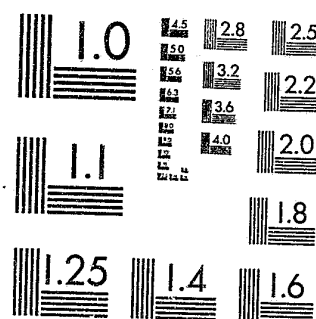


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Alternative Models for Defending the Indigent in Virginia

Final Report

This report was prepared under a grant from
the National Institute for Justice

81-17-C-1-000

October 31, 1982

Paul H. Radtke
Patricia P. Sample
Larry J. Cohen

American Institutes for Research
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I. INTRODUCTION

There are three primary methods that communities use to provide legal services to indigent criminal defendants:

- Soliciting the services of members of the bar on a voluntary (pro bono) basis;
- Soliciting such services on a reimbursed basis (assigned counsel); and
- Establishing a full-time agency to provide the services (public defender).

None of these approaches is ideal. Voluntary systems are notoriously unreliable and are insufficient to serve all of the clients needing such services. Assigned counsel systems are the most commonly used, but critics have raised questions about the quality of the services they provide, and they tend to be expensive. Public defender agencies are said to be efficient and economical, but charges of poor quality of defense have been raised against them as well.

The purpose of this report is to contribute to an empirical foundation for making choices among these systems in the State of Virginia. At issue is the experimental

public defender system that has been operating in four jurisdictions within the state during the past ten years.

Virginia's experimental public defender system was officially inaugurated in April, 1972 with the passage of legislation

to create a Public Defender Commission, provide for its membership, define its powers and duties; to provide for public defenders in certain cities, and to prescribe their duties. (Enacted by General Assembly of Virginia, Bill No. H714.)

The immediate catalyst had been a study report by the Board of Governors of the Criminal Law Section of the Virginia Bar. But the history of efforts leading to the legislation is one of enlightened concern about defendant's rights, as well as of several false starts toward a public defender system. The highlights are summarized below.*

Virginia courts were authorized as early as 1849 to appoint counsel for indigent criminal defendants. At that time, the Virginia Supreme Court essentially mandated the provision of counsel to indigents in capital cases, holding

*The highlights have been extracted from "A Study of the Defense of Indigents in Virginia and the Feasibility of a Public Defender System," Report of the Board of Governors, Criminal Law Section, Virginia State Bar to the Governor and the General Assembly of Virginia, December 1971.

that "every person accused of crimes has a right to have counsel to aid him in his defense." A 1940 statute extended this provision to all felonies in Courts of Record. In 1963 the United States Supreme Court held that indigent defendants in any serious criminal prosecution had the right to have court appointed attorneys made available to them. Virginia further extended this right with a 1964 provision to include preliminary hearings in Courts Not of Record.

Virginia courts traditionally have used the assigned counsel method to meet their indigency defense obligations. But some movement toward a public defender system began as early as 1920, with a statute permitting such offices in jurisdictions with populations over 100,000. The policy was never implemented, in part because local city councils had to provide the funding to support the offices. The population criterion was subsequently reduced considerably, but still no offices were established. In 1964, then-Governor Harrison commissioned a study on the need for a public defender system, as well as a more general review of the provision of defense services for the indigent. The study results supported a public defender approach. Again, however, no action followed.

Finally, in 1970, the Virginia State Bar conducted a survey of judges, prosecutors, and defense lawyers to assess the desirability of a public defender system. This renewed interest had no doubt been sparked by the dramatic statewide increase in the costs of providing representation to the indigent population: by fiscal 1970, the costs had risen to some \$1.6 million dollars, more than triple the costs in 1965.

The findings were published in December 1971 by the Board of Governors of the Criminal Law Section of the Virginia Bar. They were to become the basis on which the current system would operate. The principal findings were as follows:

1. The majority of judges favored the public defender method, contending that it would be a less expensive system, would provide better defense services and would speed cases through the process.
2. Prosecutors were divided, with a plurality expressing concern that the public defender office would become a social agency, thus harming the advocacy nature of the criminal trial process.
3. Defense attorneys were concerned about collusion between public defenders and prosecutors.
4. There was considerable dissatisfaction expressed about the lack of definition of indigency and about the unsystematic and highly variable ways in which individual

judges raised indigency matters. Prosecutors recommended that indigents file a financial statement in court, and that statewide guidelines be established.

In this same report, the Bar also recommended a number of specific actions, including:

1. The establishment of a commission to oversee the implementation and execution of a public defender system.
2. The establishment of pilot programs in three jurisdictions, representing large, medium and non-metropolitan populations.
3. The selection of public defenders for each site, for a term not to exceed three years. The selection process was to involve consultation with the legal community in the areas to be served.
4. Provisions for assistant public defenders on a part-time basis.
5. Provisions for investigators to assist the public defenders.
6. Continuation of the assigned counsel method where there are conflicts of interest or where public defender representation is otherwise considered inappropriate.
7. The involvement of the public defender office in a case no later than the first court appearance for the indigent and in all "critical" stages thereafter.

Four months after these recommendations were published, the General Assembly of Virginia enacted legislation creating a Public Defender Commission, whose

task it was to select and establish the sites for the pilot program. Funding was obtained from money provided to Virginia through the Law Enforcement Assistance Administration for criminal justice improvement efforts and through the Virginia Division of Justice and Crime Prevention. In November 1972, Public Defender Offices opened in Waynesboro (serving Waynesboro, Staunton, and Augusta County) and Virginia Beach; Roanoke was confirmed as the third site in December, 1975; and Petersburg followed in July, 1979.

Although there were no specific provisions in the original legislation for periodic review and evaluation of the pilot programs, policymakers as well as the Public Defender Commission itself have been keenly interested in monitoring the progress and success of the Public Defender Offices. The Public Defender Commission has played an active role in periodically reviewing the performance of the four offices. Examples include the following:

- an evaluation in 1974, shortly after the establishment of the first two pilot programs in Virginia Beach and Waynesboro/Staunton/Augusta County, in which a survey was conducted of a sample of Circuit Court, District Court, and Juvenile and Domestic Relations Court judges; Circuit and District Court clerks; commonwealth's attorneys; probation officers; sheriffs; and chiefs of police

on the functioning and performance of the offices;

- a meeting of the Commission in September, 1976, which was devoted to an internal assessment of whether or not the Virginia public defender offices were operating under standards for defense services comparable to those issued by the Task Force on Criminal Justice Goals and Objectives;
- a February 1979 meeting with members of the judiciary in Roanoke to solicit their opinions about the operations of the Roanoke office; and
- a September 1980 panel discussion at the Virginia Correctional Center for Women in Goochland between members of the Commission and inmates who had been represented by public defenders and assigned counsel.

In 1981, the Office of the Executive Secretary of the Supreme Court of Virginia surveyed the opinions of judges, commonwealth's attorneys, public defenders and local bar members and provided an analysis of what a statewide public defender system would cost.*

Finally, there have been some evaluations of the public defender offices conducted under grants from the Division of Justice and Crime Prevention. One of these was a 1975 evaluation of the projects established in Virginia

*Presentation to the Public Defender Study Committee of the Virginia State Bar, September 10, 1981, prepared by the Office of the Executive Secretary of the Supreme Court of Virginia.

Beach and Waynesboro/Staunton/Augusta which rated each project in terms of achievement of state goals, achievement of agency goals, achievement of project goals, direction and coordination, and deliverable products (Alonge, 1975). An evaluation of the Roanoke office was also conducted two years later (Wilson, 1977). The present study, then, is the latest in this series of evaluations.

Issues in the Evaluation

The current debate over Virginia's alternative models for defending the indigent revolves around two primary issues:

- The quality of the services provided to indigent clients, and
- The absolute and relative costs of providing such services.

Quality of Services

There is little agreement on which of the two principal systems provides the higher quality services. The assigned counsel approach is often thought to provide higher quality services simply because the lower caseload of such attorneys allows them to provide more individual attention to an indigent case than public defenders can. Critics argue, however, that these lower caseloads are

related to inferior services. Because most private attorneys do not practice criminal law regularly, they are assumed to be less familiar with the criminal law and its processes.

On the other hand, high caseloads are said to contribute to lower quality in public defender services. Because of the relative uniformity in most indigent cases, public defenders tend to suffer from "early burn-out." Another common argument is that the public defender is a public employee and thus tends to adopt the government's perspective on criminal cases rather than the traditional advocacy position of a defense attorney.

In this study, we measure "quality of services" by examining (1) case outcomes, such as the length and severity of the sentences imposed; (2) case processing issues, such as the length of time that elapses before the case is completed; and (3) the attitudes of judges, prosecutors, and counsel involved in indigent defense.*

*Limited resources precluded the interviewing of even a representative sample of indigent clients. Instead we rely upon other studies (see Casper, 1972) and the information provided by attorneys for particulars on the attorney/client relationship, number of contacts with each client, point of initial contact, and the like.

We begin the present study with a review of the research literature on these topics.* In general, the findings indicate the superiority of the public defender system. However, the findings are far from homogeneous.

For example, regarding case outcome, previous research suggests that public defender systems are associated with lower conviction rates (see Cohan, 1977a&b). However, the same study showed that a larger percentage of public defender cases goes to trial rather than being dismissed or suspended. The evidence regarding the severity of sentences is also contradictory. Clarke and Koch (1977) and Herman, Single, and Boston (1977) found no differences between assigned counsel and public defenders. But Steggerda and McCutcheon (1974) found that being assigned a public defender or hiring a private attorney resulted in fewer jail or prison sentences than being handled by an appointed attorney.

The evidence is more clearly in favor of the public defender when case processing is considered. Compared to assigned counsel, it appears that public defenders provide:

*For detailed reviews of the quality of services provided by assigned counsel and public defender systems, please refer to Benner and Neary (1973); Herman et al. (1977); Nathanson et al. (1977); Goldenberger et al. (1976); Taylor and Stanley (1972); and Singer et al. (1976).

- shorter case processing time (Nagel, 1973; Steggerda and McCutcheon, 1974; Cohan, 1977);
- earlier services in the criminal process and a better job of representing the client during plea bargaining (Nagel, 1973; Kraft, Erickson, and Hall, 1973); and
- better legal services to indigent clients (Kraft, Erickson, and Hall, 1973).

Cost of Services

From a policy standpoint, the quality of legal services provided to indigent defendants must be balanced against the relative cost of maintaining one system or another. But such costs are even more difficult to determine than the "quality" of legal defense.

The research literature is inconsistent in its findings regarding this issue. While Kraft, Erickson, and Hall (1973) found the cost of legal representation to be more for public defender agencies than for court appointed counsel systems, Steggerda and McCutcheon (1974) reached exactly the opposite conclusion. In a study of a public defender system in Iowa, Cohan (1977a&b) also found the public defender to be a more cost-effective method, but noted that a direct comparison was very difficult to make because of the differences in the kinds of cases assigned to public defenders and assigned counsel.

In the most systematic study of indigent defense services to date, Singer et al. (1976) concluded that there was as yet no final agreement on which system provided the better defense at the lower cost. As a general statement, this is probably the best answer we are likely to get from the literature. Other factors in addition to the type of system employed will affect not only the cost, but also the quality of legal services provided. These factors are likely to vary among jurisdictions and perhaps even over time.

Questions Central to the Evaluation

We evaluated the relative standings of Virginia's assigned counsel and public defender systems on the types of processing, outcome, and cost dimensions mentioned above. In this context, the goal of the evaluation was to answer three broad questions:

- What differences exist in indigent case processing and outcome between those jurisdictions that utilize a public defender system and those that use only an assigned counsel system?
- What differences exist in indigent case processing and outcome between the two types of defense attorneys--public defender and assigned counsel?
- What are the relative cost advantages or disadvantages of the alternative indigent defense approaches?

To answer the first two questions, we developed and tested a set of hypotheses designed to determine which of many factors, if any, were associated with variations in the quality of services to the indigent. The major hypotheses were as follows:

- H1: Indigent defendants in public defender jurisdictions receive a superior level of defense services (in terms of process and outcome measures) than do indigent defendants in assigned counsel jurisdictions.
- H2: Indigent defendants represented by public defender attorneys receive a superior level of defense services relative to indigent defendants represented by assigned counsel attorneys.

This latter hypothesis encompasses comparisons with assigned counsel attorneys only within public defender jurisdictions.

The first two questions and their related hypotheses were addressed with regard to the following dependent variables:

- whether the defendant was released or incarcerated prior to trial;
- whether the defendant was prosecuted or released without a trial;
- whether the defendant who was prosecuted pleaded guilty or not guilty;

- whether the defendant who was prosecuted asked for a bench or jury trial;
- whether the defendant who went to trial was found guilty or not guilty;
- whether the charges on which the defendant was convicted were less serious than those for which he or she was arrested;
- the severity of the convicted defendant's sentence; and
- the total time required to process the case from the date of arrest to the date of disposition.

The hypotheses were tested in two ways. Simple tabular and proportional data were compared. However, the primary technique was multiple regression analysis with constructed "dummy" dependent variables.

The question of cost was addressed in a less formal hypothesis: The cost of processing an indigent case would be less in a public defender jurisdiction than in an assigned counsel jurisdiction. We examined it by comparing the relative cost per case across the two types of jurisdictions.

Overview of the Report

In the sections that follow, we describe our methodology for the evaluation, our detailed findings, and the implications of those findings for the defense of the indigent in Virginia.

We describe our methodology in Chapter II. We begin with a description of the experimental design that was used to compare the performance of assigned counsel and public defender jurisdictions and attorneys. Each of the four public defender jurisdictions and their matched assigned counsel jurisdictions is then described, in terms of demographic, socioeconomic, criminal justice and operating characteristics. The chapter ends with a discussion of how the quantitative and qualitative data underlying the study were collected, processed, and analyzed.

Chapter III provides a detailed description of our findings. It includes flow diagrams that show how cases proceed through each type of defense system and reports on the analyses that test our hypotheses. These results and their implications are summarized in Chapter IV.

II. METHODOLOGY

Our study design focuses on cross-sectional comparisons.* The principal dimensions are:

- The type of counsel a defendant utilizes -- either a public defender or an assigned counsel attorney, and
- The type of indigent defense system utilized in the jurisdiction.

The basic forms of comparison we employ are:

Counsel Types

- Assigned counsel attorneys vs. public defender attorneys within public defender jurisdictions.
- Assigned counsel attorneys in assigned counsel jurisdictions vs. public defender attorneys in public defender jurisdictions.

*The original design proposed for this study also entailed a longitudinal study of differences among systems over an extended time frame. The design assumed the availability of certain key pieces of information over an extended period of time. Specifically, it required comparable processing and outcome data on public defender and assigned counsel jurisdictions for the time from 1967 to 1980. That assumption proved to be totally incorrect. The data that were available to us only covered the years from 1977 to 1980. This limitation, along with difficulties in the quality and consistency of the existing data, forced us to abandon the longitudinal portion of the design.

Jurisdiction Types

- Indigent cases processed in public defender jurisdictions (regardless of attorney-type) vs. indigent cases processed in assigned counsel jurisdictions.

We choose to use comparison districts, rather than to focus only on the public defender districts. This allowed us to control for many extraneous variables, to mitigate possible biases in the way cases are assigned within a district, and to control for other unknown effects caused by the presence of the public defender agency.* Thus, it was important to look at differences between public defenders and assigned counsel within a single district as well as between public defender districts and jurisdictions in which assigned counsel attorneys were not competing with a public defender system. It was also important to select comparison districts that were similar in other respects to our target sites. All significant factors that could affect the quality and cost of these two forms of legal

*The original design assumed that most, if not all, indigent cases handled within "public defender jurisdictions" would be handled by a public defender. For comparison sites, therefore, we selected four that employed only assigned counsel attorneys in indigent cases. In fact, we found that those sites which had been designated as public defender sites actually utilized assigned counsel attorneys in approximately half of the indigent cases. Thus, our intention to compare indigent defense systems led us to make comparisons within as well as across jurisdictional lines.

services must be comparable to avoid contaminating the results. In the following section, we show how we achieved this goal.

The Sites

The sites we call "public defender jurisdictions" are those four in which the state has been conducting its experimental programs. The "assigned counsel jurisdictions" are those we have selected as comparison sites (with the consent of the Public Defender Commission and the Division of Justice and Crime Prevention). Together, the eight sites provide four comparable pairs, matched by demographic, socioeconomic and criminal justice profiles. They are listed in Table 1.

Table 1. Sites Used in the Analysis

<u>Type of Jurisdiction</u>	
<u>PUBLIC DEFENDER</u>	<u>ASSIGNED COUNSEL</u>
Waynesboro/Staunton/ Augusta County	Charlottesville/ Albemarle County
Roanoke City	Lynchburg
Petersburg	Portsmouth
Virginia Beach	Chesapeake

Only two of the eight sites selected for study are complete judicial districts, serviced by a single circuit court.* The rest are portions of districts or, in some cases, combinations of portions of more than one district. Because of these complications, we cannot provide a precise description of the criminal justice characteristics for six of the sites. Such information is available only for whole districts (in the State of the Judiciary Annual Report, 1980). Only two criminal justice variables -- crime rate and percent of felony cases in total criminal caseload -- are available by site. Socioeconomic and demographic data, however, are available on a site-by-site basis. Our source is the 1977 edition of the City and County Data Book. Demographic and socioeconomic data for the four matched pairs of sites are presented in Table 2. Each pair of sites is described in more detail below.

PAIR #1: Waynesboro/Staunton/Augusta vs. Charlottesville/Albemarle

The first public defender jurisdiction consists of the cities of Waynesboro and Staunton and Augusta County. Both cities are within Augusta County, which lies in the western

*Portsmouth comprises the entire 3rd Circuit; Chesapeake the 1st.

Table 2. Demographic, Socioeconomic, and Criminal Justice Characteristics of the Eight Sites

	PAIR #1		PAIR #2		PAIR #3		PAIR #4	
	Waynesboro/ Staunton/ Augusta Public Defender	Charlottesville/ Albermarle Assigned Counsel	Roanoke Public Defender	Lynchburg Assigned Counsel	Petersburg Public Defender	Portsmouth Assigned Counsel	Virginia Beach Public Defender	Chesapeake Assigned Counsel
Population (7/75)	88,602	87,358	100,585	63,066	45,245	108,674	213,954	104,459
Population Density (per square mile, 7/75)	88	104	3,725	2,523	5,656	3,747	826	306
Percent Black Population (1970)	6.2	14.0	19.3	23.3	47.6	39.9	9.1	23.1
Per Capita Income (1974)	\$4,193	\$4,795	\$5,448	\$5,487	\$4,116	\$4,300	\$4,794	\$3,968
Unemployment Rate (1970)	2.2	4.7	2.6	2.5	4.2	4.4	3.3	2.9
Crime Rate Per 100,000, 7/75)	3,443	6,107	8,663	5,012	6,284	7,138	4,851	4,574
Percent Felony Cases in Total Criminal Caseload (1978)	49	76	39	54	79	58	47	65

part of the state.* Waynesboro is part of the 24th Judicial Circuit; Staunton and the county are considered part of the 25th Judicial Circuit. Both circuits are classified as rural. Judges serving these areas generally preside over more than one court and spend a relatively large portion of their time traveling from one courtroom to the next.

Waynesboro/Staunton/Augusta was the first site in Virginia to operate a Public Defender Office, opening its doors on November 1, 1972. During the years covered by this study, the staff included a full-time Public Defender, two part-time Assistant Public Defenders, a full-time Investigator, and a full-time secretary.

The assigned counsel jurisdiction in this pair consists of the City of Charlottesville and Albemarle County. Both are part of the 16th Judicial Circuit, a rural district which shares its western border with Augusta County.

As will be seen in Table 2 (Pair #1), the two sites are similar in population size and density, although the

*In Virginia, citizens can be residents of the county or of a city in that county, but not both. Counties are, by definition, rural areas.

black population in Waynesboro/Staunton/Augusta is half the proportion in Charlottesville/Albemarle. In Charlottesville/Albemarle, the unemployment rate is higher; the citizens are more affluent; and the crime rate is higher. Furthermore, the crimes are more severe; of the total criminal caseload handled by the circuit court, there are many more felonies than misdemeanors in Charlottesville/Albemarle.

Pair #2: Roanoke vs. Lynchburg

The second public defender jurisdiction is the City of Roanoke, part of the 23rd Judicial Circuit. Its assigned counsel match is the City of Lynchburg, part of the 24th Judicial Circuit. Both cities are located in the western part of the state.

The Roanoke Public Defender Office started operations on February 5, 1976 under the auspices of a federally funded grant approved by the Virginia Council on Criminal Justice. In an effort to match the strengths of the Commonwealth's Attorney's Office, it is staffed by a Public Defender, an Investigator, four Assistant Public Defenders, and two secretaries, all employed on a full-time basis. This makes it unique among the other offices, which tend to be made up of part-time personnel.

Roanoke is a larger and denser city, but its socioeconomic makeup is virtually identical to that of Lynchburg's (see Table 2, Pair #2). The unemployment rate and per capita income figures are similar for both sites. The chief difference between the two is in their crime rates. The rate of reported crime is much higher in Roanoke than in Lynchburg. However, this difference is somewhat mitigated by the lower percentage of felonies in Roanoke. As a result, the total number of felonies in the two sites is quite similar.

Pair #3: Petersburg vs. Portsmouth

The third public defender site consists of Petersburg in the 11th Judicial Circuit. Its assigned counsel match is the City of Portsmouth, located in the 3rd Judicial Circuit. Both towns are in southeastern Virginia, about 80 miles apart.

The Public Defender Office in Petersburg commenced operations July 1, 1979. It is staffed by the Public Defender, two part-time Assistant Public Defenders, a full-time Investigator, and a full-time secretary.

The two sites vary considerably in population size and total crime rate, but are roughly comparable on all the

other dimensions we examined (see Table 2, Pair #3).

Portsmouth is larger and somewhat more crime-ridden than Petersburg, but in terms of felonies (crime rate times percent felony cases in Table 2), the two sites are similar.

Pair #4: Virginia Beach vs. Chesapeake

The City of Virginia Beach--the fourth public defender jurisdiction--is on the Eastern Shore of Virginia, and is part of the 2nd Judicial Circuit. It is adjacent to the City of Chesapeake, the only locality in the 1st Judicial Circuit.

The Public Defender Office in Virginia Beach was established on January 15, 1973. The Public Defender heads up a staff of three part-time Assistant Public Defenders, a full-time Investigator, and a secretary.

Of all the Public Defender sites, Virginia Beach was the most difficult to match. Geographical proximity was the crucial factor in all of the pairings, but particularly in this one. A popular summer resort area, Virginia Beach experienced a population growth rate of 25 percent during the decade of the seventies. There is no other locality in the state that quite compares with it. The town of Chesapeake was selected as the best possible match.

The population of Virginia Beach is larger, more highly concentrated, and has a smaller percentage of blacks than that of the town of Chesapeake. (See Table 2, Pair #4.) In other respects, the two sites are more similar. Rates of unemployment, per capita income and crime are fairly comparable, but there is a difference in the composition of the criminal caseload. Chesapeake's caseload consists of 20% more felonies.

The demographic, socioeconomic and criminal justice data are pooled across the two types of jurisdictions in Table 3. As will be seen, the discrepancies observed in the individual pairings tend to balance out in most cases. The result is that we have two fairly comparable samples with which to test hypotheses about the relative merits of public defender and assigned counsel systems.

The Quality-of-Services Data

The quantitative data source for this study was Virginia's Offender Based Transaction System (OBTS). Access to it was provided by the state's Division of Justice and Crime Prevention. The OBTS files contain records on each count charged against an individual anywhere in the state. We were interested in all records originating during the years 1977-1980 in the targeted jurisdictions; this amounted to over 48,000 records.

Table 3. Demographic, Socioeconomic, and Criminal Justice Data for Jurisdiction Types

	Public Defender Jurisdictions	Assigned Counsel Jurisdictions
Total Population (July 1975)	448,386	363,557
Average Population* Density (per square mile, July 1975)	344	318
Average Percent Black Population (1970)	14.7%	25.8%
Average Per Capita Income (1974)	\$4753	\$4529
Average Unemployment Rate (1970)	3.0%	3.7%
Average Crime Rate (per 100,000, July 1975)	5374	5819
Average Percent Felony Cases in Total Criminal Caseload (1978)	46.4%	60.0%

* The estimates for these and all subsequent indices are weighted averages that take site population into account. They are not the simple averages of the data in Table 2.

Each record was supposed to contain the following information: defendant's age, race, and sex; dates of offense, arrest, disposition and sentence; original charge; police disposition at arrest; original and final pleas; type of counsel and trial; disposition or verdict; final conviction charge; and sentence. Unfortunately, after disaggregating the felonies from the misdemeanors in this data set, preliminary analyses revealed that the amount of missing data on certain crucial variables in the misdemeanor file would preclude a sound analysis. Moreover, the missing data were not randomly distributed across jurisdictions. Consequently, we decided to focus exclusively on the felony file. It too was weak in places, but it was much more complete than the total file.

There are 14,227 felony records in the OBTS file for the period in question. Of these, 3,648 cases from Petersburg and Portsmouth were removed for the period prior to the opening of the Petersburg Public Defender Office. Thus, the initial file consisted of 10,579 cases.

Each record represents one felony count against an individual. In keeping with the traditional approach to analyzing such data, we conducted analyses on the file of

felony counts (hereafter called the FELONY file).*

FELONY File

The missing data in the FELONY file did not at first appear to pose a problem. A relatively small amount of data was missing. Unfortunately, these missing data were not concentrated within a small number of records. Rather, they were spread across records, with many records missing one or two pieces of vital information. For example, information about the type-of-counsel variable was missing in 49 percent of the records. We further refined the FELONY file to produce a subset of records for which there were no missing data. This effort resulted in the creation of FELONY A, a file containing 2,078 records.

At this juncture, we also recoded many of the variables to make them suitable for regression analyses. While most of the data preparation was straightforward, three aspects merit discussion.

First, we did not automatically delete all records from FELONY that had missing data. This clearly would have

*We are aware of few if any studies where the case has been used as the unit of analysis. In the future, we hope to compare findings based upon an analysis of cases vs. counts.

been inappropriate. For example, when a count is dropped or dismissed, we would not expect to find data on the plea entered or the type of trial conducted. Charges are often dropped before the case comes to court and before a plea is entered. We checked for such situations, and did not delete such records from the data file.

Second, we greatly abbreviated the complex and lengthy charge and conviction coding scheme employed by the State of Virginia. Based on the National Crime Information Center (NCIC) Offense Codes, we collapsed the within-category variations into broader categories, and rank ordered them according to the Crude Serious Index developed by Hoffman and Stone-Meierhoefer (1979) in their study of post-release arrest experiences of Federal prisoners (see Table 4).

Table 4. Revised Charge Code and Conviction Code

1. Homicide	9. Auto Theft
2. Kidnapping	10. Forgery/Fraud
3. Forcible Rape	11. Heroin
4. Other Sex Crimes	12. Other Drugs
5. Robbery	13. Marijuana
6. Assault	14. Weapons
7. Burglary	15. Miscellaneous

We used this ranking to evaluate the seriousness of the charges, and computed the occurrence of plea bargaining by noticing a drop in the rank of the charge. We acknowledge, as do its creators, that this is indeed a crude index; assault includes incidents of attempted assault as well as aggravated assault against a police officer with a gun. However, we have found, as they did, that this scale provides a useful picture of the nature of the offenses.

Third, we adopted Diamond and Ziesel's (1975) modification of the Administrative Office of the U.S. Courts' "Point Scale of Sentence Severity" in weighing the magnitude of the sentences meted out by the Virginia courts. In this scheme, both the type of sentence -- fine, probation, jail, prison -- and its magnitude were considered in assessing the penalty imposed upon the individual. Fines were the least onerous sentences; probation ranked second. Jail sentences came next, with 18 months in jail considered to be equivalent to one year in prison. Each successive year in prison added two points to the severity of the sentence. The scale ranges from 0 (no sentence) to 203 (prison for life), with the smallest prison score being "6" (prison for one year).

INDIGENT File

We next isolated those counts within FELONY A which had been handled by court appointed attorneys or public defenders. We eliminated all instances where the client had hired his own attorney or had waived his right to counsel, and created INDIGENT, a file containing complete records on 1,423 counts. This is the file we used when conducting dummy variable multiple regression analyses to discern counsel type differences in the handling of a case across types of jurisdictions. A subset of this file, INDIGENT A, contains indigent cases only within public defender jurisdictions. It was used in the second set of within-public-defender-jurisdiction regression analyses, and consists of 429 records.

We took one last slice through the data. We extracted from INDIGENT those counts that ultimately resulted in a disposition of either guilty or not guilty -- those counts which were actually prosecuted by the state, where the impact of an attorney could be measured from date of arrest through to sentencing. This allowed us to measure the effectiveness of the two types of counsel and the quality of representation they afforded their clients. This file, INDIGENT B, contains complete records on 1,022 fully

prosecuted counts against indigents. The final file, INDIGENT C, consists of prosecuted counts against indigents only in public defender districts. The composition of this and the preceding files is summarized in Table 5.

Table 5. Composition of Data Sets Used in the Analysis

<u>File</u>	<u>Definition</u>	<u>Number of Counts</u>
OBTs	Offender Based Transaction System Files for the State of Virginia; each record represents a count against an individual arrested in any of the eight sites chosen for this study.	48,000+
FELONY	All felony counts	10,579
FELONY A	Felony counts for which there are no missing data.	2,078
INDIGENT	Felony counts against indigents.	1,423
INDIGENT A	Felony counts against indigents in public defender districts.	429
INDIGENT B	Prosecuted felony counts against indigents.	1,022
INDIGENT C	Prosecuted felony counts against indigents in public defender districts.	282

The Validity of the Data Files

The drastic reduction in the number of records to be analyzed was made at a potential cost in the accuracy and validity of the remaining data. The alternative, to employ sophisticated weighting procedures to preserve as many records as possible, was rejected due to the extremely large number of records with missing data. We did not wish to "pad" the data artificially merely to preserve a large "N". Having decided instead to eliminate records, we were obligated to determine how closely the reduced data sets reflected the original on as many variables as possible.

We compared the original FELONY file (N = 10,579) with: the complete record file FELONY A (no missing data, N = 2078); the complete indigent file (INDIGENT, N = 1423); and the complete prosecuted file (INDIGENT B, N = 1022). The variables on which these comparisons were based included:

- the proportion of cases arising out of each of the specific jurisdictions, both assigned counsel and public defender;
- the proportion of cases handled by assigned counsel versus a public defender attorney;
- the proportion of cases in the two types of jurisdictions -- public defender vs. assigned counsel;

- the demographic characteristics of the defendants -- race and sex;
- the distribution of criminal charges, both those made at the time of arrest and those on which a conviction was reached;
- whether the defendant was released or held prior to trial;
- the defendant's plea;
- the type of trial under which the prosecuted defendant was tried;
- the disposition of the cases (guilty or not guilty); and
- the type (i.e., prison, jail, probation or fine) and length of sentence.

Tables comparing each of the data sets on each of these variables are presented in Appendix A. We summarize the results below.

Representation of jurisdictions in the population. In the original FELONY data set (N = 10,579) the individual jurisdictions contributed unevenly to the total population. As the data were reduced the overall proportion of cases arising out of any one jurisdiction changed, partly as a function of record-keeping habits (cases from jurisdictions with more precise records remained in the analysis) and partly due to the relative changes in other jurisdiction's contributions to the total N. Our comparison of the two files shows that the relative contribution changed for only

two jurisdictions. Lynchburg provided 15.4 percent of the cases in the original data set, but increased to 35.4 percent in the FELONY file, 41.4 percent of all indigent cases, and 43.8 percent of all prosecuted indigent cases. Virginia Beach declined in representation from 31.9 percent in the original set to virtually no cases in the reduced sets. Better record keeping in the case of Lynchburg, and poorer record keeping in Virginia Beach would have caused them to be over- and under-represented in the analysis even if the data had not been reduced.

Proportion of cases in public defender vs. assigned counsel jurisdictions. Fortunately, despite shifts among individual jurisdictions, the overall proportion of cases in the types of jurisdictions remained relatively constant. The almost total loss of Virginia Beach (a public defender jurisdiction) tipped the balance toward the assigned counsel side with respect to total cases (51.3 percent to 66.3 percent), and indigent cases (69.9 percent). We judged this shift to be acceptable when the jurisdictional data were broken down by type of counsel, as we show next.

Proportion of cases represented by public defender vs. assigned counsel attorneys. The overall proportion of cases represented by the two types of counsel remained

relatively unchanged with data reduction. Comparing FELONY with FELONY A, ~~we saw an increase~~ in the proportion of assigned counsel cases from (44.3 to 52.0 percent). Most of this increase came when the privately retained and waived cases were dropped. By contrast, the percentage of public defender cases decreased only slightly from 16.9 percent in the larger data set to 16.5 percent in the reduced data sets.

Defendant race and sex. The proportion of whites decreased from 63.1 percent of the original data set to 57.0 percent of the reduced set. The distribution of sex changed hardly at all -- males continued to predominate among felons.

Distribution of criminal charges. The overall proportion of crimes remained remarkably constant. Only one type of crime, forgery-fraud, was slightly under represented in the smaller data sets, dropping from 22.0 to 18.6 percent. There was virtually no difference between the larger and reduced sets with respect to final (conviction) charges.

Release vs. incarceration prior to trial. There was a small increase (3.4 percent) in the proportion of defendants incarcerated rather than released prior to trial.

Initial plea. The number of guilty pleas rose, from 34.5 to 51.9 percent.

Type of trial. The number of jury trials increased from 4.4 to 6.5 percent.

Disposition. Again, the proportion of cases found guilty or not guilty was virtually identical. The number of nolle pros and other dispositions rose slightly.

Sentence type and length. The proportion of cases resulting in prison sentences increased by 17 percent while the proportion of jail sentences decreased by about 13 percent. The distribution of sentence length appears to be almost equivalent across the data sets.

Based on these comparisons we concluded that while the reduced data sets were not perfect matches of the large 10,000 plus file, the differences were such that valid conclusions could be reached about the overall public defender approach. Moreover, the advantages of working with a complete data set eliminated many of the qualifications, explanations and caveats that we would be forced to make had we tried to interpret the larger, less complete file.

Data Analysis

We took two approaches to the analysis of the data on quality-of-services:

- Comparison of tabular and proportional distributions across a variety of dependent variables, and
- Multiple regression analysis using "dummy" dependent and independent variables.

In the former analysis, we systematically partitioned the data sets by type of jurisdiction, type of attorney, and, in later tables, by the defendants' initial plea.

The latter analysis forms the basis for the report's major conclusions. Our principal tool was a stepwise multiple regression program developed as part of the Statistical Package for the Social Sciences (SPSS).^{*} We converted the data to be entered into this program by creating a set of bivariate, scalar, or interval variables that could be treated as numeric values.

Variables. The variables for the analysis were used in one or more of four ways. In the regression analysis,

^{*}Hull, D.H., Nie, C.H., Jenkins, J.G., Steinbrenner, K. & Brent, D.H., Second Edition, 1970. The version used was SPSS for the HP/3000, Spring Release, Version 9.1, March 15, 1982, McMaster University.

some variables were used only as independent or predictor variables. Others were initially introduced as dependent variables and were treated as independent variables in subsequent analyses. The following is a list of the variables we used, with a code indicating the type of use. The codes are as follows:

- I = variable used as an independent variable
- D = variable used as a dependent variable
- C = variable used to compute a scale or score
- S = variable derived from other data as a scale or score.

Multiple designations indicate multiple usage.

- Type of jurisdiction - public defender or assigned counsel (I)
- Type of counsel - public defender or assigned counsel (I, D)
- Defendant age - (I)
- Defendant race - (I)
- Defendant sex - (I)
- Initial criminal charge - (I, D)
- Date of arrest - (C)
- Police disposition - incarceration or release (I,D)
- Whether defendant was prosecuted or released (S)

- Initial plea - guilty or not guilty (I, D)
- Type of trial - bench or jury (I, D)
- Court disposition (D)
- Date of disposition (C)
- Type of sentence - incarcerated or "other" (D, C)
- Length of sentence (if prison or jail) (D, C)
- Severity of sentence (scale) (S)
- Time from arrest to disposition (S).

Approach. The data analysis followed a temporal progression through the criminal justice process starting with the arrest of the defendant and ending with the sentencing of the convicted felons.

The Cost Data and Analysis

We begin our analysis of the cost of the alternative methods for defending the indigent with the intent of producing a set of comparable cost figures for public defender and assigned counsel jurisdictions. The index variable we wished to produce was cost-per-count. To compute this measure, we needed two pieces of information: the actual cost of providing services for both types of attorney and accurate caseload information for the two types of attorneys.

The main data sets were: (1) the caseload data for felony, criminal misdemeanor and criminal juvenile courts for the years 1975-1980; (2) the respective cost data compiled by the Administrative Office of the Virginia Supreme Court and the Virginia Public Defender Commission; and (3) data drawn from our OBTS files.

Looking first at the cost data, expenses in the assigned counsel districts consist only of fees paid to attorneys by the court. State law establishes maximum fees for various types of cases. Our respondents indicated, however, that most case assignments yield these maxima. Lower fees are paid for cases with premature termination. The fee structure is as follows:

Felony charge, 20 years to death	\$400
All other felony charges	\$200
Misdemeanor charges	\$100
Court of no record	\$ 75.

In the public defender districts, indigent defense costs include assigned counsel fees for cases not handled by the public defenders, as well as the costs of the public defender office itself. We have not included a variety of additional indigency-related fees (such as witness expenses and tests) because these data were not available for the

study time period. We assumed no systematic differences in these additional costs across the types of jurisdictions over the years examined.

One factor which complicated our analysis was the fact that the actual dollar figures reported for each jurisdiction are prepared on a fiscal calendar that runs from July 1-June 30. Caseload figures, unfortunately, are recorded from January 1 to December 31. Therefore, we recalculated the cost figures to accommodate the calendar year. This was done by halving the total fiscal year amounts and reapportioning them on a calendar year basis. Thus, the total costs for calendar year 1979 were computed by adding half the amount spent in fiscal year 1978-79 to half of the amount spent in fiscal year 1979-80.

Total jurisdictional caseload information is presented in the State of the Judiciary report published by the Virginia Supreme Court. Unfortunately, this information does not include a breakdown by the indigency status of the defendant on the type of attorney representing the defendant. Thus, we were forced to compute an estimated indigency caseload factor for each jurisdiction.

The indigency caseload factor for each jurisdiction was derived by subtracting cases handled by private attorneys and cases where counsel was waived from the jurisdiction's total felony and misdemeanor caseload. The remaining cases were assumed to be those handled either by a public defender, if the jurisdiction provided such services, or a court appointed attorney.

Private attorney and "waived attorney" caseload figures were computed by applying the rates at which these outcomes were recorded for each jurisdiction in the OBTS data set over the period, 1977-1980. These rates are necessarily subject to the many problems of missing or inaccurate data we have described elsewhere in this report. They are, however, the best and only estimates we had available.

The private attorney and "waived counsel" rates were applied selectively to the overall caseload data taken from the annual State of the Judiciary reports. The private counsel rate was applied to all cases: felony, misdemeanor, and juvenile. The "waived counsel" rate was applied only to misdemeanor and juvenile cases. The reasoning was that felony defendants are not allowed to waive counsel whereas misdemeanor and juvenile defendants

are. Thus, the formula for computing the indigency caseload for each jurisdiction was:

$$Ic = (1-Pr) Fe + (1-(Pr+Wa)) Mi + (1-(Pr+Wa)) Ju$$

where:

Ic = Indigency caseload
Pr = Percent of cases handled by private attorneys
Fe = Total number of felony cases
Wa = Percent of cases where attory was waived
Mi = Total number of misdemeanor cases
Ju = Total number of juvenile cases.

Once the estimated number of indigent cases was computed, the overall cost of providing indigent defense (assigned counsel plus public defender costs) was divided by that number to produce an estimated cost per case.

The Qualitative Data

The qualitative data were collected during a series of interviews with judges, commonwealth's attorneys, assigned counsel, public defenders (when applicable), and court clerks in each of the jurisdictions. Site visits were conducted by one staff person and averaged one and one-half days per jurisdiction. The questions focused on the respondents' experience with the system of indigent representation in their jurisdiction, and what they perceived the advantages and disadvantages to be with regard to the quality of representation, the

attorney/client relationship, the relative benefits and drawbacks of the two systems, the impact upon case processing issues, and the general functioning of the courts in that jurisdiction. A table outlining the different interview schedules for each legal actor and a copy of the interview protocol are included in Appendix B. In all, we obtained data from some 93 persons involved in the judicial process in the eight jurisdictions. Judges and court appointed attorneys accounted for 53 interviews. The balance was distributed equally among prosecutors, public defenders and court clerks.

The interviews provided us with two things: (1) a description of how the courts functioned, and any idiosyncrasies in their data recording and handling of cases; and (2) a sense of how each of the different sites perceived its system of indigent defense and the alternatives. While not the main source of data for this study, these inputs did provide us with a context within which to examine the two systems. Our respondents had definite opinions on which was the better system and commented freely on the problems they had/would have with its implementation. They raised issues and questions we had not considered. In the public defendant jurisdictions, we frequently were able to talk with people who had been

involved in the criminal justice system prior to the installation of a Public Defender's office, and get their first-hand impression of any changes that had occurred. We were able to analyze the quantitative data with an eye toward our qualitative observations, seeing whether the interviews substantiated our findings.

III. FINDINGS

Quality-of-Defense Services

Our analysis of the quality of defense services took two forms. We were interested first in differences between public defender and court appointed counsel jurisdictions. As we described earlier, direct comparisons between specific public defender jurisdictions and their designated "control" jurisdictions were frustrated by extremely large missing data problems. Thus, we carried out the analysis across jurisdictions by pooling the data by jurisdiction type. We collapsed all data from public defender jurisdictions into a single sample and compared them with a similarly collapsed sample of all counts from the appointed counsel jurisdictions.

Our second interest lay in uncovering any differences between the court-appointed and public defender types of counsel. We examined data on court appointed attorneys from both types of jurisdictions. Our comparisons were between (1) appointed counsel and public defenders within public defender districts, and (2) the two types of attorneys, across both types of jurisdiction.

The analysis traces the path of the client from the time of arrest to final disposition and sentencing. At each point we examined certain indicators of performance where the client's counsel could make a significant difference, all other factors being equal. The indicators of performance concerned case outcome and case processing.

Regarding case outcome, we decided that an attorney could be said to have provided a superior defense for his or her client if:

- The client was released after charging;
- The client was not prosecuted;
- The client was prosecuted on a lesser charge than the one for which he or she was originally arrested;
- The client was found not guilty; or
- The client received a less severe sentence than he might otherwise have been given.

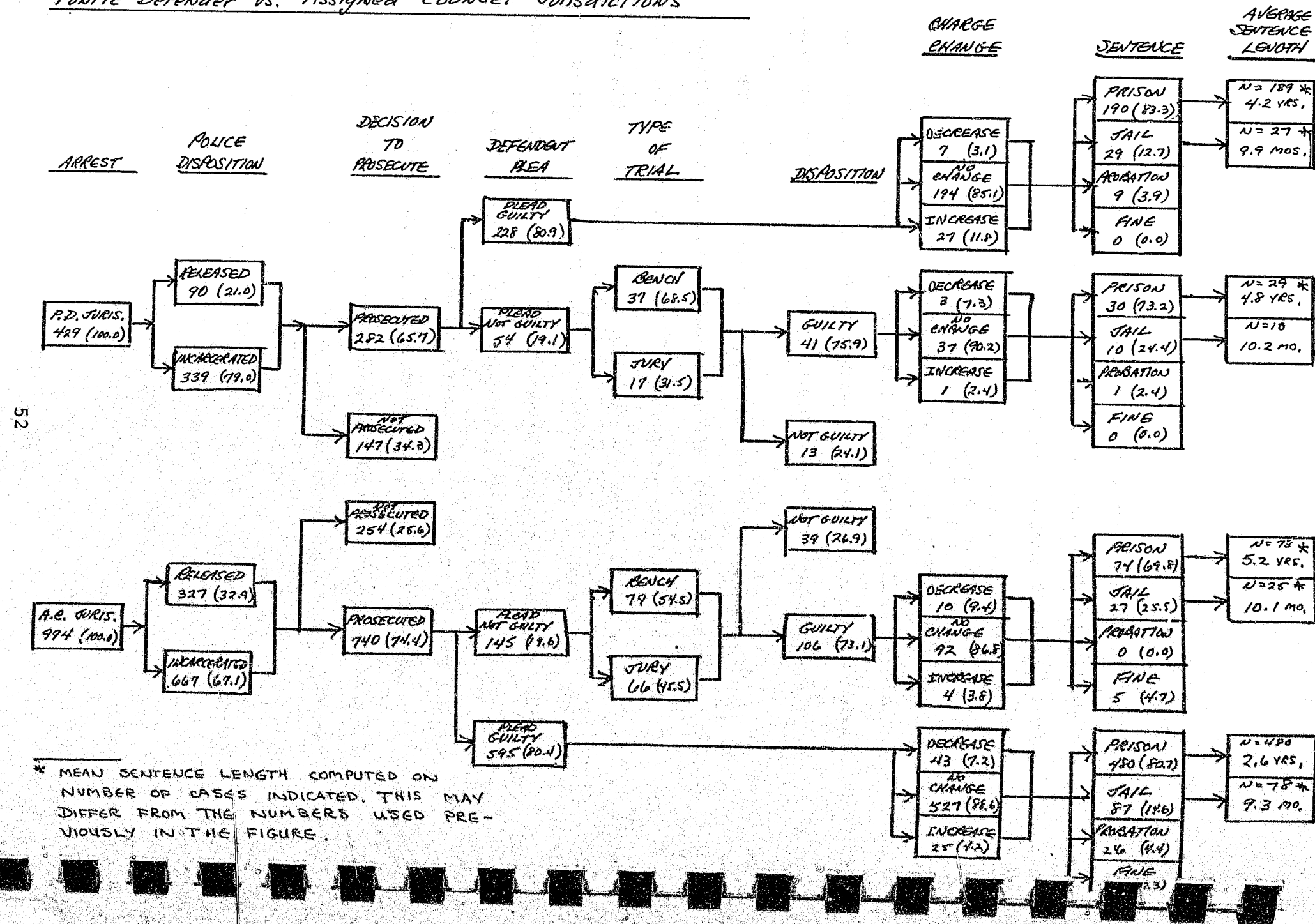
Regarding case processing, superior services are determined largely by context. The question of whether a defendant is better off by pleading guilty or not guilty or by asking for a jury trial or a bench trial depends on many factors. Generally, though, choosing to plead not guilty and requesting a jury trial can be taken as signs of a spirited effort by the attorney to defend a client.

Refusing to plea bargain or deciding to go before a jury with a weak case, however, may reflect bad judgment more than vigorous defense services.

With respect to the relative value of speed in processing, the needs of the defendant, the public and the criminal justice system are not entirely congruent. However, within reason, we assume here that a shorter case processing time serves more interests than a prolonged one.

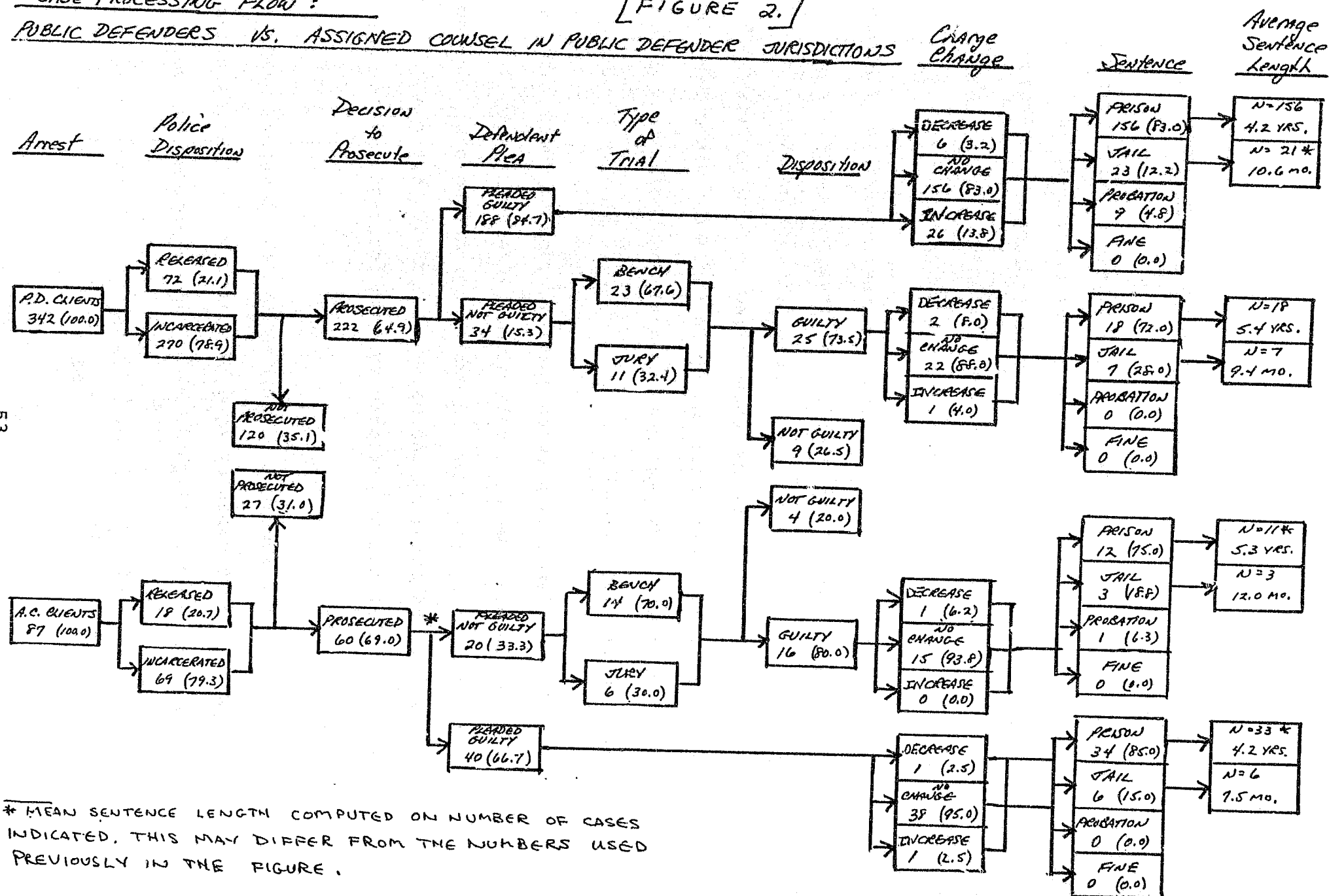
The manner in which the cases in our samples were processed through the criminal justice system is depicted in Figures 1 and 2. Comparative data are provided for each of the critical nodes in the system. In Figure 1, the two types of jurisdictions are compared. Figure 2 compares case-processing by type of counsel. It is limited to cases in public defender jurisdictions. In the following analyses, we compare jurisdictions and attorneys at each of the nodes indicated in Figures 1 and 2. We begin the analysis with an examination of a selection factor that could affect our results.

CASE PROCESSING FLOW: Figure 1.
Public Defender vs. Assigned Counsel Jurisdictions



CASE PROCESSING FLOW :
PUBLIC DEFENDERS VS. ASSIGNED COUNSEL IN PUBLIC DEFENDER JURISDICTIONS

[FIGURE 2.]



Attorney Selection: Public Defender vs. Appointment of
Assigned Counsel

To determine whether there are any systematic differences in the types of cases assigned to the attorneys, we examined the available data on defendant characteristics. This included the defendant's age, sex and race, and the charge against the defendant at the time of arrest.

The distribution of counts on these variables is shown in Table 6. The table divides the indigent count population into two groups: those tried in appointed counsel jurisdictions and those tried in "public defender" jurisdictions. The latter group is further divided between those represented by assigned counsel and those represented by a public defender.

The differences between jurisdictions on these factors are negligible. We note only minor differences with respect to the age, race and sex of the defendants, and the nature of the criminal charge. We conclude that the analysis will not be affected by such inter-jurisdictional differences.

We obtain somewhat different results, however, when comparing these cases by type of attorney. Public defender clients tend to be slightly older than appointed counsel

Table 6. Counsel Assignment: Number and Percent of Cases Assigned to Appointed Counsel and Public Defender Attorneys by Defendants' Age, Race, Sex, and Criminal Charge

55

	<u>Total: Both Jurisdictions (N=1423)</u>	<u>Assigned Counsel Jurisdictions (N=994)</u>	<u>Assigned Counsel Attorneys (N=87)</u>	<u>Public Defender Attorneys (N=342)</u>	<u>Total (N=429)</u>
<u>AGE</u>					
	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>
Under 18	3 (0.2)	3 (0.3)	0 (0.0)	0 (0.0)	0 (0.0)
18-21	294 (20.7)	212 (21.3)	20 (23.0)	62 (18.1)	82 (19.1)
22-25	385 (27.1)	258 (26.0)	29 (33.3)	98 (28.6)	127 (29.6)
26-30	294 (20.7)	213 (21.4)	20 (23.0)	61 (17.8)	81 (18.9)
31 +	447 (31.4)	308 (31.0)	18 (20.7)	121 (35.4)	290 (32.4)
<u>RACE</u>					
White	736 (51.7)	477 (48.0)	43 (49.4)	216 (63.2)	259 (60.4)
Nonwhite	687 (48.3)	517 (52.0)	44 (50.6)	126 (36.8)	170 (39.6)
<u>SEX</u>					
Male	1254 (88.1)	893 (89.8)	77 (88.5)	284 (83.0)	361 (84.1)
Female	169 (11.9)	101 (10.2)	10 (11.5)	58 (17.0)	68 (15.9)

Table 6. Counsel Assignment: Number and Percent of Cases Assigned to Appointed Counsel and Public Defender Attorneys by Defendants' Age, Race, Sex, and Criminal Charge (Continued)

<u>CHARGE CODE</u>		<u>Public Defender Jurisdictions</u>			
		<u>Total: Both Jurisdictions (N=1423)</u>	<u>Assigned Counsel Jurisdictions (N=994)</u>	<u>Assigned Counsel Attorneys (N=87)</u>	<u>Public Defender Attorneys (N=342)</u> <u>Total (N=429)</u>
	<u>%</u>		<u>%</u>	<u>%</u>	<u>%</u>
56 Homicide	20 (1.4)	17 (1.7)	0 (0.0)	3 (0.9)	3 (0.7)
Kidnapping	13 (0.9)	6 (0.6)	3 (3.4)	4 (1.2)	7 (1.6)
Forcible Rape	24 (1.7)	15 (1.5)	1 (1.1)	8 (2.3)	9 (2.1)
Other Sex Crimes	15 (1.1)	6 (0.6)	4 (4.6)	5 (1.5)	9 (2.1)
Robbery	86 (6.0)	57 (5.7)	14 (16.1)	15 (4.4)	29 (6.8)
Assault	105 (7.4)	67 (6.7)	4 (4.6)	34 (9.9)	38 (8.9)
Burglary	303 (21.3)	215 (21.6)	23 (26.4)	65 (19.0)	88 (20.5)
Theft/Larceny/ Arson	269 (18.9)	197 (19.8)	13 (14.9)	59 (17.3)	72 (16.8)
Auto Theft	66 (4.6)	41 (4.1)	4 (4.6)	21 (6.1)	25 (5.8)
Forgery/Fraud	301 (21.2)	225 (22.6)	10 (11.5)	66 (19.3)	76 (17.7)
Heroin	1 (0.1)	1 (0.1)	0 (0.0)	0 (0.0)	0 (0.0)
Other Drugs	41 (2.9)	27 (2.7)	1 (1.1)	13 (3.8)	14 (3.3)
Marijuana	68 (4.8)	49 (4.9)	3 (3.4)	16 (4.7)	19 (4.4)
Weapons	50 (3.5)	37 (3.7)	3 (3.4)	10 (2.9)	13 (3.0)
Miscellaneous	61 (4.3)	34 (3.4)	4 (4.6)	23 (6.7)	27 (6.3)

clients. Within public defender jurisdictions another difference appears. Public defender clients tend to be predominantly white. Appointed counsel clients are evenly split between non-white and white defendants. This raises a possible difficulty in interpreting the results of the analysis. On at least one key dimension, the assignment of type of counsel appears to be skewed.

We carried out a multiple regression analysis to establish the relative effect of all the variables on the type of counsel assigned. We converted the dependent variable -- in this instance, the type of counsel assigned to the defendant -- into a binary "dummy" variable. We looked only at differences within public defender jurisdictions since it is only there that the assignment issue is relevant. We found a significant relationship between a defendant's age, race, sex, and charge and the type of counsel assigned ($R = .18$; $F = 3.37$, $p < .01$). An examination of the standardized regression coefficients indicated that no single variable was the primary predictor of counsel assignment among indigent defendants in public defender jurisdictions. Older, white female defendants charged with lesser felonies tended to be assigned to public defenders. However, these variables accounted for only 3.1 percent of the variance in assignment of counsel.

We also found a slight tendency for non-white and male defendants to be charged with more serious crimes than white and female defendants. The correlation between race (defined on the binary variable of white/non-white) and charge severity was significant ($r = -.161$, $N = 429$, $p < .01$). The correlation between sex and charge severity was also significant ($r = .108$, $N = 429$, $p < .05$).

Police Disposition: Release vs. Incarceration

The first point in the criminal justice process where an attorney may make a difference is in the decision to release or incarcerate the defendant prior to trial.

Table 7 presents the distribution of police dispositions. We note, first, that defendants are more likely to be released in assigned counsel jurisdictions than in public defender jurisdictions. However, there is virtually no difference between the two types of counsel within the public defender jurisdictions. Public defenders are associated with the same proportion of releases

Table 7. Police Disposition: Number and Percent of Indigent Cases Released or Incarcerated Pending Trial by Type of Jurisdiction and Type of Counsel

	Total: Both Jurisdictions (N=1423)	Assigned Counsel Jurisdictions (N=994)	Public Defender Jurisdictions		
			Assigned Counsel Attorneys (N=87)	Public Defender Attorneys (N=342)	Total (N=429)
	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>
Released Pending Trial	417 (29.3)	327 (32.9)	18 (20.7)	72 (21.1)	90 (21.0)
59 Incarcerated	1006 (70.7)	667 (67.1)	69 (79.3)	270 (78.9)	339 (79.0)

as their assigned counsel colleagues in these jurisdictions.*

To examine these relationships in more detail, we ran regression analyses on two separate sets of data: (1) all indigent cases in all eight jurisdictions, and (2) all indigent cases in only public defender jurisdictions. The findings from both sets of analyses were the same. The variable that accounts for most of the variance in the decision to release or incarcerate the defendant is the sex of the defendant. A female defendant was more likely to be released pending trial than a male defendant. Our hypothesis had been that the severity of the charge and type of attorney would have the most influence over this decision. But we found that these variables were relatively unimportant once the sex of the defendant was taken into account. Within public defender jurisdictions, the severity-of-the-charge variable did correlate significantly ($p < .05$) with the disposition variable in the expected direction.

*We also checked the possibility that these percentages might change if the defendants who were never brought to trial were removed from the analysis. We recomputed the percentages for only those defendants who were actually prosecuted, and found that the proportion of defendants released or incarcerated changed very little when this adjustment was made.

The Decision to Prosecute

A second point at which a defendant's attorney can make a significant difference is the prosecutor's decision of whether or not to prosecute the defendant. The skill of the defense attorney in plea bargaining should be significant here.

As will be seen in Table 8, a defendant is less likely to be prosecuted in a public defender jurisdiction than in an appointed counsel jurisdiction. This difference, however, cannot be attributed solely to the public defender. Assigned counsel attorneys in the public defender jurisdictions were also more often associated with nonprosecution of the defendant than were their colleagues in assigned counsel jurisdictions.*

The regression analysis of public defender and assigned counsel jurisdictions confirmed this small but significant effect ($R = -.15$; $F = 4.35$, $p < .01$). Defendants tried in assigned counsel districts were more likely to be prosecuted than defendants in public defender

*In an earlier study, in which the distinction between assigned counsel attorneys was not made (i.e., working in and working outside of public defender jurisdictions), we reached a different conclusion regarding the relative effectiveness of the two types of counsel.

Table 8. Decision to Prosecute: Number and Percent of Cases Prosecuted or Not Prosecuted by Type of Jurisdiction and Type of Counsel

		<u>Public Defender Jurisdictions</u>				
		<u>Total: Both Jurisdictions (N=1423)</u>	<u>Assigned Counsel Jurisdictions (N=994)</u>	<u>Assigned Counsel Attorneys (N=87)</u>	<u>Public Defender Attorneys (N=342)</u>	<u>Total (N=429)</u>
		<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>
62	Prosecuted	1022(71.8)	740(74.4)	60(69.0)	222(64.9)	282(65.7)
	Not Prosecuted	401(28.2)	254(25.6)	27(31.0)	120(35.1)	147(34.3)

districts. It should be noted, however, that the total amount of variation accounted for by all seven of the predictor variables that were examined was very small (2%).

When we conducted our analysis for only the public defender sites, we failed to find a relationship between the decision to prosecute and our predictor variables. The multiple correlation was not significant ($R = .16$; $df = 6,422$; $F = 1.95$, $p > .05$). Taken together, all of the variables introduced into the equation accounted for only 3 percent of the variance on this variable. Whatever may account for the difference between type of jurisdictions, it does not appear to involve the distinction between assigned counsel and public defender attorneys.

The Initial Plea: Guilty or Not Guilty

At this point in the analysis we confined our study to only those cases that were actually prosecuted. Although some defendants were obliged to establish a plea without having their case tried to completion (i.e., the charge was dismissed or the prosecutor chose not to press the charge) we were interested only in those cases where the defendant was in real jeopardy of being convicted.

Table 9 presents the distribution of cases according to the type of plea entered by the defendant. As we have stated elsewhere, the advantages or disadvantages of pleading a particular way depend on many variables. Our concern was whether public defenders were inclined to plead their clients guilty more often than not guilty because of the heavy caseload they maintain and their presumed skills and knowledge about bargaining a plea (when compared to court appointed attorneys). If this contention is true, we would expect more public defender clients than assigned counsel clients to plead guilty, taking into account charge or sentence.

The data in Table 9 appear to confirm these claims. Public defenders are more likely to plead their clients guilty than court appointed attorneys. There is no appreciable difference in pleas between jurisdictions, but within public defender jurisdictions there is a sharp contrast between the two types of indigent attorney. Whereas almost 85 percent of public defender cases are pleaded guilty, the comparable figure for assigned counsel cases is just under 67 percent.

There also are notable differences between the two assigned counsel groups. Assigned counsel attorneys in

Table 9. Plea: Number and Percent of Cases Pleaded Guilty or Not Guilty by Type of Jurisdiction and Type of Counsel

		<u>Public Defender Jurisdictions</u>				
		<u>Total: Both Jurisdictions (N=1022)</u>	<u>Assigned Counsel Jurisdictions (N=740)</u>	<u>Assigned Counsel Attorneys (N=60)</u>	<u>Public Defender Attorneys (N=222)</u>	<u>Total (N=282)</u>
		<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>
65	Not Guilty	199 (19.5)	145 (19.6)	20 (33.3)	34 (15.3)	54 (19.1)
	Guilty	823 (80.5)	595 (80.4)	40 (66.7)	188 (84.7)	228 (80.9)

assigned counsel jurisdictions pleaded their clients guilty about 80 percent of the time -- less often than the public defender, but much more frequently than the assigned counsel attorney in the public defender jurisdiction.

The regression analysis on the jurisdiction level data ($N = 1022$) shows that the interrelationships among the variables are complex. The age, sex, race, initial-charge, and release-pending-trial variables correlate significantly ($p < .01$) with the initial plea (our dependent variable); many also are significantly related to each other. The multiple correlation for this set ($R = .22$) is significant ($F = 10.58, p < .01$). White defendants tend to plead guilty more often than non-white defendants. Younger defendants tend to plead guilty more often than older defendants.

We found comparable relationships within the public defender jurisdictions. The type of counsel, race, age, sex, severity of charge and police disposition account for 13.3% of the variation in the dependent variable. The multiple correlation is again significant ($R = .37; F = 7.05, p < .01$). With the exception of police disposition, which is not strongly linked to the dependent variable, all of the other predictor variables are related

to the decision to plead guilty or not guilty. The young, white, female defendant who is charged with a less serious offense and is represented by a public defender is likely to plead guilty.

Type of Trial: Bench vs. Jury Trial

This analysis concerned only those cases where the defendant actually went to trial; i.e., those defendants who pleaded not guilty. As we indicated earlier, the decision to plead guilty or not, or to request a jury trial or not, depends on circumstances and the chosen tactics of the defense attorney.

As we see in Table 10, there is some variation between jurisdictions in the defendant's choice of bench or jury trial. Although the majority of cases are tried before a judge, the proportion of cases taken before a jury is higher in assigned counsel jurisdictions. There is no difference between type of counsel in public defender jurisdictions.

The regression analysis of cases across jurisdictions produced no findings of interest. The multiple correlation coefficient based on all seven predictor variables was not significant ($R = .26; df = 7,191; F = 1.91, p > .05$).

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Table 10. Type of Trial: Number and Percent of Cases Pleaded Not Guilty Heard Before a Judge or a Jury by Type of Jurisdiction and Type of Counsel

	Total: Both Jurisdictions (N=199)	Assigned Counsel Jurisdictions (N=145)	Public Defender Jurisdictions		
			Assigned Counsel Attorneys (N=20)	Public Defender Attorneys (N=34)	Total (N=54)
	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>
Bench	116 (58.3)	79 (54.5)	14 (70.0)	23 (67.6)	37 (68.5)
Jury	83 (41.7)	66 (45.5)	6 (30.0)	11 (32.4)	17 (31.5)

Focusing on public defender jurisdictions only, we obtained a similar outcome ($R = .18$; $df = 6,47$; $F = 0.25$, $p > .05$).

Disposition: Guilty vs. Not Guilty

This analysis also focused only on those defendants who pleaded not guilty. In Table 11, we display the distribution of case dispositions for these defendants. In the second half of the table, we present similar data for those who originally pleaded guilty.

Briefly, we see very little difference in the rate of conviction or acquittal either between types of jurisdiction or types of counsel. In general, if an indigent defendant went to trial he or she had about a 75 percent chance of being convicted.

The regression analyses support this interpretation. Neither jurisdiction nor counsel type bears a particularly strong relationship to trial outcome. However, the analyses did point to the wisdom of defendants requesting a jury trial rather than a bench trial. Of the seven predictors considered, by far the most potent predictor of trial outcome was the type of trial selected ($R = .44$; $df = 7,191$; $F = 6.55$, $p < .01$). This variable alone accounted for over 18 percent of the variance in the final

Table 11. Disposition: Number and Percent of Indigent Cases Found Guilty or Not Guilty by Type of Jurisdiction and Type of Counsel

	Total: Both Jurisdictions (N=199)	Assigned Counsel Jurisdictions (N=145)	Public Defender Jurisdictions		
			Assigned Counsel Attorneys (N=20)	Public Defender Attorneys (N=34)	Total (N=54)
	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>
Found Guilty	147 (73.9)	106 (73.1)	16 (80.0)	25 (73.5)	41 (75.9)
Found Not Guilty	52 (26.1)	39 (26.9)	4 (20.0)	9 (26.5)	13 (24.1)
Found Guilty	147 (15.2)	106 (15.1)	16 (28.6)	25 (11.7)	41 (15.2)
Pleaded Guilty	823 (84.8)	595 (84.9)	40 (71.4)	188 (88.3)	228 (84.8)
TOTAL Guilty	970 (100.0)	701 (100.0)	56 (100.0)	213 (100.0)	269 (100.0)

verdict across both types of jurisdictions; it accounted for over 13 percent of the variance on this same dependent variable within public defender jurisdictions alone.

Sentencing

Reduction in charges. We now turn to a possible indicator of skill in the area of plea bargaining -- the ability of the attorney to negotiate a reduction in the severity of charges. Due to data limitations, our analysis is confined to those cases where the defendant was found guilty. Only in cases of conviction was the final charge recorded on which the conviction was obtained.

We looked at two populations within the data set: defendants who pleaded guilty, and thus, who might have bartered for a lesser charge; and defendants who pleaded not guilty and thus, were more likely to be tried on the original or more serious charge. In each instance, we constructed the variable "change in severity of charge" by comparing the initial charge to the final charge and coding it as increased, decreased, or the same level of severity.

Table 12 presents the distribution of charge severity of charges for both groups. Overall, there are no pronounced jurisdictional or counsel type differences.

Table 12. Change in Charge Severity: Number and Percent of Guilty Cases in which Charges were Increased or Decreased by Defendant Plea, Type of Jurisdiction and Type of Counsel

CHANGE IN CHARGE CODE	Total: Both Jurisdictions (N=970)	Assigned Counsel Jurisdictions (N=701)	Public Defender Jurisdictions		
			Assigned Counsel Attorneys (N=56)	Public Defender Attorneys (N=213)	Total (N=269)
<u>PLEADED GUILTY</u>					
	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>
Charges Increased	52 (6.3)	25 (4.2)	1 (2.5)	26 (13.8)	27 (11.8)
No Change	721 (87.6)	527 (88.6)	38 (95.0)	156 (93.0)	194 (85.1)
Charges Decreased	50 (6.1)	43 (7.2)	1 (2.5)	6 (3.2)	7 (3.1)
TOTAL	823 (100.0)	595 (100.0)	40 (100.0)	188 (100.0)	228 (100.0)
<u>PLEADED NOT GUILTY</u>					
	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>
Charges Increased	5 (3.4)	4 (3.8)	0 (0.0)	1 (4.0)	1 (2.4)
No Change	129 (87.8)	92 (86.8)	15 (93.8)	22 (88.0)	37 (90.2)
Charges Decreased	13 (8.8)	10 (9.4)	1 (6.2)	2 (8.0)	3 (7.3)
TOTAL	147 (100.0)	106 (100.0)	16 (100.0)	25 (100.0)	41 (100.0)

Over 85 percent of the convicted defendants are tried on the same charge as the one for which they were originally arrested. This is true regardless of the initial plea.

Defendants who plead guilty are slightly more likely to have their charge changed and increased in public defender jurisdictions than in assigned counsel jurisdictions. Within public defender jurisdictions, defendants were more likely to have their charge increased if they were represented by a public defender rather than an assigned counsel attorney. When the defendant pleaded guilty, only 3.2 percent of all charges handled by public defenders were decreased in severity from the time of arrest to the time of final disposition; for assigned counsel cases in these jurisdictions, the proportion is 2.5 percent. It is important to note, though, that these distinctions are based on a very small sample size. There were only 34 defendants in our data base who pleaded guilty in a public defender jurisdiction and whose charges changed.

For defendants who pleaded not guilty, the pattern is about the same. Differences between districts are not pronounced. When a change does occur in an assigned counsel jurisdiction, it is more likely to be a decrease in

the severity of the charge. The public defender jurisdiction sample size ($n = 4$) is too small to draw any conclusions.

Our regression analyses focused only on those defendants whose charge was changed, since the proportion of defendants whose charge did not change was almost identical within each of the groups we examined (83%-95%). The distinctive factor for this analysis was the direction of the change when one occurred.

Six predictors correlated significantly with the change-in-charge variable ($R = .40$; $df = 6, 113$; $F = 3.66$, $p < .01$) when examined across jurisdictions. The two most important factors associated with a change were the type of counsel and the nature of the plea. Court appointed attorneys were associated with a decrease in charges; public defenders were associated with an increase. Not guilty pleas were associated with a decrease in severity of charges; guilty pleas with an increase. However, these two variables accounted for 16 percent of the variance in the direction of the change in criminal charges. All of the predictor variables entered into the equation accounted for 16.3 percent of the variance.

A meaningful analysis of indigent defendants in public defender jurisdictions could not be conducted because of the small sample size ($n = 38$). Inspection of the zero-order correlation coefficients suggested that an increase in the severity of charges was associated with female defendants ($r = .43$, $p < .01$), release from jail pending trial ($r = -.36$, $p < .05$), and a guilty plea ($r = .38$, $p < .05$).

Our findings with regard to type of attorney are surprising. Public defender cases are associated with increased charges. This is contrary to the widely held belief that public defenders are effective plea (and perhaps charge) bargainers. We investigated this relationship further, by examining the individual records of those defendants in public defender jurisdictions whose charge had changed.

We found that the bulk of the cases (89%) in which the charges changed in a public defender jurisdiction came from only one site: Waynesboro/Staunton/Augusta where they were handled by a public defender ($n=33$). In Waynesboro, when a charge changed, it tended to increase in severity (82%). In fact, 67 percent of the increased charges in this jurisdiction was from a charge of Forgery/Fraud to that of

Theft/Larceny/Arson. The phenomenon is unique to the Waynesboro/Staunton/Augusta public defender jurisdiction.

Problems with the data set aside, the probability that the type of jurisdiction or the type of attorney could be responsible, even indirectly, for an increase in charge is very low. A likely explanation is that the changes we uncovered reflect administrative "tidying" of charges by the prosecutor. The finding is an interesting artifact that precludes use of the change-in-charge variable as an indicator of plea bargaining.

Sentence severity: type of sentence. A second area of negotiation open to a defense counselor relates to the severity of the sentence imposed. Again, we were interested in differences between defendants who pleaded guilty and those who pleaded not guilty. Our expectations were that defendants who pleaded guilty would be awarded a less severe sentence than defendants who pleaded not guilty.

Table 13 presents data on the types of sentences imposed on convicted defendants according to their initial plea. The general pattern is one of fairly comparable sentencing distributions between types of jurisdictions and counsel. However, we do note that a somewhat smaller

Table 13. Sentences: Number and Percent of Sentences Imposed on Convicted Indigent Felons by Initial Plea, Type of Jurisdiction and Type of Counsel

	<u>Public Defender Jurisdictions</u>				
	<u>Total: Both Jurisdictions (N=970)</u>	<u>Assigned Counsel Jurisdictions (N=701)</u>	<u>Assigned Counsel Attorneys (N=56)</u>	<u>Public Defender Attorneys (N=213)</u>	<u>Total (N=269)</u>
<u>PLEADED GUILTY</u>					
	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>
Fine	2 (0.2)	2 (0.3)	0 (0.0)	0 (0.0)	0 (0.0)
Probation	35 (4.3)	26 (4.4)	0 (0.0)	9 (4.8)	9 (3.9)
Jail	116 (14.1)	87 (14.6)	6 (15.0)	23 (12.2)	29 (12.7)
Prison	<u>670 (81.4)</u>	<u>400 (80.7)</u>	<u>34 (85.0)</u>	<u>156 (83.0)</u>	<u>190 (83.3)</u>
TOTAL	823(100.0)	595(100.0)	40(100.0)	188(100.0)	228(100.0)
<u>PLEADED NOT GUILTY</u>					
Fine	5 (3.4)	5 (4.7)	0 (0.0)	0 (0.0)	0 (0.0)
Probation	1 (0.7)	0 (0.0)	1 (6.3)	0 (0.0)	1 (2.4)
Jail	37 (25.2)	27 (25.5)	3 (18.8)	7 (28.0)	10 (24.4)
Prison	<u>104 (70.7)</u>	<u>74 (69.8)</u>	<u>12 (75.0)</u>	<u>18 (72.0)</u>	<u>30 (73.2)</u>
TOTAL	147(100.0)	106(100.0)	16(100.0)	25(100.0)	41(100.0)

proportion of persons who pleaded not guilty were sentenced to prison, contrary to our expectations. Since the crimes examined were felonies, the most common type of sentence is prison, followed by jail, probation and fine in descending severity and frequency. Among those who pleaded guilty, the only notable variation is the tendency within public defender jurisdictions for public defender clients to be put on probation more often than assigned counsel defendants.

Sentence severity: length of sentence. For defendants who are sentenced to prison or jail the length of the sentence becomes a crucial factor. Negotiation over the length of sentence is often as common as negotiation over the charge or type of sentence. In Table 14, we present the distribution of years imposed for defendants sentenced to prison. The table also presents average sentences by type of plea.

The most pronounced differences in sentencing appear to be related to the defendant's plea. Those who pleaded not guilty received consistently higher average sentences than those who pleaded guilty.

Table 14. Length of Prison Sentence Imposed on Convicted Indigent Felons by Initial Plea, Type of Jurisdiction and Type of Counsel

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	Total: Both Jurisdictions (N=771)	Assigned Counsel Jurisdictions (N=553)	Assigned Counsel Attorneys (N=44)	Public Defender Attorneys (N=174)	Total (N=218)
	%	%	%	%	%
<u>PLEADED GUILTY</u>					
1 year	257 (38.4)	223 (46.5)	2 (6.1)	32 (20.5)	34 (18.0)
2-3 years	224 (33.5)	161 (33.5)	9 (27.3)	54 (34.6)	63 (33.3)
4-5 years	147 (22.0)	75 (15.6)	19 (57.6)	53 (34.0)	72 (38.1)
6-10 years	27 (4.0)	14 (2.9)	3 (9.1)	10 (6.4)	13 (6.9)
11-15 years	3 (0.5)	3 (0.6)	0 (0.0)	0 (0.0)	0 (0.0)
16-98 years	10 (1.5)	3 (0.6)	0 (0.0)	7 (4.5)	7 (3.7)
99 years	1 (0.1)	1 (0.2)	0 (0.0)	0 (0.0)	0 (0.0)
TOTAL	669 (100.0)	480 (100.0)	33 (100.0)	156 (100.0)	189 (100.0)
AVERAGE	3.1	2.6	4.2	4.2	4.2
<u>PLEADED NOT GUILTY</u>					
1 year	11 (10.8)	9 (12.3)	1 (9.1)	1 (5.6)	2 (6.9)
2-3 years	28 (27.4)	21 (28.7)	2 (18.2)	5 (27.8)	7 (24.1)
4-5 years	42 (41.2)	30 (41.1)	5 (45.5)	7 (38.9)	12 (41.4)
6-10 years	13 (12.7)	6 (8.2)	3 (27.3)	4 (22.2)	7 (24.1)
11-15 years	4 (3.9)	3 (4.1)	0 (0.0)	1 (5.6)	1 (3.4)
16-98 years	4 (3.9)	4 (5.5)	0 (0.0)	0 (0.0)	0 (0.0)
99 years	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)
TOTAL	102 (100.0)	73 (100.0)	11 (100.0)	18 (100.0)	29 (100.0)
AVERAGE	5.2	5.2	5.3	5.4	5.4

Among those who pleaded not guilty, there is very little variation in type or length of sentence across types of counsel or types of jurisdictions.

Among defendants who pleaded guilty we found substantial differences across type of jurisdiction; defendants in public defender jurisdictions received longer sentences than those in assigned counsel jurisdictions. This difference is related only to the type of jurisdiction in that there is no difference between assigned counsel and public defenders within public defender jurisdictions in terms of the average length of sentence.

Table 15 presents data on the length of jail sentences. In brief, it shows no major differences in length of jail sentence between types of plea, counsel, or jurisdiction. Most sentences clustered about the six-month and 12-month level, regardless of other factors. Minor differences in the mean sentences among categories can be attributed to very small numbers of cases.

Multiple regression analyses were conducted on the length-of-sentence data. Eight predictor variables accounted for 10.2 percent of the variation in length of prison sentence ($R = .32$; $df = 8,762$; $F = 10.82$, $p < .01$). The three most potent predictors were the seriousness of

Table 15. Length of Jail Sentence Imposed on Convicted Indigent Felons by Initial Plea, Type of Jurisdiction and Type of Counsel

		<u>Public Defender Jurisdictions</u>				
		<u>Total: Both Jurisdictions</u> (N=140)	<u>Assigned Counsel Jurisdictions</u> (N=103)	<u>Assigned Counsel Attorneys</u> (N=9)	<u>Public Defender Attorneys</u> (N=28)	<u>Total</u> (N=37)
<u>PLEADED GUILTY</u>						
	<u>%</u>		<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>
1-3 months	3 (2.9)	2 (2.6)	0 (0.0)	1 (4.8)	1 (3.7)	
4-6 months	38 (36.3)	31 (39.8)	4 (66.7)	3 (14.3)	7 (25.9)	
7-9 months	2 (1.9)	0 (0.0)	1 (16.7)	1 (4.8)	2 (7.4)	
10-12 months	62 (59.0)	45 (57.7)	1 (16.7)	16 (76.2)	17 (63.0)	
TOTAL	105 (100.0)	78 (100.0)	6 (100.0)	21 (100.0)	27 (100.0)	
AVERAGE	9.5	9.3	7.5	10.6	9.9	
<u>PLEADED NOT GUILTY</u>						
1-3 months	2 (5.7)	0 (0.0)	0 (0.0)	2 (28.6)	2 (20.0)	
4-6 months	8 (22.9)	8 (32.0)	0 (0.0)	0 (0.0)	0 (0.0)	
7-9 months	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	
10-12 months	25 (71.4)	17 (68.0)	3 (100.0)	5 (71.4)	8 (80.0)	
TOTAL	35 (100.0)	25 (100.0)	3 (100.0)	7 (100.0)	10 (100.0)	
AVERAGE	10.1	10.1	12.0	9.4	10.2	

the charge upon which the defendant was convicted, the type of plea, and the type of jurisdiction. More serious charges were associated with longer sentences as were not guilty pleas and public defender jurisdictions. The plea effect noted in Table 14 was supported in the regression analysis.

Within the public defender jurisdictions, type of counsel did not account for much of the variation in length of prison sentence. We did note a tendency for nonwhites to receive longer prison sentences, as did those who were convicted on more serious charges ($R = .31$; $df = 7,210$; $F = 3.11$, $p < .01$). The multiple regression for length of jail sentence, based on the jurisdictional data, was not significant ($R = .33$; $df = 8,131$; $F = 2.01$, $p > .05$). There were too few data within the public defender jurisdictions on which to base a meaningful analysis ($n = 37$).

The sentence severity scale. Our next step was to capture the relative severity of the sentences in a single numeric scale. We computed an index of sentence severity based on both the type and degree of sentence. This scale was entered as the dependent variable in multiple regression equations.

When the jurisdictional data were analyzed, the variable which was most potent in predicting the severity of the sentence was the severity of the crime on which the defendant was convicted. Jurisdiction type was less important as a predictor. In the final equation only 9.0 percent of the variance was accounted for ($R = .30$; $df = 8,945$; $F = 11.70$, $p < .01$).

The analysis of cases within public defender jurisdictions produced comparable results. Most of the variance in the severity-of-sentence scale that was predictable was accounted for by the severity of the crime with which the defendant was charged ($R = .35$; $df = 7,257$; $F = 5.11$, $p < .01$).

Processing Time: Time from Arrest to Disposition

Public defender systems are thought to process cases more quickly than other systems. It is argued that the public defender is more familiar with the process and has a better strategic sense of plea bargaining than assigned counsel attorneys. The result is said to be a more efficient and equitable system of justice.

In this portion of our analysis, we examine the amount of time cases took to proceed through the system, from the

arrest of the defendant to the final disposition of the case. We again compare type of jurisdiction, type of counsel, and type of plea.

As shown in Table 16, there appears to be a strong relationship between the type of plea and the amount of processing time. Defendants who plead guilty are processed almost 46 days sooner than defendants who plead not guilty. Similarly, public defenders process their clients who plead guilty almost 36 days faster, on average, than the clients who plead not guilty.

Among the defendants who plead not guilty, we found:

- substantial difference by type of jurisdiction -- defendants in public defender jurisdictions took over 20 additional days to process,
- a longer processing by assigned counsel in public defender jurisdictions than in assigned counsel jurisdictions, and
- within public defender jurisdictions, an average of 37 days longer processing in those cases handled by assigned counsel compared to those handled by public defenders.

The pattern is similar in the case of those defendants who pleaded guilty. For this group, we found:

Table 16. Processing Time: Time from Arrest to Disposition by Type of Jurisdiction and Type of Counsel

	Total: Both Jurisdictions (N=1020)	Assigned Counsel Jurisdictions (N=740)	Public Defender Jurisdictions		
			Assigned Counsel Attorneys (N=60)	Public Defender Attorneys (N=220)	Total (N=280)
<u>PLEADED GUILTY</u>					
	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>
1-30 days	49 (5.9)	28 (4.7)	0 (0.0)	21 (11.2)	21 (9.2)
31-60 days	216 (26.2)	179 (30.1)	8 (20.0)	29 (15.4)	37 (16.2)
61-90 days	195 (23.7)	157 (26.4)	2 (5.0)	36 (19.1)	38 (16.7)
91-120 days	124 (15.1)	66 (14.5)	4 (10.0)	34 (18.1)	38 (16.7)
121-150 days	106 (12.9)	77 (12.9)	8 (20.0)	21 (11.2)	29 (12.7)
More than 150 days	133 (16.2)	68 (11.4)	16 (45.0)	47 (25.0)	65 (28.5)
TOTAL	823 (100.0)	595 (100.0)	40 (100.0)	188 (100.0)	288 (100.0)
AVERAGE	99.2	93.1	142.2	109.2	115.0
RANGE	7-666	8-666	41-348	7-386	7-386
<u>PLEADED NOT GUILTY</u>					
	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>
1-30 days	1 (0.5)	1 (0.7)	0 (0.0)	0 (0.0)	0 (0.0)
31-60 days	19 (9.6)	15 (10.3)	2 (10.0)	2 (6.3)	4 (7.7)
61-90 days	34 (17.3)	25 (17.2)	3 (15.0)	6 (18.8)	9 (17.3)
91-120 days	37 (18.8)	29 (20.0)	1 (5.0)	7 (21.9)	8 (15.4)
121-150 days	43 (21.8)	33 (22.8)	5 (25.0)	5 (15.6)	10 (19.2)
More than 150 days	63 (32.0)	42 (29.0)	9 (45.0)	12 (37.5)	21 (40.4)
TOTAL*	197 (100.0)	145 (100.0)	20 (100.0)	32 (100.0)	52 (100.0)
AVERAGE	145.0	139.9	181.8	145.1	159.2
RANGE	22-495	22-495	42-376	51-308	42-376

* N is reduced because of two dropped cases.

- assigned counsel jurisdictions process such cases almost 22 days faster on average than public defender jurisdictions, and
- assigned counsel in public defender jurisdictions take the longest time in processing cases; assigned counsel in assigned counsel jurisdictions take the shortest time.

The regression analysis based on jurisdictional data indicated that type of plea, jurisdiction, and counsel were the most potent predictors of processing time ($R = .32$; $df = 9,994$; $F = 13.03$, $p < .01$). However, all predictor variables considered jointly only account for about 11 percent of the variance.

The multiple correlation was also significant within public defender jurisdictions ($R = .39$; $df = 7,268$; $F = 6.96$, $p < .01$). Approximately 15 percent of the variance was explained when seven predictor variables were introduced. Police disposition, type of plea and type of counsel were the three most potent variables. We found that if the defendant was released pending trial, processing time was increased; it was also increased if the defendant entered a not guilty plea and was defended by court assigned counsel.

Cost Findings

Important as questions are about the quality of indigent representation, it is clear that the relative cost of each type of defense system is of equal or greater concern to policy makers. When asked about the advantages of public defender offices, the majority of our respondents volunteered the opinion that it costs less than the assigned counsel method. And several high level officials in Virginia State government said the cost issue would be the most important factor in the legislature's decisions about whether to expand the public defender model to other cities.

Ours is not the first effort to assess the relative cost of the Virginia Public Defender System. The offices in each jurisdiction compile an annual summary of their costs in an estimate of what it would have cost the State to provide the same services had assigned counsel been used instead. Estimated annual savings to the State have ranged from 11.1% to 41.6% during 1977-1980.

In a presentation to the Committee on District Courts in July 1981, the Office of the Executive Secretary of the Supreme Court of Virginia employed two methods for assessing the cost of implementing the system on a

statewide basis. Basing the first method on caseload, and assuming that the public defender's office would handle approximately 15% of the total workload in a given jurisdiction, this figure was shown to be less than present costs in every jurisdiction. Basing the second method on the number of staff who would be required to establish a public defender office and keep it functioning, they showed a net savings in all but nine of the 31 judicial circuits.

Our findings are in keeping with these computations. Having calculated the indigency caseload and cost per count for each jurisdiction according to the method outlined in Chapter II, we aggregated the amounts for the four assigned counsel jurisdictions and the three* public defender jurisdictions and arrived at the cost per case results reported in Table 17. While the differences favored the public defender jurisdictions between 1975 and 1977, the differences have reversed directions sharply since then. This can perhaps be explained in terms of the start-up costs of the Petersburg office in 1978.

*One jurisdiction was dropped from this portion of the analysis because there was too much missing data in our OBTS file at the misdemeanor court level to develop estimates.

Table 17. Indigency Caseload Costs per Case by Type of Jurisdiction*

Year	Type of Jurisdiction		
	Assigned Counsel	Public Defender	Dollar Differences
1975	\$ 90.97	\$ 59.67	-31.30
1976	125.48 (+38%)	94.62 (+59%)	-30.86
1977	108.71 (-13%)	96.56 (+2%)	-12.15
1978	118.30 (-9%)	89.95 (-7%)	-28.35
1979	111.95 (-5%)	116.17 (+29%)	+ 4.22
1980	114.77 (+3%)	138.57 (+19%)	+23.80

*The figures in parentheses indicated percent change from previous year

Judges in our study jurisdictions suggested that the trend should be toward an increasing disparity over time, to the benefit of public defender offices. Judges report a stronger tendency to approve a questionable indigency claim when a public defender is available than when an assigned counsel would be necessary. As one judge put it, there is no additional cost to the government, and therefore no cost to giving the defendant the benefit of the doubt. Behavior resulting from this attitude should increase public defender caseloads, relative to assigned counsel caseloads, and therefore drive down the former's cost per case relative to that of the latter.

Of course, this behavior by judges could tax the energies of current public defenders. This could reduce quality and possibly add to "burn-out" over time. Also, to the extent that judges are overly liberal in approving indigency claims they may force public defender offices to hire additional attorneys. This would drive up relative costs over time. In any event, any conclusion about the relative cost of providing defense services requires a more detailed analysis than we were able to perform here.

IV. SUMMARY AND CONCLUSIONS

We began this study with three questions:

- Do indigent defendants receive superior defense services in public defender jurisdictions or in assigned counsel jurisdictions?
- Do indigent defendants with public defender attorneys receive superior defense services compared to those with assigned counsel attorneys?
- Are indigent defense services less or more expensive when a public defender system is utilized instead of an assigned counsel system?

We succeeded in discovering significant but small differences between assigned counsel and public defender systems. The results could be used to bolster arguments on either side of the issue. Our report offers no final judgment about the public defender and assigned counsel system. What it does provide is a more complete and accurate picture of the dynamics of the two systems and the kinds of outcomes they are likely to produce. Before summarizing the quantitative findings, we will first review some of the qualitative observations we made about the two types of jurisdictions.

The Assigned Counsel System

In all four of the assigned counsel jurisdictions, judges compile a list of attorneys willing to be assigned to indigent cases. Attorneys participate voluntarily, usually to supplement their income, gain trial experience, and establish a litigation reputation. They tend to be younger, less experienced attorneys. Some judges expressed concern about the consequences of this for the quality of defense and described their methods of dealing with it. In some instances, judges have persuaded more senior members of the criminal bar to place their names on the list to be assigned the more difficult cases. In one jurisdiction we were told that more senior attorneys regularly advised the younger assignees in a kind of apprentice system, particularly with the more serious cases. This opportunity to train new attorneys was claimed as a major advantage of the assigned counsel method. On the other hand, as one attorney observed, what client would voluntarily give a trainee such enormous responsibility in so consequential a situation?

The attorneys said they did not treat assignment and private practice cases differently. A few acknowledged that when the pressure was on preference had to go to their

private clients. Monetary considerations alone sometimes necessitated this. Private clients could be called upon for funds for medical tests, document retrieval and so forth, whereas the assignment cases were limited to the fixed fee set by the court. Even if these fees went entirely for services they could not compete with private fees; most assigned felony cases had a normal maximum of \$200 whereas the going rate for a routine private case ranged between \$500 and \$750. Assigned counsel typically emphasized their professional status. Once in court, they claimed, their integrity was at stake.

Clerks and judges offered some support for this; they did not note any differences in how assigned counsel handled appointed and privately retained cases. However, one clerk did offer the impression that habeas corpus petitions claiming lawyer incompetence were filed far less frequently by convicted private clients than by convicted assigned clients. Similarly, a clerk in a public defender jurisdiction noted a sharp decline in such petitions since the public defender office opened. Certainly client expectations have much to do with whether habeas corpus petition charges are filed. Still, it would not be surprising if such alleged differential treatment existed, given the assigned counsel's need to attend to the development of a private practice.

Public Defender Systems

Like assigned counsel, public defenders become officially involved in a case at arraignment, when the defendant indicates the need for an attorney. The general practice of the public defender office is to have one of its attorneys in the courtroom to assume responsibility for all cases that day. Since assigned counsel must be identified from the list and contacted later by the clerk, there is allegedly a greater delay in connecting clients with assigned counsel than with public defenders.

In terms of client contact, the assigned counsel is perceived as having more frequent interaction with clients than do the public defenders. The latter point out, however, that contact time should even out when the efforts of the investigator are considered. These investigators gather evidence and interview clients and witnesses. Their availability was routinely cited as the single greatest asset of the public defender system by creating a certain amount of parity between the defense attorney and the prosecutor's office. Having an entire police department available, prosecutors do retain quite an edge. Still, having some investigative assistance certainly puts public defenders ahead of assigned counsel, who normally have no such assistance at all.

It was universally acknowledged that there was considerable caseload pressure on public defenders. Many legal actors felt that public defenders handled cases more expeditiously, in part because this caseload pressure forced them to "plead out" more frequently than less heavily pressured assigned counsel. Our findings tend to support this contention. Public defenders also contend that their greater familiarity with the criminal law and criminal court gave them better insight as to when a case could be won, and hence a better sense of when it was appropriate to plea. Moreover, they felt better skilled at plea bargaining than their peers because of their negotiation experience and acquired sense of "the going rate."

Case pressure is not simply a numbers problem, though. Public defenders also must contend with the unbroken routine of dealing with criminal felons day in and day out. While there are some interesting cases, most are similar in the questions at issue and how the case should be managed. This experience creates the "burn out" effect so often mentioned by our respondents and by other researchers in the literature.

To summarize the qualitative data, our interviewees tended to underscore the prevailing notions about the two indigent defense approaches:

- Assigned counsel attorneys can devote more individual attention to their indigent clients, but must balance that obligation against their potentially more lucrative private clients;
- Public defenders are more experienced in criminal procedures, but are pressured to expedite their cases through plea bargaining rather than a trial because of their caseload demands.

We now summarize our own findings, drawing on the qualitative information to clarify the meaning of the data.

Assignment of Counsel

We found that the type of counsel assigned to indigent cases is not completely random. It appears to be somewhat related to the defendants' age, sex, and race and the severity of the charge; older, white female defendants charged for less serious felonies are more often assigned to a public defender; younger, nonwhite male defendants facing more serious charges to assigned counsel. These findings tend to support the contention that more serious cases are assigned to assigned counsel attorneys.

Police Disposition

We found a strong and persistent tie between the defendants' sex and the probability of their being released prior to trial. This association held more or less independently of the severity of the charge. Apparently, women are considered more reliable than men in terms of voluntarily appearing for trial; or perhaps their parenting responsibilities are being taken into consideration.

Once this relationship was taken into consideration, the type of counsel representing the defendant and the type of jurisdiction appeared to have little to do with police disposition.

The Decision to Prosecute

Our data show that the type of counsel provided and the type of jurisdiction are only remotely related to the decision to prosecute. Defendants are somewhat less likely to be prosecuted if they are in public defender jurisdictions; but a pronounced difference between types of counsel within public defender jurisdictions was not found. This suggests that jurisdiction type has more effect than type of attorney -- a finding that is difficult to interpret in any meaningful way. As it is, we are left

with explaining an apparent "catalytic effect" in which the difference is due to the performance of both types of counsel in the jurisdiction, or to some third, untested variable.

The Defendants' Plea

The type of counsel appears to be related to the defendant's choice of plea. Public defender clients are somewhat more likely to plead guilty than other defendants. But it also appears that the defendants' age, sex, and race, and the severity of the charge are just as strongly tied to the decision of how to plead.

The relatively weak relationship between plea and type of counsel is difficult to understand. We were told that public defenders are more inclined to plead their clients guilty because they know "the going rate" better and because they face a heavier caseload and thus need to resolve their cases as expeditiously as possible. While the data support this impression, the relationship is not as strong as anticipated.

Type of Trial

We found no relationship between this variable and ~~whether the type of counsel or the type of attorney~~ defending the indigent client. We were told in the jurisdictions that there was no obvious reason why there should be.

Disposition: Guilty or Not Guilty

We found almost no variation between type of counsel or attorney and the ultimate finding of guilty or not guilty among those who went to trial (pleaded not guilty). The only systematic finding was that persons who chose a jury trial were more likely to be acquitted. This tends to confirm the conventional wisdom concerning jury trials; they introduce an unpredictable element that tends to favor the defendant.

The failure to find any systematic relationships on this variable may be due to a general lack of variation in terms of outcomes. Over 75 percent of all trials in our sample ended in a finding of guilty. With the result of the trial not a significant question in the majority of cases, this tends to mean that the events preceding the trial, the decision to prosecute or not and the choice of a plea, take on more importance.

Reduction in Charges

Our attempt to measure one aspect of plea bargaining -- the reduction in the original charge -- proved unfruitful. Although we were able to produce significant statistical relationships among several variables in this area, the results appear to be artifactual. In any event, the findings themselves could not be plausibly related to the type of attorney or jurisdiction associated with the defendant.

Type and Length of Sentence

We found very little variation in the type of sentence imposed on convicted felons in relation to the type of counsel they were assigned or the type of jurisdiction in which they were tried. Public defender attorneys did appear to have slightly more clients who were given probation. However, the difference was small.

With respect to length of sentence we found a relationship between prison sentence length and three independent variables: type of jurisdiction, plea -- and most importantly -- the severity of the charge on which the defendant was convicted. Defendants in public defender jurisdictions who pleaded not guilty and defendants with

more serious charges against them tended to receive longer prison sentences.

The length of jail sentence was found to be related only to the severity of the conviction charge. Again, the type of counsel and type of jurisdiction played no role.

On the combined sentence severity scale, we found an amalgam of relationships noted elsewhere. The public defender-assigned counsel variable was not a factor; severity of the conviction charge accounted for almost all of the variation explained.

Taken together, the findings indicate that having a public defender attorney is not associated with any substantial difference in the type, length or overall severity of the sentences handed down to defendants.

Processing Time

Our findings suggest that the advantage offered by the public defender approach relates primarily to the tendency of the public defender to plead his or her clients guilty. Type of plea was the variable which accounted for most of the variation. Defendants who pleaded guilty had a shorter processing time than those who pleaded not guilty. Type of counsel was a predictor of processing time, but only after police disposition and plea in order of importance.

To summarize our quantitative findings, we found only two areas where type of attorney or type of system seemed to make a significant difference:

- Public defenders are more likely to plead their clients guilty, and
- Assigned counsel attorneys tend to take longer to process their clients' cases.

Despite the expected finding regarding the tendency of public defenders to plead their clients guilty, presumably due to plea bargaining, we could detect no concomitant benefit to the defendant in the variables we analyzed.

The relative advantage with respect to processing time appears to be related as much to the tendency of public defenders to plead their clients guilty as to their skill in moving cases through the system.

Conclusions

The public defender experiment was designed to test a new approach to indigent defense. Our contribution to the debate over whether the experiment was a success is circumscribed by the limits of the data we examined. We cannot say that these findings are relevant to other Virginia jurisdictions should the system be expanded in the

future or whether the same results would be obtained a few years from now if the study were to be replicated. Most importantly, the differences we noted should not be considered as proof of the value of one system as opposed to the other.

Such an equivocal outcome is not surprising. Many of the differences that are likely to be created by a public defender system are very subtle and not easily captured in a secondary analysis of archival data. The effect of plea bargaining, for example, is very illusive; we failed to isolate any effect despite repeated assurances by persons in the jurisdictions that it was the most important advantage offered by the public defender approach. As tempting as it may be to declare that there is no such effect, we also know that the analysis involved many decisions about what data to include and exclude, and how to interpret certain variables that may have inadvertently masked the effect. In particular, the use of count as the unit of analysis would tend to wash out the effect of plea bargaining in exchange for dropping charges against a client.

As they stand, the findings support the contention that public defenders systems are more efficient in

processing cases when compared to assigned counsel systems. However, like many researchers who have examined the question, we cannot say that public defender systems provide an obviously superior quality of defense to indigent defendants when compared to assigned counsel attorneys.

APPENDIX A

Comparison of the Original and Reduced Data Sets:
FELONY, FELONY A, INDIGENT, and INDIGENT B

The following tables present a detailed comparison of the original 10,579 felony cases collected for this study and the three principal reduced data sets actually used in the analysis.

FELONY (N=10,579): All Felony Cases

FELONY A (N=2078): All Complete
Felony Cases

INDIGENT (N=1423): Indigent Felony Cases

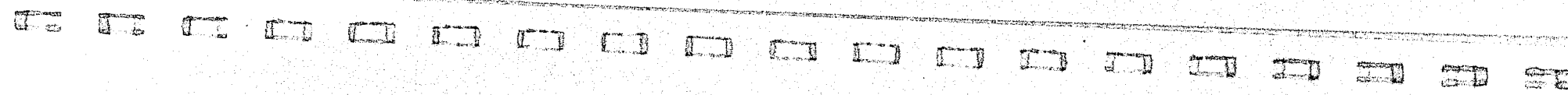
INDIGENT B (N=1022) All Prosecuted
Indigent Felony Cases

Each file was compared on the following variables:

- Percentage of cases from each individual jurisdiction
- Percentage of cases from public defender and assigned counsel jurisdictions
- Percentage of cases represented by each type of counsel
- Defendants' race
- Defendants' age
- Defendants' initial criminal charge
- Defendants' final (convicted) criminal charge
- Percentage of defendants' released or incarcerated prior to trial
- Defendants' initial plea
- Percentage of defendants' trial with a bench or jury trial
- Defendants' disposition
- Defendants' type of sentence
- Severity of defendants' sentence

	FELONY FILE (N=10,579)	FELONY A FILE (N=2078)	INDIGENT FILE (N=1423)	INDIGENT B FILE (N=1022)
<u>JURISDICTION</u>				
	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>
Albemarle	666 (6.3)	161 (7.7)	97 (6.8)	67 (6.6)
Augusta	427 (4.0)	136 (6.5)	96 (6.5)	86 (8.4)
Charlottesville	1311 (12.4)	215 (10.3)	148 (10.4)	130 (12.7)
Chesapeake	1579 (14.9)	233 (11.2)	137 (9.6)	80 (7.8)
Lynchburg	1631 (15.4)	735 (35.4)	589 (41.4)	447 (43.8)
Peterburg	234 (2.2)	94 (4.5)	68 (4.8)	30 (2.6)
Portsmouth	244 (2.3)	33 (1.6)	23 (1.6)	16 (1.7)
Roanoke	304 (2.9)	159 (7.7)	90 (6.3)	22 (2.2)
Staunton	539 (5.1)	139 (6.7)	89 (6.3)	82 (8.0)
Virginia Beach	3373 (31.9)	42 (2.0)	13 (0.9)	0 (0.0)
Waynesboro	271 (2.6)	131 (6.3)	73 (5.1)	62 (6.1)
Missing Data	0 (0.0)			
<u>JURISDICTION TYPE</u>				
Assigned Counsel	5431 (51.3)	1377 (66.3)	994 (69.9)	740 (72.4)
Public Defender	5148 (48.7)	701 (33.7)	429 (30.1)	282 (27.6)
Missing Data	0 (0.0)			
<u>RACE</u>				
White	6675 (63.1)	1185 (57.0)	736 (51.7)	511 (50.0)
Nonwhite	3904 (36.9)	893 (43.0)	687 (48.3)	511 (50.0)
Missing Data	0 (0.0)			

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A-3

<u>SEX</u>	<u>FELONY FILE</u> (N=10,579)	<u>FELONY A FILE</u> (N=2078)	<u>INDIGENT FILE</u> (N=1423)	<u>INDIGENT B FILE</u> (N=1022)
	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>
Male	8957 (84.7)	1816 (87.4)	1254 (88.1)	916 (89.6)
Female	1622 (15.3)	262 (12.6)	169 (11.9)	106 (10.4)
Missing Data	0 (0.0)			
<u>CHARGE CODE</u>				
Homicide	157 (1.5)	37 (1.8)	20 (1.4)	17 (1.7)
Kidnapping	89 (0.8)	24 (1.2)	13 (0.9)	8 (0.8)
Rape	199 (1.9)	41 (2.0)	24 (1.7)	17 (1.7)
Other Sex Crimes	162 (1.5)	27 (1.3)	15 (1.1)	7 (0.7)
Robbery	441 (4.2)	103 (5.0)	86 (6.0)	57 (5.6)
Assault	795 (7.6)	171 (8.2)	105 (7.4)	58 (5.7)
Burglary	1731 (16.5)	367 (17.7)	303 (21.3)	236 (23.1)
Theft/Larceny/Arson	2156 (20.6)	394 (19.0)	269 (18.9)	193 (18.9)
Auto Theft	359 (3.4)	82 (3.9)	66 (4.6)	50 (4.9)
Forgery/Fraud	2332 (22.3)	387 (18.6)	301 (21.2)	226 (22.1)
Heroin	23 (0.2)	4 (0.2)	1 (0.1)	0 (0.0)
Other Drugs	707 (5.7)	107 (5.1)	41 (2.9)	25 (2.4)
Marijuana	652 (6.2)	154 (7.4)	68 (4.8)	56 (5.5)
Weapons	307 (2.9)	68 (3.3)	50 (3.5)	28 (2.7)
Miscellaneous	469 (4.5)	112 (5.4)	61 (4.3)	44 (4.3)
Missing Data	100 (0.9)			
<u>POLICE DISPOSITION</u>				
Jail	2040 (61.2)	1343 (64.6)	1006 (70.7)	738 (72.2)
Bail	1296 (38.8)	735 (35.4)	417 (29.3)	284 (27.8)
Missing Data	7243 (68.5)			

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

	FELONY FILE (N=10,579)	FELONY A FILE (N=2078)	INDIGENT FILE (N=1423)	INDIGENT B FILE (N=1022)
<u>COUNSEL TYPE</u>				
	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>
Court Appointed	2406 (44.3)	1081 (52.0)	1081 (76.0)	800 (78.3)
Public Defender	918 (16.9)	342 (16.5)	342 (24.)	222 (21.7)
Privately Retained	1987 (36.6)	626 (30.1)		
Waived	123 (2.3)	29 (1.4)		
Missing Data	5145 (48.6)			
<u>PLEA</u>				
Not Guilty	844 (11.6)	299 (14.4)	211 (14.8)	199 (19.5)
Guilty	2512 (34.5)	1078 (51.9)	823 (57.8)	823 (80.5)
No Plea Entered	3927 (53.9)	701 (33.7)	389 (27.3)	
Missing Data	3296 (31.2)			
<u>TRIAL</u>				
Jury	289 (4.4)	135 (6.5)	89 (6.3)	83 (8.1)
Judge	2464 (37.2)	1271 (61.2)	960 (67.5)	939 (91.9)
No Trial Recorded	3871 (58.4)	627 (32.3)	374 (26.3)	
Missing Data	3955 (7.4)			
<u>DISPOSITION</u>				
Guilty	6239 (59.0)	1283 (61.7)	970 (68.2)	970 (94.9)
Not Guilty	297 (2.8)	76 (3.7)	52 (3.7)	52 (5.1)
Not Prosecuted	2841 (26.9)	729 (34.6)	401 (28.2)	
Certified	80 (0.8)	0 (0.0)		
Missing Data	0 (0.0)			

CONVICTION CODE

	FELONY FILE (N=10,579)	FELONY A FILE (N=2078)	INDIGENT FILE (N=1423)	INDIGENT B FILE (N=1022)
	%	%	%	%
No Charge	4320 (41.5)	795 (38.3)	453 (31.8)	52 (5.1)
Homicide	69 (0.7)	23 (1.1)	14 (1.0)	14 (1.4)
Kidnapping	25 (0.2)	8 (0.4)	3 (0.2)	3 (0.3)
Rape	60 (0.6)	13 (0.6)	12 (0.8)	12 (1.2)
Other Sex Crimes	53 (0.5)	10 (0.5)	6 (0.4)	6 (0.6)
Robbery	179 (1.7)	50 (2.4)	46 (3.2)	46 (4.5)
Assault	445 (4.3)	75 (3.6)	54 (3.8)	54 (5.3)
Burglary	995 (9.6)	257 (12.4)	219 (15.4)	219 (21.4)
Theft/Larceny/Arson	1616 (15.5)	264 (12.7)	212 (14.9)	212 (20.7)
Auto Theft	168 (1.6)	52 (2.5)	48 (3.4)	48 (4.7)
Forgery/Fraud	1166 (11.2)	246 (11.8)	204 (14.3)	204 (20.0)
Heroin	10 (0.1)	1 *	0 (0.0)	0 (0.0)
Other Drugs	255 (2.5)	69 (3.3)	27 (1.9)	27 (2.6)
Marijuana	424 (4.1)	116 (5.6)	56 (3.9)	56 (5.5)
Weapons	122 (1.2)	24 (1.2)	19 (1.3)	19 (1.9)
Miscellaneous	496 (4.8)	75 (3.6)	50 (3.5)	50 (4.9)
Missing Data	176 (1.7)			

SENTENCE

No Sentence	4320 (40.8)	795 (38.3)	453 (31.8)	52 (5.1)
Fine	206 (1.9)	17 (0.8)	7 (0.5)	7 (0.7)
Jail	2450 (23.2)	214 (10.3)	153 (10.8)	153 (15.0)
Other	1 *			
Prison	3330 (31.5)	998 (48.0)	774 (54.4)	774 (75.7)
Probation	190 (1.8)	54 (2.6)	36 (2.5)	36 (3.5)
Missing Data	1 *			

* Less Than 0.1%

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SENTENCE SCALE

	FELONY FILE (N=10,579)	FELONY A FILE (N=2078)	INDIGENT FILE (N=1423)	INDIGENT B FILE (N=1022)
	%	%	%	%
No Sentence				
1	4320 (44.7)	795 (39.3)	453 (31.8)	52 (5.1)
2	206 (2.1)	17 (0.8)	7 (0.5)	7 (0.7)
3	190 (2.0)	54 (2.6)	36 (2.5)	36 (3.5)
5	1700 (17.6)	215 (10.3)	154 (10.8)	154 (15.1)
7	792 (8.2)	312 (15.0)	269 (18.9)	269 (26.3)
9	569 (5.9)	230 (11.1)	186 (13.1)	186 (18.2)
11	308 (3.2)	85 (4.1)	68 (4.8)	68 (6.7)
13	261 (2.7)	56 (2.7)	42 (3.0)	42 (4.1)
15	853 (8.8)	232 (11.2)	147 (10.3)	147 (14.4)
17	60 (0.6)	12 (0.6)	10 (6.7)	10 (1.0)
19	14 (0.1)	3 (0.1)	2 (0.1)	2 (0.2)
21	59 (0.6)	11 (0.5)	7 (0.5)	7 (0.7)
23	8 (0.1)	1 *	1 (0.1)	1 (0.1)
25	141 (1.5)	30 (1.4)	20 (1.4)	20 (2.0)
27	1 *	0 (0.0)	0 (0.0)	0 (0.0)
29	2 *	1 *	1 (0.1)	1 (0.1)
33	2 *	1 *	1 (0.1)	1 (0.1)
39	19 (0.2)	6 (0.3)	5 (0.4)	5 (0.5)
43	2 *	2 (0.1)	2 (0.1)	2 (0.2)
53	122 (1.2)	11 (0.5)	9 (0.6)	9 (0.9)
57	1 *	0 (0.0)	0 (0.0)	0 (0.0)
63	1 *	0 (0.0)	0 (0.0)	0 (0.0)
67	3 *	1 *	0 (0.0)	0 (0.0)
73	1 *	0 (0.0)	0 (0.0)	0 (0.0)
77	2 *	2 (0.1)	2 (0.1)	2 (0.2)
83	1 *	0 (0.0)	0 (0.0)	0 (0.0)
103	4 *	0 (0.0)	0 (0.0)	0 (0.0)
123	3 *	0 (0.0)	0 (0.0)	0 (0.0)
203	1 *	0 (0.0)	0 (0.0)	0 (0.0)
Missing Data	17 (0.2)	1 *	1 (0.1)	1 (0.1)
	916 (8.7)			

* Less Than 0.1%

APPENDIX B

Instrumentation

The following forms were used in the interviews with judges, assigned counsel, commonwealth's attorneys, public defenders and court clerks. The following forms are displayed here:

- General Interview Schedule - utilized with all interviews except for court clerks.
- Judge Interview Schedule - judges only
- Public Defender Interview Schedule - public defender only
- Clerk Interview Schedule - court clerks only
- Case Processing Issues - all interviews
- Judicial Performance Form - all but judges and court clerks

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Interviewee:

Position:

Interviewer:

Jurisdiction:

GENERAL INTERVIEW SCHEDULE

1. In general, how do you feel the defense provided to indigents by public defenders compares with that provided by assigned counsel (i.e., private counsel assigned and paid for by the court)?

Comments _____

2. In general, how do you feel the defense provided by public defenders compares with the defense provided by privately retained counsel in criminal cases?

Comments _____

3. In general, how do you feel the defense provided by assigned counsel compares with the defense provided by privately retained counsel in criminal cases?

Comments _____

4. What advantages and disadvantages in the provision of defense by a public defender system have you noticed?

Advantages _____

Disadvantages _____

5. What advantages and disadvantages in the provision of defense by an assigned counsel system have you noticed?

Advantages _____

Disadvantages _____

6. What advantages and disadvantages in the provision of defense by privately retained counsel have you noticed?

Advantages _____

Disadvantages _____

7. Do you think there is a difference in the attorney/client relationship when a public defender is representing a client as opposed to when a court-appointed lawyer is the counsel?

Explain the difference _____

8. Do you think there is a difference in the attorney/client relationship when a private counsel is representing a client as opposed to a public defender?

Explain the difference _____

9. Do you think there is a difference in the attorney/client relationship when a private counsel is representing a client as opposed to an assigned counsel?

Explain the difference _____

10. It is said that because the public defender and the prosecutor are both state employees that the adversary principal on which the system is based is compromised. Do you agree?

Explain your reasoning _____

10a. Is the attorney/client relationship compromised with assigned counsel
(because they are assigned attorneys paid by the court)?

Explain your reasoning _____

JUDGE INTERVIEW SCHEDULE

1. How is indigency determined in this jurisdiction? (follow probes)

1a. Describe the process _____

1b. What criteria are considered (probe for why these criteria are included)

1c. What weight is given to each of these criteria (probe for why weighted
this way) _____

PUBLIC DEFENDER INTERVIEW SCHEDULE

1. At what stage do public defenders become involved in a case? (probe for process point and reason why that one is the focus) _____

2. How do you get your cases? (probe for actions taken, such as jail checks, police contacts, etc. and reason why use this mechanism for identifying possible clients) _____

3. How is indigency determined in this jurisdiction?

3a. Describe the process _____

3b. What criteria are considered (probe for why these criteria are included) _____

3c. What weight is given to each of these criteria (probe for why weighted this way) _____

4. How are your attorneys assigned their work? (by client--vertical representation; or by courtroom--horizontal representation) _____

5. What are the advantages and disadvantages of this mode of client assignment? (follow probes)

5a. For the management of the office _____

5b. For the individual defenders _____

5c. For the defendant _____

6. Does the assignment process differ in the misdemeanor and felony courts? Explain _____

7. What factors determine when an indigency case will be handled by your staff and when it will be handled elsewhere (probe---assigned counsel) _____

8. How do you define a case for purposes of assignment and record keeping?

9. What effect does the size of your caseload have on the ability of your staff to provide quality representation? (follow probes)

9a. Time with client

9b. Case preparation

9c. Time in court

10. Are there any particular office policies designed to deal with the caseload problem? (probe for attitude toward plea bargaining)

11. Are there any particular state laws or jurisdictional policies which place any particular burden on your staff with respect to caseload management? (e.g., speedy case requirements)

12. How are the attorneys on the public defender staff evaluated with respect to the quality of their performance?

13. Is there any difference in the quality of the performance of part-time public defender attorneys and full-time public defender attorneys?

14. Do you experience any management problems because of the presence of part-time public defender attorneys on your staff?

15. How would describe the relationship between your office and that of other actors in the criminal justice process? (follow probes)

15a. Prosecutors

15b. Judges

15b. Private defenders

15d. Court support staff

16. How much control do you have over your budget? (follow probes)

16a. Who determines budget increments _____

16b. On what basis are increment decisions made _____

16c. Must budget expenditures be cleared with anyone _____

16d. Does budgetary oversight interfere with your work _____

17. Do you have any special programs or activities designed either to
improve the management of the office or provide better representation? _____

Interviewee:

Position:

Interviewer:

Jurisdiction:

CLERK INTERVIEW SCHEDULE

We are interested in gaining your impressions of the effect on case processing of different types of defense counsel. Our questions will ask you specifically to compare public defender office attorneys (if applicable), assigned counsel (private attorneys assigned and paid for by the court) and private attorneys retained by individual defendants.

1. In general, does the speed with which a case proceeds through the criminal justice process vary as a consequence of the type of defense counsel (private, assigned, public defender) representing the defendant?

Explain _____

2. Does the outcome (disposition and sentence) vary as a consequence of the type of counsel representing the defendant?

Explain _____

3. How is indigency determined in this jurisdiction?

3a. Describe the process _____

3b. What criteria are considered (probe for why these criteria are included) _____

3c. What weight is given each of these criteria? (probe for why weighted this way) _____

Note: The following questions apply only to clerks working in jurisdictions which are using a public defender system:

4. What changes have you noticed in the processing of cases since the public defender office began operating in this jurisdiction? _____

4a. How do you account for these changes? _____

4b. Have you noticed any changes in the behavior of the judges since the public defender office began operating? _____

4c. Have you noticed any changes in the behavior of the prosecutor(s) since the public defender office began operating? _____

CASE PROCESSING ISSUES

1. In reviewing the case disposition information we received we observed that a significant percentage of the defendants waive counsel, especially in misdemeanor court, but in felony court as well. What factors do you think account for this finding?

1a. In misdemeanor court _____

1b. In felony court _____

2. What is the normal practice in this jurisdiction regarding plea bargaining? _____

2a. What aspects of the case are at issue in the negotiation? (probe on charge bargaining vs. sentence bargaining) _____

2b. Who participates in the negotiation process? (probe on description of the nature of that participation) _____

2c. How would you compare the skill of the different types of defense counsel (private, assigned, public defender) in negotiating on the sentence and/or the charge? _____

Note: Ask the following question only of defense attorneys:

3. Thinking back to 1979-1980 (use current practice if cannot remember ()) what was (is) your average caseload per week? _____

3a. What factors produced a caseload of that dimension? _____

3b. What actions did (can) you take, if any, to reduce the caseload? _____

3c. Did (does) the size of your caseload influence the quality of the representation you could (can) provide? Explain response _____

3d. If yes to 3c, what did (can) you do to try to offset this caseload pressure? _____

JUDICIAL PERFORMANCE

Our research involves a comparison among types of defense counsel in different jurisdictions of Virginia. In making these comparisons we want to avoid attributing differences to the attorneys which are really due to the attitude or behavior of the judges on the court. We would therefore like you to describe the judges on various aspects of the case disposition process. All information you provide will be strictly confidential.

When you have completed the form, please return it in the attached envelope. There are no respondent identification marks on either this form or the attached envelope.

Robert E. Crew, Jr.
Robert E. Crew, Jr.
Project Director
(202) 342-5087

JUDGE _____

How many times have you appeared before this judge?	0 <input type="checkbox"/>	1-3 <input type="checkbox"/>	4-6 <input type="checkbox"/>	7-9 <input type="checkbox"/>	10+ <input type="checkbox"/>	
The judge allows counsel ample time to present and develop arguments.	Strongly agree <input type="checkbox"/>	Agree <input type="checkbox"/>	Neither agree nor disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>	Strongly disagree <input type="checkbox"/>	No basis for response <input type="checkbox"/>
The judge makes effective use of court time.	Strongly agree <input type="checkbox"/>	Agree <input type="checkbox"/>	Neither agree nor disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>	Strongly disagree <input type="checkbox"/>	No basis for response <input type="checkbox"/>
The judge sanctions and supports negotiated pleas.	Strongly agree <input type="checkbox"/>	Agree <input type="checkbox"/>	Neither agree nor disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>	Strongly disagree <input type="checkbox"/>	No basis for response <input type="checkbox"/>
The judge's procedural rulings are prompt and proper.	Strongly agree <input type="checkbox"/>	Agree <input type="checkbox"/>	Neither agree nor disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>	Strongly disagree <input type="checkbox"/>	No basis for response <input type="checkbox"/>
The judge's political beliefs have no effect on the decision rendered.	Strongly Agree <input type="checkbox"/>	Agree <input type="checkbox"/>	Neither agree nor disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>	Strongly disagree <input type="checkbox"/>	No basis for response <input type="checkbox"/>
The judge's predisposition, if any, reflected by his actions and demeanor toward defendants is:	Strongly to innocence <input type="checkbox"/>	Moderately to innocence <input type="checkbox"/>	Neutrality <input type="checkbox"/>	Moderately to guilt <input type="checkbox"/>	Strongly to guilt <input type="checkbox"/>	No Basis for response <input type="checkbox"/>
The judge's sentences are:	Very lenient <input type="checkbox"/>	Moderately lenient <input type="checkbox"/>	Neither lenient nor severe <input type="checkbox"/>	Moderately severe <input type="checkbox"/>	Very severe <input type="checkbox"/>	No basis for response <input type="checkbox"/>
The judge shows favoritism toward individual attorneys.	Strongly agree <input type="checkbox"/>	Agree <input type="checkbox"/>	Neither agree nor disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>	Strongly disagree <input type="checkbox"/>	No basis for response <input type="checkbox"/>

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The judge makes effective use of court time.	Strongly agree <input type="checkbox"/>	Agree <input type="checkbox"/>	Neither agree nor disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>	Strongly disagree <input type="checkbox"/>	No basis for response <input type="checkbox"/>
The judge sanctions and supports negotiated pleas.	Strongly agree <input type="checkbox"/>	Agree <input type="checkbox"/>	Neither agree nor disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>	Strongly disagree <input type="checkbox"/>	No basis for response <input type="checkbox"/>
The judge's procedural rulings are prompt and proper.	Strongly agree <input type="checkbox"/>	Agree <input type="checkbox"/>	Neither agree nor disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>	Strongly disagree <input type="checkbox"/>	No basis for response <input type="checkbox"/>
The judge's political beliefs have no effect on the decision rendered.	Strongly Agree <input type="checkbox"/>	Agree <input type="checkbox"/>	Neither agree nor disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>	Strongly disagree <input type="checkbox"/>	No basis for response <input type="checkbox"/>
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END