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Examining the Quality of Representation by Public Defenders Compared to Private Attorneys

Brianna M. Ovalle
Marshall University

Examining the Quality of Representation by Public Defenders Compared to Private Attorneys

The Sixth Amendment in the United States Constitution ensures that all of those charged with a criminal act are guaranteed the right to counsel in all criminal stages (Hartley et al., 2010: Iyengar, 2007; Liang et al., 2012; McGough, 2011; NIJ, 2019). While this legal entitlement was implemented in federal court, it was not ensured in state trials until a sequence of U. S. supreme court cases during the 1960s and 1970s. The most significant case of the series was *Gideon v. Wainwright* (1963), in which the court ruled that an indigent person is ensured the arrangement for legal counsel in cases involving serious charges with the representation being at the expense of the state (Sandys & Pruss, 2017). When the rights regarding counsel were broadened, it created significant growth for public defender offices in the U.S. In 1951, there were only seven state offices. After the Gideon ruling in 1963, the number of offices grew to 136 (Hartley et al., 2010; Sandys & Pruss, 2017). In the year 2000, 82% of the indigent state defendants and 66% of the federal indigent defendants were appointed public defenders. With such a high number of indigent defenders, it is imperative that the attorneys assigned to them are just as skilled and efficient as private attorneys to ensure due process.

Effective legal representation for those who cannot afford to provide their own is essential for guaranteeing that due process is provided (Hartley et al., 2010; Liang et al., 2012; NIJ, 2019). The court is responsible for locating and appointing experienced and skillful attorneys for a defendant when the defendant is financially unable to hire counsel (Cohen, 2014; McGough, 2011). A public defender is most likely to be retained in order to fulfill this requirement (Wiltz, 2017; Yang & Carlson, 2018). but public defenders are not a perfect fix as they come with their fair share of criticisms. The quality and legitimacy of representation public

defenders offer has been called into question for a number of reasons, namely due to lack in funding, the culmination of young and inexperienced attorneys due to burnout, case overload, and conflict of interest between public defenders and other main figures in court (Anderson & Heaton, 2013; Cohen, 2014; Hartley et al., 2010; Iyengar, 2007; Liang et al., 2012; McGough, 2011; Wiltz, 2017; Yang & Carlson, 2018). A significant number of indigent defendants rely on public defenders due to financial hardships, so it is imperative that the quality of this specific counsel type be comparable to the quality of representation often attributed to private attorneys.

Background

The Sixth Amendment of the U.S. Constitution guarantees that all criminally accused have the right to counsel (Hartley et al., 2010: Iyengar, 2007; Liang et al., 2012; McGough, 2011;NIJ, 2019). The 14th Amendment guarantees due process for all (Williams, 2002). Throughout history, this was perceived to mean that if the defendant could appoint an attorney, then it was their right to have the attorney present during trial (Anderson & Heaton, 2013; Cohen, 2014; Hoffman et al., 2005; Primus, 2017; Wiltz, 2017; Yang & Carlson, 2018). While this amendment was meant to help, it did not ensure due process for those who could not financially afford to retain their own counsel. The Supreme Court was forced to address fault in a series of cases. *Powell v. Alabama* (1932), *Johnson v. Zerbst* (1938), *Gideon v. Wainwright* (1963), and *Argersinger v. Hamlin* (1972) were all cases that challenged the interpretation of the Sixth Amendment before the Supreme Court. However, it was *Gideon v. Wainwright* (1963) that was most noteworthy as it extended the obligation of appointing counsel to state and federal districts (Cohen, 2014; Hartley et al., 2010: Sandys & Pruss, 2017). The decision in Gideon was considered groundbreaking as it was assumed the most unprotected and defenseless population (indigents) would be ensured due process (Sandys & Pruss, 2017).

QUALITY OF PUBLIC DEFENDER COUNSEL

Due to the broadening of the protections of the Sixth Amendment, public defenders were created and primarily the type of counsel appointed to fulfill the new need (Cohen, 2014; Hartley et al., 2010; Iyengar, 2007; McGough, 2011; Sandys & Pruss, 2017; Shinall, 2010; Yang & Carlson, 2018). Offices to oversee public defender attorneys skyrocketed as a result (Hartley et al., 2010; Shinall, 2010). In 1951, prior to the Supreme Court cases, there were only seven state public defender offices. After the ruling from *Gideon v. Wainwright* in 1963 the number increased to 136 offices, and after the 1972 Argersinger ruling there were 573 public defender offices in the country (Hartley et al., 2010). Data from 2004 and 2006 provides a picture of the number of defendants that rely on counsel appointed by the state. In 75 of the counties in the U.S. with the highest populations, almost 80% of felony defendants were indigent (Cohen, 2014). Three-fourths of the 69,000 indigent defenders were represented by public defenders.

To continue the discussion, it is important to distinguish a public defender from a private attorney. A public defender is an attorney who is chosen by the court to represent the defender. Each public defender is the financial responsibility of the state and they are typically paid by the county in which they work (Legal Information Institute, n.d.). A private attorney works on an individual basis, privately hired, and paid for by the defendant. Representation in general, albeit quality representation, is critical for trials to be considered fair and to ensure due process for defendants regardless of financial status. The overwhelming majority of previous research has empirically determined that counsel ensures far better outcomes in criminal trials compared to not having legal counsel (Liang et al., 2012).

Because public defenders are contracted through state districts, critics have challenged the effectiveness of the representation provided compared to representation of private attorneys (Anderson & Heaton, 2013; Cohen, 2014; Hartley et al., 2010; Hoffman, Rubin, & Shepherd,

2005; Iyengar, 2007; Liang et al., 2012; Primus, 2010; Sandys & Pruss, 2017; Shinall, 2010; Williams, 2002). The main reasoning behind the criticism is that due process is not being awarded in the same way between the rich and the poor (McGough, 2011). Critics assert that the quality of counsel is less for public defenders compared to that of private attorneys, which in turn negatively impacts indigent defendants by leading to higher rates of incarceration and sanctions (Anderson & Heaton, 2013; Cohen, 2014; Hartley et al., 2010; Iyengar, 2007; McGough, 2011). For example, federal and state judges were surveyed to determine how they perceived the effectiveness of defenses presented by public defenders versus private attorneys. Findings of the survey leaned more positively toward private attorneys (Posner & Yoon, 2011). Results indicate that state and federal judges perceived inconsistencies regarding the effectiveness of counsel in 20-40% of cases over which they presided.

Literature Review

While there may be differences in how public defenders and private attorneys act within their roles, existing literature has not definitively determined whether public defenders and private attorneys offer consistent standards of counsel. Previous studies on the subject have yielded mixed results but the overwhelming majority has found little to no significant differences in major case outcomes between the two types of counsel (Cohen, 2014; Hartley et al., 2010; Iyengar, 2007; Liang et al., 2012; Posner & Yoon, 2011; Spohn & Holleran, 2000; Shinall, 2010; Williams, 2002). Six hundred and sixty-six federal and state judges were surveyed for their academic opinion on quality of counsel due to their close relationship with attorneys. This survey resulted in the finding that federal judges generally consider public defenders and private attorneys similar in quality of defense (Posner & Yoon, 2011). Spohn and Holleran (2000) found no differences in rates of incarceration when the authors examined quality of counsel in three

large, urban jurisdictions. Hartley et al. (2010) examined the effect of type of counsel on four major stages of trial for 2,850 defendants in Cook County, Chicago, Illinois. There were no dissimilarities in the decision to release, the decision to decrease the main charge, conviction rate, or the average sentence length between public defenders and private attorneys. The rate of conviction, incarceration, and sentence length were found to be statistically identical for both public defenders and private attorneys in a study of 75 of the largest counties in the U.S. (Cohen, 2014).

In terms of the length of sentences, the average sentence imposed on a defendant represented by a public defender was similar to the average sentence imposed on a defendant represented by a private attorney (Cohen, 2014; Hartley et al., 2010; Shinall, 2010; Williams, 2002). Whether a felony defendant was represented by a public defender or a private attorney had no significant influence on sentence lengths in an examination of cases in a Northern Florida county (Williams, 2002). Shinall (2010) was found to have no significant impact on how a case turned out, in fact, defendants represented by public defenders had similar outcomes to those represented by private attorneys. It also seems that the decision to plea is consistent regardless of type of attorney. A sample of 683 cases from a DUI and drug program in Tulsa, Oklahoma was examined for effects of type of counsel on rate of plea bargains and the result of the program for the defendant (Liang et al., 2012). Whether a defendant was represented by a public defender or privately hired their own attorney had no effect on the likelihood the defendant would take a plea bargain, nor did the type of counsel influence the outcome of the case.

There have been instances wherein clients represented by their own privately hired attorneys fared better than defenders appointed public defenders (Hoffman et al., 2005; Posner & Yoon, 2011; Williams, 2013). Hoffman et al. (2005) discovered that public defenders fared

worse compared to private attorneys in 3,777 felony cases in Denver, Colorado. In terms of length of sentences, felony offenders who were represented by public defenders remained in prison on average three years more than defendants who hired their own attorney in 2002 (Hoffman et al., 2005). In a study presented earlier that examined perceptions of judges of the effectiveness of different types of attorneys, state judges who were surveyed regarded private attorneys as more skillful than public defenders (Posner & Yoon, 2011). Williams (2002) did not find any statistical differences in quality of counsel in his earlier study but a later study yielded conflicting results (Williams, 2013). During an examination of cases motioned for felonious defendants in four counties in Florida, Williams (2013) discovered defendants who were represented by public defenders had less of a chance of acquittal, had a higher rate of conviction, and were less likely to be let out of jail on bail.

Some data examining the effects of counsel on the rate of incarceration and average sentence length have given rise to findings in favor of public defenders (Anderson & Heaton, 2013; Iyengar, 2007; Sandys & Pruss, 2017). In a study of data from 51 districts, public defenders lower the rate of conviction and produce lower sentences on average for their federal clients in comparison to private attorneys (Iyengar, 2007). Anderson and Heaton (2013) conducted a massive study of 3,412 defendants charged with federal homicide in Philadelphia that yielded results in favor of public defenders. Overall, public defenders were responsible for acquiring less punitive punishments and lessening the extremity of more serious sentences. More specifically, defenders minimized the chances of a life sentence by 62% and decreased the anticipated sentence length by 24%. The authors also determined there was a difference in conviction rates with those who obtained private attorneys. These clients were 19% more likely to be convicted for homicide (Anderson & Heaton, 2013). Interestingly, clients seem to be

pleased with public defenders, more so than what was determined in preceding studies (Sandys & Pruss, 2017). This could be attributed to the lone wolf nature of private counsel, whereas public defenders form close-knit working relationships with a variety of individuals.

Differences in quality of counsel between past studies and recent studies may be the result of the data utilized in the sample. Key studies conducted in the 21st century have investigated both federal cases and state cases, which in contrast have produced overwhelming support for the notion that there are no significant variations in the quality of counsel between private attorneys and public defenders (Anderson & Heaton, 2013; Iyengar, 2007; Posner & Yoon, 2011; Williams, 2002; Williams, 2013). The majority of previous studies that relied on state defendant data may have prematurely yielded results portraying public defenders as an incompetent practice. Randomization in studies is a key factor in determining whether attorney skill was examined or whether the focus of examination was on case characteristics (Anderson & Heaton, 2013; Iyengar, 2007). Essentially, defendants should be appointed either a private attorney or a public defender randomly to ensure outcomes are due to differences between the two types of counsel. With the randomization of counsel, the cases are indistinguishable and thus allows for the focus of investigation to be placed on the effect of the attorney (Anderson & Heaton, 2012; Iyengar, 2007; Shinall, 2010). Studies that examined the effect of counsel on numerous case outcomes can lead to more reliable data and a greater understanding simultaneously (Anderson & Heaton, 2013; Cohen, 2014; Hartley et al., 2010; Iyengar, 2007; Liang et al., 2012; Posner & Yoon, 2011; Shinall, 2010; Williams, 2013). However, examinations of a single outcome still effectively add to the literature but in a way that further research is required to validate findings (Hoffman et al., 2005; Sandys & Pruss, 2017; Spohn & Holleran, 2000; Williams, 2002).

Generalizability was also a key issue for almost all of the studies presented for the question of whether data from certain counties and states could be generalized (Anderson & Heaton, 2013; Hoffman et al., 2005; Iyengar, 2005; Liang et a., 2012; Posner & Yoon, 2011; Sandys & Pruss, 2017; Spohn & Holleran, 2000; Williams, 2002; Williams, 2013). It is also very important to take note of whether a study included an analysis of case characteristics and whether they played a role in case outcomes, while this is not incorrect, it may not give a whole picture as the prime focus is not on the effect of the attorney (Hartley et al., 2010; Liang et al., 2012; Williams, 2013). At the same time, studies that primarily concentrated on attorney skill differences may have neglected the impact case characteristics can have on outcomes (Anderson & Heaton, 2013; Cohen, 2014; Posner & Yoon, 2011; Williams, 2002). It would be most effective to integrate both angles to produce results that represent a more whole picture (Hartley et al., 2010; Williams, 2013).

Factors that Influence Public Defender Quality of Counsel

There are major factors that can affect the quality of representation public defenders are able to provide to their clients (Anderson & Heaton, 2013; Cohen, 2014; Hartley et al., 2010; McGough, 2011; Sandys & Pruss, 2017; Williams, 2002; Williams, 2013). Large caseloads, limited resources, poor funding, lower payments, and inadequate time to prepare in between cases are all factors argued to negatively impact the standard of counsel public defenders can offer (Anderson & Heaton, 2013; Cohen, 2014; Hartley et al., 2010; Hoffman et al., 2005; Liang, et al., 2012; McGough, 2011; Primus, 2017; Sandys & Pruss, 2017; Williams, 2002; Williams, 2013; Wiltz, 2017; Yang & Carlson, 2018). Overloaded offices across the U.S. are struggling to keep up with their caseloads (Cohen, 2014; Hoffman et al., 2005; McGough, 2011; Primus, 2017; Sandys & Pruss, 2017; Williams, 2002; Wiltz, 2017; Yang & Carlson, 2018). Not to

mention the lack of funding diminishes the resources desperately needed to keep afloat in the sea of cases public defenders are assigned to (Cohen, 2014; Hoffman et al., 2005; Liang et al., 2012; McGough, 2011; Sandys & Pruss, 2017; Williams, 2002; Wiltz, 2017). An interesting finding in the Iyengar (2007) study was that in three of the districts sampled, salary, status of the law program attended, and average of cases assigned influenced more than half of the general dissimilarities between the two types of counsel.

For example, 60 public defenders working in New Orleans were responsible for roughly 20,000 cases a year on average (Wiltz, 2017). While these issues are occurring statewide, Missouri is considered the epicenter (Yang & Carlson, 2018). In 2017, 320 defenders statewide had handled a record of 80,000 cases and the majority of public defenders working in Kansas City were tasked to handle eighty to one hundred cases per week and (Wiltz, 2017; Yang & Carlson, 2018). The standard is that no public defender should be responsible for more than 400 misdemeanor proceedings per year (American Bar Association [ABA], 2002). Public defenders working in Missouri are on record representing three to five times the limit of cases that can be overseen efficiently (Yang & Carlson, 2018). Yearly public defenders have been assigned an estimated 2,000 clients in Chicago as well as Atlanta (Primus, 2017). In regard to felony cases, public defenders should not be assigned more than 150 cases per year to ensure competency (ABA, 2002). Strikingly, defenders have been made responsible for over 700 felony cases in Miami-Dade County in Florida which is well above ABA's suggestion (Primus, 2017).

The issue has gotten so out of hand that public defender offices have filed lawsuits for better working conditions or have refused cases outright (Wiltz, 2017; Yang & Carlson, 2018). A public defender office in New Orleans was hit with a $1 million deficit in 2015 and had to rely on a crowdfunding page to help raise the money needed to supplement the shortcoming (Wiltz,

2017). This same office was forced to decline several cases involving life sentences or severe charges due to caseloads being exerted (Murphy, 2016; Wiltz, 2017).

The American Civil Liberties Union (ACLU) and the ACLU Missouri branch launched a petition, but hope to progress to a civil suit, to end Missouri's practice of waitlists arguing the method is against civilians' right to counsel (ACLU, 2020). At only seven days into the new year, more than 4,600 defendants, with around 600 of these defendants being detained while awaiting trial, were placed on a waitlist for assignment to a public defender in Missouri (ACLU, 2020). Even though most have been deemed eligible for a public defender, they must wait for one to have an opening for another case assignment (ACLU, 2020).

Unintentionally, long waits for trials have become a common consequence due to large caseloads (American Civil Liberties Union [ACLU], 2020; McGough, 2011; Primus, 2017; Williams, 2013; Wiltz, 2017; Yang & Carlson, 2018). A phenomenon referred to as "pleading to daylight," in which offenders take a plea bargain so they do not have to wait for their public defenders while in jail (Yang & Carlson, 2018). As a result, indigent defenders must either wait in jail for an unknown amount of time despite having a right to a speedy trial or pleading regardless of innocence to move on in the criminal justice process (ACLU, 2020; Wiltz, 2017; Yang & Carlson, 2018). It could take months, sometimes even years in some heavily burdened districts, before public defenders could meet with their clients even for the first time (ACLU, 2020; Murphy, 2016; Primus, 2017). In fact, the Bronx district in New York has a record average waiting period of two to three years defendants must wait without a trial (Murphy, 2016). Defendants are also being forced to go through with the trial process without an attorney as a result of the backlog of public defenders which can lead to less favorable and more severe case outcomes (ACLU, 2020).

QUALITY OF PUBLIC DEFENDER COUNSEL

Both prosecutors and judges want a consistent and well-ordered process when it comes to handling cases, due to these interrelated working relationships, public defenders are sometimes believed to have another goal such as efficiency rather than justice (Anderson & Heaton, 2013; Cohen, 2014; Hoffman et al., 2005; Liang et al., 2012; Sandys & Pruss, 2017; Williams, 2013). While they are champions for indigent defendants, they do work for the state in the long run (Hartley et al., 2010). Essentially, to avoid conflict between the different players in court, public defenders may be pressured to seek plea bargains for the sake of efficiency rather than doing what is best for their client (Cohen, 2014; Hartley et al., 2010; Liang et al., 2012; Primus, 2017; Sandys & Pruss, 2017; Williams, 2013). Judges are under pressure to keep the system running smoothly, which can lead to the assignments of public defenders who are known to not waste time in court by avoiding objections or witnesses that would slow case processing (Anderson & Heaton, 2013; Cohen, 2014; Hoffman et al., 2005; Liang et al., 2012; McGough, 2011; Williams, 2013; Yang & Carlson, 2018). Close relationships with other players, like judges and prosecuting attorneys for example, can create a complex working relationship that does not affect private attorneys (Anderson & Heaton, 2013; Cohen, 2014; Hoffman et al., 2005; Hartley et al., 2010; Liang et al., 2012; Primus, 2017; Sandys & Pruss, 2017; Williams, 2013).

Private attorneys avoid these pressures because they are not a part of the clique and have the financial means to produce a strong testimony on the behalf of their client (Cohen, 2014; Hoffman et al., 2005; Hartley et al., 2010). Private attorneys are not confined by consideration for other players and therefore are able to objectively act on behalf of their client (Anderson & Heaton, 2013; Cohen, 2014; Hoffman et al., 2005; Hartley et al., 2010). Anderson and Heaton (2013) theorize that the reason public defenders secured significantly more plea bargains for their clients compared to private attorneys is due to the lack of incentive to move cases swiftly.

Private attorneys are not bound by networks to judges or prosecuting attorneys; therefore, they are more willing to take a case to trial (Anderson & Heaton, 2013; Hartley et al., 2010; Williams, 2013).

On the flip side to this argument, the relationship to other court officials may give public defenders an advantage by giving them an edge when it comes to seeking more pleasing results (Cohen, 2014; Hartley et al., 2010; Iyengar, 2007; Williams, 2002; Williams, 2013). Because public defenders do have a closer connection to other courtroom members, public defenders have more access to certain information as well as favors (Cohen, 2014; Iyengar, 2007; Williams, 2002). This is not totally invalid as previous studies have found similar outcomes for defendants regardless of type of counsel (Cohen, 2014; Hartley et al., 2010; Spohn & Holleran, 2000; Shinall, 2010; Williams, 2002) or even outcomes that favored counsel of public defenders (Anderson & Heaton, 2013; Iyengar, 2007). The networking among courtroom officials allows public defenders to seek and obtain better plea bargains as well as lesser sanctions to ensure that case processing remains smooth and efficient (Cohen, 2014; Hartley et al., 2010; Iyengar, 2007; Williams, 2002; Williams, 2013).

Private attorneys are able to choose which clients they represent, whereas public defenders are assigned their cases without question (Cohen, 2014; Hartley et al., 2010; Liang et al., 2012; Shinall, 2010). This difference can affect case outcomes because private attorneys can choose cases that have a strong defense and therefore a high chance of victory (Liang et al., 2012; Primus, 2017; Shinall, 2010). Public defenders are forced to take cases, regardless of their strength which can lead to lower success rates and may even be a factor for high rates of plea bargaining (Liang et al., 2012; Primus, 2017; Shinall, 2010).

Looking Ahead

QUALITY OF PUBLIC DEFENDER COUNSEL

It is of utmost importance that exact due process is ensured for all defendants, especially for the large population of indigent defendants that cannot otherwise obtain counsel for themselves (Cohen, 2014; Hartley et al., 2010; Liang et al., 2012; Posner & Yoon, 2011; Primus, 2017; Sandys & Pruss, 2017). To thoroughly achieve due process, it would be efficient to examine the quality of representation between public defenders and private attorneys in several levels of the trial process as well in state and federal instances as there may be a possibility that public defenders have more of an influence during earlier stages of a trial (Hartley et al., 2010; Iyengar, 2007; Posner & Yoon, 2011; Sandys & Pruss, 2017; Williams, 2002). This will not be an easy task due to the difficulty of narrowing down the variables to examine only the quality of counsel from individual attorneys (Posner & Yoon, 2011; Shinall, 2010). Studies produce more accurate findings when the data used for the sample involves randomly assigned public defenders and private attorneys, which allows for the focus of investigation to be placed on the differences in counsel (Anderson & Eaton, 2013; Posner & Yoon, 2011; Iyengar, 2007). Future studies of the current subject should involve random assignment of counsel to effectively examine the quality of representation (Anderson & Heaton, 2010; Cohen, 2014; Posner & Yoon, 2011; Iyengar, 2007).

Future research regarding the subject should take into consideration the "type of case, strength of the case, defendant characteristics, and victim characteristics" (Shinall, 2010, p. 276) to ensure attention remains on competency of the attorney (Liang et al., 2012; Williams, 2002), as well as the effect of the power to dictate which defendants to plead guilty and the relationship of arranging plea bargains in general (Iyengar, 2007; Sandys & Pruss, 2017). To continue lawyers are perceived to be uniform but are largely disseminated in actuality which can lead to difficulties when assessing the quality of representation, they provide (Posner & Yoon, 2011).

Involving input from judges allows another perspective into the quality of the defense as they are engaged with counsel in a number of settings. Thus, future research should consider including a survey of judge's opinions to add to the literature (Posner & Yoon, 2011). Previous literature has also neglected the perception from the very clients that public defenders serve. Opinions from said population could add to the literature and greatly complete the picture of whether public defenders offer quality counsel as the majority of defendants are indigent (Sandys & Pruss, 2017). While client satisfaction and case outcomes are both equally important focuses of study, perceptions of indigent defenders should not be overlooked because they cannot financially afford their own counsel (Sandys & Pruss, 2017).

Critics argue that a lack of oversight and systematic standards for all public defender offices leads to defects in the quality and legitimacy of representation they are able to offer (Hartley et al., 2010; McGough, 2011; Primus, 2017; Sandys & Pruss, 2017; Williams, 2013; Yang & Carlson, 2018). Public defenders have been overloaded with cases and issues with subpar funding, but no research has empirically addressed how these factors affect the quality of council (Sandys & Pruss, 2017; Williams, 2013). To counter this, future research should explore the expenses of applying universal guidelines for public defenders to follow and whether the expenses of such standards would outweigh the cost of supplying indigent offenders counsel as is (McGough, 2011; Sandys & Pruss, 2017). Future studies should address how funding and case overloading empirically plays a role in attorney competency as well as how client satisfaction may affect results of cases (Sandys & Pruss, 2017; Williams, 2013). Wiltz (2017) offered a more specific approach in that future research should explore the financial benefits of implementing community-based treatment options, like drug court for example, to reduce the number of nonviolent offenders requiring counsel from public defenders. To further decrease the pool of

indigent defenders, Wiltz advises that some less serious or nonviolent crimes that result in incarceration can be decriminalized.

An issue that may have a simpler fix is the poor management of public defender offices as well as the absence of guidelines for the attorneys to follow (McGough, 2011; NIJ, 2013; Sandys & Pruss, 2017). Without more uniform standards and an administration to oversee said standards, there is a defect in the quality of representation from public defenders (McGough, 2011; NIJ, 2013; Sandys & Pruss, 2017). The implementation of universal standards could lead to more practicable case assignments, an increase in the indigent defense budget, and even the caliber of representation as long as such standards are enforced adequately (NIJ, 2013). Acquiring more funding will allow public defender offices to hire more attorneys, which in turn can also reduce the strain placed on the attorneys with unmanageable caseloads while simultaneously create incentive for already employed public defenders and new hirees (Hoffman et al., 2005; Posner & Yoon, 2011; Primus, 2017; Sandys & Pruss, 2017; Williams, 2013; Yang & Carlson, 2018). This could also be another short-term solution. In fact, even judges recommend more funding for indigent offices so that any differences in counsel could be decreased (Posner & Yoon, 2011).

A more long-term solution would be to completely restructure the plea-bargaining system, which can be used as "an out" for public defenders as they try to appease judges' need for efficiency (Hoffman et al., 2005; Iyengar, 2007; Sandys & Pruss, 2017; Williams, 2013). Lastly, while it has not been outright recommended in the aforementioned studies, it would do well to update the estimates of the number of indigent defendants and how many of these defendants rely on public defenders nationally. The last figures available were from 2007, which

leaves scholars to rely on unverifiable data from third party organizations (Langton & Farole, 2007).

Conclusion

The right of legal counsel is a critical key element to ensure defendants are given a fair trial and guarantee due process (Hartley et al., 2010: Iyengar, 2007; Liang et al., 2012; McGough, 2011; NIJ, 2019). After protections were broadened with the Gideon versus Wainwright decision, the need for effective counsel exploded and public defenders were tasked with representing defendants known as indigent defendants who could not otherwise obtain counsel on their own (Anderson & Heaton, 2013; Cohen, 2014; Hartley et al., 2010; Iyengar, 2007; Liang et al., 2012; McGough, 2011; Sandys & Pruss, 2017; Shinall, 2010; Yang & Carlson, 2018). Public defenders and private attorneys are two of the most common attorney options available for defendants (Cohen, 2014; Hartley et al., 2010). Public defendants are made available to indigent defendants at the cost of the state or county while private attorneys are privately hired by the defendant at their own accord (Legal Information Institute, n.d.). Critics have voiced concerns over the quality of representation of public defenders due to the setup of the program, wherein it is viewed that public defenders do not offer counsel on par with that of private attorneys (Anderson & Heaton, 2013; Cohen, 2014; Hartley et al., 2010; Hoffman, Rubin, & Shepherd, 2005; Iyengar, 2007; Liang et al., 2012; Primus, 2010; Sandys & Pruss, 2017; Shinall, 2010; Williams, 2002). Overall, previous research has failed to say definitively, or at least with most certainty, whether one type of attorney is better than the other (Anderson & Heaton, 2013; Cohen, 2014; Hartley et al., 2010; Hoffman et al., 2005; Iyengar, 2007; Liang et al., 2012; Posner & Yoon, 2011; Spohn & Holleran, 2000; Shinall, 2010; Williams, 2013; Williams, 2002). However, the majority of studies have found the standard to be identical for

both types of attorney (Cohen, 2014; Hartley et al., 2010; Liang et al., 2012; Posner & Yoon, 2011; Spohn & Holleran, 2000; Shinall, 2010; Williams, 2002). However, there are still many unanswered questions and uninvestigated variables to say for certain if public defenders ensure due process for their clients.

The quality of services that public defenders provide continues to be criticized rather than the personal skill of the attorney (Anderson & Heaton, 2013; Cohen, 2014; Hartley et al., 2010; Hoffman et al., 2005; Liang, et al., 2012; McGough, 2011; Primus, 2017; Sandys & Pruss, 2017; Williams, 2002; Williams, 2013; Wiltz, 2017; Yang & Carlson, 2018). A severe lack in funding and unmanageable caseloads are leading causes of inconsistent and subpar representation from public defenders. These lead to limited resources and lower wages for public defenders which can consequently lead to burn out (Hoffman et al., 2005; Posner & Yoon, 2011; Primus, 2017; Sandys & Pruss, 2017; Williams, 2013; Yang & Carlson, 2018). The intricate relationship public defenders have with judges, prosecutors, and other key figures in the court is unique and should not be overlooked (Anderson & Heaton, 2013; Cohen, 2014; Hartley et al., 2010; Hoffman et al., 2005; Posner & Yoon, 2011; Primus, 2017; Sandys & Pruss, 2017; Williams, 2013; Yang & Carlson, 2018). While these connections can certainly benefit defendants with better plea bargains and case outcomes, there is still debate as critics assert that these favors are done on behalf of trial figures to ensure a smoother and more efficient processing of cases (Anderson & Heaton, 2013; Cohen, 2014; Hoffman et al., 2005; Hartley et al., 2010; Liang et al., 2012; Primus, 2017; Sandys & Pruss, 2017; Williams, 2013).

The discussion is clearly ongoing, and there are several strides to make if the indigent counsel system is to be improved for both the overworked and underfunded public defenders as well as the indigent defendant. It is important to create a well-rounded base of knowledge from

which solutions can be produced. There are many factors to control for when examining such a subject, so it would be best to include several angles to add to the literature. Some studies have focused on case characteristics (Hartley et al., 2010; Liang et al., 2012; Williams, 2013), while others relied heavily on differences in skill between the two types of attorneys (Anderson & Heaton, 2013; Cohen, 2014; Posner & Yoon, 2011; Williams, 2002), but the ideal study would include consideration of case characteristics and attorney skill (Hartley et al., 2010; Williams, 2013). Regardless, studies from here on out should include randomization of attorneys to clients whenever possible to allow for a more accurate examination on differences between both types of attorneys (Anderson & Heaton, 2013; Iyengar, 2007). The opinions of judges and clients should be further explored as well to determine how others who are the most involved with counsel perceive both types of attorney (Posner & Yoon, 2011; Sandys & Pruss, 2017).

There are some solutions that previous studies have already named, which should be investigated further. For example, several authors have identified a lack of funding and heavy caseloads as major hindrances to job performance for public defenders (Hartley et al., 2010; Hoffman et al., 2005; McGough, 2011; NIJ, 2013; Posner & Yoon, 2011; Primus, 2017; Sandys & Pruss, 2017; Williams, 2013; Yang & Carlson, 2018). With more funding, public defender offices can allocate the funds to much needed areas, like hiring more attorneys to help ease the caseload as well as offering higher wages as incentive (Hoffman et al., 2005; Posner & Yoon, 2011; Primus, 2017; Sandys & Pruss, 2017; Williams, 2013; Yang & Carlson, 2018). Even reducing the amount of crimes that end in jail time or implementing diversion strategies, like community-based programs for example, can greatly lessen the caseload public defenders are too often tasked to handle with little help (Wiltz, 2018). Public defender offices are mostly on their own when it comes to guidance, more uniform standards or guidelines for offices to follow could

help ease the burden placed on the counsel on top of ensuring the quality of representation is efficient and consistent (McGough, 2011; NIJ, 2013; Sandys & Pruss, 2017). The most time-consuming solution would be to completely restructure the indigent defense program. This would certainly require more research into what methods would work best but may be the only way the system is completely corrected. In this case, quick fixes may not be enough.

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