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## Gap Seen Between Court-Appointed Lawyers and Public Defenders

By [ADAM LIPTAK](#)

Some poor people accused of federal crimes are represented by full-time federal public defenders who earn salaries, others by court-appointed lawyers who bill by the hour. A new study from a Harvard economist says there is a surprisingly wide gap between the two.

Both kinds of lawyers are paid by the government, and they were long thought to perform about equally well. But the study concludes that lawyers paid by the hour are less qualified and let cases drag on even as they achieve worse results for their clients, including sentences that average eight months longer. Appointed lawyers also cost taxpayers \$61 million a year more than salaried public defenders would.

There are many possible reasons for the differences in performance. Salaried public defenders generally handle more cases and have more interactions with prosecutors, meaning they may have a better sense of what they can hope to negotiate for their clients. Salaried lawyers also tend to have superior credentials and more legal experience, the study found, and those factors probably result in better performance. And salaried lawyers have no incentive to spend more time on a case than it deserves and run up their bills.

The study will add a new factor to the debate over the nation's indigent defense systems. In 1963, the [Supreme Court](#) ruled in *Gideon v. Wainwright* that poor people accused of serious crimes are entitled to legal representation paid for by the government.

Roughly three quarters of all federal defendants rely on lawyers paid for by the government, about evenly divided between salaried public defenders and appointed lawyers paid by the hour. Most of the rest hire their own lawyers, with about two percent representing themselves. The debate over how best to provide poor defendants with adequate representation has so far largely concerned whether lawyers for indigent defendants are paid enough to ensure a fair fight with prosecutors. The debate has not focused how the lawyers are paid, and whether that makes a difference.

The new study looked at federal prosecutions from 1997 to 2001. It was performed by Radha Iyengar, a post-doctoral fellow at Harvard's Institute for Quantitative Social Sciences, and presented as a National Bureau of Economic Research working paper.

Judge Morris B. Hoffman, a Colorado trial judge and a co-author of a 2005 study on the representation of indigent defendants, said the new study's innovation was in noticing that public defenders and appointed lawyers are assigned randomly in many federal judicial districts.

That means, Ms. Iyengar wrote, that the two sorts of lawyers had "the same underlying distribution of guilt in the cases they represent and thus are equally likely to lose at trial."

Court-appointed lawyers — known in federal judicial jargon as Criminal Justice Act panel attorneys — are needed where public defenders' offices have conflicts of interest in cases involving multiple defendants. They can also fill in as the volume of prosecutions fluctuate.

The vast majority of federal prosecutions end in plea bargains, and only about five percent of them reach trial. Ms. Iyengar found that court-appointed lawyers were slightly more likely to take cases to trial and slightly more likely to lose.

But her more important finding, given all the plea bargains, was that defendants represented by court-appointed lawyers received substantially longer sentences. That suggests the appointed lawyers are less adept at assessing which cases to pursue through trial and at negotiating with prosecutors.

Over all, defendants represented by court-appointed lawyers received average sentences about eight months longer. People convicted of violent crimes got five more months, while those convicted of weapons charges got almost a year and half more. But people convicted of [immigration](#) offenses receive sentences that averaged 2.5 months less if represented by appointed lawyers.

Appointed lawyers took longer to resolve cases through plea bargains — 20 days on average, a 10 percent difference.

“These results appear consistent with the hourly wage structure,” Ms. Iyengar wrote, as that structure creates incentives for appointed lawyers to take longer to resolve cases.

She concluded that appointed lawyers impose an additional \$5,800 in costs for the system for every case they handle.

Analyzing data from California and Arizona, the study found that appointed lawyers were less experienced and had less impressive credentials.

“The court appointed lawyers tend to be quite young, tend to be from small practices, and also they tend to be from lower ranked law schools,” Ms. Iyengar said in an interview. “They have a smaller client base and fewer interactions with prosecutors.”

Judge Hoffman said a number of the study's conclusions were unsurprising given that finding. However they come to represent their clients, less experienced lawyers tend to do less well in plea negotiations, in deciding which cases to take to trial and in trial outcomes, Judge Hoffman said.

Jon M. Sands, Arizona's Federal Public Defender, said he did not recognize the picture painted in the study. Court-appointed lawyers, he said, “are seasoned and committed and their sentences on the whole don't vary that much from those obtained by public defenders.”

The federal system, which handles about five percent of all criminal prosecutions, is relatively well funded and has some distinctive characteristics. The implications of the new study for the states may therefore be limited.

But more than half the states use a combination of public defenders and appointed lawyers, and a majority of indigent defendants are not represented by staff public defenders at the trial level.

David Carroll, research director for the National Legal Aid and Defender Association, endorsed the study's financial analysis but not its conclusions about the relative quality of staff versus hourly lawyers.

“Even though you can provide legal services that meet national standards in a variety of ways,” Mr. Carroll said, “there is a cost savings in establishing staff public defender offices.”

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