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Perceptions about Court-Appointed and Privately-Retained Defense Attorney Representation: (How) Do They Differ?

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ABSTRACT AND ARTICLE INFORMATION

Since *Gideon v. Wainwright* (1963), discussions about and research on the dichotomy between court-appointed and privately-retained attorneys have been pervasive, most frequently casting court-appointed attorneys in a negative light (e.g., work for the “state,” overworked and under-resourced) relative to their privately-retained counterparts (e.g., work for the “client,” autonomous and self-sufficient). In our survey, we re-visit these perceptions and include an exploratory experimental test in which we varied attorney resumes by attorney type. Consistent with prior research, participants had more positive attitudes of privately-retained attorneys and believed that they were more likely to generate favorable case outcomes than court-appointed attorneys. These attitudes were informed by participants’ perceptions about the attorneys’ resource amounts (caseload considerations, time, and energy), questions of adversarial allegiance, and sentiments of respect and altruism. In the experimental test, there were no differences in attorney ratings between participants “represented” by a public defender and those “represented” by a private defense attorney; rather, it was when asked to *compare* types of attorneys did these attitudes diverge. Overall, these results suggest that negative attitudes of court-appointed attorneys are somewhat engrained; however, there is now an increasing awareness of the systemic constraints that court-appointed attorneys face, as well as an appreciation for the work they do for indigent and under-served populations and society.

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In 1963, the United States Supreme Court's decision in *Gideon v. Wainwright* established the right to counsel, describing it as fundamental to fairness in criminal trials (under the 6th and 14th Amendments). Over the years, this right has been extended and upheld through a number of key legal decisions (right to counsel for juveniles, *In re Gault*, 1967; right to counsel in misdemeanor cases with possible jail time, *Argersinger v. Hamlin*, 1972; right to "effective assistance of counsel," *Strickland v. Washington*, 1984; right against ineffective assistance of counsel in plea bargaining, *Lafler v. Cooper*, 2012, and *Missouri v. Frye*, 2012; and the right against defense attorneys overriding client's wishes or decisions regarding the waiver of rights, *McCoy v. Louisiana*, 2018). What the Court failed to provide in these rulings was information on how to deliver counsel, which has resulted in a patchwork of unique policies and agencies across the United States, rather than centralized, politically independent state-level offices (Worden et al., 2011).

As such, the public defense system has been plagued by issues of underfunding, resulting in the appointment of inexperienced attorneys with high caseloads, limited ability to have meaningful contact with clients, and a lack of investigative resources (Sudeall, 2018).¹ The ability to provide representation that meets professional standards is made difficult because attorneys do not share the same access to resources (see, e.g., Worden, 1991), particularly court-appointed attorneys who rely on government funds. This has translated to defendant perceptions of court-appointed attorneys as inferior (e.g., Casper, 1972; Flemming, 1986). However, more recent research suggests that defendants are cognizant of these systemic challenges and that they might not hold some of the same attitudes (e.g., Moore et al., 2019; Pruss et al., 2022).

This study examines public attitudes of lawyers, specifically capturing public perceptions of privately-retained attorneys versus court-appointed attorneys in terms of their loyalties (e.g., adversarial allegiance), motivation (e.g., financial gains), and quality (e.g., ability to negotiate a favorable plea deal). We pay close attention to whether these perceptions are individual- and/or system-based (i.e., a reflection of the attorney or the public defense system). Using a survey, we assessed public attitudes about privately-retained versus court-appointed attorneys and what might be informing these perceptions. Then, we conducted an exploratory experimental test of whether these perceptions impact ratings of potential legal representation when the two attorney types have the same listed qualifications.

Literature Review

Early research on public defense stemmed from broader examinations of the legal system and actors generally (see Blumberg, 1967; Feeley, 1979; Heumann, 1977) and sometimes, specific to defense attorneys and indigent defense (Casper, 1970, 1972; Sudnow, 1965). These exploratory (albeit comprehensive), direct observations or qualitative examinations focused on the court system (e.g., lower courts; Feeley, 1979), interactions between key legal actors (Blumberg, 1967), and case resolutions (e.g., plea bargaining; Heumann, 1977). This work examined the dichotomy between court-appointed and privately-retained attorneys, often thought of as 'insiders' (court-appointed, typically) and 'outsiders' (private attorneys) of the courtroom workgroup (typology more broadly applies to all legal actors, see Blumberg, 1967; Feeley, 1979; Sudnow, 1965). Early research highlighted the unique challenge that court-appointed attorneys face: a commitment and obligation to the court/courtroom workgroup and their responsibilities to their client (Blumberg, 1967; Feeley, 1979). This categorization of attorneys as 'insiders' and 'outsiders' fed into discussions about and research on the benefits (e.g., insiders may have knowledge of unspoken policies or practices surrounding the court's handling of different types of cases) and drawbacks (e.g., insiders may prioritize maintaining relationships with other members of the courtroom workgroup over "fierce" bargaining on individual cases) of each. Regardless of the differences in how the provision of counsel is met (e.g., public defender offices, assigned counsel panels), early research created a clear, simple distinction: privately-retained/paid and court-appointed/free attorneys.

Perceptions of Lawyers: Overall and by Attorney Type

Public Perception of Attorneys

In the early 2000s, the American Bar Association (ABA & Shapiro and Associates, 2002) conducted a consumer survey measuring public perceptions of lawyers: 19% of respondents were "extremely" or "very" confident in the legal professions/lawyers compared to 50% who were "extremely" or "very" confident in the medical profession/doctors. In that sample, 59% of respondents agreed that "lawyers are knowledgeable about the law and interested in serving their clients"; however, 74% agreed that "lawyers are more interested in winning than in seeing that justice is

served,” and 69% agreed with the statement that “lawyers are more interested in making money than in serving their clients” (ABA & Shapiro and Associates, 2002).ⁱⁱ The general perception of lawyers is not entirely positive, and research examining different types of attorneys suggests that court-appointed attorneys shoulder more of these negative attitudes than their privately-retained counterparts (see below).

A more recent 2016 survey of community members focused on the right to counsel, public defense systems, and the quality of public defenders (Right to Counsel National Campaign [RCNC], 2017). Over half of the sample perceived public defenders to be well-qualified (61%) and experienced (53%); however, half (50%) reported that public defenders provide inadequate legal representation for their clients. A majority of the sample (80%) recognized that public defenders have too little time to devote to their cases and that they must work without the resources that they need (55%). These data suggest that despite recognizing systemic issues, the general public hold negative biases against public defenders. Importantly, this study did not compare public perceptions of public defenders and privately-retained attorneys.

Defendants’ Perceptions of Attorneys

Critiques of public defenders most often come from defendants. In a classic example, when a defendant was asked, “Did you have a lawyer when you went to court?,” they replied, “No, I had a public defender” (Casper, 1970). Public defenders are often perceived as part of the “system” (an agent of the state) and unwilling to devote time to their clients (Casper, 1972). In one sample, 100% of respondents with a privately-retained attorney said that their attorney *was on their side*, compared to 20.4% of those represented by a public defender (Casper, 1972). After all, it is not unreasonable to be suspicious of individuals who provide the same level of services (without pay) in a largely transactional world that revolves around money and the sentiment that ‘you get what you pay for’ and ‘nothing good comes for free.’ Defendants are skeptical of the skill and motivation (e.g., to avoid trials and seek plea deals; Boccaccini & Brodsky, 2001) of court-appointed attorneys (Flemming, 1986), and negative attitudes (disrespect and mistrust) about court-appointed attorneys seem common-place to the system (Flemming, 1986; Henderson & Shteynberg, 2020).

Research has sought to examine the nuances of these attitudes and what drives defendants’ perceptions about their court-appointed attorney (Boccaccini et al., 2004; Campbell et al., 2015; Pruss, et al., 2022; Sandys & Pruss, 2017). Much of this work has centered around understanding client satisfaction.

Boccaccini and colleagues (2004) found that clients who were able to participate in their defense reported higher levels of trust in their attorney and that trust was associated with satisfaction. More recent research has found that client satisfaction is most often related to the following three factors: communication (e.g., explaining next steps), investigation (e.g., doing what you say you will), and advocacy (e.g., fighting for the client; Pruss, et al., 2022; Sandys & Pruss, 2017). For example, Campbell and colleagues (2015) found that asking for the client’s opinion, listening to the client, investigating the prosecutor’s evidence, and notifying the client of possible outcomes were associated with satisfaction.

Despite overall satisfaction with their public defenders (52.6%; Campbell et al., 2015; Pruss et al., 2022), oft-mentioned concerns arose: questions of adversarial allegiance, a lack of trust, and references to systemic issues of the public defense system and legal system as a whole (e.g., high caseloads; Pruss et al., 2022). From these data, it is evident that negative perceptions about court-appointed attorneys still linger amongst defendants, but much of that may be attributed to systemic issues rather than to solely individual-level concerns. That is, it is possible that with increased awareness comes increased empathy and understanding for the challenges public defenders face. In fact, a recent qualitative study examining attorney-client communication found that defendants have diverse opinions about public defenders (and not all cast them as lacking) and that many recognize that public defenders are overworked and underfunded (Moore et al., 2019).

These findings suggest that individuals might be becoming more and more aware of the failings of the system and that they are not necessarily the failings of the attorney. However, much of this recent research examined perceptions amongst defendants, not the general public. The increased attention to both the practical constraints of indigent defense providers, coupled with the image of public defenders as social advocates and fighters, may have shifted the tone of the conversation away from the simple dichotomy identified in the past. In recent years, with added media spotlights on legal reforms and U.S. Supreme Court decisions, there has been an increased focus on perceptions surrounding the legitimacy of the criminal legal system and procedural justice concerns (e.g., equitable legal defense concerns) within the courtroom. We sought to re-visit these perceptions, testing whether assumptions of quality of counsel are pervasive or whether recent initiatives and an increased spotlight on the reforms surrounding the use of court-appointed attorneys in the U.S. have altered public opinion. After all, public opinion can substantially impact changes in policies and practices

(Burstein, 2003), and understanding opinions surrounding quality of counsel can help policy makers, legal practitioners, and researchers better understand the attitudes, perceptions, and expectations of voters, future jurors, and court participants (defendants, victims, witnesses, etc.).

Study Overview

In our survey, we examine public perceptions of lawyers and the legal profession *generally* and then different types of attorneys (private versus public) *specifically*. We look closely at the types of assumptions made and what drives these attitudes (e.g., perceptions about loyalty, motivation, and quality). We also conducted a systematic examination of participants' attitudes about private versus public attorneys using experimental methods. That is, we randomly assigned participants to be represented by either a "public defender" or "private criminal defense lawyer" (similar to an audit, resume study; these types of studies have been used to examine difference and biases in hiring stemming from perceptions surrounding an applicants' gender, sex, race, ethnicity, etc.; see, e.g., Bertrand & Mullainathan, 2004). After which, participants answered questions about "their" attorney's abilities (described more below).

Method

Participants

A total of 330 individuals completed the study online. The average age for the sample was 38 years old (range 19 – 74 years old). The sample was 51.9% male, 47.1% female, 0.3% transgender, and 0.6% (2 participants) preferred not to answer or did not respond. The majority of participants were White (75.8%), followed by Black/non-Hispanic (9.7%), Asian (4.8%), Hispanic (7.6%), or listed their race as other (2.1%). Highest obtained education level varied across participants; 11.4% earned a high school degree, 24.9% attended some college, 15.6% earned an associate's degree or technical college degree, 37.4% earned a bachelor's degree, 1.7% attended some graduate school, and 8.3% earned a graduate degree (0.6% preferred not to answer or did not respond).ⁱⁱⁱ

As this study was conducted online, we included questions to determine if participants were paying sufficient attention to our study materials. The first asked participants to indicate a particular response option to demonstrate their attention; $n = 16$ failed. To gauge participants' sensitivity to the type of attorney manipulation (experiment), we asked, "The resume you read was for which type of attorney?" [private

criminal defense lawyer, public defender]. Twenty-six participants answered this question incorrectly based on the condition they were assigned. If participants failed either the attention check or the manipulation check questions, they were excluded from analyses. In total, 41 participants were excluded from analyses. Our final sample consisted of 289 participants. Analyses were conducted with both the full sample and the exclusion sample, and the results remained the same.

Procedure and Dependent Measures

The Portland State University Institutional Review Board approved all materials and procedures prior to the collection of these data. We collected data from Amazon's Mechanical Turk (MTurk), a crowdsourcing website that allows individuals to work for compensation (e.g., transcribing, coding, participating in studies). Recruitment of online samples through MTurk is becoming increasingly common for research studies (particularly, social psychological); it allows for samples that are more generalizable to the general population than traditional student populations (an oft-studied population; Sheehan, 2018) and can be as reliable as other data collection methods (Hauser et al., 2018). Participants signed up for the study through MTurk and were directed to Qualtrics to complete the survey. After indicating consent, participants filled out demographic measures, received a resume of "their" attorney, and answered questions about that attorney's qualifications, followed by general questions about the legal profession and court-appointed and privately-retained attorneys. Below, we re-order the discussion of these measures and results for ease of interpretation.

Key Components of Data Collection

Perception of Lawyers Generally

The following series of statements, taken directly from the Public Perception of Lawyers Consumer Research Survey (ABA & Shapiro and Associates, 2002), were 6-point Likert-type scales with 1 indicating "strongly disagree," 2 – "disagree," 3 – "somewhat disagree," 4 – "somewhat agree," 5 – "agree," and 6 – "strongly agree." Participants indicated agreement with the following statements: (a) "Lawyers are more interested in winning cases than seeing that justice is served"; (b) "Lawyers are more interested in making money than in serving their clients"; (c) "Most lawyers are more concerned with their own self-promotion than their client's best interests"; (d) "Most lawyers try to serve the public interests well"; and (e) "Overall, I feel positively towards lawyers and the legal profession."

Attitudes Regarding Type of Counsel

The following two statements were assessed on 5-point Likert scales: 1 indicating “strongly negative,” 2 – “negative,” 3 – “neutral,” 4 – “positive,” and 5 – “strongly positive.” Participants indicated agreement with the following statements: (a) “What is your overall attitude towards privately-retained attorneys?” and (b) “What is your overall attitude towards public defenders/court-appointed attorneys?”

Participants also rated agreement with statements assessing differences between court-appointed and privately-retained attorneys. The questions were based on past research. The following series of statements were also assessed using 6-point Likert-type scales with 1 indicating “strongly disagree” and 6 indicating “strongly agree.” Participants indicated agreement with the following statements: (a) “Court-appointed counsel/public defenders fight zealously for their clients”; (b) “Court-appointed counsel/public defenders are overburdened with cases”; (c) “There is no difference in quality between public defenders/court-appointed attorneys and privately-retained counsel”; (d) “Privately-retained attorneys fight zealously for their clients”; (e) “Privately-retained attorneys are concerned with billable hours and getting paid”; (f) “Public defenders/court-appointed attorneys are more concerned with quickly resolving cases than privately-retained lawyers”; and (g) “Privately-retained attorneys are able to devote more time and energy to an individual case than public defenders/court-appointed attorneys.” Participants were also asked two open-ended questions: (1) “What is your attitude toward court-appointed attorneys/public defenders?” and (2) “What is your attitude toward privately-retained defense attorneys?”

Lastly, to examine for differences in perceptions of court-appointed and privately-retained attorneys, we asked participants four separate questions assessing differences in abilities to resolve cases. On 0-100% scale (at 5% increments), participants responded to four questions: “What is the likelihood of a court-appointed attorney/public defender winning your case at trial (i.e., an acquittal)?” and “What is the likelihood of a court-appointed attorney/public defender getting you a favorable plea offer (i.e., the best deal)?” These same questions were also then asked substituting “privately-retained attorney” for “court-appointed attorney/public defender.”

Test of Attorney Resume (Exploratory Experiment)

We systematically examined participants’ attitudes about private versus public attorneys using experiential methods, which randomly assigned

participants to an attorney and then asked them to rate that attorney. Participants were randomly assigned to one of two conditions (type of attorney manipulation): (1) court-appointed attorney or (2) privately-retained attorney. Participants “met their attorney” (viewed their resume) before answering questions about the attorney’s qualifications. The only detail that changed between the two resumes was whether the attorney was listed as a “public defender” or a “private criminal defense lawyer.” The name of the attorney was gender-neutral. This design is similar to audit studies conducted on racial and gender discrimination in hiring in which equivalent resumes were sent out, varying only whether the applicant had a White [or Black] and male [or female] sounding name (see, for example, Bertrand & Mullainathan, 2004). This was an exploratory examination of differences in perceptions and attitudes for privately-retained versus court-appointed attorneys.

Participants were asked to rate individual characteristics of their defense attorneys on scales ranging from 0-100%. Participants were asked, “Based on this resume, rate this attorney’s level of competence.” Other questions asked participants to rate their level of *expertise*, *credibility*, and *trustworthiness*. Participants also rated their willingness to follow the attorney’s advice on a scale ranging from 0-100%. Participants rated the likelihood of this lawyer winning their case at trial (i.e., an acquittal) on a scale ranging from 0-100%. Additionally, participants rated the likelihood of this attorney getting them a favorable plea offer (i.e., the best deal) on a scale ranging from 0-100%.

Results

Perceptions of Lawyers Generally

Overall, there existed a strong bias regarding lawyers’ motivations for their actions/behaviors. Namely, an overwhelming percentage of participants (74.4%) *somewhat to strongly agreed* with the statement, “Lawyers are more interested in winning cases than seeing that justice is served.” Additionally, 67% *somewhat to strongly agreed* with the statement, “Lawyers are more interested in making money than in serving their clients.” However, when asked about lawyers and the legal profession more generally, 64.3% *somewhat to strongly agreed* with the statement, “Overall, I feel positively towards lawyers and the legal profession.”

Table 1. Means and Percentages Agreement with Statements Regarding Lawyers Generally

	<i>n</i>	<i>M</i> (<i>SD</i>)	% Somewhat-Strongly Disagree	% Somewhat-Strongly Agree
Lawyers are more interested in winning cases than seeing justice served.	289	4.22 (1.19)	25.6%	74.4%
Lawyers are more interested in making money than serving their clients	288	4.07 (1.28)	33.0%	67.0%
Most lawyers are more concerned with their own self-promotion than their client's best interests	289	3.88 (1.25)	37.0%	63.0%
Most lawyers try to serve the public interests well	288	3.82 (1.12)	34.4%	65.6%
Overall, I feel positively towards lawyers and the legal profession	289	3.78 (1.15)	35.7%	64.3%

Note. Agreement with statements ranged from 1- "strongly disagree" to 6- "strongly agree". Percentages collapsed to demonstrate trends between somewhat-strongly agree[disagree].

Attitudes Regarding Type of Counsel

In looking at differences in perceptions between court-appointed and privately-retained attorneys, we first examined overall attitudes regarding type of attorney and then participants' agreement with quantitative measures assessing different statements. On a scale ranging from 1- "strongly negative" to 5 - "strongly positive," participants had significantly more positive attitudes of privately-retained attorneys than court-appointed (see Table 2). Next, for the quantitative measures assessing perceptions, we collapsed agreement and disagreement ratings (somewhat to strongly [dis]agree). In this sample, 90.2% of participants agreed with the statement that privately-retained attorneys fight zealously for their clients, while only 52.1% agreed with the same statement in reference to court-appointed attorneys. Additionally, 92.3% agreed that court-appointed attorneys are overburdened with cases, and 83.6% believed that court-appointed attorneys are more concerned with quickly resolving cases than privately-retained attorneys. Furthermore, 73.9% noted that privately-retained attorneys are concerned with billable hours and getting paid, and 88.5% noted that they are able to devote more time and energy to individual cases than court-appointed

attorneys. Lastly, 18.7% agreed with the statement that there is no difference between court-appointed and privately-retained attorneys.

Table 2. Means and Percentages Agreement with Statements Regarding Type of Counsel

	<i>n</i>	<i>M</i> (<i>SD</i>)	% Somewhat-Strongly Disagree	% Somewhat-Strongly Agree
Court-appointed counsel/public defenders fight zealously for their clients	288	3.39 (1.19)	47.9%	52.1%
Privately-retained attorneys fight zealously for their clients	285	4.57 (0.99)	9.9%	90.2%
Court-appointed counsel/public defenders are overburdened with cases	288	4.93 (1.05)	7.6%	92.3%
Privately-retained attorneys are concerned with billable hours and getting paid	287	4.19 (1.12)	26.2%	73.9%
Public defenders/court-appointed attorneys are more concerned with quickly resolving cases than privately-retained lawyers	287	4.44 (1.08)	16.3%	83.6%
Privately-retained attorneys are able to devote more time and energy to an individual case than public defenders/court-appointed attorneys	287	4.83 (1.05)	11.4%	88.5%
There is no difference in quality between public defenders/court-appointed attorneys and privately-retained counsel	288	2.37 (1.26)	81.3%	18.7%

Note. Agreement with statements ranged from 1- "strongly disagree" to 6- "strongly agree". Percentages collapsed to demonstrate trends between somewhat-strongly agree[disagree].

We then conducted paired-samples *t*-tests to examine for differences between participants' responses of attorneys' case resolution abilities as a function of type of attorney. Participants were asked 6 questions assessing their attitudes of privately-retained attorneys and court-appointed/public defenders (ranging from 1 - "strongly negative" to 5 - "strongly

Table 3. Means, Standard Deviations, and Standard Errors for Dependent Measures

	Type of Attorney		<i>n</i>	<i>t</i>	<i>p</i>	<i>d</i> [95% CI]
	Privately-Retained	Public Defender				
What is your overall attitude towards privately-retained attorneys [<u>public defenders/court-appointed attorneys</u>]?	3.37 (0.89)* <i>SE</i> = 0.05	3.01 (0.91) <i>SE</i> = 0.05	284	<i>t</i> (283) = -6.50	< 0.01	0.41 [0.24, 0.57]
What is the likelihood of a court-appointed attorney/public defender [<u>privately-retained attorney</u>] winning your case at trial (i.e., an acquittal)?	66.81 (15.95)* <i>SE</i> = 0.95	48.13 (19.54) <i>SE</i> = 1.15	284	<i>t</i> (283) = -17.28	< 0.01	1.05 [0.87, 1.23]
What is the likelihood of a court-appointed attorney/public defender [<u>privately-retained attorney</u>] getting you a favorable plea offer (i.e., the best deal)?	71.71 (15.51)* <i>SE</i> = 0.92	53.25 (19.54) <i>SE</i> = 1.16	286	<i>t</i> (285) = -15.62	< 0.01	1.05 [0.87, 1.22]

Note. * *p* < .05. Questions were asked individually for both types of attorneys. Overall attitudes on scale 1-5, ranging from 1- “strongly negative” to 5- “strongly positive”. Questions about trial and plea outcomes on scale from 0-100% scale (at 5% increments).

positive”), their ratings of the likelihood of a privately-retained attorney and court-appointed/public defender winning their case at trial, and the likelihood of a privately-retained attorney and court-appointed/public defender getting them a favorable plea offer (both scales 0-100%, in 5-point increments). Overall, participants had significantly more positive attitudes of privately-retained attorneys and rated privately-retained attorneys as significantly more likely than court-appointed/public defenders to win their case at trial and secure a more favorable plea offer.

Participants answered two separate open-ended questions assessing perceptions of court-appointed and privately-retained defense attorneys. These responses were coded for micro themes (e.g., valuable, respected) by two independent research assistants, blind to condition. Disagreement was resolved by a *third* independent coder. Overall, agreement between coders was good (Kappa’s ranging from 0.61 – 0.78). Participants’ qualitative responses were categorized into three distinct attitudinal statement type themes: positive, negative, and mixed-neutral (attitudes and/or opinions). For organization, the micro themes from participants’ responses were categorized based on the type of judgments made (e.g., motivational judgments, character judgments). Participants’ statements could have elements of more than one theme (i.e., themes are not mutually

exclusive). In total, 314 statements were categorized; however, we excluded those who failed the attention or manipulation checks, or did not respond, resulting in the examination of 289 participant statements. We provide examples of each theme by type of attorney in Table 4.

Participants were 1.8 times more likely to make positive statements about privately-retained defense attorneys (*n* = 191, 66.1%; themes: motivation judgments and [cap]ability-based judgments) than court-appointed attorneys/public defenders (*n* = 104, 36%; themes: praise-based judgments and character judgments). Participants were 1.5 times more likely to make negative statements about court-appointed attorneys/public defenders (*n* = 195, 67.5%; themes: motivation judgments, character judgments, qualification judgments, and systemic process and workload judgments) than privately-retained defense attorneys (*n* = 129, 44.6%; themes: motivation judgments and character judgments). Lastly, participants were 1.3 times more likely to make neutral attitude judgments about court-appointed attorneys/public defenders (*n* = 163, 56.4%; themes: comparable quality judgments and systemic process and workload judgments) than privately-retained attorneys (*n* = 128, 44.3%; themes: comparable quality judgments and systemic process and indifference judgments).

Table 4. Participants' Attitudinal Statements Toward Different Types of Counsel by Theme

Court-Appointed Attorneys/Public Defenders (n = 289)		Privately-Retained Defense Attorneys (n = 289)	
Attitude Judgement Theme(s)	Example Quote	Attitude Judgement Theme(s)	Example Quote
Positive Attitudes (n = 104, 36%)		Positive Attitudes (n = 191, 66.1%)	
<u>Praise-Based Judgments</u> : attorneys being deserving of respect, gratefulness, appreciation, doing "Yeoman's work," good public servants, dedicated, hardworking, determined to get good outcomes for clients.	"Every PD I've ever met has been extremely dedicated to their cases, and even with the high caseloads have all been determined to get the best outcome they can for their clients."	<u>Motivation Judgments</u> : they work harder to get better deals because they have an incentive to please clients.	"I think they aim to please their client, work a bit more at getting justice and deals for clients."
<u>Character Judgments</u> : attorneys being overworked but good, kindhearted, valuable, helpful, honorable, virtuous, and wanting to make a difference.	"I take positive attitude towards them as I feel appreciative of them for defending those who are unable to afford to do so for themselves, hence I think their job speaks highly of their character."	<u>(Cap)Ability-Based Judgements</u> : they fight harder to win cases, and have better access to resources, which is essential in securing favorable case outcomes.	"They are more likely to have better access to resources (time, resources) which might be decisive in getting the client the best possible legal outcome."
Negative Attitudes (n = 195, 67.5%)		Negative Attitudes (n = 129, 44.6%)	
<u>Motivation Judgments</u> : getting paid no matter what so no incentive to win/represent effectively, don't get to choose their own clients so less inclined to help, have guilty plea and case completion quotas.	"I think they don't work as hard for you, since they are getting paid by the state."	<u>Motivation Judgments</u> : money-driven and self-interested.	"They are interested in their image and paychecks. They will do anything for either, without reservation."
<u>Character Judgments</u> : lack loyalty and/or have a conflict-of-interest because paid by state, lack emotional investment, lazy, neglectful, and idealistic without ability to deliver.	"Probably slack because of too many cases and no emotional investment."	<u>Character Judgments</u> : arrogant, liars, corrupt, manipulative, and unreliable.	"I think they manipulate the laws to suit their client's individual needs."
<u>Qualification Judgments</u> : lacking expertise, have entry-level skills, less impressive educational background and/or training, are lower class lawyers / subpar lawyers.	"Lower class lawyers, overburdened and don't really care."	N/A	N/A
<u>Systemic Process and Workload Judgments</u> : high caseload, work circumstances prevent them from achieving their goal of making a difference.	"I think they perform a thankless job and often have to juggle many cases at once. They have no choice but to try to be efficient with their time and that means they can't give each case the attention it might require in order to win. I think they're more likely to come from less impressive schools as well..."	N/A	N/A
Mixed-Neutral Attitudes (n = 163, 56.4%)		Mixed-Neutral Attitudes (n = 128, 44.3%)	
<u>Comparable Quality Judgments</u> : private and public attorneys are of similar quality, some are good and some are bad.	"They're available for a reason and have no reason to be of any less quality than private lawyers."	<u>Comparable Quality Judgments</u> : Private and public attorneys are of similar quality, some are good and some are bad	"I feel like they are about as competent as the public attorneys, but obviously there're also very expensive attorneys who have a lot more experience."
<u>Systemic Process and Workload Judgments</u> : They are good people and try hard to achieve justice but are overburdened, overworked, overwhelmed, lack resources, underpaid, and would benefit from reforms to the justice system.	"They are necessary for indigent defendants. They are overworked and have high caseloads. Much reform is needed to preserve the system of justice."	<u>Systemic Process and Indifference Judgments</u> : They are a necessary, and are just doing their job like everyone else.	"Neutral. Many are good, some are not."

Note. We examined 289 participants statements, which were coded for micro themes within the larger positive, negative, and mixed-neutral attitude thematic categories. As such, statements made by participants could have included positive, negative, and mixed-neutral attitudes and were not mutually exclusive. We calculated percentages by examining the *N* statements made about each type of attorney, within the three attitudinal categories.

Test of Attorney Resume (Exploratory Experiment)

We examined participants' assessment of the attorney they were assigned in the exploratory experiment (resume). Because the scales asking participants to rate their attorneys' level of competence, expertise, credibility, and trustworthiness were correlated with each other (Pearson's r ranging from 0.70 - 0.85), we ran a MANOVA including these scales as the dependent variables and type of attorney as the independent variable ($n = 288$). At the multivariate level, the effect of type of attorney was not significant, $\lambda = .99$, $F(4, 284) = 0.73$, $p = .571$, $\eta^2 = .01$. Regardless of if "represented" by a public defender or private defense attorney, participants did not differ in their ratings of the attorneys' level of competence, expertise, credibility, and trustworthiness.

We then examined participants' ratings of their attorney's case resolution abilities. Similarly, due to strong correlations (Pearson's r ranging from 0.67 - 0.78), we ran a MANOVA including these scales as the dependent variables and type of attorney as the independent variable ($n = 288$). At the multivariate level, the effect of type of attorney was not significant, $\lambda = .99$, $F(3, 284) = 1.08$, $p = .360$, $\eta^2 = .01$. There were no significant differences in participants' willingness to follow their attorney's advice, perception of their attorney's likelihood of winning at trial, or securing a favorable plea deal between those "represented" by a public defender or private defense attorney.^{iv}

Discussion

In this study, we sought to examine public perceptions of lawyers, and more specifically, court-appointed and privately-retained criminal defense attorneys. We begin with a brief discussion of general attitudes before focusing on perceived differences between privately-retained and court-appointed attorneys in terms of their loyalties, motivation, and quality. We close with suggestions for future research.

Participants generally had positive attitudes of lawyers and the legal profession. In this sample, 65.6% agreed with the statement that most lawyers try to serve the public well, compared to only 39% of respondents from the ABA's 2002 survey (importantly, there exist some differences in measurement).^v However, when examining some of the negative stereotypes of lawyers, public endorsement of these perceptions is still prevalent. In this sample, 74% of participants agreed that lawyers are more interested in winning than seeing justice served, 67% agreed that lawyers are more interested in making money than serving clients, and 63% agreed

that most lawyers are more concerned with their own self-promotion than their client's best interests. These percentages have not changed much since the ABA's survey in 2002 (74%, 69%, 57%, respectively). While individuals had overall positive views of lawyers and the profession, these data suggest there is strong endorsement of negative stereotypes of lawyers.

Loyalty: Questions Surrounding Adversarial Allegiance

Participant statements regarding privately-retained attorneys reinforced the perception that they "work for the client." For example, one participant mentioned that privately-retained attorneys "are more dedicated to the individual client," whereas negative attitudes about court-appointed attorneys were primarily driven by comments referencing that they work for the state and do not really care. These statements mirror those from early research (Casper, 1972), suggesting that negative attitudes about court-appointed attorneys are deeply engrained (noted decades ago by Flemming, 1986). These statements also reflect the negative side of being a courtroom workgroup insider-- the perception that the court-appointed attorney's allegiance is to the state and not to the client.

Motivation: Respect and Altruism

Despite differences in quality ratings, we saw an appreciation of court-appointed attorneys for the work they do for under-served populations and society as a whole. Statements about court-appointed attorneys reflected a sentiment of being deserving of respect, that doing this work (representing indigent defendants) is a service to society. For example, "I feel appreciative of them for defending those who are unable to afford to do so for themselves, hence I think their job speaks highly of their character." Interestingly, this is somewhat counter to prior research that has found defendants are less likely to *trust* court-appointed attorneys (Boccaccini & Brodsky, 2002). Of course, trust and respect are different sentiments, and the lack of trust is likely related to perceptions of adversarial allegiance.

Positive attitudes about court-appointed attorneys were driven by a sense of gratitude and respect for their work, of providing representation to those who cannot afford it. This was contrary to the perceived character and motivations of privately-retained attorneys, which could be more negative (e.g., overly concerned with money and winning, manipulative, and corrupt). As one participant noted, "[Privately-retained attorneys] are corrupt and will represent anyone no matter how guilty they are." This sense of awareness and appreciation for court-appointed attorneys is somewhat similar to "empathy

for the personal and institutional challenges that public defenders face” demonstrated by defendants (Moore et al., 2019, p. 18). Community members respecting and appreciating court-appointed attorneys for the work they do could prove meaningful in policy change and reformation efforts of public system systems.

Quality: Advocacy, Outcomes, Impact of Workload and Resources

Consistent with early research (e.g., Casper, 1970), the vast majority of participants believed that there are differences in quality between court-appointed and privately-retained attorneys, with court-appointed attorneys perceived to be of lower quality. Participants rated privately-retained attorneys as being more likely to win at trial and more likely to get a favorable plea offer than court-appointed attorneys. Importantly, data from actual cases has found no differences in outcomes between privately-retained attorneys and public defenders (Hartley, 2010). Regardless, individuals still had more positive attitudes about privately-retained attorneys than court-appointed and were more likely to believe that privately-retained attorneys fight more zealously for their clients (90.2% agreed) than court-appointed attorneys (52.1% agreed).

Test of Attorney (Exploratory Experiment)

Overall, we did not see an effect of type of counsel in our experiment, as participants did not rate court-appointed attorneys differently than privately-retained attorneys. Specifically, individuals did not rate their willingness to follow the attorney’s advice or the attorney’s likelihood of winning their case at trial or getting them a favorable plea deal differently based on the type of attorney that they were assigned. This suggests that whereas citizens may think they will make different decisions based on attorney type, in practice, the outcome may be very much the same.

The resume experiment was first, followed by questions asking participants to rate numerous items about court-appointed and privately-retained attorneys (and compare them). It is possible that we did not see the expected effect because participants were not primed for it, and the distinction between attorneys was not salient enough. It is also possible that using attorney labels in subsequent questions, as opposed to questions about “this attorney” (assessing the effects of the resume; i.e., the attorney per condition), and considering how one type of attorney would perform compared to the other, may have prompted participants to reflect known stereotypes. Importantly, this was an artificial experience, as many defendants do not view their attorney’s resume prior to engaging with them, although defendants who retain an attorney likely have more information about

that individual’s qualifications than those appointed an attorney by the court. This type of research may become more valuable if indigent clients have the option of choice, a recommendation for reform (Nugent-Borakove, & Cruz, 2017; defendants stress the importance of choice of counsel, Moore et al., 2019).

Systemic Issues

In our study, we found an overarching negative bias against court-appointed attorneys, and our data suggest that this is likely attributable to individuals’ understanding of the situational and occupational constraints of the job. Participants made statements demonstrating that they are cognizant of the challenges that court-appointed attorneys face. Consistent with prior research (RCNC, 2017), our sample was aware that court-appointed attorneys are overburdened with cases (92.3% agreed) and therefore more concerned with quickly resolving cases (83.6% agreed). Although individuals are aware of this time constraint, it does not have the negative sentiment of being “*unwilling to devote time* to their clients” identified decades ago (see Casper, 1972). Rather, an awareness that the systemic deficits of underfunding, identified in prior research (Pruss et al., 2017), put court-appointed attorneys in a “no win” situation.

This dovetails with Moore and colleagues’ (2019) recent qualitative analysis of attorney-client communication, which identified the timing, duration, and frequency of communication as influential to defendants; however, as one can deduce, court-appointed attorneys often do not have the luxury of time (to communicate, amongst other things), which ultimately contributes to negative perceptions. Regardless of ability to be efficient, the rule of diminishing returns, or the ability to provide better defense as a courtroom insider, the implication here is that defendants and community members alike quantify quality as being directly related with the number of hours that attorneys can devote to a case.

Positive attitudes about privately-retained attorneys were driven by a sense that they have fewer cases and more resources and therefore are in a better position to fight harder for their clients. This aligns with hypotheses from other research, where the authors posit that a lack of resources contributes to a (perceived) deterioration in quality of services, which affects defendants’ perceptions of their attorneys’ work and outcomes (Raaajmakers et al., 2015). This suggests that clients have an underlying understanding that perceptions of private attorneys getting better case outcomes stems from a recognition that clients who can afford these attorneys are better resourced and that clients who cannot are matched with comparably under resourced court-appointed attorneys. As such,

the lack of parity in resources, rather than skills or qualifications, is potentially a more significant contributing factor in these perceived differences.

Limitations and Future Directions

One limitation of this project is that participants were drawn from a community sample and not defendants or individuals with past experience/interactions with the legal system. While it is entirely likely that our participants have had experience with lawyers and the legal profession (e.g., criminal, family law, civil law), we did not specifically target this in our sampling strategy. Our sample was largely White and highly educated, which has implications for the generalizability and impact of this work. While our data speak to community members' perceptions quite well, they likely would not translate well to defendants who are in these attorney-client relationships, navigating the criminal justice system (e.g., facing real challenges associated with pretrial release). Future work should continue to explore perceptions about quality and how these attitudes affect decision-making using a variety of samples, including defendants from different jurisdictions.

Another limitation is that we did not present participants with a hypothetical case in which to imagine the defense attorney representing them (experiment). This was an exploratory examination of baseline differences in attitudes about type of attorney. However, those attitudes might be more likely to be activated in certain types of cases compared to others (e.g., misdemeanor cases versus felony cases). Future research should extend this work to examine how the type of attorney influences defendants' decisions in differing types of cases. In addition to varying the type of case, future research could include more detailed information about two comparably similar attorneys. This can help shed light on whether educating defendants about the qualifications of (their) public defenders will help reduce the bias and stigma of indigent defenders by demonstrating that court-appointed attorneys and privately-retained attorneys have comparable qualifications and that often, court-appointed attorneys may have far more experience in handling specific types of cases than their privately-retained counterparts. Research should also examine whether such biases may be reduced by simply giving defendants the option to choose representation from a list of more than one court-appointed attorney, particularly when a brief summary of qualifications of each are provided. Similarly, future research should examine the impact of educating community members about such biases and systemic issues surrounding public defense on their decision-making as voters, jurors, and court participants (e.g., witnesses, victims, defendants).

Conclusion

Almost six decades ago, the United States Supreme Court established the rule of counsel for indigent defendants (*Gideon v. Wainwright*, 1963). Scholars have suggested that the goals of *Gideon* have gone unrealized due to a number of constraints and barriers (Giovanni & Patel, 2013). In our study, individuals were cognizant of the systemic constraints and barriers that court-appointed attorneys face (e.g., overworked, lack of resources) relative to their privately-retained counterparts. However, we also saw that these (perceived and/or real) “deficits” court-appointed attorneys grapple with affect public perceptions of quality of counsel. That is, despite being perceived as more altruistic and deserving of respect, individuals rated court-appointed attorneys as of lower quality and as less likely to win at trial and/or secure a good plea deal for their clients than privately-retained attorneys. But importantly, community members are assigning much of this disparity to system-based factors as opposed to individual. Overall, this research suggests that community members are aware of the “larger systemic inequities and injustice” that negatively impact the work of court-appointed attorneys (Pruss et al., 2021, p. 16). Given this recognition, as well as recent research that suggests that community members are supportive of criminal legal reforms and increased tax payer dollars contributing to a better and more equitable public defense system (RCNC, 2017), public policy should follow suit.

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Endnotes

- ⁱ Over the years, many lawsuits have challenged systemic failures of public defense systems (e.g., underfunding, inadequate training). For an overview of the effectiveness of those litigation efforts, see Sudeall (2018).
- ⁱⁱ Importantly, while this report sheds light on public perceptions of lawyers and the legal profession generally, it did not emphasize criminal defense work.
- ⁱⁱⁱ Our sample is largely consistent with the general population of the United States (<https://www.census.gov/quickfacts/fact/table/US/PST045221>). One noteworthy exception is that our sample included fewer Hispanic Americans than the general U.S. population (18.9%). Furthermore, 100% of our sample earned a high school degree, while 88.5% of the U.S.'s population has graduated high school.
- ^{iv} In post hoc exploratory analyses, we examined the relationship between attitudes about court-appointed attorneys and ratings of the attorney's abilities, when paired with that type of attorney (in the experimental test). We first categorized "attitudes about public defenders" into positive, neutral, and negative categories. We ran a MANOVA with the experimental outcomes as the DVs (follow advice, get favorable plea, win at trial) and type of counsel manipulation (resume) and attitudes about public defenders as the IVs, hypothesizing that those who felt positively about public defenders would have the highest ratings when they were paired with a public defender. Lowest would be those with negative attitudes and paired with a public defender. The interaction term was not significant, $p = .556$. We also split the data by type of counsel manipulation (resume) and then examined correlations between attitudes toward public defenders and the experiment outcome variables (follow advice, get favorable plea, win at trial). As attitudes about public defenders became more positive, so did ratings of the attorney in the experimental test, Pearson's $r_s = 0.197 - 0.276$. Importantly, this was the same for those who received a privately-retained attorney resume, Pearson's $r_s = 0.176 - 0.178$. Essentially, as attitudes about public defenders increased, so did willingness to follow the attorney's advice and ratings of the likelihood the attorney would win the case at trial (regardless of type of attorney paired with). The only difference was the significant positive correlation between attitudes about public defenders and ratings of the likelihood of getting a favorable plea deal when paired with a public defender, Pearson's $r = 0.197$, $p = .023$, was no longer significant when paired with a privately-retained attorney, $p = 0.181$.
- ^v We included these items on a 6-point Likert-type scale with 1 indicating "strongly disagree," 2 – "disagree," 3 – "somewhat disagree," 4 – "somewhat agree," 5 – "agree," and 6 – "strongly agree." The ABA & Shapiro and Associates survey used a **5-point** Likert-type scale ranging from "strongly agree," "agree," "neither agree nor disagree," "disagree," or "strongly agree" response options. We chose not to include a neutral response option.
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