THE PROCESS IS THE PEOPLE: JUDGE AND ATTORNEY INFLUENCE ON FEDERAL CRIMINAL CASES

by

ETHAN D. BOLDT

(Under the Direction of Christina L. Boyd and Susan B. Haire)

ABSTRACT

This dissertation explores the dynamic process of the federal criminal case and the integral role that courtroom professionals have in its development. I examine whether disparities are created by the characteristics and actions of the judges, defense attorneys, and prosecutors who handle these cases. Using newly compiled data from original federal district court documents, I test for the influence of these actors across three elements of the criminal case: pretrial detention (Chapter 2), sentencing (Chapter 3), and time to disposition (Chapter 4). With this project, I hope to bridge the gap between sociolegal research on disparities arising from defendant traits and judicial behavior research that asserts that the attitudes and experiences of court actors influence the handling of the cases before them. I find that these essential professionals meaningfully impact both the process and outcomes of federal criminal cases.

INDEX WORDS: Judicial Politics, Law, Courts, Criminal Justice, Federal Crimes, Judges, Defense Attorneys, and Prosecutors

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DEDICATION

To Ida Boldt-Schmidtke, whose resilience led to an entire family tree being planted in the United States of America in the wake of the Second World War.

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This dissertation represents the end of a decade-long journey in higher education. When I started college in 2009 with the hopes of becoming a police officer, I never could have anticipated that I would end up here. Many things about me have changed, save the fascination with the concept of justice and the people who attempt to realize it. I am incommunicably grateful to the core group of individuals whom I have had the privilege of calling my teachers, mentors, friends, and family through this process. Their presence has made me a better person and this experience worth having. It is clear that I would not be successful without them.

The thing completing a Ph.D. in political science taught me best is humility. Graduate school was, at times, too effective in teaching this lesson. Failure came in many forms and found me often. It came in the form of conference rejections, journal rejections, a lack of project results, applications denied, talks gone bad, students laughing at my early attempts at teaching, struggling to learn complicated methodologies, and so many others. Working toward a doctoral degree is a reckoning regardless of how strong your support network is. The isolation and quiet sacrifice ultimately paid dividends for me. I made it through because of the people who inspired me to keep going who are named here.

At this moment, I consider myself to be extremely fortunate. A great future is now visible. Still, I want to recognize that there are fantastic students across this discipline each year who are unable to convert this life-altering investment into the career they seek.

With many of my closest friends in that predicament or still paying down an uncertain future, I have to say that the ultimate satisfaction from this experience will come later when all of them have found careers that respect their dignity, their intelligence, and their inherent value. Of all the ways I hope to improve social science, I want to dedicate myself to dealing honestly with how this discipline affects the people who practice it. I hope I can be a friend to future graduate students.

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CHAPTER 1

INTRODUCTION

The criminal justice system is increasingly the focus of public attention, debate, and calls for reform.[1] Criminal courts have a central role to play in determining the future of justice. It is well understood that the process of adjudicating criminal cases imposes significant costs on Americans accused of committing crimes. Defendants wanting to confront the charges against them must repeatedly appear in court, coordinate with counsel, and commit financially to their own defense (Feeley, 1979). Additionally, many defendants are denied or cannot afford bail, meaning that this agonizing process often plays out entirely from inside jail (Barry-Jester, 2018; Landes, 1973; Lindquist, 2000). If convicted, defendants may be placed under long-term confinement or monitoring. The nature of the criminal adjudicatory process has the potential to disrupt the defendant's life causing breakdowns in personal relationships and problems with employment (Freudenberg et al., 2008; Pager, 2003).

The sheer number of cases shepherded through this process underscores its importance. Millions of Americans will be adjudicated in a criminal trial court proceeding within their lifetime. A survey by the Bureau of Justice Statistics reports that over one hundred million Americans (roughly one in three) have criminal records (Sabol, 2015) and one in thirty-six U.S. adults are under some form of correctional supervision each year (Kaeble et al., 2015). While scholarship has frequently evaluated how this

[1] This material is based upon work supported by the National Science Foundation under

critical process is impacted by defendant characteristics such as race, age, and gender (e.g., Ayres & Waldfogel, 1993; Johnson & Betsinger, 2009; Steffensmeier et al., 1998; Turner & Johnson, 2006), a much smaller literature has considered what influence those who handle criminal cases—judges, defense attorneys, and prosecutors—have on the accused (e.g., Epstein et al., 2013; Hartley et al., 2010). These court actors were prominently featured in qualitative, process-focused, inquiries into criminal cases that took place in the 1960's and 1970's (Blumberg, 1967; Church, 1975; Eisenstein & Jacob; 1977; Feeley, 1979). Since the shift to quantitative criminal justice research, work on these key players has been limited by the available data sources that frequently omit information on the public officials who administrate these cases. More recent studies of criminal trial court cases tend to focus on a single outcome, capture only a few jurisdictions, or attribute population-level information to individual attorneys or the judge (e.g., Schanzenbach & Tiller, 2007; Spohn & Fornago, 2009; Ward et al., 2009). As a result, our understanding of these courts has the potential to be further developed and for the foundational literature to be revisited.

This dissertation attempts to fill this gap by constructing and then analyzing a novel dataset on federal criminal cases that comprehensively accounts for judicial and attorney factors such as ideology, resources, and experience while also controlling for relevant legal determinates, defendant characteristics, and other factors. Using a large, representative, sample of federal criminal defendants sentenced from 2006 to 2013, I test the influence of these key legal actors in setting bail (Chapter 2), sentencing (Chapter 3), and time to disposition (Chapter 4).

1.1 Overview of Federal Criminal Cases

Federal criminal cases are tried in the 94 U.S. District Courts that reside in every state, Washington D.C., and several U.S. territories. Combined, these courts receive an average of approximately 92,000 criminal filings each year and have handled over one million federal criminal defendants in the past ten years (Administrative Office of U.S. Courts, n.d.).

A federal criminal court case begins with the U.S. Attorneys' Offices (USAO) that are responsible for federal prosecutions. The U.S. Attorneys, who oversee a staff of assistant prosecutors, are appointed by the president with advice and consent from the Senate (28 U.S.C. §541). The prosecutors of the U.S. Attorneys' Offices have wide discretion and make a number of key choices in the development of a criminal matter. The first decision, frequently, is whether to pursue a case for prosecution or decline it. Matters are referred to the USAO from federal law enforcement agencies and the prosecutors must decide whether the conduct involved merits federal criminal proceedings. The USAO is selective; though most matters are referred to them by highly trained federal law enforcement, they decline roughly 25 percent of them (U.S. Attorneys' Office, 2016). Then, prosecutors may authorize prosecution by filing a complaint, initiating indictment proceedings, or by filing an information (Justice Manual §9-2.030).

Defendants in federal criminal cases are typically represented through one of three means. Panel attorneys, federal defenders, or private counsel represents one third of defendants each (Harlow, 2001). Panel attorneys represent the plurality of defendants accused of federal crimes. The network of panel attorneys consists of private lawyers

who are deemed eligible to represent indigent federal defendants and receive an hourly fee when appointed to their case (Wool et al., 2002). For the other indigent defendants, a federal defender's service provides representation. In the vast majority of districts, there are federal defender offices staffed with salaried attorneys who take these cases full time. Relative to many states, the federal indigent defense system is better supported but the attorneys who represent these clients still are not compensated at the level of their privately retained counterparts (Stevens et al., 2010; Wool et al., 2002).

Once in custody, the defendant will make an initial appearance before a judge (usually a magistrate judge) where he or she is informed of the charges and their rights during the proceedings (Fed. R. Crim. P. 5(d)). Next, a detention hearing is frequently held. At this stage, the judge will decide if the defendant is to be detained pretrial. In the detention hearing, both the defense and prosecution can make arguments to the magistrate judge about whether the defendant should be held pretrial, released on conditions (and what those conditions are), or released on personal recognizance (18 U.S.C. § 3142(a)). Federal bail rules specify that defendants must be released unless the judge determines that they are a flight, safety risk, or meet certain other criteria. Unlike many states, in federal cases bail amounts are not fixed and the court cannot impose a financial condition that results in the detention of the defendant (18 U.S.C. §3142(c)(2), (3)).

As the case continues, both sides can attempt to gain an advantage by entering pre-trial motions, making further arguments at hearings, and negotiating with opposing counsel. All of these actions influence how much time the case takes, which is an important consideration for the defendant, the management of the courtroom, and the

attorneys. According to the Administrative Office of U.S. Courts, the median amount of time for a federal felony case to be concluded is roughly 7 months (Administrative Office of U.S. Courts, 2018). For this period, those who wish to offer a defense to the charges against them will have to make repeated appearances, coordinate with counsel, and navigate a complex legal system. Some of these defendants will do this while attempting to conduct their public lives. Many will be held in a detention facility until the proceedings are completed. Very few cases, however, ultimately go to trial. Approximately 88 percent of defendants with cases disposed in FY 2015 pled guilty to the charges against them (Administrative Office of U.S. Courts, n.d.).

These convicted defendants go through the sentencing phase. Sentencing is generally presided over by federal district court judges. These are Article III judges nominated by the president and confirmed by the Senate in a partisan process. In contrast with pretrial release where the judge uses relatively loose criteria to determine whether a defendant is a risk, sentencing is much more prescribed. The U.S. Sentencing Guidelines require sentences within a specific range based upon the nature of the offense, the defendant's prior criminal history, and detailed aggravating/mitigating factors. In FY 2015, nearly 87 percent of convicted defendants were sentenced to prison (Schmitt & Jones, 2016). At nearly every step of this process, the defense attorney, prosecutor, and judge have the ability to impact the direction of the case and the experiences of the defendant. This dissertation puts their influence in focus and empirically tests it.

1.2 Overview of Dissertation Chapters

This dissertation offers analyses of the impact of judges and attorneys on three aspects of federal criminal cases. In Chapter 2, I examine pretrial detention outcomes. Specifically, I focus on the decision to release defendants on their own recognizance, require monetary bail, or detain them pending trial. In Chapter 3, I explore the sentencing of these defendants to reveal whether disparities arise in incarceration length as a consequence of the professionals handling the case. Chapter 4 tests whether judges and attorneys influence case length (days to disposition). Finally, Chapter 5 offers thematic conclusions for the three analyses and project as a whole.

Overall, the project advances our understanding of criminal trial courts and the people who work within them. Despite attorneys and judges not being central to many modern day analyses of criminal cases, I find these individuals have substantive impacts on what happens to defendants. Factors such as judicial ideology and defense attorney type had clear effects across multiple stages of a criminal case. The data gathered for this project, which attaches judges and attorneys to rich information on the life of the criminal cases, has the potential to give even greater future insights.

CHAPTER 2

JUDGE AND ATTORNEY INFLUENCE ON BAIL DECISIONS

FiveThirtyEight recently published a sweeping report on the bail system used for New York City's criminal cases. Their analysis uncovered dramatic variability among judges in whether defendants were likely to be granted bail and released from jail pending trial (Berry-Jester, 2018). Defendants charged with misdemeanors could be up to 12 times more likely to be assigned cash bail, thus having to pay for their freedom, simply due to the individual judge who was assigned to their case. Despite random assignment of judges (limiting heterogeneity due to types of crimes, defendant backgrounds, and other factors among the judges) some judges released on their own recognizance as many as 75 percent of the defendants they oversaw and as few as 30 percent. This report underscores the large discretion judges can have in deciding bail.

This discretion can have tremendous consequences. Defendants held in a jail pending adjudication can lose employment, experience a weakening of social ties with the outside world, and face an increased difficulty in mustering an effective defense of their case from behind bars (Freudenberg et al., 2008; Lindquist, 2000; Landes, 1973). Research demonstrates that poor and minority defendants are the most likely to bear the burden of pretrial detention (Turner & Johnson, 2005; Sacks et al., 2015). The financial cost of that system for the public is large. Some counties spend as much as 20 percent of their overall budget on the maintenance of jail facilities alone (Johnson & Johnson, 2012). This should come as no surprise since pretrial detention contributes significantly

to America's mass incarceration problem. The incarceration rate for local jails in 2016 was 229 inmates per 100,000 residents (Zeng, 2018). The U.S. jail incarceration rate, on its own, is higher than the total incarceration rate for nearly every European country (save Belarus, Lithuania, and Latvia), Canada, and Mexico (Walmsley, 2016). Since bail has such stark consequences for individual defendants, society, and policy understanding the influence of the legal actors—judges and attorneys—who routinely make these decisions is of critical importance.

In this study, I examine bail decisions in federal district courts (also referred to as pretrial detention). By modeling these discretionary judgments, I find that whether and how a person is released pending trial is significantly affected by the judges and attorneys involved in the case. Specifically, the political preferences of individual judges, their legal background and demographic traits, and the type of counsel provided to the defendant all play a role.

2.1 The Federal Pretrial Detention Process

In courtrooms across America, accused individuals recently apprehended by the police appear before a judge on a daily basis. One of the first matters decided is whether those individuals may be released from custody until a final judgment is passed. Pretrial detention is not a punishment in the eyes of the law but is made to ensure that the defendant does not flee justice and to protect the public from those who are potentially dangerous (*U.S. v. Salerno*, 481 U.S. 739, 1987). This is equally true of those accused of federal crimes.

The Bail Reform Act of 1984 governs the federal pretrial detention process. The legislative history indicates that the statute is intended to favor release over pretrial detention (Lay & Hunt, 1985). The Bail Reform Act instructs judges that upon the appearance of a defendant, they must elect to release the defendant on personal recognizance, release the defendants on conditions (most prominently cash bail), or detain the defendant pretrial. In most cases, the judge holds a detention hearing where they field arguments from the prosecution and defense about what outcome is necessary. The statute instructs the judge that they may only order a defendant's detention if they find that "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community" (18 U.S.C. § 3142(c)(1)). For defendants with certain criminal histories or alleged crimes, a presumption arises such that it is assumed they must be detained pretrial. This presumption is still subject to rebuttal by the defendant, however (18 U.S.C. § 3142(e)(2)). Notably, judges are also barred from assigning cash bail amounts that the defendant cannot afford in contrast to many state systems (18 U.S.C. § 3142(c)(2)).

Despite statutory language that would seem to weigh against excessive pretrial detention, the proportion of defendants detained pending trial at the federal level has risen dramatically. In FY 2018, nearly 75 percent of all federal defendants were detained pretrial (Rowland, 2018). Just 30 percent of federal defendants were detained in 1988. Though explaining this rise is beyond the scope of this study, the fact that such a majority of criminal defendants are detained may suggest that judges hold far more discretion in pretrial detention than statute would imply.

2.2 Extralegal Effects on Bail

Studies of criminal trial court cases tend to focus on their ultimate outcome: sentencing (see e.g., Steffensmeier & Demuth, 2000; Hofer, 2007; Mustard, 2001; Kim et al., 2015). However, bail is a growing area of interest for scholars, the media, policymakers, and the general public. Research on bail most frequently relies on data from county jurisdictions to examine the potential for bias against defendants on the basis of their characteristics. Numerous studies have found racial and ethnic minorities are subject to significantly more restrictive bail outcomes when compared to their white counterparts (Sacks et al., 2015; Reitler et al., 2013; Jones, 2013 Wooldredge, 2012; Freiburger & Hilinski, 2010; Freiburger et al., 2010; Schlesinger, 2005; Demuth, 2003; Ayres & Waldfogel, 1994; Spohn, 2008). Similarly, previous research has often shown that women receive more favorable treatment relative to men (Freiburger & Hilinski, 2010; Turner & Johnson, 2006). Finally, another vein of inquiry has explored the consequences of pretrial detention on later aspects of a criminal case, finding that it makes a guilty plea more likely (Sacks & Ackerman, 2012), increases the probability of conviction (Gupta et al., 2016; Stevenson, 2018), and increases the length of a future sentence (Williams, 2003; Sacks & Ackerman, 2014; Stevenson, 2018).

To date, few empirical studies focused on the key decision-makers in bail proceedings exist. Only a handful of previous studies have tested attorney influence in bail, primarily focused on whether the defense lawyer was a public defender or privately retained. These have produced conflicting evidence for the notion that a publicly funded lawyer receives worse bail outcomes for their client relative to a private attorney (Sacks et al., 2015; Williams, 2017; Hissong & Wheeler, 2017). Nevertheless, others have found

that the mere provision of counsel at first appearance in criminal matters (Worden et al., 2018) and in immigration bond hearings (Ryo, 2018) increases the probability of release compared to when defendants represented themselves. Given the paucity of research in this area, I develop an original theory of judge and attorney influence in bail decision-making.

2.3 Judicial Influence at Bail

Bail in U.S. District Courts is most frequently decided by a federal magistrate judge. Federal magistrates are Article I judges who increasingly serve an important role in conducting the day-to-day operations of the district courts (Pro, 2015). Much like other federal judges, magistrates are legal elites selected through an extensive vetting process (George & Yoon, 2015). Federal magistrates are hired through a merit procedure instead of being appointed through advice and consent (Satola, 2014). The district judges of a particular district will convene an external merit selection committee by majority vote that will construct a shortlist of applicants. Ultimately, a magistrate is selected from the shortlist by a majority vote of the district judges within the district they intend to serve. Federal magistrates oversee numerous pretrial matters in both civil and criminal cases (Boyd, 2015).

As a preliminary matter, bail offers many avenues for the extralegal considerations of the judge to be impactful. The statutory language of the Bail Reform Act provides that the judicial officer must determine what conditions will "reasonably assure" the defendant's appearance at trial and safety of the community (18 U.S.C. § 3142).

This is prone to a wide range of subjective considerations about the defendant's risk. Such perceptions are likely influenced by a jurist's own background and attitudes. Specifically, I argue that a judge's political ideology, legal experience, gender, and race affect their pretrial detention determinations.

First, a judge's perception of a defendant's risk may be filtered by their political ideology. These jurists, like other elites, are likely to have sincerely-held political attitudes that influence their decision-making (Segal & Spaeth, 2002). Ideological conservatism for the past half-century in America has been linked to the politics of crime control (Beckett, 1999; Boldt, 2017). A concern for public safety gave rise to tough responses to criminality, particularly by Republicans. Control of state governments by the GOP has been linked to increases of incarceration, usage of the death penalty, and decreased fiscal support for indigent defense (Jacobs & Jackson, 2010; Jacobs & Carmichael, 2004; Davies & Worden, 2009). There is also evidence that conservatives are more likely to see crime as a product of an individual's moral weakness (Lakoff, 2010) and they tend to have stronger physiological responses to perceived threats (Oxley et al., 2008).

I expect that conservative judges will be more inclined to impose tougher pretrial restrictions on the defendants they preside over. This may arise from policy concerns or because of how their ideology molds their views of individual defendants. In terms of policy, a conservative jurist may view increased reliance on pretrial incarceration as being necessary to protect the safety of the community or uphold the rule of law in the face of potential bail jumping. Thus, they would also likely be more inclined to impose cash bail as a deterrent rather than releasing a defendant on recognizance. This ideology

may influence views of individual defendants as well. If conservatives view alleged criminals as suffering from an inherent moral weakness (Lakoff, 2010), releasing them without reformation or the potential for severe consequences is likely to be seen as being doomed to fail. Alternatively, if a conservative judge has an inflated assessment of the threat that a defendant poses to the public, he or she may be more likely to require greater restrictions on their liberty (Oxley et al., 2008).

Second, I expect that the presiding judge's prior legal experience socializes how they view the accused. In particular, I anticipate that previous service as a prosecutor or criminal defense attorney conditions views about defendants when deciding bail. Prosecutors and defense attorneys serve fundamentally different roles in the criminal court system. Prosecutors' adversarial position against defendants requires them to view them skeptically, to routinely argue against bail, and come to see them as people to be sanctioned. Defense attorneys view criminal justice from the opposite side of the courtroom; they search out redeeming qualities in the defendant, routinely arguing for fewer restrictions on them pretrial, and must be adept in finding the weaknesses in the state's case.

Some survey evidence supports the notion that prosecutors and defense attorneys have different conceptions of justice. For example, Zalman, Smith, and Kiger (2008) and Ramsey and Frank (2007) found that defense lawyers estimated higher incidence of wrongful conviction than did prosecutors. In support of their findings, they speculated that occupational perspectives and professional socialization were a key reason for this difference.

Over time, I expect these roles to have long-term consequences that can carry forward to being a judge. Specifically, that those judges who were defense lawyers will be more favorable toward defendants during the pretrial detention stage and those who have worked as prosecutors will put in place stricter conditions.

Finally, I assert that a judge's race and gender may shape views of defendants at this critical stage. Scholars have frequently studied the effect of the diversification of the courts on case outcomes (Boyd, Epstein, & Martin, 2010; Kastellec, 2013; Collins, Manning, & Carp, 2010; Boyd, 2013, Collins & Moyer, 2008; Songer, Davis, & Haire, 1994). This body of research has demonstrated significant differences between judges on the basis of their demographic traits. However, those effects frequently depend upon how a judge's race or sex-specific experiences interact with the issues before them (Kastellec, 2013; Boyd, Epstein, & Martin, 2010).

In pretrial detention matters, the views of judges who are racial minorities (black or Hispanic) and women are likely to differ from their white, male, counterparts. Public opinion research shows that racial minorities view the criminal justice system more skeptically than whites (Tyler, 2005, Hurwitz & Peffley, 2005, Lundman & Kaufman, 2003). Such skepticism may translate to more favorable pretrial conditions for defendants since judges are instructed to consider the weight of the evidence against them (18 U.S.C § 3142(g)(2)). Moreover, judges who are racial minorities may be more prone to return accused individuals to society since the consequences of mass incarceration are felt disproportionately by communities of color (Foster & Hagan, 2009). The expected differences in pretrial detention between male and female judges are not nearly as straightforward. Lundman and Kaufman (2003) found that women are more likely to

view their own interactions with the criminal justice system as being proper and thus are more trusting of criminal justice institutions. Similarly, some surveys have shown that women are more fearful of crime than men (La-Grange & Ferraro, 1989). This may imply that female judges would be more trusting of the state in weighing the evidence against the defendant or have an inflated sense of risk about releasing defendants out of a concern for public safety. Yet, surveys have also shown that women are more favorable toward alternatives to incarceration than men (Applegate, Cullen, & Fisher, 2002).

2.4 Attorney Influence in Pretrial Detention

While the judge is the key figure in the federal detention process, attorneys also play a pivotal role in determining what a defendant's pretrial status should be. Socio-legal research has shown that representation by counsel matters in determining disputes in court across numerous contexts (Galanter, 1974; Blumberg, 1967; Jonhson et al. 2006). The quality and forcefulness of that representation is likely to be a function of an attorney's abilities and experience. Indeed, scholars have found that the experience, fiscal constraints, and persuasiveness (Blumberg, 1967; Galanter, 1974; Dumas et al., 2015; Johnson et al., 2006; McAtee & McGuire, 2007) of counsel can be pivotal in achieving goals on behalf of a client.

In a federal detention hearing, a judge considers arguments from the prosecutor (typically an Assistant U.S. Attorney) and the defense attorney. The defendant has the right to representation during these proceedings and, if financially unable to hire counsel, have their counsel appointed for them (18 U.S.C. § 3142 (f)(2)(B)). The presiding judicial officer, after considering the information presented by both sides, selects which conditions will be imposed upon the defendant. Most of the factors judges are instructed

to consider are easily framed by the efforts of opposing counsel. The judge's interpretation of the weight of the evidence against the defendant, the defendant's character, community ties, and the seriousness of danger posed by their release are all subject to interpretation (18 U.S.C. § 3142 (g)). Counsel have wide latitude during these proceedings to present a strategic version of each of these factors since "the rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing" (18 U.S.C. § 3142 (f)(2)(B)).

The degree to which counsel are effective in swaying a judge's reasoning during the pretrial detention process is likely have a number of influences. The forcefulness of an attorney's arguments is determined, at least in part, by their level of experience. Seasoned prosecutors and defense attorneys will likely have crafted approaches that may even be tailored toward particular judges or courtroom workgroups (Eisenstein & Jacob, 1977). Repeat interactions with process and people should hone an attorney's abilities over time in beneficial ways.

Another influence on the effectiveness of counsel is their access to resources in terms of finances, personnel, and time. Federal prosecutors are particularly well heeled in this regard. The U.S. Attorney's Offices have the full backing of the federal government and have a committed support staff (Eisenstein, 1978). By contrast, the resources of criminal defense attorneys in the federal criminal justice system are uneven. Defendants are typically represented through one of three means: an appointed lawyer (also called a Criminal Justice Act panel attorney), a full-time public defender, or a retained lawyer. A CJA panel attorney is a private lawyer who is compensated by the government to represent indigent clients for an hourly rate (Harlow, 2001).

The conventional wisdom suggests that with a publicly funded lawyer the defendant will receive substandard representation and thus worse outcomes (Vick, 1995, Hoffman et al., 2005). Lawyers providing indigent defense across the country face problems with growing caseloads, diminished compensation, and challenging clientele ("Gideon's Promise Unfulfilled", 2000). In regard to bail, the literature is conflicted about whether indigent defendants fare worse because of their representation (Sacks et al., 2015; Williams, 2017; Hissong & Wheeler, 2017). Another aspect of legal representation that could impact bail determinations is its substantive quality (Johnson et al., 2006; McAtee & McGuire, 2007). I anticipate that defense lawyers who provide better representation to their clients will achieve more preferable bail outcomes for them.

2.5 Data

I conduct an analysis of federal pretrial detention decisions by constructing an original dataset that includes these essential courtroom professionals. Existing studies of bail tend to use local (Woodleredge et al. 2017; Williams, 2017; Hissong & Wheeler, 2017, Gupta et al., 2016) or state level data (Sacks & Ackerman, 2012; 2014; Sacks et al., 2015) rather than federal data. Similarly, very few peer-reviewed analyses include any variables related to the fixtures of the American courtroom, judges and attorneys (except e.g, Sacks et al., 2015; Williams, 2017; Hissong & Wheeler, 2017; Worden et al., 2018). To address these shortcomings, I create a novel federal dataset that combines information from court documents, the U.S. Sentencing Commission's Offender Datafiles, and other sources (U.S. Sentencing Commission, 2013). This comprehensive resource provides the identities of the courtroom professionals involved in each case, key legal and process information, the defendant's demographic traits, and outcomes across a number of stages.

The current study relies on a representative sample of detention outcomes for sentenced defendants across 20 U.S. district courts.[23] Defendants were random sampled by district-year cluster from the Federal Judicial Center's (FJC) Integrated Criminal Database (Federal Judicial Center, 2018a) with up to 20 defendants per district-year. The docket sheet for every defendant was gathered from Public Access to Court Electronic Records (PACER) an electronic record service of the U.S. court system. A criminal docket sheet provides the names of the parties, attorneys, and judges involved in the case and a readout of events. Individual defendants were matched with their corresponding observation in the U.S. Sentencing Commission Offender Datafiles by hand without common identifiers.[4] Out of all cases gathered for this analysis only 256 defendants could not be paired across the two datasets.

[2] Sentenced defendants were required to incorporate the extensive information on defendant characteristics such as race, age, sex, educational attainment, and presence of dependents as well as key legal information such as their offense level, criminal history, and detailed charges. Without these details, models of pretrial detention would be insufficient. Using sentenced defendants is consistent with the approach used by Reitler et al. (2013) who also analyzed the federal detention process.

[3] The districts used in this study are Arizona, central California, District of Columbia, middle Florida, northern Iowa, northern Illinois, southern Illinois, Kansas, eastern Kentucky, eastern Louisiana, Massachusetts, Maine, eastern Michigan, middle North Carolina, New Jersey, southern New York, middle Pennsylvania, South Dakota, western Virginia, and Vermont.

[4] Since these distinct datasets exist without common identifiers, they had to be combined manually using a series of shared variables. These are: the district, month of sentencing, length of prison sentence, length of supervised release, length of probation, dollar amount of fine, dollar amount of special assessment, dollar amount of restitution, the individual statutes associated with the charges of conviction, and other information gathered from court documents.

2.6 Variables and Methods

Utilizing a stratified random sample of 2,307 defendants sentenced from 2006 to 2013 in 20 district courts, I model pretrial detention outcomes. The dependent variable is *Pretrial Status*, which is a categorical variable capturing three distinct outcomes: detained pending trial (*N*=1,320, 57.24%), released on cash bail (*N*=559, 24.24%), and released on personal recognizance (*N*=427, 18.52%). To model the judge's selection of a pretrial detention status, a multinomial logit is employed.[5] *Pretrial Status* is the coded result of each pretrial detention outcome[6] gathered from individual criminal docket sheets. The reference category for the multinomial logit is that the defendant is detained pending trial. Accordingly, a positive coefficient on the alternate outcomes can be understood as increasing the probability that the defendant is released (through either bail or personal recognizance). Robust clustered standard errors and sample weights are entered to account for the stratified nature of data with each defendant weighted against the size of sentenced population for each district-year. Up to twenty defendants per district year were drawn. Heterogeneity due to differences between districts is controlled for via *District Fixed Effects* and serial correlation is addressed through *Detention Year Fixed Effects*, which track the year the pretrial status was decided.

[5] A multinomial approach is more appropriate than an ordered logit since there is no equivalence in distance between the three categories.

[6] Notably, defendants in federal district court do not always contest pretrial detention. Many defendants concede to detention, reach outside agreements with the prosecution regarding their pretrial status, or plead guilty before a determination can be made. Out of the data gathered for this study, 343 defendants fell into these categories.

In modeling judicial influence upon pretrial detention outcomes, I first include a measure of *Judicial Ideology*. This variable is derived from the judicial common space score (Giles et al., 2003; Epstein et al., 2007; Boyd, 2017) and ranges -1 for the most liberal judge to +1 for the most conservative. The judicial common space score is constructed by mapping the ideology of key senators and the president who are involved in the Article III advice and consent process on to the judges they confirm. However, nearly 80 percent of the pretrial conditions in this sample are decided by Article I magistrate judges who are hired rather than appointed. To accommodate the inclusion of the ideology of magistrate judges, I follow Boyd & Sievert (2013) and use the average of the district judge's scores from the year of the magistrate's hire. Since magistrates are hired by a vote of all of the district judges serving in the jurisdiction at the time, the average ideology of these judges is a reasonable proxy for the magistrate's preferences (Satola, 2014). For those magistrates who were later elevated to an Article III judgeship, district judges, and circuit judges involved in pretrial detention or release decisions, each individual judicial common space score was entered. As the presiding judicial officer becomes more conservative, I expect that the defendant will be subject to stricter pretrial conditions.

To account for the socialization of prior legal experiences, two indicator variables for *Judge Former Defense Attorney* and *Judge Former Prosecutor* are used. Both variables take the value of 1 if the judge in question has the applicable experience. Prior legal experience was coded through simple web searches and the Federal Judicial Center's biographical database (Federal Judicial Center, 2018b). I anticipate that judges who have served as defense attorneys will give defendants more favorable pretrial

detention outcomes, while former prosecutors will impose stricter conditions. I account for the influence of a judge's demographic traits by including indicator variables for *Female Judge* and *Minority Judge*. The former variable takes the value of 1 if the judge in question is a female and the latter if the judge in question was black or Hispanic. These variables were coded using data from the EEOC Litigation Project (Kim, Schlanger, & Martin, 2013), web queries, and the Federal Judicial Center biographical database (Federal Judicial Center, 2018b). I hypothesize that due to the socialization of female judges and judges who are racial minorities, they will be more favorable toward the accused in bail.

Next, I incorporate the impact of counsel in pretrial detention outcomes. I test whether the representation by different types of defense counsel changes these outcomes. I use a categorical variable that tracks the three forms of representation relied on by defendants in federal district courts. The reference category is for those defendants who are represented by a privately paid, retained, attorney with coefficients estimated for *Appointed Counsel* and for a full-time *Public Defender.* On average, I expect that private counsel will achieve more favorable outcomes. The defense counsel type was coded from each docket sheet.[7]

As an indicator of the abilities of the attorneys in the case, I include a measure of the experience of the prosecutor and defense attorney. Each attorney's bar admission year was gathered from state databases, legal directories, and other sources. *Experience Disparity* tracks the difference in years of legal experience between the prosecutor and defense lawyer (prosecutor years of experience minus the defense lawyer's years of

[7] Lawyers were identified by rule. The first listed attorney on the docket for each party was used.

experience). I hypothesize that as the prosecutor becomes more seasoned relative to the defense lawyer, the defendant will be placed under stricter pretrial conditions. Finally, I incorporate the quality of counsel. One straightforward means to measure the quality of an attorney is to examine their interactions with the state bar associations that regulate their conduct. If an attorney has committed violations so egregious to attract the public sanction or reprimand of a state bar, it can serve as an indicator of their ethics, attention to detail, and quality of representation they provide to their clients. Thus, I include a measure of *Defense Counsel Quality*, which is a binary variable that captures if they have been publicly sanctioned by a state bar association. I expect that defense lawyers that have been sanctioned in this way will garner for their clients less preferable pretrial conditions.

A wide variety of controls are used to model the legal constraints and extralegal factors that influence pretrial detention decision-making. Much of this modeling scheme directly follows Reitler et al. (2013) and their study of federal detention outcomes. First, since the Bail Reform Act has blanket provisions for the presiding judge to consider "the nature and circumstances of the offense charged" and "the history and characteristics of the person," I enter measures of *Offense Seriousness*, *Criminal History*, and whether the defendant has *Dependents* (directly related to the notion of community ties). *Offense Seriousness* incorporates the base offense level found for the defendant's crimes of eventual conviction. Ranging from 1 to 43, the base offense level is the U.S. Sentencing Guidelines index rating the seriousness of the crime. Federal crimes all have attached base offense levels and an increase in that level results in more severe criminal sanctions and lengths of incarceration (United States Sentencing Commission, 2013). I expect that

as the defendant's *Offense Severity* increases the more likely it will be that the defendant is detained or will be required to pay cash bail pending trial. *Criminal History* is the number of criminal history points assigned under the U.S. Sentencing Guidelines. Points are assigned based on the length and number of prior sentences and thus serve as an index of the extent of the defendant's prior criminal convictions (, 2013). As a defendant's criminal history becomes more severe, release under any condition should become less likely. Directly related to the defendant's ties to the local community, I enter a variable tracking whether they have *Dependents* sourced from the U.S. Sentencing Commission Offender Datafiles. I expect that those with dependents will be less likely to face detention since having local dependents would arguably decrease their risk of flight or reoffending during release.

To further account for legal constraints on bail decisions, I follow the modeling scheme used by Reitler et al. (2013) that includes indicator variables for the unique statutory triggers that encourage or mandate the detention of the accused defendant. These conditions are gathered from the crimes of eventual conviction in the U.S. Sentencing Commission's Offender Datafiles (U.S. Sentencing Commission, 2013). *Violence Trigger* captures whether the defendant's conduct constitutes a crime of violence. *Statutory Max Trigger* takes the value of 1 if the defendant's crime of eventual conviction has a statutory maximum sentence of life in prison or death. *Drug Trigger* captures whether the defendant's illegal conduct includes narcotics and the statutory maximum penalty is greater than 10 years. *Weapon/Minor Trigger* takes the value of 1 if the conduct of conviction involved a firearm or a minor.

The *Obstruction Trigger* tracks if the defendant receives an adjustment at sentencing for obstruction of justice while the *Flight Trigger* tracks whether the defendant received an adjustment for endangerment during flight (United States Sentencing Commission, 2013). I also include an indicator variable if the defendant is accused of an *Immigration* crime.

To account for extralegal considerations related to the defendant's traits, I control for several factors gathered from the U.S. Sentencing Commission's Offender Datafiles (U.S. Sentencing Commission, 2013). I used a categorical variable for offender race and ethnicity to control for possible racial/ethnic bias in bail decisions (Spohn, 2008). Coefficients are estimated for a *Black Defendant*, *Hispanic Defendant*, and *Other Race Defendant* and are measured relative to the baseline of a white defendant. I control for whether or not the case features a *Female Defendant* to account for the potential of bias as a result of sex. I also enter a continuous measure of *Defendant Age*. Finally, I include whether or not the defendant was *College Educated* as a proxy for disparities arising from socioeconomic status.

2.7 Results

The results of the multinomial logistic regression are reported in Table 2.1 and Table 2.2. Table 2.1 displays the effects of variables on the probability of receiving cash bail relative to being detained pending adjudication, while Table 2.2 does so for the probability of being released on personal recognizance. In modeling the three possible outcomes, the model offers strong predictive power with a proportional reduction in error of 39.96 percent and it correctly predicts the outcome 74 percent of the time overall. Since coefficients from multinomial logistic regression do not have a straightforward

interpretation, I provide predictive margins. These represent the average change in predicted probability of a given pretrial status outcome as a result of a specified change in the independent variable of interest across the other variables' real values.

Examining the impact of judges on defendants' pretrial status first, *Judge Ideology* indicates that as the presiding judicial officer becomes more conservative the defendant is significantly less likely to be released on personal recognizance. Figure 2.1 displays the substantive effects of judge ideology across the three possible outcomes. Going from the most liberal to the most conservative deciding judge is predicted to decrease the probability of being released on recognizance by more than 0.08. This is consistent with the idea that more ideologically conservative jurists would be tougher toward defendants given the role of crime control in partisan politics (Packer, 1964). Conservative judges are substantially less likely to allow defendants access to the least restrictive pretrial conditions. For these judges, the probability of requiring a cash bond for release or detaining the defendant was more likely (roughly 0.04 more probable for both outcomes).

The results show that the socialization of judges according to their professional experience, race, and gender also influences their pretrial detention decision-making. If the judge is a former defense attorney or racial minority it significantly increases the probability of receiving cash bail over being detained while having publicly-funded defense counsel decreases it. If the presiding judicial officer has worked previously as a criminal defense attorney (*Judge Former Defense Lawyer*), the probability of receiving cash bail increases by nearly 0.06 over being incarcerated during the proceedings. This provides some support for the theory that those judges who have worked in a repeat,

cooperative, professional relationship with criminal defendants will be more favorable toward the ones who come before them. Similarly, those judges who are black or Hispanic (*Minority Judge*) have an increased predicted probability of 0.075 of giving a monetary bond instead of having the defendant detained. Judges who are racial minorities appear to favor less restrictive pretrial conditions for the defendants in their courtroom. Women judges were significantly less likely to grant personal recognizance pending trial. The predicted probability for a defendant to receive a personal recognizance bond decreased by 0.06 if they went before a *Female Judge*. Only *Judge Prior Prosecutor* failed to reach conventional levels of significance in the model, indicative that previous service as a criminal prosecutor may not influence a judge's bail calculus.

One of the starkest extralegal effects from this analysis is the impact of being able to afford your own defense lawyer. The results tables indicate that having publicly-funded counsel in the form of an appointed attorney or full-time public defender significantly decreases the likelihood that one will be released pending trial through either monetary or personal recognizance bond. Figure 2.2 displays the predictive margins for the three detention outcomes across the types of counsel representing criminal defendants. The probability of being detained for someone who has a private lawyer is 0.45. Meanwhile, it is 0.54 for those defendants who have *Appointed Counsel* and 0.57 if they had a public defender. Thus, those who cannot afford their own attorney are roughly 25 percent more likely to have to await the adjudication of their case in a federal detention facility. Interestingly, most of this contrast arises from private lawyers being more successful in attaining a cash bond for those they represent.

This could be indicative of greater bargaining acumen on the part of private lawyers during the pretrial detention process. The other variables relating to *Defense Attorney Quality* and *Experience Disparity* fail to reach conventional levels of significance.

Perhaps unsurprisingly, the legal controls represent the most powerful predictors of pretrial status in the model. *Offense Severity*, measured by using the base offense level from the U.S. Sentencing Guidelines, has a significant and negative effect on release of either type. *Offense Severity* is predicted to increase the probability of detention from 0.37 to nearly 0.75 as it moves from its minimum to its maximum value. The extent of a defendant's *Criminal History* is crucial in determining bail. Increasing the defendant's criminal history points by a single point (out of a possible total of 43 in the sample) increases the probability of detention by 0.03. Consistent with the intent of the Bail Reform Act, defendants with the most extensive criminal histories face pretrial detention as a near certainty. For example, once the defendant hits 19 criminal history points their predicted probability of detention is over 0.95.

As a proxy for community ties, the indicator variable for whether the defendant has *Dependents* is significant and positive for both monetary bond and release on recognizance. Those who have dependents have a 0.07 diminished probability of detention versus those without dependents. Whether or not the defendant is charged with an *Immigration* offense is a substantial factor in pretrial detention (an increased probability of .36). In contrast with Reitler et al. (2013), I find that the specific conditions listed in the Bail Reform Act (such as being accused of a crime with a statutory maximum of life in prison, select narcotics crimes, and obstruction of justice) that are intended to increase the likelihood of being detained pretrial rarely have a significant

impact. Only the *Flight Trigger* condition, which tracks whether a defendant was involved in a crime that endangered others through flight, significantly decreased the probability of release on both monetary bond and personal recognizance bond.[8]

Finally, the variables tracking the individual demographic traits of defendants display several interesting effects. Relative to a white defendant only a *Hispanic Defendant* faced a significantly increased likelihood of being denied both forms of release. In fact, Hispanic defendants faced a large increase in the probability of detention at 0.19 relative to whites. This could be due in part to the association of the Latinx population with the exclusive federal domain of criminal immigration enforcement, which has built-in legal guards against pretrial release due to a perceived risk of flight (18 U.S.C. § 3142). Interestingly, robustness checks suggest this is not the only source. Even after controlling for the immigration offense type, adding variables for legal immigration status, and running a separate analysis without the undocumented or immigration crimes this effect remains. *Defendant Age* and *Female Defendant* are statistically significant and positive for both release outcomes indicating older defendants and women defendants receive more favorable pretrial status outcomes. *Defendant Education*, whether or not the accused has attended college, does not substantially impact whether they will be released under either condition.

[8] This contrast between this analysis and the study by Reitler et al. (2013) on federal detention is due to the addition of *Offense Severity*. Once the seriousness of the crime is separately controlled for, these individual trigger indicators present effects that are largely statistically indistinguishable. This makes intuitive sense because the triggering criteria are strongly associated with serious underlying criminal conduct. Regardless, the other reported findings are robust to using either approach individually (instead of by combining them in the presented analysis).

2.8 Discussion

Bail is a key exercise of judicial discretion that intersects with the efforts of attorneys and it plays out in courtrooms across America on a daily basis. Whether or not this form of incarceration without a legal determination of guilt is affected by the characteristics of those handling the case and the defendant is a question that deserves thorough exploration. In this instance, the ideology, prior legal experience, and demographic traits of judges meaningfully impacted whether (and how) defendants were released pending trial. Additionally, access to paid counsel was an important factor. Those who could afford their own attorney fared better pretrial.

There are a number of ways this study could be expanded upon or applied to different contexts. One could examine in depth the types and amounts of collateral offered by defendants released on bond. Some defendants are able to secure their release on the promise that they will relinquish property if they violate the terms, that relatives will face the penalty, or other guarantees different than a simple monetary amount.

It is clear that the results featured in this analysis are likely to contrast markedly from many county courts where the vast majority of bail determinations take place. For one, the federal pretrial detention process is unusually progressive in its prohibition on judges assigning monetary bail amounts that defendants cannot afford (18 U.S.C. § 3142(c)(2)). A comparative study that analyzes the tradeoffs between this policy versus the many state systems where defendants are often detained because they simply cannot afford bail would be useful in advancing public discourse about bail policy.

Table 2.1- Multinomial Logit Results, Release on Monetary Bond Versus Detention

Variable	*Coefficient*	*RSE*
Judge Factors		
Judge Ideology	0.083	(0.424)
Judge Former Prosecutor	-0.011	(0.188)
Judge Former Defense Attorney	0.458*	(0.276)
Minority Judge	0.643**	(0.275)
Female Judge	0.022	(0.205)
Attorney Factors		
Experience Disparity	0.001	(0.006)
Appointed Counsel	-0.559**	(0.220)
Public Defender	-0.978**	(0.195)
Defense Attorney Quality	-0.470	(0.380)
Legal Controls		
Offense Severity	-0.057**	(0.014)
Criminal History	-0.184**	(0.029)
Dependents	0.313**	(0.139)
Violence Trigger	-0.391	(0.260)
Statutory Max Trigger	-0.305	(0.287)
Drug Trigger	0.044	(0.326)
Weapon/Minor Trigger	-0.195	(0.247)
Obstruction Trigger	-0.055	(0.660)
Flight Trigger	-14.498**	(0.820)
Immigration	-2.062**	(0.386)
Defendant Controls		
Black Defendant	-0.262	(0.205)
Hispanic Defendant	-1.193**	(0.273)
Other Race Defendant	0.123	(0.489)
Female Defendant	0.350*	(0.207)
Defendant Education	0.004	(0.201)
Defendant Age	0.024**	(0.007)
Fixed Effects		
District	INCLUDED	
Detention Year	INCLUDED	
Observations	2,306	
% Reduction in Error	39.96%	

Notes: Dependent variable is *Pretrial Status* category. Coefficients show log-odds of being released on cash bail versus being detained pretrial. Probability weights are used to weight each defendant according to their proportion to the population of sentenced defendants in each district-year. Significant coefficients at $p < .05$ are indicated with an ** while those at $p < .10$ are marked with an *.

Table 2.2- Multinomial Logit Results, Release on Personal Recognizance Versus Detention

Variable	*Coefficient*	*RSE*
Judge Factors		
Judge Ideology	-0.788*	(0.439)
Judge Former Prosecutor	0.071	(0.256)
Judge Former Defense Attorney	-0.061	(0.359)
Minority Judge	0.115	(0.240)
Female Judge	-0.682**	(0.253)
Attorney Factors		
Experience Disparity	-0.008	(0.007)
Appointed Counsel	-0.583**	(0.215)
Public Defender	-0.587**	(0.282)
Defense Attorney Quality	0.606	(0.420)
Legal Controls		
Offense Severity	-0.076**	(0.015)
Criminal History	-0.181**	(0.026)
Dependents	0.708**	(0.220)
Violence Trigger	-0.903**	(0.284)
Statutory Max Trigger	-0.383	(0.339)
Drug Trigger	-0.021	(0.309)
Weapon/Minor Trigger	0.076	(0.336)
Obstruction Trigger	0.044	(0.535)
Flight Trigger	-12.893**	(0.607)
Immigration	-3.579**	(0.575)
Defendant Controls		
Black Defendant	-0.108	(0.269)
Hispanic Defendant	-1.405**	(0.280)
Other Race Defendant	0.234	(0.607)
Female Defendant	0.673**	(0.308)
Defendant Education	0.179	(0.276)
Defendant Age	0.035**	(0.009)
Fixed Effects		
District	INCLUDED	
Detention Year	INCLUDED	
Observations	2,306	
% Reduction in Error	39.96%	

Dependent variable is *Pretrial Status* category. Coefficients show log-odds of being released on personal recognizance versus being detained pretrial. Probability weights are used to weight each defendant according to their proportion to the population of sentenced defendants in each district-year. Significant coefficients at $p < .05$ are indicated with an ** while those at $p < .10$ are marked with an *.

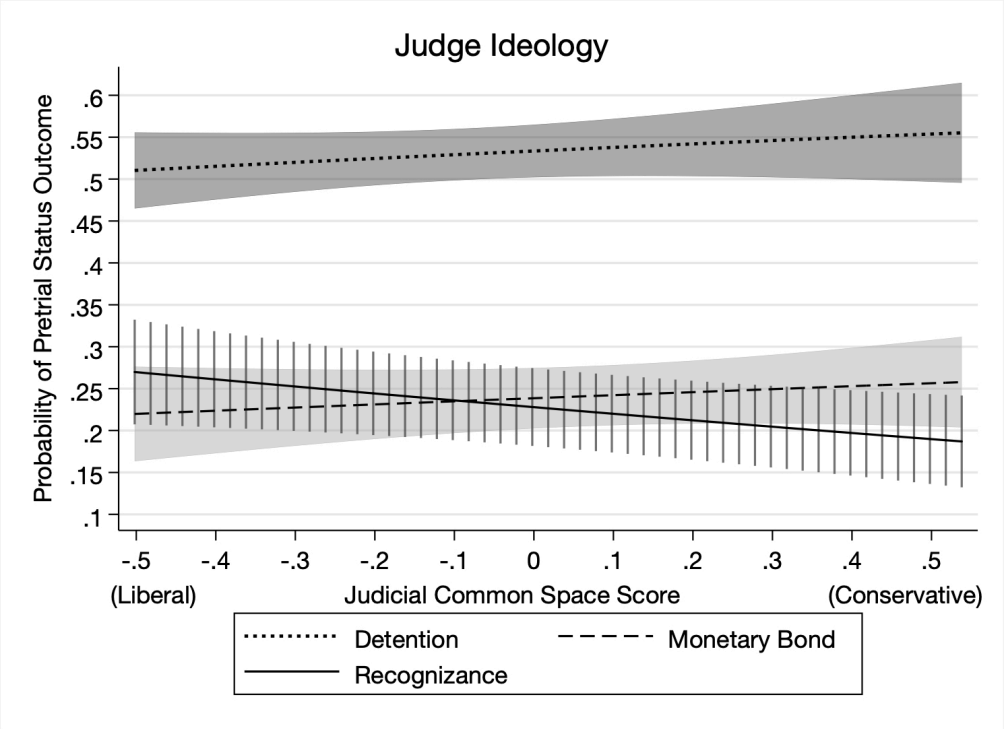

Figure 2.1 – Effect of Judge Ideology on Probability of Bail Outcome

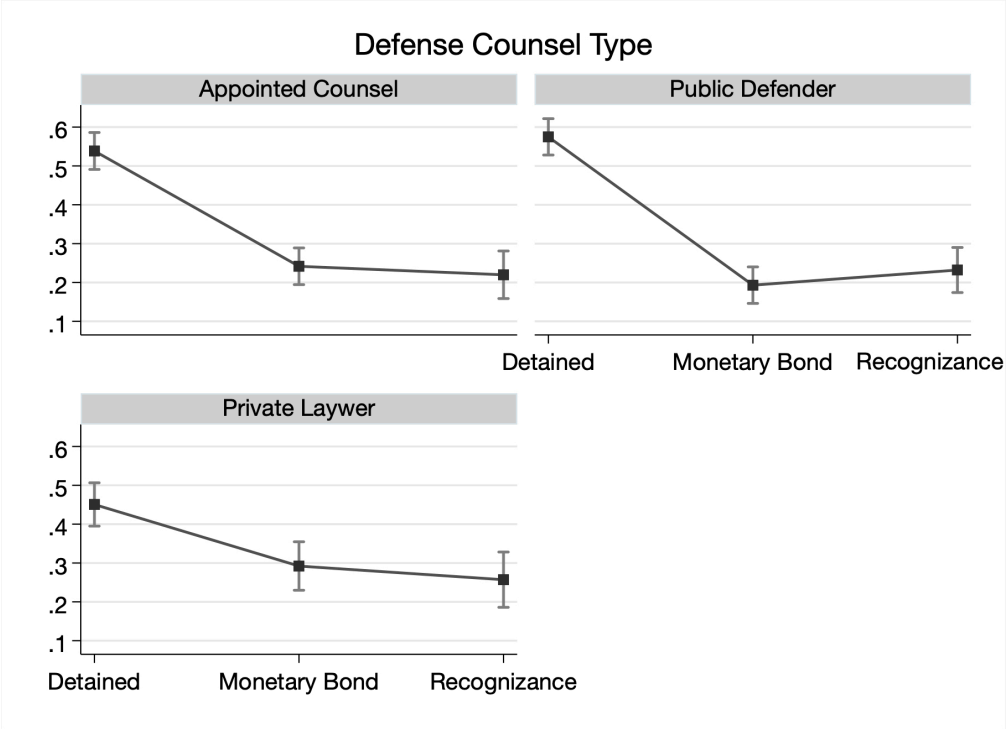

Figure 2.2 – Effect of Defense Counsel Type on Probability of Bail Outcome

CHAPTER 3

JUDGE AND ATTORNEY INFLUENCE IN SENTENCING

When Henry Hudson was nominated to become a U.S. District Judge by George W. Bush in 2002, he had an established reputation of being a conservative who was tough on crime. The Washington Post profiled Hudson during his time as the Commonwealth's Attorney for Arlington County, Virginia and dubbed him the "Hang 'em high" prosecutor (Bauer, 1983). In this interview, Hudson highlighted the lengthening of jail sentences for those convicted in the county as one of his "proudest accomplishments." He explained to the Post, "I have always been a firm believer that the certainty of punishment is the backbone of any type of deterrence." The Chairman of the Senate Judiciary Committee, Patrick Leahy, raised the concerns of local criminal defense attorneys who expressed reservations about Hudson's ability to be an even-handed jurist during his confirmation hearing (Confirmation Hearings on Federal Appointments, 2002). Nevertheless, the Senate easily confirmed Henry Hudson.

The case of Henry Hudson raises significant questions about how the courtroom professionals, who routinely handle criminal matters, might affect case outcomes. Once on the bench, do judges like Henry Hudson continue to act on seemingly clear political attitudes and a preference for harsh sentences? And, to what extent do the individual members of the court–judges and attorneys–determine justice? The American legal system promises that criminal defendants will receive equal treatment under the law. However, there is ample reason to suspect that the individual members of the court shape

what will ultimately become of those accused of crimes. Judges like Henry Hudson are selected on the basis of political considerations and bring to the bench formative life experiences that are likely to alter their perception of how defendants should be adjudicated. Similarly important, the prosecution and defense who are fixtures of the criminal courtroom act strategically to frame the application of law. These attorneys provide crucial advocacy on the defendant's culpability and, if convicted, the need for punishment to address their wrongdoing. Even though federal and state governments have attempted to control the influence of extralegal factors by passing sentencing guidelines, mandatory minimums, "three strikes" rules, and other provisions to limit discretion in criminal matters, the judge and counsel still decide what will become of defendants within the framework of those laws.

The influence of attorneys and judges on criminal cases has critical implications for policy and for the lives of individual defendants. Numerous Americans experience the criminal court process each year, many of whom will ultimately be found guilty and face criminal sanctions. The Bureau of Justice Statistics reports that one hundred million U.S. adults (nearly one in three) have a criminal record (Sabol, 2015) and one in thirty-six are under some form of correctional supervision (Kaeble et al., 2015). For the individual accused, the prospect of imprisonment has well-documented negative ramifications including damaged social ties (Berg & Huebner, 2011), stigmatization (Moore et al., 2013), barriers to employment (Pager, 2003), and negative health outcomes (Binswanger et al., 2007).

In the face of such damaging consequences, the public is implored to believe that those who litigate criminal cases will provide zealous representation and those who decide them will provide impartial justice. While many prior studies have examined the nature of disparities in criminal cases on the basis of the defendant's characteristics, fewer have considered how the traits of legal professionals impact the process or outcomes (except e.g., Schanzenbach & Tiller, 2007; Epstein et al., 2013). Research on attorneys and judges in criminal cases has been hampered by limited data sources that frequently omit information on them. I address this shortcoming by collecting, compiling, and then analyzing original data from federal court documents and other sources that track these individuals. This novel data source allows for a more comprehensive model of criminal court process including the legal factors, defendant traits, and the influence of the professionals tasked with disposing of these cases.

In this study, I examine how attorneys and judges influence federal sentencing. Using representative data from 20 federal district courts from 2006 to 2013 I test how these professionals create disparities in the defendant's final sentence. The results indicate that, even after accounting for the recognized determinants of sentencing, individual attorneys and judges make a substantial difference in the time a defendant must serve in prison. These findings underscore the important role these actors have in determining justice for the multitudes of Americans who are convicted of crimes.

3.1 Courtroom Professionals and Criminal Cases

The notion that judges and attorneys matter in deciding criminal cases is not novel. Foundational socio-legal studies highlighted their importance in the quality of legal representation given to the defendant (Blumberg, 1967), the negotiation of plea

bargains (Heumann, 1981), the setting of norms regarding court procedures (Church et al., 1978; Church, 1985), and sentencing (Gibson, 1977, 1978). Since the early empirical works on criminal trial courts, however, the vast majority of studies have focused on disparities in sentencing based on defendant characteristics, particularly their race. As Johnson and Betsinger (2009) explained, "Few topics have received as much attention from criminal justice researchers as the presence of racial and ethnic disparities in criminal sentencing" (p. 1048). The availability of sentencing datasets with detailed variables including legal considerations, offender demographic traits, and other factors has proliferated quantitative studies on the subject. However, aspects of sentencing that are not well captured by these datasets, or simply not included at all, have received only modest attention by comparison.

One area where these data are limited is in examining the influence of judges and attorneys on sentencing. The most prominently used data sources on sentencing, the U.S. Sentencing Commission Offender Datafiles (e.g., Steffensmeier & Demuth, 2000; Mustard, 2001; Johnson et al., 2008) and the Pennsylvania Commission on Sentencing's data (e.g., Steffensmeier et al., 1998; Kramer & Ulmer, 2009) include few variables, if any, relating to these actors. The omission of information on the legal actors involved in cases has limited our understanding of sentencing. Studies assert that bias may cause similarly situated defendants to be sentenced differently.

However, without judge or attorney information, researchers cannot examine whether differences in the treatment of defendants result from the characteristics of the human actors in charge of the machinery of justice. With this project, I seek to integrate rich theories about judicial behavior and attorney representation into models of sentencing to explicitly test their impact.

3.2 Judicial Behavior and Sentencing

Judges in trial court proceedings make fewer discretionary decisions than their appellate court colleagues. As gatekeepers to the judiciary, these jurists frequently deal with routine matters where court norms and legal rules often dictate simple outcomes (Boyd, 2017; Zorn & Bowie, 2010; Ashenfelter, Eisenberg, & Schwab, 1995). Further, the traditional view of the justice system holds that judges should be neutral arbiters of the law. Yet, in areas where trial court judges have discretion, social scientists have uncovered a variety of extralegal influences on their decisions. Prior scholarship has found that the discretionary decisions of trial court judges are influenced by partisanship or ideology (Carp & Rowland, 1983; Lloyd, 1995; Schanzenbach & Tiller, 2007), career considerations (Huber & Gordon, 2004; Choi, Gulati, & Posner, 2011; Epstein, Landes, & Posner, 2013), gender (Segal, 2000; Collins, Manning, & Carp, 2010; Boyd, 2013), and race (Cox & Miles 2008; Collins, Manning, & Carp, 2010).

Criminal sentencing is one of the most important areas of trial court decision-making where judges hold considerable discretion to determine what they view as an appropriate punishment for convicted offenders. In federal criminal cases, statute commands judges to impose sentences "sufficient but not greater than necessary" to reflect the seriousness of the offense, adequately deter illegal conduct, protect the public,

and to promote respect for the rule of law among other factors (18 U.S.C. §3553(a)). Like any other human decision-maker, judges make this determination using their own experiences and views as a guide. Several factors are prone to impact a judge's evaluations of a convicted defendant at sentencing. First, a judge's sentencing behavior is likely filtered by their political ideology. Judges have sincerely-held political preferences that may impact their judgment either intentionally or inadvertently (Segal & Spaeth, 2002). Trial court judges are also frequently selected on the basis of partisan considerations whether through election (Klein & Baum, 2001), merit selection (Goelzhauser, 2018), or appointment (Dubois, 1985; McLeod, 2012). Federal judges are particularly subject to partisan considerations during the confirmation process. Presidential concerns about defending administration decisions and establishing a legacy in policymaking often results in the nomination of Article III judges who are ideologically similar to the president (Goldman, 1999). The selection of the district judges that preside over federal sentencing are made with reference to both national and regional party interests due to senatorial courtesy (Carp & Rowland, 1983).

For the Republican Party, the last fifty years has seen the rise of a position on crime control become central to party platforms, campaign promises, and policies in office (Jacobs & Helms, 1996; Tonry, 1999; Boldt, 2017). Historically, the rights given to the accused and concerns about being too lax toward criminals were touted by conservatives as being important issues in the selection of federal judges. After the due process revolution of the Warren Court, Richard Nixon famously promised to staff the courts with "law and order" judges who would roll back the progressive criminal justice reforms that upset a large segment of America (Gizzi & Curtis, 2016; McMahon, 2011).

Over time, Republican administrations have retained a strong focus on several key targets of federal enforcement such as illegal drugs (Beckett, 1999; Whitford & Yates, 2009), violent crime (Boldt & Boyd, 2018), immigration (Jamieson & Taussig, 2017), and terrorism (Pfiffner, 2015). Evidence indicates that the Republican Party has made substantive impacts on criminal justice policy by instituting harsher treatment for offenders (Jacobs & Jackson, 2010; Jacobs & Carmichael, 2004). With these policy concerns at hand, it is straightforward to expect the resulting appointees to be increasingly punitive toward criminal defendants during sentencing. Conservative jurists are also more likely to hold sincere preferences for punitiveness because of these shared values. Research focused on the role of ideology or partisanship in criminal cases has found tougher treatment of defendants by conservatives and Republican appointees (e.g., Cook, 1973; Kritzer, 1978; Gibson, 1978; Rowland et al., 1984).

A handful of prior studies have focused specifically on the effects of partisanship in sentencing. Schanzenbach and Tiller (2007) utilized the district level proportion of Democratic appointees on individual federal sentences finding that Republican judges did give harsher sentences across most crimes. Schanzenbach and Tiller (2008) followed up the study by using court documents to link individual judges to sentences, replicating many of their earlier findings. Epstein, Landes, and Posner (2013) utilized data from the Syracuse's TRAC project, which allowed for a test of partisanship in sentencing with limited controls.

Their results also showed that the party of the individual sentencing judge does have a marginal influence on sentence length, with Republicans being more punitive. Notably, these studies do not account for other judicial characteristics, the attorneys involved, and use a dichotomous measure of party rather than more nuanced continuous measures of ideology (Giles et al., 2001; Epstein et al., 2007).

Another characteristic that is likely to frame how judges perceive criminal defendants at sentencing is their professional legal background. This is because as Ulmer (1970) declared, "Judges, like other men, are born, develop, mature, and become socialized" (p. 580). Previous experiences in the area of criminal litigation are likely to socialize values regarding defendants (Heumann, 1981). Specifically, employment as a prosecutor or defense attorney may engender divergent views that carry into judicial service. Prosecutors must as a matter of routine assert that the defendant is guilty; they perceive the strengths in the state's case and see a criminal as someone to be sanctioned. Meanwhile, defense attorneys must protect the accused against the state's threat to their liberty (Burger, 1969). They must be adept at finding the flaws in the government's case and the redeeming qualities of the defendants. These kinds of professional experiences are commonplace in the federal judiciary. Among district judges, 50 percent have worked as prosecutors, while 11 percent have been public defenders (George & Yoon, 2015).

Surveys of prosecutors and defense attorneys support the notion that they perceive the criminal justice system in markedly different ways. When asked about the prevalence of errors and misconduct in proceedings, defense attorneys rate them as being more frequent than prosecutors do (Ramsey & Frank, 2007). Similarly, surveys of the two professions show that most defense attorneys feel that there is a need for criminal justice

reform, while most prosecutors do not share that opinion (Smith et al., 2011). These divergent views seem likely to influence sentencing behavior, with former prosecutors being more punitive and former defense lawyers preferring more lenient sentences. Few prior studies have examined the role of previous prosecutorial or defense experience in sentencing; some have shown differences between judges who had those backgrounds (Steffensmeier & Herbert, 1999; Myers, 1988) while others have found few differences asserting that socialization into the judicial role overrides these prior experiences (Spohn, 1991).

Finally, judges are socialized according to their race and gender. A large body of research has examined the role of diversity in judicial decision-making (e.g., Songer, Davis, & Haire, 1994; Boyd, Epstein, & Martin, 2010; Kastellec, 2013; Collins, Manning, & Carp, 2010; Bonneau, 2009; Collins & Moyer, 2008). These studies have shown effects that depend on how particular issue areas intersect with experiences specific to racial minorities and/or women. Prominent examples include how black judges decide race discrimination cases (Kastellec, 2013) or how female judges decide sexual harassment cases (Boyd, Epstein, & Martin, 2010). Race and gender effects have been uncovered in criminal cases at the appellate level (e.g., Collins, Manning, & Carp, 2010; Bonneau, 2009) albeit inconsistently (null findings in Songer, Davis, & Haire, 1994).

One may expect that a judge's race or gender impacts their perception of the defendants at sentencing. Racial minorities have less trust in criminal justice institutions (Tyler, 2001, 2005; Lundman & Kaufman, 2003) and are more likely to view the criminal justice system as discriminatory (Hurwitz & Peffley, 2005; Peffley & Hurwitz, 2007).

Surveys of punitive attitudes show that nonwhites tend to be less supportive of harsh punishment, such as the death penalty (Combs & Comer, 1982; Bobo & Johnson, 2004). Those racial minorities who become judges seem likely to translate common skepticisms about criminal justice and a diminished preference for punishment into more lenient sentences for the offenders they preside over. The connection between gender and criminal sentencing is admittedly more mixed. Some research suggests that women tend to be more trusting of criminal justice institutions than men (Lundman & Kaufman, 2003) and display greater fear of crime (La-Grange & Ferraro, 1989). Knowing this, one might assume women would be more inclined to sanction criminals than men. In fact, women show diminished support for punitive policies (Halim & Stiles, 2001; Whitehead & Blankenship, 2000) and often prefer rehabilitation to punishment (Applegate, Cullen, & Fisher, 2002).

Prior research has produced contradictory results for sentencing differences due to judge race and gender demonstrating that these questions have yet to be resolved. Studies have found that nonwhite judges are more punitive toward criminal defendants (Steffensmeier & Britt, 2001) where others found them to be less punitive (Welch, Combs, and Gruhl, 1988; Johnson, 2006; Johnson, 2014) than their white counterparts. Similarly, scholars have produced studies that show that female judges are more punitive (Spohn, 1991; Steffensmeier & Herbert, 1990), less punitive (Johnson, 2014), or that there are no substantial differences in the sentencing behavior of men and women across all criminal cases (Boyd & Nelson, 2017; Kritzer & Uhlman, 1977).

3.3 Attorney Representation and Sentencing

Counsel performs a critical role in the resolution of legal disputes and has been shown to be forceful in a wide variety of contexts. Quality of representation (Johnson et al., 2006; McAtee & McGuire, 2007), levels of legal experience (McGuire, 1995; Haire, Lindquist, & Hartley, 1999) and counsel resources (Blumberg, 1967; Galanter, 1974; Dumas et al., 2015) have all been demonstrated to affect case outcomes. In criminal matters, the prosecutor and the defense attorney are essential actors who alter the course of events across numerous stages including bail (Reitler et al., 2013; Landes, 1973), plea negotiation (Heumann, 1981; Bushway & Redlich, 2012), and trial (Mather, 1979; Elder, 1989; Diamond et al., 1996). At criminal sentencing, when a judge makes a determination for a convicted defendant, he or she evaluates their culpability, prior record, and propensity for reoffending. These perceptions can easily be shaped by the attributes and efforts of counsel.

From a broad perspective, a criminal case can be seen as an adversarial battle of resources and experience between opposing parties. Galanter (1974) famously articulated that the legal system is slanted in favor of those resource and experience-laden parties or the "haves." He argued that most parties can be defined as either "repeat players," those who regularly must appear in court to advocate their interests, or "one-shotters" who come to the legal system only occasionally for recourse. The repeat players have experience, resources, connections, and the ability to impact the law itself. Thus, they almost always "come out ahead."

In criminal cases, the prosecution is the ultimate repeat player and "have" party in terms of its structural advantages. Prosecutors' offices have a professional staff that develops a depth of experience routinely trying criminal matters (Eisenstein, 1978). Prosecutors are typically better financially supported than most forms of federal criminal defense (Blumberg, 1967; Stevens et al., 2010). The law also gives the prosecution notable powers that the defense cannot possess. For example, the state moves first setting the terms of the legal dispute through charge selection (Kutateladze, 2018), they decide whether to attempt detention of a defendant pending trial increasing pressure to resolve the case (Reitler et al., 2013; Landes, 1973), and whether to extend a plea bargain (Howard et al., 2000). These inherent advantages can limit the range of sentencing options that are considered for defendants, which terms a defendant may accept through a plea deal, and the overall sentence length (Rakoff, 2016).

For individual attorneys in criminal cases, their impact may be amplified or diminished by their resources and experience. One potential indicator of an attorney's abilities is how long they have been practicing law. Newly minted lawyers may be unfamiliar with how to best represent their case and might not benefit from court-specific norms because of their outsider status (Heumann, 1981). By contrast, seasoned attorneys might rely on tested strategies that are based on past encounters with similar cases, the same jurisdiction, or even a specific judge. In regard to sentencing, the ability to negotiate a desired outcome is likely bolstered by such experience.

The capacity of individual defense attorneys to represent specific clients might be structured by whether they are appointed counsel, a full-time public defender, or a private, retained, attorney. Despite the mandate of *Gideon v. Wainwright* (1963), it is

often said that defendants who cannot afford their own attorney are provided with sub-standard representation due to the significant caseload pressures, diminished compensation, and poor government funding faced by public counsel (Alschuler, 1975; Patton, 2012).

At the federal level, indigent defendants must rely on either a panel attorney or a federal defender. The network of panel attorneys consists of private lawyers who are deemed eligible to represent indigent federal defendants and receive an hourly fee when appointed to their case (Wool et al., 2002). For the other indigent defendants, a full-time salaried federal defender's office or community defender service provides representation. Relative to many states, this system is better supported,[9] but the attorneys who represent federal indigent defendants still are not compensated at the level of their privately retained counterparts (Stevens et al., 2010; Wool et al., 2002). Consequently, the conventional wisdom suggests that forms of publicly supported counsel will be less effective in garnering favorable treatment at sentencing.

A number of prior studies have examined the degree to which appointed counsel, full- time public defenders, or private counsel obtains different results for their clients. Those indigent defendants represented by publicly-funded counsel have been found to be more likely to be detained pretrial (Williams, 2013), were less likely to have their case go to trial (Champion, 1989; Hoffman et al., 2005), were more likely to be found guilty (Hoffman et al., 2005) and, importantly, received longer sentences when compared to those with private counsel (Hoffman et al., 2005; Elder, 1989).

[9] See, for example, Louisiana Supreme Court Chief Justice Bernette Johnson discussing the potential insolvency of the Louisiana public defender system in 2016 (Johnson, 2016).

Notably, other studies have found no significant differences in outcomes for defendants based on defense counsel type (Gitelman, 1970; Spohn & Holleran, 2002; Williams, 2002; Hartley et al., 2010).

One attribute that is prone to influence legal decision-making is attorney quality. Problems with the quality of representation provided by defense attorneys in criminal cases are particularly pronounced. As the editors of the Harvard Law Review wrote in a scathing assessment of the state of criminal defense in America: "Stories of intoxicated, sleeping, or otherwise incompetent public defenders are legion, such that it has become trite to lament the sometimes shockingly incompetent quality of indigent defense counsel in America today" ("Gideon's Promise Unfulfilled," 2000, p. 2064). Though potentially important, quality in legal representation is difficult to measure empirically and often requires an innovative approach. For example, scholarship that has examined the role of counsel quality at the U.S. Supreme Court has taken advantage of Justice Blackmun's ratings of their oral argument performance (Johnson et al., 2006; McAtee & McGuire, 2007). The quality of representation in criminal cases is likely to influence sentencing determinations, as defendants represented by poorly performing counsel may make their clients appear more culpable and needing of a harsher sentence.

In summary, based on prior research I expect that ideologically conservative jurists and those with prior prosecutorial experience will give longer prison sentences. I anticipate that judges who have prior criminal defense experience, are female, or are racial minorities will give comparatively shorter sentences.

Relating to the attorneys, I expect that more experienced lawyers will garner better outcomes for their clients. Finally, I anticipate that those defendants represented by lawyers who are publicly supported (i.e. public defenders or appointed counsel) and those defense attorneys who provide lower quality representation will receive longer sentences.

3.4 Data Collection

To test theories surrounding judges and counsel, I utilize a novel dataset constructed to incorporate their influence. Empirical criminal courts research has relied heavily on a few existing data sources. The U.S. Sentencing Commission's Offender Datafiles and the Pennsylvania Commission on Sentencing's data are the most widely utilized (e.g., Steffensmeier & Demuth, 2000; Mustard, 2001; Johnson et al., 2008; Steffensmeier et al., 1998; Kramer & Ulmer, 2009). These analytical resources are excellent for examining sentencing decisions on the basis of guidelines structure and certain defendant demographic traits. Despite the ubiquitous use of these datasets, they do have notable shortcomings. They are not nearly as useful in studying other aspects of criminal court process (e.g., charging, pretrial detention, motions, plea bargaining, and trials) since they are oriented toward sentencing. Critically, these data sources also provide few, if any, variables that account for the professional people tasked with the disposition of criminal cases. The U.S. Sentencing Commission does not provide any judge identifiers or variables. It gives only a single variable relating to attorneys, defense counsel type, which the commission stopped gathering after FY 2003 (U.S. Sentencing Commission, 2016). Pennsylvania's data includes the name of the sentencing judge, but no attorney variables (Pennsylvania Commission on Sentencing, 2017).

Researchers interested in the role of attorneys and judges in federal criminal cases have taken a number of approaches to adapt to the omission of this information. Some have utilized district-level variables such as the proportion of Democratic appointed judges in a district (Schanzenbach & Tiller, 2007) or the percentage of black and female judges in a district (Ward et al., 2009). Such analyses can provide great insight into how district-level representation influences decision-making but to ascribe aggregate variables to individual actors is an ecological fallacy (King, Keohane, & Verba, 1994). Others have relied on alternative forms of federal sentencing data. The Transactional Records Access Clearinghouse (TRAC) has obtained data on federal criminal cases that incorporate the identity of individual sentencing judges. Epstein, Landes, and Posner (2013) conducted a bivariate analysis of judge partisanship and sentencing across different offense categories. Unfortunately, these data do not include the appropriate variables to model the sentencing guidelines or defendant characteristics. A final vein of research has taken to exploring the role of these important actors using original data from a small number of districts (Wu & Spohn, 2010; Spohn & Fornago, 2009; Kim, Spohn, & Hedberg, 2015).

The data created for this project represent an original empirical contribution. I innovate on these prior efforts by identifying the individual attorneys and judges in each case, combining those records with the detailed datasets provided by the U.S. Sentencing Commission, and by using representative samples from 20 U.S. District Courts across the country.[10] Twenty defendants sentenced per district-year from 2006 to 2013 were

[10] These include the districts of Arizona, central California, District of Columbia, middle Florida, northern Iowa, northern Illinois, southern Illinois, Kansas, eastern Kentucky, eastern Louisiana, Massachusetts, Maine, eastern Michigan, middle North Carolina, New Jersey, southern New York, middle Pennsylvania, South Dakota, western Virginia, and Vermont.

randomly selected from the Federal Judicial Center's (FJC) Integrated Database on criminal defendants (Federal Judicial Center, 2018a). Each defendant's docket sheet was downloaded from Public Access to Court Electronic Records (PACER), a records service of the federal courts. Docket sheets are official court documents that give a detailed list of events that occur in the life of a case, provide contact information for the attorney(s), and identifies the judge involved with particular events. Information relating to the sentencing judge and attorneys (including their names) were entered from the docket sheets. Then, using the record created from combining a FJC database entry and the docket sheet, each defendant was manually paired with an observation in the U.S. Sentencing Commission's Offender Datafiles (U.S. Sentencing Commission, 2013). Observations were linked using common variables.[11] Of the full sample, 254 cases could not be matched to an observation in the U.S. Sentencing Commission's data. The resulting dataset is a rich resource as it has the potential to capture in detail events with each case, the legal parameters, key characteristics of the defendant, and information on court professionals.

3.5 Variables and Methods

This study relies on a stratified random sample of 2,699 sentenced federal criminal defendants across 20 judicial districts from 2006 to 2013. The unit of analysis is a single sentenced defendant with up to 20 defendants sampled per district-year. A count model (negative binomial regression) is used to predict the dependent variable of *Months of Incarceration*. Sourced from the U.S. Sentencing Commission's Offender Datafiles,

[11] The common variables are the district, month of sentencing, length of prison sentence, length of supervised release, length of probation, dollar amount of fine, dollar amount of special assessment, dollar amount of restitution, the individual statutes associated with the charges of conviction, and other information gathered from court documents.

this dependent variable is the prison sentence in months given to each defendant.[12] Probability weights are employed to weight each defendant according to their proportion of the population of sentenced defendants in each district-year. To account for heterogeneity due to jurisdiction I include District Fixed Effects and to control for longitudinal variation I utilize Year Fixed Effects for the year of sentencing.

Turning first to the influence of the sentencing judges, I include a measure of *Judicial Ideology*. This is the judicial common space score for each jurist and ranges -1 for the most liberal judge to +1 for the most conservative. (Giles et al., 2003; Epstein et al., 2007; Boyd, 2015). Accordingly, I expect that more conservative sentencing judges will prefer harsher punishment, thus increasing sentence length. To account for a judge's legal background, I employ two dichotomous variables for *Judge Former Prosecutor* and *Judge Former Defense Attorney*. These take the value of 1 if the Federal Judicial Center biographical database indicates they have the relevant previous employment experience and 0 otherwise (Federal Judicial Center, 2018b). I expect that the socialization of prior prosecutorial experience will have a positive impact on the defendant's sentence length and prior experience as a defense attorney to have a negative effect. In considering the impact of judicial diversity in sentencing, I include indicator variables for whether the decision-maker is a *Minority Judge* or a *Female Judge*.

[12] This analysis excludes life sentences, which have no fixed length in months. Only 12 defendants received life sentences. Sentences of probation or other alternative sanctions are coded as 0 months of incarceration.

I anticipate that judges who are black or Hispanic will, on average, prefer more lenient sentences due to racial experiences and skepticism of the criminal justice system. Similarly, based on women's support for rehabilitative policies and diminished support for punishment, I expect female judges will give lighter sentences than men.[13]

Next, I account for the role of counsel in the model. First, I use a categorical variable to capture the constraints placed on different types of defense counsel in providing representation. The reference category for this variable is the defendant being represented by a retained, private, lawyer with coefficient estimates for those represented by *Appointed Counsel* (CJA panel attorney) or a full-time *Public Defender*. The type of defense counsel provided at the time of sentencing was gathered from the criminal docket sheet. I anticipate that those who have a publicly funded attorney will receive a longer sentence than those represented by a private lawyer, all else equal. Second, to model the impact of how seasoned the attorneys are, the bar admission year for the defense attorney and prosecutor serving at the time of sentencing were gathered from state bar records, disciplinary records, attorney profiles from law firms, or other web sources.[14] From this admission information, I include a measure of *Attorney Experience Disparity*. This variable is encoded as the number of years of experience the prosecutor has minus the years of experience the defense attorney has. I expect that, if the prosecuting attorney is

[13] In 30 cases a magistrate judge handled the sentencing who was not later appointed to an Article III judgeship. For those individuals, the average judicial common space score for the district at the time of their appointment was used (Boyd & Sievert, 2013) and a simple web search was performed to locate prior employment information, gender, and race. If instead the magistrate judge was eventually confirmed their judicial common space score for that position was utilized and their other characteristics were available via the FJC's biographical database.

[14] If a bar admission year could not be located, the year that the attorney graduated law school was utilized (if available).

more experienced relative to the defense attorney, increasing the value of this variable, the sentence length will increase. Finally, I include an indicator for *Defense Counsel Quality*. This variable takes the value of 1 if the defense attorney has been sanctioned by a state bar association and 0 otherwise. These were coded from state government websites and bar association sources. I anticipate that those defense lawyers who have a record of misconduct will, on average, provide lower quality representation to the defendants they represent, thus increasing the sentence faced by the defendant at the conclusion of the case.

A variety of controls are included relating to the law, the defendant, and other considerations. First, I control for the influence of the U.S. Sentencing Guidelines. The guidelines appear as a table with two axes. On the vertical axis the defendant's offense level, ranging 0 to 43, emulates the seriousness of the conduct of conviction (Guidelines Manual §2A1.1, 2016). Each crime has a base offense level and is adjusted upwards or downwards depending on specific listed aggravating or mitigating circumstances. The final offense level is the number arrived at after the sentencing judge has made these and other potential adjustments. On the horizontal axis of the sentencing grid is the criminal history category. This represents the defendant's prior criminal conduct and aggravates the sentence proportionally; as the U.S. Sentencing Guidelines Manual explains, "A defendant with a record of prior criminal behavior is more culpable than a first offender and thus deserving of greater punishment" (Guidelines Manual §4A1.1, 2016). Points are assigned based on the number/severity of past convictions and then a final criminal history category of 1 through 6 is derived.

Once a final offense level and criminal history category are selected this determines the potential sentences in months the judge is intended to consider within the guidelines range. As either the final offense level or the final criminal history category increases, the possible sentences become longer. To control for the structure of the U.S. Sentencing Guidelines, I include *Guideline Range Fixed Effects*. This variable captures every unique guideline range (e.g., 0-6 months or 2-8 months) to model the within-guidelines sentencing discretion provided to the judge at the final determination of incarceration length.[15] These fixed effects also factor in how the range of sentences are expanded or contracted by statutory minimums or maximum sentences which supersede the guidelines. There are 164 unique sentencing ranges within the data. This categorical variable further aids in controlling for the perceived seriousness of the defendant's crime and assessments of their risk of reoffending since each guideline range is an intersection of offense seriousness and prior criminal history.

In addition to modeling within-guidelines discretion, I account for instances where the prosecution sponsors a successful downward departure in the form of a substantial assistance motion. A *Government Sponsored* departure is one where federal prosecutors encourage the court to provide a reduced sentence because the defendant has assisted the government investigating or prosecuting another person (Guidelines Manual §5K1.1, 2016). I utilize the U.S. Sentencing Commission datafiles' information on

[15] This approach is similar to that used by Mustard (2001) and Schanzenbach and Tiller (2007), who employed a categorical by categorical interaction of offense level and criminal history category to include a unique effect for every cell (as opposed to every unique range). That approach, which produces 314 estimated coefficients, could not be used for this study because the smaller sample size produces missing values for grid cells and results in collinearity.

government sponsored departures. This indicator variable takes the value of 1 when there is a government sponsored departure and 0 where none is present. I also separate the substantive nature of different types of crimes using *Offense Type Fixed Effects*, which is simply the U.S. Sentencing Commission Offender Datafile's 44 category offense type variable. Finally, to model differences in sentencing between those defendants who pleaded guilty and those who opted to have a trial, a indicator variable for *Trial* is incorporated in the model.

I control for a number of the defendant's characteristics gathered from the U.S. Sentencing Commission Offender Datafiles. In order to control for the influence of racial bias in sentencing, I utilize a categorical variable for offender race. Coefficient estimates for *Black Defendant*, *Hispanic Defendant*, and *Other Race Defendant* are displayed relative to the baseline of a white defendant. Also included is *Female Defendant*, which takes the value of 1 if the defendant is a woman. As a rough control for the offender's socioeconomic status, I include *Defendant Education* that takes the value of 1 if the defendant has attended college and 0 if they have not. Finally, I control for *Defendant Age* to separate possible age biases in sentencing.

3.6 Results

Table 3.1 reports the results of the negative binomial regression with probability weights and robust clustered standard errors on the district-year. The model performs well in predicting sentence lengths reducing errors by 85.35%. The results indicate that four judge and attorney factors significantly impact a defendant's sentence of incarceration in months.

Looking first at sentencing judge effects, *Judicial Ideology* is statistically significant at $p < 0.05$ and positive relaying that, all else equal, the more ideologically conservative a sentencing judge is the longer the sentence given to the defendant.

Since the coefficients from a negative binomial regression do not clearly display the substantive effect of the independent variables, I present predictive margins for the variables of interest. Predictive margins are the average predicted effects for a variable of interest across the remaining variables' real values. Figure 3.1 displays the predicted values for the sentence length in months given changes in the sentencing judge's ideology. Going from the most liberal sentencing judge to the most conservative increases a defendant's predicted sentence length by nearly 11.44 months on average. This substantively large effect suggests that the ideological disposition of a judge is an important filter on their view of what an appropriate sentence is. The mean sentencing discretion provided by the guideline ranges in the sample was roughly 18 months. Thus, a difference of 11 months represents a sizable proportion of the within-guidelines authority.

Female Judge is statistically significant and positive relaying that female judges tend to be more punitive than their male colleagues in contrast to expectations. Compared to male judges, the model predicts that women judges sentence defendants to 4.16 months longer on average. Although this result is consistent with some prior studies on gender and sentencing (Spohn, 1991; Steffensmeier & Herbert, 1990), it is somewhat surprising given women's reluctance to support punitive policies as a general matter (Halim & Stiles, 2001; Whitehead & Blankenship, 2000; Applegate, Cullen, & Fisher, 2002). Perhaps other gender-related motivations such as the need for social cohesion or a concern for public safety override these abstract preferences when evaluating individuals

as a decision-maker. Figure 3.2 plots the substantive effects for all categorical variables relating to judges and attorneys by displaying the change in sentence length relative to the reference category. These marginal contrasts are the predicted sentence length for the reference category (e.g., a male sentencing judge) subtracted from the predicted sentence length of each alternative category (e.g., a female sentencing judge). In this instance, the confidence bands convey that predicted difference in sentence length between female judges and male judges is statistically significant at $p < 0.1$. Meanwhile, a judge's legal background, operationalized as *Judge Former Prosecutor* and *Judge Former Defense Attorney*, does not appear to affect sentence length, all else equal ($p > 0.1$). The effect of *Minority Judge* also fails to reach statistical significance.

Turning to variables for the attorneys in the case, the type of defense counsel the defendant is represented by substantially impacts sentence length. *Public Defender* is statistically significant at $p < 0.05$ and positive. Compared to those defendants who are represented by private counsel, those who are assigned a full-time public defender received sentences nearly 8.53 months longer on average. Those defendants represented by *Appointed Counsel* also received significantly longer sentences than those who had a retained lawyer. Those represented by an appointed panel attorney are predicted to receive an additional 6.23 months. Consistent with expectations, those represented by either form of publicly supported counsel had worse sentencing outcomes. *Defense Attorney Quality* is positively signed and statistically significant. This rough indicator of quality that captures whether attorneys have been sanctioned by a state bar association shows substantive differences in terms of sentencing. Defendants represented by attorneys who, at some point in their career, have run afoul of bar association standards

receive sentences roughly 10.33 months longer on average. This supports the notion that strong representation matters in criminal cases. Finally, the attorneys' *Experience Disparity* is not statistically significant. The general legal experience of counsel appears not to matter when it comes to this final stage.

The controls for the legal determinants of sentencing perform largely as one would expect based on prior work. The defendants who were the beneficiary of a *Government Sponsored* Departure are assigned to nearly 31.06 fewer months of incarceration than those who did not receive a departure for assisting the government. Those who went to *Trial*, as opposed to pleading guilt did not experience significantly different terms of incarceration.

Variables measuring the effects of defendant characteristics produced mixed results. The only race that was significantly different from the reference category of a white defendant was *Other Race Defendant*. Defendants of this catchall group received sentences that were nearly 13.97 months shorter than their Caucasian counterparts. The categories of *Black Defendant* and *Hispanic Defendant* were not statistically distinguishable from the baseline of a white defendant in terms of the sentence. Relative to a male defendant, a *Female Defendant* received a sentence that was, on average, 15.33 months shorter. *Defendant Education* significantly reduced a defendant's sentence length. College educated defendants obtained a sentence that was approximately 6.63 months shorter than those who were not similarly educated. Older defendants also received more lenient sentences than did younger defendants. For an increase of 10 years in *Defendant Age*, they received a sentence roughly 1.5 months lighter.

3.7 Discussion

The results of this analysis demonstrate that the individuals tasked with handling criminal cases matter in what ultimately becomes of defendants. A judge's ideology and gender shapes their sentencing behavior across offenders. The type and quality of representation given to a convicted defendant has an impact on time spent incarcerated. These findings are completely consistent with a social science understanding of legal decision-making. Though the law guarantees equal treatment, with the exercise of discretion comes the potential for preferences, backgrounds, and bias to operate.

Notably, most of a sentence is set by the recognized legal factors: the seriousness of the offense and the offender's criminal history. These extralegal influences exerted by courtroom professionals are marginal in comparison to the power of the guidelines. Yet, in terms of possible impact these differences are anything but marginal. An additional month spent in prison is of great consequence to the individual offender as it furthers the separation from family, community, and freedom. It also has implications for the federal penal system. In FY 2015, nearly 87 percent of convicted federal defendants were sentenced to prison (Schmitt & Jones, 2016) and the federal prison population has increased nearly every year since 1980 from just 24,640 inmates to 185,617 in 2017 (U.S. Bureau of Prisons, 2018). Thus, variability in prison sentences has the ability to affect the vast majority of federal defendants and may contribute to mass incarceration.

The findings of this study underscore the importance of individual judges and attorneys in the criminal context. The prominent role of ideology in federal judicial selection implies that increasingly politicized and partisan process (Boyd, Lynch, & Madonna, 2016) may be translating into disparities in punishment for convicts, a serious

policy consequence. For presidential administrations and political parties focused on achieving "law and order" policy goals, appointing trial judges who share their beliefs could have broad effects on the contours of justice in America. In regard to the attorneys, differences in the representation between publicly supported counsel and private counsel appear to produce harsher outcomes for indigent criminal defendants. This suggests that public defense system, even at the federal level, may require additional support to give economically disadvantaged defendants equal access to effective counsel.

Sentencing is just a single context where courtroom professionals might affect defendants in criminal cases. And, it is a comparatively strict test for the influence of these actors due to the structured nature of the laws that regulate it. The findings of this study are likely to understate the overall importance of attorneys and judges since a confluence of events ultimately set the stage for the final act of sentencing. The data used for this study will be extended to other aspects of criminal court process that research has rarely explored in detail.

Table 3.1- Negative Binomial Results, Sentenced Incarceration in Months

Variable	*Coefficient*	*RSE*
Judge Factors		
Judge Ideology	0.181*	(0.043)
Judge Former Prosecutor	-0.037	(0.031)
Judge Former Defense Attorney	0.060	(0.086)
Minority Judge	0.062	(0.042)
Female Judge	0.067**	(0.040)
Attorney Factors		
Experience Disparity	0.001	(0.001)
Appointed Counsel	0.108*	(0.040)
Public Defender	0.145*	(0.043)
Defense Attorney Quality	0.159*	(0.079)
Legal Controls		
Government Sponsored	-0.635*	(0.081)
Trial	0.093	(0.068)
Defendant Controls		
Black Defendant	0.021	(0.040)
Hispanic Defendant	0.047	(0.057)
Other Race Defendant	-0.265*	(0.134)
Female Defendant	-0.286*	(0.075)
Defendant Education	-0.113*	(0.039)
Defendant Age	-0.003**	(0.001)
Fixed Effects		
Guidelines Range	INCLUDED	
Offense Type	INCLUDED	
District	INCLUDED	
Sentence Year	INCLUDED	
Constant	-0.203	(0.338)
Observations	2,699	
% Reduction in Error	85.35%	

Notes: Dependent variable is the *Months of Incarceration* given to the defendant. Robust clustered standard errors on the district-year are included in parentheses. Probability weights are used to weight each defendant according to their proportion to the population of sentenced defendants in each district-year. ** Significant at $p < 0.05$. * Significant at $p < 0.1$.

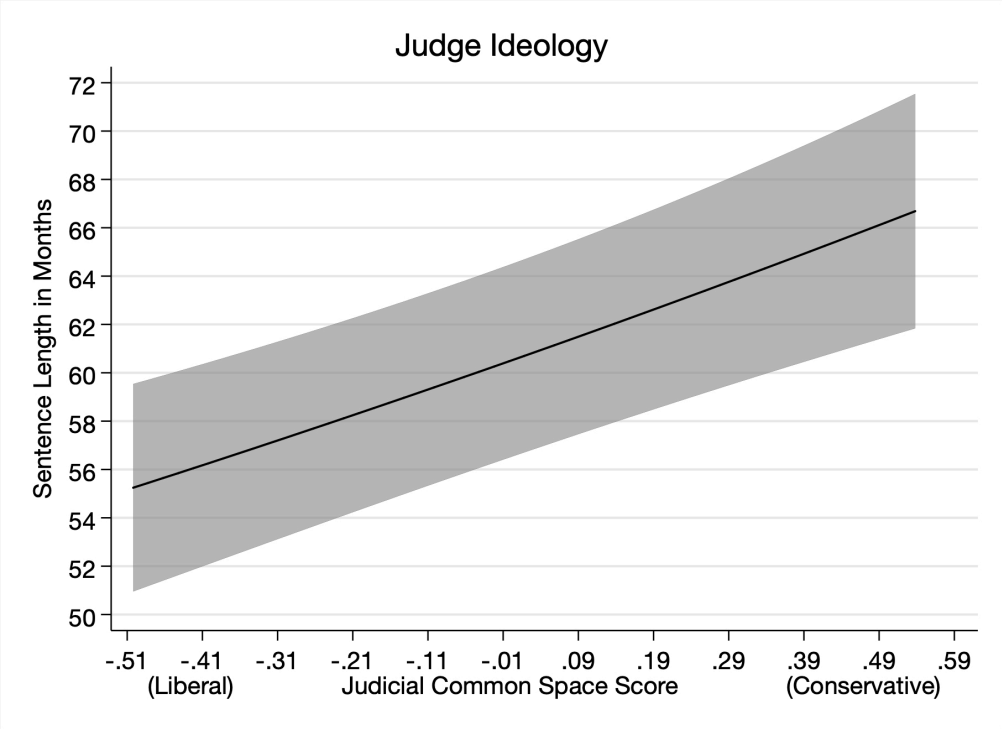

Figure 3.1 – Effect of Judicial Ideology on Sentence Length

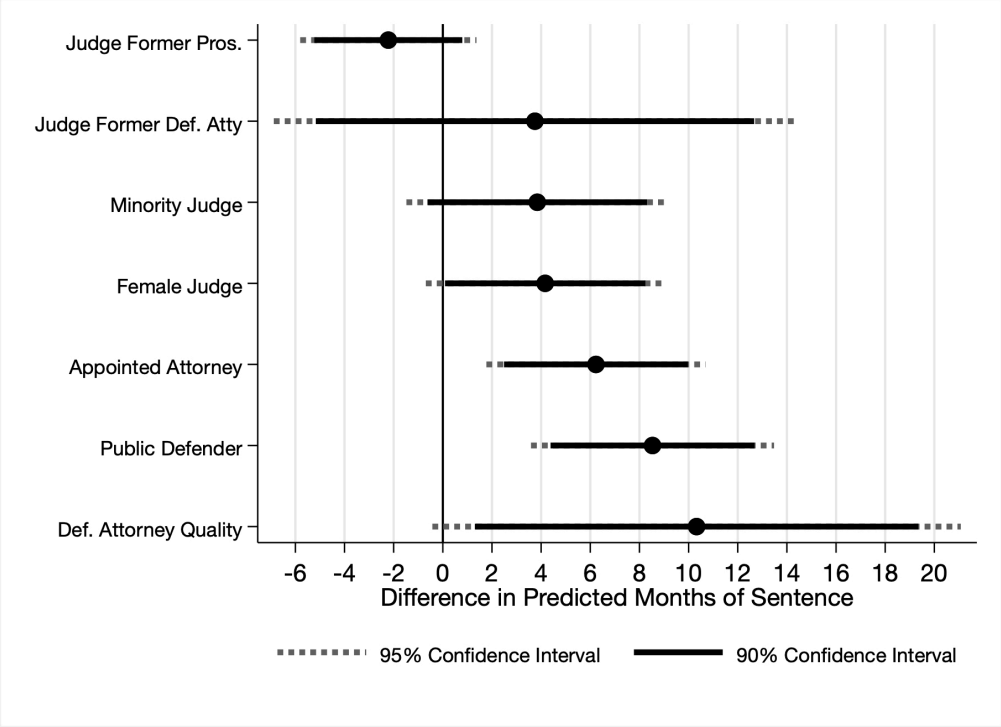

Figure 3.2 – Effect of Categorical Variables on Sentence Length

CHAPTER 4

JUDGE AND ATTORNEY INFLUENCE ON TIME TO DISPOSITION

A staple of college course syllabi in criminal justice, Herbert Packer's *Two Models of Criminal Justice* (1964), set out organizing principles for two divergent perspectives on the criminal justice process. The first, "crime control," requires informality and operational efficiency to deliver just deserts to wrongdoers in the name of public safety. The competing model, "due process," insists on formal criminal justice process, including numerous procedural hurdles, to ensure defendant rights and correctness in fact-finding. Much of how the criminal justice system functions can be illuminated through the lens Packer provided.

The balance between procedural safeguards and the need to move swiftly to protect the public creates pervasive tensions in justice policymaking. How long should appeals last for a convict who has been sentenced to die?[16] What standard of review should immigration judges use when deciding to delay deportation?[17] Do police have to wait to obtain a warrant to draw the blood of an uncooperative motorist they suspect to be intoxicated?[18]

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[16] See Texas' recent attempts to apply an expedited appellate process for those in the state that have been sentenced to execution (Blakinger, 2018).
[17] See former Attorney General Jeff Sessions' order to immigration judges instructing them to delay removal from the United States only for "good cause shown" (Alexander, 2018).
[18] See *Missouri v. McNeely*, 569 U.S. 141, (2013).

Though widely admired as a piece of theoretical scholarship, Packer's unparalleled insight about the key role of time in criminal justice has only resulted in a handful of empirical investigations regarding it (see e.g., Church et al., 1978; Hagan & Zats, 1985; Lushkin & Lushkin, 1986; 1987; Ostrom et al., 2007).

The time it takes for cases to be disposed of in criminal courts, though rarely considered by research, is an increasingly important indicator of the experiences of defendants and outputs of these institutions. It is common knowledge that American criminal courts are, "a system of pleas, not a system of trials" (*Lafler v. Cooper*, 566 U.S. 156, 2012) the functioning of which depend on "bargain justice" (Church, 1979). Over 94 percent of defendants in state and 97 percent in federal court plead guilty (Goode, 2012). Determinate sentencing regimes, such as sentencing guidelines, and other legal restrictions on the exercise of discretion mean that there are frequently more similarities in the sanctioning of defendants than there are contrasts. Thus, the process by which defendants arrive at those outcomes becomes an area of variation worth exploring.

Time has always been an essential consideration for criminal trial courts and the parties involved in them. For defendants, another day awaiting the end of their case can be significant. Defendants pending trial live with the uncertainty of possible punishment, incur the financial costs of an attorney, bail, or other fees, and must balance their personal and professional responsibilities with the obligation of regular court attendance. All of this led Malcom Feeley (1979) to famously declare that for many accused individuals "the process is the punishment." For the attorneys and the judge, time spent on one criminal case necessarily means that it is not spent on other cases. As the administrator of the court, the judge must maintain efficiency in processing cases to protect limited docket

space. Prosecutors and defense attorneys have similar constraints. A prosecutor's office has to meet the right to a speedy trial, retain mobility in combatting crime through the courts, and allot its resources to maximize its impact on the community it serves. Defense lawyers have to balance their own caseload. Public defenders often serve an overwhelming number of clients with a constant stream of new indigents with unique concerns (Gardiner et al., 2017). Private and appointed counsel may have a different calculus entirely, balancing their compensation or the defendants' ability to pay with the best representation they can provide to them (Blumberg, 1967). In this study, I explore how attorneys and judges shape how long it takes for criminal cases to be disposed of in federal district court.

4.1 Judges, Criminal Case Management, and Time to Disposition

Federal district courts face considerable caseload pressure. With just 677 authorized district judges over the past five years, these trial courts have disposed of over 1.3 million cases (Administrative Office of U.S. Courts, 2018). Though a much smaller portion of the docket than civil cases, each judge sees an average of 100 additional felony defendants added to their docket annually. Overseeing criminal cases brings special considerations, such as the Speedy Trial Act of 1974, which specifies that a trial must commence for a criminal defendant within 70 days of the filing of charges (18 U.S.C § 3161). However, this seemingly strict time limit is not always adhered to due to a number of legal caveats.[19] Judges, of course, must balance these administrative logistics with a concern for doing justice. For example, the judge ensures that a defendant understands

[19] Both parties in a federal criminal case may move for continuances, certain pretrial events and motions are not counted in the running total, the defendant may waive speedy trial rights altogether, and numerous other complex considerations work together to ultimately determine how long a defendant may await adjudication (18 U.S.C § 3161).

the nature of the charges (Fed. R. Crim. P. 10(a)), has access to counsel (Fed. R. Crim. P. 44), that the efforts by the state to bring the defendant to justice are legal (Fed. R. Crim. P. 12(b)(3)(C)), must guarantee that any guilty plea is knowing and voluntary (*Boykin v. Alabama*, 395 U.S. 238, 1969) among many other important, codified, responsibilities to protect defendant rights.

These countervailing concerns square neatly with Packer (1969) and his conception of crime control versus due process. Judges, like other human decision-makers, have sincerely held preferences that influence their professional choices (Segal & Spaeth, 2002; Epstein, Landes, & Posner, 2013). As the arbiter and administrator of a legal case, a judge can exercise their discretion to shepherd it toward its conclusion or delay it. The power and means to do this varies significantly by context. A growing area of research has examined managerial judging in civil cases and the extent to which jurists are involved in pushing cases toward settlement. Managerial judging involves the jurist's active participation in settlement negotiations between the parties in civil matters and has gained popularity in both state and federal courts (Resnik 1982, Kritzer, 1986; Boyd, 2013). In federal criminal cases, the Federal Rules of Criminal Procedure instruct the presiding judicial officer that "the court must not participate in [plea agreement] discussions" (Fed. R. Crim. P. 11(c)(1)). It is not permissible for federal trial judges to participate in plea negotiations nor can they encourage the defendant to accept a plea deal that has been presented to them (*United States v. Bradley*, 455 F.3d 453, 4th Cir. 2006).

Federal rules promoting impartiality mean the managerial judging style found in some civil contexts is prohibited in the U.S. district courts in criminal cases.[20] Yet, even though judges cannot have an active role in plea negotiations, they retain ultimate control of a criminal case's calendar. Based on their individual discretion, judges may, for example, decide to grant or decline continuances, choose to schedule hearings, set deadlines for filings, motions, and the date for trial (Fed. R. Crim. P. 12; Fed. R. Crim. P. 45). How judges exercise their agency in controlling court time is likely to be a function of their ideology, their prior legal background, and their socialization as a result of race and gender-specific experiences.

The models of due process and crime control articulated by Packer (1964) have obvious correlations with liberal and conservative ideologies about law enforcement. In fact, the procedural rights afforded to alleged criminals have been the subject of prominent conservative efforts in the selection and evaluation of judges themselves. Richard Nixon wrote in a statement to the Republican National Convention Committee in 1968,

> "At every level of law enforcement and criminal justice there are needed men with an awareness of the severity of the crime crisis, men with a new attitude toward crime and criminals. Nowhere is this more necessary than in the judiciary, from the lowest court to the Supreme Court. At the judicial level it is time that the rights of the victimized millions in this country receive at least the same measure of concern and attention and action as have the rights of the criminally few" (Nixon, 1968).

President Nixon called for dramatic changes in how the courts interacted with criminal defendants at every level. In his view, this was more than simple rhetoric, since in 1972,

[20] While federal judges are prohibited from engaging in active plea negotiations, a number of states have been experimenting with managerial judging in criminal cases (Batra, 2015).

he claimed to have lived up to his goal. He explained, "I have kept that promise. I am proud of the appointments I have made to the courts…whenever I have the opportunity to make more appointments to the courts, I shall continue to appoint judges who share my philosophy that we must strengthen the peace forces as against the criminal forces in the United States." (Nixon, 1972).

Nixon is not the only Republican president to have clearly articulated his intention to change the judiciary in order to rollback procedural protections for defendants (Oliver, 1998; 2003). Most recently, Donald Trump has made numerous public statements about his intent to influence the justice system to combat what he claims is a crisis of illegal immigration.[21] Under his watch, the Department of Justice imposed a quota system that evaluates the immigration judges based on how many cases they are able to complete annually (Torbati, 2018).

This conservative focus on crime control has potential implications for judicial behavior when supervising a criminal case and restricting how much of the court's time it will occupy. These stances of Presidents Nixon and Trump are single examples of a long-term trend of partisan political concerns influencing the staffing of the federal district courts (Rowland, Carp, & Stidham, 1984; Alumbaugh & Rowland, 1990; Goldman, 1999; Giles, Hettinger, & Peppers, 2001; Epstein et al., 2007). District court judges as overseers of federal trials can provide initial protection to an administration's efforts under legal challenge. These judges are also frequently elevated to the U.S. Court of Appeals and a select few become U.S. Supreme Court justices (Goldman, 1967). Thus, district court appointments are an important output of the ruling majority and these elite

[21] See for example a recent speech made to the American Farm Bureau where he called U.S. immigration laws, "sick, demented laws that we have to change" (Trump, 2019).

individuals are likely to share conservative views about crime control. Past research on the impact of conservative trial judges in criminal cases generally shows defendants fare worse when facing them (Nagel, 1962; Cook, 1973; Schanzenbach & Tiller, 2007). I expect that more conservative judges will shorten the length of criminal case duration since they will extend fewer procedural safeguards to defendants.

Another influence on a judge in controlling the calendar of a criminal case is their prior legal experience. Behavior on the bench can be conditioned by a jurist's life experiences and social background (Nagel, 1961; Ulmer, 1970; Giles & Walker, 1975; Goldman, 1975; Tate & Handberg, 1991). One experience that has a direct connection to criminal cases is whether they have previously served as prosecutors or defense attorneys themselves. Both kinds of positions require occupational socialization and many have intrinsic motivations for seeking them that involve strong normative views of justice (Felkenes, 1975; Heumann, 1981; Weiss, 2005). While in the job, prosecutors have to pursue convictions while defense attorneys must zealously represent the accused as a simple matter of routine. Over time, I expect that these experiences shape how these lawyers view criminal defendants.

Survey evidence has shown strong differences between public defenders and prosecutors view criminal justice (Ramsey & Frank, 2007; Smith et al., 2011). In fact, a growing field of inquiry is beginning to scrutinize how the mindsets, culture, and socialization of prosecutors are linked to miscarriages of justice such as wrongful conviction (e.g., Findley & Scott, 2006; Burke, 2005; Medwed, 2004). From the opposite side of the courtroom, Worden (1995) found that prior defense attorney experience made judges less likely to accept prosecutor's sentencing recommendations. I anticipate that

these powerful social experiences have a lasting impact on the decision-making of those who later take the bench. Former defense attorneys seem likely to extend more court time to criminal defendants, while former prosecutors will extend less.

The socialization of judge's gender and race may also have an impact on how a judge manages the calendar of a criminal case. Numerous prior works have tested the impact of a judge's demographic traits on the cases before them (Boyd, Epstein, & Martin, 2010; Choi et al., 2011; Kastellec, 2013; Collins & Moyer, 2008; Songer, Davis, & Haire, 1994; Farhang & Wawro, 2004). In general this field of inquiry shows that gender and race effects are present only where the life experiences of the judge have a direct connection with the legal area at hand.

In the oversight of federal criminal cases, I anticipate that female judges will extend the time they take to be resolved. While research has found that women's predispositions toward collaboration and consensus building accelerate the disposition of civil cases (Boyd, 2013), criminal cases do not allow for the involvement of the judge in plea-bargaining (Fed. R. Crim. P. 11(c)(1)). Accordingly, the tools available for the management of criminal cases typically involve formal pretrial procedures, such as scheduling hearings, deadlines, or allowing for continuances. If female judges are more naturally predisposed toward building a consensus, I hypothesize that they should be less likely to deny either party access to the court to facilitate a mutually agreeable outcome in a criminal case. Moreover, limited evidence suggests women are more favorable toward offenders than men (Halim & Stiles, 2001; Whitehead & Blankenship, 2000; Applegate, Cullen, & Fisher, 2002) and thus female judges should institute more formal processes in keeping with the model of due process espoused by Packer (1964).

Judges who are black or Hispanic may also be more favorable to defendants due to skepticism of the criminal justice system. The disparate impact of criminal enforcement is borne by communities of color (Foster & Hagan, 2009) and a consequence of that is that racial minorities are often more critical of its actions than whites are (Tyler, 2001, Hurwitz & Peffley, 2005, Lundman & Kaufman, 2003). Skepticism of criminal justice should translate into views in keeping with the Packer (1964) model of due process. I expect that judges who are racial minorities will extend cases, on average, to check the power of prosecutors and law enforcement through formal process.

4.2 Attorneys and the Life of a Criminal Case

Attorneys have a more direct role in determining the lifespan of a criminal case. The prosecutor holds much of the power. The prosecutor exercises leverage as the first mover deciding if a person will be charged, what they will be charged with, and when the charges should be filed (Glaeser et al., 1998; Spohn & Holleran, 2001; Worrall, Ross, & McCord, 2006). This decision not only begins the case in the court system but also lays the foundation for all future plea-bargaining negotiations. Concern has developed about whether prosecutors systematically file more charges than are necessary to secure a just outcome, called "overcharging," as a means to ensure a favorable negotiating landscape (Davis, 2007).

As the representative for the government, the prosecutor has similarly broad negotiating authority (*Bordenkircher v. Hayes,* 434 U.S. 357, 1978). In federal plea-bargaining, either the prosecution or defense can begin negotiations, however, it is the U.S. Attorney's office that retains sole discretion to decide whether a potential agreement

will be extended and what it will entail (Justice Manual § 9-27). Federal prosecutors are permitted to engage in charge-based agreements (regarding which charges will be pled to), sentence-based agreements (stipulations to a particular sentencing guideline range or recommendations regarding length), or an agreement that combines the two (Brown & Bunnell, 2006). In return, the Assistant U.S. Attorney can seek a litany of possible requirements be imposed as part of the plea agreement from the cooperation of the defendant in an ongoing investigation to limits on future avenues of professional employment. By contrast, the menu of options presented to the defendant's attorneys is limited. They can seek their client's consent to a proposed agreement, try to convince the prosecutor to change the terms, or go to trial (Mather, 1979; Alschuler, 1975).

Prosecutors have strong incentives to see that cases are rapidly disposed of. Conviction statistics are metrics on which they are frequently assessed and prosecutors work within the limitations of their budgets to maximize them (Gordon & Huber, 2002; Rasmusen, Raghav, & Ramseyer, 2009). Even federal prosecutors, though backed by the might of the U.S. Government, have resource constraints (O'Neill, 2003). At the same time, U.S. Attorney's Offices face external pressure from presidential administrations, Congress, and the public to respond quickly to critical issues. Consequently, they make strategic choices about which cases to pursue in order to be politically responsive (Whitford & Yates, 2009; Boyd & Boldt, 2018). The speedy disposition of cases can be seen as a critical part of meeting these demands.

Defense attorney incentives relating to time in federal criminal cases are more complex. This is due, in no small part, to the different kinds of defense counsel that are provided. Defendants in district courts are typically represented either by an appointed

lawyer, full-time public defender, or private attorney (Harlow, 2001). Blumberg (1967) and Alschuler (1975) argued that the compensation structure of defense lawyers might fundamentally alter the representation they provide. The crux of their argument was that defense lawyers whose pay does not vary based upon what they commit to cases have few incentives to substantially help their clients. Instead, they asserted that defense attorneys with fixed incomes had greater incentives to quickly churn cases and maintain their standing with the other members of the court since they do not secure any additional reward for investing more time and resources into a case. This argument, in combination with research that has found that publicly supported defense counsel garners worse outcomes for their clients (Elder, 1989; Champion, 1989, Spohn & Holleran, 2002; Hartley et al., 2010), underpins my expectation that public defenders will have the fastest disposition rates, followed by appointed lawyers, and then private attorneys.

When comparing the preferences of prosecutors and defense attorneys about the time it takes to resolve criminal cases, it is reasonable to suspect that a defense attorney would have it be longer. For example, defense attorneys are likely to submit aspects of the prosecutions case to formal challenge or may need to signal that they are willing to take a case to trial as part of negotiations (Heumann, 1981). How this balance in preferences controls case duration is likely to be influenced by the relative abilities of counsel. The literature on appellate court litigation has identified levels of experience as a useful indicator of attorney performance (McGuire, 1995; Haire, Lindquist, & Hartley, 1999).

Attorneys who are more experienced are likely to be more familiar with the law, the jurisdictions they practice in, and, most importantly, be better negotiators. I expect that if the prosecutor is more experienced relative to the defense attorney, then the case will be disposed of faster.

External to both counsel experience and the type of defense lawyer provided to the defendant, the substantive quality of the attorneys' representation can prove influential (Blumberg, 1967; Galanter, 1974; Johnson et al., 2006; McAtee & McGuire, 2007). Variation in quality is pronounced for criminal defense lawyers. Many commentators on the criminal courts have pointed out that defense representation is often lacking, leading some to claim that the constitutional right to representation under the Sixth Amendment is not being met ("Gideon's Promise Unfulfilled", 2000). Lawyers who are distracted, unmotivated, or ethically compromised may herd defendants through the court process. I anticipate that defendants who have low quality representation will have their cases disposed of faster, relative to those who are represented zealously.

4.3 Data Collection

In order to test my theory regarding the impact of courtroom professionals on time to disposition, I create a new dataset designed to place them in focus. Existing data sources on criminal cases provide a narrow window with which to view the important work of America's criminal trial courts. The predominantly used sources, the U.S. Sentencing Commission's Offender Datafiles and the Pennsylvania Commission on Sentencing's data, provide a rigorous resource to examine how the law and defendant characteristics structure sentencing outcomes (Steffensmeier & Demuth, 2000; Mustard, 2001; Johnson et al., 2008; Steffensmeier et al., 1998). These datasets are only designed

to study sentencing decisions. For example, in the U.S. Sentencing Commission's data, time to disposition, filing dates, and sentencing dates are not included (U.S. Sentencing Commission, 2013). Another prominent data source, the Federal Judicial Center's Integrated Criminal Database, includes many of those benchmarks but has no information related to the defendant and includes only basic charging information (Federal Judicial Center, 2018a). The two data sources also do not share common identifiers so that they may be easily combined. A critical omission for those interested in understanding the role of judges and lawyers in these cases is that none of these data include any variables or identifiers regarding these essential courtroom professionals.[22]

I improve on these existing data sources by combining them with rich information from original court documents that allow for the addition of the identities of the judges and attorneys. This new dataset has the capacity to provide a balanced look at criminal cases by incorporating detailed information on the defendant and legal process from the Sentencing Commission data, key case benchmarks from the FJC Criminal Integrated Database, and the substance of the case and the people in charge of processing them from court documents. Altogether, this dataset represents more than 3,000 criminal defendants representatively sampled from 20 U.S. district courts. [23]

The process for creating this new data entailed randomly sampling twenty sentenced defendants for each district-year from 2006 to 2013 from the FJC data. For

[22] The commission data did at one point include defense counsel type but it stopped gathering after FY 2003 (U.S. Sentencing Commission, 2013).

[23] Specifically, it utilizes the districts of Arizona, central California, District of Columbia, middle Florida, northern Iowa, northern Illinois, southern Illinois, Kansas, eastern Kentucky, eastern Louisiana, Massachusetts, Maine, eastern Michigan, middle North Carolina, New Jersey, southern New York, middle Pennsylvania, South Dakota, western Virginia, and Vermont.

every sampled defendant, a docket sheet was downloaded from Public Access to Court Electronic Records (PACER) the online records center of the U.S. court system. Docket sheets are court documents that provide an annotated calendar of events that happen during a case, provide contact information for the attorneys, and identify the judge(s) involved. Judge and attorney names were coded directly from the docket sheet. The observation generated by pairing the FJC data and the docket sheet was then linked manually with an observation in the U.S. Sentencing Commission's Offender Datafiles using common variables (U.S. Sentencing Commission, 2013).[24] Only 159 cases could not be matched to an observation in the U.S. Sentencing Commission's data.

4.4 Variables and Methods

The dependent variable is *Time to Disposition*, which is the number of days from filing to sentencing constructed from the FJC Criminal Integrated Database.[25] To analyze the duration of these cases, I use a negative binomial count model predicting the number of days from court filing to sentencing in each defendant's criminal case. Since this sample involves sentenced defendants only, there is no censoring present in the data that would necessitate usage of a survival model. Regardless, the results reported here are robust to using survival methods.[26] The Kaplan-Meier function for the sample is displayed in Figure 4.1. As one can see, nearly 70 percent of cases are disposed of within

[24] Variables used for linking include the district, month of sentencing, length of prison sentence, length of supervised release, length of probation, dollar amount of fine, dollar amount of special assessment, dollar amount of restitution, the individual statutes associated with the charges of conviction, and other details.

[25] I exclude 39 cases (1.4 percent) that have durations longer than 5 years.

[26] A Cox proportional hazards model was tested on the data and, with the exception of a few coefficients associated with fixed effects, it produced identical results in terms of statistical significance and direction of effect.

the first year of them being filed with the district court. Within two years, less than ten percent are still active. The total number of cases in the sample is 2,750 with up to twenty defendants sampled per district-year from 2006 to 2013 in twenty judicial districts. Probability weights are used to measure each defendant relative to the population of defendants sentenced within a given district-year. I enter sentencing *Year Fixed Effects*, *District Fixed Effects*, and district-year clustered robust standard errors to control for heterogeneity due to jurisdiction and serial correlation.

The first independent variable of interest, *Judicial Ideology*, is the judicial common space score for the judge presiding at sentencing and spans -1 for the most liberal judge to +1 for the most conservative (Giles et al., 2003; Epstein et al., 2007; Boyd, 2015). Due to how conservative politics in America has retained a focus on crime control, I expect that as the judge becomes more conservative the faster he or she will see defendants handled in their courtroom. I incorporate the judge's prior legal experience by including the indicator variables *Judge Former Prosecutor* and *Judge Former Defense Attorney*. Each captures whether the judge has the relevant career background as reported by the Federal Judicial Center biographical database (Federal Judicial Center, 2018b). If my theory is supported, judges who have previously worked as prosecutors should shepherd defendants through more quickly because of their socialization to be more aggressive toward them. Conversely, I expect that those judges with previous defense experience will institute more formal procedures to protect defendant rights and thus they will dispose of cases slower.

Finally, I account for the influence of socialization according to race and gender by including indicator variables for whether the case had a *Female Judge* or *Minority Judge*. Based upon my theory, I hypothesize that both will extend the life of cases.

Turning to the impact of attorneys on the duration of criminal cases, I use a measure of *Experience Disparity*. The prosecutor and defense attorney's year of bar admission was gathered from electronic sources such as attorney profiles, state bar databases, and disciplinary records. This variable is the number of years of experience that the prosecutor has minus the number the defense lawyer has.[27] I expect that as the prosecutor becomes more experienced relative to the defense, the more rapidly the case will be concluded. The effects of different types of defense counsel and their corresponding incentive structures regarding case length are tested through a three-level indicator variable. The reference category is for a retained, private, lawyer while coefficients are estimated for *Appointed Counsel* (CJA panel attorney) or a *Public Defender*. I anticipate that public defenders will have the shortest time to disposition since they are not compensated relative to the time they invest in a case. Meanwhile, since appointed lawyers in the federal district courts and private lawyers are commonly able to bill for time I expect their cases to be disposed of slower. To account for variation in the substantive character of representation provided by defense lawyers, I include a measure of *Defense Attorney Quality*.

[27] By rule, the first listed lawyer on the docket was used.

This variable tracks whether the defense lawyer has been sanctioned by a state bar association at some point during their career. I expect that those attorneys who have stepped out of line to such an extreme degree that it would merit public intervention by the bar to invest less in their individual clients. Thus, they should dispose of cases more quickly.

A number of legal aspects involved in the case of each defendant are likely to impact how long it takes. To control for case complexity, I enter *Number of Unique Charges* and *Number of Codefendants* into the model. The first variable is sourced from the U.S. Sentencing Commission Offender Datafile and is the number of unique charging statutes levied against the defendant. The second is gathered from the FJC Integrated Criminal Database and is the maximum defendant number for each docketed case. Together these represent the complexity of a criminal case. I expect that the complexity of the case increases the time it takes to be processed by the court system. Next, I include whether the defendant pleaded guilty or went to *Trial*. Only 135 cases (4.91 percent) are coded as a 1 for trial. I expect those defendants who go to trial will spend more time in court. Similarly, I model whether the defendant was the recipient of a *Government Sponsored* downward departure at sentencing as recorded by the U.S. Sentencing Commission. Government sponsored departures that are favorable to the defendant are likely to take longer to negotiate and many are based on extended cooperation in an ongoing investigation (Guidelines Manual §5K1.1, 2016). To control for the seriousness of the defendant's alleged conduct I include a measure of *Offense Severity*, which is the base offense level assigned by the U.S. Sentencing Guidelines. And, to account for the defendant's *Criminal History*, I enter the six level criminal history category assigned

under the same regime. I anticipate that more criminally severe cases and defendants will take longer for the justice system to process. Finally, *Offense Type Fixed Effects* are employed to separate the nature of different crimes. This is simply the U.S. Sentencing Commission's 44 category offense typology used as a categorical variable.

I model the extralegal influence of an offender's demographic characteristics through measures provided by the U.S. Sentencing Commission. Defendant race is controlled for using a five-level categorical variable with the baseline of white defendant. The alternative categories with estimated coefficients are for a *Black Defendant*, *Hispanic Defendant*, or *Other Race Defendant*. To control for the influence of the biological sex of the defendant, I capture whether the case includes a *Female Defendant*. I also include *Defendant Education*, which takes the value of 1 if the defendant has attended college as a rough control for socioeconomic status. *Defendant Age* in years is also incorporated. I expect that non-white defendants, male defendants, less educated defendants, and younger defendants will have faster disposition times due to diminished due process that may come with cumulative disadvantage (Spohn, 2008; Wooldredge et al., 2015).

4.5 Results

Table 4.1 contains the results of the negative binomial model. The model does moderately well in predicting the length of criminal cases reducing errors by 22.43 percent. All four judge-focused variables are not statistically distinguishable from zero. Contrary to expectation, judge characteristics appear to have no influential role in setting the length of criminal cases. This stands in sharp contrast to the growing literature examining managerial judging in civil cases where judges have an appreciable impact on whether and how fast cases settle (Kritzer, 1986; Boyd, 2013). One potential reason for

this is the Federal Rules of Criminal Procedure's prohibition on judges being involved in plea negotiations (Fed. R. Crim. P. 11(c)(1)). If 95 percent of criminal cases are resolved by guilty plea, then in the vast majority of cases judges are prohibited from meaningfully participating in the dispute resolution process. This analysis produces no support for the notion that the other aspects of setting the court's calendar, which may extend or shorten the life of a criminal case, are impacted by a judge's characteristics, background, or political preferences.

While individual judges were not influential in determining the length of a criminal case, both the *Experience Disparity* between the parties and counsel type, whether the defendant was represented by a *Public Defender*, produced statistically significant results. Viewed in a certain way, this may provide some circumstantial support for the importance of the Federal Rules of Criminal Procedure since attorney characteristics impact length even though the judge's do not. Predictive margins are reported to convey the substantive predicted impacts of these variables on case length.

The predicted impact of *Experience Disparity* is displayed in Figure 4.2. From this variable's minimum value (where the defense attorney has nearly 40 years more experience than the prosecutor) to its maximum (where the opposite is true) the case length is predicted to decrease by nearly two months. This is evidence that the experience of the attorneys involved meaningfully affects their negotiating ability. As the prosecutor becomes more seasoned, they will be able to obtain convictions at a faster pace. The variable for counsel type reports significant results in that those defendants represented by a *Public Defender* have significantly faster disposition times. Compared to a private defense lawyer, defendants with a public defender are predicted to have their case

concluded 38 days faster. Notably, *Appointed Counsel* is not statistically distinct from having a retained lawyer. These findings are in keeping with the arguments espoused by Blumberg (1967) and Alschuler (1975) that the financial compensation associated with investing additional time into a case has real consequences for criminal defendants. Since both appointed and private counsel in federal court are routinely able to bill hourly for their services, additional time spent on the case is encouraged. Meanwhile, public defenders that are paid through fixed salary have no such financial incentive. Finally, the measure of *Defense Counsel Quality* is statistically insignificant. This proxy for the quality of representation provided by defense lawyers does not appear to matter in determining case length but may be important in other contexts.

The legal controls largely had expected effects on case duration. *Number of Unique Charges* is statistically significant and positive indicating that the legal complexity associated with the criminal case increased the time it took to be prosecuted. For each additional unique count against the defendant, the predicted case length increased by roughly two weeks. The predicted difference in case length between having just one unique charge and the maximum of twelve was approximately 7.5 months. Whether or not the case went to *Trial*, unsurprisingly, had a substantial effect on overall case length. Cases that terminated through trial were over six months longer than cases with guilty pleas as predicted by the model. Those defendants who were able to secure a *Government Sponsored* downward departure from the Sentencing Guidelines had cases that were nearly two months longer.

Both *Offense Severity* and *Criminal History* had a significant and positive effect on case length. The more serious a defendant's crime and record, the longer the case took to be disposed of. *Number of Codefendants* did not have a statistically significant effect.

Extralegal defendant traits had a mixed impact on case duration. Both *Black Defendant* and *Other Race Defendant* had increased case durations relative to whites, contrary to expectation. Meanwhile, older defendants (*Defendant Age*) also had longer cases. *Female Defendant*, the college educated (*Defendant Education*), and *Hispanic Defendants* did not experience appreciably different case lengths than their reference categories.

4.6 Discussion

This analysis provides the first contemporary look at how the ideals of due process and crime control identified by Packer (1964) impact the timing of criminal cases. The fact that this theory, with such clear connections to judicial behavior in criminal cases, did not produce significant results may be surprising. Of course, this lack of significant findings may be restricted to federal courts where strong provisions against judicial involvement in the dispute resolution process exist. As negotiators who were independent of such involvement, attorneys did have a meaningful role to play in using time as part of the negotiating process and in service of their broader goals.

This study can be expanded substantially in terms of its depth. Many events happen during the life of a criminal case that changes its course. Attorneys constantly speak, position, and negotiate through pretrial proceedings. One way to add richness to this study would be to examine individual motions by attorneys, waivers by the defense (e.g., indictment waivers, waivers of speedy trial rights, waiver of jury trials), and other

events systematically recorded into the court docket sheets to pull apart the complex pretrial process that leads to the mutually agreed upon guilty plea in so many cases. It is clear from this analysis that much of the variation in case duration has yet to be successfully explained or predicted. Even with large numbers of legal controls, offense type fixed effects, controls for jurisdiction, and time, the models performed only moderately well. Regardless of what such an analysis might show, time will continue to be an essential dimension in the administration of justice in our criminal courts.

Table 4.1- Negative Binomial Results, Number of Court Days from Filing to Sentencing

Variable	*Coefficient*	*RSE*
Judge Factors		
Judge Ideology	-0.049	(0.041)
Judge Former Prosecutor	0.022	(0.030)
Judge Former Defense Attorney	-0.064	(0.045)
Minority Judge	0.043	(0.038)
Female Judge	-0.038	(0.038)
Attorney Factors		
Experience Disparity	-0.002**	(0.001)
Appointed Counsel	0.060	(0.038)
Public Defender	-0.113**	(0.044)
Defense Attorney Quality	-0.011	(0.061)
Legal Controls		
Number of Unique Charges	0.044**	(0.011)
Number of Codefendants	0.005	(0.004)
Trial	0.438**	(0.053)
Government Sponsored	0.154**	(0.046)
Offense Severity	0.015**	(0.002)
Criminal History	0.016**	(0.007)
Defendant Controls		
Black Defendant	0.079**	(0.034)
Hispanic Defendant	-0.040	(0.043)
Other Race Defendant	0.282**	(0.141)
Female Defendant	-0.007	(0.041)
Defendant Education	-0.018	(0.034)
Defendant Age	0.004**	(0.001)
Fixed Effects		
Offense Type	INCLUDED	
District	INCLUDED	
Sentence Year	INCLUDED	
Observations	2,750	
% Reduction in Error	22.43%	

Dependent variable is *Time to Disposition*. Probability weights are used to weight each defendant according to their proportion to the population of sentenced defendants in each district-year. Significant coefficients at $p < .05$ are indicated with an ** while those at $p < .10$ are marked with an *.

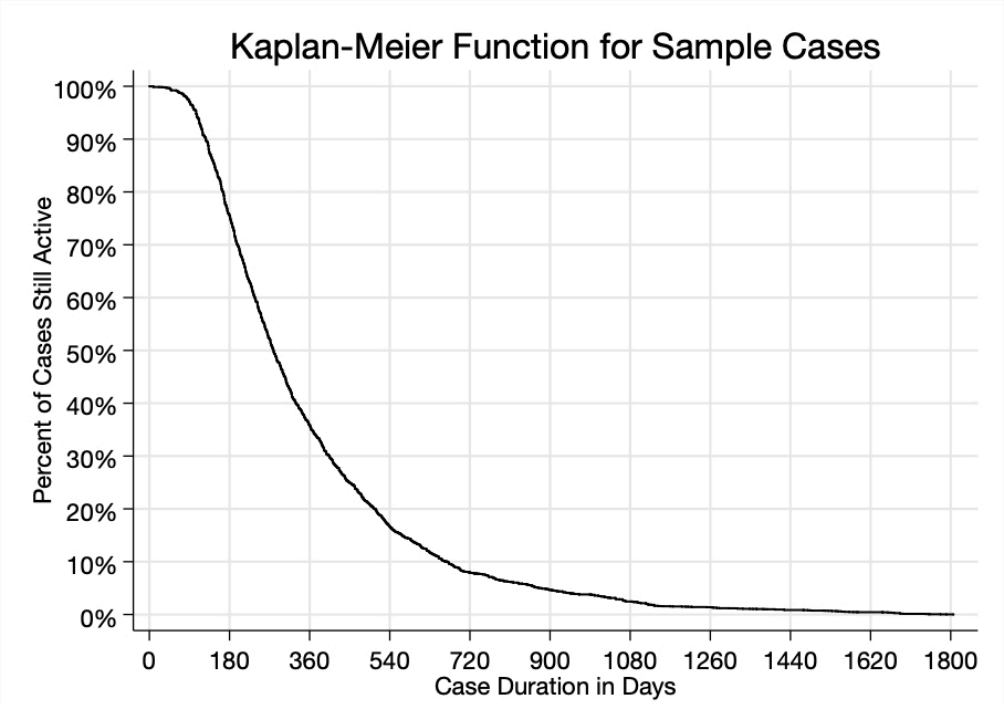

Figure 4.1 – Kaplan-Meier Function of Case Duration

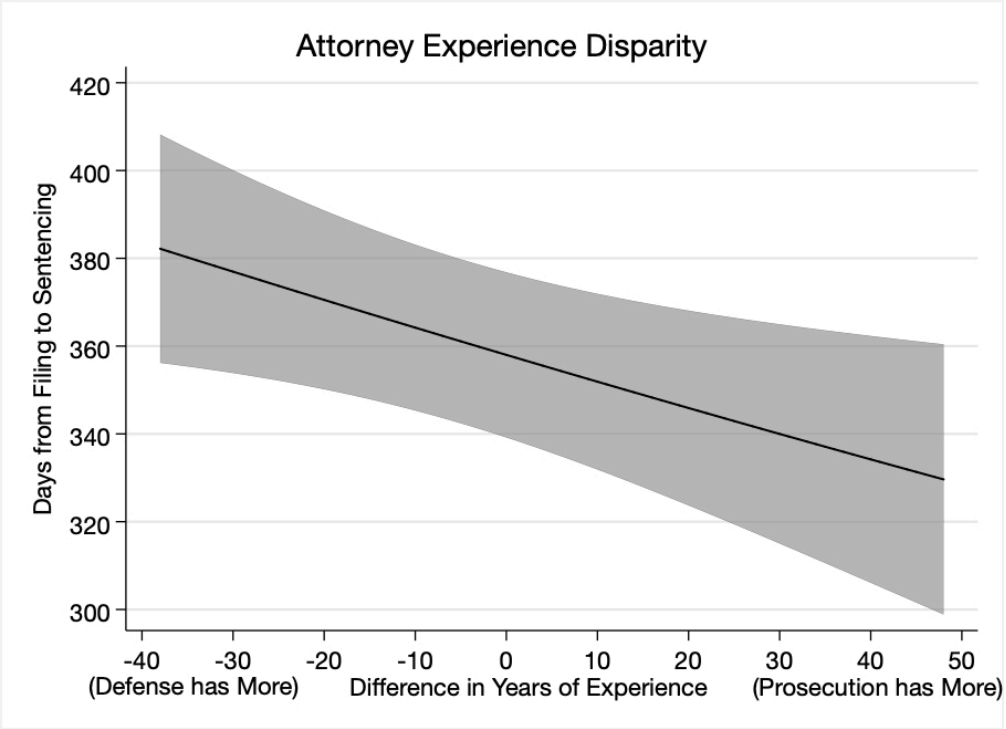

Figure 4.2 – Effect of Attorney Experience Disparity on Case Duration

CHAPTER 5

CONCLUSION

From the outset, this dissertation had several goals. Its primary purpose was to evaluate the role of attorneys and judges in criminal cases, which is underpinned by a widely recognized but aging literature (Blumberg, 1967; Church, 1975; Eisenstein & Jacob; 1977; Feeley, 1979; Heumann, 1981). The results drawn from the analyses reaffirm their importance. Defendants faced different probabilities of pretrial detention, case lengths, and terms of incarceration on the basis of who represented them or the judge who oversaw the proceedings.

Taken together, the results suggest that judge characteristics matter in federal criminal cases where the law acknowledges them as the sole decision-maker (bail and sentencing) but not where the law restricts their involvement (as in the crucial role of plea bargaining and its connection to disposition time). Judge ideology, legal background, race, and gender had substantive impacts in bail. Meanwhile, ideology and gender both influenced the sentence length of offenders. Across all three analyses, defendants who could pay for their own lawyers fared better. Defendants with a publicly provided defense were more likely to be detained pretrial and faced longer sentences. In Chapter 4, it becomes apparent that this very well could be due to changes in the extent of representation provided by these attorneys as their defendants also had the shortest case disposition times. If true, this is consistent with prominent criticisms of the public defense system in the United States. It supports the claim that because of the structural

challenges faced by those who represent indigent clients, they garner substandard outcomes (Alschuler, 1975; Patton, 2012). The measure of defense attorney quality only reached statistical significance in regards to sentencing. Similarly, attorney experience had discernable effects but only with respect to case duration.

At this stage, it is difficult to discern why certain inconsistencies emerge between these three aspects of federal criminal cases. Take, as an example, the finding that a judge's experience as a former defense lawyer makes them more likely to release a defendant on cash bail when such experience had no significant impact on sentencing. This is difficult to explain since the rationales underpinning a judge's view of a defendant seem unlikely to differ substantially between bail (about risk) and sentencing (about punishment). By contrast, the differences in findings on attorney experience may have a simpler explanation. Attorney experience has a closer connection to the dynamic adversarial processes that determine the length of criminal cases. Thus, the difference between that finding and the lack of results found in pretrial detention and sentencing may simply be contextual. Further studying how court professionals themselves view their role at different stages in criminal cases could reveal the logic behind these differences.

The most surprising finding from this project was that the models for sentencing produced large effects for judges and attorneys compared to pretrial detention and time to disposition. Federal guidelines were implemented in 1987 to limit disparities between similarly situated offenders at sentencing (28 U.S.C. §991(b)). Even after the sentencing guidelines were declared advisory in 2005, Hofer (2007) found that increased discretion did not cause great change in aggregate sentence lengths. I found that individual judge

ideology resulted in as much as 11 months difference in incarceration length between the most liberal and most conservative jurists. Shifts in the probability of detention outcomes and time to disposition were smaller by comparison. Given the restrictive legal context of the guidelines, I anticipated that case disposition times and bail would be more malleable to the traits of individual judges and attorneys. These findings suggest that may not be the case.

The secondary goal of this dissertation was to create a dataset that paired individual judges and attorneys with rich case-level information across a large representative sample. To this end, 2,699 cases with complete information across all variables were gathered in 20 districts. The intensive process began by coding all listed attorneys and judges from randomly sampled dockets gathered from the Federal Judicial Center's Criminal Integrated Database (Federal Judicial Center, 2018a). Then, I manually matched each docket's observation with the United States Sentencing Commission's Offender Datafiles without common identifiers (U.S. Sentencing Commission, 2013). The overall difficulty of the procedure limited the number of cases I was able to gather and use. Even after the completion of this dissertation, I am continuing the data collection behind this project and will finalize it so others may use it. Once finished, I believe it will be an important resource for studying criminal trial courts, judicial behavior, and the effects of counsel.

Despite its breadth and potential, this project does have some limitations. The most prominent limitation is one of legal context. Federal criminal justice differs substantially from the state/local environment. Though they have expanded dramatically over time, federal prosecutions make up a small proportion of the United States' criminal

actions (O'Neill, 2004). Most prosecutions occur at the state level and have a greater share of minor offenses, interpersonal street crime, and property crimes (Motivans, 2019; Rosenmerkel et al., 2009). Moreover, states can have distinct criminal laws, criminal procedure, judicial systems, selection methods, and rules governing counsel. Another potential limitation is the findings being time bound. While defendants sentenced from 2006 to 2013 were selected to ensure completeness in the online dockets, federal prosecutorial priorities change over time (Boldt & Boyd, 2018; Whitford & Yates, 2009). Sweeping changes have, and are continuing to be made, in the laws surrounding federal criminal justice (*United States v. Booker,* 543 U.S. 220, 2005; Rascoe, 2019). As the legal parameters surrounding federal criminal justice continue to evolve, so too may the behavior of those that carry them out.

Going forward, there is great potential to expand upon the work presented in this dissertation. In examining pretrial detention, future analysis could center on the assignment of monetary amounts in cash bail. Exploring the amounts required of different defendants could provide greater variation in how individual judges and attorneys assess the risk of those before them. Further, it could reveal who bears the greatest financial burden in pretrial release in terms of race, gender, age, and type of offense. In testing sentencing decisions, further study could be done to assess what types of criminal cases generate appeals and to what extent those appeals are successful. An emphasis of that study would be to see whether those defendants represented by a public defender or appointed counsel seek appeals more frequently. How those defendants are received on appeal may speak volumes about the quality of representation provided by a public defense and how the court system views the competence of different types of

attorneys. In studying time to disposition, one clear avenue for expansion is to incorporate motions by counsel into the analysis. Motions are prevalent during the court proceedings and can meaningfully hasten or delay the outcome. For counsel, there is a clear tradeoff between filing motions, being able to negotiate informally with the opposing side, and keeping a favorable relationship with the judge. The strategic usage of motions itself would be an interesting frame of analysis.

Given the generalizability concerns brought by the federal context, a straightforward extension of this project could be to examine judges and attorneys in local criminal courts. Such an analysis may reveal even greater influence on the part of these key figures. The contrasts in law could cause dramatic differences in case handling even between states and local jurisdictions. One could also broaden the focus from the influence of lone attorneys and judges to examining group decision-making dynamics. While individual attorneys and judges undoubtedly affect the cases they are tasked with adjudicating, local legal culture and norms may also define what happens to defendants (Church, 1975; Eisenstein & Jacob; 1977). Whatever the case, many interesting projects remain to be done on criminal trial courts and the people that work within them.

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