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AN ANALYSIS OF DEFENSE COUNSEL IN THE PROCESSING OF FELONY DEFENDANTS IN SAN DIEGO, CALIFORNIA*

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The effectiveness of counsel provided for indigent defendants is a burning subject for discussion both within and without the legal profession. Unfortunately, the dearth of adequate empirical research makes this discussion largely speculative, and almost always biased. The authors of this article, by their statistical analysis of the felony defense system in the City of San Diego, have greatly increased the factual basis upon which rational discussion may be grounded. When they hit upon one of the usual, facile conclusions, their systematic analysis of the variables frequently negates the apparent differences in the performance of the various types of defense counsel. Although they employ sophisticated statistical techniques, our authors provide results which are comprehensible and enlightening to anyone concerned with the problems of defending the indigent.

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The original study examined the role of defense counsel in processing criminal cases in Denver, Colo., and San Diego, Cal. The results of the San Diego study are presented in this article. A forthcoming issue of the *Denver Law Journal* will contain the findings of the Denver study.

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INTRODUCTION

THE processing of criminal cases involves the complex interaction of many offices and persons. These include police, prosecutors, defense attorneys, judges, witnesses, grand juries, clerks, and correctional personnel, just to list a few. In turn, all of these actors operate within a system that has constraints placed on it by such forces as legislation, precedent, and system-developed rules and procedures. Obviously, to obtain a complete understanding of how the criminal justice system operates, what causes delays, and why outcomes differ within and between jurisdictions, the entire system must be examined and the effect of all the factors at each stage of the process determined. Such a study would necessarily be time-consuming and costly. The approach of this study is to begin by examining in detail a certain part of the system. It analyzes the role of defense counsel in the processing of felony defendants and determines generalized findings about the performance of various types of counsel in that role. Further analyses of the other system functions must be completed and the interactions detrmined to obtain a full system analysis. It should be noted that the thrust of the analyses is on the felony trial court level, however the authors do treat the preliminary processing at the Municipal Court. This was made possible because of a Pilot Project instituted in San Diego Municipal Court in 1971 by the California Bureau of Criminal Statistics. Thus, the analyses of defense counsel in the Municipal Court and the combined Municipal and Superior Court, are probably unique.

I. BACKGROUND

A. *Right to Counsel*

In 1932, the United States Supreme Court decided the case of *Powell v. Alabama*[1] which held, *inter alia,* that the states

were required to provide counsel to indigent defendants in all capital cases. Through a series of decisions which includes *Gideon v. Wainright*,[2] *Douglas v. California*,[3] *Escobedo v. Illinois*,[4] *Miranda v. Arizona*,[5] and most recently, *Argersinger v. Hamlin*,[6] the scope of the right to counsel has been extended and more clearly defined. These decisions and the associated questions regarding counsel have been the subjects of extensive scholarly discussion[7] and therefore will be not reexamined.

The major interest here is the system used for representation of the indigent in felony cases and the comparison of this representation with that provided by retained counsel. Before the *Gideon* decision, it was not uncommon for the defendant to represent himself. Today, however, he is usually represented by a public defender or a court-appointed counsel either from the bar or from a volunteer organization.[8] Probably the most widely used system is that of assigned-counsel where the judge appoints counsel for the indigent defendant. This may be done on a random or a rotating basis from the bar as a whole. A young lawyer seeking experience may be appointed, or the appointment may be from a small group of lawyers who make their livelihood from the fees paid for representing indigents. In some jurisdictions this is combined with a voluntary public defender system that is privately controlled and financed.[9]

Basically, there is no uniformity of systems for the representation of indigents among states. Even within a state, systems vary from county to county, and from city to city.[10] In

[1] 287 U.S. 45 (1932).

[2] 372 U.S. 335 (1963).

[3] 372 U.S. 353 (1963).

[4] 378 U.S. 478 (1964).

[5] 384 U.S. 436 (1966).

[6] 92 S. Ct. 2006 (1972).

[7] *See, e.g.*, Craig, *The Right to Adequate Representation in the Criminal Process*, 22 SW. L.J. 260 (1968); Katz, *Gideon's Trumpet: Mournful and Muffled*, 55 IOWA L. REV. 523 (1970); Siegal, *Gideon and Beyond: Achieving an Adequate Defense for the Indigent*, 59 J. CRIM. L.C. & P.S. 73 (1968); Note, *Judicial Safeguards of the Rights of Indigent Defendants*, 41 NOTRE DAME LAW. 982 (1966); Note, *The Right to Effective Counsel in Criminal Cases*, 18 VAND. L. REV. 1920 (1965).

[8] 3 L. SILVERSTEIN, DEFENSE OF THE POOR IN CRIMINAL CASES IN AMERICAN STATE COURTS (1965); O'Brien, *Implementing Justice: The National Defender Project*, 1 VALP. U.L. REV. 320 (1967); *Advantage and Disadvantages of Different Methods of Defense*, 26 BRIEFCASE 105 (1968) (panel discussion); *The Public Defender and Other Suggested Systems for the Defense of Indigents*, 53 JUDICATURE 242 (1970) (Remarks of L. Anderson, V. Warner, and D. Foster).

[9] An example of a privately controlled and financed voluntary public defender system is the San Diego professional corporation known as Defenders, Inc., which is described in section I.D. *infra*.

[10] NATIONAL DEFENDER PROJECT, REPORT OF THE PROCEEDINGS OF THE NATIONAL DEFENDER CONFERENCE (May 1969); NATIONAL DEFENDER PROJECT, REPORT TO THE NATIONAL DEFENDER CONFERENCE (May 1969).

rural areas, court-appointed counsel is generally used unless there is a state public defender system. Even in urban areas the public defender may be supplemented by appointed counsel.

All systems for representation of the indigent have been subjected to much criticism when compared to the defense available to persons who are financially able to retain counsel. It is frequently stated that retained counsel essentially manipulate the system in order to minimize the effect of the system on their clients, whereas court-appointed counsel provide inferior defense for the indigent because of such things as inexperience, high case loads, and inadequate investigative services. These criticisms are usually based either on the personal experiences of those who have acted as defense counsel[11] or on observations of the system in operation.[12] Since inferences about performance of counsel can be supported by the selective use of cases, samples, observations, and opinions of participants in the system, potential error arises from observation of the system with a predilection for or against defense counsel, either in their appointed or retained role.

A better approach is to examine statistically the result of the representation of criminal defendants, both the indigent and those capable of retaining private attorneys. In those studies where data have been collected on case dispositions, it is generally concluded that defendants represented by public defender or appointed counsel more often receive adverse dispositions than those represented by retained counsel. The following statement, an editorial note to a Cook County study of continuances, is typical:

> [I]ndications of injustice appear when one examines the data on representation of indigents. The non-guilty disposition rate for defendants with retained counsel is more than twice as large as the rates for defendants with public defenders. Plea reductions occur less often among public defender cases than among retained cases. Finally, while clients of the public defender are accused of somewhat more serious offenses, the sentences imposed on public defender clients seem more harsh than the differences in crime type would warrant. Unfortunately data on sentencing by crime was not tabulated, so no definitive judgment can be made about the level of justice obtained by the various types of lawyers. But the possibilities of unfairness are, to say the least, disturbing.[13]

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[11] Seegal, *Some Procedural and Strategic Inequities in Defending the Indigent*, 51 A.B.A.J. 1165 (1965).

[12] Sudnow, *Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office*, 12 SOCIAL PROBLEMS 255 (1965).

[13] Banfield & Anderson, *Continuances in the Cook County Criminal Courts*, 35 U. CHI. L. REV. 256-57 (1968).

The differential dispositions for counsel are reported in studies in Maine,[14] Oregon,[15] and Massachusetts.[16]

On the other hand, the type of disposition does not differ for appointed and retained counsel according to recent studies in Ohio[17] and the District of Columbia.[18] In the D.C. study, cases of defendants charged with robbery and assault were examined separately by type of counsel. In summary, it is stated:

> The original hypotheses concerning defense counsel were these:
>
> 1. The criminal bar members generally perform better than other attorneys, and
>
> 2. there is a significant difference between the effectiveness of counsel when appointed and retained.
>
> At this point, both of these hypotheses have been rejected by the data. In many instances, rates of success for the groups of attorneys have been extremely similar; at other times one or another group was superior, but no clear pattern emerges. Accordingly, the evidence presented here suggests that, generally speaking, an accused in the District of Columbia courts receives equal representation whether he retains his own attorney or has one assigned . . . .[19]

There are two studies, one done in 1935[20] and the other as recent as 1970,[21] that reach conclusions similar to that of the D.C. study. Both deal with California and the public defender system. In both of these studies the conviction rate is high regardless of counsel, although the public defender does have a higher rate than retained. The interesting result is that when the sentence is examined as a function of the offense[22] or offense and prior record,[23] both studies conclude that the public defender is almost as effective as retained counsel and

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[14] INSTITUTE OF JUDICAL ADMINISTRATION, SUPREME JUDICAL COURT AND THE SUPERIOR COURT OF THE STATE OF MAINE (Jan. 1971; app., Feb. 1971).

[15] S. Zamsky, Effects of Bail and Other Pre-Trial Procedures on Outcome, Plea and Speedy Trial (University of Oregon School of Law).

[16] S. BING & S. ROSENFELD, A REPORT BY THE LAWYER'S COMMITTEE FOR CIVIL RIGHTS UNDER LAW TO THE GOVERNOR'S COMMITTEE ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, THE QUALITY OF JUSTICE IN THE LOWER CRIMINAL COURTS OF METROPOLITAN BOSTON (1970).

[17] L. KATZ, L. LITEWIN, & R. BAMBERGER, A REPORT TO THE NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE OF THE LEAA, JUSTICE IS THE CRIME: PRETRIAL DELAY IN FELONY CASES (Sept. 1971).

[18] J. Feinman, Effective Counsel and Criminal Justice: A Statistical Study of Defense Counsel in the Criminal Courts of the District of Columbia, Feb. 1, 1971 (unpublished paper submitted to the School of Government and Public Administration, The American University).

[19] *Id.* at 41-42.

[20] R. BEATTIE, *The Public Defender and Private Defense Attorneys* (Studies in the Administration of Criminal Justice, No. 1, Bureau of Public Administration, University of California, Berkeley, July 1, 1935).

[21] G. SMITH, A STATISTICAL ANALYSIS OF PUBLIC DEFENDER ACTIVITIES (Ohio State University Research Foundation, June 1970).

[22] R. BEATTIE, *supra* note 20.

[23] G. SMITH, *supra* note 21.

Thus, although there is evidence which suggests that the dispositions differ with the type of counsel, there is other evidence which suggests that the dispositions are similar. The present study was undertaken to examine further this question using a number of defendant-related and system-related vari-

"the differences which the data reveal in no way justify beliefs about the public defender being ineffective counsel."[24]

ables. Comparisons are made between the varying types of counsel representing the indigent and counsel retained by those who can afford to pay.

B. *Study Objective*

Specifically, the objective of this study is to examine the processing of felony defendants by appointed and retained counsel in order to:

(1) develop a quantitative description and comparison of defense counsel in the processing of criminal cases, and a quantitative measure of the interaction of defense counsel with the felony defendant and the criminal justice system;

(2) measure time between steps in the processing of cases and determine how these vary with type of counsel; and

(3) develop models of felony processing that take account of the type of defense counsel and other revelant factors and which may be useful components of a study of the total criminal justice system.

C. *Description of Methodology and Analyses*

Three major areas in the processing of felony defendants are examined in the study: (1) type of disposition of the defendant, (2) the sentence of a convicted defendant, and (3) time for processing. The approach systematically investigates the relationship of type of defense counsel in each of these areas and takes into account a set of defendant-related and system-related factors. These are shown in Table 1. As can be seen, most of the variables are qualitative in nature.

Recently developed statistical techniques[25] permit analyses

[24] *Id.* at 81.

[25] Goodman, *The Analysis of Multidimensional Contingency Tables: Stepwise Procedure and direct Estimation Methods for Building Models for Multiple Classifications*, 13 TECHNOMETRICS 33, 61 (1971); Goodman, *The Multivariate Analysis of Qualitative Data: Interactions Among Multiple Classifications*, 65 J. OF AMER. STAT. ASS'N. 226, 256 (1970).

of the interaction between these qualitative variables and an assessment of the statistical significance of the interactions. (In this study the .95 and .99 confidence levels are used unless otherwise specified.[26]) The techniques also permit the testing of various hypotheses.

As an illustration, consider the analyses undertaken to investigate the relationship between the two variables—type

TABLE 1 Factors or Characteristics Examined

Major Areas of Examination	Type of Counsel	Defendant-Related Variables	System-Related Variables
Type of Disposition	Appointed and Retained used in all analyses	Offense Prior Record Bail Status Age Race Existing Criminal Status Multiple Defendants	Motions Continuances Type of Proceeding Time
Sentence	Appointed and Retained used in all analyses	Offense Prior Record Bail Status	Level of Conviction Type of Proceeding Manner of Guilty Disposition
Time	Appointed and Retained used in all analyses	Offense Bail Status	Continuances Motions Type of Disposition

of disposition and type of counsel. To determine if there is a statistically significant difference between types of counsel, two methods are employed. The first technique provides an estimation of the interaction between variables; the other provides for the testing of the null hypothesis, *i.e.*, that the two variables are independent. If there is a large enough disproportion of defendants represented by one type of counsel for a particular disposition, the corresponding measure of the interaction will be statistically significant. Also the hypothesis that defense counsel and type of disposition are independent of each other will be rejected. The significant interactions lead to the following observations based on the data: there is a significant relationship between high dismissal rates and retained counsel; and there is a significant relationship between high conviction

[26] Confidence level refers to the probability that the results obtained were not due to chance. In this case, there is only a 5 percent probability at the .95 level, or a 1 percent probability at the .99 level that the findings are due to factors other than those postulated.

rates and appointed counsel. (Note that the use of the term "relationship" does not necessarily denote cause and effect, just as cause and effect is not established when there are significant correlations between quantitative variables.)

The next step is to examine an additional characteristic of the defendant or of the criminal justice system (as set out in Table 1) as a possible explanation for the interaction between defense counsel and type of disposition. For example, consider the offense charged. This variable is classified according to crimes against person, property, and public health and safety. Three techniques are used to interpret the relationships between the variables. First, the interaction between the three variables are calculated and the statistical significance is assessed as before. For example, the relationship between counsel and type of disposition, (which is significant when viewed in a two-way table) becomes statistically insignificant when this relationship is examined using the third variable — offense. Second, a variety of hypotheses are tested concerning possible relationships between the variables.[27] This technique contributes to understanding the relationship between the variables when hypotheses concerning independence are supported by the data. Third, a model is selected describing the relationship between the three variables. Procedures are employed which choose from a variety of hypothetical models a "best" fit model, *i.e.*, one in which the observed data are not significantly different from that expected from the model. These techniques include systematically eliminating interactions that are not significant at some given level.[28] Thus, the model chosen best fits the data in the sense that only the most significant relationships are included, and those that are within statistical-fluctuation limits are excluded. In the example where defense counsel, the type of disposition, and offense are examined, all of the relationships involving both defense counsel and type of disposition are eliminated by these procedures. The best fit model is: disposition is independent of the type of counsel, given the offense charged.

In this manner many other variables are examined in order to better understand the relation between counsel and type of disposition. These same procedures are used in examining the defense counsel relationship with sentences and with time.

If the analysis does not lead to an explanation of the ob-

[27] There are actually 18 possible hypotheses for 3 variables; this increases to 166 for 4 variables.

[28] These procedures are analogous to selecting systematically a best regression equation for quantitative variables.

served interactions using three variables, four variables are considered and the same statistical techniques are applied. Higher-order tables describing the defendants by even more variables can be analyzed. However, the theory on which the methods are based requires a large sample size since the significance of trends in the data is being assessed continually. Generally, the data consisting of one to two thousand defendants supported an analysis of the interaction between three to four variables.

There are admitted limitations in the use of statistical techniques in that results must still be explained and interpreted upon the basis of a knowledge of the actual processing peculiarities of a jurisdiction and any other facts that can be determined. Also, some important effects or factors may simply be omitted from systematic analysis. Possible omissions in the present study are the variation of skills or experience within categories of counsel, the characteristics of the prosecutor, and the circumstances of the crime. However, regardless of potential limitations, the completed analysis reveals and confirms some very significant relationships between type of defense counsel and type of disposition, sentence, and time for processing.

D. *Description of San Diego Felony Defense System*

San Diego, California has a population of over 697,000 as indicated in the 1970 census and ranks as the nation's fourteenth largest city. Approximately 3,900 felony complaints were terminated in the lower courts of San Diego County during 1970, and about 3,700 felony defendants were terminated in the upper courts of the county during that same year.[29] In the City of San Diego, felony defendants receive the usual pretrial processing in the San Diego Municipal Court and then proceed to the Superior Court of the County of San Diego for the trial level proceedings.

Persons accused of a felony who are finincially unable to retain counsel are represented in the felony proceedings at the expense of the court by appointed counsel. Attorneys are generally appointed from the bar. There is no public defender in the usual sense in San Diego. However, there is a private, nonprofit corporation, Defenders, Inc., which, since it handles only criminal matters, is like a public defender's office. In some respects though, it is similar to a large law firm specializing in

[29] 1970 Crime and Delinquency in California — Reference Tables — Felony Defendants Disposed of in California Courts, Bureau of Criminal Statistics, 1970.

criminal practice since it is independent of the state or local authorities. About two-thirds of the defendants terminated in the superior court have appointed legal counsel from either Defenders, Inc., or practicing attorneys. In the municipal court it is estimated that about 57 percent of the terminated defendants are indigent and have appointed counsel.

The appointment of counsel to represent a defendant charged with a felony is made at the felony arraignment court in the municipal court after a determination of indigency. The same appointed counsel representing the indigent defendant in the lower court proceedings will generally represent him in the superior court. The judges of the superior court routinely review the appointments at the time of arraignment in superior court and usually re-appoint the lower court counsel. However, if the judges feel that a more experienced defense attorney is indicated, they are free to appoint a new attorney.

Counsel appointed by the court are paid on an appearance basis. The fee for arraignments or for motions is about $25; for probation proceedings, it is about $35. The fee for a full day or more than a half day in a trial or a preliminary hearing is $100; for a half day or less, it is $75. Some of these figures may be larger for capital cases. Out-of-court time is generally not reimbursed.

To illustrate the disparity in fees paid to attorneys acting under court appointment as contrasted with operating on a retained basis, the following typical example is given. An attorney could charge a client $500-$600 for a routine case on a retained basis. While acting under court appointment the fee would be about $75. For a murder case the retained attorney could charge over $3,000, while the court-appointed counsel would receive only $700. On the other hand, the attorneys generally specializing in court appointments are more recent law school graduates who have not yet built up reputations. Some attorneys feel that court appointments offer very valuable experience. The attorneys with established reputations only infrequently take appointments, and then usually at the specific request of a judge who may feel that a particular case requires a more experienced counsel.

The attorneys working with Defenders, Inc., are generally recent law school graduates who spend a few years with Defenders, Inc., and then join a local law firm. In 1970, Defenders, Inc., represented approximately 1,400 defendants in San Diego County, excluding juvenile cases and drunk cases. The full staff consists of about 20 attorneys with approximately 11 working

in the City of San Diego (non-juvenile) and the remainder servicing the rest of the county. These attorneys offer a slightly different aspect in court appointments. They function very much like a law firm in that the fees are assigned directly to the corporation which in turn pays the attorneys a fixed salary roughly equivalent to the pay of a deputy district attorney. Since these attorneys are salaried, their behavior in handling felony defendants is to some extent free from the financial pressure of reimbursement on the basis of court appearance.

E. *Data Sources*

The findings of the study of defense counsel in the processing of felony cases in San Diego are based on the following data sources:[30]

(a) San Diego Municipal Court — all defendants against whom felony charges were filed and who were terminated in the municipal court in the period January 1, 1971 through July 31, 1971.

(b) San Diego Superior Court[31] — the defendants in every third felony case filed in the superior court during the calendar year 1970 who were terminated in the superior court prior to April 30, 1971.

(c) Combined Municipal Court and Superior Court for the City of San Diego — all felony defendants against whom charges were both filed and terminated in either the municipal or superior courts in the period January 1, 1971, through June 30, 1971.

In addition to these data, the study group also observed the practices and procedures in the jurisdiction and interviewed judges, defense counsel, and prosecutors. Without these additional inputs, interpretation of the data would have been less meaningful and certain analyses would have been overlooked. Although a report could be based on these alone, they are included in this study only when they provide insight about the results. Even though it is acknowledged that the data is never quite as complete as would be desired, the data bases for this study offer a unique opportunity for an in-depth examination of the role of the counsel for the defense.

[30] Basic individual case data on Municipal and Superior Court cases were obtained through the cooperation of the California Bureau of Criminal Statistics. This was supplemented with additional information on defense counsel, motions, countermeasures, bail status and other items from case jackets with the assistance and cooperation of members of the Clerk's Office of those Courts.

[31] Only defendants in the jurisdiction of the City of San Diego are included.

II. Detailed Analysis of Findings

A. *Defense Counsel in San Diego Municipal Court*

The San Diego Municipal Court is responsible for preliminary processing of felony defendants. The felony may be resolved as a misdemeanor[32] or the case dismissed and thus terminated at the lower court level. This section examines defendants terminated in the municipal court as a function of defense counsel.

In the felony arraignment court of the municipal court, the accused is arraigned and enters a plea, generally on the day after his arrest or within 72 hours. At arraignment, bail is set, and if indigency is determined, an attorney from the practicing bar or an attorney from Defenders, Inc., is appointed to represent the defendant at the expense of the court. If the defendant pleads guilty to the felony charge, he is certified to the superior court for sentencing. If the defendant pleads not guilty, a preliminary hearing date is set which usually is within 10 court days of arraignment. Prior to the preliminary hearing a defendant may change his plea. A pre-preliminary hearing (similar to the readiness or pretrial conference in the superior court), is held to detemine the "negotiability" of such a case under terms mutually acceptable to the defendant and to the prosecution. After the preliminary hearing the case may be dismissed. If probable cause has been determined, the defendant is bound over for arraignment in the superior court. The arraignment in superior court generally occurs 2 to 3 weeks after the preliminary hearing.

Table 2 San Diego Municipal Court Felony Defendants (First Half 1971)

Defendants	Percent
Dismissed	20
Transferred	6
Plea Guilty/Misdemeanor	25
Plea Guilty/Felony	12
Plea Not Guilty (Bound Over)	37
Total	100

[32] Cal. Penal Code § 17(b)(5) (West 1970) provides for the reduction of a felony charge to a misdemeanor charge in certain circumstances:

> (b) When a crime is punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances:
>
> . . . .
>
> (5) When, at or before the preliminary examination and with the consent of the prosecuting attorney and the defendant, the magistrate determines that the offense is a misdeameanor, in which event the case shall proceed as if the defendant had been arraigned on a misdeameanor complaint.

Since this section deals only with lower court dispositions, (dismissals, transfers, misdemeanor convictions) it is of interest to determine the percentage that these represent of the municipal court activity relative to defendants charged with felonies. The activity is indicated in Table 2. This is based on data taken from court records covering the first half of 1971 and also from supplementary data obtained from the California Bureau of Criminal Statistics. These figures indicate that approximately half of the defendants charged with a felony terminate in the lower court with the remaining proceeding to the superior court on either a certification or an information. Thus, it is acknowledged that an examination of the defendants terminated in the lower court does not afford a complete picture of the felony processing in the lower court.

1. Defense Counsel and Dispositions

Table 3 shows the disposition of defendants as a function of defense counsel representation. Three levels are shown for the disposition—dismissal as a result of a transfer to juvenile court, other dismissals, and conviction on a plea of guilty to a misdemeanor.

TABLE 3 San Diego Municipal Court Counsel Versus Disposition

	TYPE OF COUNSEL													
	No Counsel		Def. Inc.		Court Appt.		Retained		Pro-pria		Per-sona		Total	
Disposition	No.	%	No.	%	No.	%	No.	%	No.	%			No.	%
Dismissed[a]	5	26.3	7	5.9	8	1.6	34	7.0	0	0.0			54	4.8
(%)	(9.2)		(13.0)		(14.8)		(63.0)		(0.0)				(100.0)	
Dismissed[b]	8	42.1	48	40.7	162	32.1	160	33.2	0	0.0			378	33.6
(%)	(2.1)		(12.7)		(42.9)		(42.3)		(0.0)				(100.0)	
Convicted	6	31.6	63	53.4	334	66.3	288	59.8	2	100.0			693	61.6
(%)	(0.9)		(9.1)		(48.2)		(41.5)		(0.3)				(100.0)	
Total	19	100.0	118	100.0	504	100.0	482	100.0	2	100.0			1125	100.0
(%)	(1.7)		(10.5)		(44.8)		(42.8)		(0.2)				(100.0)	

[a]Dismissed: Most frequent reason is transferal to juvenile court.
[b]Dismissed: Most frequent reason is interest of justice and motion of D.A., including lack of evidence, no jurisdiction.

The results indicate that disposition and counsel are related. The strongest associations are between guilty pleas (high) for appointed counsel, and transfer dismissals (low) for appointed counsel. For retained counsel the frequency of juvenile transfers is significantly high, while the proportion of dismissals is significantly low. Also, the number of convictions for Defenders, Inc., is significantly low.

It is of interest to attempt to explain this interaction between types of dispositions in municipal court and defense counsel in terms of some of the other variables or factors avail-

able. It is possible that the relationship between disposition and defense counsel can be "explained" by a mutual association with the offense. When the distribution of defendants by offense and counsel is in turn examined according to disposition, the data support the hypothesis that the nature of the offense is independent of both the defense counsel and the disposition in the San Diego Municipal Court. Therefore the offense does not explain the association between disposition and counsel.

None of the characteristics of the defendant available to the study explain the differences in conviction rate in a satisfactory manner. Distinctions between counsel remain when the defendant's prior record, his parole or probation status, his race or age, and his defendant status (*i.e.*, individual defendant or co-defendant) are taken into account. It might be mentioned that the race of the defendant was not significantly associated with the type of disposition, but that his age provided some explanation because of the juvenile transfers.

2. Defense Counsel and Time

There is an association between disposition time and defense counsel. The two types of appointed counsel have about the same disposition times, while their median time is about 1.2 weeks shorter than retained counsel. Table 4 shows the relationship.

TABLE 4 Disposition Time for Defenders, Inc., Court Appointed Counsel, and Retained Counsel — Defendants Shown Cumulatively

	0-2 Weeks	2-4 Weeks	4-6 Weeks	6-8 Weeks	8-10 Weeks
Defenders, Inc.	42 (37%)	84 (73%)	103 (90%)	113 (97%)	115 (100%)
Court Appointed Counsel	179 (37%)	359 (74%)	445 (92%)	470 (97%)	486 (100%)
Retained Counsel	92 (21%)	228 (51%)	345 (78%)	418 (94%)	444 (100%)

Although the lag of retained counsel is related to some extent to the difference in counsels' disposition rates, similar differences in disposition times appear when dismissals or convictions are considered separately. These differences remain when the offense charged, the defendant's race, and his defendant status are considered. There is no information readily available on formal proceedings involved in the lower court terminations. The defendants are terminated by dismissal or guilty plea at any time from the arraignment through the preliminary hearing. Without more detailed information about when the

actual guilty pleas or dismissals were elicited, the role of counsel on this level cannot be explored further.

B. *Defense Counsel in San Diego Superior Court*

The Superior Court of San Diego County is the trial court for the processing of felonies. Sixty-six percent of superior court felony defendants are defendants who have been bound over from the municipal court after a preliminary hearing. Ten percent of the defendants are those who are held to answer for the felony as a result of a grand jury indictment. The final 24 percent are those who have already pleaded guilty to a felony charge in the municipal court and have been certified to the upper court for sentencing. A trial date is set for approximately 50 days after the arraignment in superior court. (California has a maximum statutory time limit of 60 days to trial unless waived by the defendant.) Two weeks prior to the trial date, a pretrial or readiness conference is held where the results of any plea bargaining in the interim are formalized. At these conferences, the defendant may change his plea to guilty, or, more frequently, to either a lesser charge or to one count among several listed in the charges. Most of the superior court dispositions (73 percent) are guilty pleas. Only about 12 percent of the defendants go to trial.

The distribution of defense counsel in the superior court is expectedly different from that for the municipal court. About 33 percent of the defendants had privately retained counsel, nearly 56 percent were represented by court-appointed counsel, and about 12 percent were represented by attorneys from Defenders, Inc. These figures are based on a 1970 sample of superior court filings. An examination of the superior court dispositions for the first half of 1971 indicates that these figures may vary somewhat from year to year. The approximately one-third retained counsel figure is constant, but the ratio of court-appointed counsel to counsel from Defenders, Inc., seems to vary depending on the available manpower of the latter.

The role that defense counsel plays in the processing of felony defendants in the superior court will be examined from several points of view. The first question to be addressed is whether there is or is not a relationship between the disposition of the charges against the defendants and type of defense counsel. Next, the sentencing and probation terms for the defendants who have been convicted are examined to determine if the type of defense counsel makes a difference. Finally, the time to the disposition is examined by defense counsel with

both the court-appointed counsel and Defenders, Inc., to make the sample size sufficiently large to examine four variables.

TABLE 5 San Diego Superior Court—Defense Counsel Versus Simple Disposition

Defense Counsel	DISPOSITION Not Guilty No.	%	Guilty No.	%	Total No.	%
Appointed Counsel	108	60.0	494	68.5	602	66.8
(%)	(17.9)		(82.1)		(100.0)	
Retained Counsel	72	40.0	222	31.5	299	33.2
(%)	(24.1)		(75.9)		(100.0)	
Total	180	100.0	721	100.0	901	100.0
(%)	(20.0)		(80.0)		(100.0)	

A statistical analysis of Table 5 shows an association between disposition and type of defense counsel. For example, the chances that a defendant represented by retained counsel will have a not guilty disposition are significantly higher than the chances that a defendant represented by appointed counsel will have a not guilty disposition.

This relationship between the disposition and defense counsel may be due to the types of defendants that he represents or to the types of offenses which his clients are charged with committing.

Table 6 is a three-variable contingency table giving the type of defense counsel, the guilty/not guilty disposition, and the type of offense charged against the defendant. The relationships between these three variables may be presented in a variety of ways. The approach chosen shows the distribution of defense counsel among the defendants found guilty and among those found not guilty for each of the offense categories. Three categories of offense are indicated: crimes against persons (*e.g.*, murder, robbery, and rape); crimes against property (*e.g.*, burglary, theft, and forgery); and crimes against health and safety (principally the possession or sale of narcotics).

The multiple dimensional contingency table analysis as applied to Table 6 yields the following results: In the superior court the disposition of the charges and defense counsel are independent, given the nature of the offense. The type of offense is related to the type of defense counsel and the type of offense is related to disposition. However, the relationship between the disposition and defense counsel in the presence of the third variable, offense, is negligible in general.

The independence of disposition and counsel, given the

particular regard to the use of continuances and motions for the purpose of delay or for the purpose of affecting a particular disposition.

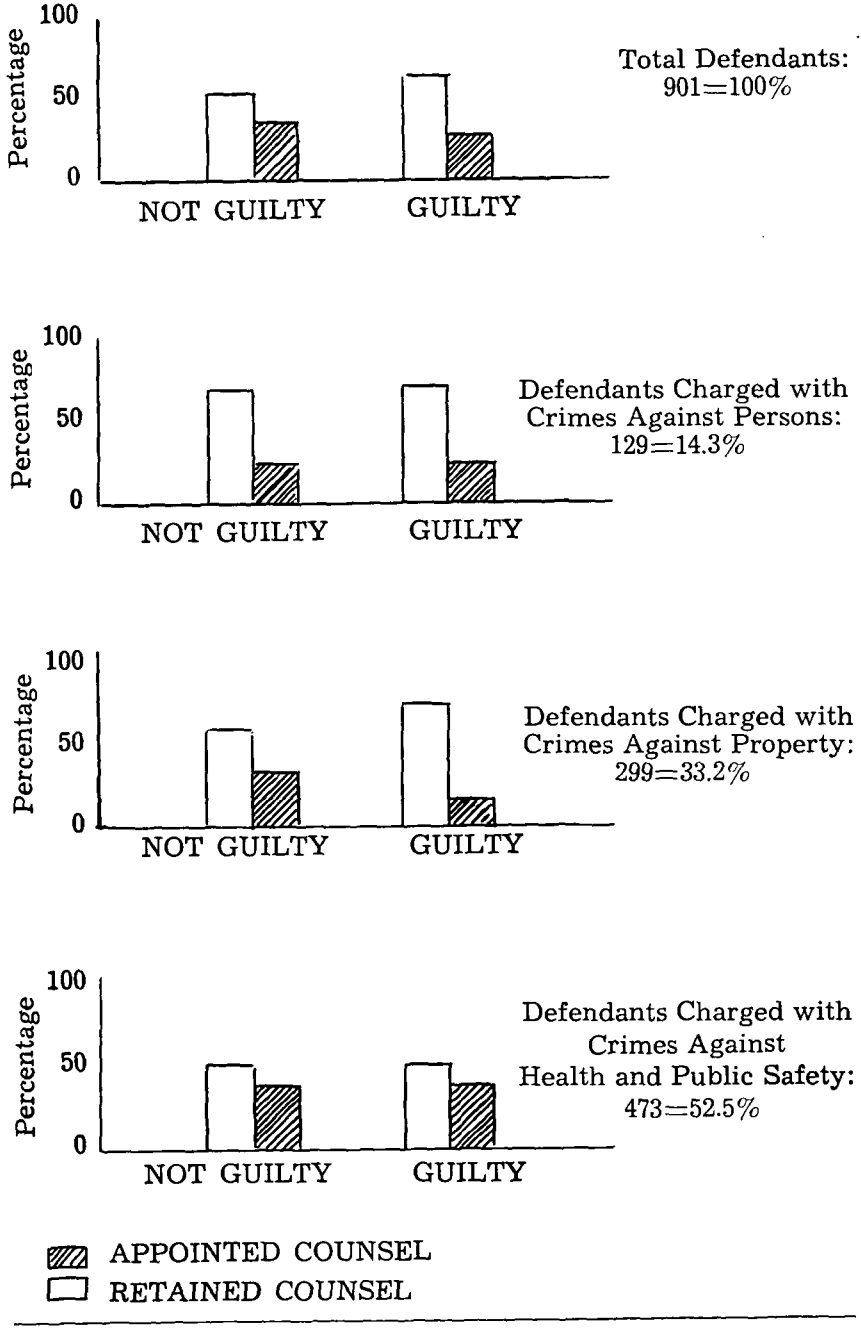
1. Defense Counsel and Guilty/Not Guilty Disposition

The guilty/not guilty dispositions of charges against defendants are shown in Table 5 as a function of court-appointed and retained counsel. The appointed counsel category combines nature of the offense charged, is demonstrated graphically in Figure 1. Note first the top sub-graph of the figure showing the difference in the distribution of the defense counsel for the not guilty and the guilty dispositions. As indicated previously, for the number of defendants involved (over 900), this difference is statistically significant. Shown beneath the proportion for the defendants found guilty and not guilty are the distributions of counsel for the three offense categories. Note that the proportions for health and safety offenses and for the crimes against persons, which together account for about two-thirds of the defendants in this analysis, are virtually identical when the defendants found guilty are contrasted with the not guilty. For the defendants accused of crimes against property there is

TABLE 6 Dispositions Versus Type of Counsel for Crimes Against Persons, Property, and Public Health and Safety

	TYPE OF COUNSEL							
Dispositions	Court-Appointed No.	%	Retained Counsel No.	%	Defenders, Inc. No.	%	Total No.	%
Crimes Against Persons								
Dismissed	7	7.8	2	5.0	6	33.3	15	10.1
(%)	(46.7)		(13.3)		(40.0)		(100.0)	
Acquitted	4	4.4	4	10.0	1	5.6	9	6.1
(%)	(44.4)		(44.4)		(11.1)		(100.0)	
Convicted	79	87.8	34	85.0	11	61.1	124	83.8
(%)	(63.7)		(27.4)		(8.9)		(100.0)	
Total	90	100.0	40	100.0	18	100.0	148	100.0
(%)	(60.8)		(27.0)		(12.1)		(100.0)	
Crimes Against Property								
Dismissed	12	5.1	2	2.8	5	10.6	19	5.4
(%)	(63.2)		(10.5)		(26.3)		(100.0)	
Acquitted	10	4.3	12	17.1	0	0.0	22	6.3
(%)	(45.5)		(54.5)		(0.0)		(100.0)	
Convicted	212	90.6	56	80.0	42	89.4	310	88.3
(%)	(68.3)		(18.1)		(13.5)		(100.0)	
Total	234	100.0	70	100.0	47	100.0	351	100.0
(%)	(66.7)		(19.9)		(13.4)		(100.0)	
Crimes Against Public Health and Safety								
Dismissed	54	19.8	59	26.0	19	29.2	132	23.4
(%)	(40.9)		(44.7)		(14.4)		(100.0)	
Acquitted	16	5.9	5	2.2	2	3.1	23	4.1
(%)	(69.6)		(21.7)		(8.7)		(100.0)	
Convicted	203	74.4	163	71.8	44	67.7	410	72.6
(%)	(49.5)		(39.8)		(10.7)		(100.0)	
Total	273	100.0	227	100.0	65	100.0	565	100.0
(%)	(48.3)		(40.2)		(11.5)		(100.0)	

FIGURE 1 San Diego Superior Court—Distribution of Defense Counsel by Simple Disposition and by Offense



a deviation indicating (among other things) that a larger proportion of the defendants found guilty had appointed counsel. This trend may be significant *in itself* and certainly worthy of further examination. However, this deviation is within the limits of an overall model for the observed data which states that given the offense, dispostion and defense counsel are independent.

Therefore the association between disposition and defense counsel as previously discussed may actually be due to the composition of the charges against the defendants rather than to the type of defense counsel. Offenses have different guilty/not guilty disposition ratios and different distributions of counsel for the defendants found guilty and for those found not guilty. Since the two types of counsel represent individuals from generally different economic backgrounds, the types of offenses which the defense counsel routinely handles will differ in composition. About 64 percent of the defendants with retained counsel are accused of crimes against health and safety, whereas about 43 percent of the defendants of the appointed counsel fall into this crime category. On the other hand, over 15 percent of the defendants with appointed counsel are accused of crimes against persons, whereas the comparable figure for retained counsel is less than 10 percent. Since the odds of being convicted of a health and safety offense are less than 57 percent compared to over 75 percent for a crime against a person, the retained counsel "looks better" in the two-way table of defense counsel versus disposition (Table 5). Thus, the nature of the offense offers an "explanation" for the association between disposition and defense counsel.

Having established that the relationship between defense counsel and disposition may be attributed to the type of offense charged against the defendant, it is natural to explore this relationship further in light of some of the characteristics of the defendants. The techniques employed in the analysis of contingency tables extend in a straightforward manner to consider the variables in a higher order table. Several characteristics of the defendant were selected to analyze separately as the fourth variable in a four-way contingency table that already included the type of defense counsel, the guilty/not guilty disposition of the felony charges, and the nature of the offense. These four characteristics or qualitative variables are (1) the prior record of the defendant, (2) his bail or jail status at the time of arraignment in superior court, (3) his criminal status or commit-

ment at the time the felony was committed (*i.e.*, no commitment, a parole commitment, or a probation commitment), and (4) the defendant's race. Although there are other variables available, the ones chosen illustrate the types of defendant-related variables that can be considered relative to the association between disposition and defense counsel.

a. *Prior Record*

An examination of this variable reveals interactions which confirm some fairly intuitive relationships involving the defendant's prior record. The interaction between retained counsel and defendants with a minor prior record is significantly high. On the other hand, the interaction between appointed counsel and defendants with a major prior record is high, and between retained counsel and the same defendants it is low. For defendants charged with property crimes, the interactions are significantly high for a major prior record. There is also a relationship, although not as strong, between prior record and disposition, specifically, high guilty dispositions for defendants with major prior records.

Perhaps the most interesting interactions involving the prior record of the defendant also involve the defense counsel and the disposition variables. These are three-factor interactions in the four-variable breakdown of defendants by counsel, disposition, offense, and prior record. These interactions indicate that for defendants with a major prior record who are represented by retained counsel there were more not guilty dispositions or less guilty ones than with appointed counsel. These interactions are substantial and cannot be explained away by chance sampling fluctuations. Taken together, this means that defendants with major prior records usually are involved with property-related crimes, are represented by appointed counsel, and are likely to be found guilty. However, if they are among the few who can afford retained counsel, they have a far better chance of being found not guilty.

As a caution, it should be noted that the prior record of the defendant certainly is not a good explanation of the different disposition record of counsel because, for the defendants with a minor prior record, the disposition proportions of the two types of counsel are identical.

b. *Criminal Status*

The criminal status variable is a measure of whether the defendant at the time of the commission of the offense did or did not have a commitment to the criminal justice system, such

as being on parole or probation or even being a prisoner in an institution (*e.g.*, as would be the case if the offense is assaulting a prison guard).

An examination of this defendant-related variable in the four-way contingency table relating the criminal status to defense counsel, disposition, and offense leads to some fairly simple and interesting results. Defendants with no criminal commitment at the time the offense was committed have a strong positive interaction with retained counsel. The opposite is true for defendants with a criminal commitment. It is interesting to note that even though this criminal status is related to defense counsel, it is not significantly related to either the disposition or to the offense. The guilty/not guilty disposition and defense counsel are independent of each other, given the nature of the offense. Furthermore, given the type of defense counsel, the criminal status is independent of the disposition and the offense. Thus, whether a defendant was on probation, parole, or in prison when the offense was committed has no relation to the disposition or to the type of offense. It can only be said that the defendant with a commitment will most likely have appointed defense counsel.

c. *Race*

An examination of the race of the defendant in relation to his defense counsel, the nature of the offense, and the disposition of the charges against him is quite revealing. The race variable has three levels or categories: white, black, and other, the latter containing mostly Mexican-Americans and Indian-Americans.

This variable is of interest because it is a personal variable or characteristic of the defendant available in the criminal records that is not directly related to the criminal justice system. Also, the socio-economic implications of this characteristic offer an opportunity to examine the defendant in relation to the system, apart from the defense counsel.

The strongest relationships or interactions involving the defendant's race are those between race and defense counsel. The most significant interactions are those indicating the disproportion of the types of defense counsel among black defendants. Although appointed counsel defend only about two-thirds of all defendants, they defend almost 85 percent of the black defendants. Also significant are the interactions between white defendants and the type of counsel. Retained counsel are significantly associated with white defendants. Eighty-one per-

cent of the defendants of retained counsel are white, whereas only about 71 percent of all the defendants are white.

The relationship of race to the offense charged is equally interesting. Whites have a disproportionately high share of the health and safety offenses and a disproportionately low share of the crimes against persons. For blacks just the opposite is true: there are significant interactions indicating a disproportionately high share of the crimes against persons and a disproportionately low share of the drug offense category.

The relationship between the race of the defendant and the guilty/not guilty disposition of the charges is of interest in that it is essentially nil. The data indicate no significant association between the defendant's race and the disposition of the charges against him when viewed in a contingency that takes into account the four variables of counsel, disposition, offense, and race.

d. *Bail Status*

The bail status of the defendant is, to some degree, an indicator of his economic status and probably also of the offense committed. A defendant in custody may be financially unable to make even a moderate amount of bail or, if the offense is a capital offense, bail may not be set. Three categories are used for this bail variable: in custody, free on bail, or released on personal recognizance.

Since the ability to make bond and the type of defense counsel are economically related, it should be expected that the interactions would show some strong relationship between the bail status and the defense counsel. In fact, an extremely strong relationship between defendants in custody and appointed counsel is indicated. The relationship is just the opposite for the defendants on bond or released on their own recognizance.

This bail status variable is also significantly related to the offense categories. In particular, defendants in custody tend to be charged with crimes against persons rather than health and safety offenses. The opposite is true for defendants released on bail or personal recognizance.

The bail status is also related to the guilty/not guilty disposition variable. Although the associations are not as strong as those previously discussed, there is an association between being in custody and conviction and between being on bond and lack of conviction.

2. Defense Counsel and Detailed Disposition

The previous section examined the role of counsel for the defense as it related to a guilty or not guilty disposition of the charges against the defendant. It was seen that the marginally significant relationships indicated that defendants with appointed counsel had a higher conviction rate than with retained counsel, but that this difference effectively disappeared when the offense was taken into account.

However, much information or detail is overlooked when this simple guilty/not guilty approach is taken. There is no indication as to whether the defendant did or did not go to trial; there is no indication whether a defendant found not guilty was dismissed or acquitted; and, there is no indication that if the defendant was convicted, that he was convicted of the felony as charged or of a lesser charge. It is frequently stated that the effectiveness of defense counsel is indicated on this level rather than at the guilty/not guilty level. Therefore, this section addresses the defense counsel in relation to the more detailed dispositions.

In the prior discussion, the distinction between the two types of appointed counsel had to be ignored in order to be able to examine the higher order interactions involving the defense counsel, disposition, the offense committed, and the fourth defendant-related variable. Several of the latter were examined. This limitation was imposed because of the sample size in order to maintain the validity of the statistical methods for four variables. In this section the three types of counsel are ex-

TABLE 7 San Diego Superior Court—Defense Counsel Versus Detailed Disposition

	DEFENSE COUNSEL							
	Defenders, Inc.		Court-Appointed Counsel		Retained Counsel		Total	
Disposition	No.	%	No.	%	No.	%	No.	%
Dismissed	20	20.4	56↓	11.1	55	18.4	131	14.5
(%)	(15.3)		(42.7)		(42.0)		(100.0)	
Acquitted	3	3.1	29	5.8	17	5.7	49	5.4
(%)	(6.1)		(59.2)		(34.7)		(100.0)	
Guilty/ Felony as Charged	55	56.1	277	55.0	132↓	44.1	464	51.5
(%)	(11.9)		(59.7)		(28.4)		(100.0)	
Guilty/ Lesser Felony	9↓	9.2	100	19.8	67	22.4	176	19.5
(%)	(5.1)		(56.8)		(38.1)		(100.0)	
Guilty/ Misdemeanor	11	11.2	42	8.3	28	9.4	81	9.1
(%)	(13.6)		(51.8)		(34.6)		(100.0)	
Total	98	100.0	504	100.0	299	100.0	901	100.0
(%)	(10.9)		(55.9)		(33.2)		(100.0)	

sel (from the bar), and privately retained counsel. Since the examination now proceeds with a more detailed breakdown of both defense counsel and the disposition of the charges, the sample size limits the number of qualitative variables under consideration to three; *i.e.*, one more in addition to the defense counsel and the detailed type of disposition.

In Table 7 the superior court defendants are presented by the type of defense counsel and by the type of disposition. Five categories appear in the disposition variable. Defendants found not guilty are shown as being either dismissed or acquitted. For the guilty defendants, it is indicated whether they were convicted of the felony as charged, of a lesser felony, or of a misdemeanor.

A statistical analysis of Table 7 reveals the following:

- The type of defense counsel and the detailed disposition of the charges are not independent classifications; instead they are strongly related variables.
- The strongest interactions indicate a significantly low number of dismissals for court-appointed counsel. Also, the number of defendants found guilty of a felony as charged is significantly low for privately retained counsel. In addition, the number of defendants found guilty of a lesser felony than the one(s) charged who were defended by Defenders, Inc., is also significantly low. (These are indicated by an arrow in the appropriate cell of the table.)
- Other large contributors to the association between the detailed disposition and defense counsel are the dismissals for Defenders, Inc., and retained counsel. They are higher than expected.

Separating the two types of appointed counsel has revealed differences between them. As Table 7 shows, the types of not guilty dispositions vary between counsel. Court-appointed counsel has disproportionately fewer dismissals than his counterpart. But on the other hand, he has disproportionately higher acquittals. This might reflect a lack of sound early appraisal of the case or a desire on the part of the inexperienced attorney to obtain trial experience. His counterparts, the retained counsel and Defenders, Inc., dispose of their not guilty defendants predominately by dismissals.

It was indicated previously that retained counsel has a disproportionately (and significantly) low number of defendants convicted of the felony as charged. For defendants found guilty of a lesser felony, he has a disproportionately high percentage. This may be an indication of retained counsel "working harder" or "getting a better deal" for his defendants. This will be examined further.

The number of defendants with attorneys from Defenders, Inc., is disproportionately high for defendants found guilty of the felony as charged, whereas it is disproportionately low for the defendant found guilty of a lesser felony. This result is largely due to the number of defendants who have already pleaded guilty to the felony (as charged) in the lower court and are certified to the superior court for sentencing. Defenders, Inc., represents a disproportionately large share of these superior court defendants, and this affects the above results.

a. *Counsel, Disposition, and a Defendant-Related Variable*

In the analyses involving the defense counsel, the type of disposition, and a defendant-related variable, not a great deal of light is shed on the strong relationship between disposition and counsel just discussed. The characteristics of the defendant related in a fairly obvious way to counsel or to the disposition, but the analyses did not result in the "explanation" of the counsel-disposition relationship.

To illustrate, there was an interaction between the prior record of the defendant and the defense counsel. The proportion of defendants with counsel from Defenders, Inc., with major prior records is significantly high. The opposite is true for retained counsel. Similar results follow from analyses involving counsel, disposition, and bail status of the defendant and involving counsel, disposition, and the criminal (commitment) status of the defendant. These defendant-related variables, as with the prior record, relate in a fairly obvious manner to counsel and to the disposition. However, they do not offer any explanation for the counsel-disposition association.

One of the defendant-related variables, the race of the defendant, simplifies the three-way breakdown by counsel, disposition, and race, but it does not explain the relationship of counsel and disposition. The race and disposition of the defendant are independent, given the type of defense counsel. This is similar to the result describing the four-way breakdown of

defendants involving defense counsel, not guilty/guilty disposition, offense, and race.

b. *Counsel, Disposition, and Offense*

As was true with the not guilty/guilty disposition, the consideration of the offense category offers an "explanation" of the defense counsel detailed disposition relationship. Although there are deviations within the limits of statistical fluctuation, the model chosen as a good fit for the observed data states that the defense counsel is independent of the type of disposition of the charges against the defendant, given the nature of the offense charged. This explanation could not be achieved by any of the characteristics of the defendant.

c. *Nontrial Dispositions*

The previous analyses, for defense counsel, type of disposition, and a third variable, have been repeated for a slightly different set of defendants, where all dispositions as a result of trial are omitted. This leaves only dismissals and the three levels of guilty pleas (guilty of a felony as charged, guilty of a lesser felony, and guilty of a misdemeanor).

The results of these analyses involving only nontrial dispositions are essentially identical with results obtained from analyses involving all the defendants. In particular, the data support the hypothesis that, given the nature of the offense, the defense counsel and nontrial dispositions are indpendent. Also, given the type of defense counsel, the race of the defendant is independent of the nontrial disposition.

3. Defense Counsel and Disposition—Pretrial Motions and Continuances

The popularized notion of retained counsel making many pretrial motions or delaying court proceedings is a familiar one. The San Diego Superior Court data are examined to determine the extent to which these phenomena occur. Three variables, types of counsel, type of disposition, and the number of continuances are examined. The disposition is divided into the following levels: dismissed, acquitted, and convicted. The continuances are divided into categories: no continuance, one continuance, and more than one continuance. A continuance means a formal delay of either trial or readiness conference proceedings.

The analysis of these variables shows that continuances do not offer any explanation for defense counsel/disposition relationships. In fact, a good fit for the observed data indicates that the number of continuances is independent of the counsel

and the disposition. All types of counsel have about the same distribution of number of continuances. Thus it is seen that the three types of counsel are similar in their use of continuances, and that continuances are not related to either counsel or disposition.

A similar result is obtained for the three variables: defense counsel, disposition, and the use of a motion to suppress evidence. The analysis shows that the hypothesis best describing the three-variable breakdown of defendants states that the use of the motion to suppress is independent of defense counsel and disposition.

To an extent, an explanation is provided for the counsel-disposition relationship by an analysis of defense counsel, disposition, and the use of a motion to quash or set aside an information or indictment. Retained counsel uses this motion for about 18 percent of his clients, whereas for either type of appointed counsel, the comparable figure is about 10 percent. The best fit hypothesis states that the type of defense counsel is independent of the disposition, given the use of a motion to quash.

4. Defense Counsel and Sentencing

Another critical point at which the type of defense counsel may have an impact is at sentencing. It seems to be commonly believed that the defendants of retained counsel get a better sentence through the efforts of their defense attorney. In Table 8, the defendants found guilty are classified according to counsel and sentence (prison, probation, or jail). The arrow indicates a significant interaction for that particular frequency.

TABLE 8 San Diego Superior Court—Defense Counsel Versus Sentences

Defense Counsel	SENTENCE: Prison (state) No.	%	Probation No.	%	Jail (county) No.	%	Total No.	%
Defenders, Inc.	16	12.3	25↓	7.9	41	12.9	82	10.8
(%)	(19.5)		(30.5)		(50.0)		(100.0)	
Court-Appointed Counsel	96↑	73.8	138↓	43.8	200	63.1	434	57.0
(%)	(22.1)		(31.8)		(46.1)		(100.0)	
Retained Counsel	18↓	13.8	152↑	48.3	76	24.0	246	32.3
(%)	(7.3)		(61.8)		(30.9)		(100.0)	
Total	130	100.0	315	100.0	317	100.0	762	100.0
(%)	(17.1)		(41.3)		(41.6)		(100.0)	

- The strongest interaction appears for defendants with retained counsel who received probation sentences.

> Almost half of the defendants placed on probation are represented by retained counsel whereas only about a third of the defendants convicted are represented by retained counsel. Opposite trends are seen for both types of appointed counsel. Also significant are the frequencies for prison sentences. Again, the advantage is in favor of retained counsel—he has significantly fewer defendants who receive prison sentences, whereas the court-appointed counsel has significantly more.
>
> The hypothesis that the sentence and the type of counsel are independent is rejected at greater than the 99.5 percent confidence level.

a. *Defense Counsel, Sentence, and Criminal Justice System Variables*

Before examining the strong relationship between counsel and sentence using defendant-related variables, characteristics of the criminal justice system are considered. These are the offense charged, the level of the conviction, and the manner of the guilty disposition (*i.e.*, an original plea of guilty to a felony in the lower court, a change of plea in the upper court, or guilty as the result of a trial). Simply stated, the nature of the offense charged has little to do with the strong counsel/sentence interaction. It was determined previously that offense did offer an explanation of the disposition of the charges. However, once a defendant is convicted, the offense does not explain the differences between types of counsel and sentence. The other system variable, *i.e.*, the level and manner of the disposition, also sheds no light on the strong counsel/sentence interaction.

b. *Defense Counsel, Sentence, and Defendant-Related Variables*

Interestingly enough, the usual defendant-related variables also do not offer a good explanation of the counsel/sentence relationship. Neither prior record nor the criminal commitment of the defendant explain any of the associations. However, the bail status of the defendant does shed some light on the interactions, although the explanation is not at the usual levels of significance. A different view of sentencing, which follows, brings out these trends more sharply.

c. *Defense Counsel and Sentence Weights*

A more precise and uniform look at sentencing is possible through the use of sentence weights. The California Bureau

of Criminal Statistics has devised a numerical scale which allows so many points or sentence weights for the various types and combinations of sentences; *e.g.*, 12 months in jail has a sentence weight of 12, 3 years on probation has a sentence weight of 6, a fine of up to $500 has a sentence weight of 1. These weights are treated cumulatively for a combined sentence. Thus, 3 years on probation and jail term of 12 months has a sentence weight of 18. There are also adjustments to take into consideration the defendant's prior record.

Use of this quantitative scale provides a more uniform treatment of the sentencing than does the qualitative scale of prison, probation, or jail used in the preceding analysis. Now, rather than considering the categories of the qualitative scale as alternatives, the numerical sums of the sentence weight scale reflect the degree of the sentence.

Table 9 shows the convicted defendants for whom sentence weights were available cross-classified with defense counsel. As before, the arrow indicates the frequencies which give rise to significant (at least at the 5-percent level) interactions. It is noted that the significant associations occur at the smallest

TABLE 9 San Diego Superior Court—Sentence Weight versus Defense Counsel

	COUNSEL							
	Defenders, Inc.		Court-Appointed Counsel		Retained Counsel		Total	
Sentence Weights	No.	%	No.	%	No.	%	No.	%
0-6	23↓	33.3	124↓	36.7	110↑	60.8	257	43.7
(%)	(8.9)		(48.2)		(42.8)		(100.0)	
7-12	22	31.9	89	26.3	41	22.7	152	25.9
(%)	(14.5)		(58.6)		(27.0)		(100.0)	
13-18	9	13.0	54	16.0	16	8.8	79	13.4
(%)	(11.4)		(68.4)		(20.3)		(100.0)	
19-24	5	7.2	24	7.1	5	2.7	34	5.8
(%)	(14.7)		(70.6)		(14.7)		(100.0)	
25-30	4	5.8	13	3.8	3	1.7	20	3.4
(%)	(20.0)		(65.0)		(15.0)		(100.0)	
31-36	1	1.4	9	2.7	3	1.7	13	2.2
(%)	(7.7)		(69.2)		(23.1)		(100.0)	
Greater Than 36	5	7.2	25	7.4	3	1.7	33	5.6
(%)	(15.1)		(75.8)		(9.1)		(100.0)	
Total	69	100.0	338	100.0	181	100.0	588	100.0
(%)	(11.7)		(57.5)		(30.8)		(100.0)	

sentence weight level. Note that retained counsel has about 61 percent of his convicted defendants in this category, whereas the other two types of counsel had only about a third. The sentence weight and the defense counsel are significantly related.

(1) Defense Counsel, Sentence Weight, and Criminal Justice System-Related Variables

Briefly, the criminal justice system variables — the offense, the level of conviction, and the manner of disposition previously described — do not yield simple results explaining the defense counsel interactions with sentence weight. They indicate fairly obvious relationships but these do not offer any simple interpretation.

(2) Defense Counsel, Sentence Weight, and Defendant-Related Variables

When the characteristics of the defendant are taken into consideration, some simplification of the association between defense counsel and the sentence occurs. Briefly, neither prior record of the defendant nor his criminal status explain this relationship. However, the bail/jail status does. Thus, the hypothesis that defense counsel and sentences of convicted defendants measured by sentence weight are independent, given the bail status of the defendant, is the model that best fits the data. This is illustrated by Figure 2. The results indicate that the relationship between counsel and sentence weight disappears when the bail status is taken into account.

5. Defense Counsel and Time to Disposition

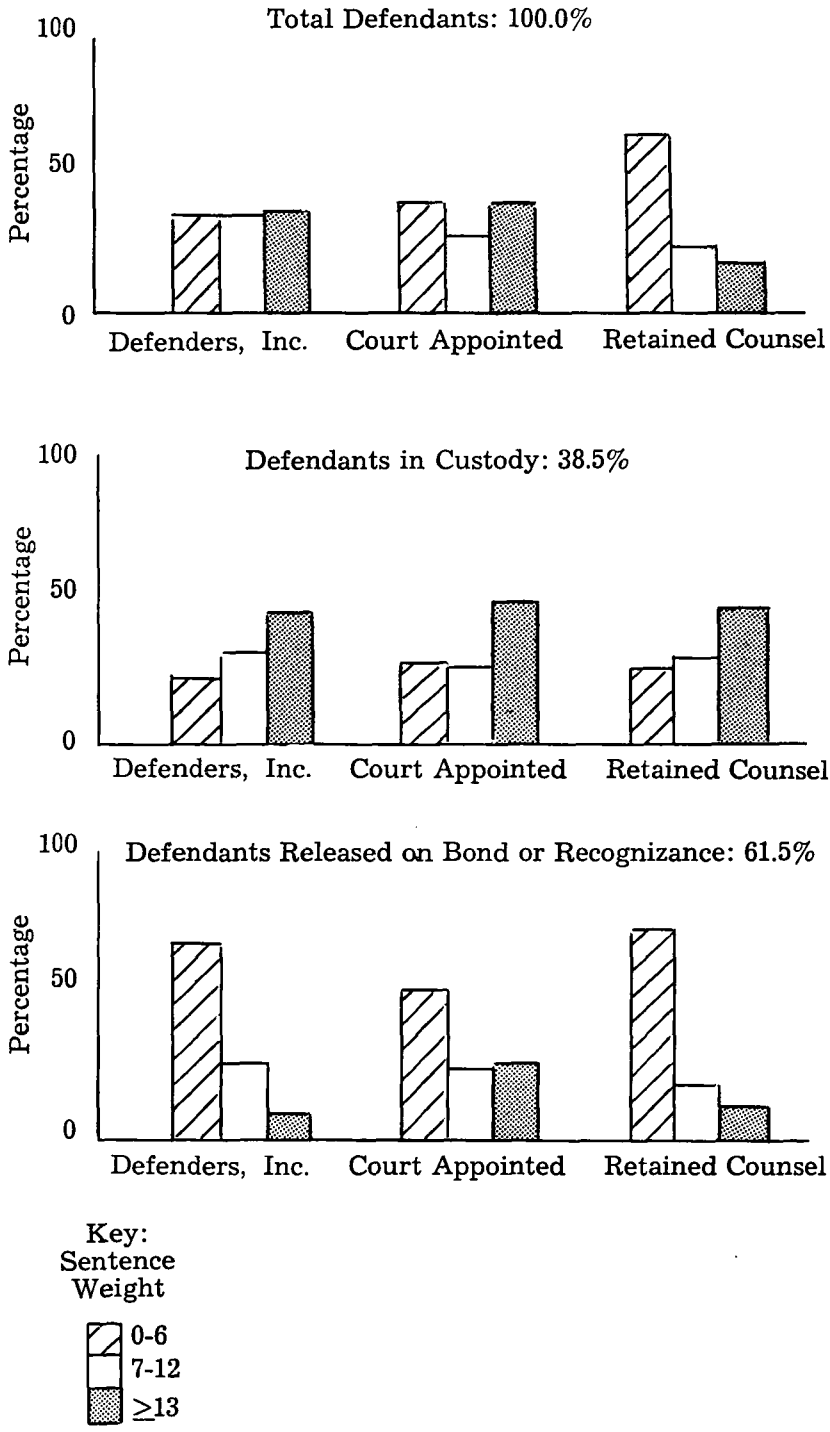
The data indicate that the time to disposition is strongly related to the type of defense counsel. The time to disposition is the time from the filing of the charges in superior court to the day on which the defendant was discharged (if found not guilty) or was sentenced (if found guilty). This definition will be modified somewhat in the following.

An analysis of the interactions shows a strong association of defendant-clients of Defenders, Inc., counsel with termination in the first month. This trend is even indicated as being significant in the second month. The strongest interaction found, was a significantly low association of defendants-clients of retained counsel with termination in the first month. A plausible explanation for these trends is the proportion of guilty pleas certified from the lower court. Defenders, Inc., represented a large share of these defendants whereas the retained counsel did not.

a. *Defense Counsel, Time to Disposition, and Criminal Justice System-Related Variables*

The relationship between defense counsel and disposition time is examined as a function of the disposition (dismissed,

FIGURE 2 San Diego Superior Court—Defense Counsel versus Sentence Weight versus Bail Status



acquitted, or convicted) and also as a function of the level of conviction for the defendants found guilty. Although neither of these variables offers an explanation for the counsel/time interactions, they do present some interesting hypotheses supported by the observed data.

The results for each variable are essentially the same. An analysis of defense counsel, disposition time, and disposition yields the following model: the type of defense counsel is independent of the disposition, given the disposition time; *i.e.,* for defendants in the system for the same length of time, the type of counsel and the disposition are independent. Just as the offense offered an explanation of the counsel/disposition relationship, so does the disposition time. This may be confusing, but it should be realized that time may be viewed either as a cause in bringing about a particular disposition or as an effect of the manner of the disposition. It may be a cause if one equates delay with a particular disposition such as not guilty. On the other hand, it can be considered an effect of the manner of disposition, *i.e.,* a result of the fact that it takes longer to get a trial verdict than it does to plead guilty. The statistical methods are not dependent on the interpretation of time. If time is viewed as an effect in the above sense, the model suggests that the counsel is related to time through the choice of proceedings and that the proceedings are related to the dispositions; however, counsel is not directly related to the disposition. This is not delay, but rather the choice of different proceedings (guilty plea, change of plea, or trial) which give rise to differences in time, insofar as one is free to choose.

As indicated above, a similar result holds for the analysis involving defense counsel disposition time and level of conviction (guilty of the felony as charged, guilty of a lesser felony, and guilty of a lesser misdemeanor). The best fit of the observed data is the following hypothesis: the type of defense counsel is independent of the level of the conviction, given the disposition time. The level of conviction is related to the proceedings. It may be said that the relation between defense counsel and the level of conviction is "explained" by the disposition time, which is related to the proceedings, *i.e.,* a guilty plea certification is handled promptly, but signifies a conviction of the felony as charged.

b. *Defense Counsel and Time to Dispostion—Motions and Continuances*

The relationship between counsel and disposition time is

intimately related to the nature of the proceedings involved. This makes it difficult to analyze this relationship with the usual techniques of statistical analysis. In other words, the various proceedings take place on different time scales and, as such, it is impossible to apply the usual techniques to all the defendants in the same contingency table. To illustrate, all of the guilty plea certifications are referred to probation during the first 2 weeks, while some of the trial dispositions take longer than 3 months. This creates fundamental problems for the statistical techniques. Thus, it will not be possible to demonstrate with these methods that the proceedings account for the time distribution. Simply stated, the events or proceedings determine the time to disposition on a large scale. The role of counsel in attempting to affect time on a smaller scale for specific proceedings can occur through the use of motions and continuances.

The following discussion examines defense counsel in relation to time for selected proceedings (*i.e.*, dismissals, change of plea, and trials) with particular regard to the use of motions and continuances by counsel. These particular proceedings are chosen since they are directly related to certain types of continuances or motions. The time to disposition for these proceedings is generally more precise than the one discussed previously. For dismissals it is the same; *i.e.*, the time from the filing of the charges to the actual dismissal. For the changes of plea it is the time from filing to roughly the day on which the change of plea was made — not the day of sentencing which may be weeks later. Similarly, for the defendants going to trial, if they are found not guilty, the day of acquittal is used; if found guilty, that day of guilty verdict is used rather than the sentencing day. It is thought (and verified) that such a definition involving the actual time to the determination of guilt would offer a purer reflection of possible counsel delay or activity, which may be hidden when the time to sentence is included.

The data clearly reveal a spread in the time to disposition for the various types of defense counsel. But the statistical techniques indicate that for each of these proceedings, defense counsel and the time to disposition are independent. In other words, this spread is within the statistical fluctuation and hence negligible. It should be noted that the dismissal times, the change of plea times, and the trial times are essentially different, but that for each of these proceedings, the variation

with defense counsel is within bounds. Actually, we may stop here with the statement that the counsel and disposition time are not related for the selected proceedings. However, the role of motions and continuances is still of interest.

A statistical analysis of the data on the effect of continuances on the various proceedings indicates that although the use of continuances clearly delays the time to disposition for each of the proceedings, it is not associated with a specific type of defense counsel. Thus, the observed data does not support the popular notion that certain counsel use continuances for the purpose of delay.

Analyzing the use of pretrial motions, *i.e.,* the motion to suppress or the motion to quash an indictment or an information, yields slightly different results. The statistical methods show that for both dismissals and trials, the defense counsel, the time to the particular disposition, and whether or not there were pretrial motions *are independent* to the limits of statistical fluctuations. Thus, there is no significant time shift if motions are involved. This should be clear since most motions are filed and heard within the time allotted between arraignment and the trial. Also, there is no significant relationship between motions and defense counsel.

For defendants who changed their plea, the result is somewhat different. In these cases, the motions are related to time, *i.e.,* there is a statistically significant shift in time depending on whether or not a motion was made. However, the methods indicate that this has nothing significant to do with the type of defense counsel and that the fluctuations are within bounds.

C. *A Combined Look at Defense Counsel in San Diego Municipal and Superior Courts*

In the two previous sections, II A and B, defense counsel were examined separately on a lower court basis and then on an upper court basis. This section is not a recapitulation of the results of these respective sections, but rather a new examination of the interaction of defense counsel with a set of felony defendants whose cases were filed and terminated in either the upper or lower courts during the same period of time. Whether a defendant is or is not terminated in upper or lower courts is treated here as another variable. The period under investigation is the first half of the calendar year 1971.

Before beginning the discussion, it may be beneficial to examine the differences in the distribution of counsel and of

offenses disposed of between the respective courts. The distribution of defense counsel for defendants filed and terminated during the first half of 1971 is given in Table 10.[33] It is observed that there is a larger proportion of the retained counsel in the municipal court than in the superior court. Court-appointed counsel was about the same fraction of each sample. Defenders, Inc., on the other hand, had a larger percentage represented in the superior court, counter to the trend for retained counsel.

TABLE 10 Distribution of Defense Counsel—San Diego Municipal and Superior Courts 1971

	COURT LEVEL	
Type of Counsel	San Diego Municipal Court Percent	San Diego Superior Court Percent
Defenders, Inc.	11	18
Court-Appointed Counsel	46	47
Retained Counsel	44	35

The distribution of offenses, as would be expected, is different between the two courts. This is shown in Table 11.

TABLE 11 Distribution of Offenses—San Diego Municipal and Superior Courts 1971

	COURT LEVEL	
Offense Crimes Against	San Diego Municipal Court Percent	San Diego Superior Court Percent
Persons	5	11
Property	18	35
Health & Safety	75	49
Other	2	4

The dominance of health and safety offenses (essentially possession or sale of narcotics) in both jurisdictions is apparent. Almost half of the superior court terminations and three-fourths of the municipal court terminations fall into this category. Note also that in the lower court the proportion of crimes against persons or property is about half that of the upper court.

Figure 3 shows the distribution of defense counsel at each of the possible terminations. The trend for retained counsel to dispose of more of his defendants in the lower court than the upper court, and the opposite trend for Defenders, Inc., is apparent.

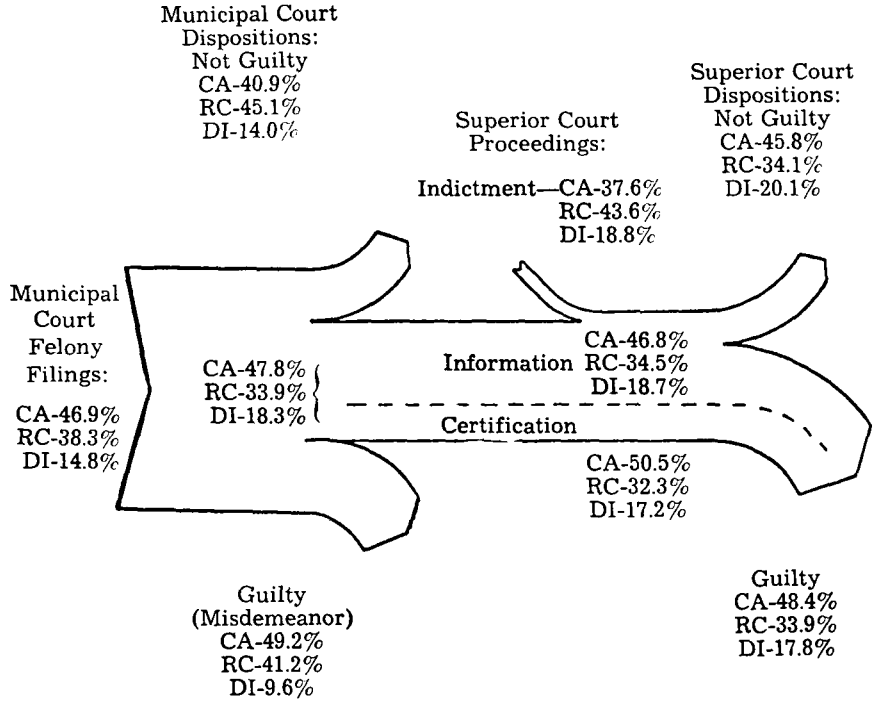
A most interesting result occurs when the statistical tech-

[33] It should be noted that the distribution of appointed counsel shifted between 1970 and 1971.

niques of contingency table analysis are applied to a three-way table involving defense counsel, a simple guilty/not guilty disposition, and whether the defendant was terminated in the upper or lower court. The results of the analysis indicate that:

- Guilty/not guilty disposition is independent of the defense counsel, given the court level (to a level of confidence of 97.5 percent).

FIGURE 3 Combined Municipal and Superior Court Felony Processing for the City of San Diego (excluding other jurisdictions in San Diego County)—Defendants Charged and Disposed January-June 1971—Distribution of Defense Counsel for Proceedings and Dispostions[a]



[a]CA=court-appointed; RC=retained counsel; DI=Defenders, Inc.

creased. Even so, it is interesting to note that for the defendants terminated in the upper and lower courts during the first half of 1971, the guilty/not guilty rate varied between court levels. There is an association between the type of defense counsel and the court level, but the relation between counsel and disposition is not significant to the adjusted level.

III. SUMMARY OF FINDINGS

A. *San Diego Municipal Court*

Defenders, Inc., has the lowest conviction rate (53 percent) for its defendants, followed in order by privately retained counsel (60 percent), and by the court-appointed counsel (66 percent). This difference is due in part to the higher proportion of both Defenders, Inc., and retained counsel defendants transferred to juvenile court. Furthermore, Defenders, Inc., has a larger proportion of dismissals than the other two types of counsel. These differences remain when the nature of the charged offense — crimes against persons, property, or public health and safety — is considered. This is in contrast to the dispositions in the superior court. Additionally, none of the characteristics of the defendant available to the study explain the differences in conviction rate in a satisfactory manner. It should be noted that the lower court terminations are either dismissals or convictions on pleas of guilty to felony charges reduced to or treated as misdemeanors.

There is also a distinction between types of counsel with regard to the time to disposition. The median time to disposition for both types of appointed counsel is about 1.2 weeks shorter than the median time for retained counsel. Differences in disposition time remain when the offense charged, the defendant's race, and his defendant status (*i.e.*, individual defendant or co-defendant), are taken into account, and also when dismissals and convictions are considered separately.

It is impossible to draw clear conclusions about defense counsel from the examination of municipal court terminations of defendants charged with felonies. The distinctions between counsel remain and neither the nature of the offense nor the available characteristics of the defendant offer a satisfactory explanation. But it must be noticed that certain items of information that aid in explaining the differences between defense counsel dispositions in the superior court, *i.e.*, the bail or jail status of the defendant, and the precise timing of the actual proceedings, were not in the data base for the defendants in the municipal court sample.

B. *San Diego Superior Court*

1. Dispositions

The conviction rate for defendants represented by retained counsel in the superior court is about 76 percent; for Defenders, Inc., about 77 percent; and for court-appointed counsel, 83 percent. The lower conviction rate for retained counsel and Defenders, Inc., results from a larger proportion of their defendants being dismissed in the interests of justice or on motion of the prosecution. About 72 percent of the defendants represented by retained counsel plead guilty to the charge or to an amended or lesser charge, about 71 percent for Defenders, Inc., and about 74 percent for the court-appointed counsel.

Differences in the respective conviction rates for counsel largely disappear when the offense is taken into consideration. Within each of the offense categories, (crimes against persons, property, and public health and safety) the conviction rate is approximately the same for each type of counsel. Therefore, the difference in conviction rate can be attributed to the unequal share of the types of offenses handled by the various types of counsel. The data support the hypothesis that given the type of offense, disposition and type of counsel are independent of each other.

A more detailed look at the disposition is possible. Instead of a not guilty/guilty approach, the defendants may be classified as to whether they are dismissed, acquitted, convicted of the felony as charged, convicted of a lesser felony, or convicted of a misdemeanor. Using this classification of dispositions, differences in defense counsel are more apparent; however, the unequal composition of offenses for defense counsel again offers an explanation for the differences in disposition. As before, the observed data support the hypothesis that the disposition is independent of the type of defense counsel, given the type of offense. The results hold even when restricted to nontrial dispositions.

In addition to offense, characteristics of the defendant (prior record, bail/jail status,[34] parole or probation status at the time of arrest, and race) are alternatively considered. However, none of these defendant-related variables provide an explanation of the relationship between defense counsel and the disposition. As a matter of fact, the data support the specific hypotheses that disposition is independent of the race

[34] The bail/jail status of the defendants may also be a characteristic of the offense.

of the defendant, given the type of defense counsel, and that disposition is also independent of the parole or probation status of the defendant, given the type of defense counsel.

The use of continuances and pretrial motions by the various types of defense counsel as it directly relates to the disposition yields some interesting results. The dispositions are viewed as dismissals, acquittals, or conviction. For resettings or continuances of various proceedings, the data support the hypothesis that the number of resettings is independent of both the defense counsel and the disposition. The motion to suppress is related to the disposition, but it is independent of the type of counsel. The use of the motion to quash, on the other hand, is related to counsel — retained counsel use this motion more often. When the use of this motion is taken into consideration, disposition is independent of defense counsel.

2. Sentencing

For the large fraction of the defendants who are convicted, it is important to examine sentences as a function of type of counsel representing defendents. When alternative sentences are considered, it is clear that a large proportion of the convicted defendants represented by retained counsel receive suspended sentences and probation instead of prison or jail sentences. Characteristics of the defendant (prior record, bail/jail status, parole or probation status at the time of arrest, and race) do not offer a satisfactory explanation of the differences in sentence as a function of counsel, although the bail/jail status does offer a marginal explanation. Similarly, the offense does not explain these differences.

Other characteristics may be termed criminal justice system-related variables or more simply system-related variables. Two particular system-related variables are examined: manner of conviction (*i.e.,* whether a defendant is convicted on an original plea of guilty, a change of plea to guilty, or as a result of a trial) and a level of conviction (*i.e.,* whether a defendant is convicted of a felony as charged, of a lesser felony, or of a misdemeanor).

The California Bureau of Criminal Statistics assigns a numerical measure to the imposed sentences, called sentence weights. These sentence weights compare on the same numerical scale the lengths of prison or jail sentences, the terms of probation, the amount of fines, and other special sentences. Thus, the sentence weight is more than an indicator of alternative sentences — it is a measure of the degree of the sentence.

When the sentence weights are examined by defense counsel, a disproportionately large number of defendants represented by retained counsel receive light sentence weights.

If sentence weights and defense counsel are examined with defendant-related and system-related variables, the results are different from the preceding. Although the system-related variables, the offense, the defendant's prior record, and his parole or probation status do not offer an explanation of the counsel-sentence relationship, the bail/jail status of the defendant does. The data support the hypothesis that the sentence weight is independent of the type of defense counsel, given the bail/jail status of the defendant. This result may be put in perspective when it is realized that the bail/jail status is in part an indication of the economic status of the defendant, but may also be an indication of the seriousness of the offense.

The distribution of sentence weights for the defendants free on bail is about the same for each type of counsel. There is a different distribution of sentence weights for defendants in custody, but this distribution is about the same for each type of counsel. This analysis fully acknowledges the strong relationship between defense counsel and the bail/jail status of the defendants. However, the data indicate that once the bail/jail status of the defendant is determined, the distribution of sentence weights is independent of the type of defense counsel.

3. Timing

Defendants represented by the Defenders, Inc., have the shortest median time to disposition (1.7 months) followed by court-appointed counsel (2.2 months) and by retained counsel (2.4 months). For the convicted defendants this disposition time includes the time between the resolution of the charges and the sentencing, *i.e.*, the period during which a full probation report is prepared.

The differences between counsel disappear when the type of proceeding involved in the resolution of the charges is considered. For the defendants who had charges against them dismissed, for those who changed their plea to guilty in the superior court, and for the defendants going to trial, there is no significant difference in disposition time by counsel. (This disposition time ends at the resolution of the charges rather than at the sentencing.) Although there are differences between these groups of defendants (*e.g.*, it takes longer for a trial dis-

position than for a guilty plea), there are no significant time differences by counsel.

When continuances or resettings of the proceedings are considered, there is also no time difference by counsel. In those cases where continuances were granted, the time to disposition is understandably longer. However, the use of continuances is the same for each type of counsel. The data support the hypothesis that the time to disposition is independent of the type of counsel. Whether there were or were not continuances is independent of counsel for each of the groups of defendants considered.

The results are somewhat different when the pretrial motions to suppress or to quash are considered as they relate to time. For the defendants who are dismissed and for the defendants who go to trial, whether or not pretrial motions were made is independent of defense counsel and even independent of the time to disposition. This is understandable since time is allotted for hearing these motions within the time set for trial. However, for the defendants who change their pleas, whether or not a motion is made (more particularly whether the motion is granted or denied), may well be a factor in the decision to change the plea. The data support the hypothesis that whether or not a motion is made is related to the disposition time for the defendants who change their pleas, but that this is independent of the type of defense counsel.

C. *Combined Municipal Court and Superior Court*

In a brief look at the role of defense counsel on a combined upper and lower court basis, some revealing trends appear. About 75 percent of the municipal court terminations are health and safety (*i.e.*, drug) violations. In the superior court, about 50 percent of the terminations are in this category. The proportion of defendants charged with offenses against persons or against property in the upper court is twice that of the lower court. About the same proportion, 46 percent, of the upper and lower court terminations are defendants with court-appointed counsel. However, there is a very clear trend for the retained counsel to terminate his defendants at the lower level court. The opposite is true for Defenders, Inc. This tendency of Defenders, Inc., to terminate defendants in the upper court is due in large part to their disproportionate share of the defendants who plead guilty to a felony in the lower court and consequently must proceed to the superior court for final disposition and sentencing.

A final note of interest is the conviction rate considered for all defendants terminated in the upper and lower courts with the court level being considered as a factor. (Since terminations in the upper and lower courts are being considered as alternatives here, the defendants entering the superior court directly on grand jury indictments were deleted.) The hypothesis that the guilty/not guilty disposition is independent of counsel, given the court level is marginally supported by the data. However, the relationship between counsel and the court level at which the charges were disposed of is not fully explained by consideration of the offense charged.

CONCLUSION

As stated at the beginning of this article, there are many views on the quality of defense counsel for the indigent. Through numerous analyses of interrelations between defendant-related and system-related factors, this study has presented a meaningful information base for destroying myths about differing kinds of counsel. For example, where at first blush it appeared that retained counsel was obviously superior, analysis often revealed some other differentiating factor, such as offense. Where a cursory review of the case dispositions would lead to one conclusion on counsel effectiveness, the study could pinpoint something such as a procedural requirement which in effect dictated the differential results. Sometimes, however, variations in result could be related only to type of counsel. No other factor could be found to explain the distinctions. Although in some parts of the system, data were unavailable for thorough analysis, occasionally one kind of counsel simply had better performance. Without prejudice or passion, one could say that for those instances, type of counsel made the difference.

Overall, however, the basic findings indicate only slight variations in performance by the types of defense counsel found in San Diego. Generally, the article has been cautious about drawing inferences beyond the obvious. The data and the comparisons are there; it is hoped that they will assist in further careful analyses and will dispel facile criticisms and condemnations. It has not been the purpose of this article to draw conclusions about or suggest alternatives to the various methods of providing counsel to indigent defendants. Societal needs will demand other studies with these purposes — the findings of this study should help.