

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

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Abstract

Local governments in the United States are required to offer free legal services to low-income people accused of crimes. Indigent defendants represented by private attorneys working as assigned counsel fare worse than defendants represented by public defenders or retained attorneys, but the reasons for the observed differences in case outcomes are not well understood. We shed new light on the causes of these disparities by taking advantage of detailed court records from one large jurisdiction in Texas that allow us to track the same lawyers across different case types. We find that the majority of the disparity in outcomes is due to within-attorney differences across cases in which they are assigned versus retained. In contrast to the existing literature, our results show the selection of low-quality attorneys into assigned counsel can explain at most one-quarter of the gap in outcomes for low-income defendants. A fee structure for assigned counsel that incentivizes obtaining quick pleas from clients likely contributes to moral hazard. We also present evidence that endogenous matching of defendants and privately retained attorneys plays some role in determining case outcomes, but does not explain the assigned counsel penalty.

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1. Introduction

Governments in the United States are constitutionally required to provide effective legal counsel, free of charge, to low-income (indigent) defendants who are accused of serious crimes. While in some instances indigent defense is provided by a public defender's office, in others it is provided by private attorneys who elect to serve in an assigned counsel system, where they generally face a different incentive structure than they face in the private market. In 2004, almost 70% of clients in large urban jurisdictions were represented by publicly provided legal counsel, rather than a defense attorney they hired on their own. Despite being a pervasive feature of the criminal justice system, indigent defense systems in the U.S. have recently been characterized as “broke and broken” (Uphoff 2010) and “a mockery of justice for the poor” (Pfaff 2016). Indigent defendants tend to experience worse criminal justice outcomes (Iyengar 2007, Roach 2010, Anderson and Heaton 2012). Underfunded and inadequate indigent defense is also a potentially important contributor to the persistent racial gap in criminal justice outcomes, as black and Hispanic males represent a disproportionate share of people in poverty and in state and federal prisons.^{1,2}

In this paper, we leverage comprehensive data on court cases and attorneys to investigate the mechanisms behind the less favorable case outcomes typically observed among indigent clients. 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, where a third party assigns indigent clients to a private attorney from a pool of lawyers who have registered with the county. Unlike in their private practice, attorneys are not able to turn down indigent defendants

¹ At the end of 2013, 36.1% of inmates in state or federal prisons were black and 21.9% were Hispanic, larger than their respective shares of the total population (17.1% and 13.2%) (authors' calculations based on Table 8 in Carson (2014)). By comparison, white prisoners are 33.3% of the incarcerated population and 62.1% of the total population.

² Because of this connection between race, income, and reliance on indigent defense, the U.S. Department of Justice has made fair and accessible access to quality representation a priority through its Access to Justice Initiative, noting that these disparities are inconsistent with its mission to ensure the fair administration of criminal justice for all Americans (see <http://www.justice.gov/atj>). The importance of quality legal representation at all stages of the criminal justice process was also emphasized by U.S. Supreme Court Justice Anthony M. Kennedy in *Missouri v. Frye* (132 S. Ct. 1399) and *Lafler v. Cooper* (32 S. Ct. 1376).

assigned to them, and defendants are not allowed to select amongst attorneys. Further, the fee structure for assigned counsel cases in Bexar County, like that in many jurisdictions, creates incentives for attorneys to pursue quick outcomes with little effort, outcomes that may not be in their clients' interests.³

There are four possible reasons why outcomes might be worse in cases handled by assigned counsel on average: 1) Case characteristics: Indigent clients may be harder to defend than non-indigent clients. 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 market for private counsel, leading to less productive attorney-client matches. 4) Moral hazard: Attorneys may exert less effort in cases in which their clients are assigned.

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). This conclusion is based first on comparing observable characteristics of cases tried by assigned and retained counsel, and second on comparing outcomes for observably similar cases that are tried by public defenders vs. assigned counsel or that are tried in areas where the outside options for private attorneys are on average better or worse. Less attention has been paid to the possible matching and moral hazard explanations for the disparities, in large part due to data limitations. Our unique administrative court records not only contain detailed information about clients and their cases, but also permit us to track individual attorneys over time and across cases, comparing case outcomes when the same attorney is working as retained or assigned counsel. This, in turn, allows us to separately identify the roles of case characteristics and adverse selection from those of matching and moral hazard

³ See Gross (2013) for a national survey of indigent defense compensation. Most states have very low hourly rates combined with low maximum caps or they have flat fees for assigned counsel. Similar to several other major jurisdictions in the U.S., Bexar County has flat fees that vary by case disposition and that incentivize quick outcomes like plea bargains.

in explaining the disparities in outcomes observed among indigent clients.

We begin by confirming existing research findings in Bexar County. When a defendant has assigned counsel, he or she is more likely to receive a guilty verdict, to be incarcerated, to receive a longer sentence, and to be issued a larger fine. The differences are not only statistically significant, but they are economically meaningful; for example, a defendant is over 28% more likely to receive a guilty verdict with assigned relative to retained counsel, and conditional on a guilty verdict can expect a sentence that is more than 45% longer.

Our data then allow us not only to condition on detailed case characteristics (including information about the offense, client, and court), but also to control flexibly for observed and unobserved lawyer characteristics. We control for observed lawyer characteristics using information from the State Bar of Texas, and for unobserved lawyer characteristics by including lawyer-by-year fixed effects. These attorney controls allow us to examine whether the same attorney tends to obtain different outcomes in cases in which he or she is assigned as opposed to retained, and thus provides us with the opportunity to more precisely quantify the role of adverse selection in case outcomes. We find that adverse selection among attorneys who engage in assigned counsel cases explains at most one-fourth of the disparities in outcomes observed among clients of assigned as opposed to retained counsel, and in fact sometimes exacerbates these differences.

Given that large gaps remain for many outcomes even with this rich set of controls, we then consider the potential roles of inefficient client-attorney matching and moral hazard in explaining the worse outcomes observed among indigent clients who are assigned counsel. Indigent clients and assigned counsel do not have the ability to choose each other the way retained counsel and private clients do, which could also explain some of the assigned counsel penalty. We evaluate the extent to which the match between client and attorney can mitigate the assigned counsel penalty by focusing on four observable dimensions along which defendants have a revealed preference in the market for private attorneys. Overall, while there are notable differences in the types of attorneys with whom

different clients match on the private market, we find little evidence that being assigned a lawyer who looks like a better “match” reduces the assigned counsel penalty substantially.

Finally, we examine the possible role of moral hazard in giving rise to the assigned counsel penalty. While our administrative data cannot speak directly to lawyer effort, quickly resolving cases is particularly incentivized by the attorney 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 evidence that attorneys resolve their assigned cases approximately 18% faster than their retained cases, consistent with reduced effort. Further, following recent research on the role of pre-adjudication detention in client incentives, we find that this speedy resolution exists regardless of the client’s detention status, although the disparity in case length is more pronounced for clients who are in jail. To gain additional insight into the importance of moral hazard in explaining the assigned counsel penalty, we also appeal to a 2010 survey of Bexar County lawyers conducted by the Texas Task Force on Indigent Defense, which 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 average 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 relatively bad or inexperienced attorneys electing disproportionately into assigned counsel roles. Instead, they suggest that institutional factors that affect the incentives attorneys have to provide effective counsel are key in understanding these disparities. The results also provide insight into what turns out to be a nuanced interplay of lawyer and client characteristics, which ultimately has important ramifications for criminal justice outcomes in general, and disparities in those outcomes across different groups in particular. These disparities in treatment in the criminal justice system, in turn, have been shown to 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, Geller et al. 2012, Aizer and Doyle 2013, Lovenheim and Owens 2013, Agan and Starr 2017).

The paper proceeds as follows. In the next section, we provide background on the U.S. indigent defense system in the U.S. in general, and discuss the Bexar County context in particular. We also review the literature on sources of disparities in outcomes for cases in which attorneys are assigned vs. retained. In Section 3, we describe our data and provide some descriptive statistics. We discuss our empirical approach to estimating the effect of assigned counsel on case outcomes as well as to disentangling alternative sources of observed disparities in Section 4. In Section 5, we present and discuss our results as well as several extensions and robustness tests. We conclude in Section 6.

2. Background

2.1. Indigent Defense and the Bexar County Context

In the U.S., there are two ways courts can provide legal counsel for indigent defendants: through public defenders or assigned counsel. Public defenders are employees of the court, typically working out of a publicly funded public defender office. Assigned counsel are independent private attorneys who volunteer into a potential selection pool, subject to minimum qualification criteria, and who work on cases on a contract basis. Roughly 79% of jurisdictions have a public defender's office, which tend to be supported by an assigned counsel system that can handle overflow cases, or situations where conflicts of interest prevent the public defender's officer from representing a client (DeFrances and Litras 2000). In jurisdictions without a public defender, indigent defense is fully provided by assigned

counsel. Until 2014, Bexar County District Courts used an assigned counsel system almost exclusively.⁴

The compensation lawyers receive in Bexar County for serving as assigned counsel in Bexar County is a function of the severity of the charge and the disposition of the case. Attorneys in Bexar County may choose between hourly and flat fee schedules; in practice, they choose the flat fee schedule 75% of the time (Texas Task Force on Indigent Defense 2010). Based on responses to a 2010 survey of Bexar County attorneys (discussed further in Section 5.3), this is because the flat fees are never challenged, whereas a judge can challenge the hourly amounts. In addition, if an attorney can get a case resolved quickly via plea bargain, the flat fee amounts will be higher than pay based on the hourly rate.⁵

In Table 1, we present Bexar County's 2015 assigned counsel fee schedule, which has remained unchanged since at least 2002.⁶ Flat fee payments are lowest for the least severe felonies (state jail and third degree felonies) and highest for the most severe felonies (capital cases). Attorneys have an explicit incentive to resolve a case via plea, or through revoking probation for more serious offenses. Regardless of case severity, a case not resolved via plea bargain or dismissal is worth only \$200, meaning that the return to an attorney resolving a first degree felony charge via plea is 375% larger than taking a case to trial.⁷ On the private market, lawyers retained in Bexar County frequently charge

⁴ During our sample period (between 2005 and 2013), the Bexar County Public Defender's Office only handled cases in which the defendant had severe mental health issues and cases that were appealed. There was no public defender's office in the county prior to 2005. In 2014, Bexar County launched an initiative to expand the role of its Public Defender's Office.

⁵ Hourly rates vary based on degree of charge and whether the time is for a trial, other court appearance, or out of court time. They vary between \$50/hour to \$125/hour – with most hourly rates around \$75/hour. The rates represent somewhere between 1/5th and 1/6th of the flat fee, however most attorneys still choose the flat fee. See Table 1.

⁶ The Texas Indigent Defense Commission's archives of Bexar County's indigent defense plans only extend back to 2002. See <https://tidc.tamu.edu/public.net/Pages/CountyDashboard.aspx>. The fees have not been adjusted for inflation over time.

⁷ 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 even making requests (Texas Task Force on Indigent Defense 2010).

flat fees in criminal cases, but those fees are an order of magnitude larger; private representation for a DUI charge is at least \$1,200 per case, or more if the case is complicated.⁸

In general, attorneys who work as assigned counsel do so for at least one of two reasons. First, unlike in the private market, attorneys working as assigned counsel do not have to incur the costs of advertising or recruiting clients. 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.⁹ The second reason to work as assigned counsel is to gain experience handling criminal cases. Bexar County attorneys surveyed in 2010 reported that they typically worked on two to three felony cases a month as assigned counsel, and four cases as retained counsel. The additional experience that comes from assigned cases can later be directly advertised to potential clients.

Nearly two-thirds of the felony cases that come before the court in Bexar County are represented by assigned counsel. After someone is booked, they have the opportunity to declare that they are indigent, based on whether their net income (i.e., income less certain necessary expenses) is below a certain amount per month.¹⁰ Eligibility to receive food stamps, Medicaid, Temporary Assistance to Needy Families, Supplemental Social Security, or public housing also render the defendant eligible to receive assigned counsel. Bexar County is required to assign indigent defendants legal counsel within

⁸ For example, see <https://www.fightduicharges.com/texas/what-is-the-cost-of-a-dui-in-texas/>.

⁹ To qualify for the state jail felony list, an attorney must have at least one year of previous experience in criminal litigation as well as previous 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 previous experience in criminal litigation as well as previous experience as trial counsel (as lead or co-counsel) in at least two felony jury trials. Finally, 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 previous experience in criminal litigation, (2) have previous 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.

¹⁰ 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. See <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=177>.

72 hours of arrest. If the person is in custody, the magistrate is required to assign a lawyer “as soon as possible” (Texas Task Force on Indigent Defense 2010), typically by the end of the first working day after the defendant has requested it. Someone not in custody must have counsel assigned for their first court appearance.

Attorneys in the assigned counsel pool are assigned felony cases in Bexar County in one of two ways, depending on the specific court. In both systems, attorneys must take on the clients assigned to them, and clients have no say on the attorney they are assigned to. 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 will then assign 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. 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.¹¹ At the conclusion of the case, attorneys representing indigent clients are paid by the court, rather than having to collect money from the individual client.

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, Roach 2014). There are several potential reasons for this. First, publicly financed counsel may handle

¹¹ There are only three ways in which an attorney in the assigned counsel pool who has met the language and experience requirements cannot be assigned to a case. An attorney can be excused if he or she (1) is actively working on another case as assigned counsel, (2) has a legal conflict with the case, or (3) has registered with the court that they are on vacation. “Vacation” is a specific term in this context; lawyers have to register vacations in advance, and must swear that they are truly on vacation or attending to a family emergency, rather than trying to manage their case load (see <http://home.bexar.org/dc/attorneyvacation.html>)

different types of cases and clients than privately retained attorneys. For example, defendants charged with white-collar crimes are more likely to use private counsel, whereas those with a prior criminal record are more likely to use public counsel (Harlow 2000). Differences in case and client characteristics are important to take into account in understanding the sources of disparities in outcomes across cases with different types of representation.

A second possible source of disparities in case outcomes stems from potential adverse selection in the pool of private attorneys available to serve as counsel. The regular, but typically low, compensation may attract primarily inexperienced or low-quality attorneys who are not capable of earning higher wages 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 methods for offering legal counsel to indigent defendants as evidence that adverse selection is important (Iyengar 2007, Roach 2010).¹²

Another plausible reason that assigned counsel performs relatively 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. In order to adequately represent the best interests of their clients in court, defense attorneys have to learn what those best interests are. A mutual trust is helpful in facilitating communication between a lawyer and his or her client, and may also help a lawyer uncover relevant facts, witnesses, alibis, or extenuating circumstances regarding the case. Trust and communication could also be important in ensuring that 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 appropriately for court, behaving in a calm and mature manner before a judge, and refraining from suspicious activity while the case unfolds. To facilitate this matching process, most

¹² While comparing outcomes for defendants with retained attorneys to those with public defenders or assigned counsel is empirically more challenging given the lack of any random assignment, Hartley et al. (2010) and Cohen (2014) present evidence that defendants with retained attorneys and public defenders generally have similar case outcomes, whereas those with assigned counsel generally have worse case outcomes.

law offices offer free initial consultations, where the client and attorney can meet in person. Websites offering legal advice suggest that people meet with at least two attorneys who have experience handling the cases like theirs before deciding to hire one, and that clients should be looking for an attorney that makes them “feel comfortable,” and to “trust [their] gut.”¹³ This may lead individuals accused of crimes to seek out attorneys not only with many years of experience or who attended prestigious law schools, but also who have similar backgrounds as their own. Indeed, while there has been little research on matches between clients and their attorneys, there is a growing body of work that shows that matches along racial, gender, and other dimensions matter in other criminal justice contexts (e.g., Antonovics and Knight 2009, McCrary 2007, Anwar et al. 2012, Shayo and Zussman 2011, Depew et al. 2016) as well as in many contexts outside criminal justice (e.g., Dee 2004, Fairlie et al. 2014, Jackson and Schneider 2011).

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 zealously, those attorneys who take on such cases 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, legal scholars have 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). As further discussed in Section 5.3, survey evidence from Bexar County points to an important role for effort in generating disparities in outcomes between cases tried by assigned as opposed to retained counsel.

3. Data and Descriptive Statistics

¹³ See, for example, <http://www.wikihow.com/Select-a-Criminal-Defense-Attorney>.

3.1. Empirical Setting and Data Sources

The setting for our study is Bexar County, Texas, which is the home of San Antonio. Bexar County had a population of 1.7 million in 2010, making it the fourth most populous county in Texas. 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.¹⁴

Our main source of data are comprehensive administrative records covering 64,410 felony charges filed in Bexar County District Court 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, Bohn et al. 2015).¹⁵ The data include detailed information on the case such as race and ethnicity of the defendant, whether the defense attorney was assigned or retained, and other case characteristics and outcomes. The data also include the identity of the defendant and the defense attorney.¹⁶ The longitudinal nature of these data allows us to follow both individual defendants and individual attorneys 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 and background 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, any language capabilities, 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.

¹⁴ The remaining 3.2% identified as, in descending order, Asian, two or more races, American Indian and Alaska Native, and Native Hawaiian and Other Pacific Islander. See <http://quickfacts.census.gov/qfd/states/48/48029.html> and <https://www.tsl.texas.gov/ref/abouttx/popenty32010.html>.

¹⁵ For additional details about these data, see Freedman and Owens (2016) and Freedman et al. (2016).

¹⁶ The court records generally only include the identity of the last attorney to handle the case.

The case data also include home address of the defendant. Using this address, we identify the census block group in which each defendant lives, and then integrate information from the U.S. Census Bureau's five-year (2009-2013) American Community Survey (ACS) on demographic characteristics of that block group. This gives us important additional information about defendants' backgrounds. For example, the case data do not include the income of the defendant, but a defendant's home address allows us to ascertain the poverty rate of his or her neighborhood. Information on clients' home addresses combined with State Bar records on attorneys' workplace 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

Table 2 provides descriptive statistics on case and attorney characteristics as well as case outcomes broken out by cases in which the lawyer was retained or appointed. Overall, 64% of cases are represented by assigned counsel.¹⁷ Several patterns are worth highlighting. First, the table makes clear the potential role that client and case characteristics may have in the relative performance of assigned counsel. Defendants represented by appointed lawyers are slightly more likely to be women, more likely to be black and less likely to be white, are about a quarter of a year older, live in more impoverished neighborhoods, and are less likely to be released on bond at some point during the adjudication process. They 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 appointed counsel more likely to be state jail felonies, the lowest level felony offense that can be charged in Texas, as opposed to a more serious first, second, or third degree felony. In other words,

¹⁷ A very similar percentage of felony defendants in U.S. district courts nationwide (66%) had publicly financed counsel in 1998 (Harlow 2000).

relative to non-indigent defendants, indigent defendants are better characterized as low-level offenders with long criminal histories.

In each year of our sample, 79% of attorneys serve as both assigned and retained counsel.¹⁸ This large percentage could potentially leave little scope for adverse selection into the assigned counsel pool if a majority of attorneys will serve on an assigned case in a given year. However, in Table 2, we see that cases with assigned attorneys have on average attorneys who are less experienced, as measured by both years since admission to the Texas Bar and previous number of felony cases tried, than lawyers that clients choose to hire themselves. This is true over time as well, in Figure 1 we graph the average percent of assigned cases by years since passing the bar: for less experience attorneys, a vast majority of their cases in a given year are assigned and this declines as the attorney gains more experience. In addition, Table 2 shows that attorneys working as appointed counsel are more likely to be women and to have offices that are further from where the client lives relative to attorneys working as retained counsel.¹⁹ These differences in attorney characteristics, and particularly the adverse selection on the basis of experience, could explain some of the assigned counsel penalty.

We also show in Table 2 that on average cases with appointed counsel tend to garner worse outcomes than cases with retained counsel, consistent with the previous literature. Cases with appointed attorneys are 17 percentage points more likely to result in a conviction on average. While only a slightly greater fraction of appointed 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

¹⁸ Of the respondents to the Texas Task Force on Indigent Defense’s survey of lawyers for the purposes of its 2010 review of Bexar County’s indigent defense system (discussed in more detail in Section 5.3), 70% reported working on court assigned cases.

¹⁹ We see little evidence that lawyers who attended more highly ranked law schools are overrepresented in retained cases. A plurality of attorneys working as both retained or assigned counsel attended the local law school, St. Mary’s, which is unranked in U.S. News and World Report ranking of law schools.

less likely to end in dismissal.²⁰ Clients represented by assigned counsel also tend to receive unconditionally longer sentences and higher 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 assigned vs. retained criminal defense attorneys. Our administrative data allows us to control for a rich set of both case and attorney characteristics to determine how much of the assigned counsel penalty these can explain. One key benefit of our data is that we can match attorneys across cases over time and thus, unlike in previous studies, we can observe the *same* attorney working as both assigned counsel and retained counsel in the same year. This allows us to use attorney fixed effects to control for both observable and unobservable potential differences between attorneys, such as education, experience, or charisma, which could also affect outcomes in criminal cases. If disparities in case outcomes between assigned and retained counsel cases arise purely as a result of adverse selection (i.e., lower quality attorneys choose to be assigned counsel, and that causes less favorable case outcomes), then we should find no disparities once we look at outcomes in cases tried by the same attorney. After controlling for a rich set of case and attorney characteristics, any remaining penalty could be due to differences in the quality of the matching process or differences in attorney effort (i.e. moral hazard).

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

$$(1) \quad y_{ijkt} = \alpha + \beta_1 \text{assigned}_{ik} + \mathbf{X}_{ijt} \boldsymbol{\Omega} + \mathbf{A}_{ijkt} \boldsymbol{\Pi} + \epsilon_{ijkt}$$

where

$$\mathbf{X}_{ijt} = \mathbf{D}_{ij} + o_i + c_{it} \text{ and } \mathbf{A}_{ijkt} = \mathbf{a}_{ijk} + \gamma_{kt}.$$

²⁰ Pleading nolo contendere, rather than guilty, can be beneficial to a defendant in future civil legal actions. For example, if the defendant was later sued in civil court, a previous guilty plea means that the defendant is criminally liable for the incident as a matter of fact. This would not be the case if they pled nolo contendere. For that same reason, nolo contendere pleas can also be easier to appeal.

Where y_{ijkt} is the outcome of case i for defendant j with attorney k taking place in year t .²¹ $assigned_{ik}$ is a dummy variable indicating whether attorney k was assigned (as opposed to retained) when representing defendant j in case i in year t , \mathbf{X}_{ijt} is a vector of case characteristics. \mathbf{X}_{ijt} includes defendant characteristics \mathbf{D}_{ij} : defendant gender, defendant race, defendant age at the time of the offense, the poverty rate of the defendant's block group, 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), the defendant's conviction history (i.e., the number of convictions a defendant had accumulated at the time of the relevant charge). \mathbf{X}_{ijt} also includes o_i are dummies for offense codes²² and c_i is 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 this allows us to control for the judge that the defendant had to deal with). \mathbf{A}_{ijkt} is a vector of attorney and attorney-client match characteristics. It includes \mathbf{a}_{ijk} : a vector of the attorney's experience (i.e., the total number of felony cases that an attorney has represented in Bexar County), and the fraction of those cases in which he or she served as assigned counsel- both measured at the date the case was filed.²³ \mathbf{a}_{ijk} : additionally includes the (logged) distance in miles between the defendant's home and his lawyer's office as well as a dummy for whether or not the attorney is the same race as the defendant. \mathbf{A}_{ijkt} also includes attorney-by-year fixed effects γ_{kt} , which control for observable and unobservable differences across attorneys. We cluster standard errors at both the defendant block group and the attorney levels.²⁴

²¹ t is defined by the complaint year

²² There are 413 offense codes. Notably, the offense level determines the list from which the assigned counsel attorney is drawn if a court-appointed attorney is requested.

²³ The total number of cases an attorney has represented at the time the charge was filed likely best captures the amount of experience and skill an attorney brings to a particular case. However, attorneys typically advertise the number of years of experience they have, so in our analysis of client-attorney matching, we measure experience as the number of years since an attorney joined the Texas Bar.

²⁴ 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

In this specification, β_1 is estimated within attorneys and relies on variation in outcomes for attorneys who work as both assigned and hired counsel in the same year. Any significant coefficient on $assigned_{ik}$ implies a difference in case outcomes for the same attorney when that attorney is assigned vs. retained working a case with very similar characteristics. Such a difference could arise from unmeasured elements of the match between the client and attorney or to attorney effort, but cannot be solely attributable to attorney characteristics and thus to adverse selection.

Identifying the source of a disparity by sequentially adding in 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), which essentially identifies the size of 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 (case characteristics and attorney characteristics). The amount of bias due to the omission of any particular set of covariates B is simply equal to $(assigned_{ik}' assigned_{ik})^{-1} assigned_{ik}' B_{ik} \theta_B$, where θ_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 legal outcomes. In our results, we will present the unconditional assigned attorney penalty, and then using the Gelbach decomposition we will present the percent of the penalty that can be explained by each of our included characteristics: case characteristics and attorney characteristics.²⁵

We also extend the model in the empirical analysis to explore potential heterogeneity in the impact of having assigned as opposed to retained counsel across several dimensions, including most notably

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.

²⁵ In appendix tables we also show the break down even further by defendant characteristics, offense fixed effects, court x year fixed effects, and attorney characteristics.

defendant characteristics. Since the racial preferences of clients vary by race, we run separate regressions for black, Hispanic, and white defendants in which we include interactions between client and attorney race and ethnicity. These specifications are aimed at testing whether the performance of a particular attorney is more consistent across representation types when the assigned counsel matching process happens to more closely replicate the market match.²⁶

5. Results

5.1. Case Characteristics and Adverse Selection

We first explore whether, in line with past research, assigned counsel is associated with less favorable criminal justice outcomes for defendants in Bexar County. In doing so, we can not only condition on highly detailed offense and defendant characteristics, but also can directly control for potential selection of attorneys into assigned counsel by exploiting the fact that we observe lawyers handling cases in which they were assigned and cases in which they were retained. In effect, we can determine the extent to which disparities in outcomes across cases with assigned and retained attorneys are driven by differences in observable offense characteristics, observable defendant characteristics, observable time-varying attorney characteristics, and time-invariant attorney characteristics. Any residual disparities in outcomes across cases with assigned and retained attorneys could be attributable to differences in match quality or in lawyer effort on assigned counsel cases. For brevity, in the tables, we only show the coefficient on the dummy for assigned counsel from a model with no controls (i.e., the unconditional assigned counsel penalty), along with the fraction of the variation the outcomes explained added covariates, adjusting for the fact that each regression contains an increasingly larger set of independent variables.

5.1.1. Baseline Results

²⁶ Since we found little evidence that clients prefer attorneys from more prestigious schools, and the prevalence of unranked law schools in our sample, we do not include law school rank in these regressions.

We begin with an analysis of adjudication outcomes in Table 3. Unconditionally, clients represented by assigned counsel are 2 percentage points (22%) less likely to have their charges reduced after the prosecutor has made the initial filing decision. As we show in column (2), controlling for characteristics of the case and client reduce the assigned counsel penalty to almost zero. Decomposing the source of the unconditional penalty suggests that client characteristics account for roughly 15% of this difference ($se = 5.3\%$), and 70% of this reduction may be explained by the judge the case in assigned to, although this is noisily estimated ($se = 72.6\%$).

Clients represented by assigned counsel are 12 percentage points (51%) less likely to have their cases dismissed than defendants with private attorneys. Adding in our client, case, court, and attorney controls reduces this penalty by roughly half, leaving a significant 5.75 percentage point (25%) assigned counsel penalty unexplained by these observable characteristics. Characteristics of the client can explain 16.2% of this penalty ($se = 1.6$ percentage points), and adverse selection, defined as observable characteristics of the attorney, along with the attorney by year fixed effects, can explain 24.8% of this penalty ($se = 6.2$ percentage points).

In Texas, defendants with little or no previous contact with the justice system, accused on 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 were 5 percentage points (19%) less likely to receive deferred adjudication, 1.8 percentage points (7%) of which cannot be explained by client, case, court, or attorney characteristics. Not surprisingly, client characteristics, which includes criminal history, is the primary explanation for this gap, but it is noteworthy that comparing cases tried by the same attorney in the same year exacerbates the disparity, relative to simply comparing cases on average, increasing the difference in the use of deferred adjudication by 45.8% ($se = 11.9$ percent). Controlling for the judge also exacerbates the difference, suggesting that certain courts are particularly less likely to grant this method of resolution to indigent clients.

When lawyers are working as assigned counsel, their clients are 15 percentage points (45%) more likely to enter nolo contendere (no contest) pleas. Our data suggest that 42% of this gap can be explained by variation across clients, and 23% of this gap can be characterized as being due to adverse selection on the part of the attorney. However, a significant gap still remains after controlling for these characteristics; 36% of the difference in no contest pleas is plausibly due to a failure of the court's matching process to create a compatible lawyer-client pair or to moral hazard on the part of the attorney.

The probability that a client pleads guilty actually increases as we compare increasingly similar cases, from a statistically insignificant 1.4 percentage point difference to a statistically significant 2 percentage point (13%) difference. Decomposing this change across specifications suggests that comparing similar clients reduces this disparity, but when you actually compare the cases that the same attorney is working on in the same year, the probability that a guilty plea is entered is even more different across retained and assigned clients 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.

Overall, when guilty pleas, no contest pleas, and actual convictions in court (a rare outcome) are combined, clients represented by assigned counsel are 17 percentage points more likely to be convicted than clients represented by retained counsel. Approximately 55% of the assigned counsel penalty in conviction rates can be explained by differences in indigent and non-indigent clients, but controlling for differences in features of the offenses, court, and attorneys still leaves 44% of the assigned counsel penalty unexplained.

In Table 4, we turn to the sentences handed down to convicted offenders, both unconditionally and conditional on conviction. The clients of attorneys working as assigned counsel are 19 percentage points more likely to be given sentences of incarceration, and 12 percentage points more likely to be

incarcerated conditional on conviction. This penalty falls to 7.5 percentage points once we control for client, court, offense, and attorney characteristics, and to 4.8 percentage points conditional on conviction. Like conviction overall, differences in the clients themselves explain almost 60% of the 19 percentage point gap, and we also observe a substantively large difference in the propensity of judges to incarcerate convicted offenders, as court assignment explains 22% of the assigned counsel penalty. However, there is still a significant conviction penalty left after we control for these characteristics.

Sentences for clients represented by assigned counsel are twice as long as they are for clients represented by retained counsel, both unconditionally and conditional on conviction. Much like adjudication itself, characteristics of the clients explain a large fraction of this gap: 68% of the unconditional difference and 108% of the difference across convicted clients. However, similar to the pattern we observed in pleading, the assigned counsel penalty is exacerbated when we compare cases tried by the same attorney in the same year, although this is more pronounced for convicted clients. Once we condition on these observables, we estimate a residual assigned counsel penalty of 58% in expectation, and 33% conditional on conviction. Notably, the estimated assigned counsel penalties we observe are similar in magnitude to those found in past work comparing outcomes for cases handled by assigned counsel and public defenders (e.g., Anderson and Heaton 2012) and by assigned counsel and private attorneys (e.g., Cohen 2014).²⁷

Finally, fines may be particularly onerous for low income clients, and we observed that clients represented by assigned counsel were subject to higher fines and court fees than clients represented by lawyers that they paid themselves. Much of this difference is driven by conviction; overall, fines assessed to clients represented by assigned counsel are twice as large as those assessed to clients represented by retained counsel, but conditional on conviction, this difference falls to 26%. Roughly 14% of the large assigned counsel penalty in expected fines can be explained by differences in the case

²⁷ For example, Anderson and Heaton (2012) find that, compared to assigned counsel, public defenders reduce clients' murder conviction rates by 19% and reduce overall time served in prison by 24%.

and client background; once we condition on conviction, the type of offense that assigned counsel clients are convicted of appears to be more important, explaining 47% of the assigned counsel penalty. However, we observe that different judges also appear to have different tastes for issuing fines, and comparing increasingly similar cases slightly increases the unexplained assigned counsel penalty conditional on conviction, from a 26% larger fine to a 29% larger one.

The results from Table 3 and 4 confirm that defendants with assigned counsel fare worse in their adjudication and sentencing outcomes than those who hire their own attorneys. In most cases, case characteristics, attorney characteristics, court/judge characteristics, and offense characteristics reduce this penalty but do not eliminate it. This implies that something other than adverse selection (of attorneys OR clients) is explaining the large remaining penalties.

5.1.2. IV Results

One potential concern is that our case and client characteristics may not fully capture features of those cases and clients 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 lawyer might be willing to take a case as hired counsel if a person charged with a particular crime appears to be a good client along certain unmeasurable dimensions (e.g., shows up to meetings on time, dresses appropriately, speaks articulately, etc.), but might not be willing to take an observably similar case if a person does not seem like he or she would be a good client. This could lead to adverse selection in the cases tried by assigned counsel that our current set of case and client characteristics do not capture.

Therefore, we consider an IV strategy where we use a Bartik-style instrument for whether a defendant uses assigned or retained counsel, predicting a client's use of assigned counsel based on the timing of their arrest and the industrial composition of his/her neighborhood. Here, we exploit the heterogeneous effects of the Great Recession across demographic groups and industries, combined with cross-sectional 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.²⁸ These IV results appear in Table 5. All the results presented include the full set of controls, including attorney-by-year fixed effects. Unfortunately, while the coefficient on the instrument in the first-stage has the expected sign, it is somewhat weak (the F-statistic is 9), and as a result the second-stage coefficients tend to be much larger in absolute value, and also less precise, than the OLS estimates. Notably, however, the IV results are the same sign as the OLS estimates, with the exception of punishment conditional on conviction, where the standard errors are still large enough to encompass our fixed effects results. 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 helps to mitigate concerns about possible unobserved selection in cases represented by retained vs. assigned attorneys.²⁹

5.2. *Client-Attorney Match Quality*

²⁸ To construct the instrument, we first 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 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. 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.

²⁹ In results available on request, we include defendant fixed effects along with all other client, offense, and attorney controls as well as attorney-by-year fixed effects. Client fixed effects largely eliminates the assigned counsel penalty for pre-adjudication outcomes and for case disposition, but there remain statistically significant effects of assigned counsel on whether a defendant was incarcerated, the fine amount, and sentence length. While this particular LATE 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 their own attorney in another, is almost certainly due to variation in both the client's criminal history, social ties, or life circumstances that have a direct effect on case outcomes. For example, a defendant who is eligible for assigned counsel might nonetheless scrape together funds for retained counsel if he or she believes he or she has a strong case that only a hired lawyer would be willing to pursue zealously. Conversely, someone who knows that he or she has little chance of avoiding conviction given the strength of the case against him or her may not feel it is worthwhile to hire a lawyer if he or she also has access to assigned counsel. Of course, in this case, the estimates from fixed effect regressions will exacerbate any bias due to endogeneity as the factors that led a given defendant to choose a different form of counsel (e.g., changes in defendant income or differences in the perceived strength of evidence across different cases) are correlated with outcomes

The previous results suggest that case and client characteristics as well as adverse selection are important sources of the observed disparities in the dispositions of cases handled by assigned and retained counsel, but still leave a large fraction of the assigned counsel penalty unexplained. The remaining penalty could come from the inability of indigent clients to endogenously match with attorneys or from differential attorney effort on assigned versus retained cases.

In Table 6 we show that defendants who retain their own counsel retain attorneys with different characteristics along several dimensions. Non-indigent defendants are 10 percentage points more likely to retain counsel that is the same race as they are. Defendants also have a slight preference for male attorneys, 83% of retained attorneys are male versus 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.³⁰ 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 about 4 additional years of experience (measured as years since joining the Texas Bar) on average. 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 more experienced attorneys. However, while black defendants retain a black attorney over twice as often as they are assigned a black attorney by the courts (18.9% vs. 8.7% of the time) and Hispanic defendants are 13 percentage points more likely to retain a Hispanic attorney than be assigned one (46% vs. 33%), white defendants are 6 percentage points less likely to retain a white attorney than to be assigned a white attorney (59% vs. 65%).

We now ask whether the assigned counsel penalties varies by the four dimensions along which clients have a revealed preference in the retained attorney market that is not reflected in the assigned counsel matching process: the race of the attorney, the gender of the attorney, how far the attorney

³⁰ This may also be due to liquidity constraints on the part of clients, rather than preferences per se. We return to this issue when we discuss our results.

works from their place of residence, and how many years of experience the attorney has. In the interest of space, we show results for only three outcomes: whether they are convicted, sentence length conditional on conviction, and case length as a measure of attorney effort.

We begin by examining how the assigned counsel penalty for selected outcomes varies by the race of the client and attorney in Table 7. Since racial preferences appear to vary by client race (see Table 6), 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 controls for case, client, and attorney, along with attorney-by-year fixed effects.

Recall that black defendants were more than twice as likely to retain a black attorney as to be assigned one. When they are assigned a black attorney, however, are slightly more likely to be convicted (8 percentage points more likely versus 6 percentage points more likely), although this difference is statistically imprecise. That said, we find that conditional on guilt, black defendants who are assigned black attorneys receive substantially longer sentences than black defendants assigned non-black attorneys. In contrast, black defendants who are assigned white attorneys have almost no assigned counsel penalty; we cannot reject the null hypothesis that white attorneys obtain similar sentences for their convicted black clients, regardless of whether they are appointed or retained. We find no evidence of substantively important differences in case length for black defendants when we look across attorney races.

Could the difference in sentence length be due to black attorneys being generally worse when serving as assigned counsel? If this were true, we would expect to see that Hispanic and white defendants also had particularly large assigned counsel penalties when assigned black attorneys. This does not appear to be the case; if anything, Hispanic defendants less likely to be convicted, receive shorter sentences conditional on conviction (although these coefficients are not significant at

conventional levels). 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 apparent revealed preference that which defendants have for Hispanic versus white lawyers, white attorneys appear to spend more time on retained cases relative to Hispanic attorneys, and we find suggestive evidence that the assigned counsel penalty is small for white attorneys with regards to conviction and sentence length.

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 background provides and meaningful reduction in the assigned counsel penalty. It is worth noting that our finding that black clients matched with black assigned counsel receive particularly long sentences is consistent with behavioral differences on the part of black attorneys, but also ethnographic research identifying "double discrimination" against low income black defendants by judges, prosecutors, or juries (Espinoza and Esqueda 2008).

In Table 8, we estimate how the assigned counsel penalty varies with respect to the distance between an attorney's office and defendant's home, with the attorney's experience, and with the attorney's gender. We also explore how these outcomes vary when we restrict our attention to cases tried by attorneys with offices in San Antonio rather than elsewhere in Bexar County or even in Houston or Dallas (as shown in the "local only" column). Focusing on state jail or third degree felonies (the "minor crimes" columns) or clients who live in census block groups where the median household income is less than \$44,000 in 2010 (the "poor areas" columns).³¹

We find little evidence that any of the apparent client preferences for nearby, experienced or male attorneys is directly related to lower conviction rates or shorter sentences for assigned versus retained work. One potential explanation for this is that lawyers with these characteristics work harder for their

³¹ \$44,000 is the 75th percentile of block group median household income for defendants with assigned counsel in our data. It is approximately the 55th percentile for defendants with retained counsel.

retained clients, at the expense of their indigent ones. We do not find this to be true for experienced or male clients. In fact, our data suggest that more experienced attorneys spend more equal amounts of time on their assigned and retained cases. We do find that attorneys who live in places that are further from where a client lives also spend more equal amounts of time on their cases, which could be consistent with attorneys who live close to defendants spending more time on retained cases at the expense of their appointed ones.

Overall, while there are notable differences in the types of attorneys with whom different clients match on the private market versus 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 substantially³². Therefore, we conclude that failures in the court process assigning attorneys to indigent clients to do so in a way that matches their preferences, at least along distance, racial, ethnic, and gender dimensions, is unlikely to account for very much of the assigned counsel penalty.

5.3. Moral Hazard

To the extent that there remains a significant assigned counsel penalty even after controlling for case and client characteristics as well as adverse selection, and that this residual penalty is not 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 both indirect evidence from our administrative data and direct evidence from survey data that differences in attorney effort on assigned vs. retained cases is likely an important contributor to the observed disparities in outcomes.

5.3.1. Indirect Evidence from Court Records

As previously discussed, the fee structure for assigned counsel creates incentives to obtain pleas

³² In unreported results, we find that a lawyer working as assigned counsel performs particularly poorly relative to when he or she works as retained counsel in the three courts (District Courts 186, 226, and 379) 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.

as quickly as possible; under the flat fee arrangement, attorneys have no monetary incentive to prolong a case or take it trial (Table 1). Unfortunately, during the time period under consideration, there were no changes in the payment system for assigned counsel in Bexar County, so we do not have a clean source of identification for studying the impact of the assigned counsel compensation structure on how cases are adjudicated. Notably, however, the fact that flexibly allowing for unobserved attorney effects after controlling for observed case, client, and attorney characteristics actually amplifies the disparities in deferred adjudication and guilty pleas is striking; deferred adjudication requires both the longest time commitment and lowest financial return on the part of the attorney, and guilty or no contest pleas have the highest payout.

Another indicator of lawyer effort that we can calculate from the court records is case duration; i.e., the length of time that elapses between the original complaint date, which corresponds to when the defendant is booked, and the date when the case ends, for which we use the earlier of the judgement date and the adjudication date.³³ 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 submitting them one at a time, and more generally using the discovery process to postpone hearings.³⁴ At the same time, as demonstrated in a series of recent papers on pre-trial detention, individuals detained pre-trial may, in fact, prefer to quickly plead guilty or no contest in exchange for an earlier release (Dobbie et al. 2017, Stevenson 2017, Gupta et al. 2016).

³³ Dismissed cases have an adjudication date, but no judgement date. Cases that receive deferred adjudication have a judgement date with a later adjudication date.

³⁴ As a *New York Times* profile of defense lawyers in Bronx County put it, "... the true masters of delay are the defense attorneys. For them, muddled memories and lost witnesses – the passage of time itself – are the ingredients for getting clients off" (Glaberson 2013). As related by Feeley (1979), one defense attorney said that, "We can make life difficult for the prosecutors by filing a lot of motions... it's part of my ammunition to secure my objectives. They know I'm serious and that I'll spend a lot of time to pursue it. I'll wear them down that way" (223).

In Table 9, we show results from regressions for the natural log of case length in days/Unconditionally, cases with assigned counsel last about half as long as cases with retained counsel on average, at about 1.3 months vs. 2.8 months. Adding in our observable controls drops this penalty to about one-fifth. Roughly 60% of this assigned counsel penalty can be attributed to characteristics of the client (which includes their bail status) and the court itself. While only a small fraction of the difference in case length can be attributed to observed characteristics of the attorney, compared to his or her retained cases, defense attorneys resolve cases 17.8% faster when they are working as assigned counsel.

Given the important role of pre-trial detention in the potential benefit to the client of quick resolution, we next divide our sample by whether or not the client had a bail bond posted. Conditional on all other features of the client, case, and attorney, both detained and released clients have cases which resolve faster when represented by assigned counsel. Focusing first only on clients who are released prior to adjudication, when attorneys are working as assigned counsel they resolve cases 17% (se=0.20) faster than when they are retained. When we limit our attention to clients who are detained, we observe a 24.9% reduction (se = 0.045) in the time from complaint filing to resolution. These differences are also statistically distinguishable, in the sense that the interaction between assigned counsel and being released in the full sample of cases is statistically different from zero. Decomposing the components of the unconditional assigned counsel penalty reveal that whether or not the client is detained prior to adjudication is, essentially, the only client characteristic that affects case length. The specific offense is more important than characteristics of the attorney in determining how long it takes to resolve cases, and appears to be more important when clients are detained. Interestingly, we find that the average difference in length for cases tried by assigned and retained counsel is exacerbated when we compare cases appearing before the same judge, if the client is being held in jail. If the client is released, the difference in length of cases is smaller when we look within judge.

For both detained and released clients, however, roughly half of the assigned counsel penalty

remains after conditioning on case, client, court, and attorney characteristics. While there is a case to be made that quick resolution could benefit detained clients, the fact that we also observe a statistically and substantively meaningful reduction in case length for both detained and released clients suggests that attorneys invest less time and effort on these cases. Given that 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.

5.3.2. Direct Evidence from Attorney Surveys

Recent qualitative evidence from Bexar County corroborates these quantitative findings, further underscoring how differences in effort on cases in which attorneys are assigned as opposed to retained could contribute to observed disparities. 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 Bexar County's assigned counsel system, and in particular with its compensation structure for assigned counsel. Specifically, 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 guilty pleas, and in particular guilty pleas early in the process.

Reported differences in the Texas Task Force's survey in the number of hearings, the fraction of cases in which pre-trial motions were filed, and time spent on cases provides further evidence that attorney effort could be an important contributing factor to disparities in case outcomes. The average number of hearings survey respondents said were typically required to dispose a felony case on which they were assigned counsel was 4.0, compared to 4.3 for a felony case on which they were retained counsel (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 assigned and retained 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, with 16.3 hours reported for assigned cases and 26.7 hours reported for retained cases (p-value = 0.03). In percentage terms, the magnitude of this disparity echoes that for overall case length between cases handled by assigned and retained counsel as determined from the court records.

These average differences in reported hours worked by type of representation are not driven by only a few lawyers, but rather reflect a more pervasive phenomenon. For those attorneys who work on both types of cases, Figure 2 shows the relationship between average hours worked by attorneys in the sample for assigned vs. retained felony cases. Each point represents a surveyed lawyer's typical hours worked on assigned cases (y-axis) vs. retained cases (x-axis); lawyers on the 45-degree line report working the same number of hours on each type of case on average. The size of the points corresponds to the relative number of assigned and retained cases handled by the lawyer; those who have a more balanced caseload (i.e., closer to half assigned and half retained) are given greater weight.³⁵ While 56% of attorneys who handle both types of felony cases report working the same number of hours on assigned and retained cases (with points on the 45-degree line), nearly 40% acknowledge spending strictly fewer hours on average on assigned cases (points below the 45-degree line). Only two lawyers reported spending more hours on average on assigned felony cases than retained ones; however, those

³⁵ Specifically, the weight is constructed as $\text{Share Assigned} \times (1 - \text{Share Assigned})$.

two lawyers also spent unusually few hours on both types of cases. These findings are 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 effort 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 and client characteristics as well as adverse selection among attorneys can only account for a small fraction of the differences, suggest that variation across cases in lawyer effort plays a central role in generating these disparities.

6. Conclusion

In this paper, we leverage detailed administrative data from one large county in Texas that allows 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: case and client 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 in assigned counsel cases.

We find that client characteristics can explain large fractions of the negative outcomes for indigent versus non-indigent clients, and consistent with existing research, pre-trial detention is an important component of this. Adverse selection among lawyers volunteering to serve as assigned counsel can explain roughly one fifth of the assigned counsel penalty in dismissal rates, no contest pleas, and fines, but comparing cases tried by the same lawyer at the same time actually exacerbates differences in deferred adjudication, guilty pleas, and incarceration sentences for conviction clients. We also find

little evidence that endogenous matching on the private market plays an important role in how a case is adjudicated.

To the extent that case and client 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, even if the defendant is released on bond, is consistent with this interpretation. Further, qualitative evidence from a survey conducted by the Texas Task Force on Indigent Defense highlights striking gaps in the average number of hearings, motions filed, and hours spent on cases handled by assigned relative retained counsel.

Our results have important implications for policymakers seeking ways to provide a fair and accessible system of legal representation for those charged with crimes. Rather than 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 a 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. In future work, we intend to explore how varying propensities of individual lawyers to exert effort in their retained cases can shed light on the role of conviction on future criminal behavior.

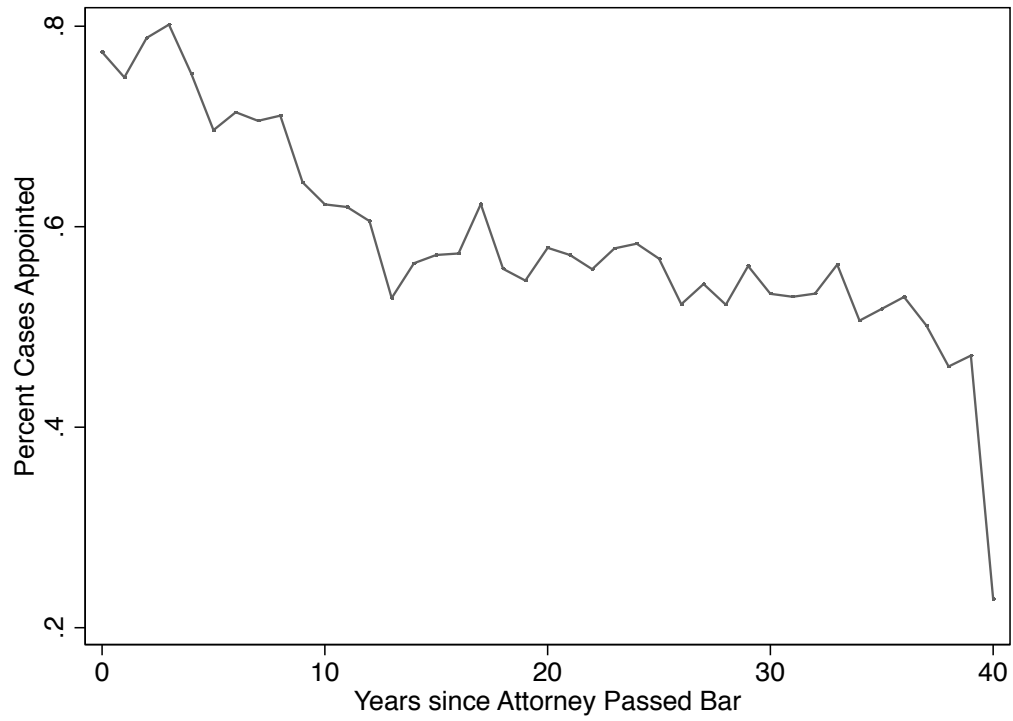
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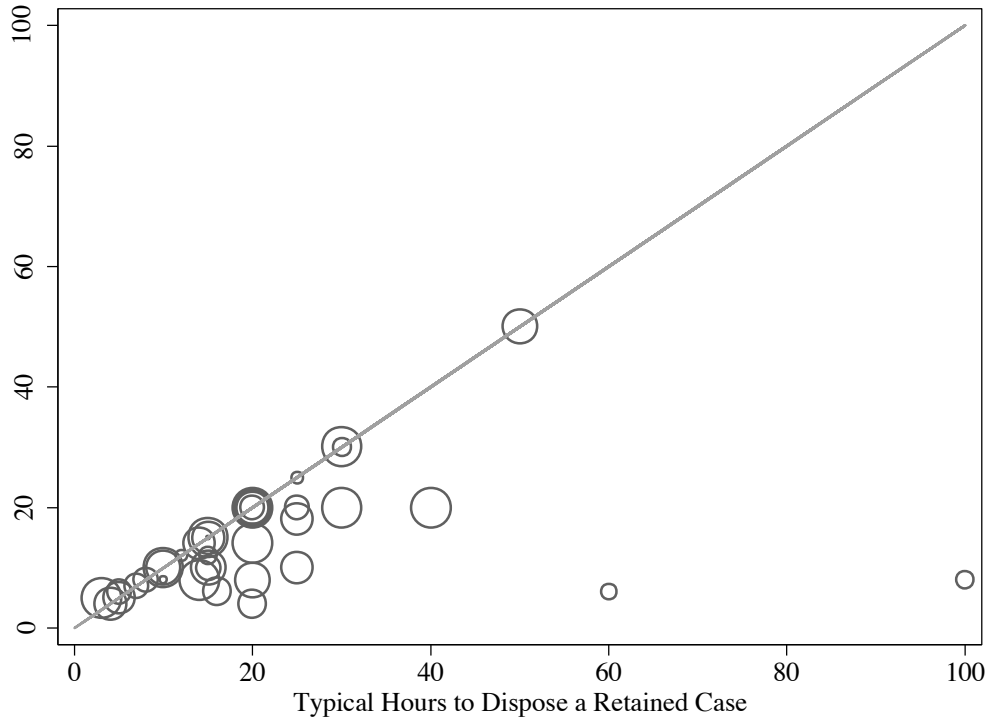
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Figure 1. Average Percent of Cases which are Appointed by Attorney Experience



Notes: n=727 individual attorneys.

Figure 2. Typical Hours to Dispose Assigned and Retained Felony Cases



Notes: 2010 Texas Task Force on Indigent Defense Survey of Bexar County Attorneys. Each point represents a surveyed lawyer's typical hours worked on felony assigned cases (y-axis) vs. retained cases (x-axis). The size of the points corresponds to the relative number of assigned and retained cases handled by the lawyer; those who have a more equal caseload (i.e., closer to half assigned and half retained) are given greater weight. Sample size = 41. For clarity, one respondent who reported typically spending 200 hours on retained cases vs. 30 hours on assigned cases is not shown.

Table 1. Fee Schedule for Assigned Counsel in Bexar County, 2015

	State Jail, 3 rd Degree	2 nd Degree	3 rd Degree	Capital
Initial Jail Visit	\$100	\$100	\$100	\$100
Flat Fee: Pleas Flat Fee: Post-Indictment Dismissals	\$400	\$500	\$750	1 st Chair \$3500 2 nd Chair \$2500
Flat Fee: Motion to Revoke Probation Flat Fee: Pre-Indictment Dismissals	\$200	\$250	\$350	1 st Chair \$1750 2 nd Chair \$1250
Flat Fee: Cases not disposed of by plea or dismissal	\$200	\$200	\$200	\$200
Hourly Rate: Court Appearance	\$75	\$75	\$75	\$75
Hourly Rate: Evidentiary Hearing	\$75	\$85	\$100	1 st Chair \$125 2 nd Chair \$115
Hourly Rate: Trial	\$75	\$100	\$125	1 st Chair Voir Dire \$100 2 nd Chair \$90 1 st Chair Trial \$150 2 nd Chair \$140
Hourly Rate: Out of Court Time	\$50	\$60	\$75	\$80

Notes: Adapted from State of Texas and County of Bexar, "Joint Order Adopting Fee Schedule," October 14, 2015. Document 67837.

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

	Retained (n=23,662)		Assigned (n=40,748)	
	Mean	<i>Std. Dev.</i>	Mean	<i>Std. Dev.</i>
Defendant Characteristics				
Male	82.7%		79.7%	
Age at Offense	31.14	10.88	31.44	10.65
White	28.20%		22.45%	
Black	12.25%		19.27%	
Hispanic	59.55%		58.28%	
Previous Charges	1.161	1.925	1.651	2.295
Previous Convictions	0.558	1.280	1.001	1.691
Released on Bond	87.16		55.2	
Block Group Poverty Rate	23.8%	16.4%	28.2%	17.2%
Case Characteristics				
State Jail Felony	36.8%		48.5%	
2nd or 3 rd Degree Felony	47.5%		40.9%	
1 st Degree	15.6%		10.6%	
Violent Crime	20.29%		20.84%	
Property Crime	14.20%		23.43%	
Drug Crime	37.79%		32.50%	
Attorney Characteristics				
Years of Experience	19.03	9.77	15.48	9.52
Male	91.3%	28.2%	76.7%	42.2%
Distance from Client Residence	8.738	14.542	10.930	28.152
Previous Cases	597.673	619.218	332.523	421.340
Percent Assigned	37.0%	25.6%	77.7%	21.0%
Race / Ethnic Match	46.7%		35.1%	
Case Outcomes				
Charges Reduced	11.2%		9.0%	
Dismissed	31.1%		19.1%	
Deferred Adjudication	30.0%		24.9%	
Guilty Plea	14.3%		15.8%	
Nolo Contendere	24.2%		39.6%	
Convicted	38.7%		55.8%	
Incarcerated	27.9%		46.9%	
Sentence (Days)	552	1524	728	2063
Fine	\$1069	\$964	\$1506	\$1219

Note: Data represents all felony cases in Bexar County, TX from 2005-2013.

Table 3. Unconditional and Residual Assigned Counsel Penalties for Case Outcomes

	Reduced Charge mean = 0.098		Case Dismissed mean = 0.234		Deferred Adjudication mean = 0.267		Plead Nolo mean = 0.340		Plead Guilty mean = 0.152		Convicted mean = 0.496	
	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)
Assigned Counsel Penalty <i>% of Penalty</i>	-0.021*** [0.003]	-0.004 [0.006]	-0.120*** [0.007]	-0.058*** [0.009]	-0.051*** [0.008]	-0.018+ [0.009]	0.154*** [0.009]	0.055*** [0.010]	0.015*** [0.009]	0.021** [0.007]	0.171*** [0.008]	0.075*** [0.010]
<i>Due to:</i>												
Client		0.147***		0.162***		1.497***		0.424***		2.050***		0.558***
Chars.		[0.053]		[0.016]		[0.074]		[0.020]		[0.148]		[0.022]
Offense FE		0.191 [0.719]		0.040 [0.104]		-0.075 [0.136]		-0.109** [0.048]		-0.052 [0.429]		0.004 [0.085]
Court FE		0.712 [0.726]		0.070 [0.105]		-0.321 [0.139]		0.098+ [0.051]		-0.326 [0.432]		-0.043 [0.085]
Attorney Chars.		-0.255 [0.172]		0.248*** [0.062]		-0.458*** [0.119]		0.231*** [0.064]		-2.082*** [0.605]		0.041 [0.040]
Adjusted R ²	0.001	0.143	0.018	0.109	0.003	0.255	0.024	0.198	0.0003	0.154	0.027	0.269

Notes: All regressions include 64,623 observations. Columns labeled (1) contain no controls, and columns labeled (2) include the full set of controls. Client characteristics include gender, age at offence, race, total number of felony charges previously filed in Bexar County, total number of previous convictions in Bexar County, whether or not the client was released on bond during the adjudication process, and block group poverty rate. Attorney characteristics include the natural log of distance between defendant's residence and law office, number of cases worked in Bexar County as of the complaint filing date, the percent of previous cases where the attorney was assigned council as of the complaint filing date, a dummy for whether or not the attorney is the same race as the defendant, and attorney by year fixed effects. Standard errors adjusted for heteroscedasticity and clusters at the defendant home block group and attorney level. Allocation of assigned counsel penalty is based on a Gelbach (2016) decomposition, with reported results divided by the unconditional penalty. Reported standard errors on these projections (which are also scaled by the estimated penalty for ease of interpretation) are adjusted to also allow for two way clustering at the block group and attorney level after the projections are estimated.

Significant at +10%, *5%, **1%, and ***0.1% levels.

Table 4: Unconditional and Residual Assigned Counsel Penalties for Sentence Outcomes

	Incarcerated Incarcerated mean = 0.400		Incarcerated Conviction mean =0.806		Ln(Sentence) mean = 664 days		Ln(Sentence) Conviction mean = 1,340 days		Ln(Fine) mean = \$1,346		Ln(Fine) Conviction mean = \$1,755	
	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)
Assigned Counsel Penalty <i>% of Penalty</i>	0.190*** [0.009]	0.075*** [0.010]	0.122*** [0.009]	0.049*** [0.0127]	1.12*** [0.074]	0.457*** [0.068]	0.461*** [0.088]	0.282*** [0.0843]	1.01*** [0.051]	0.583*** [0.071]	0.234*** [0.013]	0.259*** [0.0226]
<i>Due to:</i>												
Client Chars.		0.593*** [0.022]		0.559*** [0.078]		0.682*** [0.027]		1.084*** [0.191]		0.141*** [0.014]		0.027 [0.056]
Offense FE		0.038 [0.069]		-0.034 [0.026]		0.012 [0.123]		0.011 [0.054]		0.044 [0.117]		0.471*** [0.021]
Court FE		-0.012 [0.069]		0.222** [0.110]		-0.102 [0.123]		-0.460** [0.217]		0.020 [0.117]		-0.743*** [0.150]
Attorney Chars.		-0.014 [0.035]		-0.150** [0.062]		-0.002 [0.044]		-0.247** [0.118]		0.217*** [0.058]		0.140** [0.056]
Adjusted R ²	0.0348	0.285	0.0192	0.257	0.0254	0.313	0.00516	0.356	0.0232	0.123	0.0199	0.313

Notes: Unconditional regressions include 64,623 observations. Conditional regressions include 32,047 observations. Columns labeled (1) contain no controls, and columns labeled (2) include the full set of controls. Client characteristics include gender, age at offence, race, total number of felony charges previously filed in Bexar County, total number of previous convictions in Bexar County, whether or not the client was released on bond during the adjudication process, and block group poverty rate. Attorney characteristics include the natural log of distance between defendant’s residence and law office, number of cases worked in Bexar County as of the complaint filing date, the percent of previous cases where the attorney was assigned council as of the complaint filing date, a dummy for whether or not the attorney is the same race as the defendant, and attorney by year fixed effects. Standard errors adjusted for heteroscedasticity and clusters at the defendant home block group and attorney level. Allocation of assigned counsel penalty is based on a Gelbach (2016) decomposition, with reported results divided by the unconditional penalty. Reported standard errors on these projections are adjusted to also allow for two way clustering at the block group and attorney level, after the projections are estimated.

Significant at +10%, *5%, **1%, and ***0.1% levels.

Table 5. Residual Assigned Counsel Penalties: IV Results

	Reduced Charge	Dismissed	Def. Adj.	Plead Nolo	Plead Guilty	Plead Convicted	Incarc. Incarc.	Incarc. Convic.	Ln(Sen.) Ln(Sen.)	Ln(Sen.) Convic.	Ln(Fine) Ln(Fine)	Ln(Fine) Convic.
Assigned Counsel Penalty - FE	-0.00438 [0.00579]	-0.058*** [0.00908]	-0.0181+ [0.00925]	0.055*** [0.00985]	0.0207** [0.00737]	0.075*** [0.00964]	0.075*** [0.0102]	0.049*** [0.0127]	0.457*** [0.0678]	0.282*** [0.0843]	0.583*** [0.0708]	0.259*** [0.0226]
Assigned Counsel Penalty - IV	-0.267 [0.272]	-0.368 [0.409]	-0.409 [0.436]	0.209 [0.513]	0.579 [0.402]	0.841 [0.557]	0.854+ [0.518]	-5.392 [25.05]	6.744+ [3.783]	-36.74 [163.5]	1.832 [2.945]	0.143 [9.406]

Notes: Unconditional regressions include 64,623 observations. Conditional regressions include 32,047 observations. Client characteristics include gender, age at offence, race, total number of felony charges previously filed in Bexar County, total number of previous convictions in Bexar County, whether or not the client was released on bond during the adjudication process, and block group poverty rate. Attorney characteristics include the natural log of distance between defendant's residence and law office, number of cases worked in Bexar County as of the complaint filing date, the percent of previous cases where the attorney was assigned council as of the complaint filing date, a dummy for whether or not the attorney is the same race as the defendant, and attorney by year fixed effects. Standard errors adjusted for heteroscedasticity and clusters at the defendant home block group and attorney level. Allocation of assigned counsel penalty is based on a Gelbach (2016) decomposition, with reported results divided by the unconditional penalty. Reported standard errors on these projections (which are also scaled by the estimated penalty for ease of interpretation) are adjusted to also allow for two way clustering at the block group and attorney level after the projections are estimated.

Significant at +10%, *5%, **1%, and ***0.1% levels.

Table 6. Attorney Characteristics by Representation Type and Defendant Race

	Same Race as Client	Male	Distance from Client's Residence (Miles)	# of felony cases tried in Bexar as of Complaint Date	Years on Texas Bar
All Defendants					
Retained (n=23,663)	46.5%	82.7%	10.1	610	19.3
Assigned (n=40,748)	35.5%	79.5%	17.3	332	15.6
Black Defendant					
Retained (n=2,898)	18.9%	83.7%	9.6	676	18.0
Appointed (n=8,853)	8.7%	80.8%	18.8	345	15.5
Hispanic Defendant					
Retained (n=14,091)	46.1%	86.0%	9.6	635	19.5
Appointed (n=23,747)	32.8%	82.2%	16.8	329	15.6
White Defendant					
Retained (n=6,673)	59.2%	75.4%	11.2	530	19.2
Appointed (n=9,148)	65.4%	71.5%	17.1	329	15.8

Table 7. Race and Ethnicity Match Results, by Defendant Race

	Conviction		Ln Sentence	Conviction	Case Length	
A. Black Defendants						
Assigned	0.0611*	0.0891*	0.186	0.784**	-0.162**	-0.146
	[0.0261]	[0.0449]	[0.167]	[0.262]	[0.0498]	[0.0887]
Assigned × Black Atty	0.028		0.597+		0.0165	
	[0.0520]		[0.310]		[0.101]	
Assigned × Hisp Atty		-0.029		-0.663*		-0.00979
		[0.0528]		[0.316]		[0.102]
Assigned × White Atty		-0.0234		-0.303		-0.046
		[0.0704]		[0.414]		[0.134]
Observations	9,443	9,443	4272	4272	9,443	9,443
B. Hispanic Defendants						
Assigned	0.0706***	0.105***	0.342**	0.19	-0.198***	-0.241***
	[0.0144]	[0.0169]	[0.119]	[0.172]	[0.0325]	[0.0324]
Assigned × Black Atty		-0.101		-0.443		0.101
		[0.0638]		[0.393]		[0.0935]
Assigned × Hisp Atty	0.0348		-0.152		-0.0431	
	[0.0219]		[0.208]		[0.0461]	
Assigned × White Atty		-0.0315		0.179		0.0402
		[0.0216]		[0.207]		[0.0462]
Observations	35,761	35,761	18659	18659	35,761	35,761
C. White Defendants						
Assigned	0.0974***	0.0544**	0.607+	0.575**	-0.267***	-0.161***
	[0.0256]	[0.0199]	[0.324]	[0.216]	[0.0449]	[0.0353]
Assigned × Black Atty		0.0161		0.174		-0.146
		[0.0781]		[1.057]		[0.169]
Assigned × Hisp Atty		0.0457		0.0178		-0.103+
		[0.0324]		[0.396]		[0.0557]
Assigned × White Atty	-0.043		-0.0325		0.106+	
	[0.0314]		[0.377]		[0.0548]	
Observations	13,975	13,975	4,730	4,730	13,975	13,975

Notes: See Table 5 for notes. All models include case, client, and attorney controls, and attorney-by-year fixed effects, with relevant singleton observations excluded. Standard errors adjusted for heteroscedasticity and clusters at the defendant home block group and the attorney level. Significant at +10%, *5%, **1%, and ***0.1% levels.

Table 8. Defendant Preference Matches and Case Outcomes

	Conviction				Ln Sentence				Conviction				Case Length			
	Full Sample	Local Only	Minor Crimes	Poor Areas	Full Sample	Local Only	Minor Crimes	Poor Areas	Full Sample	Local Only	Minor Crimes	Poor Areas	Full Sample	Local Only	Minor Crimes	Poor Areas
A. Distance from Defendant's Home to Law Office																
Assigned	0.142***	0.139***	0.150***	0.142***	0.152***	0.154***	0.159***	0.149***	0.574***	0.549***	0.916***	0.531**				
	[0.022]	[0.022]	[0.024]	[0.026]	[0.018]	[0.018]	[0.020]	[0.0218]	[0.153]	[0.155]	[0.177]	[0.177]				
Assigned × Ln(Distance)	0.002	0.004	0.003	-0.001	-0.009	-0.011	-0.014	-0.008	0.036	0.049	-0.002	0.063				
	[0.010]	[0.010]	[0.011]	[0.013]	[0.008]	[0.009]	[0.009]	[0.0110]	[0.077]	[0.078]	[0.086]	[0.094]				
B. Years Since Texas Bar Admission																
Assigned	0.166***	0.167***	0.167***	0.175***	0.151***	0.151***	0.141***	0.167***	0.741***	0.744***	0.966***	0.763***				
	[0.021]	[0.021]	[0.021]	[0.026]	[0.019]	[0.019]	[0.021]	[0.023]	[0.182]	[0.182]	[0.200]	[0.226]				
Assigned × Experience	-0.012	-0.013	-0.008	-0.021	-0.009	-0.010	-0.004	-0.019	-0.061	-0.065	-0.033	-0.078				
	[0.012]	[0.012]	[0.013]	[0.015]	[0.010]	[0.010]	[0.011]	[0.013]	[0.096]	[0.096]	[0.110]	[0.112]				
C. Male Attorney																
Assigned	0.170***	0.173***	0.176***	0.179***	0.131***	0.133***	0.136***	0.141***	0.398*	0.388*	0.741***	0.281				
	[0.027]	[0.027]	[0.027]	[0.035]	[0.023]	[0.023]	[0.022]	[0.028]	[0.170]	[0.173]	[0.191]	[0.198]				
Assigned × Male Atty	-0.029	-0.032	-0.025	-0.046	0.005	0.003	-0.002	-0.006	0.276	0.285	0.197	0.399+				
	[0.029]	[0.030]	[0.030]	[0.037]	[0.025]	[0.025]	[0.024]	[0.031]	[0.191]	[0.194]	[0.212]	[0.223]				
Observations	64,623	62,718	45,015	45,919	64,623	62,718	45,015	45,919	32,047	31,109	21,786	24,056				

Notes: See Table 5 for notes. All models include case, client, and attorney controls, attorney fixed effects, and attorney-by-year fixed effects, with relevant singleton observations excluded. Attorney experience is measured in decades. Standard errors adjusted for heteroscedasticity and clusters at the defendant home block group and the attorney level. Significant at +10%, *5%, **1%, and ***0.1% levels.

Table 9. Assigned Counsel Penalty for Case Length

			Detained Pre-Adjudication	Released Pre-Adjudication
	(1)	(2)	(3)	(4)
Assigned Counsel	-0.638*** [0.00949]	-0.196*** [0.0193]	-0.286*** [0.045]	-0.187*** [0.020]
<i>% of Penalty Due to:</i>				
Client Chars.		0.388*** [0.012]	-0.008 [0.009]	-0.002 [0.006]
Offense FE		0.051 [0.027]	0.894*** [0.171]	0.158** [0.064]
Court FE		0.217*** [0.040]	-0.376** [0.166]	0.256*** [0.075]
Attorney Chars.		0.036 [0.037]	-0.017 [0.096]	0.093 [0.052]
Adj. R ²	0.0907	0.421	0.427	0.294

Notes: Regressions in columns 1 and 2 include 64,623 observations. Column 3 contains 21,399 observations, and column 4 contains 42,475 observations See Table 5 for additional notes. Standard errors adjusted for heteroscedasticity and clusters at the defendant home block group and, in columns (4) and (5), at the attorney level. Significant at +10%, *5%, **1%, and ***0.1% levels.