Effects of Alternative Types of Counsel on Criminal Procedure Treatment

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EFFECTS OF ALTERNATIVE TYPES OF COUNSEL ON CRIMINAL PROCEDURE TREATMENT

STUART S. NAGEL†

The purpose of this article is to present some findings with regard to how defendants having certain types of counsel differ in their criminal procedure treatment from defendants who have other types of counsel. The comparisons studied are: (1) counsel versus no counsel; (2) hired counsel versus provided counsel; (3) public defender versus assigned counsel; and (4) early-obtained counsel versus late-obtained counsel.

The findings in this article are based on previous data gathered by Lee Silverstein for the American Bar Foundation.¹ That data covered 11,258 felony cases for the year 1962, taken from a sample of 194 counties located in all fifty states. In order to control for the type of crime committed,² we will only be concerned in this analysis with the 1,101 state grand larceny cases examined in the Silverstein study.³

Various questions may be raised as to the value of re-examining the Silverstein data: (1) Doesn't the Silverstein study itself provide ample treatment of the subject?; (2) If not, haven't other studies effectively covered the area?; (3) What is the current value of findings based on 1962 data—especially in light of Gideon v. Wainwright?⁴ Because of

† Professor of Political Science, University of Illinois. The writer gratefully thanks David Neubauer of the Louisiana State University at New Orleans for the work he did as a graduate student at Illinois in processing some of the data presented in this paper. This research is one of a series of policy science studies on measuring and achieving effects of alternative legal policies partly financed by National Science Foundation grant GS-2875. The NSF is not responsible for the results.

1. L. SILVERSTEIN, DEFENSE OF THE POOR IN CRIMINAL CASES IN AMERICAN STATE COURTS: A Field Study and Report, Vol. I (1965). The total sample of data can be obtained on computer tape from the Inter-University Consortium for Political Research at the University of Michigan. The basic nationwide data was compiled at great cost, particularly in man-hours contributed, and therefore cannot be easily duplicated for later time periods.

2. Such a control is necessary because the more severe the crime is, the more likely the defendant will have a hired attorney; and the more severe the crime is, the longer the sentence is likely to be. Thus, unless one holds constant the type of crime committed, having a hired attorney will correlate positively with receiving a long sentence. For related reasons the urbanism and economic class of the defendants may also have to be controlled in order to make meaningful comparisons between types of counsel.

3. Grand larceny cases were also one of the most frequently occurring felony cases in the state data. They constituted about 15 per cent of the 11,258 cases. Variations on burglary, bad check-passing and felonious assault also frequently occurred. There seems to be no reason, however, why the effects of alternative types of counsel on criminal procedure treatment should be different between grand larceny cases and these other crimes.

the particular nature and focus of the study presented in this paper, each of these questions is readily answerable. First, the Silverstein study, like most of the other studies, only compares the public defender with assigned counsel rather than counsel versus no counsel, hired counsel versus provided counsel, or early-obtained counsel versus late-obtained counsel. The Silverstein study is further limited by the brevity of its comparative portion and by virtue of the fact that it compares counties rather than cases, thus risking loss of detail which may be valuable for making more accurate comparisons. Second, while other articles and books have been written relevant to the effects of alternative types of counsel on criminal procedure treatment, some of these studies, unlike the present study, are non-quantitative. With the exception of the Silverstein study, all the other studies deal with only a single community or state rather than the nation as a whole. None of the studies simultaneously control for crime severity, urbanism, economic class, and other variables which disrupt the comparisons. In addition, the other studies concentrate on fewer stages of...

5. Aggregate comparisons lead to what is known as the ecological fallacy whereby if one compares (1) the wealth of states or counties with a high percentage of blacks with (2) the wealth of states or counties with a high percentage of whites, he may be lead to believe that blacks are wealthier than whites because black states are wealthier than white states. In reality, the black states are wealthier than white states in spite of their black citizens (who are attracted to migrate to the wealthier states), rather than because of the black citizens. Related misperceptions can result from comparing public defender counties with assigned counsel counties, rather than comparing individual public defender cases with assigned counsel cases. Working with counties rather than cases also tends to mean working with a smaller, less reliable sample.


7. Casper, supra note 6; Skolnick, supra note 6.

8. Casper, supra note 6 (Connecticut, especially New Haven); Oaks & Lehman, supra note 6 (Chicago); Taylor, supra note 6 (Denver and San Diego); Benjamin & Pedeliski, supra note 6 (Minnesota); Blumberg, supra note 6 (New York City); Skolnick, supra note 6 (an unidentified California county); Summers, supra note 6 (Milwaukee).
criminal justice treatment than the approximately one dozen stages included in this study.

Lastly, although *Gideon* and its progeny have led to an increase in the percentage of cases having some form of counsel, there seems to be no reason for suspecting that this development has produced any substantial change in the variation of treatment between defendants with counsel and those without. Likewise due to the right to counsel cases, there has been an increase in the percentage of cases having provided counsel rather than hired counsel, and an increase in the percentage of public defender cases rather than assigned counsel cases. As provided counsel (particularly the public defender) becomes increasingly burdened with additional cases without a commensurate increase in staffing and funding, the unfavorable disparities found in this study between provided counsel and hired counsel may also increase.

**Counsel Versus No Counsel**

Table 1 shows how defendants who have attorneys differ in the criminal procedure treatment they receive from those who lack attorneys. Criminal procedure treatment refers mainly to (1) receiving a preliminary hearing, (2) being released on bail, (3) having a relatively short delay from arrest to disposition if the defendant is in jail pending trial, (4) receiving a jury trial if the defendant is tried, (5) being found not guilty, (6) receiving a suspended sentence or probation, if convicted, and (7) receiving a relatively short prison term, if imprisoned at all.

The column in Table 1 entitled “fraction in sample” shows, in the denominator, how many of the 1,101 grand larceny cases had applicable information available with regard to each treatment stage, and shows in the numerator how many of those received favorable treatment. For example, 676 of the 1,101 cases had information available on whether or not the defendant received a preliminary hearing in counties that provide preliminary hearings, and 376 of those 676 defendants did receive a preliminary hearing.

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9. One might think that those lacking counsel before *Gideon* were more likely to be indigent, and those lacking counsel after *Gideon* were more likely to be non-indigent. As is shown in Appendix 1, however, even before *Gideon* most of those lacking counsel were non-indigent because most states or at least the larger states already provided counsel to the indigent in felony cases. Appendix 1 shows a -.21 correlation between being non-indigent and having counsel which is probably due to the relative lack of provided or hired counsel among upper working class and lower middle class defendants.

10. The lowness of the numerator with regard to the percent who had a jury trial of those tried (242 cases) reflects the fact that all defendants who were not tried are excluded from the numerator and those cases are thus not applicable.
TABLE 1. HOW DEFENDANTS WHO HAVE ATTORNEYS DIFFER IN THEIR CRIMINAL PROCEDURE TREATMENT FROM THOSE WHO LACK ATTORNEYS (Using a Nationwide Sample of 1,101 State Grand Larceny Cases)

<table>
<thead>
<tr>
<th>Fraction in Sample</th>
<th>Criminal Procedure Treatment</th>
<th>All Cases</th>
<th>Urban Cases</th>
<th>Non-Indigent Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>% who received preliminary hearing</td>
<td>57 ⊕ 44</td>
<td>59 ⊕ 41</td>
<td>64 ⊕ 38</td>
</tr>
<tr>
<td>376</td>
<td>% who were released on bail</td>
<td>53 ⊕ 36</td>
<td>54 ⊕ 39</td>
<td>74 ⊕ 37</td>
</tr>
<tr>
<td>576</td>
<td>% who had short delay of two months or less from arrest to disposition or trial while in jail</td>
<td>60 ⊕ 89</td>
<td>64 ⊕ 89</td>
<td>57 ⊕ 96</td>
</tr>
<tr>
<td>458</td>
<td>% who had jury trial of those tried</td>
<td>31 + 30</td>
<td>29 + 20</td>
<td>34 + 33</td>
</tr>
<tr>
<td>873</td>
<td>% who were not found guilty</td>
<td>11 + 7</td>
<td>10 + 5</td>
<td>12 + 10</td>
</tr>
<tr>
<td>165</td>
<td>% who received a suspended sentence or probation rather than a prison sentence</td>
<td>47 + 37</td>
<td>45 + 39</td>
<td>58 ⊕ 38</td>
</tr>
<tr>
<td>245</td>
<td>% who received short prison terms of one year or less of those imprisoned</td>
<td>48 ⊕ 22</td>
<td>48 + 40</td>
<td>37 — 46</td>
</tr>
<tr>
<td>1101</td>
<td>Number in Sample</td>
<td>769 109</td>
<td>590 50</td>
<td>363 58</td>
</tr>
</tbody>
</table>

+ means defendants who had lawyers received better treatment.
— means defendants who lacked lawyers received better treatment.
The sign is circled where the difference is greater than ten.

If one divides the 1,101 cases into those in which the defendant did have counsel (769 cases) and those in which he did not (109 cases), and disregards the ones for which information on the presence of counsel was unavailable (223 cases), then some interesting percentages are revealed with regard to the relation between having or not having counsel and criminal procedure treatment. These percentages, like most of the others in this article, are generally based on large enough denominators to be statistically reliable although the denominators vary depending on which
treatment stage is involved since different treatment stages have different
degrees of completeness of applicable information (i.e., different ratios
between the denominator in the "fraction in sample" and the 1,101 total).

The Total Sample of Cases

The first row of Table 1 shows that 57 per cent of the defendants
with counsel received a preliminary hearing, compared to only 44 per
cent of the defendants without counsel.11 The preliminary hearing is im-
portant for obtaining release of the defendant on bond, filtering out the
innocent if a lack of probable cause can be shown, establishing inconsis-
tencies in testimony made by the prosecution's witnesses between the pre-
liminary hearing and the trial, and obtaining knowledge of the prosecu-
tor's evidence.12 Defendants without counsel, however, may not realize
the importance of a preliminary hearing, and they may therefore be more
willing to waive it or at least not to request it.

The defendant with counsel was also substantially more likely to be
released on bail. This is so in spite of the fact that defendants with
counsel were more likely to be indigent and thus less capable of putting
up bail money. Indigent defendants are more apt to have counsel since in
most counties (even as of the early 1960's) indigent defendants could
obtain court-appointed counsel, but non-indigent defendants had to pay
for their own counsel and therefore often went unrepresented. What may
be happening is that attorneys representing indigents are able to get the
bond sufficiently reduced so that even the indigent defendants can be re-
leased,13 but the unrepresented non-indigent defendant has his bond set at
a figure beyond even his greater ability to pay.14

11. Those who did not receive a preliminary hearing were either recorded as hav-
ing waived it, possibly, without realizing its importance, or they were recorded as having
"no preliminary hearing, reason unknown."

12. These were the points emphasized by the Supreme Court in declaring that the
preliminary hearing is a critical stage of prosecution. Coleman v. Alabama, 399 U.S.
1, 9-10 (1970). Appendix 1 does show a +.19 correlation between receiving a prelimi-
nary hearing and being released on bond.

13. Not very many of the defendants had their bonds reduced, but 14 per cent of
the 539 grand larceny defendants in the sample for whom information was available, see
note 1 supra & text accompanying, who had attorneys had their bond reduced, whereas
only six per cent of the 62 defendants who lacked attorneys had their bond reduced.

14. The average or mean bond for the 246 indigents for whom bond was set was
2,054 dollars; and for the 354 non-indigents, it was 2,213 dollars. However, of the 60
defendants for whom no bond was set and who were thus kept in jail, 38 were indigent
and only 22 were non-indigent. Likewise, with regard to favoring the non-indigent, of
the ten defendants who were released from jail on their own recognizance, only one was
indigent and nine were non-indigent. Thus, if we arrange all defendants in a frequency
distribution with (1) those released on recognizance at the bottom, (2) those having
set money amounts in the middle and (3) those for whom no bail was set at the top,
then the exact median or middle-most bond for indigents was 2,328 dollars, and the
median bond for non-indigents was 1,850 dollars. This is another example of where
The next row of Table 1 reveals one possible disadvantage of having counsel, namely, that if a defendant with counsel is not released on bond, he is more likely to have a relatively long delay in jail. The presence of defense counsel may delay the defendant from coming to trial because his attorney has to investigate and prepare, and may have to ask for one or more postponements. Part of the explanation may also lie in the fact that defendants who hire attorneys have more complicated or more severe cases than those who do not, even if one holds constant both the crime and the fact that all the defendants were kept in jail pending trial.15

There were no significant differences between defendants having counsel and defendants lacking counsel on whether or not they received a jury trial, which seems contrary to what one would expect. Part of the explanation is due to the small number of defendants tried, which tends to make these percentages unreliable.16 Likewise, having one's case dismissed or obtaining an acquittal is relatively rare after becoming a recorded case in the trial court dockets. This rarity is at approximately the ten per cent level as contrasted to the greater probability of receiving favorable treatment at the other six stages of criminal procedure. The rarity is shared both by defendants with counsel and those without counsel, although defendants without counsel were slightly more likely to plead guilty and thus preclude chances of ultimate acquittal. The similarity in treatment breaks down however when one considers only those defendants who actually reached the trial stage. Twenty-seven per cent of the defendants who go to trial with counsel are acquitted, but zero per cent of the few defendants who go to trial without counsel are acquitted. This could be explained by the many trial matters which require or benefit from having a lawyer such as evidence admissibility, opening and closing argument, direct and cross-examination, jury selection and instruction, deposition presentation, psychological support to the defendant, and knowledge of the law in general.

15. The relatively greater time consumed in cases where defendants are represented by counsel is even more pronounced where the defendant is not in jail awaiting trial. Thus, 68 per cent of the defendants represented by counsel came to trial over ninety days from their arrest, while only 29 per cent of the defendants who lacked counsel came to trial over ninety days from their arrest.

16. Jury trials are also a relatively rare phenomenon for defendants regardless of whether they have counsel and regardless of the type of counsel, even though jury trials correlate substantially in Appendix 1 with being found not guilty.
Although having an attorney may not help much in obtaining a dismissal or acquittal (except in those rare cases which proceed to trial), the last two rows of Table 1 show that having an attorney is helpful, if one is found guilty, in obtaining a suspended sentence or probation, or in obtaining a relatively short prison sentence if a prison sentence is imposed. This may not be a reflection of the attorney's powers of persuasion over the judge or the jury, since few cases are tried and relatively few of the trial cases are jury trials. Instead, it may be a reflection of the attorney's greater ability to engage in plea bargaining with the prosecutor. The attorney knows what the law is and roughly what the empirical likelihood of a conviction is, and is therefore less likely to be bluffeded into accepting a substantial jail sentence. An attorney can also more meaningfully threaten to take the case to trial and even to a jury trial with all the time and expense that would mean for the prosecution.\(^{17}\)

**In the Urban Cases**

The second set of percentages in Table 1 separate the more urban cases from the less urban cases in order to control for the effects of urbanism. A county was defined as relatively urban if it had 100,000 or more population and relatively rural if it had less than 100,000 population. It may be important to control for urbanism because defendants in urban areas are more likely to have attorneys and because criminal procedure treatment may be more favorable at some stages (and more unfavorable at other stages) in urban areas than in rural areas. Thus, what may appear to be a relation between having an attorney and criminal procedure treatment may really be due to the fact that having an attorney and certain kinds of criminal procedure treatment are both co-effects of being a defendant in an urban county.\(^{18}\)

Appendix 1 shows that there is a \(+.23\) correlation between having an attorney and being tried in a relatively urban county. This is roughly the equivalent of saying that there are about 23 percentage points separating the per cent of urban cases that have counsel from the per cent of rural cases that have counsel.\(^ {19}\) In actual calculation the difference turns out to

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17. Twenty per cent of the 613 grand larceny defendants in the sample for which information was available, see note 1 supra & text accompanying, who had attorneys had their charge reduced, whereas only two per cent of the 87 defendants who lacked attorneys had their charge reduced.


19. The formula for calculating the difference between two percentages is slightly different from the formula for calculating a correlation coefficient although they can
be 17 per cent: 92 per cent of the 640 useable urban cases had counsel, compared to only 75 per cent of the 238 rural cases.

The urban-only cases in the middle of Table 1 tend to reveal basically the same differences between having counsel and not having counsel as the total set of cases on the left side of Table 1. Thus, when looking only at urban cases, defendants with counsel are still substantially more likely to receive a preliminary hearing, to be released on bail, and to endure relatively long delays in jail while awaiting trial. As in the total sample, the urban counsel cases are similar to the urban no-counsel cases with regard to receiving a jury trial and not being found guilty. The wider spread on the jury trial variable is attributable to that variable's -.12 correlation with urbanism rather than to counsel/no-counsel disparities. The data also shows that the urban defendant with a lawyer is more likely to receive a suspended sentence or probation or a short prison sentence than the urban defendant without a lawyer, but not quite so likely as the rural defendant with a lawyer.

The similarity between the counsel versus no-counsel pattern in the urban cases and the total sample is consistent with the fact that Appendix 1 shows only very low correlations between being an urban defendant and receiving favorable or unfavorable criminal procedure treatment. Urban areas do tend to give slightly shorter prison terms to convicted defendants in grand larceny cases than rural areas, possibly because larceny in rural areas is more likely to be committed by individuals rather than business firms. The correlation between urbanism and larceny sentences is not, however, great enough to substantially affect the counsel versus no-counsel comparisons.

be interpreted in a similar manner. The difference between percentages is the simpler method to apply and interpret, but it is usable only where dichotomous variables are involved like counsel versus no counsel, hired counsel versus provided counsel, or public defender versus assigned counsel as in Tables 1, 2 & 3. The correlation approach is used in Appendix 1 because percentages are not shown there from which the differences can be calculated, and because some of the variables there are not natural dichotomies. See H. Blalock, Social Statistics 294-96 (1972); S. Nagel, Rapid Interpretation of Fourfold Tables (1963) (unpublished paper available from the writer on request).

20. Only urban cases are presented in the middle of Table 1 because: (1) there are more urban cases than rural ones; (2) the rural counsel cases versus the rural no-counsel cases produce findings largely redundant to the urban counsel cases versus the urban no-counsel cases, although the differences are somewhat more pronounced in the rural cases; and (3) Table 1 is thereby more consistent with subsequent tables particularly where public defenders are compared with assigned counsel since there were virtually no rural public defenders.

21. The convicted rural defendant with a lawyer received a suspended sentence or probation 51 per cent of the time, whereas the convicted rural defendant without a lawyer received a suspended sentence or probation only 35 per cent of the time. See note 1 supra & text accompanying.
In the Non-Indigent Cases

The third set of percentages in Table 1 separate the non-indigent, or middle-class, cases from the indigent ones in order to control for the effects of indigency on the relation between having counsel and receiving favorable criminal procedure treatment. It may be important to control for indigency or economic class because indigent defendants are more likely to have attorneys and because criminal procedure treatment may be more or less favorable to poor defendants because they are poor. Thus, what may appear to be a relation between having an attorney and certain kinds of criminal procedure treatment may really be due to the fact that having an attorney and receiving certain treatment are both co-effects of being an impoverished rather than a middle-class defendant.\footnote{22}

In this study, an indigent defendant is generally defined as one who was not financially able to hire his own lawyer. Indigent defendants were thus by definition eligible for free court-provided counsel, at least in those stages providing counsel in the early 1960's. Of the 1,101 larceny cases, there were 336 defendants who were categorized as indigents, and 98 per cent of them were represented by some kind of counsel. On the other hand, there were 421 defendants who were categorized as non-indigents, and 86 per cent of them were represented by counsel. This is consistent with Appendix 1 which shows a -.21 correlation between being non-indigent and having counsel.

Unfortunately, the criminal case data did not provide a breakdown of non-indigents into those who were lower middle-class, and thus possibly not wealthy enough to hire their own lawyers but not poor enough to be eligible for a free lawyer, and those who were upper middle-class and could more easily hire their own lawyers. Likewise, it is unfortunate that the data did not define indigency in terms of family income so that one could see better what percentage of the poor were going unrepresented.

Only a set of non-indigent cases are presented on the right side of Table 1 rather than also a separate set of indigent cases because: (1) there are more non-indigent cases than indigent ones; (2) there are virtually no indigent defendants lacking counsel, given the way indigency was defined; and (3) if the comparison could be made, indigent counsel cases versus indigent no-counsel cases would probably produce findings largely redundant to the non-indigent counsel cases versus the non-indigent no-counsel cases.

Unlike the urban cases, controlling for indigency does produce some

\footnote{22. On differences between indigent and non-indigent defendants with regard to the availability of attorneys and criminal procedure treatment, see Nagel, supra note 18, at 1278-83.}
important differences in the counsel versus no-counsel pattern, as shown by comparing the non-indigent cases on the right side of Table 1 with the total cases on the left side. The direction of the counsel versus no-counsel pattern is generally the same, but the size of the differences is usually greater. Thus, in the total sample there is only a difference of 17 percentage points with regard to being released on bail, whereas in the non-indigent sample the difference is 37 points. This shows that when all the defendants are non-indigent and thus approximately equal in their ability to pay the same bail, those who have lawyers are much more likely to be able to arrange for bail terms which they can meet, even though these non-indigents may have committed more severe larcenies. Likewise, the effect of having a lawyer on producing prolonged delay is clearer when all the defendants being compared are non-indigent rather than when the defendants are mixed as in the total sample. Also, having counsel has a greater effect in this area on receiving a suspended sentence or probation.

The explanation for the strengthened impact of counsel on treatment when indigency is held constant seems to be that not only does indigency correlate with having counsel (as urbanism does), but it also correlates more directly with some types of criminal procedure treatment (which urbanism does not). Thus, Appendix 1 shows a +.42 correlation between being non-indigent and being released on bail, and a +.20 correlation between being non-indigent and receiving a suspended sentence or probation of those convicted.

The last row of Table 1 shows a small but unusual negative difference between having counsel and receiving a short prison term. Thus, 46 percent of the no-counsel defendants received short prison terms compared to 37 percent of the defendants with counsel. This may reflect the fact that counsel is more likely to be hired for the more severe grand larceny cases. It may also evidence the fact that the same non-indigents who steal the larger sums of money are those more capable of hiring counsel—the upper middle-class non-indigents. When one compares non-indigents with indigents, Appendix 1 shows a +.13 correlation between being non-indigent and receiving a longer prison term.

If crudely controlling for economic class, as was done here, brings out the importance of counsel in avoiding unfavorable and possibly illegal criminal procedure treatment, then more accurate controls for economic class and other intervening variables would probably even further emphasize the importance of counsel. Given this importance, the question is raised as to different methods of providing counsel for those who cannot afford an attorney and who might thereby suffer disproportionately un-
favorable treatment in spite of their innocence or low degree of guilt.\textsuperscript{23}

**Hired Counsel Versus Provided Counsel**

One way to provide counsel for those who cannot afford an attorney is the judicare system whereby an indigent defendant can hire the attorney of his choice and the government will pay all or a percentage of the reasonable fee charged. In contrast is the system whereby the indigent defendant does not hire his own counsel, but rather is provided with a free counsel who is either a salaried public defender or an ad hoc appointed counsel. Comparing the judicare system with the court-provided attorney is in effect comparing hired counsel with free or provided counsel.

Table 2 shows how defendants who have their own hired attorneys differ in their criminal procedure treatment from those who have been provided free attorneys.\textsuperscript{24} Table 2 shows that one receives more favorable treatment with hired counsel than with provided counsel at all stages of criminal procedure treatment except on the matter of delay and shortness of prison sentence. For example, 76 per cent of the defendants who had hired counsel were released on bail, compared to only 25 per cent of the defendants who had provided counsel. Of course, this might be due to the fact that defendants with hired counsel are more likely to have the money

\textsuperscript{23} There are several works discussing the importance of having counsel. See ABA PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO PROVIDING DEFENSE SERVICES (1967); ATTORNEY GENERAL'S COMMITTEE, REPORT ON POVERTY AND THE ADMINISTRATION OF FEDERAL CRIMINAL JUSTICE (1964); D. FELLMAN, THE DEFENDANT'S RIGHTS 112-27 (1958); Beaney, *The Right to Counsel*, in *The Rights of the Accused* 145 (S. Nagel ed. 1972).

Kalven and Zeisel data indicate that as of the 1950s if both sides are represented by attorneys, then 76 per cent of the time the attorneys are evenly balanced according to a survey of judges (who in seeking balance may perceive more balance than actually exists), 11 per cent of the time the defense is superior, and 13 per cent of the time the prosecution is superior; but under defense counsel they lump together hired counsel, assigned counsel, and the public defender. They further find that the presence of superior counsel is not an important factor in judge-jury disagreements, but they do not provide data on the importance of superior counsel in determining how the defendant is treated in jury trials or in any of the stages of the criminal justice process. H. KALVEN & H. ZEISEL, *The American Jury* 115, 351-72, 477-82 (1966).

\textsuperscript{24} Unfortunately, there is no way of controlling for indigency in Table 2 such that one could compare hired counsel of non-indigents with provided counsel of non-indigents or compare hired counsel of indigents with provided counsel of indigents. This is so because non-indigents by definition are ineligible for court-provided counsel and because indigents by definition (and by the absence of judicare systems for criminal cases) are unable to hire their own attorneys.

Appendix 1 shows a +.97 correlation between being a non-indigent and having hired counsel. This is based partly on the fact that in the total sample of cases, there were 323 defendants who were known to be non-indigent, and 99 per cent of those non-indigents who had counsel, had hired counsel rather than provided counsel. The +.97 correlation also reflects the fact that in the total sample of cases, there were 313 indigent defendants, and only 3 per cent of those indigents who had counsel, had hired counsel rather than provided counsel.
to meet the bail requirements than defendants with provided counsel. Partially counteracting that economic status argument, however, are two points. First, the left side of Table 1 shows that indigent defendants with counsel were more likely to be released on bail than non-indigent defendants without counsel, which indicates the influence of the attorney as an important supplement to one's economic status. Second, the 51 percentage point difference is substantially larger than any other difference in the tables, and such a large variation seems more reasonable to attribute to both economic status and type of counsel rather than to economic status alone.25

### Table 2. How Defendants Who Have Their Own Hired Attorneys Differ in Their Criminal Procedure Treatment From Those Who Have Been Provided Attorneys

<table>
<thead>
<tr>
<th>Fraction in Sample</th>
<th>Criminal Procedure Treatment</th>
<th>All Cases</th>
<th>Urban Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Hired Counsel</td>
<td>Provided Counsel</td>
</tr>
<tr>
<td>103/252</td>
<td>% who waited only two weeks or less for counsel to appear or be appointed</td>
<td>38 - 42</td>
<td>32 - 39</td>
</tr>
<tr>
<td>376/676</td>
<td>% who received preliminary hearing</td>
<td>62 + 54</td>
<td>63 + 57</td>
</tr>
<tr>
<td>458/873</td>
<td>% who were released on bail</td>
<td>76 Θ 25</td>
<td>78 Θ 25</td>
</tr>
<tr>
<td>165/245</td>
<td>% who had short delay of two months or less from arrest to disposition or trial while in jail</td>
<td>50 Θ 64</td>
<td>58 - 64</td>
</tr>
<tr>
<td>76/242</td>
<td>% who had jury trial of those tried</td>
<td>31 + 26</td>
<td>31 + 24</td>
</tr>
</tbody>
</table>

25. Moreover, one would think the bail bonds of non-indigent defendants would be set higher than the bonds of indigents, thereby partially offsetting the economic status variable. The bonds of non-indigents are possibly set higher because of their greater ability to pay and forfeit, and also because non-indigents may be committing more severe grand larcenies. The data, however, shows the median bond set for non-indigents is lower than for indigents, possibly because non-indigents impress judges as being better risks for lower bonds and release on recognizance. See note 14 supra.
Hired counsel were also much more likely to obtain a suspended sentence or probation rather than a prison sentence for their clients. That difference may, however, be attributed to the fact that provided counsel represent indigent defendants who may have prior criminal records and therefore would be worse risks for probation or suspended sentences. Supporting that notion is the fact that there was a \( +.13 \) correlation between being indigent and having a prior record in some related federal data.\(^{26}\) In contrast, though, the left side of Table 1, row 6 tends to show that indigent defendants with counsel were more likely to receive a suspended sentence or probation than non-indigent defendants without counsel. Also, like the bail finding in Table 1, a higher percentage of the counsel-present cases in Table 1 received a suspended sentence or probation than the no-counsel cases, even though the counsel-present cases were more likely to involve indigents. Thus, it appears that having or not having counsel may be a more important predictor of criminal procedure treatment than indigency.

As in the counsel/no counsel comparisons of Table 1, Table 2 shows that the availability of hired counsel versus provided counsel makes little difference with regard to receiving a jury trial (of those tried) or with regard to not being found guilty.\(^{27}\) Hired counsel also made little diff-

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<table>
<thead>
<tr>
<th>% who were not found guilty</th>
<th>13</th>
<th>9</th>
<th>12</th>
<th>7</th>
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<tbody>
<tr>
<td>% who received a suspended sentence or probation rather than a prison sentence</td>
<td>61</td>
<td>37</td>
<td>60</td>
<td>35</td>
</tr>
</tbody>
</table>

| % who received short prison terms of one year or less of those imprisoned | 38  | 52 | 34  | 55 |

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\(+\) means defendants with *hired* lawyers received better treatment.

\(\sim\) means defendants with *provided* lawyers received better treatment.

The sign is circled where the difference is greater than ten.

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27. Of the 39 cases in the sample that went to trial with a hired lawyer, 31 per cent resulted in acquittal; while of the 63 cases that went to trial with provided counsel, only 17 per cent resulted in an acquittal. *See* note 1 *supra* & text accompanying. This
ference with regard to receiving a preliminary hearing. On all three of these treatment variables, however, defendants with hired counsel did receive somewhat more favorable treatment than did defendants with provided counsel. Also similar to counsel versus no counsel in Table 1, the hired lawyer takes more time with his case than provided counsel, even when his client is in jail awaiting trial and especially when his client is out on bail. Hired counsel also takes longer to appear in the case than provided counsel, probably because obtaining hired counsel means shopping around, inquiring among friends, and possibly being turned down by some attorneys.

There are several reasons why hired counsel might obtain more favorable treatment for their clients than provided counsel. First, if provided counsel is a public defender, he is likely to be overworked and understaffed such that he is unable to give each case sufficient individual investigation and research. Second, if provided counsel is an ad hoc assigned attorney, he may be either a young inexperienced volunteer, or an older corporate lawyer who lacks experience in criminal law and may be only reluctantly representing the defendant.

It may be useful to separate the urban cases from the total sample of cases on the possibility that the urban cases are disproportionately hired counsel cases or provided counsel cases and that urban cases tend to receive more favorable or less favorable treatment. When one controls for urbanism the right side of Table 2 indicates that the pattern of hired counsel clients receiving generally more favorable treatment is still preserved. This result is partly explained by the +.04 correlation between being relatively urban and having hired counsel rather than provided counsel. This very low correlation may reflect such facts as: (1) urban defendants who can afford an attorney are more likely to hire one, given the greater formality of the urban legal system; (2) urban defendants who cannot afford an attorney are also more likely to be provided with one; and (3) these two factors balance each other, producing a zero correlation between urbanism and hired counsel. The urban pattern also resembles the greater pattern of Table 2 because, as was mentioned in discussing Table 1, there is little correlation between urbanism and favorable or unfavorable treatment.

In spite of the fact, as indicated by this data, that hired counsel might

indicates, in combination with row 6 of Table 2, that hired counsel makes little difference compared to provided counsel with regard to obtaining a dismissal, but more of a difference with regard to obtaining an acquittal where a lawyer's time and trial skills are more involved.

28. See note 1 supra & text accompanying.
29. See Appendix 1.
30. Id.
be more effective than provided counsel, it is unrealistic to expect the federal, state, or local governments in the near future to adopt a judicare system to enable the poor to obtain hired counsel. This is so largely because the judicare system is more expensive to the government than a public defender, who is paid one salary to handle all the indigent criminal cases during a given year; and it is more expensive than the traditional ad hoc assigned counsel system, where assigned counsel is paid less than the prevailing fee which hired attorneys would receive under judicare.\textsuperscript{31}

**Public Defender Versus Assigned Counsel**

In light of the expense of judicare, the only politically realistic alternatives for providing counsel for the poor are the salaried public defender or the ad hoc assigned counsel. There are different kinds of public defender systems depending on such things as whether the attorney is part or full time, and whether he covers a single county or rides a circuit of counties. Likewise, assigned counsel programs vary depending on such things as whether the attorney is paid a fee commensurate with the work done or just a nominal fee or no fee, and whether he is assigned from a volunteer list or assigned in a rotation order regardless of his desires.

Table 3 shows, in general, how salaried public defenders differ from ad hoc assigned counsel in the criminal procedure treatment they obtain for their respective clients.\textsuperscript{32} The left side of the table uses the total sample of cases, but this in effect means only using the cases involving indigent defendants, since only indigents are eligible for the services of the public defender or assigned counsel. Thus, there is no set of non-indigent public defender cases to compare with non-indigent assigned counsel cases analogous to the right side of Table 1.

The Table 3 comparisons yield mixed findings. On some matters the public defender clients seem to receive more favorable treatment, and on the other matters the assigned counsel clients seem to do so. The public defender client spends less time waiting for a lawyer to be provided than

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\textsuperscript{31} Additional detail on hired or retained counsel versus provided counsel is available. See Silverstein, supra note 6, at 53-57; Taylor, supra note 6; Skolnick, supra note 6.

\textsuperscript{32} If one compares cases having a public defender with those having assigned counsel, as done in Table 3, then both sides of the comparison are obviously represented by counsel. If, however, one compares counties where the public defender system is the system for representing indigents with counties where assigned counsel is the system, then it is possible that all defendants may not have counsel. This relates to a major difference between this study and the Silverstein research. See note 5 supra & text accompanying. Ninety-four per cent of the defendants in counties with defender systems had counsel, but only 87 per cent of the defendants did in counties with assignment systems. See note 1 supra & text accompanying. This probably shows that public defenders are less likely to be waived than assigned counsel or are more likely to be appointed before the case is otherwise resolved.
the assigned counsel client. This is logical since the public defender is an on-going institution and can be made more readily available, whereas to appoint assigned counsel requires at least one or more hearings or visits to find a willing and able attorney.  

33. If waiting time is measured in terms of transpired stages in the criminal justice process rather than transpired days, then assigned counsel does not appear to come on so late compared to the public defender. This lessened difference is due to the fact that the public defender is largely an urban phenomenon, and in urban cases it takes longer for the stages to pass than for the days to pass compared to rural cases. For a discussion of the stages-passed versus time-passed method of measuring waiting time, see text accompanying notes 39-40 infra.

**TABLE 3. HOW INDIGENT DEFENDANTS WHO HAVE PUBLIC DEFENDERS DIFFER IN THEIR CRIMINAL PROCEDURE TREATMENT FROM THOSE WHO HAVE ASSIGNED COUNSEL**

<table>
<thead>
<tr>
<th>Fraction in Sample</th>
<th>Criminal Procedure Treatment</th>
<th>All Cases</th>
<th>Urban Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Public Defender</td>
<td>Assigned Counsel</td>
</tr>
<tr>
<td>103/252</td>
<td>% who waited two weeks or less for counsel to appear or be appointed</td>
<td>71 @ 38</td>
<td>71 @ 31</td>
</tr>
<tr>
<td>376/676</td>
<td>% who received preliminary hearing</td>
<td>62 + 53</td>
<td>62 + 55</td>
</tr>
<tr>
<td>458/873</td>
<td>% who were released on bail</td>
<td>18 — 27</td>
<td>18 — 27</td>
</tr>
<tr>
<td>165/245</td>
<td>% who had short delay of two months or less from arrest to disposition or trial while in jail</td>
<td>75 @ 60</td>
<td>75 @ 58</td>
</tr>
<tr>
<td>76/242</td>
<td>% who had jury trial of those tried</td>
<td>22 — 26</td>
<td>22 — 24</td>
</tr>
<tr>
<td>138/957</td>
<td>% who were not found guilty</td>
<td>4 — 9</td>
<td>4 — 7</td>
</tr>
<tr>
<td>320/734</td>
<td>% who received a suspended sentence or probation rather than a prison sentence</td>
<td>23 @ 40</td>
<td>23 @ 38</td>
</tr>
</tbody>
</table>

33. If waiting time is measured in terms of transpired stages in the criminal justice process rather than transpired days, then assigned counsel does not appear to come on so late compared to the public defender. This lessened difference is due to the fact that the public defender is largely an urban phenomenon, and in urban cases it takes longer for the stages to pass than for the days to pass compared to rural cases. For a discussion of the stages-passed versus time-passed method of measuring waiting time, see text accompanying notes 39-40 infra.
According to row 4 the public defender seems to require less time preparing his case. This may be due both to the more specialized experience of the public defender in handling criminal cases and to greater pressures on him to move his cases along quickly. He may also have a greater tendency to plead his clients guilty which might account for their shorter stay in jail pending disposition of their cases. This is partly supported by the slightly higher percentage of public defender clients who plead guilty or who are found guilty (96 per cent) as compared to assigned counsel defendants (91 per cent).

The public defender’s possible greater tendency and ability to plead his clients guilty to a lesser charge may explain why the public defender’s clients receive shorter prison sentences. On the other hand, assigned counsel does seem to exert more effort on behalf of his clients as indicated by the fact that: (1) he enables a greater percentage of them to be released on bail even though both sets of clients are indigent; (2) he makes more extensive use of jury trials; and (3) he, like hired counsel, is more likely to obtain a suspended sentence or probation on their behalf.

Most of these differences between the public defender and assigned counsel do not reflect inherent differences in being a salaried defense lawyer rather than being on an ad hoc assignment. Instead, they seem to reflect the fact that public defenders in the sample are always from urban areas.

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<table>
<thead>
<tr>
<th></th>
<th>% who received short prison terms of one year or less of those imprisoned</th>
</tr>
</thead>
<tbody>
<tr>
<td>118</td>
<td>81</td>
</tr>
</tbody>
</table>

+ means defendants who had public defenders received better treatment.

— means defendants who had assigned counsel received better treatment.

The sign is circled where the difference is greater than ten.

---

<table>
<thead>
<tr>
<th></th>
<th>Number in sample</th>
</tr>
</thead>
<tbody>
<tr>
<td>1101</td>
<td>49</td>
</tr>
</tbody>
</table>

34. It may appear that the public defender consumes less time than assigned counsel because of his relatively short participation in the time consumed between arrest and trial regardless whether the defendant is released on bond. The time between the public defender's appointment and trial, however, may actually be longer than the time between assigned counsel's appointment and trial since the public defender does tend to be appointed earlier. See note 1 supra & text accompanying.

35. See Table 3, row 6.

36. Of the 167 grand larceny defendants who were represented by assigned counsel, 18 per cent had their bonds reduced whereas zero per cent of the 45 defendants who were represented by a public defender had their bonds reduced. See note 1 supra & text accompanying. The lack of subsequent bond reduction by the public defender may be at least partly due to the fact that he is more likely to be present when the original bond is set in view of his earlier appointment.
EFFECTS OF ALTERNATIVE TYPES OF COUNSEL 421

counties which are often congested, and assigned counsel are at least sometimes from less pressured rural counties. Because of the congestion of heavy urban caseloads, the understaffed public defender is possibly not able to do as thorough or as individualized a job as one might expect from his specialized expertise.\textsuperscript{37}

Because all the public defenders were in the relatively urban counties, it is impossible to compare rural public defenders with rural assigned counsel. We can, however, compare urban public defenders with urban assigned counsel. In doing so on the right side of Table 3, however, we get a pattern of differences quite similar to the pattern produced by the total group of cases. This is due to the fact that the urban public defender cases are the same as the public defender cases for the total sample, and the urban assigned counsel cases are similar to the assigned counsel cases in the total sample since there are more urban than rural cases in the total sample.

Nevertheless, most of the differences on the right side of Table 3 are smaller than the differences on the left side, showing that holding urbanism constant does decrease the differences between assigned counsel and public defender. The one exception is the earliness of appointment which does seem to be a real difference inherent in the greater on-going availability of the public defender. The differences between public defender and assigned counsel would probably be even less if population data were readily available for further equalizing the urbanism of the public defender and assigned counsel cases. Unfortunately, the assigned counsel cases on the "urban" side of Table 3 are probably less urban than the public defender cases. It would also be helpful if we could get data on the financing and caseloads of public defenders' offices so that we could compare well-financed public defenders with less well-financed to see how much of a difference is made by financing and thus staffing-per-caseload.\textsuperscript{38}

\textsuperscript{37} Much of the literature dealing with the problems of public defenders emphasizes their increasingly heavy caseloads and resulting pressures to plead their clients guilty, even though the quality of attorneys doing public defender work may have improved somewhat in recent years due to stiffer law school admissions, better law school training and possibly a greater public service orientation. \textit{See}, e.g., \textit{Casper, supra} note 6, at 106-14; \textit{Oaks & Lehman, supra} note 6; \textit{Blumberg, supra} note 6. The Casper book finds that a large amount of the negative reactions of Connecticut prison inmates against the legal system relate to what they perceive as unwarranted disparities between the treatment of defendants represented by public defenders and equally guilty, but better treated defendants having hired attorneys. \textit{Casper, supra} note 6 at 100-25. In Illinois the public defender may also lack some trial and appellate vigor because his appointment and retention depends on the chief judge of the circuit.

\textsuperscript{38} Other comparisons of assigned counsel and public defenders have been made. \textit{See} Anderson, Warner & Foster, \textit{supra} note 6; Benjamin & Pedelisiski, \textit{supra} note 6; and Summers, \textit{supra} note 6.
Early-Obtained Counsel Versus Late-Obtained Counsel

In discussing Table 2, it was mentioned that provided counsel appears on behalf of defendants quicker than hired counsel. Likewise, in discussing Table 3, it was mentioned that the public defender appears on behalf of his clients sooner than assigned counsel. What is the relationship between early-obtained counsel and favorableness of criminal procedure treatment?

There are two ways to measure whether counsel is early-obtained or late-obtained. One way involves counting the number of days from arrest to the time counsel appears or is appointed. This is the method that was used in the first row of Tables 2 and 3. The median on this measure was two weeks. The alternative method is to determine at what stage in the process counsel appeared or was appointed. The median on this measure was "after filing indictment or equivalent but before arraignment."

The stages-passed measure may make more sense than the days-passed measure because the defendant is worse off if he does not get an attorney until the day of trial, even if that is only five days from arrest, than if he is forced to wait thirty days before receiving counsel but no court hearing has expired during that time. Supreme Court decisions on when counsel should be appointed also specify stages rather than days. On the other hand, though, it may be harmful to wait many days for counsel regardless of what stages transpire because: (1) the defendant may be needlessly languishing in jail; (2) witnesses' memories may fade, especially if their statements are not being preserved in depositions; and (3) the defendant may become psychologically depressed, thereby hurting his ability to help with the case and to make a good impression on the court.

There is no Table 4 summarizing the relationships of early and late appointed counsel for four reasons. First, it would probably have to be a double table, one part using the days-passed measure and one part using the stages-passed measure. It is easier to discuss the few situations in which those measures produce different results (as was done with the first row of Table 3) than to double the data presented. Second, it would

40. The days-passed approach rather than the stages-passed approach was also used in Tables 2 and 3 partly for methodological considerations. In the computerized data, the actual stage of counsel's appearance or appointment was not recorded. Instead, what was recorded was "the stage at which counsel is usually appointed in non-capital felonies in the county." See note 1 supra & text accompanying. The days-passed measure, by contrast, is based on the individual case rather than the average case from that county, although it therefore has more missing information. There is some relationship between the two measures in that if the trial is early, the number of days passed will be few since there are no appointments after trial. The relationship, however, is not high because urbanism correlates negatively with obtaining counsel within a few days, but positively with obtaining counsel before the passage of the median stage. Appendix 1.
be necessary to present rural and indigent cases, in addition to urban and non-indigent ones, in order to adequately show the patterns involved. This is so because the urban pattern is the reverse of the rural pattern, and the non-indigent pattern differs substantially from the indigent one.

Third, early and late counsel turn out to be merely different ways of saying provided and hired counsel for the urban and rural cases, and merely different ways of talking about types of hired counsel or types of provided counsel for the non-indigent and indigent cases. In other words, early and late counsel do not independently reflect the time of appearance or appointment, but rather the type of counsel which has already been discussed with regard to Tables 2 and 3. Fourth, even if early and late counsel could be measured independently from type of counsel, it probably would not produce patterns as substantial as when types of counsel are compared. In other words, time of appearance is probably substantially less important to criminal procedure treatment than is counsel versus no counsel, hired counsel versus provided counsel, and public defender versus assigned counsel. Presenting what would amount to ten subtables (two measures times five categories relating to the totality, urbanism, and indigency) would thereby distract from these more important relations.

Proceeding to those results of the data which are significant, it becomes evident that when all the cases are lumped together, the clients with late counsel tend to receive more favorable treatment than the clients with early counsel. This occurs because late counsel tends to be hired counsel, and early counsel tends to be provided counsel. The only exceptions to the more favorable treatment of late counsel clients is with regard to delay in preparing the case and length of prison term for those imprisoned, probably caused in some degree by the possibly greater severity of grand larcenies committed by non-indigents who hire counsel.

If one looks only at the rural cases, the data shows that clients with early counsel receive more favorable treatment. This occurs because (unlike the more general urban pattern) early counsel in rural areas tend to be hired counsel since (1) it takes longer to arrange for court-assigned counsel in a rural area than it takes to hire an attorney and (2) there were no on-going public defender programs in the rural areas as of the early 1960's. On the other hand, if one looks only at the urban cases, early counsel tends to be a public defender and late counsel to be hired counsel.

With respect to the indigent cases, clients of early and late counsel tend to have the same mixed treatment as the patterns in Table 3 because early counsel for indigents tends to correspond to having a public defender,
and late counsel for indigents tends to correspond to having assigned counsel. If one looks only at the non-indigent cases, the differences are smaller because early and late counsel do not correspond to distinct types such as public defender or assigned counsel. Instead, early counsel may mean an attorney that the defendant quickly grabs, possibly in the vicinity of the criminal courthouse, whereas late counsel may mean an attorney for whom the defendant more carefully shops. Thus, although the differences are small, late counsel in the non-indigent cases does obtain more favorable treatment for his client, with the usual exceptions of delay related to preparation and length of prison term related to crime severity.41

**SOME CONCLUSIONS**

Having an *attorney* is especially important with regard to receiving a preliminary hearing, being released on bail, and receiving a short sentence if imprisoned. It is also beneficial, although less so, with regard to obtaining a jury trial, a dismissal or acquittal, and a suspended sentence or probation if found guilty. Having an attorney does, however, correlate to the defendant's detriment with regard to the increased delay in jail of those defendants who are not released on bail.

These findings hold up when one analyzes only urban cases or only rural cases because urbanism does not substantially correlate with how one is treated although urban defendants are more likely to have attorneys. These counsel versus no counsel findings are substantially strengthened when one analyzes only non-indigent cases or only indigent cases because indigency does substantially correlate with how one is treated, and indigent defendants were more likely to have counsel since by definition indigency is closely related to receiving court-appointed counsel.

Having a *hired attorney* rather than a court-provided one seems especially important with regard to being released on bail and receiving a suspended sentence or probation if found guilty, although these relations are confounded by the relation between economic class and having a hired attorney rather than a court-provided one. It also seems beneficial to have a hired attorney with regard to receiving a preliminary hearing, a jury trial, and a dismissal or acquittal. A hired attorney, however, possibly to the defendant's detriment is more likely to appear later in the case than a court-provided attorney, is likely to consume more time while the defendant is in jail pending trial, and is more likely to have clients who receive longer prison terms if the defendant is imprisoned.

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41. For a discussion of the problem of at what point in time counsel should be provided see *Silverstein*, supra note 6, at 75-88. *See also* A Special Committee of the Association of the Bar of the City of New York & The National Legal Aid and Defender Association, *Equal Justice for the Accused* (1959); Hunvald, *The Right to Counsel at the Preliminary Hearing*, 31 Mo. L. Rev. 109 (1966).
Having a public defender rather than assigned counsel if one is indigent may mean getting an attorney more quickly, having one's case processed faster, and being better represented in (or pushed into) plea bargaining for a reduced charge and lesser sentence. On the other hand, having assigned counsel may mean more vigorous representation with regard to bail reduction, requesting a jury trial, obtaining a dismissal or acquittal, and obtaining a suspended sentence or probation if convicted.

Having an early-obtained counsel may theoretically be an advantage because he can begin his investigation and preparation sooner. As an empirical matter, however, early-obtained counsel tends to mean court-provided counsel rather than hired counsel especially in the more urban counties where the public defender system is used. Among indigents in the data analyzed, early counsel means having a public defender rather than assigned counsel.

If one seeks to protect the innocent from adverse criminal procedure treatment, the policy recommendations which result from these findings logically lead to advocating increased provisions for providing attorneys to those who otherwise would not have them. The hired counsel versus provided counsel findings might lead one to advocate the judicare system for allowing indigents and near indigents to hire their own attorneys who would be paid in whole or in part from a government fund. Such a program, however, would have to be economically and thus politically feasible. In the absence of such a system, an adequately financed public defender system seems most capable of protecting the innocent from maltreatment and conviction. If the appropriate governmental agencies refuse to finance public defender systems proportionate to their heavy caseload, assigned counsel seems most effective especially in less urban areas where caseloads are smaller and can be handled on an ad hoc assignment basis.

In view of the importance of adequate financing for either a hired counsel judicare system or a salaried public defender system, it is important for governmental bodies and society to recognize the importance of providing adequate counsel to those who otherwise cannot afford counsel. Counsel for the poor protects the innocent from conviction and harassment and thereby decreases bitterness toward the system. Without counsel, constitutional rights are less likely to be enforced and more likely to be rendered meaningless. Attorneys also help to bring about orderly reform of the legal system as opposed to resorting to violence and other non-legal tactics to bring legal reform. Attorneys can provide an educational function to their clients, thereby preventing some wrong-doing in the future before it occurs. With proper defense counsel, the American adversary system, which presupposes that truth lies between the opposing attorneys, has at least some chance of obtaining its truth-seeking goal.
APPENDIX I. THE CORRELATIONS BETWEEN THE CHARACTERISTICS OF DEFENDANTS, THEIR TYPE OF COUNSEL, AND THE CRIMINAL PROCEDURE TREATMENT THEY RECEIVE

|                                | Non-indigent | Relatively urban | Counsel vs. no counsel | Hired counsel vs. provided counsel | Public defender vs. assigned counsel | Early counsel vs. late counsel | Received prelim. hearing | Released on bail | Short delay | Jury trial | Not found guilty | Probation vs. prison | Short vs. long prison |
|--------------------------------|--------------|------------------|-----------------------|----------------------------------|-------------------------------------|--------------------------------|------------------------|---------------------|-------------|------------|--------------|---------------------|-----------------------|-----------------------|
| Non-indigent                   |              |                  |                       |                                  |                                     |                                |                        |                     |             |            |              |                     |                       |                       |
| Relatively urban               |              |                  |                       |                                  |                                     |                                |                        |                     |             |            |              |                     |                       |                       |
| Counsel vs. no counsel         |              |                  |                       |                                  |                                     |                                |                        |                     |             |            |              |                     |                       |                       |
| Hired counsel vs. free counsel |              |                  |                       |                                  |                                     |                                |                        |                     |             |            |              |                     |                       |                       |
| Public defender vs. assigned counsel |        |                  |                       |                                  |                                     |                                |                        |                     |             |            |              |                     |                       |                       |
| Early counsel vs. late counsel |              |                  |                       |                                  |                                     |                                |                        |                     |             |            |              |                     |                       |                       |
| Received preliminary hearing   |              |                  |                       |                                  |                                     |                                |                        |                     |             |            |              |                     |                       |                       |
| Released on bail               |              |                  |                       |                                  |                                     |                                |                        |                     |             |            |              |                     |                       |                       |
| Short delay                    |              |                  |                       |                                  |                                     |                                |                        |                     |             |            |              |                     |                       |                       |
| Jury trial                     |              |                  |                       |                                  |                                     |                                |                        |                     |             |            |              |                     |                       |                       |
| Not found guilty               |              |                  |                       |                                  |                                     |                                |                        |                     |             |            |              |                     |                       |                       |
| Probation vs. prison           |              |                  |                       |                                  |                                     |                                |                        |                     |             |            |              |                     |                       |                       |
| Short vs. long prison          |              |                  |                       |                                  |                                     |                                |                        |                     |             |            |              |                     |                       |                       |

Correlations greater than 10 are italicized.
X = Related by definition.
Decimal points are eliminated.