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**Measuring the Effect of Defense Counsel on
Homicide Case Outcomes**

Award Number 2009-IJ-CX-0013

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EXECUTIVE SUMMARY

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Under nearly every theory of criminal justice, the effect of the individual lawyer on the outcome of the case is an extraneous influence on the system of criminal justice. The facts of the case are supposed to determine the outcome - not the skill or resources of the attorney. It is therefore important to understand the extent of the effect of the individual attorney on the outcome of a case. Yet measuring the effect of the lawyer on an individual case is very difficult because lawyers and clients select one another. A lawyer who apparently generates better outcomes for her clients than her peers may simply be selecting better cases. Our primary research question was to better understand the effect of the lawyer on the outcome of criminal cases.

In this Report, we take advantage of a natural experiment that allows us to measure the difference that a lawyer makes in murder cases. In Philadelphia, since April 1993, every fifth murder case is sequentially assigned at the preliminary arraignment to the Defender Association of Philadelphia. The other four cases are assigned to appointed counsel. This allow us to isolate the effect of the "treatment" - cases with Defender Association attorneys with the "control" - cases with appointed counsel by using an instrumental variables approach.

The instrumental variables approach allows us to account for the fact that there is "crossover" between the two groups after initial assignment and that some defendants in each group ultimately decide to hire their own attorneys. It essentially measures the portion of the overall variation that is attributable to the initial random assignment.

Our primary dataset consists of a sample of 3412 defendants charged with murder between 1994 and 2005 in Philadelphia.

The differences in outcome are striking. Compared to private appointed counsel, public defenders reduce the murder conviction rate by 19%. They reduce the probability that their clients receive a life sentence by 62%. Public defenders reduce overall expected time served in prison by 24%.

In Table 1 we report IV regression estimates of the impact of public defender representation on a range of outcomes.

Table One: Estimated Impact of Defender Association Representation on Case Outcomes

Outcome	Average for Those Assigned Appointed Counsel	Estimated Effect of Public Defender Representation on Outcome		
		(IV1)	(IV2)	(IV3)
Guilty of any charge	.801	-.020 (.046)	-.037 (.046)	-.070 (.073)
Number of guilty charges	2.36	-.271 (.206)	-.243 (.200)	-.436 (.301)
Guilty of murder	.565	-.051 (.057)	-.110* (.056)	-.111 (.071)
Life sentence	.262	-.153** (.046)	-.161** (.046)	-.209** (.062)
Death sentence	.013	-.001 (.013)	-.001 (.013)	-.005 (.019)
Average sentence length (years)	20.9	-6.53** (1.99)	-6.42** (1.92)	-3.10 (2.70)
Minimum sentence, conditional (years)	8.45	-1.72 (1.18)	-1.55 (1.17)	-1.49 (1.92)
Maximum sentence, conditional (years)	18.6	-3.52 (2.56)	-3.03 (2.57)	-5.35 (4.59)
Expected time served (years)	11.0	-2.63** (0.86)	-2.61** (0.85)	-0.75 (1.35)
Include controls?		N	Y	Y
Include case fixed effects?		N	N	Y

Note: The IV coefficients estimated in the first three columns are estimated by using legal representation at the preliminary arraignment as an instrument for later representation. Conditional minimum and maximum sentences do not include individuals sentenced to life imprisonment or death. An asterisk (*) denotes an estimate that is statistically significant at the two-tailed 5% level, and two asterisks (**) at the 1% level. Heteroskedasticity-robust standard errors are reported in parentheses. All of the estimates noted as statistically significant except the "Guilty of murder"--IV2 and "Expected time served"--OLS would remain significant after applying the Benjamini and Hochberg correction for multiple comparisons with a false discovery rate of .05. See Yoav Benjamini & Yosef Hochberg, *Controlling the False*

Discovery Rate: A Practical and Powerful Approach to Multiple Testing,
57 J. R. STAT. SOC. B. 289 (1995).

Each entry in the table reports the results from a separate regression. Column IV1 estimates a simple linear IV model with no controls; this is equivalent to dividing the mean difference in outcomes reported in Table 1 by the mean difference in representation (.44). Column IV2 adds to the IV regressions controls for defendant race, gender, age and age squared; year of case; and indicators for the number of defendants; total number of charges; presence of a weapons or conspiracy charge; and total prior charges and prior arrest for assault, aggravated assault, weapons offenses, drug offenses, burglary, robbery, and theft. In general we obtain similar effects estimates whether we do or do not control for other factors.

Column IV3 adds a set of indicator variables for each case as additional controls. This essentially identifies the impact of Defender Association representation by comparing the outcomes for co-defendants who were involved in the same case, where one defendant was assigned to the Defender Association and other defendants were assigned private counsel. The main advantage of such a within-case analysis is that it ensures balance of factors determined at the case level—such as the quality of witnesses, investigative effort by the police, etc.—across those with different types of representation, even when such factors may be unobservable. The primary drawback of the models with case-level indicators is that these models appreciably reduce our sample size, since in essence this approach excludes the 2,061 cases involving a single defendant from the analysis and focuses only on those cases with several defendants who differ in their initial assignment. Because of the smaller sample, these estimates are less precise than those using the full sample.

Our results suggest that defense counsel makes an enormous difference in the outcome of cases, even in the most serious of cases where one might hope that it would matter least. When we apply methods used in past studies of public defenders that did not have the benefit of random assignment, we obtain far more modest estimated impacts,

which suggests defendant sorting is an important confounder affecting past research and that certain defendants are more likely to be represented by certain attorneys.

To better understand the causes of the discrepancy in outcomes that we observed, we conducted 20 qualitative interviews with judges, appointed counsel, and public defenders in Philadelphia. We found that compared to the Defender Association attorneys, appointed counsel are impeded by conflicts of interest on the part of both the appointing judges and the appointed counsel, limited compensation, incentives created by that compensation, and relative isolation.

Compensation for representing a defendant in a murder case in Philadelphia was far below national standards during the study period. Lawyers also received a flat fee for pre-trial work no matter how much or how little work prior to the trial occurred. This provided little incentive to thoroughly prepare the case. Finally, lawyers were paid significantly more if the case went to trial. This discouraged appointed counsel from negotiating plea agreements on behalf of their clients. As a result, plea agreement rates for defendants represented by appointed counsel were substantially lower than for defendants represented by the public defenders.

As a result of these systemic causes, appointed counsel spend less time with defendants and investigate and prepare cases less thoroughly. Moreover, the inevitable human error in judgment is less likely to be caught by another member of the defense team because appointed counsel are primarily operating individually.

Our findings raise questions regarding the fundamental fairness of the criminal justice system and whether it provides equal justice under the law. It also raises questions as to whether current commonly-used methods for providing indigent defense satisfy Sixth Amendment guarantees of effective counsel and whether other steps may be justified to reduce the disparity in outcomes that we observe. Our findings are limited by the fact that we observed only a single jurisdiction. More research in other jurisdictions to determine the effect of counsel on outcomes would be useful.