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Kids, Counsel and Costs: an Empirical Study
of Indigent Defense Services in the Los
Angeles Juvenile Delinquency Courts

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In the landmark case *In re Gault*, the Supreme Court guaranteed juveniles virtually all of the criminal due process rights previously granted to adults. Arguably the most vital of those rights is the right to competent counsel. Scholars have studied how systems provide legal counsel and have questioned the use of certain models to provide defense services. Los Angeles County utilizes two distinct models for the provision of defense services: a contract-panel attorney model and a public defender office. This study looks at data from over 2,800 juvenile court case files from the Los Angeles juvenile courts and asks the following questions: Do public defenders and contract-panel attorneys behave differently? If so, does their behavior make a difference? Our analysis shows that contract panel attorneys are less active, and that youth represented by contract panel attorneys are convicted of more serious offenses and are subject to more severe dispositions. Finally, noting differences in both attorney behavior and outcomes, we explore some of the potential causes and implications of our findings.

I. Introduction

A. *The Juvenile Justice System*

The Sixth Amendment to the Constitution affords adults and youth the right to an attorney in criminal proceedings.¹ Beginning in the 1960s, the United States Supreme Court extended that right to require competent counsel for all critical stages of a criminal proceeding where the defendant faces jail time, including misdemeanors.² In 1967, the right to counsel guaranteed by the Sixth Amendment was extended to juveniles in the land mark case of *In re Gault*.³ While the Court in *Gault* provided the due process framework for all juvenile courts, the United States Supreme Court in *McKeiver* refused to extend the right to a jury trial in juvenile delinquency proceedings.⁴ In language that has repeatedly been used to limit the due process rights of juveniles, the *McKeiver* court explained that the guiding principal of juvenile

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¹ U.S. CONST. amend. VI.

² *Gideon v. Wainwright*, 372 U.S. 335, 344-345 (1963).

³ *In re Gault*, 387 U.S. 1, 42 (1967).

⁴ *McKeiver v. Pennsylvania*, 403 U.S. 528, 550-551 (1971).

delinquency jurisprudence was “fundamental fairness,” rather than a constitutional mandate found in the sixth amendment.⁵ However, the core principal of competent legal counsel has remained a fundamental element of due process for juveniles since 1967.

How systems deliver criminal defense services to the indigent has evolved to include three basic models: “assigned counsel, contract panel attorneys, and public defender programs.”⁶ Under an assigned counsel system, the court selects a private defense attorney from a predetermined list of attorneys who have elected to participate in the program. Attorneys in this scheme are paid hourly or on a case-by-case basis.⁷ The contract attorney model is defined by a contractual relationship between a group of attorneys and a court or municipality. The contract typically provides for representation of all defendants for a fixed fee over a specific period of time, or for a fixed fee for a specific number of cases and then a per-case fee for each subsequent case.⁸ Public Defender offices are government or non-profit entities whose sole purpose is the representation of indigent defendants.⁹ Public defenders are salaried employees whose compensation is not determined by the number of cases or clients they represent during the course of the year. While public defender offices are typically under-staffed and under-resourced,¹⁰ when compared to other means of delivering legal services they maintain distinct advantages over their alternatives: they can take advantage of economies of scale,¹¹ provide

⁵ *Id.* at 543.

⁶ Robert L. Spangenberg & Marea L. Beeman, *Indigent Defense Systems in the United States*, 58 LAW & CONTEMP. PROBS. 31, 32 (1995).

⁷ *Id.* at 33.

⁸ Spangenberg, *supra* note 6 at 34-35.

⁹ *Id.* at 36-37.

¹⁰ *Id.* at 270.

¹¹ DAVID W. NEUBAUER & HENRY F. FRADELLA, *AMERICA’S COURTS AND THE CRIMINAL JUSTICE SYSTEM* 176 (10th ed. 2011).

internal training, performance oversight,¹² and have intellectual capital in the form of multiple generations of attorneys working together providing guidance, counsel and cultures of zealous representation.¹³

B. Literature

Scholars began to examine adult public defense systems early on and that line of research has continued to date.¹⁴ Many of the earlier studies found little or no effect on outcomes related to the type of attorney, whether one was comparing public defenders to private attorneys, assigned counsel or contract panel attorneys.¹⁵ While studies have shown that public defenders and private defense counsel tend to reach the same results for their clients,¹⁶ a series of recent studies have shown there are significant outcome differences when comparing public defenders to assigned or contract panel attorneys.¹⁷ Iyengar found that in the federal courts, public defenders outperformed court assigned attorneys when considering conviction rates and length of sentences and found troubling relationships between the attorney, outcomes and race.¹⁸ Cohen's recent study of state court data found that private attorneys and public defenders performed

¹² *The Presumption of Guilt: Systemic Factors That Contribute to Ineffective Assistance of Counsel in California*, 45 Cal. W. L. Rev. 263, 298.

¹³ NEUBAUER & FRADELLA, *supra* note 11 at 176.

¹⁴ See generally, Floyd Feeney & Patrick G. Jackson, *Public Defenders, Assigned Counsel, Retained Counsel: Does the Type of Criminal Defense Counsel Matter?*, 22 RUTGERS L.J. 361 (1990-1991), and more recently, Thomas H. Cohen, *Who's Better at Defending Criminals? Does Type of Defense Attorney Matter in Terms of Producing Favorable Case Outcomes* (2011) available at <http://ssrn.com/abstract=1876474>.

¹⁵ Feeney & Jackson, *supra* note 14, at 407.

¹⁶ Richard D. Hartley, Holly Ventura Miller & Cassia Spohn, *Do you get what you pay for? Type of counsel and its effect on criminal court outcomes*, 38 J. CRIM. JUST. 1063, 1068-1069 (2010).

¹⁷ Thomas H. Cohen, *Who's Better at Defending Criminals? Does Type of Defense Attorney Matter in Terms of Producing Favorable Case Outcomes* (2011), available at <http://ssrn.com/abstract=1876474>; Radha Iyengar, *An Analysis of the Performance of Federal Indigent Defense Counsel*, (NBER, Working Paper No. 13187, June 2007).

¹⁸ Iyengar found that substandard legal representation disproportionately affected minority and immigrant populations. *Id.* at 28-30

equally well when considering trial and sentencing outcomes;¹⁹ however when comparing public defenders to assigned counsel, the study found that public defenders performed better considering conviction rates, prison versus probation and the length of sentences.²⁰ Most recently, Anderson and Heaton²¹ measured how attorney types effect murder case outcomes in Philadelphia, and found dramatic differences in outcomes between assigned counsel and public defenders. Their study found that as compared to appointed counsel, public defenders in Philadelphia reduced murder conviction rates by nineteen percent, the chances of a life sentence by sixty-two percent and overall expected time in prison by twenty-four percent.

Juvenile advocates, legal organizations and academics have all studied the efficacy of attorneys in the juvenile justice system. The literature in this area consists of formal assessments of juvenile justice systems by the National Juvenile Defender Center,²² as well as scholarly articles from the legal community commenting on the state of the juvenile system.²³ Almost without exception, the community of academics, child advocates and professional organizations raise serious questions about the quality of legal representation in the juvenile justice system.²⁴

Two studies have examined the relationship between outcomes and the type of attorney representing the minor. In 1980, Clarke and Koch found that attorney type made no significant difference, and found that youth represented by any attorney fared worse in some measures when

¹⁹ Cohen, *supra* note 17, at 44.

²⁰ *Id.* at 45.

²¹ Anderson, James M. and Heaton, Paul, How Much Difference Does the Lawyer Make? The Effect of Defense Counsel on Murder Case Outcomes (October 1, 2011). Available at SSRN: <http://ssrn.com/abstract=1884379> or <http://dx.doi.org/10.2139/ssrn.1884379>

²² “The National Juvenile Defender Center (NJDC) was created in 1999 to respond to the critical need to build the capacity of the juvenile defense bar and to improve access to counsel and quality of representation for children in the justice system.” *About Us*, NATIONAL JUVENILE DEFENDER CENTER, http://www.njdc.info/about_us.php (last visited Jan. 7, 2011).

²³ See generally Jerry R. Foxhoven, *Effective Assistance of Counsel: Quality of Representation for Juveniles is Still Illusory*, 9 BARRY L. REV. 99 (2007), and Barbara Fedders, *Losing Hold of the Guiding Hand: Ineffective Assistance of Counsel in Juvenile Delinquency Representation*, 14 LEWIS & CLARK L. REV. 771 (2010).

²⁴ Foxhoven, *supra* note 25, at 112-120.

compared to youth without an attorney.²⁵ Another study conducted in 1976-77 compared the performance of public defenders and private counsel in Alameda and Los Angeles Counties when representing youth subject to transfer to the adult system. This study by Hancock and Van Dusen found that in Los Angeles County, public defenders were more effective at keeping their clients in the juvenile delinquency system;²⁶ however, it found no measureable performance difference between the two groups practicing in Alameda County.²⁷

II. The Study

The goal of this study is to understand: 1) how public defenders and contract panel attorneys differ in their legal representation of their juvenile clients and 2) if those differences exist, how they impact the final case disposition.

A. Setting

The juvenile justice system in Los Angeles is one of the largest systems in the world. Yearly, law enforcement arrest more than 50,000 youth resulting in 20,000 being formally charged with crimes and processed through the juvenile justice system.²⁸ Ten juvenile court houses contain thirty juvenile courts staffed by judges, superior court commissioners and referees.²⁹

²⁵Stevens Clarke and Gary Koch, *Juvenile Court: Therapy or Crime Control, and Do Lawyers Make a Difference*, 14 LAW AND SOC'Y REV. 263, 298 (1980).

²⁶PAULA HANCOCK & KATHERINE TEILMANN VAN DEUSEN, ATTORNEY REPRESENTATION IN JUVENILE COURT: A COMPARISON OF PUBLIC DEFENDERS AND PRIVATELY RETAINED COUNSEL (n.d.) at 20.

²⁷*Id.*

²⁸Jacquelyn McCroskey, *Youth in the Los Angeles County Juvenile Justice System: Current Conditions and Possible Directions for Change*, LOS ANGELES CHILDREN'S PLANNING COUNCIL, April 2006, at 3.

²⁹*Juvenile Locations*, LOS ANGELES SUPERIOR COURT, <http://www.lasuperiorcourt.org/locations/ui/filteredlist.aspx?ct=JU&f=DQ> (last visited Feb. 28, 2012); CAL. WELF. & INST. CODE § 255 (Deering 2011) (authorizing subordinate judicial officers).

The Los Angeles County Public Defender's office employs over 700 attorneys, staffing 44 offices in 46 courts across the county, with a separate division dedicated to representing youth charged with crimes in the delinquency courts.³⁰

Cases that present a conflict of interest for the public defender must be handled by an attorney who is not an employee of the public defender's office. Where the public defender is confronted with two or more potential clients and a conflict of interest exists, the public defender's internal policy requires that the public defender keep the client who is in the greatest jeopardy and reject the remaining clients, however this policy does not apply in every case evaluated by the public defender's office.³¹

Each year the County of Los Angeles issues a request for proposals to provide defense services for those youth that represent a conflict of interest for the public defender.³² The contract panel attorneys must submit a proposal in order to represent those clients rejected by the public defender.³³ Specific contract terms for each courthouse and corresponding panel vary; but in general, the contract panel is paid a single, per-case flat fee and in return must provide all legal services for each case.³⁴ The current fee rate for each case ranges from \$320 to \$345, regardless of the seriousness or complexity of the case.³⁵

California's juvenile delinquency laws are written to give attorneys the opportunity to litigate almost every procedural or constitutional issue available to adults in the criminal system.

³⁰ *Services*, LOS ANGELES COUNTY PUBLIC DEFENDER, <http://pd.co.la.ca.us/Services.html> (last visited Oct. 6, 2011).

³¹ One of the authors is a former Los Angeles County public defender, who was responsible for executing this policy. It was confirmed that the policy remains in place in a conversation with the Assistant Public Defender, Winston Peters on April 4th, 2012.

³² *Bid Information*, L.A. COUNTY ONLINE, <http://camisvr.co.la.ca.us/lacobids/BidCommodity/CommAwardFrm.asp> (last visited Oct. 13, 2011).

³³ *Id.*

³⁴ Sue Burrell, *Contracts for Appointed Counsel in Juvenile Delinquency Cases: Defining Expectations*, 16 UC DAVIS J. OF JUVENILE L. AND POL'Y 42 n.123 (forthcoming).

³⁵ *Id.* at 40 n.121.

In California, a juvenile can litigate his detention,³⁶ the admissibility of evidence prior to trial,³⁷ his speedy trial rights,³⁸ the suitability of his disposition,³⁹ and probation violations.⁴⁰ In California, an attorney is appointed at the time the minor first appears in court and is constitutionally required at all critical stages of the criminal proceeding.⁴¹

B. Methodology

The research process began in early 2008 when the Presiding Judge of the Los Angeles County juvenile courts granted researchers access to confidential juvenile delinquency court files. The research team was provided with 40,000 juvenile delinquency case filings that represented all new filings in Los Angeles County from January 1, 2004 through December 31, 2007. Researchers randomly selected 4,000 cases that served as the representative research sample for this study.

All variables were manually extracted and entered into a researcher created database from juvenile court files. The research team collected over three hundred types of data from the court file that included: demographic data, case history, lawyer actions and disposition data. Many of these variables were later used as statistical controls for factors such as race, gender, and prior court involvement.

1. Variable Definitions

³⁶ *In re Dennis H.*, 19 Cal.App.3d 350, 354-355 (1971).

³⁷ CAL.WELF. & INST. CODE § 701.1 (Deering 2011).

³⁸ CAL.WELF. & INST. CODE § 631 (Deering 2011).

³⁹ CAL.WELF. & INST. CODE § 800 (Deering 2011).

⁴⁰ CAL.WELF. & INST. CODE § 777 (Deering 2011).

⁴¹ CAL.WELF. & INST. CODE § 676 (a) (Deering 2011).

This study utilized multiple variables to describe different lawyer actions, case outcomes, the case itself, and the defendant. For greater clarity in understanding the analysis and results we have provided brief descriptions for the different dependent, independent, and control variables (Table 1).

a. Dependent Variables

The *attorney actions* variables represented actions that a lawyer could take on behalf of their clients (Table 1). These variables were used in the analysis as dependent variables to answer the first research question: Do public defenders and contract panel attorneys differ in the actions they take while representing their juvenile clients?

The *case outcome* variables represent the type, level, and severity of the final disposition on the case (Table 1). These variables were used to represent the outcome of the guilt phase of the case, and if convicted, the severity of the sentence as represented by the number of years sustained. These variables were used as dependent variables to help answer the second research question: Is there a relationship between attorney type and case outcomes?

b. Independent Variable

Attorney type served as an independent variable when analyzing the data to determine if there were differences in lawyer actions and case outcomes. (Table 1). It should be noted that the “other” lawyer type was not included in the study due to its limited sample size.⁴²

c. Control Variables

⁴² The “other” attorney category represented only 7% of attorneys, while public defenders equaled 57%, and court panel attorneys equaled 36%.

The *defendant background* information category represented information on each of the defendants in our sample and included variables such as age, ethnicity, and gender. These variables were used to describe the populations in the juvenile justice system and were used to control for demographic differences in the sample when studying the effect of the independent variable (attorney type) on the dependent variable (case outcome). The *case information* category included variables describing the crimes the youth were facing, the maximum possible years of confinement for all charges filed, and if the defendant had an active case prior to the one studied in the analysis.

The analysis attempted to take into account preexisting differences between the two groups and in order to minimize their potential impact, the analysis used the following case information variables and background characteristics to control for preexisting differences in the sample when studying the effect of the independent variable (attorney type) on the dependent variable (case outcome): number of years charged in original filing, category of crime and whether the minor was active before the instant filing. (Table 1).

Table 1.
Study Constructs and Operationalization

Dependent Variables

Category	Variables	Description	Scale
Attorney Actions	Number of motions filed	Total number of motions filed by attorneys on behalf of clients.	Continuous: Total number of motions filed
	Expert witness appointed	Expert witness was appointed and testified during the course of the case.	Dichotomous: - Yes - No
	Number of expert witness requested	The total count of expert witnesses requested	Continuous: Total number of witness requests
	Request to release	Attorney requested release of defendant.	Dichotomous: - Yes - No
	Request to dismiss	Attorney requested a dismissal of charges.	Dichotomous: - Yes - No
Case Outcome	The verdict	The case decision -	Dichotomous: - Dismiss - Convict
	Number of years sustained	The sum of the all sentences associated with each charge sustained by the court	Continuous: Total number of years
	Disposition Level	Represents the severity of the dispositional outcome which varied from informal probation (least severe) to youth prison(most severe)	Ordinal in order of least to most severe: 1. Informal Probation with no Admission of Guilt 2. Informal Probation with Admission of Guilt for Misdemeanors 3. Informal Probation with Admission of Guilt for Certain Felonies 4. Home on Probation 5. Suitable Placement/Therapeutic Group Homes 6. Camp Community Placemen 7. Prison for Youth in California
	Crime Category Conviction	The seriousness of the crime sustained (misdemeanor to serious felony)	Ordinal in order of least to most severe: - Misdemeanor - Felony (3 or fewer years) - Felony (4 or more years)

Independent Variable

Category	Variables	Description	Scale
Lawyer Type	Type of Lawyer	Attorney type 1) Public Defender or 2) Contract Panel.	Nominal: - Public Defender Attorney - Contract panel Attorney

Control Variables

Category	Variables	Description	Scale
Defendant Background	Age	Age of minor.	Continuous: Age
	Gender	Gender of minor.	Dichotomous: - Male - Female
	Ethnicity	Ethnicity of minor.	Nominal: - African American - Asian-American - Latino - White - Multi-Ethnic - Other
Case Information	Number of years charged	The maximum number of years of imprisonment for all charges filed in this case.	Continuous: The sum of number of year associated with all the case charges.
	Crime Category	Classification of charges as misdemeanor, felony (under 3 years), felony (over 3 years).	Ordinal in order of severity: - Misdemeanor - Felony (less than 3 years) - Felony (more than 3 years)
	Active before filing	Indicates if defendant had an active case prior to the current case.	Dichotomous: - Yes - No

III. Results

A. Descriptive Statistics

Out of the original 4,000 petitions that were randomly selected, 3,090 cases were included in the study for analysis. Twenty cases were inaccessible due to the minor being declared unfit or sent to California Youth Authority. Another $n = 327$ cases were sealed. If cases began or ended in a jurisdiction other than Los Angeles county, they were not included ($n = 69$). Last, there were cases lost in the system that could not be accounted for by the Los Angeles Superior Court's case

tracking program ($n = 164$). Of the remaining $N = 3,420$ cases, $n = 134$ cases were unavailable because they were currently active in the courts, and an additional $n = 196$ cases were still being processed at the court Archives.

The descriptive statistics of the sampled cases revealed that most cases involved Latino (58.5%) or African-American (28%) males, who were between the ages of 14 to 17 (Table 2a). Most in the sample did not have other active cases in the court system (64.7%). The majority of youth were charged with felonies (78.7%) and many of these felonies carried a maximum sentence of four or more years.(44.5%.) The average minor in the study faced a maximum sentence of 4.1 years, aggregating the maximum number of years associated for each charge.⁴³ They were typically represented by a public defender (56.8%), or court appointed attorney (36.2%), or other (7% privately retained attorney) (Table 2b).⁴⁴ The majority of the cases resulted in the conviction of the defendant (91.8%), and the top three disposition levels included home on probation (38%), camp community placement (19.8%), and Informal Probation with Admission of Guilt for Misdemeanors (12.6%). Convictions were almost equally distributed across misdemeanors, (31.3%), felonies with less than 3 years of maximum confinement time (30.8%), and felonies with more than 3 years of maximum confinement time (33.6) (Table 2c).

⁴³ It should be noted that the “maximum confinement time” that is used in this study IS NOT the maximum confinement time calculated by the determinate sentencing rules mandated in the California Penal Code, nor is it calculated using the rules which govern how to calculate maximum confinement time under *In re Claude J.*, 217 Cal.App.3d 760 (1990). The maximum as used in this study was simply the sum of the years associated with the sentence of each of the charges that were sustained.

⁴⁴ It is important to note that the analysis did not include the “other” attorney category, but focused solely on the court appointed and public defender categories due to the very small number in the “other” category that would have rendered any findings in that category unstable.

Table 2A

Descriptive Statistics for the Sample of Minors Included in the Study

Variable	<i>n</i>	Percent
Age		
9	1	0.1
10	4	0.2
11	11	0.6
12	58	3.0
13	123	6.4
14	275	14.3
15	412	21.4
16	455	23.6
17	498	25.8
18	88	4.6
19	2	0.1
20	1	0.1
Gender		
Male	1602	83.1
Female	326	16.9
Ethnicity		
African-American	540	28.0
Asian-American	39	2.0
Latino	1127	58.5
White	182	9.4
Multi	5	0.3
Other	35	1.8

Table 2B
Descriptive Statistics on the Case Information

Variable	<i>n</i>	Percent
Active before filing		
New	1778	64.7
Active	969	35.3
Crime Category Charged		
Misdemeanor	592	21.2
Felony (3 or fewer years)	954	34.2
Felony (4 or more years)	1241	44.5
Lawyer Type		
Public Defender	1595	56.8
Contract Panel	1018	36.2
Number of years charged		
	Mean	4.1
	Std. Deviation	3.3
	<i>n</i>	2888.0

Table 2C
Descriptive Statistics for the Case Disposition

Variable	<i>n</i>	Percent
Disposition		
Conviction	2142	91.8
Dismissal	192	8.2
Disposition Level		
Informal Probation with no Admission of Guilt (WIC 654)	243	11.0
Informal Probation with Admission of Guilt for Misdemeanors (WIC 725)	280	12.6
Informal Probation with Admission of Guilt for Certain Felonies (WIC 790)	177	8.0
Home on Probation	843	38.0
Suitable Placement/Therapeutic Group Homes	219	9.9
Camp Community Placement	438	19.8
Prison for Youth in California	17	0.8
Crime Category Conviction		
Misdemeanor	905	31.3
Felony \leq 3 Years	890	30.8
Felony $>$ 3 Years	970	33.6

B. Results for Research Question 1: Are there differences in the actions that public defenders and contract panel attorneys take when representing their juvenile clients?

The lawyer action analysis examined the activities that the deputy public defenders and the contract panel attorneys engaged in on behalf of their clients in each of the cases. A Pearson chi-square analysis was used to determine if certain activities differed between the two lawyer types. In addition, an independent samples *t*-test was also conducted to examine mean differences in the frequency of continuous variables.

1. Lawyer Actions

Our results revealed that public defenders tended to be more active in the courtroom. As displayed in Table 3, results indicate that public defenders were significantly more likely to file motions, $X^2(1, n = 267) = 19.18, p < .01$, have expert witnesses appointed, $X^2(1, n = 1100) = 20.48, p < .01$, and were more likely to request the release, $X^2(1, n = 1719) = 4.08, p < .05$, and dismissal of their client's cases, $X^2(1, n = 1806) = 28.91, p < .01$. It should be noted that no significant differences were observed in whether the attorneys filed motions to dismiss, $X^2(1, n = 1110) = 1.16, ns$, or whether the matter went to adjudication, $X^2(1, n = 1822) = .24, ns$.

In addition, the analysis revealed that public defenders had, on average, filed more motions and requested more expert witnesses than their court appointed counterparts ($p < .01$). Independent sample *t*-tests contrasted the number of expert witnesses requested and the number of written motions submitted. As shown in Table 4, statistically significant mean differences in the number of expert witnesses requested were found as a function of the type of attorney. For youth represented by public defenders, the mean number of expert witnesses requested was significantly higher than for defendants represented by contract attorney, $t(180) = 2.96, p < .01$,

equal variances assumed. Moreover, statistically significant mean differences in the number of written motions submitted were found for defendants represented by public defenders versus contract panel attorneys. For minors represented by a contract panel attorney, the number of written motions was significantly lower than for those who were represented by deputy public defender, $t(265) = 4.50, p < .01$, equal variances assumed.

Table 3
Attorney's Actions as a Function of Type of Attorney

Action	Public Defenders		Contract Panel Attorney		χ^2	
	%	<i>n</i>	%	<i>n</i>		
Filed a motion					37.35**	
	No Motions	87%	1390	94.5%	962	
	Yes Motion	13%	205	5.5%	56	
Expert witness appointed					20.36**	
	No	93.2	1487	97.2	990	
	Yes	6.8	108	2.8	28	
Request to release					4.08*	
	No	94.9	985	96.9	660	
	Yes	5.1	53	3.1	21	
Did matter go to adjudication					.24	
	No	61.9	683	60.8	437	
	Yes	38.1	420	39.2	282	
Request to dismiss					28.91**	
	No	98.0	904	98.9	652	
	Yes	2.0	190	1.1	60	

Note: ** $p < .01$, * $p < .05$

Table 4
Mean Differences in the Number of Written Motions and the Number of Expert Witnesses Requested as a Function of Type of Attorney

Action	Minors Represented by PD			Minors Represented by CPA			<i>t</i> (<i>df</i>)	Cohen's <i>d</i>
	<i>n</i>	<i>M</i>	(<i>SD</i>)	<i>n</i>	<i>M</i>	(<i>SD</i>)		
How many expert witnesses requested	126	.68	.59	56	.41	.53	2.96**(180)	.48
How many written motions filed	205	1.27	.63	56	1.11	.37	2.46**(152)	.153

** $p < .01$

Note: PD = Public Defenders, CPA = Contract Panel Attorney

C. Results for Research Question 2: *Is there a relationship between attorney type and case outcomes?*⁴⁵

A central function of this study is to examine the relationship between the type of attorney and the final case outcome. The case dispositional outcome was operationalized using three variables: the sum of the years associated with the charges sustained, the disposition level and the severity of the crime category. The following are the results for the analyses involving the three dependent variables.

1. Severity of Outcome Regression Analysis

If the minors' petition was sustained, an analysis was conducted examining the relationship between lawyer type and the severity of the case outcome. Three dependent variables were used to represent severity and they included: 1) the sum of the years associated with the charges sustained, 2) the disposition level and 3) the severity of the crime category. The sum of the years was a simple aggregation of the years attendant with each charge sustained. The disposition level reflected a range starting with the least serious (e.g. informal probation) to the most serious (e.g. California Department of Juvenile Justice). The severity of the crime category also represented a range starting with the lowest level of crime (i.e. misdemeanor) to the most serious (i.e. felonies whose maximum sentence exceeds three years). A three-step hierarchical multiple regression model, was constructed predicting the severity of the outcome.

⁴⁵ An analysis was conducted to determine any difference in the rates of case dismissals. A 2 X 2 Pearson chi-square test was conducted and no statistically significant differences were found, $X^2(1, n = 2888) = .49, p > .05$. This analysis indicated that lawyer type did not predict a greater likelihood of dismissal. However, it should be noted that the dependent variable was severely imbalanced with 91.8 % of the cases in our sample ending in a conviction (Table 2c).

To isolate the effect of the attorney type, demographic characteristics such as age, race, and gender were controlled for in Step 1 of all three regression models. In Step 2, the three predictors signifying the nature of the underlying cases were added to the model, and included: the maximum number of years charged, the seriousness of the crime, and whether the minor was active before filing.⁴⁶ At Step 3, a single independent predictor was included in the model: deputy public defender versus contract panel attorney. Despite the number of predictors included in the model, no multicollinearity problems were encountered, as all predictors exhibited satisfactory tolerance levels ranging from .33 to .95.

2. Length of the Sentence Analysis

The dependent variable in this analysis was the magnitude of the sentence, which is measured by the number of charges sustained and the corresponding number of years of possible confinement attributed to each charge sustained. After including all other predictors as statistical controls for the attorney type, the attorney type emerged as significant predictor of the number of years sustained, $F_{change}(1, 1916) = 5.11, p < .05$. Being represented by contract panel attorney was significantly associated with youth who were convicted of more serious offenses or more charges, or a combination of both. ($B = .15, \beta = .05, p < .05$). This meant that a minor represented by a contract panel attorney would suffer a sentence that was fifteen percent longer or, on average, fifty four days more than a defendant represented by a public defender. Results for Model 1 are presented in Table 5.

This overall model with all the predictor variables was also significant $F(11, 1916) = 73.16, p < .01$ and accounted for 30% of the variance in the severity of the sentence measured in

⁴⁶ Please note that the public defender policy of selecting the client who is in the greatest jeopardy was statistically controlled for with these variables.

the number of years sustained. Several other variables emerged as statistically significant predictors of the number of years sustained. Older defendants tended to receive longer sentences ($B = .05, \beta = .04, p < .05$). Male defendants, on average, received longer sentences when compared to female defendants ($B = .29, \beta = .07, p < .01$). If a defendant had an active case before the case studied here, there was a higher likelihood of a longer sentence. ($B = .29, \beta = .09, p < .01$). Being charged with higher category crime would also result in a longer maximum sentence. ($B = .20, \beta = .10, p < .01$) (Table 5).

Table 5
Hierarchical Multiple Regression Predicting Number of Years Sustained

Predictor	At Step			Final Model		
	$R^2 \Delta$	R^2 Cumm.	Multiple R	B	SE	β
Intercept				-.60	.36	--
Step 1: Demographics	.02*	.02*	.16*			
Age				.05*	.02	.04*
Gender				.29**	.08	.07**
Ethnicity				.20	.12	.06
				.29	.24	.03
				.14	.11	.04
				.40	.62	.01
				.26	.25	.21
Step 2: Nature of the Cases	.27**	.29**	.54**			
Active Before Filing				.29**	.07	.09**
Number of Years Charged				.22**	.01	.44**
Crime Category Charged				.20**	.06	.10**
Step 3: Attorney's Characteristic	.002*	.292**	.55**			
Attorney Type				.15*	.07	.05*

Note: Reference group for gender is Female; for ethnicity is White, and for attorney type is Public Defenders.

** $p < .01$, * $p < .05$.

3. Disposition Regression Analysis

The dependent variable in this analysis was the severity of the disposition which ranged from non-wardship probation to youth prison. After including all other predictors as statistical controls for the attorney type, the attorney type emerged as significant predictor of the level of disposition $F_{change}(1, 1916) = 30.56, p < .01$. Our findings show that youth represented by a contract panel attorney were significantly associated with more severe disposition outcomes ($B = .34, \beta = .10, p < .01$) (Table 6). In other terms, a youth represented by a contract panel attorney had a 34% increased likelihood of being sentenced to the next higher disposition level when compared to those represented by a public defender (Table 6).

This overall model, incorporating all predictors, was found to be significant, $F(11, 1916) = 100.04, p < .01$, and accounted for 36% of the total variance in the level of disposition. Other findings from this model revealed that increases in age were significantly associated with more severe dispositions ($B = .10, \beta = .09, p < .01$). Being Latino or African-American, on average, resulted in an increase in the severity of the disposition ($B = .62, \beta = .19, p < .01$; $B = .54, \beta = .15, p < .01$, respectively). Being Asian-American, on average, also resulted in higher disposition levels. ($B = .67, \beta = .06, p < .01$). Males, on average, received more severe disposition levels ($B = .21, \beta = .05, p < .01$). Cases that were active before filing tended to receive more severe dispositions ($B = 1.55, \beta = .46, p < .01$). Youth facing more charges resulted in higher dispositions ($B = .04, \beta = .09, p < .01$), and higher categories of crime charged were found to be associated with the increase in the level of disposition ($B = .34, \beta = .17, p < .01$) (Table 6).

Table 6

Hierarcical Multiple Regression Predicting Disposition

Predictor	At Step			Final Model		
	<i>R</i> ² <i>Δ</i>	<i>R</i> ² Cumm.	Multiple <i>R</i>	<i>B</i>	<i>SE</i>	<i>β</i>
Intercept				.02	.33	--
Step 1: Demographics	.07**	.07**	.27**			
Age				.10**	.02	.09**
Gender						
Male				.21**	.08	.05**
Ethnicity						
African-American				.54**	.11	.15**
Asian-American				.67**	.22	.06**
Latino				.62**	.10	.19**
Multiple Ethnicities				.23	.57	.01
Other				.26	.23	.02
Step 2: Nature of the Cases	.29**	.36**	.60**			
Active Before Filing				1.55**	.06	.46**
Number of Years Charged				.04**	.01	.09**
Crime Category Charged				.34**	.05	.17**
Step 3: Attorney's Characteristic	.01**	.37**	.61**			
Attorney Type						
Contract Panel Att.				.34**	.06	.10**

Note: Reference group for gender is Female; for ethnicity is White, and for attorney type is Public Defenders.
***p* < .01, **p* < .05.

4. Severity of the Crime Sustained Regression Analysis

The dependent variable of this analysis was the seriousness of the charges sustained. Crime categories were created for the purposes of the model, and they included: 0 = none, 1= misdemeanor, 2= felony with a maximum sentence of three years or less, and 3= felony with a maximum sentence over three years. After including all other predictors as statistical controls for the attorney type, the attorney type emerged as a significant predictor of the severity of crime category sustained $F_{change}(1,1916) = 9.22, p < .01$. These findings indicate that court appointed

attorneys, on average, were significantly associated with a more serious category of crime sustained ($B = .10, \beta = .06, p < .01$). In other terms, a defendant represented by a court appointed attorney would have a 10% higher likelihood of being convicted of a more serious category of crime when compared to those represented by a public defender (Table 7).

This overall model, incorporating all predictors, was found to be significant, $F(11, 1916) = 62.07, p < .01$, and accounted for 27% of the total variance in the crime category sustained. Other findings from this model revealed that older defendants tended to leave the courtroom with a higher sentence measured by the category of crime sustained ($B = .03, \beta = .05, p < .05$). Being Latino or African-American significantly associated with stronger verdicts in terms of the category of crime sustained ($B = .16, \beta = .10, p < .01$; $B = .18, \beta = .10, p < .01$, respectively). Being male, on average, would result in the higher category of crime sustained ($B = .18, \beta = .09, p < .01$). In terms of the underlying nature of the cases, having an active case before filing was significantly associated with a higher category of crime sustained ($B = .24, \beta = .15, p < .01$). The initial severity of charge measured in the number of years charged was found to be a statistically significant predictor of the crime category sustained ($B = .06, \beta = .25, p < .01$). Moreover, the category of crime associated with the initial charge was also found to be a significant predictor of the crime category sustained ($B = .24, \beta = .23, p < .01$) (Table 7).

Table 7
Hierarcical Multiple Regression Predicting Crime Category Sustained

Predictor	At Step			Final Model		
	$R^2\Delta$	R^2 Cumm.	Multiple R	B	SE	β
Intercept				-.22	.18	--
Step 1: Demographics						
	.04**	.04**	.19**			
Age				.03*	.01	.05*
Gender				.18**	.04	.09**
Ethnicity						
				.18**	.06	.10**
				.21	.12	.04
				.16**	.05	.10**
				.28	.31	.02
				.12	.13	.02
Step 2: Nature of the Cases						
	.22**	.26**	.51**			
Active Before Filing				.24**	.03	.15**
Number of Years Charged				.06**	.01	.25**
Crime Category Charged				.24**	.03	.23**
Step 3: Attorney's Characteristic						
	.01**	.263**	.51**			
Attorney Type						
				.10**	.03	.06**

Note: Reference group for gender is Female; for ethnicity is White, and for attorney type is Public Defenders.
 ** $p < .01$, * $p < .05$.

These three models demonstrate that the type of attorney was a statistically significant predictor of verdict's severity in all three predictive models even after controlling for the demographic factors and the underlying nature of the cases. Being represented by contract panel attorney was consistently associated with receiving a more serious disposition measured by the total number of years sustained, disposition, and the category of crime sustained.

5. Limitations

These findings suggest that there are behavioral and dispositional differences between the different lawyer types; however, there is a limitation to the study design that is worth discussing. In this study the researchers were unable to randomly assign defendants to receive services from the public defender or the contract panel attorney due to the conflict of interest policy for the public defender's office, and other ethical, logistical, and resource constraints. Instead, the analysis employed a hierarchical multiple regression analysis, which provided the ability to examine the behaviors and outcomes of each lawyer type, and compare them to each other. This method has much strength, but it does not completely address the issue of selection bias, which is the possibility that one of the lawyer types (either contract panel, or public defender) had higher instances of youth with certain immeasurable or undocumented characteristics that could explain the differences in lawyer behavior and disposition outcomes. For example, it could be possible-but very unlikely-that contract panel lawyers had a higher percentage of defendants who acted out during their court proceedings, and this may have been the reason for the differences in results. This study's research design attempted to reduce the risk of selection bias by choosing and controlling for variables that have a strong relationship with the dispositional outcomes: the severity of charges, the number of years charged and cases that were active before filing. We would argue that these variables, once controlled for, dramatically reduce the potential for selection bias, and increase the validity of the claims made about lawyer differences. However, there is no absolute certainty without the conduct of an experimental study to completely verify this claim.

IV. Discussion

A. Attorney Practice

The attorney actions isolated in this study are: motions for release from custody, written motions filed on behalf of the minor and whether the attorney was successful in appointing an expert witness. They were selected because they were evident from the court file and are consistent with recommended attorney practices in the standards and guidelines published by the National Juvenile Defender Center,⁴⁷ the ABA,⁴⁸ and the California State Bar.⁴⁹

Our analysis shows that in each of the measures cited above, public defenders were more active. Of course every client is not detained, nor does each case require a motion, or an expert witness. However, the status of being detained, the presence of litigable pre-trial issues and the need for additional expertise are common in the practice of law and particularly common in the juvenile courts.⁵⁰

1. Motions Filed

Our “motions filed” variable did not identify the nature of the motion, but simply sought to capture activity consistent with effort on behalf of a client. The different factual scenarios and accompanying strategies that would justify and also preclude the filing of a written motion are limitless. However, as a practical matter it is not uncommon that facts reported by police

⁴⁷ *About Us*, NATIONAL JUVENILE DEFENDER CENTER, http://www.njdc.info/about_us.php (last visited Jan. 7, 2011).

⁴⁸ ABA MODEL RULES OF PROFESSIONAL CONDUCT, PREAMBLE, *available at* http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope.html

⁴⁹ State Bar of California, *Guidelines on Indigent Defense Services Delivery Systems* (2006), *available at* www.calbar.ca.gov/LinkClick.aspx

⁵⁰ Brian Jay Nicholls, *Justice in the Darkness: Mental Health and the Juvenile Justice System Symposium: New Frontiers in Family Law: Monologues & Commentary: Study Note*, 11 J. L. FAM. STUD. 555, 558 (2009) (juvenile offenders with mental health problems had improved mental health, and outcomes, with treatment); Barry Holman & Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, JUSTICE POLICY INSTITUTE 8-9 (Nov. 28, 2006).

officers demonstrate some violation of the Fourth, Fifth or Sixth Amendments.⁵¹ For example, the exclusionary rule acts to ensure the lawful exercise of police power, so a systematic failure to enforce rules against unlawful searches and seizures erodes the deterrent effect implicit in the rule.⁵² If a motion to suppress is litigated and the minor prevails, the dismissal would manifest itself in the data we reviewed and would be perceived to be a positive result. Even if the motion is filed but not litigated in a hearing, identifying the issue and presenting the issue to the prosecutor and judge puts the minor in a better position to negotiate a more favorable disposition or limit the number of charges faced by the minor—both metrics that were created and studied here. Here, the data showed that public defenders were twice as frequent, “motion filers,” as their counterparts on the contract panels.

2. Detention

Research shows that detention is a more reliable predictor of future criminality than gang affiliation, weapons or family dysfunction.⁵³ Pre-trial detention has the effect of socializing the detainee in a concentrated delinquent environment as well as disrupting educational services and severing family support, both vital to a child’s success. Where a child wants out of custody, their attorney is ethically obligated to advocate for their client’s release, but pre-trial detention advocacy is also urged in practice guidelines published by National Juvenile Defender Center,

⁵¹ U.S. CONST. amend IV (protecting against unreasonable searches and seizures), V (protecting against self-incrimination), and VI (the right to a speedy trial, to confront witnesses, and to the assistance of counsel).

⁵² “without that rule the freedom from state invasions of privacy would be so ephemeral and so neatly severed from its conceptual nexus with the freedom from all brutish means of coercing evidence as not to merit this Court’s high regard as a freedom ‘implicit in the concept of ordered liberty.’” *Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

⁵³ *Ten Principles for Providing Effective Defense Advocacy at Juvenile Detention Hearings*, NATIONAL JUVENILE DEFENDER CENTER, <http://njdc.info/publications.php> (2008).

and the California State Bar.⁵⁴ In our study, we found that public defenders were more likely to advocate for a minor's release by requesting a separate detention hearing in the form of a *Dennis H.* hearing or separate *William M.* hearing calendared after the initial arraignment.⁵⁵ Our data demonstrated that public defenders set these detention hearings forty percent more frequently than the contract panel attorneys.

3. Expert Appointments

Data show that seventy-five percent of all youth in the juvenile justice system suffer from some form of learning disability and the same percentage suffer from at least one DSM IV diagnosis.⁵⁶ It is therefore common in the juvenile justice system, that courts and attorneys seek outside assistance in the form of experts to help them identify, diagnose and explain a child's mental health issues as well as to help fashion appropriate dispositions. If a court is ignorant of a child's capacity, the court may order terms and conditions of probation with which the child cannot comply. Failure on probation results in deeper penetration into the juvenile justice system, making it more difficult to extricate the minor later.⁵⁷ Our study showed that public defender clients had experts appointed to their cases twice as frequently as their counterparts represented by the contract panel attorneys. This troubling pattern suggests the possibility that a

⁵⁴ *Ten Core Principles for Providing Quality Delinquency Representation Through Public Defense Delivery Systems*, NATIONAL JUVENILE DEFENDER CENTER, http://www.njdc.info/pdf/10_Core_Principles_2008.pdf (2008); *IJA-ABA Standards for Juvenile Justice*, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/groups/criminal_justice/pages/JuvenileJusticeStandards.html (last visited Feb. 28, 2012).

⁵⁵ A *William M.* hearing is a hearing which gives the attorney an opportunity to present evidence that the minor is not a flight risk and arrange for alternative residential placements if needed. *See In re William M.*, 3 Cal.3d 16 (1970). A *Dennis H.* hearing is a probable cause determination where the prosecution must present a prima facie showing of the minor's guilt or the minor must be released. *See In re Dennis H.*, 19 Cal. App.3d 350 (1971).

⁵⁶ *Juvenile Justice- Issues*, PACER CENTER, <http://www.pacer.org/jj/issues/> (last visited Feb. 28, 2012).

⁵⁷ *Juvenile Offenders and Victims: 2006 National Report*, U.S. DEPARTMENT OF JUSTICE: OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, 2006, at 235 (statistics show that the more prior referrals a juvenile has, the more likely that they will return to juvenile court).

significant number juvenile defendants may go through the system without any party alerted to the mental health issues they face.

B. Implications

One consideration often overlooked is that the attorney is the single member of the court team that has access to the most accurate information about the child. The import of the attorney client relationship and its primacy amongst other court participants is difficult to overstate as the attorney is the only person involved in the decision making process who has unfettered access to the minor's psychological, medical and educational history as well as familial pathologies. If an attorney lacks sufficient time or the financial incentive to take the time necessary to interview the client adequately, then important information may be lost. This leaves the court with poor information, placing the judge in the untenable position of imposing sanctions without information that is potentially vital to the success or failure of the child.

While the rationale for Los Angeles' choice of a low-bid, flat-fee compensation model may be cost savings,⁵⁸ the current system of representation presents latent but substantial expenses to the taxpayer and County of Los Angeles. As described in our study, youth in the juvenile justice system who are represented by a contract panel attorney are thirty four percent more likely to end up at a higher disposition after their case is resolved. A cursory comparison of dispositional costs demonstrates the actual costs to the County attributable to the choice of compensation scheme. According to the Los Angeles County Probation Department, the per day

⁵⁸Los Angeles County Supervisor Michael Antonovich's Justice Deputy, Anna Pembadjian is quoted as stating, "Paying them (contract panel attorneys) more isn't going to enhance their ability to represent these juveniles, or paying them hourly versus a flat fee." Molly Hennessy-Fiske, *Juvenile Justice Diverges in Court*, LOS ANGELES TIMES, June 14, 2010, <http://articles.latimes.com/2010/jun/14/local/la-me-juvenile-justice-20100614>.

costs for basic, low-level at home supervision is approximately \$5.25/day. Enhanced at home supervision services by the probation department cost approximately \$15.70/day. Group homes or suitable placement facilities cost approximately \$25.65/day. Camp community placement, according to the probation department costs approximately \$307.00/day. According to last year's probation report to the board of supervisors, 3,025 youth were sent to camp for an average term of six months. Of these 3,025 youth we estimate that 1,724 (or 57%) were represented by contract panel attorneys⁵⁹. According to our analysis, 34 percent of those represented by contract lawyers or 586 youths could have been in a lower level alternative disposition had they been represented by an equivalent to the public defender. The total cost of 586 youth in camp for an average of 180 days each is approximately \$ 32,382,360.⁶⁰ The following figures show the approximate costs and savings to the county had the minor been sentenced to each respective disposition instead of Camp Community Placement:

Disposition	Cost/day	X	# of days	X	# of impacted defendants	=	<i>Cost of Alt. Disposition</i>	Potential Savings (Camp cost - Alt. disposition)
Camp for impacted defendants	307	X	180	X	586	=	32,382,360	0
Standard Home on Probation	5.25	X	180	X	586	=	553,770	31,828,590
Enhanced Home on Probation	15.7	X	180	X	586	=	1,656,036	30,726,324
Suitable Placement	25.65	X	180	X	586	=	2,705,562	29,676,798

⁵⁹ This estimate was derived by examining the percent of youth in camp from our study who were represented by contract panel lawyers from 2004-2007.

⁶⁰ All cost figures provided the Los Angeles County Probation Department, Juvenile Field and Juvenile Special Service Bureaus. These costs do not reflect the education costs which are not borne by the probation department.

C. Conclusion

The U.S. Supreme Court has repeatedly emphasized that the central principal in any due process inquiry is fundamental fairness.⁶¹ Yet, our findings show that two youth charged with similar offenses and sharing similar backgrounds can expect very different representation by their attorneys and more importantly, very different results. That these differences are driven by factors that have no relation to the culpability of the minor and are entirely out of the minor's control raise serious questions about the integrity of the attorney appointment process and Los Angeles County's decision to leave the provision of defense services for youth to a low-bid, flat-fee system.

In Los Angeles, the adult criminal court system has no analog to the low-bid flat-fee regime adopted by the juvenile courts. In the adult system, cases rejected by the public defender's office are either handled by an alternate public defender office, or by private attorneys paid on an hourly basis, whose rates are set by the courts and the Los Angeles County Bar Association.⁶² Curiously, the juvenile delinquency court system has retained a compensation scheme that has been universally condemned as the worst option for the provision of defense services.⁶³ The principal flaw in the flat fee system is that it provides the opposite financial incentive one would choose for their attorney.⁶⁴ As Roach and others have identified, attorneys being paid a flat fee, "could have an incentive to dispense with the case quickly if possible."⁶⁵

⁶¹ McKeiver, *supra* note 4 at 543.

⁶² *Indigent Criminal Defense Appointment Schedule*, LOS ANGELES COUNTY BAR ASSOCIATION, <http://www.lacba.org/showpage.cfm?pageid=24> (last visited Feb. 28, 2012).

⁶³ Spangenberg, *supra* note 6, at 34.

⁶⁴ The U.S. Supreme court has held that where an actual conflict-including pecuniary-is evidenced, it can be the basis for ineffective assistance of counsel. *Cuyler v. Sullivan*, 446 U.S. 335, 349-350 (1980).

⁶⁵ Michael Roach, *Explaining the Outcome Gap between Different Types of Indigent Defense Counsel: Adverse Selection and Moral Hazard Effects* 24 (2011) available at

This is not merely economic theory, as the pattern of flat fee contract panel attorneys pleading cases at an early stage in order to maximize profits has been documented by the department of justice and others.⁶⁶

In 1984, the Supreme Court of Arizona found that a compensation scheme similar to the one utilized by Los Angeles County created a presumption of ineffective assistance,⁶⁷ and the state of Washington has effectively outlawed contractual schemes similar to the Los Angeles model.⁶⁸ While disparities in the quality of legal services alone do not give rise to a claim of ineffective assistance under the *Strickland* standard,⁶⁹ wide gaps in performance and outcomes arguably implicate the constitutional guarantees of fundamental fairness set out in *Gault*,⁷⁰ and the equal protection clause.⁷¹

A simplistic interpretation of our results would suggest that public defenders are simply better attorneys than the contract panel. We do not make this claim. However, we are confident that the compensation scheme and the legal services model employed by the County of Los Angeles are fundamentally flawed and result in the arbitrary and disparate treatment of children in the juvenile delinquency system.

When the United States Supreme Court offered that the right to counsel meant, “not errorless counsel, and not counsel judged ineffective by hindsight,”⁷² it was a declaration by our highest court that our system has to account for reasonable variances in attorney resources,

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1839651; see also JAMES M. ANDERSON & PAUL HEATON, HOW MUCH DIFFERENCE DOES THE LAWYER MAKE? THE EFFECT OF DEFENSE COUNSEL ON MURDER CASE OUTCOMES 27 (2011).

⁶⁶ Laurence A. Benner, *The Presumption of Guilt: Systemic Factors That Contribute to Ineffective Assistance of Counsel in California*, 45 CAL. W. L. REV. 263, 304 (2009).

⁶⁷ State of Arizona v. Smith, 140 Ariz. 355 (1984).

⁶⁸ Washington State Rules of Professional Conduct, Rule 1.8 m (1-2)

⁶⁹ Strickland v. Washington, 466 U.S. 668, 687 (1984).

⁷⁰ *In re Gault*, supra note 3.

⁷¹ Skinner v. Oklahoma, 316 U.S. 535 (1942).

⁷² Trapnell v. United States, 725 F.2d 149, 151-152 (1983).

ability and vigilance. While the vagaries of the legal system afford differences in attorney quality, principals of fundamental fairness mandate that these differences should not fundamentally prejudice an entire class of youth, nor should the prejudice be a simple function of how a municipality decides to compensate the attorneys.