a flat payment of \$200 for any other type of resolution. In practice, attorneys choose the flat fee in 75% of cases (Texas Task Force on Indigent Defense 2010). Based on a 2010 survey of Bexar County attorneys (discussed further in Section 5.3), this is because flat fee requests are not subject to review, whereas a judge can adjust, or even refuse, the hours requested by a lawyer. Additionally, if an attorney can get a case resolved quickly, the flat fee amounts will be higher than pay based on the hourly rate.

Both the low hourly rates and flat fee options affect the incentives of assigned counsel. Under the flat fee structure, attorneys have an explicit incentive to resolve a case via plea. Flat fees are not uncommon in private criminal law, and retained attorneys typically set fees based on the complexity of the case and the individual's criminal history. According to one San Antonio firm, someone with no prior criminal history charged with possession of less than one gram of marijuana will pay a flat fee of \$1000-\$4000.<sup>9</sup> Assuming an hourly wage of \$200, a retained attorney would expect to work 5-20 hours on such a case. If assigned, an attorney could receive a flat fee of \$500 for a guilty plea, meaning that the typical attorney would spend no more than 2.5 hours on the case in order to receive his or her market wage. Prior to 2009, if an assigned attorney did not enter a guilty plea, his or her hourly wage would be \$75, \$125 less than the median hourly rate for criminal defense attorneys.

## *2.2. Sources of Disparities in Assigned Counsel Case Outcomes*

A robust finding in the literature on indigent defense is that defendants with assigned counsel fare worse than those with other forms of counsel (Iyengar 2007, Anderson and Heaton 2012, Cohen 2014, Shem-Tov 2017). There are several potential reasons for this. First, publicly financed counsel may handle different types of cases and clients. For example, defendants charged with white-collar crimes are more likely to use private counsel, whereas those with a prior criminal

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<sup>8</sup> Assigned counsel does have the option to petition judges for additional compensation if they spend their own resources in order to, for example, conduct an investigation, but in practice this happens in less than 1% of cases. Judges are not required to grant additional compensation, and the fear of being denied leads attorneys to forego making requests (Texas Task Force on Indigent Defense 2010).

<sup>9</sup> Cook & Cook Law Firm, PLLC. <https://lawyerdefend.me/average-cost-of-criminal-defense-lawyer-in-san-antonio-texas/>.

record are more likely to use public counsel (Harlow 2000). Further, clients who are technically eligible for indigent defense may choose to borrow money to retain private counsel if they expect that the return to doing so is high, potentially leading to selection along unobserved dimensions in the characteristics of cases handled by assigned vs. retained counsel.

A second potential source of disparities in case outcomes stems from possible adverse selection in the assigned counsel pool. The regular, but typically low compensation may attract primarily inexperienced or low-quality attorneys who are not capable of earning more as retained counsel. In the past, researchers have generally interpreted the observed worse outcomes for defendants randomly assigned to assigned counsel as opposed to public defenders in jurisdictions that simultaneously use both as evidence that adverse selection is important (Iyengar 2007, Roach 2010).

Another plausible reason that assigned counsel performs worse, at least relative to retained counsel, is that any benefits associated with the ability of defendants to endogenously match with lawyers are lost when attorneys are assigned by a third party. Mutual trust facilitates communication between a lawyer and his or her client, which may help a lawyer uncover relevant facts, witnesses, alibis, or extenuating circumstances regarding a case. It also could help ensure the defendant behaves in a way that reduces the probability that he or she will be convicted or incarcerated, such as showing up on time, dressing and behaving appropriately in court, and refraining from suspicious activity while the case unfolds. To facilitate the matching process, most law offices offer free initial consultations. Websites offering legal advice suggest that people meet with at least two experienced attorneys before hiring one, that they should be looking for an attorney that makes them “feel comfortable,” and that they should “trust [their] gut.”<sup>10</sup> This may also lead individuals accused of crimes to seek out attorneys who have similar backgrounds as their own.

A final reason that assigned counsel may perform worse than other forms of legal representation is moral hazard. Given the low private returns to pursuing assigned counsel cases, attorneys may exert less effort on them relative to cases on which they are retained. Because lawyer effort is not easily observed or measured, there is little evidence on the quantitative importance of this effect. However, Schwall (2016) exploits a change in payment scheme from hourly to flat fee for indigent defense attorneys and finds evidence consistent with attorneys’ exerting less effort

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<sup>10</sup> See, for example, <http://www.wikihow.com/Select-a-Criminal-Defense-Attorney>.

under the flat fee system. Legal scholars have also highlighted potential moral hazard problems associated with remuneration by third parties (Carrington 1979, Toone 2014), and while they do not entirely rule out adverse selection, interviews with defendants and other agents of the court consistently suggest that privately retained attorneys tend to prepare more and pursue cases more zealously than assigned counsel (Klein 1986, Anderson and Heaton 2012).

### **3. Data and Descriptive Statistics**

#### *3.1. Empirical Setting and Data Sources*

The setting for our study is Bexar County, Texas, which is the home of San Antonio. According to Census data, Bexar County had a population of 1.7 million in 2010, making it the fourth most populous county in Texas. Notably, Bexar County is ethnically and racially diverse; in 2010, 59.1% of the population of the county identified as Hispanic or Latino, 29.5% of the population identified as white alone (not Hispanic or Latino), and 8.2% of the population identified as African American.

Our main source of data are comprehensive administrative records covering 64,209 felony charges filed in Bexar County District Courts between 2005 and 2013. Bexar County began releasing these data in 2011 as part of an initiative to make court records more accessible (Gonzalez 2011). The data include detailed information on each case, such as characteristics of the defendant, the offense with which the defendant was charged, case outcomes, and sentencing outcomes. In addition to the identities of the defendants, the records include the identities of defense attorneys, which allow us to follow individual lawyers as they interact with the Bexar County courts over time and across cases.

We merged these administrative court records with several other datasets. First, we obtained information from the State Bar of Texas on the characteristics of all attorneys licensed to practice in Texas, including many characteristics to which clients might have a “gut” reaction. Specifically, the Texas Bar maintains information on when the attorney was licensed in Texas, the law school from which they graduated, the ethnicity and gender of the attorney, and the location of their office. Both the case and bar data include the attorney’s bar number, allowing us to uniquely identify attorneys in both datasets and merge the two together.

The case data also include the home address of the defendant. Using this address, we determine the census block group in which each defendant lives, and then incorporate block group demographics from the Census Bureau’s 2009-2013 American Community Survey. This gives us

additional information about defendants' backgrounds. For example, the case data do not include defendants' incomes, but defendants' home addresses allow us to ascertain the poverty rates of their neighborhoods, along with correlates of their likely costs of borrowing money. Information on clients' home addresses combined with State Bar records on attorneys' office addresses also allows us to calculate the distance between clients' residences and their lawyers' offices. Physical proximity may affect the client's (or the client's family's) ability to meet and communicate with their attorney.

### *3.2. Descriptive Statistics*

Overall, assigned counsel represents 63% of felony cases that come before Bexar County District Courts.<sup>11</sup> Table 2 provides descriptive statistics on case and attorney characteristics as well as case outcomes broken out for cases in which the lawyer was privately retained or assigned. Panels A and B of the table make clear the potential role that client and case characteristics may play in the relative performance of assigned counsel. Defendants represented by assigned counsel are slightly more likely to be women, more likely to be black and less likely to be white, and reside in more impoverished neighborhoods. They also tend to live in more unstable neighborhoods, where instability is defined as the fraction of housing units in the defendant's block group that are vacant or whose current occupant moved in after 2009; as we discuss in Section 5.1.2, we use this measure to proxy for the ease of borrowing funds to retain an attorney on the private market. Additionally, defendants represented by assigned counsel are less likely to be released on bond at some point during the adjudication process. They also have more serious criminal histories, as measured by both previous felony charges filed against them as well as previous convictions. However, the cases represented by assigned counsel are more likely to be state jail felonies, the lowest level felony offenses that can be charged in Texas, as opposed to more serious first, second, or third degree felonies.

During the time period under consideration, 67% of attorneys in our sample serve as both assigned and retained counsel in the same year.<sup>12</sup> This could potentially leave little scope for adverse selection into the assigned counsel pool. However, as Panel C of Table 2 reveals, there are systematic differences between attorneys who handle assigned and retained cases. Attorneys

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<sup>11</sup> Two-thirds of felony defendants nationwide had publicly funded counsel in 1998 (Harlow 2000).

<sup>12</sup> Of respondents to the Texas Task Force on Indigent Defense's survey of lawyers (discussed further in Section 5.3), 70% reported working on assigned cases.

working as assigned counsel are more likely to be women and tend to have offices further from where their clients live. Attorneys handling assigned cases also tend to be less experienced, as measured by both years since admission to the Texas Bar and previous number of cases tried.<sup>13</sup> Differences in experience and other characteristics of attorneys on assigned and retained cases could explain some of the assigned counsel penalty.<sup>14</sup>

Panel D of Table 2 indicates that, consistent with the previous literature, felony cases with assigned counsel tend to garner worse outcomes than cases with retained counsel on average. Cases with assigned attorneys in Bexar County are 18.3 percentage points more likely to result in a conviction on average. While only a slightly greater fraction of assigned counsel cases are resolved via a guilty plea, assigned counsel cases are substantially more likely to end in a nolo contendere or “no contest” plea, where the client admits that the state has sufficient evidence to convict but neither admits nor denies guilt, and are less likely to end in dismissal.<sup>15</sup> Clients represented by assigned counsel also tend to receive longer sentences and larger fines.

#### **4. Empirical Methodology**

We take advantage of the unique features of our data and setting to better measure and understand disparities in case outcomes for clients with assigned as opposed to retained defense attorneys. Our administrative data allow us to control for detailed case and attorney characteristics to determine how much of the assigned counsel penalty these can explain. One key benefit of our data is that, unlike in previous studies, we can observe the same attorney working as both assigned counsel and retained counsel at the same point in his or her career. This allows us to control for both observable and unobservable potential differences between attorneys, such as education, charisma, or experience, which could also affect outcomes in criminal cases. If disparities in outcomes between assigned and retained counsel cases arise purely as a result of adverse selection, we should find similar outcomes, on average, in otherwise similar cases tried by the same attorney in the same year. After conditioning on case and attorney characteristics and including attorney-

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<sup>13</sup> We find little evidence that lawyers who attended highly ranked law schools are overrepresented in retained cases. A plurality of attorneys working as retained and assigned counsel attended the local law school, St. Mary’s, which is unranked in the U.S. News and World Report ranking of law schools.

<sup>14</sup> In Appendix Figure A1, we plot the average percentage of an attorney’s cases that are assigned by years since Texas Bar admission. For less experienced attorneys, the vast majority of cases in a given year are assigned as opposed to retained. The fraction assigned declines with attorney experience.

<sup>15</sup> Pleading nolo contendere rather than guilty can benefit a defendant in future legal actions. If a defendant is sued in civil court, a previous guilty plea means the defendant is criminally liable for the incident as a matter of fact. This is not the case if he or she pled nolo contendere. For the same reason, no contest pleas can be easier to appeal.

by-year fixed effects, any remaining penalty could be due to unobservable differences across cases handled by assigned and retained counsel (an issue we address in Section 5.1.2), differences in lawyer-client match quality across assigned and retained cases (explored in Section 5.2), or differences in attorney effort across assigned and retained cases (examined in Section 5.3).

The basic regression of interest for this analysis is as follows:

$$(1) \quad y_{ikt} = \delta + \beta_1 \text{assigned}_{ik} + \mathbf{X}_{it} \boldsymbol{\Omega} + \mathbf{A}_{ikt} \boldsymbol{\Pi} + \epsilon_{ikt}$$

where

$$\mathbf{X}_{it} = [\mathbf{D}_i, o_i, c_{it}] \text{ and } \mathbf{A}_{ikt} = [\mathbf{a}_{ik}, \gamma_{kt}].$$

In equation (1),  $y_{ikt}$  is the outcome for defendant  $i$  (or for case  $i$ , as for our purposes each case is associated with one defendant) with attorney  $k$  taking place in year  $t$  (where  $t$  is defined by the complaint year of the case). In our main analysis, we focus on four outcomes: case dismissal, deferred adjudication, conviction, and incarceration conditional on conviction.<sup>16</sup>  $\text{assigned}_{ik}$  is a dummy variable indicating whether attorney  $k$  was assigned (as opposed to retained) when representing defendant  $i$ .  $\mathbf{X}_{it}$  is a matrix of defendant/case characteristics, which includes the following defendant characteristics in  $\mathbf{D}_i$ : defendant gender, defendant race, defendant age at the time of the offense, the poverty rate of the defendant's block group, the fraction of housing units in the defendant's block group that are vacant or whose current occupant moved in after 2009, whether or not the defendant was released during the adjudication process, the defendant's complaint history (i.e., the number of felony charges a defendant had accumulated at the time of the relevant charge), and the defendant's conviction history (i.e., the number of convictions a defendant had accumulated at the time of the relevant charge).  $\mathbf{X}_{it}$  also includes  $o_i$ , a dummy for the offense code associated with the defendant's case,<sup>17</sup> and  $c_{it}$ , a court docket dummy (which we define as a unique combination of court and charge year; in Bexar County, each court has one judge, and thus  $c_{it}$  controls for the judge the defendant faced).  $\mathbf{A}_{ikt}$  is a matrix of attorney and attorney-client match characteristics. The vector  $\mathbf{a}_{ik}$  includes directly observable and measurable attributes of attorney  $k$  and his or her match with defendant  $i$ , including the total number of felony cases the attorney had represented in Bexar County (a measure of experience) as well as the fraction of those cases in which he or she served as assigned counsel. Both these variables are

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<sup>16</sup> In Appendix Tables A1-A5 and Appendix Figure A2, we present results for every adjudication and sentencing outcome.

<sup>17</sup> There are 413 offense codes. Notably, the offense level dictates the list from which assigned attorneys are drawn.

measured at the date the case was filed.<sup>18</sup> The vector  $\mathbf{a}_{ik}$  additionally includes the (logged) distance in miles between the defendant’s home and his lawyer’s office as well as an indicator for whether or not the attorney is the same race as the defendant.  $\mathbf{A}_{ikt}$  also includes attorney-by-year fixed effects  $\gamma_{kt}$ , which absorb roughly half the variation in assigned counsel.<sup>19</sup> We cluster standard errors at both the defendant block group and the attorney levels.<sup>20</sup>

In this specification,  $\beta_1$  is identified off variation within attorneys who work as both assigned and retained counsel in the same year. Thus, a significant coefficient on  $assigned_{ik}$  implies a difference in outcomes for the same attorney when that attorney is assigned vs. retained in similar cases handled at a similar point in the attorney’s career. Such a difference could arise from unmeasured elements of the match between the client and attorney or from variation in attorney effort, but cannot solely be attributable to fixed attorney characteristics and thus to adverse selection.

Identifying the source of a disparity by sequentially adding covariates can be problematic, particularly when the covariates are correlated. Therefore, we quantify the importance of any given factor in explaining the assigned counsel penalty using an order-invariant decomposition following Gelbach (2016). We specifically identify the size of the omitted variable bias in the unconditional estimate of the assigned counsel penalty, relative to the conditional estimate, that is attributable to two sets of covariates: the collection of variables  $\mathbf{X}_{it}$ , which we term case characteristics, and the collection of variables  $\mathbf{A}_{ikt}$ , which we term attorney characteristics. The amount of bias due to the omission of any particular set of covariates  $B$  is equal to  $(assigned'assigned)^{-1}assigned'B_{ik}\hat{\theta}_B$ , where  $\hat{\theta}_B$  is the estimated conditional correlations between the control variables in  $B$  and the legal outcome from equation (1). Scaling the amount of the penalty (and the estimated standard errors) attributed to each factor by the average unconditional penalty allows us to compare the relative importance of each factor across outcomes.

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<sup>18</sup> The number of cases previously handled likely best captures the amount of experience and skill an attorney brings to a particular case. However, attorneys typically advertise their years of experience, so in our analysis of client-attorney matching, we measure experience as years since Texas Bar admission.

<sup>19</sup> In other words, if we were to aggregate our sample to one observation per attorney per year, 49.4% of those observations would have less than 100% and more than 0% of cases assigned.

<sup>20</sup> Clustering at the defendant home block group level consistently yields more conservative standard errors than clustering at the defendant level. It is also conceptually in line with our instrumental variable strategy (discussed in Section 5.1) that exploits block group-level income shocks as a source of exogenous variation in the likelihood that a defendant uses assigned counsel.

In our results, we present the unconditional assigned counsel penalty, and then the percent of the penalty explained by case characteristics and attorney characteristics based on the decomposition.

One concern is that our controls and fixed effects do not fully capture features of cases that could be relevant for legal outcomes, and that may also be correlated with whether a client retains their own counsel or is assigned a lawyer by the court. For example, a defendant who qualifies for assigned counsel might be less inclined to scrape together funds for retained counsel if he or she knows that in his or her case, the return to hiring a lawyer is low. After presenting the basic decomposition results, we discuss the implications of such selection on unobservables and consider several extensions to our main model as well as alternative subsample analyses to ascertain its empirical relevance. We then turn to our tests for the importance of match quality and moral hazard in generating the assigned counsel penalty.

## **5. Results**

In Section 5.1, we explore how much of the assigned counsel penalty across different case outcomes can be explained by case and attorney characteristics, estimating equation (1) and using the decomposition methodology described above. The results speak to the extent to which adverse selection of cases or attorneys into assigned counsel explains the observed gaps. We also perform several robustness checks to better understand the potential importance of unobservable differences between indigent and non-indigent clients. To the extent that disparities in outcomes across cases with assigned and retained attorneys persist even after conditioning on case and attorney controls, client-attorney match quality and lawyer effort could be important explanations. In Section 5.2, we examine whether a policy that attempts to replicate the endogenous matching process of defendants to attorneys on the private market could reduce the residual gaps. Finally, in Section 5.3, we provide evidence on the importance of moral hazard in contributing to the remaining disparities.

### *5.1. Case Characteristics and Adverse Selection*

#### 5.1.1 Baseline Results

We begin by decomposing the source of the raw assigned counsel penalty for our main outcomes of interest in Figure 1. For each outcome, the first bar in the figure shows the coefficient, and associated 95% confidence interval, on the dummy for assigned counsel from a model with no controls (i.e., the unconditional assigned counsel penalty). The final bar shows the estimated assigned counsel penalty conditional on all other covariates (i.e., the residual assigned counsel

penalty).<sup>21</sup> The intervening bars show contributions of case characteristics  $\mathbf{X}_{ijt}$  and attorney characteristics  $\mathbf{A}_{ijkt}$  to the assigned counsel penalty based on the decomposition.<sup>22</sup>

Clients represented by assigned counsel are 13.5 percentage points (39% of the retained case mean) less likely to have their cases dismissed than defendants with retained attorneys. Adding case and attorney controls reduces this penalty by roughly half, leaving a significant 6.1 percentage point assigned counsel penalty. Case characteristics account for 31% of the unconditional disparity, while adverse selection on the part of attorneys accounts for 24%.

In Texas, defendants with little or no previous contact with the justice system who are accused of low-level offenses can qualify for deferred adjudication, meaning that if they remain crime-free for a fixed period of time and comply with any other court orders, their case will be dismissed. Clients represented by assigned counsel are 5.6 percentage points (18% of the retained case mean) less likely to receive deferred adjudication, 3.2 percentage points of which cannot be explained by case or attorney characteristics. Case characteristics explain 36% of the gap. Meanwhile, attorney characteristics explain essentially none of the gap; that is, the disparity persists within attorneys trying similar assigned and retained cases within the same year.

Overall, when guilty pleas, no contest pleas, and actual convictions in court (a rare outcome) are combined, clients represented by assigned counsel are 18.3 percentage points more likely to be convicted than clients represented by retained counsel. Approximately 34% of the assigned counsel penalty in conviction rates can be explained by differences in case characteristics, but even after additionally controlling for differences across attorneys, 47% of the assigned counsel penalty remains unexplained.<sup>23</sup>

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<sup>21</sup> Unconditional and conditional estimates are also reported in Appendix Tables A1 and A2.

<sup>22</sup> In Appendix Table A3, we break the decomposition results down further by defendant characteristics, offense fixed effects, court-by-year fixed effects, and attorney characteristics.

<sup>23</sup> Appendix Figure A2 breaks out guilty pleas and nolo contendere pleas. When lawyers work as assigned counsel, their clients are 16.4 percentage points (73% of the retained case mean) more likely to enter nolo contendere pleas. 35% of this gap can be explained by case characteristics, and 26% can be characterized as being due to adverse selection among attorneys. The estimated likelihood that an indigent client pleads guilty actually becomes more precise as we compare increasingly similar cases, from a marginally statistically significant 1.9 percentage point difference to a statistically significant 2.2 percentage point (16% of the retained case mean) difference. Decomposing this change suggests that comparing similar clients eliminates this disparity, but the probability that a guilty plea is entered is even more different across retained and assigned clients of the same attorney in the same year than it is for clients on average. An example that would be consistent with this would be, for example, if more experienced attorneys were more likely to negotiate guilty pleas for their retained clients than less experienced attorneys, and less experienced attorneys took on, and quickly pled out, more assigned cases.

Turning to a sentencing outcome, defendants with assigned counsel are 7.5 percentage points more likely to be incarcerated conditional on conviction. This penalty falls to 2.3 percentage points once we control for case and attorney characteristics.<sup>24</sup> Not surprisingly, differences in case characteristics explain the majority (77%) of the gap in incarceration outcomes.<sup>25</sup> Attorney quality, again defined by the same attorney's outcomes in similar retained cases in the same year, accounts for none of the gap, leaving a residual penalty that corresponds to 31% of the raw difference in case outcomes.

### 5.1.2. Robustness

The previous results suggest that defendants with assigned counsel fare worse in their adjudication and incarceration outcomes than those who hire their own attorneys, and that controlling for case and attorney characteristics reduces but does not eliminate the disparity for most outcomes. One concern is that certain unmeasured characteristics of cases that are correlated with the likelihood that a client uses assigned or retained counsel could also independently affect case outcomes. Specifically, if someone accused of a crime is aware of the penalty associated with assigned counsel, they may exert more effort in acquiring the resources needed to hire a private attorney from family or friends, even if they are eligible to a court appointed attorney. In this case, some fraction of the assigned counsel penalty is due to this differential selection of the marginal defendant.<sup>26</sup>

As a first test of the potential importance of this unobserved selection, we appeal to a well-established literature in sociology on the correlates of social capital and reciprocal exchange. Sampson et al. (1999) showed that, even more so than measures of poverty or racial segregation, measures of housing turnover are strongly correlated with the likelihood that neighbors provide each other with financial assistance. Figure 2 illustrates conceptually how the selection problem plays out in the context of neighborhoods that have lower or higher housing turnover; i.e., that are more or less stable. In neighborhoods with low housing turnover, the social cost of raising money

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<sup>24</sup> Appendix Figure A2 includes outcomes for incarceration not conditional on conviction; however, those results are driven mainly by conviction. Appendix Figure A2 also includes decompositions for other sentencing outcomes, including sentence length and fines.

<sup>25</sup> Recall that our case characteristics include court docket dummies, which account for judicial preferences.

<sup>26</sup> Suppose the only outcome a defendant cared about was conviction. The expected cost of using assigned counsel can be expressed as  $r = E(\text{Conviction} | \text{Retained}, X) - E(\text{Conviction} | \text{Appointed}, X)$ , which is only different from our estimated assigned counsel penalty to the extent that our control variables in equation (1) differ from the private information,  $X$ , used by defendants to form their expectations. Rational defendants will hire an attorney as long as the utility loss associated with paying their private fee,  $U(f)$  is less than the expected utility loss associated with the increased probability of conviction  $U(r)$ .

is lower, meaning that all defendants who anticipate the return to retained counsel to be  $r^L$  or higher choose to use the private market. In neighborhoods with high housing turnover, only defendants who anticipate the return to retained counsel to be  $r^H$  or higher are willing to turn to neighbors for funds.

If unobserved selection on the expected return to assigned counsel is driving our results, then we would expect that in neighborhoods with low housing turnover, the observed assigned counsel penalty will be  $p^L$ ; in these neighborhoods, increased rates of reciprocal exchange mean that the cost of “scraping together” money is lower, implying that only people who perceive a very low return to retained counsel (e.g., a low assigned counsel penalty) would not hire them. Alternately, in neighborhoods with high housing turnover, we would expect larger penalties on average,  $p^H$ , as the marginal indigent person retaining counsel would expect the benefit to be higher.

Following the sociology literature, we measure block group level instability as the fraction of all housing units in the ACS (renter or owner occupied) that are vacant or whose current resident moved in after 2009. For the regressions, we standardize this variable to be mean zero, with a standard deviation of one. We show the results of a model in which the assigned counsel penalty is allowed to vary with this measure in Panel B of Table 3. Our data provide some evidence consistent with theory; in neighborhoods where residents have fewer informal networks on which to rely, assigned counsel penalties are larger on average, particularly with respect to conviction. However, the first-order effect of the assigned counsel penalty (not shown) is still statistically and substantively significant, and is qualitatively identical to our first order effect that does not allow for this heterogeneity (shown in Panel A of Table 3 for reference). This suggests that selection on the client side can explain some, but not all, of the observed assigned counsel penalty.

In a second test of the potential importance of endogenous case allocation between assigned and retained lawyers, we consider an instrumental variable (IV) strategy in which we instrument for whether a defendant uses assigned or retained counsel using Bartik-style shift-share measures that arguably only affect case outcomes through their effects on the likelihood a defendant uses a court-provided lawyer. Specifically, following Beaudry et al. (2012), we construct a two-part instrument that predicts a client’s use of assigned counsel based on the timing of his or her arrest and the industrial composition of his or her neighborhood.<sup>27</sup> Here, we exploit the heterogeneous

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<sup>27</sup> The Beaudry et al. (2012) version of the Bartik instrument consists of two instruments. The first instrument captures variation in wages driven by changes in wages within an industry. The second instrument captures variation in wages

effects of the Great Recession across industries, combined with cross sectional and temporal variation in the concentration of workers in different industries in Bexar County, to obtain exogenous variation in the probability that a given defendant will be eligible for assigned counsel. The excludability of the instrument relies on the assumption that changing economic circumstances affect the relative performance of assigned and retained counsel only through the fact that the marginal indigent defendant would not have qualified for assigned counsel in different macroeconomic circumstances. The IV results appear in Panel C of Table 3. The first-stage is reasonably strong (the F-statistic is 28), but the IV estimates tend to be much larger in absolute value, and slightly less precise, than the baseline OLS estimates. Notably, however, the IV results are the same sign as the OLS estimates. This leads us to conclude that focusing on variation in the use of assigned counsel that is arguably exogenous to unobserved client characteristics does not contradict our overall findings. This further helps to mitigate concerns about possible unobserved selection in cases represented by retained vs. assigned attorneys; if anything, the assigned counsel penalty increased, rather than decreased, when local economic conditions deteriorated.

In the remaining panels of Table 3, we consider different subsamples of cases and clients in which the scope for unobserved characteristics of cases to be important is substantially more limited. First, in Panel D, we focus only on cases where the top charge is either a state jail or 3<sup>rd</sup> degree felony. Since these minor crimes carry much shorter sentences, a marginally indigent client may be less inclined to, for example, draw on an extended social network to raise funds in order to retain an attorney. In this sample, we find that there is a slightly smaller reduction in the probability of receiving deferred adjudication in assigned cases, but conditional on being

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driven by the growth of high-wage vs low-wage industries. To construct the first instrument, we determined the share of individuals in each block group in Bexar County who were working in each of 13 broad industries using the 2008-2012 five-year ACS. We then used data from each of the one-year ACS IPUMS samples for Bexar County as a whole between 2005 and 2013 to regress (log) household income on dummies for whether that individual worked in each of the same 13 broad industries alluded to above. Household income is the closest measure to what would be considered by the County Clerk's Office to determine eligibility for assigned counsel. Using coefficients from these nine regressions (one for each year between 2005 and 2013), we then predict household income for each individual appearing in our court records, applying the arrest year-specific coefficients to the industry shares of the defendants' home block groups. These predicted values are the first instrument. The second instrument is based on changes in the industrial composition of jobs in a block group, and is constructed using annual block group-level data on industry shares. Using 2001-2004 Census LODES data, we estimated the mean wage in the same 13 industries in Texas, and then standardized this mean relative to the median wage. We then constructed an annual measure of predicted wage changes in each block group in Bexar County for 2005-2015 as the sum of the percent of jobs in each industry in that year multiplied by the statewide average relative 2001-2004 wage in that industry. Variation in how the recession that occurred during our sample period affected employment and income of different industries provides time-varying and cross-sectional variation in predicted income for individual defendants, which in turn affects the probability of being eligible for assigned counsel in a manner independent of the outcomes of interest.

convicted, clients represented by assigned counsel are more likely to be incarcerated. Restricting attention further in Panel E to examine only charges for possessing less than one gram of a controlled substance (a common state jail felony), we find similar, if not larger, penalties.

Next, in Panels F and G, we focus on clients living in lower income areas by excluding all cases (retained and assigned) in which the client lives in a block group where the median household income exceeds \$44,000, the 75<sup>th</sup> percentile of block group median household income of clients represented by assigned counsel. This helps to alleviate concerns that our current set of controls do not adequately address the inframarginality problem associated with comparing indigent and non-indigent clients. For all outcomes, our results are highly robust to this sample limitation as well. Also in line with results for the full sample, we find that in more unstable neighborhoods (where residents have fewer informal networks on which to rely), assigned counsel penalties tend to be larger.<sup>28</sup>

Finally, in Panel H, we restrict the sample to attorneys who were admitted to the Texas Bar fewer than five years before charges were filed, limiting the potential for differential attrition from the retained counsel market to affect our estimates. While our sample size is much smaller, the point estimates remain qualitatively identical.

The fact that we find little evidence that the assigned counsel penalty is substantially reduced with these alternative specifications and samples, as well as in IV estimates identified off fluctuations in individual income driven by macroeconomic conditions, substantially limits the scope for unobserved client or case characteristics to be driving our estimates. Any such factor leading to worse outcomes for indigent defendants must be equally important when clients encounter higher and lower borrowing costs, when clients face minor and serious punishments, when clients are lower and higher income, and when attorneys are more and less experienced. Our results further suggest that any unobserved factor affecting outcomes must be particularly

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<sup>28</sup> In Appendix Table A4, we also show that the results are robust to excluding cases with attorneys who work for firms whose main office is located outside of San Antonio, which helps to address possible concerns that our results are influenced by novice attorneys working in Bexar County to gain experience. We also show in Appendix Table A4 that the results are robust to excluding MTRs, where the severity of the original charge and the identity of the original attorney handling the case are not always clear.

important when people accused of crimes are more likely to be indigent due to business cycle fluctuations.<sup>29,30</sup>

## 5.2. *Client-Attorney Match Quality*

The previous results indicate that a large fraction of the assigned counsel penalty remains unexplained even after controlling for case characteristics as well as adverse selection of attorneys into assigned counsel pool. The residual penalty could arise from the inability of indigent clients to endogenously match with attorneys. In Table 4, we show that defendants who hire their own counsel match with attorneys with different characteristics than those who are assigned attorneys along several dimensions. Non-indigent defendants are 11 percentage points more likely to retain counsel that is the same race as they are. Defendants also have a slight preference for male attorneys; 82.8% of retained attorneys are male, compared to 79.5% of assigned attorneys. Relative to when they are retained, when attorneys are assigned, their offices are located 7 miles further from a defendant's place of residence on average. Attorneys who are retained also tend to be more experienced than those who are assigned; they have tried over 80% more felony cases in Bexar County and have 3.7 additional years of experience (measured as years since Texas Bar admission) on average. Clients retaining their own attorney also choose attorneys who are more specialized in the type of crime of which they are accused<sup>31</sup> In general, these preferences do not vary significantly by defendant race. Clients of all races and ethnicities have a slight preference for male attorneys (a preference that also does not vary by client gender), prefer closer attorneys, and prefer more experienced attorneys. However, while black and Hispanic defendants are substantially more likely to retain a lawyer of the same race or ethnicity than to be assigned one of the same race or ethnicity, white defendants are somewhat less likely to retain a white lawyer than to be assigned a white one.

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<sup>29</sup> In results available on request, we include defendant fixed effects along with all other case and attorney controls. Defendant fixed effects largely eliminate the assigned counsel penalty for adjudication outcomes, but there remain statistically significant effects of assigned counsel on whether a defendant was incarcerated, the fine amount, and sentence length. While this particular local average treatment effect may be of some interest, it is unlikely that it can be interpreted as the impact of representation on case outcomes, as the reason that an individual has assigned counsel in one case, but manages to hire his or her own attorney in another is almost certainly due to changes in the client's criminal history, social ties, or life circumstances that have direct effects on case outcomes.

<sup>30</sup> In results available on request, we find that assigned counsel performs particularly poorly relative to retained counsel in the three courts that do not as strictly adhere to the attorney rotation wheel in selecting assigned counsel. We also find little evidence that lawyers working in larger firms perform better or worse when handling cases as assigned vs. retained counsel.

<sup>31</sup> Here, we group offenses into 18 different categories, such as arson, burglary, homicide, drug crime, etc.

We now investigate whether the assigned counsel penalties vary across the dimensions along which clients have a revealed preference in the retained attorney market that is not reflected in the assigned counsel matching process: the attorney's race, the attorney's gender, how far the attorney's office is from a client's residence, the attorney's years of experience, and the attorney's experience with the specific offense (measured as the total number of cases handled in that offense category).

In Table 5, we examine how the assigned counsel penalty varies by the race of the client and attorney. Again, we show results for four outcomes: dismissal, deferred adjudication, conviction, and incarceration conditional on conviction.<sup>32</sup> Since racial preferences appear to be race specific, we estimate these models separately for black, Hispanic, and white defendants, and show both the average difference for a racial match relative to an attorney of a different race as well as the average differences for having an attorney of each of the two other races/ethnicities relative to a racial match. All regressions have the full set of case characteristics  $\mathbf{X}_{ijt}$  and attorney characteristics  $\mathbf{A}_{ijkt}$ .

While black defendants are more than twice as likely to retain a black attorney as to be assigned one, when indigent black defendants are assigned a black attorney, vs. a Hispanic or white attorney, they are slightly (but not statistically significantly) less likely to see their case dismissed (3.1 percentage points vs. 2.3 percentage points less likely). Similarly, relative to black defendants assigned lawyers of different races or ethnicities, black defendants assigned black lawyers are about 20% less likely to receive deferred adjudication. Conviction rates are also higher for black defendants with attorneys of the same race, but again the difference relative to black defendants assigned attorneys of different races or ethnicities is not statistically significant. Finally, with respect to incarceration conditional on conviction, the assigned counsel penalty is about twice as large when black attorneys as opposed to Hispanic or white attorneys represent black clients, although the effects are imprecisely estimated. Taken together, these results suggest that government attempts to connect black clients with black attorneys may do little to improve their case outcomes, in contrast to results found in other social contexts, such as education and policing (e.g., Dee 2004, McCrary 2007).<sup>33</sup>

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<sup>32</sup> We show results for additional outcomes in Appendix Table A5.

<sup>33</sup> This finding is consistent with multiple plausible mechanisms. For example, it could be due to behavioral differences on the part of black attorneys or to adverse treatment of black clients by white or Hispanic lawyers that is independent of the client's economic status. Our data do not allow us to distinguish between these mechanisms.

Could black attorneys generally be worse when serving as assigned counsel? If this were true, Hispanic and white defendants would also have particularly large assigned counsel penalties when assigned black attorneys. This does not appear to be the case; if anything, Hispanic defendants are less likely to be convicted, and receive shorter sentences conditional on conviction, when they are assigned, as opposed to when they hire, black attorneys. Relative to black or white attorneys, Hispanic attorneys appear to have larger gaps in conviction rates for their Hispanic and white clients, but the estimated gaps are only marginally precisely estimated. We also fail to find evidence that white defendants who are assigned black counsel do much worse than white defendants who hire black counsel, although in contrast to the revealed preference that white defendants have for Hispanic vs. white lawyers, we find that, with respect to conviction, the assigned counsel penalty is smaller for white attorneys representing white clients. In sum, despite an apparent preference for same-race, or non-white lawyers on the private market, we do not find evidence that being assigned a lawyer from a client's preferred racial or ethnic background results in a meaningful reduction in the assigned counsel penalty.

In Table 6, we estimate how the assigned counsel penalty varies with respect to the attorney's gender, the distance between an attorney's office and defendant's home, the attorney's years of experience, and the extent to which the attorney specializes in the particular charge. We find little indication that having male, nearby, experienced, or specialized attorneys is related to lower conviction rates or shorter sentences for assigned vs. retained work. Note that the "match" values of distance and experience are not standardized, and yet the first-order effects of having assigned counsel are statistically indistinguishable from, and, with the exception of sentence conditional on conviction, substantively identical to, the baseline estimates.

Overall, while there are notable differences in the types of attorneys with whom different clients match on the private market and whom they are assigned by the court, we find little evidence that being assigned a lawyer who looks like a better match reduces the assigned counsel penalty substantially. Therefore, we conclude that changing the process by which the court assigns attorneys to indigent clients is unlikely to improve outcomes for indigent defendants dramatically.

### *5.3. Moral Hazard (Attorney Effort)*

To the extent that there remains a significant assigned counsel penalty even after controlling for case characteristics as well as adverse selection, and that this residual penalty is not obviously attributable to the poorer matches that result when clients cannot choose their own attorneys, it

leaves moral hazard as a potentially important explanation. In this section, we present evidence from our administrative data and from a survey of lawyers that indicates that differences in attorney effort on assigned vs. retained cases is likely a key contributor to the observed disparities in case outcomes.

### 5.3.1. Evidence from Court Records

As previously discussed, the fee structure for assigned counsel creates incentives to obtain pleas as quickly as possible. Under the flat fee arrangement, attorneys have no monetary incentive to prolong a case or take it to trial; in the hourly rate system, hourly rates are less than half of private market rates and incentivize quick resolution to be able to take on additional cases. In this context, a natural proxy for lawyer effort that we can calculate from the court records is case duration; i.e., the length of time that elapses between the complaint date, when charges were initially filed against the defendant, and the date when the case ends, for which we use the earlier of the judgement date and the adjudication date.<sup>34</sup> Delaying cases can benefit defendants in a number of ways, including making it more likely that the prosecutor offers a favorable deal, that evidence or witnesses are lost, etc. (Feeley 1979). Attorneys zealously defending their clients may pursue a variety of strategies to delay a case, for example by requesting continuances for consultation purposes or for psychiatric evaluations, filing numerous motions, and using the discovery process to postpone hearings. At the same time, however, individuals detained pre-trial may prefer to quickly plead guilty or no contest in exchange for an earlier release (Gupta et al. 2016, Stevenson 2016, Dobbie et al. 2018).

On average, cases represented by assigned counsel are 65% shorter than when counsel is retained. In Panel A of Table 7, we show results from regressions for the natural log of case length in days on the full set of case and attorney characteristics. The results suggest that on average attorneys resolve assigned cases 12.5% faster than similar retained cases ( $e^{-0.134}-1 = -0.125$ ). In Gelbach decomposition results not shown, we find that 51% of the assigned counsel penalty for case length can be attributed to characteristics of the case (which includes clients' bail status). Roughly 28% of the difference in case length can be attributed to characteristics of the attorney.

Given the important role of pre-trial detention in the potential benefit to the client of quick resolution, we divide our sample by whether the client had a bail bond posted. Conditional on all

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<sup>34</sup> Dismissed cases have an adjudication date, but no judgement date. Cases that receive deferred adjudication have a judgement date with a later adjudication date.

other features of the case and attorney, both detained and released clients' cases resolve faster when represented by assigned counsel. However, cases are particularly short among indigent clients who are detained at any point prior to adjudication. While detained clients might prefer a quick resolution, the fact that we also observe shorter case lengths for released clients when their lawyer is assigned suggests that attorneys invest less time and effort on these cases. Given the fee structure for assigned counsel incentivizes quick pleas, rather than lengthy investigations, extended negotiations, and trials, moral hazard on the part of attorneys is a potentially compelling explanation for the results.

In Panels B and C of Table 7, we explore whether clients who are “matched” with attorneys who share characteristics that appear to be valuable on the private market have shorter or longer cases. There is little evidence that the assigned counsel penalty is larger for clients matched with attorneys of the same race or ethnicity. However, being assigned a lawyer whose office is further from one's home (something not desirable on the retained market) or being assigned a more experienced lawyer (something that is) is associated with slightly longer cases.

The expansion of the flat fee option in Bexar County during our sample period allows us to further explore how the compensation structure affects attorney behavior. For the first half of our sample, lawyers could only increase their effective hourly wage by convincing their client to plead guilty or no contest quickly. After 2009, having a case dismissed became relatively more attractive, as lawyers could earn at least the fixed fee on those as well. To assess the impacts of this change, in Figure 3 we present the results of extensions of equation (1) in which we allow the assigned counsel penalty to vary with the year the case was filed. The black dots represent the estimated assigned counsel penalties for dismissals, nolo contendere pleas, guilty pleas, and deferred adjudications in each year, with 95% confidence intervals indicated. The black horizontal lines show the average estimated penalties for cases filed in each payment regime (before and after June 2009), with 95% confidence intervals shaded.

The probability that a case was dismissed or a no contest plea was entered appears stable across regimes. However, relative to their retained clients, attorneys were less likely to enter guilty pleas, and more likely to negotiate deferred adjudication, for their assigned clients after fixed fees were possible for the latter. The effect for guilty pleas is particularly notable given these are entirely within the defense's control, and do not require any concession on the part of the prosecutor or

judge. We view these results as suggestive evidence that lawyers' behavior is responsive to changes in the compensation structure.

### 5.3.2. Evidence from Attorney Surveys

Recent qualitative evidence from Bexar County further underscores how differences in effort on cases in which attorneys are assigned as opposed to retained could contribute to disparities in case outcomes. In April 2010, the Texas Task Force on Indigent Defense conducted a survey of Bexar County lawyers, the responses to which they shared with us. While too small to draw strong conclusions (a total of 93 attorneys responded to the survey), several patterns emerge. First, the survey revealed substantial dissatisfaction among criminal defense attorneys with the compensation structure for assigned counsel; 82% of lawyers surveyed had negative views about the county's fee structure. In response to a follow-up question about incentives created by the fee structure, a majority said that the system did not provide an incentive to provide quality representation. Moreover, a plurality noted in open-ended responses that the fee structure encouraged pleas, and in particular pleas early in the process.

Reported differences in the Task Force's survey in the number of hearings, motions filed, and time spent on cases provide additional evidence that attorney effort likely contributes to disparities in case outcomes. The average number of hearings respondents said were typically required to dispose an assigned felony case was 4.0, compared to 4.3 for a retained felony case (p-value for the difference = 0.06); for those lawyers who reported an average number of hearings for both types of cases, the figures were 3.9 and 4.2 (p-value = 0.03). Retained counsel also filed pre-trial motions in felony cases substantially more often than assigned counsel (71.4% vs. 60.5% of cases; p-value = 0.08); for those who reported average pre-trial motions for both types of cases, the figures were similar (69.9% vs. 61.1% of cases; p-value = 0.004).

Even more striking, though, was that survey respondents reported spending on average 16.8 hours on felony cases on which they were assigned counsel, about half the 33.5 hours they reported spending on felony cases on which they were retained counsel (p-value = 0.01). Limiting attention to lawyers who reported average hours spent on both assigned and retained felony cases, the gap remains stark at 16.3 hours for assigned cases and 26.7 hours for retained cases (p-value = 0.03). In percentage terms, the magnitude of this disparity echoes that we found for overall case length between cases handled by assigned and retained counsel. These findings are also in line with those of Anderson and Heaton (2012), whose interviews with various agents of the court in Philadelphia

suggested that certain institutional factors may serve to reduce the amount of time lawyers on assigned counsel put into preparing cases.

We cannot quantify the exact contribution of moral hazard to observed disparities in outcomes between cases handled by assigned and retained counsel. However, the evidence presented in this section, together with the previous results indicating that case characteristics as well as adverse selection among attorneys can only account for a fraction of the differences, suggest that variation across assigned and retained cases in lawyer effort plays a central role in generating the disparities.

## **6. Conclusion**

In this paper, we exploit detailed administrative data from one large county in Texas that allow us to track cases through the criminal justice system as well as follow lawyers as they handle different cases in different roles. Our ability to observe the same lawyer handling similar cases under different case allocation regimes allows us to differentiate between four possible mechanisms driving the disparity in outcomes for indigent clients: differing case characteristics, adverse selection of low quality attorneys into assigned counsel, lower quality matches between attorneys and defendants, and reduced effort on the part of lawyers.

We find that, while important in understanding the disparities, case characteristics are not solely responsible for the worse case outcomes generally observed among indigent relative to non-indigent defendants. Meanwhile, adverse selection among lawyers electing to serve as assigned counsel can explain at most one-third of the disparities in outcomes among clients of assigned as opposed to retained lawyers. We also find little evidence that court-determined matches between clients and attorneys that happen to replicate more closely private market matches deliver better case outcomes.

To the extent that case characteristics, adverse selection, and match quality together can only explain a fraction of the disparities in outcomes between cases tried by assigned and retained counsel, our results point to a central role for moral hazard in generating these disparities. Our finding that lawyers working in assigned cases resolve these cases faster is consistent with this interpretation. Further, survey evidence highlights striking gaps in the average number of hearings, motions filed, and hours spent on cases handled by assigned relative retained counsel.

Our results provide a window into the sources of disparities in outcomes for defendants with assigned as opposed to retained counsel. These disparities are important to understand not just because of their immediate impacts on indigent individuals, but also because differences in

treatment by the criminal justice system may have long-run impacts as well. One potential long-run social cost of the disparate treatment is higher rates of future crime among low-income individuals (Aizer and Doyle 2015). To shed some light on this, we consider the relationship between attorney-specific assigned counsel penalties and future recidivism of those attorney's clients. We first generate attorney-specific assigned counsel penalties from estimating conviction using equation (1), but including interactions between the assigned counsel dummy and attorney fixed effects. We then regress the probability that a defendant has felony charges filed against him or her again in the next three years on our full set of case characteristics. Because those incarcerated cannot recidivate (at least temporarily), we exclude defendants who were imprisoned from this sample. In Figure 4, we plot attorney-specific assigned counsel penalties against the average difference in the residualized recidivism rates for their retained and assigned clients. We find a positive and statistically significant relationship between them, suggesting that indigent clients represented by attorneys with greater assigned counsel penalties are more likely to recidivate in the future.<sup>35</sup>

Our results have important implications for policymakers seeking ways to provide a fair and accessible system of legal representation for those charged with crimes. Relative to programs aimed at mitigating adverse selection in the assigned counsel pool, such as pro-bono style requirements that all attorneys represent a certain number of indigent clients each year, improving the incentives for individual attorneys to mount robust defenses in assigned counsel cases is likely to be a more effective strategy for improving the quality of indigent defense. To the extent that inadequate indigent defense is an important contributor to the persistent racial gap in criminal justice outcomes, improving incentives for attorneys who defend indigent clients represents an important step in ensuring equal access to justice for all Americans.

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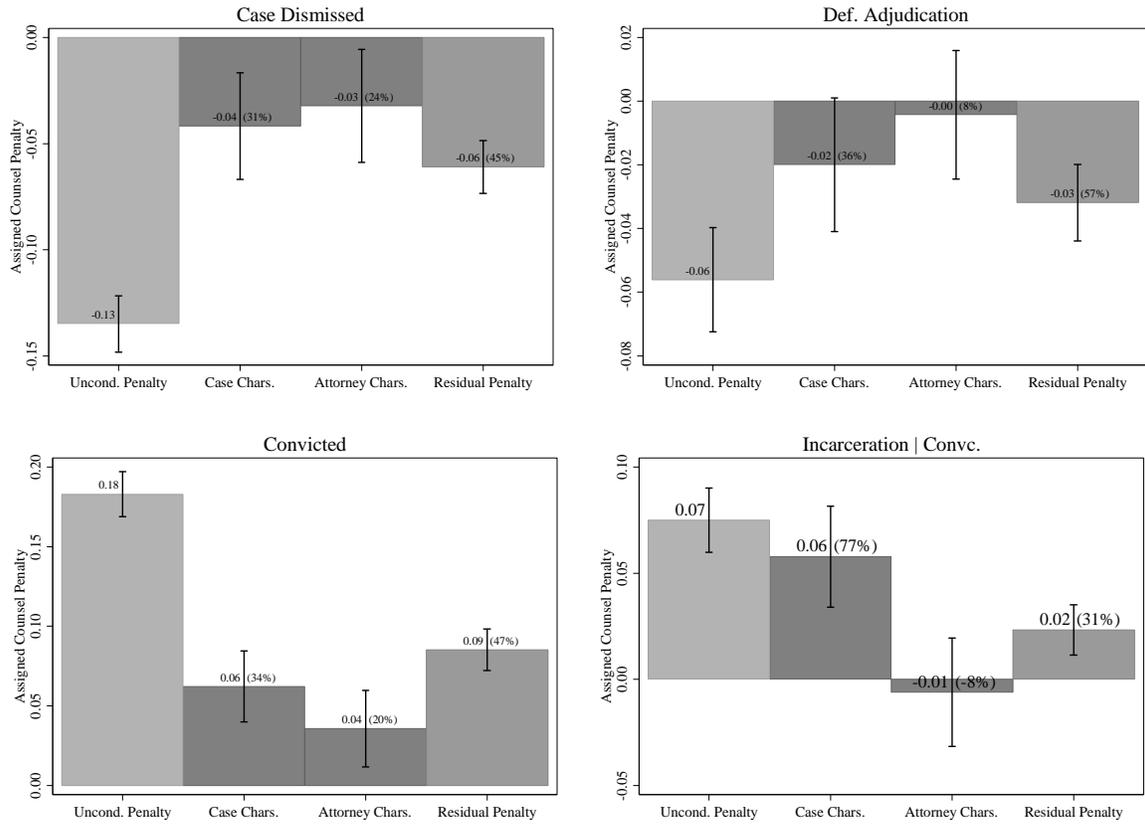
<sup>35</sup> Including all defendants, even those incarcerated, the relationship remains positive and statistically significant, but as expected, smaller in magnitude (beta = 0.048, se = 0.029).

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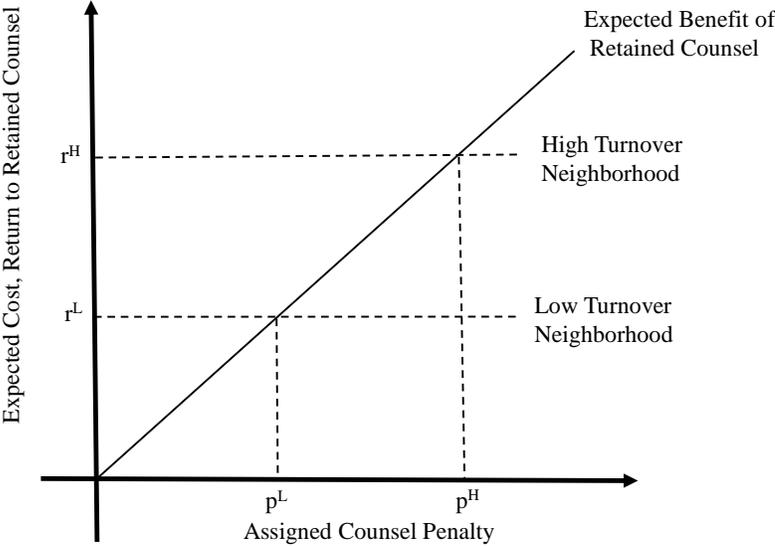
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**Figure 1. Assigned Counsel Penalty Decompositions**

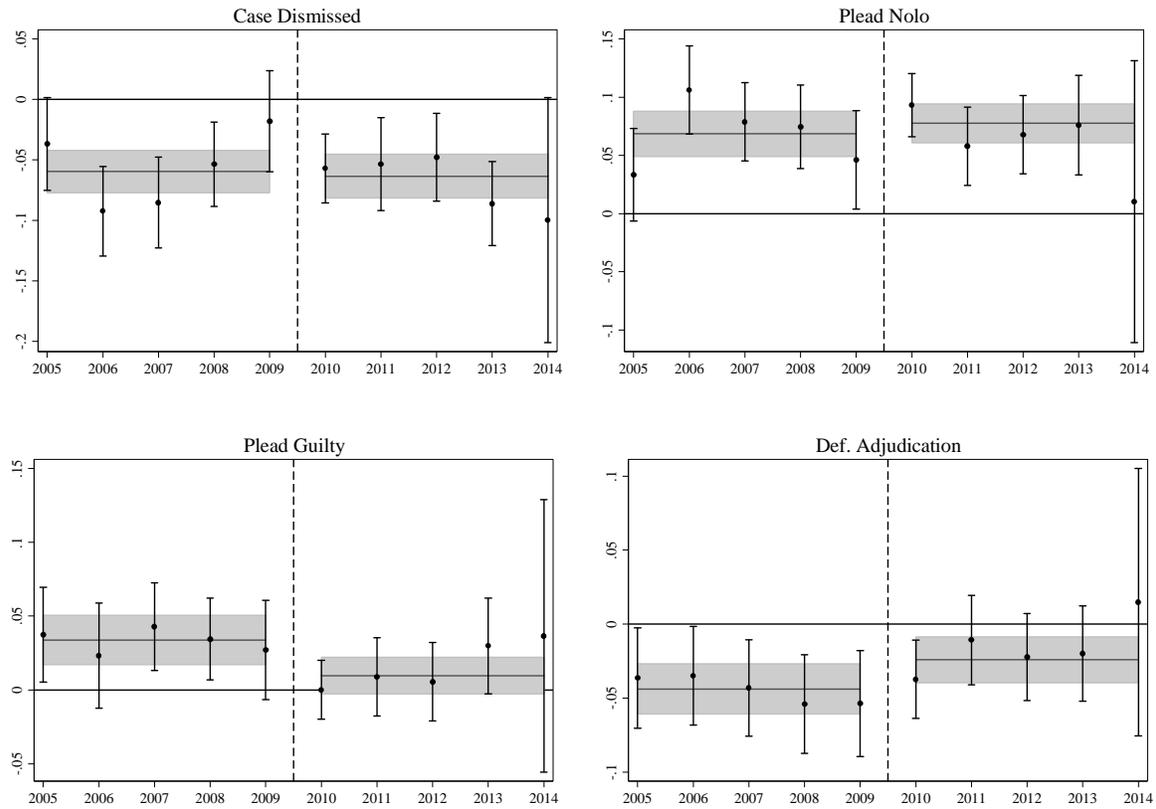


Notes: In each figure, the first bar is the unconditional coefficient on having an assigned (as opposed to retained) attorney for the outcome listed at the top. The next two bars represent a Gelbach (2016) decomposition that shows the amount of the penalty that can be explained by case characteristics and attorney characteristics, along with 95% confidence intervals of these estimates. The final bar is the residual penalty after controlling for all case and attorney characteristics. Reported percentages are the decomposition estimate divided by the unconditional coefficient.

**Figure 2.** The Return to Private Counsel and Borrowing Costs

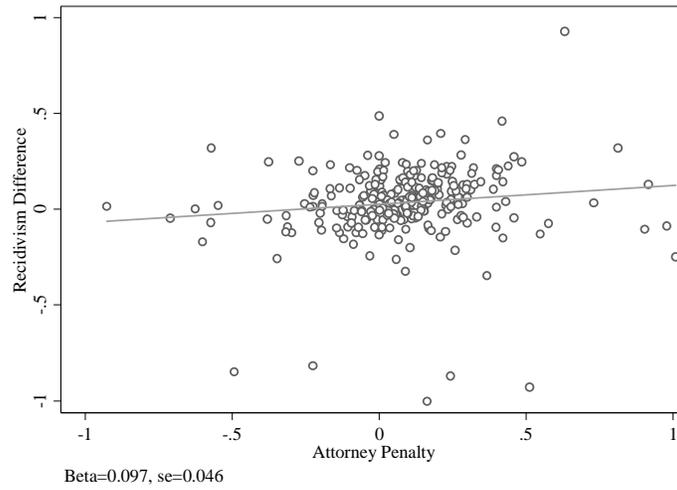


**Figure 3. Assigned Counsel Penalty Over Time**



Notes: The dotted line denotes when the compensation regime changed (see text for details). For each outcome, the black dots represent the estimated assigned counsel penalty in each year, with 95% confidence intervals indicated. Black horizontal lines show the average assigned counsel penalty for cases filed in each compensation regime, with 95% confidence intervals shaded.

**Figure 4.** Attorney-Specific Assigned Counsel Penalties and Client Recidivism



Notes: Estimates of attorney-specific assigned counsel penalties are plotted against the difference in the probability an attorney's indigent relative to non-indigent clients recidivate within 3 years. Excludes defendants who were imprisoned from the sample.

**Table 1.** Fee Schedule for Assigned Counsel in Bexar County

	State Jail, 3 <sup>rd</sup> Degree	2 <sup>nd</sup> Degree	3 <sup>rd</sup> Degree	Capital
Initial Jail Visit	\$100	\$100	\$100	\$100
<b>Flat Fees</b>				
Pleas	\$400	\$500	\$750	1 <sup>st</sup> Chair \$3500 2 <sup>nd</sup> Chair \$2500
Post-Indictment Dismissals (available after July 2009 only)	\$400	\$500	\$750	1 <sup>st</sup> Chair \$3500 2 <sup>nd</sup> Chair \$2500
Pre-Indictment Dismissals (available after July 2009 only)	\$200	\$250	\$350	1 <sup>st</sup> Chair \$1750 2 <sup>nd</sup> Chair \$1250
Cases not disposed of by plea or dismissal (available after November 2015 only)	\$200	\$200	\$200	\$200
Motion to Revoke Probation (2005- July 2009)	\$175	\$225	\$300	N/A
Motion to Revoke Probation (after July 2009 only)	\$200	\$250	\$350	N/A
<b>Hourly Rates</b>				
Court Appearance	\$75	\$75	\$75	\$75
Evidentiary Hearing	\$75	\$85	\$100	1 <sup>st</sup> Chair \$125 2 <sup>nd</sup> Chair \$115
Trial	\$75	\$100	\$125	1 <sup>st</sup> Chair Voir Dire \$100 2 <sup>nd</sup> Chair Voir Dire \$90 1 <sup>st</sup> Chair Trial \$150 2 <sup>nd</sup> Chair Trial \$140
Out of Court Time	\$50	\$60	\$75	\$80

Notes: Adapted from State of Texas and County of Bexar, "Joint Order Adopting Fee Schedule," September 3, 2004, Document 58349; July 6, 2009, Document 62328; October 14, 2015, Document 67837.

**Table 2.** Case Characteristics and Outcomes for Retained and Assigned Counsel Clients

	Retained (n=23,559)		Assigned (n=40,650)	
	Mean	Std. Dev.	Mean	Std. Dev.
<b>A. Defendant Characteristics</b>				
Male	82.8%		79.5%	
Age at Offense	31.0	10.8	31.4	10.6
White	28.2%		22.4%	
Black	12.3%		19.3%	
Hispanic	59.5%		58.3%	
Previous Charges	1.28	0.70	1.18	0.59
Previous Convictions	0.64	1.37	1.05	1.74
Released on Bond	87.1%		55.2%	
Block Group Poverty Rate	23.9%	16.4%	28.2%	17.1%
Block Group Turnover Rate	26.8%	14.1%	29.0%	14.3%
<b>B. Case Characteristics</b>				
State Jail Felony	37.0%		48.8%	
2nd or 3 <sup>rd</sup> Degree Felony	47.4%		41.2%	
1 <sup>st</sup> Degree	15.6%		10.0%	
Violent Crime	20.3%		20.8%	
Property Crime	14.2%		23.4%	
Drug Crime	37.9%		32.5%	
<b>C. Attorney Characteristics</b>				
Male	91.5%	27.9%	77.7%	41.6%
Distance from Client (Miles)	10.06	51.09	17.28	103.24
Years of Experience	19.02	9.79	15.28	9.62
Previous Cases	611.10	631.74	332.48	426.59
Percent Assigned	37.0%	25.6%	77.4%	20.8%
Race / Ethnic Match	46.5%		35.5%	
<b>D. Case Outcomes</b>				
Dismissed	34.3%		20.8%	
Deferred Adjudication	30.8%		25.2%	
Charges Reduced	11.2%		9.2%	
Convicted	36.4%		54.7%	
Guilty Plea	13.6%		15.5%	
Nolo Contendere	22.6%		39.0%	
Convicted at Trial	0.2%		0.2%	
Incarcerated	28.6%		47.0%	
Sentence (Days)	550.16	1394.38	654.87	1572.74
Fine	\$1041	\$950	\$1456	\$1117

Notes: 64,209 observations.

**Table 3.** Assigned Counsel Penalties for Case Outcomes, Robustness Checks

	Dismissed	Def. Adj.	Convicted	Incarc.   Convic.
<b>A. Baseline OLS Estimates (64,209 / 30,789)</b>				
Assigned Counsel	-0.0610*** [0.0061]	-0.0319*** [0.0059]	0.0852*** [0.0064]	0.0233*** [0.0056]
<b>B. Interactions with Social Capital (64,209 / 30,789)</b>				
Assigned Counsel × Borrowing Costs	-0.0042 [0.0042]	-0.0007 [0.0036]	0.0050 [0.0039]	-0.0036 [0.0045]
<b>C. IV Estimates (63,063 / 30,132)</b>				
Assigned Counsel	-0.386* [0.153]	-0.381* [0.149]	0.700*** [0.174]	0.347 [0.229]
<b>D. Minor Offenses (45,171 / 20,931)</b>				
Assigned Counsel	-0.0722*** [0.0073]	-0.0220** [0.0075]	0.0856*** [0.0075]	0.0383*** [0.0075]
<b>E. Minor Drug Possession Offenses (12,844 / 8,635)</b>				
Assigned Counsel	-0.0810*** [0.0175]	-0.0546** [0.0179]	0.1180*** [0.0161]	0.0319* [0.0154]
<b>F. Low-Income Block Groups</b>				
Assigned Counsel	-0.0564*** [0.0075]	-0.0333*** [0.0075]	0.0852*** [0.0075]	0.0173** [0.0065]
<b>G. Low-Income BGs, Interactions w/ Social Capital (43,993 / 22,366)</b>				
Assigned Counsel × Borrowing Costs	-0.0062 [0.0056]	-0.0033 [0.0046]	0.0103+ [0.0054]	0.0002 [0.0054]
<b>H. ≤ Five Years of Experience (8,871 / 4,440)</b>				
Assigned Counsel	-0.0722*** [0.0162]	-0.0354+ [0.0199]	0.0933*** [0.0206]	0.0020 [0.0182]

Notes: All regressions include controls for case and attorney characteristics. Standard errors adjusted for heteroscedasticity and clusters at the defendant home block group and attorney level. Significant at +10%, \*5%, \*\*1%, and \*\*\*0.1% levels.

**Table 4. Attorney Characteristics by Representation Type and Defendant Race**

	Same Race as Client	Male	Distance from Client's Residence (Miles)	# of Cases Tried in Bexar as of Complaint Date	Years on Texas Bar	% Previous Cases in Same Offense Category
<b>All Defendants</b>						
Retained (n=23,559)	46.5%	82.8%	10.1	611	19.0	18.5%
Assigned (n=40,650)	35.5%	79.5%	17.3	332	15.3	17.2%
<b>Black Defendant</b>						
Retained (n=2,892)	18.8%	83.8%	9.5	678	17.8	21.3%
Assigned (n=7,841)	8.7%	80.9%	18.8	345	15.2	18.9%
<b>Hispanic Defendant</b>						
Retained (n=14,017)	46.1%	86.1%	9.6	635	19.3	18.5%
Assigned (n=23,685)	32.9%	82.2%	16.8	329	15.2	16.8%
<b>White Defendant</b>						
Retained (n=6,650)	59.3%	75.4%	11.3	531	18.9	17.3%
Assigned (n=9,124)	65.4%	71.4%	17.1	329	15.5	16.7%

Notes: All differences between characteristics of retained and assigned cases are significant at the 1% level. "% Previous Cases in Same Offense Category" is the percent of all the attorney's previous cases that were charged with the same offense (defined for 18 different categories such as arson, assault, burglary, homicide, drug crime, etc.).

**Table 5. Race and Ethnicity Match Results, by Defendant Race**

	Dismissed		Def. Adj.		Convicted		Incarcerated   Convicted	
<b>A. Black Defendants</b>								
Assigned	-0.0233	-0.0317	-0.047**	-0.0576	0.065***	0.0806**	0.0248	0.0544
	[0.0193]	[0.0325]	[0.0158]	[0.0462]	[0.0191]	[0.0247]	[0.0158]	[0.0454]
Assigned × Black Atty	-0.0083		-0.0103		0.015		0.0296	
	[0.0373]		[0.0473]		[0.0315]		[0.0461]	
Assigned × Hisp Atty		-0.0735		-0.0145		0.0966+		-0.0037
		[0.0505]		[0.0598]		[0.0528]		[0.0522]
Assigned × White Atty		0.026		0.0157		-0.0392		-0.033
		[0.0384]		[0.0477]		[0.0333]		[0.0468]
Obs.	10,733	10,733	10,733	10,733	10,733	10,733	5,312	5,312
<b>B. Hispanic Defendants</b>								
Assigned	-0.067***	-0.077***	-0.0266**	-0.039***	0.086***	0.111***	0.0210**	0.0154
	[0.0103]	[0.0117]	[0.0092]	[0.0102]	[0.0104]	[0.0121]	[0.0079]	[0.0133]
Assigned × Black Atty		0.0629		0.0045		-0.0742		-0.0158
		[0.0477]		[0.0500]		[0.0525]		[0.0324]
Assigned × Hisp Atty	-0.0096		-0.0124		0.0251+		-0.0057	
	[0.0145]		[0.0130]		[0.0150]		[0.0159]	
Assigned × White Atty		0.0068		0.0128		-0.0226		0.0067
		[0.0146]		[0.0130]		[0.0150]		[0.0161]
Obs.	37,702	37,702	37,702	37,702	37,702	37,702	19,617	19,617
<b>C. White Defendants</b>								
Assigned	-0.091***	-0.045**	-0.034	-0.0232	0.11***	0.060***	0.0134	0.0515**
	[0.0195]	[0.0160]	[0.0220]	[0.0151]	[0.0211]	[0.0140]	[0.0266]	[0.0184]
Assigned × Black Atty		-0.00646		-0.0644		0.070		-0.104*
		[0.0519]		[0.0557]		[0.0543]		[0.0484]
Assigned × Hisp Atty		-0.0502*		-0.0053		0.0497+		-0.0307
		[0.0255]		[0.0276]		[0.0262]		[0.0348]
Assigned × White Atty	0.0462+		0.0108		-0.0516*		0.038	
	[0.0245]		[0.0265]		[0.0248]		[0.0330]	
Obs.	15,774	15,774	15,774	15,774	15,774	15,774	5,860	5,860

Notes: All regressions include controls for case and attorney characteristics. Standard errors adjusted for heteroscedasticity and clusters at the defendant home block group and attorney level. Significant at +10%, \*5%, \*\*1%, and \*\*\*0.1% levels.

**Table 6. Defendant Preference Matches and Case Outcomes**

	Dismissed	Def. Adj.	Convicted	Incarcerated   Convicted
<b>A. Male Attorney</b>				
Assigned Counsel	-0.0646*** [0.0165]	-0.0267* [0.0129]	0.0834*** [0.0167]	0.0088 [0.0152]
Assigned Counsel × Male	0.0042 [0.0175]	-0.0061 [0.0148]	0.0021 [0.0187]	0.0166 [0.0162]
<b>B. Distance from Defendant's Home to Law Office</b>				
Assigned Counsel	-0.0644*** [0.0115]	-0.0307** [0.0094]	0.0872*** [0.0112]	0.0183+ [0.0100]
Assigned Counsel × Ln(Distance)	0.0018 [0.0054]	-0.0006 [0.0045]	-0.0011 [0.0051]	0.0028 [0.0052]
<b>C. Years Since Texas Bar Admission</b>				
Assigned Counsel	-0.0689*** [0.0119]	-0.0436*** [0.0128]	0.104*** [0.0128]	0.0114 [0.0129]
Assigned Counsel × Experience	0.0048 [0.0061]	0.0072 [0.0067]	-0.0117+ [0.0070]	0.0071 [0.0067]
<b>D. Offense Specialization</b>				
Assigned Counsel	-0.0549*** [0.0072]	-0.0187** [0.0066]	0.0690*** [0.0077]	0.0297*** [0.0067]
Assigned Counsel × Specialization	-0.0003 [0.0003]	-0.0007** [0.0002]	0.0009*** [0.0002]	-0.0004* [0.0002]
Observations	64,209	64,209	64,209	30,789

Notes: All regressions include controls for case and attorney characteristics. Main effects of interacted variables are also included but not shown. Specialization is the percent of the attorney's previous cases that were charged with the same offense (defined for 18 different categories such as arson, assault, burglary, homicide, drug crime, etc.). Standard errors adjusted for heteroscedasticity and clusters at the defendant home block group and the attorney levels. Significant at +10%, \*5%, \*\*1%, and \*\*\*0.1% levels.

**Table 7.** Assigned Counsel Penalty for Case Length

<b>A. Average Differences</b>			
	All	Detained Pre-Adjudication	Released Pre-Adjudication
Assigned Counsel	-0.134*** [0.017]	-0.239*** [0.033]	-0.139*** [0.013]
Observations	52,488	18,902	33,586
<b>B. Racial and Ethnic Matches</b>			
	Black Defendants	Hispanic Defendants	White Defendants
Assigned Counsel	-0.084* [0.039]	-0.119*** [0.027]	-0.130** [0.039]
Assigned Counsel × Same Race Attorney	0.011 [0.104]	-0.040 [0.044]	0.009 [0.046]
Observations	8,847	30,720	12,921
<b>C. Other Match Dimensions</b>			
	Distance from Home to Law Office	Years since Bar Admission	Male Attorney
Assigned Counsel	-0.197*** [0.031]	-0.210*** [0.032]	-0.154*** [0.037]
Assigned Counsel × Match Dimension	0.035** [0.012]	0.0452* [0.020]	0.023 [0.040]
Observations	52,488	52,488	52,488

Notes: All regressions include controls for case and attorney characteristics. Sample excludes motions to revoke probation (MTRs). Standard errors adjusted for heteroscedasticity and clusters at the defendant home block group and the attorney levels. Significant at +10%, \*5%, \*\*1%, and \*\*\*0.1% levels.

Appendix

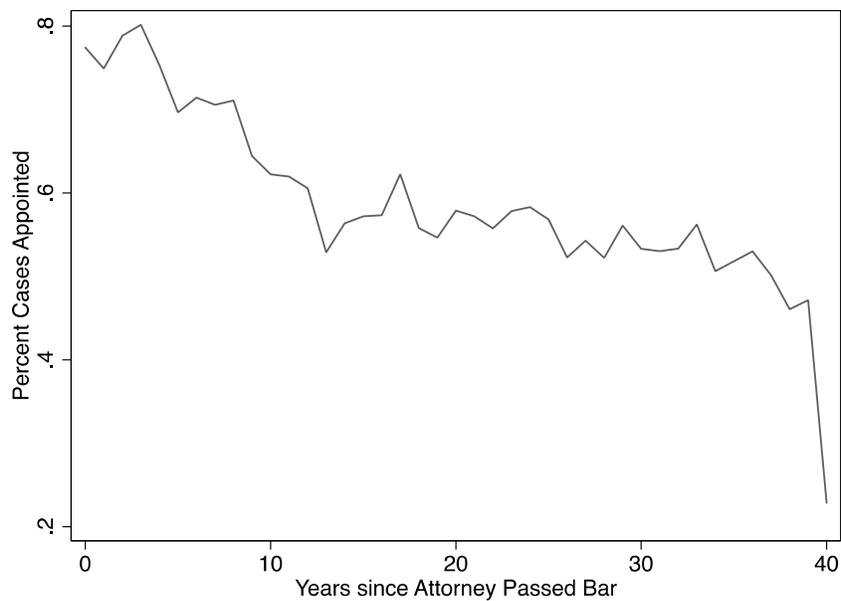
# Is Your Lawyer a Lemon? Incentives and Selection in the Public Provision of Criminal Defense

Amanda Agan  
Matthew Freedman  
Emily Owens

## Appendix (For Online Publication)

### A. Appendix Figures

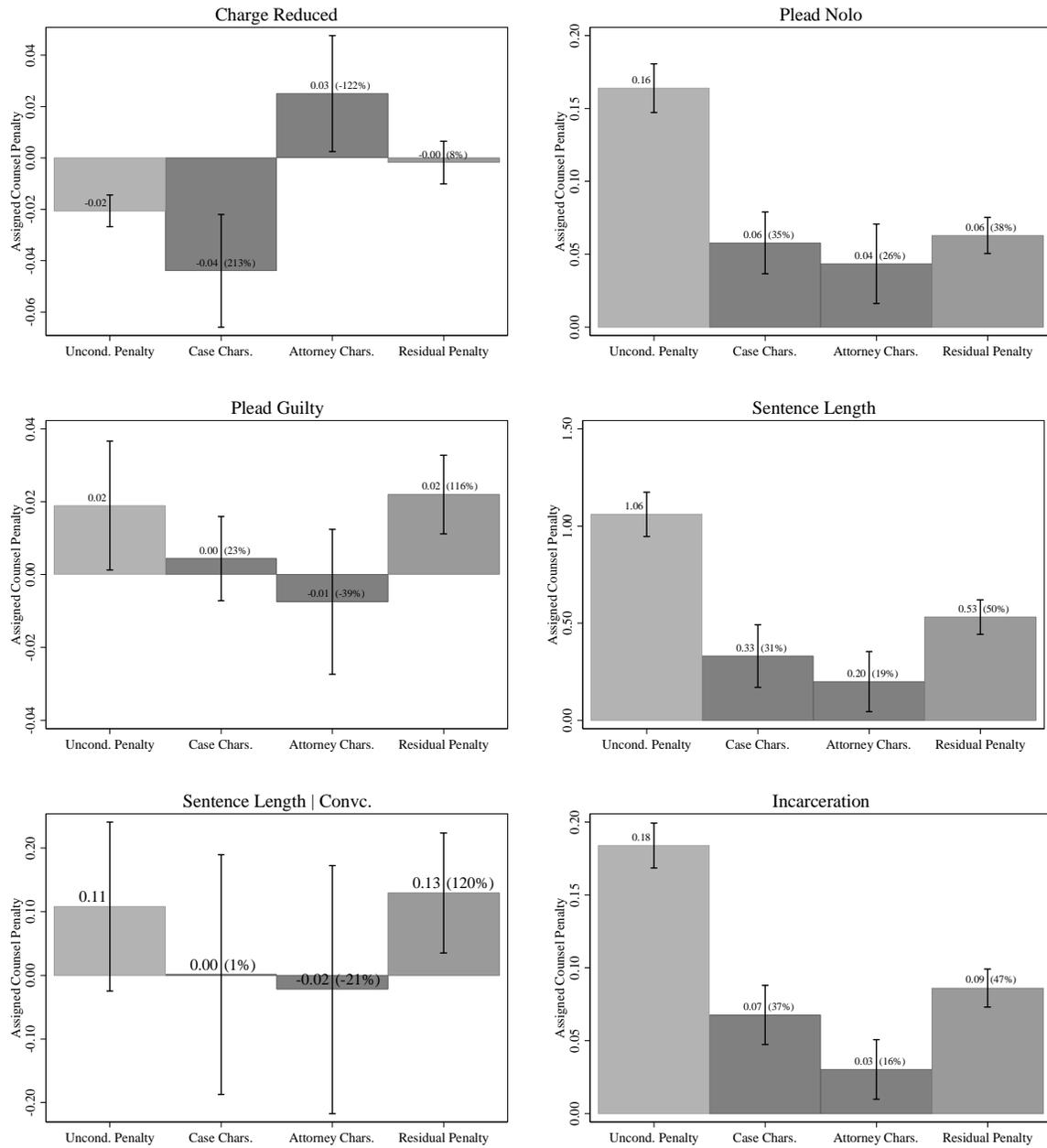
**Figure A1.** Average Percent of Cases Assigned by Attorney Experience



Notes: Sample includes 727 attorneys.

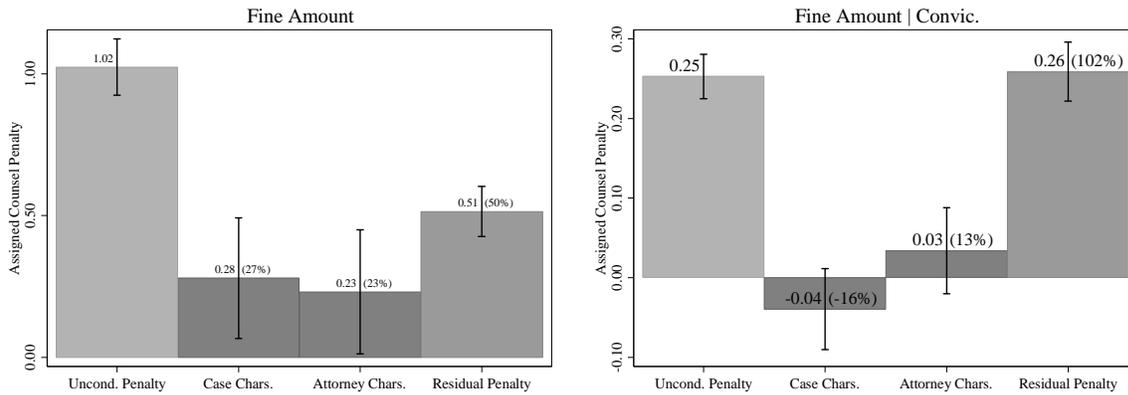
# Appendix

**Figure A2.** Assigned Counsel Penalty Decompositions for Additional Outcomes



## Appendix

**Figure A2 (continued).** Assigned Counsel Penalty Decompositions for Additional Outcomes



Notes: In each figure, the first bar is the unconditional coefficient on having an assigned (as opposed to retained) attorney for the outcome listed at the top. The next two bars represent a Gelbach (2016) decomposition that shows the amount of the penalty that can be explained by case characteristics and attorney characteristics, along with 95% confidence intervals of these estimates. The final bar is the residual penalty after controlling for all case and attorney characteristics we are able to control for. Reported percentages are the decomposition estimate divided by the unconditional coefficient.

## Appendix

### B. Appendix Tables

**Table A1.** Unconditional and Residual Assigned Counsel Penalty for Case Outcomes

<b>A. Adjudication Outcomes</b>												
	Reduced Charge ret. mean = 0.112		Case Dismissed ret. mean = 0.343		Deferred Adjudication ret. mean = 0.308		Plead Nolo ret. mean = 0.226		Plead Guilty ret. mean = 0.136		Convicted ret. mean = 0.364	
	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)
Assigned Counsel	-0.021***	-0.00172	-0.135***	-0.061***	-0.056***	-0.032***	0.164***	0.0628***	0.0189*	0.0220***	0.183***	0.0852***
	[0.00316]	[0.00407]	[0.00676]	[0.00612]	[0.00834]	[0.00591]	[0.00851]	[0.00613]	[0.00902]	[0.00531]	[0.00726]	[0.00640]
Adjusted R <sup>2</sup>	0.00108	0.144	0.0221	0.141	0.00367	0.35	0.0282	0.209	0.000644	0.157	0.0311	0.285
<b>B. Punishment Outcomes</b>												
	Incarcerated ret. mean = 0.286		Incarcerated   Conviction ret. mean = 0.784		Ln(Sentence) ret. mean = 550 days		Ln(Sentence)   Conviction ret. mean = 1,512 days		Ln(Fine) ret. mean = \$ 1,041		Ln(Fine)   Conviction ret. mean = \$ 1,455	
	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)
Assigned Counsel	0.184***	0.0861***	0.0749***	0.0233***	1.061***	0.531***	0.108	0.129**	1.024***	0.514***	0.253***	0.259***
	[0.00785]	[0.00644]	[0.00775]	[0.00559]	[0.0580]	[0.0438]	[0.0677]	[0.0447]	[0.0508]	[0.0434]	[0.0142]	[0.0176]
Adjusted R <sup>2</sup>	0.0327	0.361	0.00828	0.699	0.0232	0.379	0.000284	0.67	0.024	0.184	0.0224	0.332

Notes: All regressions in Panel A include 64,209 observations. In Panel B, regressions conditional on conviction include 30,789 observations. Columns labeled (1) contain no controls, and columns labeled (2) include controls for case and attorney characteristics. Standard errors adjusted for heteroscedasticity and clusters at the defendant home block group and attorney level. Significant at +10%, \*5%, \*\*1%, and \*\*\*0.1% levels.

## Appendix

**Table A2.** Full Results for Conditional Regressions in Columns (2) of Table A1

	Reduced Charge	Dismissed	Def. Adj.	Plead Nolo	Plead Guilty	Convicted	Incarc.	Incarc.   Convic.	Ln(Sen.)	Ln(Sen.) C onvic.	Ln(Fine)	Ln(Fine)   Convic.
Assigned Counsel	-0.00172 [0.00407]	-0.0610*** [0.00612]	-0.0319*** [0.00591]	0.0628*** [0.00613]	0.0220*** [0.00531]	0.0852*** [0.00640]	0.0861*** [0.00644]	0.0233*** [0.00559]	0.531*** [0.0438]	0.129** [0.0447]	0.514*** [0.0434]	0.259*** [0.0176]
Male Defendant	-0.00634* [0.00322]	-0.0221*** [0.00505]	-0.0877*** [0.00536]	0.0740*** [0.00517]	0.0325*** [0.00439]	0.106*** [0.00473]	0.102*** [0.00456]	0.0377*** [0.00542]	0.703*** [0.0309]	0.386*** [0.0414]	0.133*** [0.0357]	0.0298* [0.0139]
Age at Offense	0.0006*** [0.000135]	-0.000476* [0.000187]	-0.0009*** [0.000184]	0.0008*** [0.000204]	0.000412* [0.000173]	0.0013*** [0.000206]	-0.00015 [0.000185]	-0.001*** [0.000166]	-0.0042*** [0.00123]	-0.0107*** [0.00128]	0.0046*** [0.00138]	0.000303 [0.000481]
Previous Complaints	-0.0123*** [0.00119]	0.0161*** [0.00214]	-0.0486*** [0.00203]	0.0199*** [0.00256]	0.0117*** [0.00212]	0.0317*** [0.00259]	0.0263*** [0.00242]	0.0106*** [0.00125]	0.208*** [0.0169]	0.146*** [0.0107]	-0.141*** [0.0155]	-0.00453 [0.00469]
Previous Convictions	0.0067*** [0.00152]	-0.0167*** [0.00283]	0.0090*** [0.00235]	0.00392 [0.00324]	0.00455 [0.00283]	0.00865* [0.00346]	0.0141*** [0.00317]	-0.00042 [0.00142]	0.127*** [0.0219]	0.0439*** [0.0119]	0.135*** [0.0203]	0.00764 [0.00589]
Detained Pre-Adjudication	0.00229 [0.00284]	0.0992*** [0.00476]	0.123*** [0.00426]	-0.151*** [0.00579]	-0.0683*** [0.00475]	-0.219*** [0.00507]	-0.223*** [0.00499]	-0.0423*** [0.00285]	-1.473*** [0.0325]	-0.355*** [0.0230]	-0.691*** [0.0343]	-0.0512*** [0.00905]
Home Poverty Rate	-0.00216 [0.00802]	-0.0231* [0.0104]	-0.0306** [0.0115]	0.0372** [0.0129]	0.00855 [0.0104]	0.0454*** [0.0119]	0.0489*** [0.0105]	-0.00045 [0.00858]	0.274*** [0.0705]	-0.0354 [0.0681]	0.11 [0.0754]	0.0321 [0.0254]
Local Borrowing Costs	0.0231** [0.00787]	0.00489 [0.0133]	0.0243+ [0.0132]	-0.0055 [0.0143]	-0.0220+ [0.0117]	-0.0284* [0.0134]	-0.0356** [0.0128]	-0.0118 [0.0107]	-0.277** [0.0885]	-0.129 [0.0877]	0.00716 [0.0916]	-0.0266 [0.0294]
Distance from Home to Law Office	-0.00103 [0.00217]	0.0092*** [0.00277]	0.0091*** [0.00248]	-0.00741* [0.00318]	-0.0117*** [0.00286]	-0.0188*** [0.00302]	-0.0178*** [0.00297]	-0.00529* [0.00241]	-0.106*** [0.0193]	-0.0311 [0.0192]	-0.0633*** [0.0189]	-0.00126 [0.00680]
Previous Cases	-3.7E-05 [0.00009]	1.37E-05 [0.000102]	3.54E-05 [0.000115]	3.26E-05 [0.000129]	-0.00013 [0.00009]	-9.3E-05 [0.000116]	-0.00018 [0.000110]	-0.00025** [0.00009]	-0.00128+ [0.000695]	-0.00179* [0.000716]	-0.00074 [0.000656]	-0.00082** [0.000277]
Percent of Cases Assigned	-0.0264 [0.0592]	0.00315 [0.0662]	0.00866 [0.0696]	-0.0432 [0.0767]	0.0506 [0.0552]	0.00698 [0.0740]	-0.0205 [0.0655]	0.00948 [0.0491]	-0.12 [0.450]	-0.0901 [0.422]	0.0241 [0.480]	-0.151 [0.168]
Racial / Ethnic Match	-0.00376 [0.00291]	0.00154 [0.00386]	0.000757 [0.00410]	-0.0102* [0.00461]	0.00692+ [0.00411]	-0.003 [0.00448]	-0.00384 [0.00409]	-0.00304 [0.00377]	-0.016 [0.0279]	0.00957 [0.0274]	-0.0206 [0.0279]	0.00294 [0.0101]
Average Retained Caseload	0.000253+ [0.000146]	-0.0027*** [0.000643]	0.0012*** [0.000320]	0.0007*** [0.000208]	0.000897* [0.000371]	0.0016*** [0.000403]	0.0020*** [0.000475]	0.000179+ [0.000108]	0.0121*** [0.00262]	0.000064 [0.000796]	0.0201*** [0.00486]	-0.00012 [0.000521]

Notes: All unconditional regressions include 64,209 observations. Regressions conditional on conviction include 30,789 observations. All models additionally include offense dummies, court docket dummies, client race dummies, and attorney-by-year fixed effects. Standard errors adjusted for heteroscedasticity and clusters at the defendant home block group and attorney level. Significant at +10%, \*5%, \*\*1%, and \*\*\*0.1% levels.

Appendix

Table A3. Disaggregated Decomposition Results

	Reduced Charge	Dismissed	Def. Adj.	Plead Nolo	Plead Guilty	Convicted	Incarc.	Incarc.   Convic.	Ln(Sen.)	Ln(Sen.) C onvic.	Ln(Fine)	Ln(Fine)   Convic.
Uncond. Penalty ( $\beta$ )	-0.0206*** [0.00316]	-0.135*** [0.00676]	-0.0561*** [0.00834]	0.164*** [0.00851]	0.0189* [0.00902]	0.183*** [0.00726]	0.184*** [0.00785]	0.0749*** [0.00775]	1.061*** [0.0580]	0.108 [0.0677]	1.024*** [0.0508]	0.253*** [0.0142]
<b>Amount of <math>\beta</math> Due to Differences in:</b>												
Offense FE	-0.0202*** [0.0021]	-0.0064** [0.0021]	0.0134*** [0.0029]	0.0009 [0.0020]	-0.0052*** [0.0015]	-0.0045+ [0.0024]	-0.0037 [0.0031]	0.0374*** [0.0056]	-0.1492*** [0.0258]	-0.1388** [0.0470]	0.0424* [0.0184]	-0.0596*** [0.0046]
Court FE	-0.0209* [0.0105]	-0.0043 [0.0124]	0.026** [0.0096]	-0.0044 [0.0101]	-0.0182*** [0.0053]	-0.0224* [0.0104]	-0.018* [0.0089]	0.0036 [0.0107]	-0.1284+ [0.0712]	-0.0237 [0.0812]	0.0287 [0.1045]	0 [0.0260]
Male Defendant	0.0002+ [0.0001]	0.0007*** [0.0002]	0.0029*** [0.0006]	-0.0024*** [0.0005]	-0.0011*** [0.0002]	-0.0035*** [0.0006]	-0.0033*** [0.0006]	-0.0018*** [0.0004]	-0.0229*** [0.0042]	-0.0181*** [0.0033]	-0.0043** [0.0014]	-0.0014+ [0.0008]
Age at Offense	0.0002* [0.0001]	-0.0002+ [0.0001]	-0.0003* [0.0002]	0.0003* [0.0002]	0.0002 [0.0001]	0.0005* [0.0002]	-0.0001 [0.0001]	-0.0005* [0.0002]	-0.0016+ [0.0008]	-0.006* [0.0025]	0.0018+ [0.0009]	0.0002 [0.0003]
Race FE	-0.0002 [0.0003]	0.0008 [0.0006]	-0.0037*** [0.0007]	0.003*** [0.0006]	-0.0002 [0.0005]	0.0027*** [0.0007]	0.0024*** [0.0006]	0.0002 [0.0003]	0.0104* [0.0044]	-0.0029 [0.0026]	-0.0085* [0.0041]	-0.0001 [0.0009]
Previous Complaints	-0.0055*** [0.0008]	0.0072*** [0.0013]	-0.0217*** [0.0027]	0.0089*** [0.0017]	0.0052*** [0.0011]	0.0142*** [0.0020]	0.0118*** [0.0017]	0.0033*** [0.0008]	0.0928*** [0.0131]	0.0453*** [0.0101]	-0.0631*** [0.0104]	-0.0014 [0.0016]
Previous Convictions	0.0028*** [0.0007]	-0.007*** [0.0013]	0.0037*** [0.0010]	0.0016 [0.0014]	0.0019 [0.0012]	0.0036* [0.0015]	0.0059*** [0.0015]	-0.0001 [0.0005]	0.0527*** [0.0105]	0.0156** [0.0049]	0.0562*** [0.0100]	0.0027 [0.0023]
Detained Pre-Adjudication	-0.0007 [0.0009]	-0.0317*** [0.0017]	-0.0394*** [0.0018]	0.0483*** [0.0021]	0.0218*** [0.0017]	0.0701*** [0.0024]	0.0714*** [0.0024]	0.016*** [0.0012]	0.4709*** [0.0159]	0.1343*** [0.0098]	0.2211*** [0.0123]	0.0194*** [0.0038]
Home Poverty Rate	-0.0001 [0.0004]	-0.001* [0.0005]	-0.0013* [0.0005]	0.0016** [0.0006]	0.0004 [0.0005]	0.0019*** [0.0006]	0.0021*** [0.0005]	0 [0.0004]	0.0117*** [0.0034]	-0.0014 [0.0028]	0.0047 [0.0034]	0.0012 [0.0011]
Local Borrowing Costs	0.0005* [0.0002]	0.0001 [0.0003]	0.0005+ [0.0003]	-0.0001 [0.0003]	-0.0005+ [0.0003]	-0.0006* [0.0003]	-0.0008** [0.0003]	-0.0003 [0.0003]	-0.0061** [0.0020]	-0.0031 [0.0024]	0.0002 [0.0021]	-0.0006 [0.0008]
Distance from Home to Law Office	0 [0.0000]	0 [0.0003]	0 [0.0003]	0 [0.0002]	0 [0.0004]	0 [0.0006]	0 [0.0006]	-0.0001 [0.0002]	0.0002 [0.0035]	-0.0008 [0.0013]	0.0001 [0.0021]	0 [0.0002]
Previous Cases	0.0103 [0.0250]	-0.0038 [0.0296]	-0.0099 [0.0334]	-0.0091 [0.0379]	0.0347 [0.0305]	0.0258 [0.0337]	0.0504 [0.0367]	0.0823* [0.0370]	0.357 [0.2348]	0.5838* [0.2788]	0.2069 [0.1925]	0.2669** [0.0969]
Percent of Cases Assigned	-0.0107 [0.0249]	0.0013 [0.0278]	0.0035 [0.0292]	-0.0174 [0.0322]	0.0204 [0.0232]	0.0028 [0.0310]	-0.0083 [0.0275]	0.0039 [0.0220]	-0.0484 [0.1888]	-0.0374 [0.1890]	0.0097 [0.2014]	-0.0627 [0.0753]
Racial / Ethnic Match	0.0004 [0.0003]	-0.0002 [0.0004]	-0.0001 [0.0005]	0.0011+ [0.0006]	-0.0008 [0.0005]	0.0003 [0.0005]	0.0004 [0.0005]	0.0003 [0.0005]	0.0018 [0.0032]	-0.0011 [0.0033]	0.0023 [0.0032]	-0.0003 [0.0012]
Average Retained Caseload	-0.0011 [0.0007]	0.0123*** [0.0034]	-0.0052** [0.0016]	-0.0033*** [0.0009]	-0.004* [0.0019]	-0.0074*** [0.0021]	-0.0091*** [0.0026]	-0.0009 [0.0007]	-0.0545*** [0.0150]	-0.0003 [0.0045]	-0.0909*** [0.0254]	0.0006 [0.0029]
Attorney x Year FE	0.0262 [0.0402]	-0.0418 [0.0425]	0.0074 [0.0458]	0.0721 [0.0531]	-0.0578 [0.0410]	0.0141 [0.0462]	-0.0033 [0.0456]	-0.0916+ [0.0479]	-0.0568 [0.3050]	-0.5666 [0.3887]	0.1025 [0.2896]	-0.1707 [0.1277]

Notes: All unconditional regressions include 64,209 observations. Regressions conditional on conviction include 30,789 observations. All models additionally include offense dummies, court docket dummies, client race dummies, and attorney-by-year fixed effects. Standard errors adjusted for heteroscedasticity and clusters at the defendant home block group and attorney level. Significant at +10%, \*5%, \*\*1%, and \*\*\*0.1% levels.

Appendix

**Table A4.** Residual Assigned Counsel Penalty for Case Outcomes, Additional Robustness Checks

	Reduced Charge	Dismissed	Def. Adj.	Plead Nolo	Plead Guilty	Convicted	Incarc.	Incarc.   Convic.	Ln(Sen.)	Ln(Sen.)   Convic.	Ln(Fine)	Ln(Fine)   Convic.
<b>A. Baseline OLS Estimates (64,209 / 30,789)</b>												
Assigned	-0.00172 [0.00407]	-0.0610*** [0.00612]	-0.0319*** [0.00591]	0.0628*** [0.00613]	0.0220*** [0.00531]	0.0852*** [0.00640]	0.0861*** [0.00644]	0.0233*** [0.00559]	0.531*** [0.0438]	0.129** [0.0447]	0.514*** [0.0434]	0.259*** [0.0176]
<b>B. Local Attorneys (62,210 / 29,785)</b>												
Assigned	-0.00187 [0.00413]	-0.0599*** [0.00614]	<b>-0.0323***</b> [0.00599]	0.0621*** [0.00619]	0.0218*** [0.00538]	0.0843*** [0.00644]	0.0852*** [0.00646]	0.0224*** [0.00559]	0.528*** [0.0440]	0.128** [0.0447]	0.504*** [0.0435]	0.259*** [0.0176]
<b>C. Excluding Motions to Revoke Probation (MTRs) (52,488 / 26,817)</b>												
Assigned	0.000221 [0.00443]	-0.0616*** [0.00693]	-0.0337*** [0.00648]	0.0731*** [0.00716]	0.0216*** [0.00581]	0.0951*** [0.00724]	0.102*** [0.00766]	0.0354*** [0.00582]	0.634*** [0.0519]	0.212*** [0.0472]	0.583*** [0.0537]	0.259*** [0.0184]

Notes: Sample sizes indicated in parentheses (Full / Conditional on Conviction). All regressions include controls for case and attorney characteristics. Standard errors adjusted for heteroscedasticity and clusters at the defendant home block group and attorney level. Significant at +10%, \*5%, \*\*1%, and \*\*\*0.1% levels.

## Appendix

**Table A5.** Match Effects for Unreported Outcomes

	Reduced Charge	Plead Nolo	Plead Guilty	Incarc.	Ln(Sen.)	Ln(Sen.)  Convic.	Ln(Fine)	Ln(Fine)   Convic.
Average Assigned Counsel Penalty (Table 3, Panel A)	-0.00172 [0.00407]	0.0628*** [0.00613]	0.0220*** [0.00531]	0.0861*** [0.00644]	0.531*** [0.0438]	0.129** [0.0447]	0.514*** [0.0434]	0.259*** [0.0176]
<b>Match Dimension:</b>								
Male Attorney	-0.00063 [0.00988]	-0.00332 [0.0163]	0.00507 [0.0115]	0.00729 [0.0165]	0.076 [0.109]	0.146 [0.120]	-0.0764 [0.126]	-0.0591 [0.0420]
Distance from Home to Law Office	-0.00478 [0.00321]	-0.0008 [0.00484]	0.000227 [0.00533]	-0.00247 [0.00481]	-0.0102 [0.0325]	0.00292 [0.0416]	-0.0194 [0.0390]	-0.00195 [0.0139]
Years Since Bar Admission	0.00351 [0.00419]	-0.00927 [0.00731]	-0.00342 [0.00564]	-0.00792 [0.00719]	-0.0341 [0.0459]	0.0625 [0.0544]	-0.0496 [0.0419]	-0.0399* [0.0163]
Racial / Ethnic Black	0.0248 [0.0185]	0.0111 [0.0265]	0.000875 [0.0306]	0.0355 [0.0288]	0.335+ [0.177]	0.275 [0.272]	0.0299 [0.273]	-0.012 [0.0811]
Racial / Ethnic Hispanic	-0.00254 [0.0100]	0.013 [0.0165]	0.0129 [0.0140]	0.0179 [0.0157]	0.117 [0.107]	0.00178 [0.120]	0.0408 [0.101]	-0.0558 [0.0415]
Racial / Ethnic White	-0.00299 [0.0177]	-0.0244 [0.0226]	-0.0279 [0.0186]	-0.0227 [0.0248]	-0.0729 [0.162]	0.316 [0.264]	-0.273 [0.182]	0.124 [0.0833]

Notes: All unconditional regressions include 64,209 observations. Regressions conditional on conviction include 30,789 observations. All models additionally include controls for case and attorney characteristics. See Table 5 for observation counts for racial matches. Standard errors adjusted for heteroscedasticity and clusters at the defendant home block group and attorney level. Significant at +10%, \*5%, \*\*1%, and \*\*\*0.1% levels.