

# Counsel Quality and Client Match Effects in Indigent 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 lawyers across different cases. In contrast to the existing literature, we find that the majority of the disparity in outcomes is due to within-attorney differences across cases in which they are assigned and retained; the selection of low-quality attorneys into assigned counsel can explain at most 20% 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 attorneys plays some role in determining case outcomes, although defendants' revealed preference for male attorneys with offices close to their places of residence tends to work against them in court.

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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 people who are accused of serious crimes. While the vast majority of people accused of felonies do receive legal counsel, many have questioned whether that counsel is effective; indeed, indigent defense systems in the United States have recently been characterized as “broke and broken” (Uphoff 2010) and “a mockery of justice for the poor” (Phaff 2016). Underfunded and inadequate indigent defense is 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.<sup>12</sup>

In this paper, we 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. Until 2014, Bexar County District Courts used an assigned counsel system, where a third party assigns indigent clients 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 assigned to them, and defendants are not allowed to select their own attorneys. Further, the fee structure for assigned counsel cases in Bexar County, like that in many jurisdictions, creates incentives for attorneys to pursue particular case outcomes, such as plea bargains, that may not be in their clients’ interests.

There are four possible reasons why outcomes might be worse in cases handled by assigned

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<sup>1</sup> 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 population (17.1% and 13.2%) (authors’ calculation based on Table 8 in Carson (2014)). By comparison, white prisoners are 33.3% of the incarcerated population and 62.1% of the population.

<sup>2</sup> Because of this connection between race, income, and reliance on indigent defense, the 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).

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 inefficient attorney-client matches. 4) Moral hazard: Attorneys may exert less effort in cases where 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, 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 in explaining the disparities in outcomes observed among indigent clients.

We begin by confirming existing research findings in Bexar County. Even after controlling for charge and client characteristics, when a defendant has assigned counsel, he or she is more likely to be remanded without bond, to have a larger court-issued bond, to be 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, controlling for charge and client characteristics, a defendant is over 27% 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 almost 80% longer.

We then take the next step of flexibly controlling not only for observed lawyer characteristics using information from the State Bar of Texas, but also for time-invariant unobserved lawyer characteristics using lawyer fixed effects. This allows 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. Contrary to previous work, we find that adverse selection among attorneys who engage in assigned counsel cases can account for only a small fraction of the gap in outcomes for indigent defendants. In fact, adverse selection alone explains at most one-fifth of the disparities in outcomes observed among clients of assigned as opposed to retained counsel.

Next, we evaluate the extent to which the match between client and attorney can mitigate the “assigned counsel penalty” in court. We focus on four observable dimensions along which defendants have a revealed preference in the market for private attorneys. Specifically, relative to assigned counsel cases, when clients hire attorneys on the private market, they tend to choose attorneys whose offices are close to where they live, who are male, who have more experience, and, for clients of color, who are the same race and ethnicity. Comparing cases in which clients happen to be assigned counsel that is a better “match” along one of these dimensions, we find that, if anything, indigent black and Hispanic clients have better outcomes when assigned white attorneys. This finding is consistent with recent research on “double discrimination” in courts (Espinoza and Esqueda 2008, Depew et al. 2016). We also find that clients’ revealed preference for male attorneys who work close to where they live may be counterproductive: indigent clients

assigned to female attorneys or attorneys whose offices are located further from where the client lives tend to receive shorter sentences and are less likely to be found guilty than other indigent clients. However, clients' revealed preference for more experienced attorneys works in their favor; we find that the assigned counsel penalty is somewhat smaller for attorneys with more years of experience, which is also consistent with past research on public defenders (Abrams and Yoon 2007).

Finally, we consider the potential role of moral hazard in explaining the worse outcomes observed among indigent clients who are assigned lawyers. While our administrative data cannot speak directly to lawyer effort, we present several pieces of evidence that consistently point to a central role for moral hazard in generating the observed disparities.

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 largely by relatively bad or inexperienced attorneys electing disproportionately into assigned counsel. 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, 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 2016).

The paper proceeds as follows. In the next section, we describe the indigent defense system in Bexar County and review the literature on sources of disparities in outcomes for cases in which attorneys are assigned vs. retained. We describe our data in Section 3. In Section 4, 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. We present and discuss our results as well as several extensions and robustness tests in Section 5. 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 managed by an elected Public Defender, while assigned counsel are independent private attorneys who volunteer into a potential selection pool (subject to minimum qualification criteria). About 90% of large counties in the U.S. use assigned counsel to provide legal representation to indigent defendants, although many have a public defender's office that also handles cases (DeFrances and Litras 2000). Until 2014, Bexar County District Courts used an assigned counsel system almost exclusively.<sup>3</sup>

As is the case in many jurisdictions, the compensation lawyers receive for serving as assigned counsel in Bexar County is a function of the severity of the charge and the disposition of the case. Attorneys in Bexar County may choose between hourly and flat fee schedules, and in practice choose the flat fee schedule 75% of the time (Texas Task Force on Indigent Defense 2010).

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<sup>3</sup> In early 2014, the public defender's office in Bexar County began handling cases for some indigent defendants that assigned counsel previously handled. Prior to that, the public defender in Bexar County only handled cases in which the defendant had severe mental health issues and cases that were appealed.

Anecdotal survey evidence implies that this is because the flat fees are never challenged but a judge can challenge the hourly amounts; in addition, assuming the attorney can get the case resolved quickly via plea bargain, the flat fee amounts will be higher than the hourly rate. In Figure 1, we present the 2015 fee schedule for assigned counsel in Bexar County. 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 the case via plea, or through revoking probation for more serious offenses. Regardless of case seriousness, 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.<sup>4</sup> On the private market, lawyers retained in Bexar County primarily charge flat fees in criminal cases, but the fees are an order of magnitude larger; private representation for a DUI charge is at least \$1200 per case, or more if the case is complicated.<sup>5</sup>

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.<sup>6</sup>

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<sup>4</sup> Assigned counsel does have the option to petition judges for additional compensation if they spend their own resources in order to, for example, conduct an investigation, but in practice this happens in less than 1% of cases; judges are not required to grant additional compensation, and the fear of being denied leads to attorneys to forego even making requests (Texas Task Force on Indigent Defense 2010).

<sup>5</sup> For example, see <https://www.fightduicharges.com/texas/what-is-the-cost-of-a-dui-in-texas/>.

<sup>6</sup> 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

The second benefit of working as assigned counsel is to gain experience working on criminal cases. Bexar County attorneys surveyed in 2009 reported that they worked on two to three felony cases a month as assigned counsel, and four cases as retained counsel (Texas Task Force on Indigent Defense 2010). The additional experience that comes from assigned cases can later be directly advertised to potential clients.

Nearly two-thirds of the 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.<sup>7</sup> 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 72 hours of arrest. If the person is in custody, the magistrate is required to assign counsel “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. 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 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

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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.

<sup>7</sup> The defendant’s necessary expenses include rent or mortgage, food/groceries, car payments, and utilities. These expenses are subtracted from the defendant’s gross income, including spousal income if applicable. The threshold for qualifying is adjusted annually pursuant to the Federal Poverty Guidelines. In 2015, it was \$980.83 per month. See <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=177>.



(District Courts 186, 226, and 379) and in other cases based on who is at the top of the list of eligible lawyers (District Courts 144, 175, 186, 187, 227, 290, 399, and 437). Lawyers who have been assigned to a case must contact the defendant by the end of the first working day that they are appointed, and represent the defendant until the conclusion of the case.<sup>8</sup> 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 tend to 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, the cases handled by publicly-financed legal representation tend to have different characteristics than those handled by privately retained attorneys. For example, defendants charged with white-collar crimes are more likely to use private counsel, whereas those with a 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

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<sup>8</sup> 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>)

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).<sup>9</sup>

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. An attorney must be able to communicate with his or her client in order to establish alibis or extenuating circumstances that are relevant to the case, and ensure that his or her client behaves in a way that reduces the probability that the client will be convicted or incarcerated, such as showing up on time, dressing and behaving in a calm and mature manner in court, and refraining from suspicious activity while the case unfolds. To these ends, most 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” (e.g., [wikihow.com/Select-a-Criminal-Defense-Attorney](http://www.wikihow.com/Select-a-Criminal-Defense-Attorney)). 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,

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<sup>9</sup> 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.

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 an adverse selection story, interviews with defendants and other agents of the court consistently suggest that privately retained attorneys tend to prepare more and pursue cases more fervently than assigned counsel (Klein 1986, Anderson and Heaton 2012). As further discussed in Section 5.3, survey evidence from Bexar County also points to an important role for effort in generating disparities in outcomes between cases tried by assigned as opposed to retained counsel.

### **3. Data**

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 the state. Importantly for our study, 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.<sup>10</sup>

Our main source of data are comprehensive administrative records covering 64,623 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).<sup>11</sup> The data include detailed information on the defendant (including race and ethnicity, 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 - this 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.

Table 1 documents the potential role that case characteristics may have in the relative performance of assigned counsel. People represented by appointed counsel are slightly more likely to be women, are about half a year older, and live in more impoverished neighborhoods. They have more serious criminal histories, as measured by previous felonies filed against them and previous convictions, but are more likely to be accused of a less serious state jail felony- either a drug or property offense. Notice that the attorneys working in appointed counsel cases are more likely to be women, have offices that are further from where the client lives, and are generally less experienced, as measure by both years since admission to the Texas Bar and number of felony cases tried, than lawyers who clients choose to hire themselves. Notably, we do not observe that appointed counsel went to lower ranked law schools, a measure commonly used to approximate for human capital (e.g. Abrams and Yoon 2007).

On average, we observe that cases represented by appointed counsel are 17 percentage points

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<sup>10</sup> 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/popcnty32010.html>.

<sup>11</sup> For additional details about these data, see Freedman and Owens (2014) and Freedman et al. (2015).

more likely to result in a conviction. While roughly the same percentage of cases are resolved via guilty plea, assigned counsel cases are more likely to end in a no contest plea. These clients also have their bonds set higher, and receive, unconditionally, longer sentences and higher fines.

In Table 2, we document that persistently worse outcomes in assigned counsel cases are a potentially important source of racial disparities in the criminal justice system in San Antonio. Over half of clients of color are remanded without bond (i.e., not given the opportunity to post bail), compared to 43% of white clients. Similarly, over half of both black clients and Hispanic clients are eventually adjudicated guilty, relative to 39% of white clients. Conditional on a guilty verdict, clients of color receive sentences that are two to six months longer than white clients. Overall, 64% of cases are represented by assigned counsel.<sup>12</sup> However, almost three-fourths of black clients are represented by assigned counsel, compared to 63% of Hispanic clients and 58% of white clients.

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 dimensions along which clients might have a “gut” reaction to a lawyer. 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.

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.

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<sup>12</sup> A very similar percentage of felony defendants in U.S. district courts nationwide (66%) had publicly financed counsel in 1998 (Harlow 2000).

Census Bureau’s five-year (2009-2013) American Community Survey (ACS) on a number of 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, however their home address can give us information about the average income of people living in that block group. Importantly, 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. Additionally, attorneys who work in particular neighborhoods may be able to relate to residents in ways that are typically difficult for a researcher to observe.

In each year of our sample, 79% of attorneys serve as both assigned and retained counsel.<sup>13</sup> In Table 3, we present evidence that while many of the same attorneys who work as retained counsel also work as assigned counsel, relative to defendants who are indigent, defendants who select their own counsel end up with different attorney matches along some, but not all, dimensions. Black defendants retain a black attorney over twice as often as they are assigned a black attorney by the courts (19% vs. 8% of the time), and Hispanic defendants are 14 percentage points more likely to retain a Hispanic attorney than be appointed one (46% vs. 32%). White defendants, on the other hand, are 7 percentage points less likely to retain a white attorney than to be assigned a white attorney (59% vs. 66%). Other measures of match quality in table 1 do not vary by race; clients of all races and ethnicities prefer to hire male attorneys, a result that also does not vary by client gender. Relative to when they are retained, when attorneys are appointed, and their offices are

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<sup>13</sup> 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 appointed cases.

located 1.4 to 2.8 miles further from a defendant's place of residence on average.<sup>14</sup> Attorneys who are retained also have two to four more years of experience (measured as years since joining the Texas Bar) than those who are appointed on average. Finally, when they have the means to hire their own defense attorney, people do not appear to have a strong preference for lawyers with degrees from more prestigious law schools.

Table 4 provides more information on the observed distribution of client and attorney matches by race and ethnicity, both in cases where the matches happen endogenously in the private market and in cases where attorneys are assigned to defendants by the court. Even without conditioning on the types of crimes or language needs of the clients (which the court uses in its assignment process), it is clear that the distribution of attorneys across clients is more consistent in the assigned counsel pool. In particular, all defendants have less than a 10% chance of being assigned a black attorney (although black defendants are relatively more likely to be assigned a black attorney than Hispanic or white defendants), about a 30% chance of being assigned a Hispanic attorney, and about a 64% chance of being assigned a white attorney.<sup>15</sup>

#### **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 versus retained criminal defense attorneys. One key benefit of our data is that we can match attorneys across cases over time and thus analyze outcomes for the same attorney in different types of cases. That is, unlike in previous studies, we

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<sup>14</sup> 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.

<sup>15</sup> The higher frequency with which black indigent defendants are paired with black attorneys arises because, on average, black defendants are charged with more serious crimes and black attorneys are overrepresented in the pool of assigned counsel lawyers eligible to work on more serious cases (first-degree and capital offenses). In the empirical analysis that follows, we control in different specifications not only for highly detailed offense codes, but also for lawyer characteristics including experience.

can observe the same attorney working as both assigned counsel and retained counsel, and therefore can test whether the same attorney tends to have better or worse case outcomes when they are working in different roles. In effect, we can control for both observable and unobservable potential differences between attorneys, such as education, experience, or charisma, which could affect outcomes in criminal cases. If disparities in case disposition 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. To the extent that we do still see differences, it could be attributable to differences in case or defendant characteristics, which we can also control for to a large extent, differences in the quality of the matching process, or differences in attorney effort.

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

$$(1) \quad y_{ij} = \alpha + \beta_1 \text{assigned}_j + \mathbf{X}_i \boldsymbol{\Omega} + \mathbf{A}_{ij} \boldsymbol{\Pi} + \gamma_j + \epsilon_{ij}$$

In equation (1),  $y_{ij}$  is the outcome of a particular case for defendant  $i$  with attorney  $j$ ,  $\text{assigned}_{ij}$  is a dummy variable indicating whether attorney  $j$  was assigned (as opposed to retained) when representing defendant  $i$ ,  $\mathbf{X}_i$  is a vector of offense and defendant characteristics, including offense code,<sup>16</sup> defendant gender, defendant race, defendant age at the time of the offense, median household income of the defendant's block group, per capita income of the defendant's block group, the poverty rate of the defendant's block group, the defendant's complaint history (i.e., the number of 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), and a court docket dummy (which we define as a unique combination of court,

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<sup>16</sup> There are 460 offense codes.



offense level, and charge year). Notably, the offense level determines the list from which the assigned counsel attorney is drawn if a court-appointed attorney is requested.  $\mathbf{A}_{ij}$  is a vector of attorney and attorney-client match characteristics, including attorney race, the attorney's experience (i.e., the total number of cases that an attorney has represented at the time the charge was filed), and the fraction of the lawyer's cases in which he or she served as assigned counsel each year.<sup>17</sup>  $\mathbf{A}_{ij}$  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.

In some specifications, we control for observable and unobservable time-invariant differences across attorneys with attorney fixed effects,  $\gamma_j$ .<sup>18</sup> In that case,  $\beta_1$  is estimated within attorneys and relies on variation in outcomes for attorneys who work as both assigned and hired counsel. Any significant coefficient on *assigned<sub>j</sub>* implies a difference in case outcomes for the same attorney when that attorney is assigned versus retained. 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 (immutable) attorney characteristics and thus to adverse selection. In regressions without attorney fixed effects, we allow for arbitrary unobserved correlation in outcomes within client by clustering standard errors at the defendant level; when we add attorney fixed effects, we cluster standard errors at both the defendant and the attorney levels.

We extend this model in the empirical analysis to explore whether the impact of having assigned as opposed to retained counsel varies with characteristics of the defendant. Since the

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<sup>17</sup> 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.

<sup>18</sup> These fixed effects subsume attorney race, which is otherwise included in the vector  $\mathbf{A}_{ij}$ .

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.<sup>19</sup>

## 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, along with the fraction of the variation the outcomes explained by the models, adjusting for the fact that each regression contains an increasingly larger set of independent variables.

We begin with an analysis of pre-adjudication outcomes in Table 5. Unconditionally, clients

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<sup>19</sup> Since we found little evidence that clients prefer attorneys from more prestigious schools, we do not include law school rank in these regressions.

represented by assigned counsel are 20.9 percentage points (40%) more likely to be denied bail, and bail amounts are over three times larger than in cases represented by retain attorneys.<sup>20</sup> Those represented by assigned counsel are also 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), characteristics of the case and client reduce the assigned counsel penalty, most notably for the probability that a charge is reduced, where the assigned counsel penalty essentially falls to zero. Including case and client characteristics also substantially increases the explanatory power of our model, which is not surprising given that the case controls include 460 dummies for the specific offense as well as demographic characteristics and the criminal history of the defendant.

Adding controls for the demographics and experience of the attorney as well as for aspects of the match between the attorney and client (column (3)) further reduces the assigned counsel penalty in terms of defendants being held without bail, but has little impact on the level at which bail is set. In column (4), we add attorney fixed effects, now explicitly comparing each attorney's performance across different types of representation. Time-invariant, unobserved characteristics of the attorney both slightly increase our ability to explain pre-adjudication outcomes and reduce the assigned counsel penalty.

Since attorneys take more assigned counsel cases early in their careers, this within-attorney comparison may still not completely eliminate the impact of adverse selection on the estimates. Therefore, in column (5) of Table 5, we introduce attorney-by-year fixed effects, meaning that we are comparing pre-adjudication outcomes for cases tried by the same attorney in the same calendar year. Even with these extensive controls, when attorneys are appointed to a case rather than retained, their clients are 14.6 percentage points (28%) more likely to be denied bail, and bail

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<sup>20</sup> We add \$1 to all bond amounts so that zeroes are defined in these regressions. Those remanded without bond are assigned a bond amount of \$10,000,000, which is twice the highest bond ever set in the data.

amounts are set over twice as high.

Taken as a whole, the results in Table 5 imply that case and defendant characteristics entirely explain the likelihood that filed felony charges will be reduced. However, observed differences in clients and cases together with adverse selection into assigned counsel can explain at most 30% of the unconditional difference in bail setting for indigent clients in Bexar County. Adverse selection alone can account for no more than 17% of the difference in bail setting.

In Table 6, we turn to results regarding how cases are adjudicated, which directly affects the compensation of assigned counsel. As in Table 5, column (1) of Table 6 presents unconditional estimates. Just under one-fourth of cases are dismissed, but this is almost 50% less common for assigned counsel cases. Clients represented by assigned counsel are also 5 percentage points (19%) less likely to receive deferred adjudication, an outcome which implies their cases will be dismissed if they meet some conditions set by a judge (typically completion of a rehabilitative program and a set time period of desistance). Instead, cases are 45% more likely to be resolved via a plea of *nolo contendere* or “no contest”, where the client admits that the state has sufficient evidence to convict, but neither admits or denies guilt.<sup>21</sup> Assigned counsel cases are also 10% more likely to be resolved in a guilty plea. Overall, assigned counsel cases are 17 percentage points, or about 34%, more likely to result in some sort of plea (guilty or *nolo contendere*), which is the most lucrative outcome for an assigned counsel attorney.

As in bail setting, including characteristics of the case and client reduces the assigned counsel penalty and increases the explanatory power of the model. Strikingly, however, including attorney controls actually makes it more likely that clients plead guilty, rather the case being resolved via

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<sup>21</sup> Pleading *nolo contendere*, rather than guilty, can be beneficial to a defendant in future 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.

deferred adjudication. Adding attorney and attorney-by-year fixed effects (column (5) of Table 6), which again dramatically limits the scope for adverse selection, still leaves statistically and substantively significant assigned counsel penalties. More specifically, unobserved factors like attorney-client match quality and moral hazard account for 63% of the reduction in dismissals, 113% of the reduction in deferred adjudication, 61% of the increase in nolo contendere pleas, 265% of the increased probability of guilty pleas, and 77% of the overall increase in conviction rates.

In Table 7, we examine whether or not defendants represented by assigned counsel receive harsher punishments, both unconditionally (Panel A) and conditional on guilt (Panel B). Since defendants represented by assigned counsel are more likely to be found guilty, the difference in whether or not a defendant is incarcerated, the amount they are fined, and the length of their sentence are smaller once we restrict attention to people who are convicted. Nonetheless, we find evidence that as yet unmeasured factors like the matching process or moral hazard may result in particularly poor client advocacy post-adjudication. Excluding any controls for case or attorney characteristics, among those with a guilty verdict, the assigned counsel penalty for fines is an additional \$376 (over the mean of \$1426), and that for sentences translates into an additional 4 months behind bars (over the mean of about 7 months). The penalty actually grows when comparing post-adjudication outcomes across similar cases tried by the same attorney in a particular year; in that case, the assigned counsel penalty for fines is an additional \$432, and that for sentences corresponds to nearly 6 additional months behind bars. While large, these estimated effects 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).<sup>22</sup>

### *5.2. Match Quality*

In contrast to existing research, our results suggest that adverse selection into assigned counsel can explain only a small fraction in the differences in outcomes for indigent and non-indigent defendants. Some of the residual disparities could be attributable to the lower match quality that results from having an attorney assigned as opposed to one that is endogenously chosen. We now turn to four dimensions along which clients have a revealed preference that is not reflected in the assigned counsel matching process: the race of the attorney, the gender of the attorney, how far the attorney 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: the probability that the defendant is remanded without bond (RWB), the probability that they plead guilty or nolo contendere, and their sentence length conditional on conviction.

We begin by examining how the assigned counsel penalty varies by the race of the client and attorney in Table 8. Since racial preferences vary by client race (see Tables 3 and 4), 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 and 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, black defendants are only slightly less likely to be remanded without bond and slightly more likely to plead guilty compared to when

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<sup>22</sup> 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%.

they are assigned a Hispanic or white attorney; for each of these two outcomes, the point estimates are statistically imprecise and very small relative to the average assigned counsel penalty. In addition, 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.

Could it be that black attorneys are generally worse when serving as assigned counsel? If this were true, we would expect to see that Hispanic and white defendants also had particularly poor outcomes when assigned black attorneys. This does not appear to be the case; Hispanic defendants are much less likely to be remanded without bond and tend to receive substantially shorter sentences when assigned black counsel (although the estimated coefficient on sentence length is not statistically significant at conventional levels). When assigned Hispanic attorneys, Hispanic clients are more likely to be remanded without bond, and also weakly more likely to plead guilty. Even though Hispanic clients do not appear to prefer to retain white counsel, when assigned a white attorney, the assigned counsel penalty is smaller.

The assigned counsel penalty appears to be smallest for white defendants who are assigned white attorneys, particularly relative to when white defendants are assigned a Hispanic attorney. Taken as a whole, it is possible that white attorneys simply perform better as assigned counsel for defendants of all backgrounds, particularly when compared to Hispanic attorneys. However, it is notable that in the private market, both white and Hispanic defendants appear to prefer to hire Hispanic counsel to white counsel. It is also worth noting that, based on the ethnographic research on discrimination, our finding that black clients matched with black assigned counsel receive

particularly long sentences could plausibly be the result of “double discrimination” by judges, prosecutors, or juries, or possibly behavioral differences on the part of black attorneys in these cases (Espinoza and Esqueda 2008).

In Table 9, 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. While defendants appear to prefer lawyers whose offices are located closer to their residence, this preference does not obviously help the client, suggesting that the cost of travel to a lawyer’s office may represent an important constraint on someone’s choice of lawyer. As the results in Panel A of Table 9 suggest, being represented by an attorney who does not work near where you live is associated with a reduced probability of being remanded without bond as well as a reduced probability of pleading guilty or nolo contendere; for the latter, the estimate for the full sample is statistically significant at the 10% level. Being assigned a lawyer who looks like a retained attorney on the distance dimension, meaning a lawyer that works 9 miles from the defendant’s house rather than 11 miles, increases the assigned counsel penalty by 1% for pleas. This effect is similar even if we restrict our sample to cases tried by lawyers whose office is 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) has little impact on the magnitude or significance of the estimates.<sup>23</sup>

As can be seen in Panel B of Table 9, assigning a defendant an attorney with more years of experience may reduce the assigned counsel penalty, particularly for defendants from poorer

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<sup>23</sup> \$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.



neighborhoods. To put the magnitudes of the effects of experience in perspective, on average someone who is assigned counsel in our sample received a lawyer who was admitted to the Texas Bar 15 years ago. Retained counsel, on the other hand, was admitted on average 19 years ago. For defendants from poor areas, being assigned a lawyer with 19 as opposed to 15 years of experience reduces the assigned counsel penalty for being denied bail by 4.8% and for pleading guilty by 4.4%. We find a smaller, and statistically imprecise, impact of experience on the assigned counsel penalty for sentencing.

Finally, while defendants who choose their own counsel are more likely to select men, being assigned a male attorney does not reduce the probability that the client will be denied bail or plead guilty. Female assigned counsel also perform substantially better when the defendant is sentenced. In fact, convicted defendants from poor neighborhoods who are represented by female attorneys receive statistically identical sentences in retained and assigned counsel situations.

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. In fact, some attorney assignments that would appear to match a client’s preferences, particularly a preference for black and Hispanic attorneys who are male and have offices close to where a defendant lives, can actually exacerbate negative case outcomes.

### *5.3. Moral Hazard*

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 together can account for less than one-third of the gap in outcomes. Failures in the court process that assigns attorneys to indigent clients to do so in a way that matches their

preferences, at least along distance, racial, ethnic, and gender dimensions, also appear to account for very little of the assigned counsel penalty. A final plausible source of the disparities in outcomes between cases handled by assigned and retained attorneys is differences in attorney effort across cases.

As previously discussed, the fee structure for assigned counsel creates incentives to obtain pleas as quickly as possible; under the flat fee arrangement, attorneys have no monetary incentive to prolong a case or take it trial. Unfortunately, during the time period under consideration, there were no major 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 pleas have the highest payout. This points to an important role for lawyer effort in determining case outcomes.

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 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 they 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.<sup>24</sup>

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 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.<sup>25</sup> Retained counsel also filed pre-trial motions in felony cases substantially more often than assigned counsel (71.4% vs. 60.5% of cases). 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. Limiting attention to lawyers who reported average hours spent on both assigned and retained felony cases, the difference remains stark at 16.3 hours for assigned cases and 26.7 hours for retained 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, this 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

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<sup>24</sup> There may also be implicit incentives to bring a case to trial; one-third of survey respondents said that they had difficulty obtaining reimbursements for case-related expenses if the case did not proceed to trial.

<sup>25</sup> The difference for misdemeanor cases was even starker, at 3.0 for assigned counsel and 3.7 for retained counsel.

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 assignment 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, contrary to existing quantitative research, it is not the case that adverse selection among lawyers is the primary explanation for the disparities in outcomes between otherwise similar cases in which attorneys are retained as opposed to court appointed. While we document striking differences in the types of attorneys with whom clients match on the private market, we also do not find strong evidence that being assigned a lawyer who appears to be a better “match” reduces the assigned counsel penalty substantially; in fact, defendants’ ability to select their own attorneys based on characteristics such as distance from their home, race, ethnicity, and gender may in some cases be counterproductive when it comes to obtaining better case outcomes.

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 of a particularly large assigned counsel penalty for pleas is consistent with a fee structure that incentivizes appointed attorneys to obtain such dispositions quickly. 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 looking for ways to ensure the fair administration of criminal justice for all Americans. Rather than programs aimed at mitigating adverse selection, 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 fair and accessible access to effective representation.

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

	State Jail, 3 <sup>rd</sup> Degree	2 <sup>nd</sup> Degree	3 <sup>rd</sup> Degree	Capital
Initial Jail Visit	\$100	\$100	\$100	\$100
Flat Fee: Pleas Flat Fee: Post-Indictment Dismissals	\$400	\$500	\$750	1 <sup>st</sup> Chair \$3500 2 <sup>nd</sup> Chair \$2500
Flat Fee: Motion to Revoke Probation Flat Fee: Pre-Indictment Dismissals	\$200	\$250	\$350	1 <sup>st</sup> Chair \$1750 2 <sup>nd</sup> 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: Evid. Hearing	\$75	\$85	\$100	1 <sup>st</sup> Chair \$125 2 <sup>nd</sup> Chair \$115
Hourly Rate: Trial	\$75	\$100	\$125	1 <sup>st</sup> Chair Voir Dire \$100 2 <sup>nd</sup> Chair \$90 1 <sup>st</sup> Chair Trial \$150 2 <sup>nd</sup> Chair \$140
Hourly Rate: Out of Court Time	\$50	\$60	\$75	\$80

Source: State of Texas and County of Bexar, “Joint Order Adopting Fee Schedule,” October 14, 2015. Document 67837.



**Table 1.** Defendant Characteristics and Case Outcomes for Retained and Assigned Counsel Clients in Bexar County, Texas

		Retained (n=23,450)		Appointed (n=41,173)	
		Mean	<i>Std. dev</i>	Mean	<i>Std. dev</i>
Male		82.7%		79.7%	
Age at Offense		31.14	10.88	31.44	10.65
Previous Complaints		1.161	1.925	1.651	2.295
Previous Convictions		0.558	1.280	1.001	1.691
State Jail Felony		36.8%		48.5%	
2nd or 3 <sup>rd</sup> Degree Felony		47.5%		40.9%	
1 <sup>st</sup> Degree / Capital Felony		15.6%		10.6%	
Neighborhood Characteristics					
Median Income		\$ 48,591	\$ 25,703	\$ 42,049	\$ 22,305
Per Capita Income		\$ 18,584	\$ 9,875	\$ 16,290	\$ 8,508
Poverty Rate		23.8%	16.4%	28.2%	17.2%
Attorney Characteristics					
Male		91.3%	28.2%	76.7%	42.2%
Distance from Residence to Attorney		8.738	14.542	10.930	28.152
Previous Cases		597.673	619.218	332.523	421.340
Years of Experience		19.03	9.77	15.48	9.52
Percent Appointed		37.0%	25.6%	77.7%	21.0%
Race / Ethnic Match		46.7%		35.1%	
Law School Rank		16.3	6.84	16.0	6.74
Case Outcomes					
Convicted		38.7%		55.8%	
Dismissed		31.1%		19.1%	
Deferred Adjudication		30.0%		24.9%	
Guilty Plea		14.3%		15.8%	
Nolo Contendere		24.2%		39.6%	
Incarcerated		27.9%		46.9%	
Charges Reduced		11.2%		9.0%	
Bond		\$ 170,821	\$ 34	\$ 711,699	\$ 31
Sentence (years)		7.02	24.80	21.42	29.46
Fine		\$ 135	\$ 30	\$ 370	\$ 20

Table 2: Black, White, and Hispanic Clients in Bexar County, Texas

	Remanded Without Bond	Adjudicated Guilty	Sentence (in years)   Guilty	Assigned Counsel
Black (n=10,885)	53.7%	51.0%	3.98	73.7%
Hispanic (n=37,970)	55.3%	53.4%	3.64	63.1%
White (n=15,768)	43.2%	39.3%	3.46	58.2%

Notes: All mean outcomes for black and Hispanic clients are statistically different from the mean for white clients with  $p < 0.01$  with the exception sentence conditional on guilt for Hispanic clients, where  $p = 0.059$ .

**Table 3. Attorney Characteristics by Type of Appointment and Defendant Race**

	Same Race as Client	Male	Distance from Client's Residence (miles)	Years on Texas Bar	Law School Rank
Black Defendant					
Retained (n=2,862)	19.3%	83.4%	9.2	17.8	15.4
Appointed (n=8,023)	8.4%	75.8%	10.6	15.4	15.9
Hispanic Defendant					
Retained (n=14,000)	46.3%	93.1%	7.8	19.3	16.5
Appointed (n=23,970)	32.4%	76.9%	10.6	15.4	15.9
White Defendant					
Retained (n=6,588)	59.2%	90.8%	10.6	18.9	16.4
Appointed (n=9,180)	65.7%	76.9%	12.1	15.7	16.1

**Table 4.** Distribution of Attorney and Defendant Race

		Black Defendant		Hispanic Defendant		White Defendant	
Black	Retained	553	<i>19.3%</i>	213	<i>1.5%</i>	120	<i>1.8%</i>
Attorney	Appointed	672	<i>8.4%</i>	1,088	<i>4.5%</i>	407	<i>4.4%</i>
Hispanic	Retained	541	<i>18.9%</i>	6,490	<i>46.3%</i>	2,563	<i>38.9%</i>
Attorney	Appointed	2,148	<i>26.8%</i>	7,767	<i>32.4%</i>	2,742	<i>29.9%</i>
White	Retained	1,768	<i>61.8%</i>	7,297	<i>52.1%</i>	3,905	<i>59.2%</i>
Attorney	Appointed	5,203	<i>64.8%</i>	15,115	<i>63.0%</i>	6,031	<i>65.7%</i>

**Table 5.** Assigned vs. Retained Counsel Results – Pre-Adjudication Outcomes

	(1)	(2)	(3)	(4)	(5)
	Remanded without Bond (mean = 0.52)				
Assigned Counsel	0.209***	0.176***	0.152***	0.147***	0.146***
	[0.005]	[0.004]	[0.006]	[0.008]	[0.009]
Adjusted R <sup>2</sup>	0.040	0.129	0.130	0.145	0.158
	Ln Bond Amount (exp(mean) = \$426,859)				
Assigned Counsel	1.427***	1.067***	1.067***	1.038***	1.024***
	[0.033]	[0.041]	[0.041]	[0.058]	[0.060]
Adjusted R <sup>2</sup>	0.038	0.148	0.148	0.163	0.176
	Reduced Charge (mean = 0.098)				
Assigned Counsel	-0.021***	0.001	-0.001	-0.002	-0.004
	[0.003]	[0.003]	[0.003]	[0.004]	[0.004]
Adjusted R <sup>2</sup>	0.001	0.135	0.135	0.138	0.143
Client & Offense Controls		Y	Y	Y	Y
Attorney Controls			Y	Y	Y
Attorney Fixed Effects				Y	Y
Attorney-by-Year Fixed Effects					Y

Notes: All regressions include 64,623 observations, except for bond amount, which is missing in 2,667 cases. Those remanded without bond are assigned a bond amount of \$10 million. Life sentences are set at 100 years. Client controls include gender, age at offence, race, total number of felony charges previously filed in Bexar County, total number of previous convictions in Bexar County, and median income, per capita income, and poverty rate in home block group. Case characteristics are fixed effects for court docket and worst offense type. Attorney controls 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 counsel as of the complaint filing date, and a dummy for whether or not the attorney is the same race as the defendant. Exponentiated mean values of logged outcomes are presented. Standard errors adjusted for heteroscedasticity and clusters at the defendant and, in columns (4) and (5), at the attorney level. Significant at +10%, \*5%, \*\*1%, and \*\*\*0.1% levels.

**Table 6.** Assigned vs. Retained Counsel Results – Type of Adjudication

	(1)	(2)	(3)	(4)	(5)
Case Dismissed (mean = 0.234)					
Assigned Counsel	-0.120***	-0.111***	-0.087***	-0.080***	-0.076***
	[0.004]	[0.004]	[0.005]	[0.007]	[0.007]
Adjusted R <sup>2</sup>	0.019	0.079	0.081	0.099	0.104
Deferred Adjudication (mean = 0.267)					
Assigned Counsel	-0.051***	-0.034***	-0.051***	-0.051***	-0.058***
	[0.004]	[0.004]	[0.005]	[0.006]	[0.007]
Adjusted R <sup>2</sup>	0.003	0.204	0.205	0.218	0.236
Plead Nolo Contendere (mean = 0.340)					
Assigned Counsel	0.154***	0.129***	0.098***	0.091***	0.094***
	[0.004]	[0.004]	[0.005]	[0.007]	[0.007]
Adjusted R <sup>2</sup>	0.024	0.132	0.135	0.169	0.181
Plead Guilty (mean = 0.152)					
Assigned Counsel	0.015***	0.012***	0.040***	0.040***	0.039***
	[0.003]	[0.003]	[0.004]	[0.005]	[0.006]
Adjusted R <sup>2</sup>	0.0004	0.072	0.076	0.133	0.148
Guilty / Nolo Cont. Verdict (mean = 0.496)					
Assigned Counsel	0.171***	0.144***	0.138***	0.130***	0.133***
	[0.004]	[0.004]	[0.005]	[0.007]	[0.007]
Adjusted R <sup>2</sup>	0.027	0.220	0.220	0.230	0.237
Client & Offense Controls		Y	Y	Y	Y
Attorney Controls			Y	Y	Y
Attorney Fixed Effects				Y	Y
Attorney-by-Year Fixed Effects					Y

Notes: All regressions include 64,623 observations. See Table 5 for additional notes. Standard errors adjusted for heteroscedasticity and clusters at the defendant and, in columns (4) and (5), at the attorney level. Significant at +10%, \*5%, \*\*1%, and \*\*\*0.1% levels.

**Table 7.** Assigned vs. Retained Counsel Results – Case Outcomes

	(1)	(2)	(3)	(4)	(5)
<b>A. Unconditional</b>					
Incarcerated (mean = 0.40)					
Assigned Counsel	0.190*** [0.004]	0.147*** [0.004]	0.147*** [0.005]	0.139*** [0.008]	0.144*** [0.008]
Adjusted R <sup>2</sup>	0.0348	0.210	0.211	0.223	0.236
Ln Fine Amount (exp(mean) = \$256)					
Assigned Counsel	1.009*** [0.028]	0.999*** [0.028]	0.806*** [0.036]	0.753*** [0.051]	0.720*** [0.053]
Adjusted R <sup>2</sup>	0.023	0.090	0.091	0.110	0.118
Ln Sentence Length (exp(mean) = 14.4 days)					
Assigned Counsel	1.116*** [0.031]	0.943*** [0.028]	0.933*** [0.035]	0.877*** [0.051]	0.906*** [0.052]
Adjusted R <sup>2</sup>	0.025	0.244	0.244	0.257	0.269
<b>B. Conditional on Guilt</b>					
Incarcerated   Guilty (mean = 0.806)					
Assigned Counsel	0.122*** [0.006]	0.081*** [0.006]	0.094*** [0.007]	0.089*** [0.009]	0.097*** [0.010]
Adjusted R <sup>2</sup>	0.019	0.173	0.173	0.190	0.229
Ln Fine Amount   Guilty (exp(mean) = \$1,426)					
Assigned Counsel	0.234*** [0.012]	0.302*** [0.010]	0.270*** [0.013]	0.268*** [0.016]	0.265*** [0.018]
Adjusted R <sup>2</sup>	0.020	0.291	0.292	0.299	0.312
Ln Sentence Length   Guilty (exp(mean) = 213 days)					
Assigned Counsel	0.461*** [0.045]	0.514*** [0.040]	0.587*** [0.049]	0.567*** [0.064]	0.609*** [0.069]
Adjusted R <sup>2</sup>	0.005	0.284	0.285	0.301	0.332
Client & Offense Controls		Y	Y	Y	Y
Attorney Controls			Y	Y	Y
Attorney Fixed Effects				Y	Y
Attorney-by-Year Fixed Effects				Y	Y

Notes: Regressions in Panel A include 64,623 observations. Regressions in Panel B include 32,047 observations. Two sentences are missing from the data. Life sentences are set at 100 years. See Table 5 for additional notes. Standard errors adjusted for heteroscedasticity and clusters at the defendant and, in models 4 and 5, attorney level. Significant at +10%, \*5%, \*\*1%, and \*\*\*0.1% levels.

**Table 8. Race and Ethnicity Match Results, by Defendant Race**

	RWB		Plead Guilty or Nolo Cont.		Ln Sent   Guilty	
	A. Black Defendants					
Assigned	0.102*** [0.025]	0.099*** [0.026]	0.123*** [0.021]	0.143*** [0.041]	0.306+ [0.182]	1.443*** [0.277]
Assigned × Black Atty	-0.004 [0.037]		0.021 [0.046]		1.135*** [0.333]	
Assigned × Hisp Atty		0.014 [0.069]		-0.007 [0.066]		-0.198 [0.544]
Assigned × White Atty		0.001 [0.038]		-0.024 [0.046]		-1.258*** [0.340]
Observations	9,443		9,443		4,272	
	B. Hispanic Defendants					
Assigned	0.140*** [0.015]	0.179*** [0.016]	0.122*** [0.011]	0.164*** [0.014]	0.628*** [0.093]	0.491** [0.151]
Assigned × Black Atty		-0.160* [0.062]		-0.100 [0.062]		-0.396 [0.368]
Assigned × Hisp Atty	0.039+ [0.021]		0.042* [0.017]		-0.137 [0.177]	
Assigned × White Atty		-0.033 [0.022]		-0.039* [0.017]		0.161 [0.178]
Observations	35,761		35,761		18,659	
	C. White Defendant					
Assigned	0.165*** [0.027]	0.136*** [0.019]	0.163*** [0.022]	0.110*** [0.017]	0.847** [0.310]	0.885*** [0.206]
Assigned × Black Atty		-0.0789 [0.068]		0.039 [0.070]		0.039 [1.044]
Assigned × Hisp Atty		0.039 [0.034]		0.054+ [0.028]		-0.046 [0.379]
Assigned × White Atty	-0.029 [0.033]		-0.053+ [0.027]		0.038 [0.363]	
Observations	13,975		13,975		4,730	

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. Standard errors adjusted for heteroscedasticity and clusters at the defendant and attorney level. Significant at +10%, \*5%, \*\*1%, and \*\*\*0.1% levels.



**Table 9.** Defendant Preference Matches and Case Outcomes

	RWB				Plead Guilty or Nolo Cont.				Ln Sent   Guilty			
	Full Sample	Local Only	Minor Crimes	Poor Areas	Full Sample	Local Only	Minor Crimes	Poor Areas	Full Sample	Local Only	Minor Crimes	Poor Areas
<b>A. Distance from Defendant's Home to Law Office</b>												
Assigned	0.143*** [0.0166]	0.141*** [0.0168]	0.151*** [0.0182]	0.141*** [0.0187]	0.153*** [0.0135]	0.156*** [0.0137]	0.161*** [0.0159]	0.148*** [0.0161]	0.571*** [0.128]	0.544*** [0.128]	0.911*** [0.152]	0.534*** [0.140]
Assigned × Ln(Distance)	0.000952 [0.00725]	0.00235 [0.00755]	0.00162 [0.00831]	-0.00123 [0.00913]	-0.0104+ [0.00607]	-0.0122+ [0.00639]	-0.0152* [0.00707]	-0.00759 [0.00794]	0.0375 [0.0626]	0.0524 [0.0635]	0.00031 [0.0738]	0.0621 [0.0742]
Ln(Distance)	-0.021** [0.00658]	-0.02*** [0.00672]	-0.0181* [0.00768]	0.141*** [0.0187]	-0.015** [0.00502]	-0.014** [0.00517]	-0.0102+ [0.00568]	0.148*** [0.0161]	-0.0789 [0.0570]	-0.0885 [0.0578]	-0.103 0.911***	0.534*** [0.140]
<b>B. Years Since Texas Bar Admission</b>												
Assigned	0.165*** [0.0170]	0.166*** [0.0172]	0.165*** [0.0184]	0.173*** [0.0204]	0.149*** [0.0150]	0.149*** [0.0152]	0.139*** [0.0177]	0.166*** [0.0180]	0.742*** [0.157]	0.746*** [0.157]	0.968*** [0.182]	0.769*** [0.192]
Assigned × Experience	-0.0119 [0.0101]	-0.0127 [0.0102]	-0.00725 [0.0108]	-0.0208+ [0.0121]	-0.00912 [0.00757]	-0.00924 [0.00765]	-0.00395 [0.00928]	-0.0184* [0.00927]	-0.0621 [0.0807]	-0.0655 [0.0805]	-0.0339 [0.0964]	-0.0799 [0.0911]
<b>C. Male Attorney</b>												
Assigned	0.170*** [0.0225]	0.172*** [0.0227]	0.175*** [0.0242]	0.179*** [0.0301]	0.130*** [0.0181]	0.131*** [0.0183]	0.135*** [0.0188]	0.140*** [0.0221]	0.399** [0.142]	0.388** [0.144]	0.741*** [0.165]	0.285+ [0.160]
Assigned × Male Atty	-0.0288 [0.0245]	-0.0314 [0.0248]	-0.0245 [0.0262]	-0.0462 [0.0318]	0.00529 [0.0198]	0.00307 [0.0200]	-0.00208 [0.0211]	-0.00559 [0.0238]	0.275+ [0.159]	0.285+ [0.161]	0.197 [0.185]	0.398* [0.180]
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 and attorney level. Significant at +10%, \*5%, \*\*1%, and \*\*\*0.1% levels.