

# How Judges' Professional Experience Impacts Case Outcomes: An Examination of Public Defenders and Criminal Sentencing\*

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## Abstract

How do judges' previous professional experiences affect outcomes? In this short article, we investigate the question by documenting the effect of judges' previous criminal justice experience on sentencing. Leveraging millions of federal sentences from 2010 to 2019, we find that defendants with charges assigned to a judge with criminal defense experience are, on average, less likely to be incarcerated. In some cases, their sentences are also shorter, which we show is partially attributable to former defenders being less likely to give out extremely long sentences. We find some corresponding effects for prosecutorial experience, but they are less consistent overall. The findings make two key contributions. First, they contribute to growing evidence of disparities in the criminal legal system, particularly those associated with judge characteristics. Second, the findings showcase the potential impact of judges' previous professional experience (as opposed to demographic characteristics) on decision-making. Both illustrate how political actors can influence policy through judicial selection on the basis of professional experience.

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# 1 Introduction

Over the course of his 2020 campaign, then-candidate Joe Biden promised that he would reshape the federal courts by appointing more diverse nominees, not just women and people of color, but also nominees with professional experience beyond private practice. This included the specific promise to appoint more former criminal defense attorneys. Biden did this quickly: out of his first 42 federal courts nominees, about a third have some sort of criminal defense experience. For many proponents of criminal justice reform, the hope is that these judges will help bring criminal sentencing outcomes more in line with reform goals like decreasing incarceration.

In this short article, we use the example of judges who have been criminal defense lawyers to investigate how judges' previous professional experience could shape important policy outcomes. Our investigation is guided by two important questions. First, how does this kind of previous experience translate into different outcomes for individuals in the criminal justice system? And second, what can we learn about the politics of judicial decision making?

To answer these questions, we leverage an enormous and rich dataset on hundreds of thousands of federal sentences from 2010 to 2019, combining these with data on federal judges' previous professional experience. We find that previous criminal justice experience is indeed predictive of criminal sentencing. Specifically, criminal defendants assigned to a federal judge with previous public defender experience are on average less likely (by up to 3 percentage points) to be sentenced to incarceration and more likely to be sentenced to community service or probation. This is the case for both Republican and Democratic judicial appointments, with some suggestive evidence the effect may be stronger among Republican appointments. Importantly, criminal defendants assigned to former defenders are in some instances also more likely to end up with shorter incarceration sentences too – by about 18 months. As explanation, we show evidence that former defenders are less willing to sentence defendants to extremely long sentences (in excess of 30 years).

This article makes two important contributions that expand on existing research. The first contribution is to document a new area of discrepancies faced by criminal defendants. Research has so far mostly focused on sentencing differences associated with defendant characteristics (e.g., defendants’ race); however, the findings in this study corroborate a growing literature showing that the characteristics of criminal legal system actors – such as judges – may also impact sentencing. Discrepancies such as those documented here are highly important: more punitive sentences lead to greater political disengagement (Weaver and Lerman, 2010) (of those incarcerated as well as their families and communities, Burch (2013); Lee, Porter and Comfort (2014); Sugie (2015); White (2019a)); in addition, harsher sentences may increase recidivism (Doleac, Forthcoming). It is possible that judges’ previous professional experience could affect such negative downstream effects.

The second contribution is to the growing judicial politics literature on the impact of judicial backgrounds on decision making. The recent literature has mostly focused on judges’ descriptive characteristics, such as race or gender (e.g., Boyd, Epstein and Martin, 2010), with previous, more descriptive studies looking at previous judicial experience or attributes of social backgrounds (e.g., George and Weaver, 2017). This study takes this literature a step further by identifying an important area in which a specific kind of *professional* background – public defender experience – contributes to judicial decision making. In so doing, this research highlights how policy makers can strategically use judicial selection on the basis of a particular kind of professional experience to further their own policy preferences through the courts.

This article proceeds as follows. In Part 2, we highlight the growing literature documenting disparate treatment of criminal defendants and how it may vary with judges’ previous criminal justice experience. The data – drawn from an expansive trove of federal sentencing data – are discussed in Part 3. Part 4 presents the key results, which are that sentences issued by former criminal defenders are less likely to include incarceration and, in some cases, much shorter. Part 5 concludes by noting how these findings inform judicial

politics research and broader questions of policymaking through the courts.

## 2 How Criminal Sentences May be Impacted by the Criminal Justice Experience of Judges

Our inquiry is motivated by two connected research streams. The first concerns how similarly situated defendants may be treated differently by the criminal system. Punishment severity can have important downstream consequences, including dampening effects on political and civic participation (e.g., Weaver and Lerman, 2010). This is the case even when incarceration is brief (White, 2019*b*). Scholars have found that leniency in the criminal courts can lower the likelihood that individuals commit additional offenses (Agan, Doleac and Harvey, 2021), which is important since others have shown long-term economic consequences associated with a criminal record (Pager, 2003; Mueller-Smith and Schnepel, 2021).

Much research on these disparities has focused on defendant characteristics, including studies documenting more punitive sentences faced by non-White defendants (e.g., Arnold, Dobbie and Yang, 2018; Demuth and Steffensmeier, 2004; Kleck, 1981; Steffensmeier and Demuth, 2000). (This extends to the death penalty (e.g., Phillips and Marceau, 2020), although juries, not judges, make federal death determinations.) Studies further show that defendants’ interactions with the criminal legal system could also be impacted by characteristics of law enforcement – including the race of police officers (Brown and Frank, 2006; Bradbury and Kellough, 2011; Headley and Wright, 2020; Shoub et al., 2020), prosecutors (Farrell, Ward and Rousseau, 2009), and jurors (Sommers and Ellsworth, 2001).

Most relevant to our inquiry are papers identifying a relationship between the characteristics of *judges* and criminal sentence severity. This includes papers showing that defendants – particularly Black defendants – whose cases are assigned to Black federal judges tend to receive less punitive sentences than those whose cases are assigned to White judges

(Scherer, 2004; Harris, 2018). (Some earlier findings – e.g., Steffensmeier and Britt (2001); Welch, Combs and Gruhl (1988) – show sentences issued by Black judges may be more severe than those issued by White judges.) Along the same lines, Steffensmeier and Hebert (1999) find that women judges sentence more harshly than their male counterparts, while (Cohen and Yang, 2019) identify a smaller racial disparity in women judges’ sentencing. Perhaps the strongest findings concern sentences given by Republican-appointed judges versus Democratic-appointed judges, with studies showing that Republican-appointed judges, on average, award more punitive and racially disparate sentences (e.g., Cohen and Yang, 2019, among others).

The political science literature on judicial decision making in civil cases also supports our inquiry, linking judges’ personal characteristics – such as their gender, race, ethnicity, and any interactions of these – to their decision-making (Haire and Moyer, 2015; Boyd, 2016) across civil rights (Cox and Miles, 2008), racial discrimination (Kastellec, 2013), and gender discrimination cases (Boyd, Epstein and Martin, 2010). These findings comport with ample literature in political science documenting the importance of partisanship and ideology in fundamentally shaping judicial decision making (e.g., Epstein, Landes and Posner, 2013; Segal and Spaeth, 2002).

Older, more descriptive studies have looked at how judges’ *professional* experience might relate to judicial decision making (see George and Weaver, 2017, for an overview). In terms of previous experience with the criminal legal system, the most relevant studies are the descriptive inquiries of Tate (1981) and Johnston and Peabody (1976), which looked at a variety of personal attributes and their relationship to Supreme Court voting, finding a positive relationship between prosecutorial experience and more conservative voting. This is consistent with the descriptive work of Nagel (1962) and (Nagel, 1974), which look at a variety of background characteristics of few hundred state and federal judges and their non-unanimous rulings in one year (1955) on selected criminal cases, finding that previous prosecutorial experience is related to being less likely to vote for the defense. In terms

of other kinds of experiences, Epstein, Knight and Martin (2003) examines the norm of previous judicial experience among Supreme Court justices, arguing that it results in a homogeneous Court (see also George, 2007). Brudney, Schiavoni and Merritt (1999) examine judges with management experience in labor law cases, finding that judges with managerial experience are more likely to side against the unions' position. A recent unpublished study on this topic is Shepherd (2021), which shows that judges with corporate and prosecutorial experience are more likely to favor employers in employer-employee conflicts.

Research has yet to explore the possible impact of any previous criminal defense experience, perhaps surprising given American law's emphasis on the right to defense counsel. That said, the literature does shed light on expectations and pathways for this relationship. A theme from the scholarship is that judges' characteristics are predictors of case outcomes, primarily as they relate to important features of the case. For example, a very influential paper, (Boyd, Epstein and Martin, 2010), shows that federal appeals panels that have at least one female member vote differently than all-male panels but that they do so in cases having a gender component, such as sexual harassment or reproductive rights cases. The authors posit that this is in part due to "informational accounts," which would suggest "unique and valuable information emanating from shared professional experiences" (Boyd, Epstein and Martin, 2010, p. 391) playing an important role in decision-making.

Applied to sentencing and public defenders, this suggests a potential mechanism, although there could be others. First, we would expect former public defenders to have more knowledge about how incarceration impacts defendants' and their families' lives. Indeed, public defenders routinely form strong, empathetic connections with their clients and their families, no doubt developing greater sensitivity to the externality costs associated with incarceration. Second, and relatedly, the proximity to clients has the potential to people more sensitive to the ways in which institutional and societal structures contribute to criminal offenses. This may make public defenders less likely to favor measures that are primarily punitive. Third, defenders must be acutely aware of prosecutors' enormous

power and significant resources relative to their own. For Judge Ketanji Brown Jackson, for example, her public defender experience was a reminder “that every person who is accused of criminal conduct by the government, regardless of wealth and despite the nature of the accusations, is entitled to the assistance of counsel” (Jackson, 2021, p. 5). All of these would imply that public defenders are likely to have a different perspective of the criminal legal system – and its heavy consequences – than other judges.

Advocates of increasing former public defenders’ representation on the court have pushed for these judges precisely by arguing that they have an important viewpoint on criminal sentencing. As one organization wrote in support of appointing more public defenders, “the more [public defenders] that are nominated and confirmed, the better our justice system will be.”<sup>1</sup> This makes the approach attractive for political actors seeking policy change through the courts. Indeed, unlike earlier politicians (Ronald Reagan or Jimmy Carter), who campaigned on the basis of making demographically based appointments primarily to appeal to political constituencies rather than as a way to change policy, supporting the appointment of more public defenders onto the courts appears to be part of an emerging pattern of using experiential diversity to advance a policy agenda. According to one observer, an increase in the number of public defenders appointed would mean that “[i]t would take two or three presidencies, and an overwhelming number of governors and state lawmakers working to change their judiciaries,” but it would lead to “a real shift in the scales of justice” (Geidner, 2021).

We note that we may expect the opposite relationship between prosecutorial experience and sentencing, especially given older research suggesting as such (Nagel, 1962, 1974). The pathway between this type of experience and sentencing is, however, less clear in modern times. First, many future judges and elected officials pursue a prosecutorial careers (for example as U.S. Attorneys) as a way to signal political interest, which may make it a less impactful experience. Second, many former U.S. Attorneys (or attorneys general)

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<sup>1</sup><https://www.afj.org/article/from-the-defense-table-to-the-bench-the-importance-of-public-defenders-as-judges/>

develop primarily civil rather than criminal experience, which would weaken the potential relationship to criminal sentencing. Lastly, many former federal prosecutors go in and out of government work, identifying primarily as government lawyers representing the government’s position. Many judges are former government lawyers, however. This would make clear relationship between prosecutorial experience and sentencing difficult to identify.

### 3 Data on Sentencing and Judges’ Criminal Justice Experience

In 2005 *United States v. Booker* gave federal judges the ability to deviate from U.S. federal criminal sentencing guidelines, making their input into sentencing highly important. Judges may also depart from the statutory minimums associated with specific charges provided a defendant cooperates (Bogan, 2012).

Data for this project therefore draw on two sources: (1) federal criminal sentencing data and (2) data on federal judges’ previous work experience.

**Federal Charging and Sentencing Outcomes.** For federal sentencing outcomes, we obtained data from the Transactional Records Access Clearinghouse (TRAC) via special permission. TRAC invokes the Freedom of Information Act to make repeated requests to federal agencies regarding federal criminal and immigration enforcement. This includes information on all federal criminal charges that are handled by federal courts from the Administrative Offices of the Courts. The raw requests are then digitized and minimally processed.

We use these data to examine all available federal criminal charges from January 1, 2010, to December 31, 2019 – 5,522,432 unique charges. We narrowed these down to include only those charges assigned to an identified federal district judge (or a visiting appeals judge, in some cases). The dropped cases included those assigned to magistrate judges, who are not Article III judges and for whom there is no professional experience



data.<sup>2</sup> This left us with 3,644,951 charges handled by 1,447 unique federal judges.

The primary outcome of interest the sentence, if any, associated with a charge. We therefore narrowed the charges to those for which there is a “guilty disposition,” coded as such in the data. This includes cases where the defendant pled guilty, went forward with a trial and was found guilty by a jury or judge, or otherwise ended up with a guilty disposition. Narrowing the data in this way yielded 725,608 unique charges with guilty dispositions that also had sentencing information. (In the Appendix, we investigate guilty dispositions as an outcome variable across all charges, finding it has substantively no relationship to the criminal justice experience of the assigned judge.)

Note that that many charges in the federal system are resolved via plea agreements. Since judges may be more hesitant to intervene in such cases, we at times examine these separately. (Approximately 84 percent of the charges we examine are pleas.) We also conduct separate analyses focusing on instances where a jury or bench trial leads to a guilty verdict. Because any one case can have multiple defendants, we cluster on the unique case identifiers in the analyses, discussed below.

We examine several sentencing outcomes. First, we consider type of sentence (incarceration, community service, and probation), paying closer attention in the analyses to incarceration, the most punitive of the possible outcomes. (Analyses on community service and probation are in the Appendix.) Second, we examine length of incarceration in months.<sup>3</sup> (We do not examine the death penalty as an outcome because it must be handed down by a jury, not a judge.) Table 1 provides a more detailed breakdown of sentences by disposition.

Throughout the analyses, we include the federal district court, month, and year (by way of month-year) as fixed effects. We do so because it is necessary to condition on

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<sup>2</sup>Many misdemeanor and all petty offense charges are handled by magistrate judges. In the Appendix, we present analyses that drop such charges, restricting the sample space to only felonies. The substantive results are unaffected.

<sup>3</sup>Total number of months incarcerated is calculated by adding up the reported days, months, and years of incarceration.

	Pleas	Jury or Bench Trials	All Guilty Disposition
Share of All Guilty Dispositions	0.84	0.04	1.00
Any Incarceration	0.80	0.88	0.80
Any Community Service	0.02	0.03	0.02
Any Probation	0.09	0.06	0.09
N	612364.00	31182.00	725608.00

Table 1: Summary statistics on federal charges denoted as having a guilty disposition (among those assigned to a federal district or appeals judge only).

jurisdiction and time in order to invoke the assumption that cases are assigned to judges without regard to their previous professional experience. (Note that recent literature such as Levy (2017) has called into question whether cases are fully randomized to appeals judges, but there is less reason to think that possible case assignments in the district courts would vary according to the previous professional experience of the judge.) Including a district court dummy also averages out the fact that some jurisdictions (e.g., New York’s Southern District, which includes financial hubs) tend to hear different kinds of criminal cases than others (e.g., California’s Southern District of California, which includes major border areas). Month and year dummy variables also ensure that any patterns are not driven by temporal variation – e.g., sentencing overall becoming harsher or temporal blips associated with current events. Finally, although we cannot control for the exact charge, we do include a control for whether the charge is a felony.<sup>4</sup>

**Judges’ Previous Criminal Justice Experience.** In addition, we obtained biographical data on judges from the Federal Judicial Center (FJC). The FJC maintains an updated database containing biographical information for all federal district and appeals judges, including age, race and ethnicity, gender, duration and type of service, and political factors (such as their Senate confirmation vote margin and the name of the president who appointed them).

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<sup>4</sup>Data on the charge type is unfortunately often not coded in the raw data; substantive inferences do not change if we drop this variable.

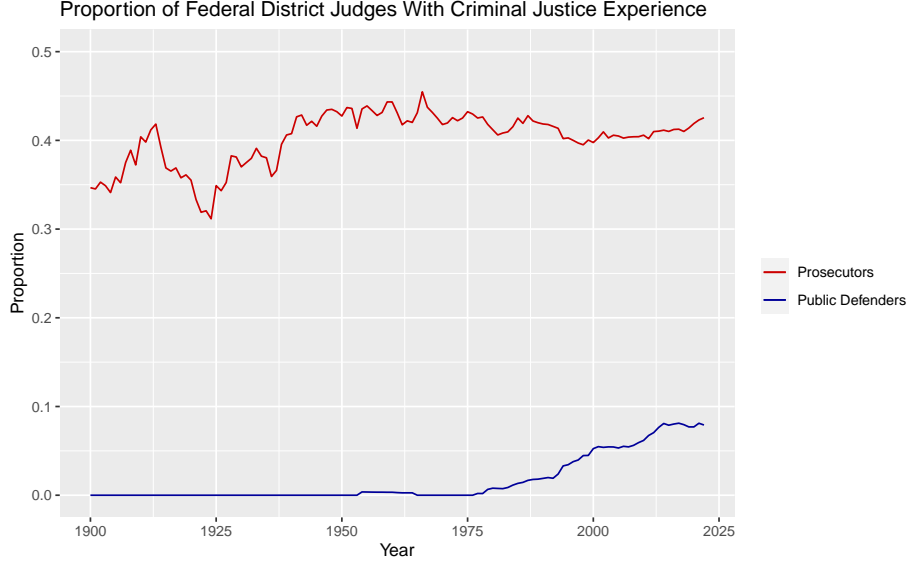


Figure 1: Proportion of federal district judges with prosecutorial (red) or defender (blue) experience over time. Source: Federal Judicial Center.

The FJC data also provides a brief description of judges’ professional experience, including previous prosecutorial or public defender experience. To extract information pertinent to our analyses, we use pattern matching. For example, to determine which federal judges had previous criminal defense experience, we included an indicator for any entries that mentioned “public defender,” “defender,” or “defense” at least once.<sup>5</sup> To examine, which judges had previous prosecutorial experience, we identified those entries that had at least one mention of “prosecutor,” “district attorney,” or “attorney general.” We also included any mentions of federal prosecutorial experience – e.g., “U.S. Attorney” or “Assistant U.S. Attorney.”<sup>6</sup> We then manually inspected both sides of coding. In the Appendix, we provide finer-grained analyses on subsets of these judges. Figure 1 shows how the share of

<sup>5</sup>A concern may be that we have captured judges who previously had expensive criminal defense practices and lack a strong tie to the experiences of average defendants, but a manual examination of the data showed no such cases. We did, however, find two cases (out of 122) where the judge had only brief volunteer public defender experience (and one instance where the judge had part-time experience). We dropped those with only volunteer experience (but kept part-time experience).

<sup>6</sup>All pattern matching allowed for alternative punctuation and/or capitalization.

both public defender and prosecutor experience has shifted over time, highlighting both the strong presence of prosecutors as well as the rising – albeit more muted – presence of those with public defender experience.

	All	Democrats	Republicans
Women	23.10	30.40	16.70
Whites	79.90	71.50	87.20
Blacks	10.40	16.70	4.90
Hispanics	6.50	7.20	5.90
Harvard Law School	6.60	8.60	4.80
Yale Law School	3.70	5.00	2.50
Public.Defender	6.40	10.30	3.00
Prosecutor	41.70	39.20	43.80
Number	1752.00	832.00	949.00

Table 2: Characteristics of U.S. District Court judges appointed since 1960. Source: Federal Judicial Center.

Zooming in on the present day, Table 2 shows the basic summary statistics of a snapshot of federal district judges on these dimensions. Of the 1752 judges listed in the FJC database who were appointed to the U.S. District Courts in 1960 or later and were active when we received the sentencing data, about 6% of them listed some sort of defender or public defender experience, while 36% of them list some sort of prosecutorial experience, with most having experience as U.S. attorneys. (Twenty judges, or 1.9 percent, have both.) That said, the largest shares of judges have some sort of private practice experience. An interesting point of comparison is that there were more judges educated at Harvard Law School than with public defender experience.

## 4 Relationships Between Sentencing Outcomes and Judges’ Public Defender Experience

We examine the impact of public defender or prosecutorial status on several criminal sentencing outcomes: (1) whether an individual is sentenced to incarceration and (2) length

of incarceration, if any. For the latter, we pay particularly close attention to extremely long sentences. We examine sentences involving community service and probation in the Appendix, finding that former public defenders are more likely than others to sentence to both.

As discussed, these outcomes are conditional on a defendant being sentenced. We therefore subset the analyses to those charges that resulted in some sort of “guilty disposition” – coded as such in the data – and for which there is some sort of sentence reported ( $n=1,471,312$ ). We, at times, subset the data to evaluate pleas and guilty dispositions associated with a jury or bench trial, separately; we do so because, although judges have the authority to deviate in pleas, they may be likely to defer to any agreements.<sup>7</sup>

Unless otherwise noted, all analyses include fixed effects for (1) district court, (2) year of charge, and (3) month of charge, to invoke the as-if random assignment of case to judge. The models also include fixed effects or dummies for (4) whether the charge was a felony, (5) judge gender, (6) party of the president who appointed the judge, and (6) judge race/ethnicity. All specifications also include a numerical control for judge commission year, which takes into account the assigned judge’s experience on the bench and also, more roughly, age. Lastly, there may be multiple defendants charged as part of the same case. For this reason, all models present standard errors clustered at the case level and also at the participant level (using unique identifiers within the AOC data), which account for interdependence among sentences in the same case and, if relevant, the same defendants.

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<sup>7</sup>We also examine trials, pleas, and general guilty dispositions as outcomes of interest among all criminal charges, so as to understand whether the assignment to a former public defender might change these sorts of outcomes. These results are included in the Appendix. We do find some significant differences in these outcomes between public defender/prosecutor judges with regards to going to trial (bench or jury trials) or pleading, but the effects are close to 0 with a sample size of close to 3 million. This suggests that the primary effects on sentence type and severity are not due primarily to selection bias in the types of cases that advance to sentencing.

Table 3: Outcome is whether sentence (if any) included any incarceration. All models are linear probability models and include fixed effects for district, month, year, and identity of appointing president. Standard errors clustered at the case and defendant level.

	Jury or Bench Trial Only	Pled Only	All
Pub Defender	-0.016+ (0.009)	-0.017*** (0.003)	-0.022*** (0.003)
Prosecutor	-0.006 (0.005)	0.038*** (0.002)	0.030*** (0.001)
Female	-0.008 (0.005)	0.013*** (0.002)	0.017*** (0.001)
Black	0.001 (0.008)	0.007** (0.002)	0.009*** (0.002)
Hispanic	0.032*** (0.007)	-0.015*** (0.002)	-0.013*** (0.002)
Asian American	-0.005 (0.025)	0.017** (0.006)	0.037*** (0.004)
American Indian	0.009 (0.138)	-0.094*** (0.015)	-0.079*** (0.014)
Two or More Races/Ethnicities	0.095* (0.042)	0.039*** (0.008)	0.044*** (0.008)
Judge Commission Year	-0.003* (0.001)	-0.003*** (0.000)	-0.004*** (0.000)
Charge is a Felony	0.091*** (0.013)	0.094*** (0.004)	0.141*** (0.004)
Num.Obs.	31 182	612 363	725 607
R2	0.028	0.069	0.064
R2 Adj.	0.024	0.069	0.064
R2 Within	0.005	0.005	0.008
R2 Pseudo			
AIC	18 241.2	575 400.9	680 935.7
BIC	19 343.1	576 907.1	682 464.5
Log.Lik.	-8988.606	-287 567.446	-340 334.850
Std.Errors	by: Case.Id & Participant.Id	by: Case.Id & Participant.Id	by: Case.Id & Participant.Id
FE: as.factor(District.x)	X	X	X
FE: as.factor(Appointing.President..1.)	X	X	X
FE: as.factor(Month)	X	X	X
FE: as.factor(Year)	X	X	X

+ p < 0.1, \* p < 0.05, \*\* p < 0.01, \*\*\* p < 0.001

## 4.1 Whether a Sentence Involves Incarceration

We first examine whether a sentence involves any period of incarceration. (These sentences could also include other punishments along with incarceration, including fines or community service.) As context, about 80 percent of “guilty” charges with sentencing information involved some period of incarceration (Table 1). (We examine additional important outcomes – community service and probation – in the Appendix, showing that charges assigned to former public defenders are more likely to be end in one of these relatively less punitive outcomes.)

Table 3 shows a series of linear probability models with any period of incarceration as the outcome. We condition the universe of guilty dispositions to instances where there is a jury or bench trial verdict (Column 1), there is a plea (Column 2), or all guilty dispositions (Column 3). The table shows a negative relationship between incarceration and being

assigned to a judge with previous experience as a public defender, even taking into account the party of the judge’s appointing president (and, thus, their party), the judge’s age, race, and gender, and whether the charge involves a felony. (In the Appendix, we show additional analyses subsetting only to felonies; the substantive inferences are the same.) On average, for charges with guilty dispositions, this difference is a decrease of about 2.2 percentage points (Column 3). The effect is significant at the 5 percent level for pleas and among all guilty dispositions but narrowly misses 5 percent significance ( $p$ -value of 0.08) among the smaller share of charges that went to trial.

The effect may initially appear substantively small (up to 2.2 percentage points), but, given the volume of sentences, it has meaningful ramifications. A back-of-the-envelope calculation suggests that having 8 percent of federal district judges with previous experience as public defenders (as was the case in 2020) as opposed to prosecutorial experience results in approximately 3000 fewer incarceration sentences over a ten-year period. Hypothetically projecting, if the current share of judges with prosecutorial experience (35 percent) instead had public defender experience, we would have about 13,200 fewer incarceration sentences over a ten-year period. And as we show later, many of these would be extremely long sentences.

The model also includes a dummy for previous prosecutorial experience – including previous experience as a U.S. Attorney or Assistant U.S. Attorney. There is no significant relationship between prosecutorial experience and incarceration for cases with guilty verdicts (and the coefficient is in the opposite direction than expected); however, for pleas and for all guilty dispositions, the effect is about a 3-3.8 percent increase in incarceration sentences. The figure could have massive impact considering the number of sentences in the data, but we note inconsistency across the procedural posture (especially when compared with the public defender results).

## 4.2 Length of Incarceration

We next consider incarceration length. Studies have shown that harsher sentences might reduce crime by keeping people incarcerated and therefore unable to commit additional crimes (Owens, 2009), but harsh sentences might also have negative downstream impacts on recidivism (e.g., Doleac, Forthcoming).

For the analyses that follow, we calculated the length of incarceration as the total number of months sentenced. Note, that for some charges, the sentence was tantamount to life in in prison, if not more.<sup>8</sup> For example, 352 unique incarceration sentences in the data exceeded 100 years, while 57 exceeded 500 years and 14 exceeded 1000 years. These extremely long sentences create concerns not just about data entry, but also about a rightward skew that could bias analyses on sentence length. Thus, for any sentence equal to or in excess of 100 years, we imputed a conservative figure of 100 years, which is well in excess of the average human lifespan. (Additional specifications in the Appendix show that the specific choice of 100 years does not impact the substantive inferences, although it does affect the size of the coefficient.)

Using this truncation, Figure 2 shows the density of incarceration length (in months) for charges that eventually went to a jury or bench trial (left panel) and those that were pled (right panel), among former public defenders, prosecutors, and all judges. The figure shows that, for charges proceeding to trial, former public defenders give both short (< 200 months) and very long sentences (> 900 months) less frequently than their colleagues who lack that prior professional experience. Sentence lengths for pleas, on the other hand, appear relatively equivalent across judges.

We formally test the relationship between professional experience and sentence length in Table 10, which shows a series of OLS regressions with the total months incarcerated, truncated at 100, as the outcome variable. As before, we include a battery of controls and

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<sup>8</sup>This was inconsistently coded. For some, this was labeled as an incarceration “type”; for others, the incarceration length exceeded average human life expectancy.



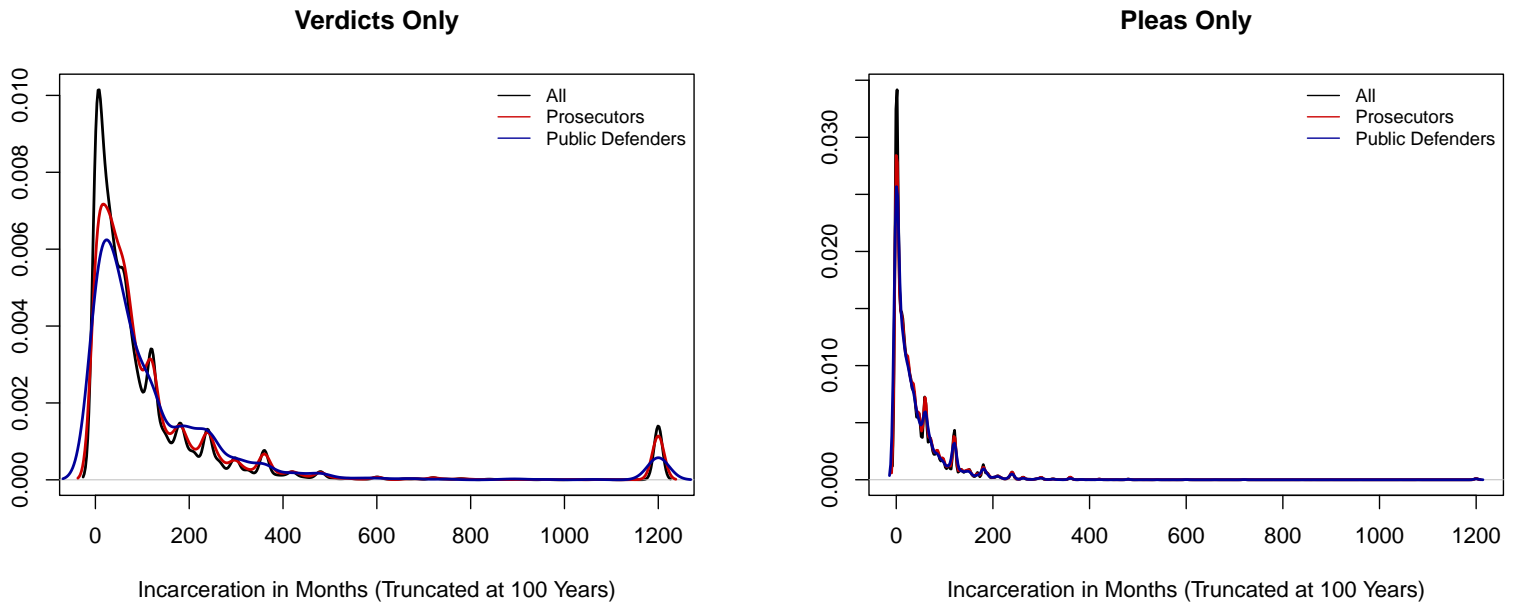


Figure 2: Density of incarceration length for all (black), prosecutor (red) or defender (blue) judges. Left panel shows incarceration length only for charges that were resolved in a jury or bench trial; right panel shows hows incarceration length only for charges that were pled. All incarceration lengths are truncated at 100 years (1200 months).

Table 4: Outcome is incarceration length truncated at 100 years (1200 months). All models are OLS and include fixed effects for district, month, year, and identity of appointing president. Sentences exceeding 100 years are coded as 100 years. Standard errors clustered at the case and defendant level.

	Jury or Bench Trial Only	Pled Only	All
Pub Defender	-18.016* (7.033)	-0.015 (0.462)	-0.925+ (0.546)
Prosecutor	1.451 (4.110)	1.605*** (0.283)	1.507*** (0.330)
Female	-6.157 (4.232)	1.230*** (0.301)	0.920** (0.341)
Black	2.481 (7.058)	-1.168* (0.458)	-0.968+ (0.580)
Hispanic	-10.146* (4.462)	-5.160*** (0.365)	-4.763*** (0.410)
Asian American	-35.940* (13.976)	-2.339* (1.112)	-3.161*** (0.895)
American Indian	177.269 (145.681)	-4.208*** (1.095)	-1.805 (1.494)
Two or More Races/Ethnicities	-30.410 (29.357)	-2.195* (0.912)	-2.447* (0.984)
Judge Commission Year	0.746 (1.065)	-0.022 (0.067)	-0.089 (0.083)
Charge is a Felony	6.572 (9.268)	1.253+ (0.757)	5.907*** (0.813)
Num.Obs.	31 182	612 363	725 607
R2	0.096	0.075	0.062
R2 Adj.	0.092	0.075	0.062
R2 Within	0.001	0.001	0.001
R2 Pseudo			
AIC	423 048.9	6 845 818.4	8 411 690.5
BIC	424 150.7	6 847 324.6	8 413 219.3
Log.Lik.	-211 392.433	-3 422 776.204	-4 205 712.227
Std.Errors	by: Case.Id & Participant.Id	by: Case.Id & Participant.Id	by: Case.Id & Participant.Id
FE: as.factor(District.x)	X	X	X
FE: as.factor(Appointing.President..1.)	X	X	X
FE: as.factor(Month)	X	X	X
FE: as.factor(Year)	X	X	X

+ p < 0.1, \* p < 0.05, \*\* p < 0.01, \*\*\* p < 0.001

fixed effects. As Table 10 demonstrates, for criminal charges that are resolved via a jury or bench trial (Column 1), there is indeed a sizable effect associated with being assigned to a former public defender, with these defendants on average receiving sentences that are around *18 months shorter*, a statistically significant effect. There is no significant effect for charges that were pled (Column 2), echoing the overlap in the right-side panel of Figure 2. Unsurprisingly, because the majority of the guilty dispositions are pleas, there is not a significant relationship between public defender experience and sentence length among all guilty dispositions (Column 3). By contrast, we find no effect of prosecutorial experience on sentence length when it comes to cases that advanced to trial (Column 1), but we do see more modest effects (about 1.5 months increases) among pleas and among all guilty dispositions (Columns 2 and 3).

What is driving the large sentence decrease for charges assigned to public defenders in Table 10, Column 1? A possible answer lies in Figure 2, which shows that former public defenders appear to be more hesitant than their colleagues to mete out very long sentences in charges that proceed to trial. To examine how former public defenders approach such sentences more closely, we present a series of regressions in which we dichotomize long sentences versus not – specifically considering whether a sentence was longer than (1) 100 years, (2) 70 years, and (3) 30 years. We do so only for charges that involved a jury or bench trial – a small but important share of sentences – as this is the only subset on which Table 10 shows a large difference.

These results are shown in Table 5, and provide additional support for the intuition that former public defenders are especially unlikely to mete out extremely long sentences. Specifically, at each dichotomized level, public defenders are less likely, by approximately 1-2 percentage points, to give out that sentence. Also note that using different cut points yields similar results for sentences in excess of 30 years, which could be driven by very long sentences at the extreme high end, but does suggest a strong pattern for former public defender sentencing practices. We see no similar pattern for former prosecutors.

Table 5: Outcome is incarceration length being greater than some length (yes or no). All models are linear probability models and include fixed effects for district, month, year, and identity of appointing president. Standard errors clustered at the case and defendant level.

	More than 100 Years	More than 70 Years	More than 30 Years
Pub Defender	−0.011* (0.006)	−0.012* (0.006)	−0.022** (0.008)
Prosecutor	−0.001 (0.003)	−0.001 (0.003)	0.003 (0.005)
Female	−0.003 (0.003)	−0.004 (0.003)	−0.007 (0.005)
Black	0.004 (0.006)	0.003 (0.006)	0.008 (0.008)
Hispanic	0.001 (0.003)	0.001 (0.003)	0.004 (0.005)
Asian American	−0.015 (0.011)	−0.017 (0.011)	−0.039** (0.015)
American Indian	0.120 (0.137)	0.119 (0.137)	0.232 (0.146)
Two or More Races/Ethnicities	−0.026** (0.009)	−0.027** (0.009)	−0.034 (0.032)
Judge Commission Year	0.000 (0.001)	0.000 (0.001)	0.001 (0.001)
Charge is a Felony	−0.006 (0.008)	−0.006 (0.008)	0.002 (0.009)
Num.Obs.	31 182	31 182	31 182
R2	0.033	0.034	0.062
R2 Adj.	0.029	0.030	0.058
R2 Within	0.001	0.001	0.001
R2 Pseudo			
AIC	−21 512.3	−19 533.6	3181.3
BIC	−20 410.4	−18 431.7	4283.2
Log.Lik.	10 888.131	9898.776	−1458.647
Std.Errors	by: Case.Id & Participant.Id	by: Case.Id & Participant.Id	by: Case.Id & Participant.Id
FE: as.factor(District.x)	X	X	X
FE: as.factor(Appointing.President..1.)	X	X	X
FE: as.factor(Month)	X	X	X
FE: as.factor(Year)	X	X	X

+ p < 0.1, \* p < 0.05, \*\* p < 0.01, \*\*\* p < 0.001

### 4.3 Differences by Party

The analyses presented included fixed effects for identity of appointing president. A benefit of this approach is that it incorporates more information into the models than just the appointing president’s party, because, even conditional on party, some presidents are more focused on crime than others. For example, President Donald Trump campaigned with an aggressive “tough on crime” platform, and observers have noted that the judges he nominated are more conservative than previous Republican-appointed federal judges (Bonica and Sen, 2021). However, as a more general matter, we are also interested in whether the association between previous experience as a public defender and sentencing varies with political party. For example, because the Republican Party has traditionally been “tough on crime”, public defender experience may attenuate these tendencies and therefore result in an even stronger effect among Republican-appointed judges with public defender experience. For Democratic judges, because they may be less punitive to begin with, the public defender “effect” may be weaker.

Table 6 therefore includes an analysis where we interact Republican-appointed judges with public defender status (Democratic presidential appointment is the omitted category). Note that interpretations of these results must be tempered by the fact that only about 3 percent of Republican appointees have defender experience, compared to about 10 percent of Democratic appointees (Table 2).

That said, the table does suggest some differing effects of public defender experience by party across some subsets of the data, although the narrative is not uniform. There is not a significant difference between Republican and Democratic sentencing when it comes to jury or bench trials (Column 1), but there is for pleas (Column 2) and all guilty dispositions (Column 3). Columns 2 and 3 both show heightened effects of public defender experience among Republican appointed judges – reducing incarceration by a further 2 percent for pleas and 1.6 percent overall. We cannot rule out that there is no difference between judges of the two parties when it comes to the length of incarcerations that result from

Table 6: For Columns 1-3, outcome is whether sentence (if any) included any incarceration. Models are linear probability models and include fixed effects for district, month, year, and party of appointing president interacted with public defender. For Column 4, outcome is truncated sentence length for sentences with jury or bench trials. For all models, standard errors clustered at the case and defendant level.

	Any Incarceration (Trials)	Any Incarceration (Pleas)	Any Incarceration (All)	Incarceration Length
Pub Defender	-0.022+ (0.012)	-0.013*** (0.003)	-0.019*** (0.003)	-14.024 (8.579)
Republican	0.001 (0.005)	0.026*** (0.002)	0.026*** (0.001)	9.750** (3.715)
Prosecutor	-0.007 (0.005)	0.038*** (0.002)	0.029*** (0.001)	1.487 (4.023)
Female	-0.009+ (0.005)	0.014*** (0.002)	0.018*** (0.001)	-7.437+ (4.203)
Black	0.001 (0.008)	0.007** (0.002)	0.010*** (0.002)	1.767 (6.990)
Hispanic	0.034*** (0.007)	-0.016*** (0.002)	-0.012*** (0.002)	-10.186* (4.376)
Asian American	-0.007 (0.025)	0.016** (0.006)	0.039*** (0.004)	-37.617** (13.980)
American Indian	-0.013 (0.138)	-0.104*** (0.015)	-0.091*** (0.014)	168.892 (145.618)
Two or More Races/Ethnicities	0.074+ (0.041)	0.030*** (0.008)	0.034*** (0.008)	-39.727 (28.941)
Judge Commission Year	0.000 (0.000)	0.000* (0.000)	-0.001*** (0.000)	0.229 (0.196)
Charge is a Felony	0.090*** (0.013)	0.094*** (0.004)	0.142*** (0.004)	6.474 (9.288)
Pub Defender * Republican	0.017 (0.019)	-0.020* (0.008)	-0.016* (0.008)	-12.292 (14.708)
Num.Obs.	31 182	612 363	725 607	31 182
R2	0.026	0.069	0.064	0.096
R2 Adj.	0.023	0.068	0.064	0.092
R2 Within	0.005	0.006	0.009	0.002
R2 Pseudo				
AIC	18 274.7	575 608.2	681 302.7	423 049.9
BIC	19 309.8	577 023.8	682 739.5	424 085.0
Log.Lik.	-9013.362	-287 679.080	-340 526.338	-211 400.943
FE: as.factor(District.x)	X	X	X	X
FE: as.factor(Month)	X	X	X	X
FE: as.factor(Year)	X	X	X	X

+ p < 0.1, \* p < 0.05, \*\* p < 0.01, \*\*\* p < 0.001

trials. Overall, public defender experience appears to affect judges' sentencing regardless of party, but the effect is somewhat stronger among Republican judges when sentencing in certain types of cases.

## 5 Discussion and Conclusion

The results in this study provide evidence that criminal defendants assigned to federal district judges who are former public defenders are less likely to be sentenced to incarceration. We observe these results for both Republican- and Democratic-appointed judges, with some limited evidence that the “public defender effect” may be stronger for Republicans. In addition, for charges with a bench or jury verdict, assignment to a former public defender results in incarceration sentences that are about 18 months shorter on average. Former public defenders' lower likelihood of handing down extremely long sentences – 30 years or more – appear to be driving this finding, at least in part.

That said, the relationship between previous prosecutorial experience and sentencing is less straightforward. Defendants whose cases are assigned to former prosecutors may be more likely to receive sentences of incarceration, but the length of the sentences they receive after conviction in a bench or jury trial are generally unaffected.

What does this mean for our understanding of fairness in the courts and of the politics of judicial behavior? First, from a policy perspective, the results suggest that policy makers can indeed shape substantive outcomes of interest with careful selection of their judicial appointees. In this case, more progressive politicians can impact criminal justice outcomes through their appointments of judges with criminal defense experience. Consistently appointing former public defenders would reduce the number of people incarcerated and, potentially, prison sentence length, even, as we show here, among judges appointed by the same president. Even a subtle shift would result in thousands of fewer sentences of incarceration per year. By contrast, “law and order” politicians could – more slightly – move the dial in the other direction by specifically nominating more individuals with

prosecutorial experience.

Second, it is important to note that shifts in the courts' sentencing outcomes have downstream consequences. Deciding whether or not a defendant will be incarcerated is hugely consequential for the individual's life. In addition to loss of freedom and connection with their outside lives, incarceration can further remove individuals from political life and decrease their sense of political efficacy (Weaver and Lerman, 2010).

Finally, the findings contribute to our understanding of judicial decision making. Previous work has shown how judges' personal characteristics – such as their age, race, gender, or religion – influence their decision making, showing that they do so mostly when some dimension of a case is relevant to that identity. Here, we see that previous professional experience – in particular, criminal defense experience – can work similarly. As we show, having previous public defender experience predicts judicial decision making when it comes to criminal cases, with public defenders exhibiting the hallmarks of individuals who are more skeptical of longer, more punitive sentences. This would be consistent with the broader judicial politics literature on decision making, but would expand it in the important direction of professional background.

We conclude by noting important areas of further research. First, in this analysis, assuming mostly random assignment of cases to judges is reasonable given district and month fixed effects. Although it is possible that this assumption may be too strong, non-random assignment would need to bring case attributes into alignment with previous public defender (or prosecutorial) experience, which seems less tenable. This makes it safe to say, as we do here, that there is a causal treatment effect associated with having a case assigned (or not) to a judge with public defender experience.

Second, and more broadly, our work engages an increasingly publicly salient point, which is policymakers' desire and ability to shape judicial outcomes at an institutional level. Policymakers wanting certain outcomes from the courts have previously relied on ideology as their main vehicle for judicial selection. The recent shift to name judges with



certain professional profiles – such as those with public defender profiles, which we explored here – is much more novel. More research is needed on the political motivations behind this shift, as well as its implications for policy making through the courts.

## 6 Appendix

This Appendix contains additional analyses for “How Judges’ Professional Experience Impacts Case Outcomes: An Examination of Public Defenders and Criminal Sentencing.”

### 6.1 Outcomes for All Charges, not Just Guilty Dispositions

Only criminal charges with a guilty disposition – the lion’s share of which are pleas or trial verdicts – may have associated sentencing information. However, these outcomes could themselves be impacted by a judge’s criminal justice experience. To better understand how these patterns may vary according to public defender/prosecutor status – and thus, whether selection bias may be explaining some of the main results at the sentencing stage – we examine these as outcome variables. Note here that we are looking at the entirety of charges over which we have a judge identified, so a substantially larger sample than before ( $n = 2,961,311$ ), giving us enormous statistical power.

Table 7 presents these results, looking at three procedural outcomes as the quantities of interest: (1) whether the charge was settled via a trial (bench or jury); (2) whether the defendant pled, (3) whether the dataset indicates that the charge was associated with a “guilty” disposition.<sup>9</sup> Interestingly, assignment to a public defender (Column 1) is slightly – 0.01 percent – less likely to be associated with a jury or bench trial verdict. This is close enough to 0 not to be a meaningful effect, particularly in light of the very large sample. However, assignment to a public defender does increase the probability the charge will lead to a plea deal by a more substantive 1.4 percentage points (Column 2). This is still small, but significant, and, although we cannot say anything definitive on what explains this, it could suggest less of a willingness by public defenders to reject plea deals compared to other judges or more of a willingness by defendants to pursue a plea. Lastly, for overall guilty dispositions (Column 3), the relationship associated with assignment to a former

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<sup>9</sup>For this last category, we further include dummies for disposition reason, as pleas will usually be guilty dispositions.

Table 7: Outcome is whether charge proceeded to a jury or bench trial (Column 1), was pled (Column 2), or resulted in a guilty disposition (Column 3). All models are linear probability models and include fixed effects for district, month, year, and identity of appointing president. Standard errors clustered at the case and defendant level.

	Jury or Bench Trial	Pled	Guiltyies
Pub Defender	−0.001* (0.000)	0.014** (0.005)	−0.003* (0.001)
Prosecutor	−0.002*** (0.000)	−0.006* (0.003)	0.004*** (0.001)
Female	−0.001+ (0.000)	−0.002 (0.003)	0.004** (0.001)
Black	−0.002*** (0.001)	−0.009 (0.007)	0.003* (0.002)
Hispanic	−0.010*** (0.001)	−0.009+ (0.005)	0.001 (0.001)
Asian American	−0.002*** (0.000)	−0.001 (0.010)	0.005 (0.004)
American Indian	0.002** (0.001)	−0.017 (0.022)	−0.003 (0.002)
Two or More Races/Ethnicities	−0.003*** (0.001)	0.018 (0.011)	0.003 (0.004)
Judge Commission Year	0.000*** (0.000)	0.000 (0.001)	0.000 (0.000)
Charge is a Felony	0.002** (0.001)	0.031*** (0.006)	0.002 (0.002)
Num.Obs.	2 961 311	2 961 311	2 961 311
R2	0.032	0.049	0.885
R2 Adj.	0.032	0.049	0.885
R2 Within	0.001	0.000	0.000
R2 Pseudo			
AIC	−5 167 799.9	3 831 549.0	−2 211 036.9
BIC	−5 166 084.0	3 833 264.9	−2 208 379.3
Log.Lik.	2 584 032.947	−1 915 641.510	1 105 724.449
Std.Errors	by: Case.Id & Participant.Id	by: Case.Id & Participant.Id	by: Case.Id & Participant.Id
FE: as.factor(District.x)	X	X	X
FE: as.factor(Appointing.President..1.)	X	X	X
FE: as.factor(Month)	X	X	X
FE: as.factor(Year)	X	X	X
FE: as.factor(Disposition.Reason)			X

+ p < 0.1, \* p < 0.05, \*\* p < 0.01, \*\*\* p < 0.001

public defenders is 0.03 percent – again, a precisely estimated zero – once we include the procedural posture of the case (whether it went to trial or did not).

The important question from these analyses is whether this gateway step is the primary (or even partial) explanation behind the findings in the main text regarding incarceration status and length. For *incarceration length*, the answer is clearly no: we found a relationship between public defender experience and incarceration length primarily for charges resolved via a jury or bench trial, and here, there is next to 0 difference between public defenders and others. It is statistically significant, but it is basically a precisely estimated zero.

For whether there is any incarceration, the answer is slightly more complicated. We saw in the main text that public defenders are less likely to sentence individuals to incarceration by about 2-3 percentage points (although the effect is narrowly insignificant for verdicts). If assignment to former public defenders somehow is associated with more pleas (in lieu of incarceration), then, if anything, this would logically imply that public defenders are shifting over some portion of less severe crimes into the plea category and away from incarceration. This would actually leave former public defenders with, if the mechanism was one purely based on gatekeeping at this step, slightly more severe crimes to potentially incarcerate. In other words, if there is selection into pleas, then former public defenders might only have discretion over more severe cases. The conclusion of this thought exercise is that, if anything, this would lead former public defenders to incarcerate more harshly. The evidence presented in the main text, however, provides evidence to the contrary.

## 6.2 Other Possible Interactions

We also conducted various analyses interacting public defender status with other characteristics of interest to political scientists, namely (1) race or ethnicity and (2) gender.

**Race.** Research on criminal sentencing points to important differences between Black and white judges on sentencing, with Black judges at times being more or less harsh than their white counterparts. (To our knowledge, similar effects have not been found for judges who identify as Latino/Hispanic, although the number of Latino/Hispanic judges has historically been smaller, which has made scholarly inquiry challenging.) However, this does vary according to defendant’s race, an important interplay.

While we do not have defendant race in our data – meaning that these analyses are not necessarily assessing the same effects as previous work – we do have judges’ race or ethnicity coded in the judicial biographical data. Table 8 shows analyses that interact public defender status with whether the assigned judge is Black. As the table shows, there is no significant interaction between judge race and public defender experience, suggesting no increase/decrease in the likelihood of incarceration or on incarceration length.

**Gender.** Along with judge race, there are corresponding studies looking into the relationship between gender and judicial decision making. As we discussed, most of these connect gender and decision making concerning civil complaints involving gender/sex discrimination or harassment, Title IX, and reproductive rights. However, some papers have shown gender-based differences in sentencing (Steffensmeier and Hebert, 1999), although, given that an overwhelming majority of defendants are male, the mechanisms are not so clear.

In our context, the possibly important fact is that women are overrepresented as public defenders, the opposite of most other legal practice areas (<https://www.zippia.com/public-defender-jobs/demographics/>). Thus, perhaps it may be the case female former

Table 8: For Columns 1-3, outcome is whether sentence (if any) included any incarceration. Models are linear probability models and include fixed effects for district, month, year, and party of appointing president interacted with public defender. For Column 4, outcome is truncated sentence length for sentences with jury or bench trials. For all models, standard errors clustered at the case and defendant level.

	Any Incarceration (Trials)	Any Incarceration (Pleas)	Any Incarceration (All)	Incarceration Length
Pub Defender	-0.012 (0.010)	-0.019*** (0.003)	-0.025*** (0.003)	-17.556+ (8.911)
Black	-0.002 (0.008)	0.010*** (0.003)	0.009*** (0.002)	5.268 (9.556)
Prosecutor	-0.005 (0.005)	0.036*** (0.002)	0.028*** (0.001)	1.265 (5.060)
Female	-0.005 (0.005)	0.011*** (0.002)	0.014*** (0.001)	-6.843 (4.687)
Judge Commission Year	-0.003** (0.001)	-0.003*** (0.000)	-0.004*** (0.000)	0.770 (1.143)
Charge is a Felony	0.092*** (0.013)	0.095*** (0.004)	0.141*** (0.004)	6.153 (12.046)
Pub Defender * Black	-0.003 (0.021)	-0.006 (0.007)	0.008 (0.007)	-8.828 (17.399)
Num.Obs.	31 182	612 363	725 607	31 182
R2	0.027	0.069	0.064	0.096
R2 Adj.	0.023	0.068	0.064	0.092
R2 Within	0.004	0.005	0.008	0.001
R2 Pseudo				
AIC	18 261.4	575 584.1	681 176.0	423 060.0
BIC	19 338.2	577 056.4	682 670.4	424 136.9
Log.Lik.	-9001.676	-287 662.049	-340 458.016	-211 401.013
FE: as.factor(District.x)	X	X	X	X
FE: as.factor(Month)	X	X	X	X
FE: as.factor(Appointing.President..1.)	X	X	X	X
FE: as.factor(Year)	X	X	X	X

+ p < 0.1, \* p < 0.05, \*\* p < 0.01, \*\*\* p < 0.001

public defenders have different, or more empowering experiences, as public defenders. Table 9 shows these analyses, with public defender status interacted with judge gender. In contrast to a story where female public defenders have a distinctive experience, the data suggest we cannot rule out no difference in how public defender experience operates across genders.

Table 9: For Columns 1-3, outcome is whether sentence (if any) included any incarceration. Models are linear probability models and include fixed effects for district, month, year, and party of appointing president interacted with public defender. For Column 4, outcome is truncated sentence length for sentences with jury or bench trials. For all models, standard errors clustered at the case and defendant level.

	Any Incarceration (Trials)	Any Incarceration (Pleas)	Any Incarceration (All)	Incarceration Length
Pub Defender	-0.022* (0.010)	-0.010** (0.003)	-0.020*** (0.003)	-17.850* (7.651)
Female	-0.010+ (0.006)	0.015*** (0.002)	0.017*** (0.001)	-6.112 (4.335)
Prosecutor	-0.006 (0.005)	0.038*** (0.002)	0.030*** (0.001)	1.451 (4.111)
Black	0.000 (0.008)	0.008** (0.002)	0.009*** (0.002)	2.497 (7.100)
Hispanic	0.032*** (0.008)	-0.015*** (0.002)	-0.013*** (0.002)	-10.153* (4.462)
Asian American	-0.004 (0.025)	0.015** (0.006)	0.037*** (0.004)	-35.978* (14.011)
American Indian	0.011 (0.138)	-0.096*** (0.015)	-0.080*** (0.014)	177.222 (145.687)
Two or More Races/Ethnicities	0.096* (0.042)	0.038*** (0.008)	0.044*** (0.008)	-30.439 (29.369)
Judge Commission Year	-0.003* (0.001)	-0.004*** (0.000)	-0.004*** (0.000)	0.744 (1.065)
Charge is a Felony	0.091*** (0.013)	0.094*** (0.004)	0.141*** (0.004)	6.565 (9.254)
Pub Defender * Female	0.027 (0.021)	-0.020*** (0.006)	-0.005 (0.005)	-0.709 (16.306)
Num.Obs.	31 182	612 363	725 607	31 182
R2	0.028	0.069	0.064	0.096
R2 Adj.	0.024	0.069	0.064	0.092
R2 Within	0.005	0.005	0.008	0.001
R2 Pseudo				
AIC	18 241.1	575 379.6	680 936.1	423 050.9
BIC	19 351.4	576 897.2	682 476.4	424 161.1
Log.Lik.	-8987.567	-287 555.811	-340 334.052	-211 392.431
FE: as.factor(District.x)	X	X	X	X
FE: as.factor(Month)	X	X	X	X
FE: as.factor(Appointing.President..1.)	X	X	X	X
FE: as.factor(Year)	X	X	X	X

+ p < 0.1, \* p < 0.05, \*\* p < 0.01, \*\*\* p < 0.001

### 6.3 Robustness on Truncation Decisions

There is huge variation in incarceration length, particularly at the higher end. This makes it easy for outlier sentences (for example, those in excess of 100 years) to skew results. In the main analysis we used data that were truncated at 100 years; that is: any sentence above 100 years (for example, those of 120 years) was just re-recorded as 100 years in the data. However, Table 10 shows different years of truncation starting with 80 years, 60 years, and so on. The table shows that, regardless of how we truncate the data, public defenders still a sentence defendants to fewer months of incarceration (among charges that proceeded to trial). The coefficient is no longer statistically significant when we truncate sentence length at 50 years. This suggests that there is a key difference in how judges handle sentences at the extreme high end. These results also correspond substantively with the results in Table 10, which show that dichotomizing sentences into “extremely long” sentence shows a difference in charges assigned to public defenders versus not.



Table 10: Outcome is incarceration length, truncated at different years. All models are OLS and include fixed effects for district, month, year, and identity of appointing president. Standard errors clustered at the case and defendant level.

	80 Years	70 Years	60 Years	50 Years
Pub Defender	-11.612** (3.856)	-10.558** (3.754)	-9.450** (3.642)	-8.098* (3.510)
Prosecutor	3.908+ (2.186)	3.735+ (2.092)	3.596+ (1.987)	3.499+ (1.863)
Female	-3.814+ (2.218)	-3.481 (2.133)	-3.164 (2.041)	-2.893 (1.926)
Black	1.287 (3.824)	0.853 (3.601)	0.489 (3.379)	0.197 (3.138)
Hispanic	-12.829*** (2.805)	-12.646*** (2.691)	-12.507*** (2.565)	-12.443*** (2.421)
Asian American	-19.279* (8.037)	-19.078* (7.671)	-18.780* (7.340)	-18.156** (7.039)
American Indian	23.686 (39.362)	24.497 (39.348)	25.661 (39.312)	27.192 (39.314)
Two or More Races/Ethnicities	-6.491 (25.242)	-5.789 (25.098)	-4.917 (24.906)	-3.671 (24.691)
Judge Commission Year	0.513 (0.564)	0.527 (0.539)	0.519 (0.512)	0.482 (0.481)
Charge is a Felony	15.917*** (4.362)	15.775*** (4.104)	15.496*** (3.850)	14.865*** (3.612)
Num.Obs.	31 182	31 182	31 182	31 182
R2	0.112	0.116	0.122	0.128
R2 Adj.	0.108	0.113	0.118	0.125
R2 Within	0.003	0.003	0.003	0.003
R2 Pseudo				
AIC	389 405.6	386 835.9	383 870.1	380 117.9
BIC	390 507.5	387 937.8	384 972.0	381 219.8
Log.Lik.	-194 570.818	-193 285.966	-191 803.059	-189 926.969
FE: as.factor(District.x)	X	X	X	X
FE: as.factor(Appointing.President..1.)	X	X	X	X
FE: as.factor(Month)	X	X	X	X
FE: as.factor(Year)	X	X	X	X

+ p < 0.1, \* p < 0.05, \*\* p < 0.01, \*\*\* p < 0.001

## 6.4 Community Service and Probation

We lastly investigate other important sentencing outcomes that are of special concern. (Again, all of these are conditional on a guilty disposition.) First, a pattern evidenced in the left-side panel of Figure 2 is that public defenders appear to be less likely to sentence individuals in the 0-50 month range – on the lower end of possible sentences. A possible explanation is that they instead steer punishment to incarceration alternatives like community service or probation. Of the various alternatives (community service, probations, or fines), fines are probably the most lenient, followed by community service and then probation. Because fines are present in nearly all charges in our sentencing data, we limit our inquiry into community service and probation.

Thus, Table 11 Column 1 looks at charges where the defendant was not sentenced to incarceration but instead was sentenced to community service only, an alternative to incarceration and one that perhaps would be more amenable to judges with public defender experience. In Table 11 Column 2 we look at any community service *or* probation (but again no incarceration) as the outcome, while in Column 3 we look at any community service *and* probation (but no incarceration) as the outcome. In this way, the three columns represent more lenient (but increasingly punitive) sentences compared to incarceration. For all specifications, we use a linear probability model with the usual suite of controls and fixed effects, subsetting the data minimally by looking to all guilty dispositions.

For all three columns, the assignment of cases to a former public defender results in small but significant effects. For community service and community service and probation (Columns 1 and 3) the coefficients are indeed very small. But the coefficient for community service or probation (2.2 percentage points) is significant and meaningful. Taken with our previous findings, this lends some support to the idea that public defenders are more likely to consider alternatives to incarceration. Note that we also see corresponding mirroring effects for former prosecutors in Column 2, suggesting that prosecutors are less likely.

Table 11: Outcome is no incarceration, but community service only (Column 1), community service or probation (Column 2), and community service and probation (Column 3). All models are linear probability models and include fixed effects for district, month, year, and identity of appointing president. Standard errors clustered at the case and defendant level.

	Community Service Only	Community Service or Probation Only	Community Service and Probation Only
Pub Defender	0.001*** (0.000)	0.022*** (0.003)	0.001* (0.001)
Prosecutor	0.000 (0.000)	-0.030*** (0.001)	-0.001* (0.000)
Female	0.000 (0.000)	-0.017*** (0.001)	0.000 (0.000)
Black	0.000* (0.000)	-0.009*** (0.002)	-0.001 (0.001)
Hispanic	0.000+ (0.000)	0.013*** (0.002)	-0.001 (0.000)
Asian American	0.000 (0.001)	-0.037*** (0.004)	-0.001 (0.001)
American Indian	-0.001** (0.000)	0.079*** (0.014)	-0.004*** (0.000)
Two or More Races/Ethnicities	0.000 (0.001)	-0.044*** (0.008)	-0.004** (0.001)
Judge Commission Year	0.000** (0.000)	0.004*** (0.000)	0.000 (0.000)
Charge is a Felony	-0.001** (0.000)	-0.141*** (0.004)	-0.006*** (0.001)
Num.Obs.	725 607	725 607	725 607
R2	0.007	0.064	0.018
R2 Adj.	0.007	0.064	0.018
R2 Within	0.000	0.008	0.000
R2 Pseudo			
AIC	-2 588 295.3	680 935.7	-1 510 748.2
BIC	-2 586 766.5	682 464.5	-1 509 219.4
Log.Lik.	1 294 280.644	-340 334.850	755 507.108
Std.Errors	by: Case.Id & Participant.Id	by: Case.Id & Participant.Id	by: Case.Id & Participant.Id
FE: as.factor(District.x)	X	X	X
FE: as.factor(Appointing.President..1.)	X	X	X
FE: as.factor(Month)	X	X	X
FE: as.factor(Year)	X	X	X

+ p < 0.1, \* p < 0.05, \*\* p < 0.01, \*\*\* p < 0.001

Table 12: For Columns 1, outcome is whether sentence (if any) included any incarceration. Models is linear probability models and include fixed effects for district, month, year, and party of appointing president interacted with public defender. For Column 3, outcome is truncated sentence length for sentences with jury or bench trials (OLS). For Column 2, outcome is whether incarceration is longer than 30. years (LPM). For all models, standard errors clustered at the case and defendant level.

	Any Incarceration (All)	Incarceration Length (Trials)	Incarceration Length More than 30 Years (Trials)
Pub Defender	-0.019*** (0.003)	-19.599** (7.055)	-0.023** (0.007)
Prosecutor	0.032*** (0.001)	2.139 (4.175)	0.002 (0.004)
Female	0.015*** (0.001)	-6.002 (4.241)	-0.004 (0.004)
Black	0.005* (0.002)	5.130 (7.385)	0.012 (0.008)
Hispanic	-0.015*** (0.002)	-10.019* (4.409)	0.001 (0.005)
Asian American	0.035*** (0.004)	-30.577* (14.253)	-0.026+ (0.014)
American Indian	-0.084*** (0.014)	177.570 (145.676)	0.094 (0.138)
Two or More Races/Ethnicities	0.043*** (0.008)	-31.695 (29.203)	-0.054*** (0.012)
Judge Commission Year	-0.003*** (0.000)	0.284 (1.069)	0.001 (0.001)
Num.Obs.	689 495	29 718	29 718
R2	0.059	0.098	0.052
R2 Adj.	0.058	0.094	0.048
R2 Within	0.002	0.001	0.001
R2 Pseudo			
AIC	631 498.2	403 053.3	-3030.4
BIC	633 008.8	404 140.5	-1943.2
Log.Lik.	-315 617.111	-201 395.656	1646.220
FE: as.factor(District.x)	X	X	X
FE: as.factor(Appointing.President..1.)	X	X	X
FE: as.factor(Month)	X	X	X
FE: as.factor(Year)	X	X	X

+ p < 0.1, \* p < 0.05, \*\* p < 0.01, \*\*\* p < 0.001

## 6.5 Restricting Sample Only to Felonies

In our original analysis, we excluded cases heard by magistrate judges, over whom we have no biographical (professional experience) data. These cases primarily involved non-felonies, such as misdemeanors or petty offenses. Although we have no reason to think that our choice to exclude magistrate judges affects our results – indeed, district judges are our primary focus – we consider here an alternative, which is to limit our analyses to only cases involving felony charges. These must be assigned to a district court judge. (These are coded in the data, although we have reason to think the coding is irregular.)

These are presented in Table 12, which subsets the data to only felonies. The substantive conclusions remain across the major findings.

Table 13: For Columns 1-3, outcome is whether sentence (if any) included any incarceration. Models are linear probability models and include fixed effects for district, month, year, and party of appointing president interacted with public defender. For Column 4, outcome is truncated sentence length for sentences with jury or bench trials. For all models, standard errors clustered at the case and defendant level.

	Any Incarceration (Trials)	Any Incarceration (Pleas)	Any Incarceration (All)	Incarceration Length
Prosecutor	0.001 (0.007)	0.018*** (0.003)	0.020*** (0.002)	1.500 (5.714)
Republican	0.006 (0.006)	0.011*** (0.002)	0.019*** (0.002)	8.985* (4.401)
Pub Defender	-0.016+ (0.009)	-0.019*** (0.003)	-0.024*** (0.003)	-18.128** (7.026)
Female	-0.010+ (0.005)	0.014*** (0.002)	0.018*** (0.001)	-7.418+ (4.211)
Black	0.000 (0.008)	0.007** (0.002)	0.010*** (0.002)	1.715 (7.051)
Hispanic	0.035*** (0.007)	-0.016*** (0.002)	-0.012*** (0.002)	-10.157* (4.362)
Asian American	-0.008 (0.025)	0.017** (0.006)	0.040*** (0.004)	-37.333** (13.996)
American Indian	-0.017 (0.138)	-0.093*** (0.015)	-0.086*** (0.014)	168.152 (145.643)
Two or More Races/Ethnicities	0.077+ (0.041)	0.024** (0.008)	0.030*** (0.008)	-39.952 (28.998)
Judge Commission Year	0.000 (0.000)	0.000+ (0.000)	-0.001*** (0.000)	0.228 (0.196)
Charge is a Felony	0.090*** (0.013)	0.094*** (0.004)	0.142*** (0.004)	6.376 (9.299)
Prosecutor * Republican	-0.013 (0.009)	0.036*** (0.003)	0.017*** (0.003)	-0.156 (7.392)
Num.Obs.	31 182	612 363	725 607	31 182
R2	0.026	0.069	0.064	0.096
R2 Adj.	0.023	0.069	0.064	0.092
R2 Within	0.005	0.006	0.009	0.002
R2 Pseudo				
AIC	18 273.2	575 373.3	681 245.4	423 051.1
BIC	19 308.3	576 788.9	682 682.3	424 086.2
Log.Lik.	-9012.622	-287 561.630	-340 497.716	-211 401.539
FE: as.factor(District.x)	X	X	X	X
FE: as.factor(Month)	X	X	X	X
FE: as.factor(Year)	X	X	X	X

+ p < 0.1, \* p < 0.05, \*\* p < 0.01, \*\*\* p < 0.001

## 6.6 Interactions Between Party and Former Prosecutorial Status

A separately interesting question might be whether we see an interaction between party and former prosecutorial experience. For example, we might think that Republicans who are former prosecutors might be especially punitive in their sentencing. We investigate this in Table 13, which shows fleeting proposition, but mostly when we examine the prevalence or not of any incarceration among all sentences and pleas (for which we see a significant baseline effect, for Democrats). We do not see any interaction between party and prosecutorial status with regard to incarceration length (Column 4) and also with sentences that proceed to trial (Column 1).

## 6.7 Congressional Session Fixed Effects

The analyses in the main text use fixed effects for the identity of the appointing president. That means that we are comparing average affects across nominees made by Donald Trump, Joe Biden, Barack Obama, etc. However, this has the potential overlook the important role that home-state senators play in the judicial appointments process. (By “home-state,” we mean senators representing the state where the vacancy is located.) Even appointments made by the same president could differ ideologically depending on whether the home-state senators are more liberal or conservative.

We therefore include in Table 14 analyses that replace fixed effects for the identity of the appointing president with fixed effects for the the session of Congress, which we operationalize as Congressional session corresponding to the date of the Senate Judiciary Committee vote. Each presidential term corresponds with two congressional sessions. By including fixed effects for congressional session (along with district fixed effects), we therefore take into account changes in the home state senators and in the Senate’s composition. This serves as a more stringent control for politics/ideology than is provided by the appointing-president fixed effects.

The Table shows results consistent with those in the main text, namely reduced probability of incarceration (Column 1), likelihood of shorter incarceration (Column 2), and proclivity against very long sentences (Column 3), the latter two among charges ending in a trial verdict.

Table 14: For Columns 1, outcome is whether sentence (if any) included any incarceration. Models is linear probability models and include fixed effects for district, month, year, and party of appointing president interacted with public defender. For Column 3, outcome is truncated sentence length for sentences with jury or bench trials (OLS). For Column 2, outcome is whether incarceration is longer than 30. years (LPM). For all models, standard errors clustered at the case and defendant level.

	Any Incarceration (All)	Incarceration Length (Trials)	Incarceration Length More than 30 Years (Trials)
Pub Defender	-0.015*** (0.003)	-20.789** (7.176)	-0.024** (0.008)
Prosecutor	0.027*** (0.001)	1.908 (4.183)	0.002 (0.004)
Female	0.016*** (0.001)	-5.871 (4.312)	-0.003 (0.005)
Black	0.003 (0.002)	5.585 (7.523)	0.012 (0.008)
Hispanic	-0.015*** (0.002)	-9.196+ (4.739)	0.001 (0.005)
Asian American	0.040*** (0.004)	-29.559* (14.516)	-0.025+ (0.014)
American Indian	-0.079*** (0.014)	175.821 (145.922)	0.081 (0.138)
Two or More Races/Ethnicities	0.045*** (0.008)	-33.300 (30.141)	-0.061*** (0.015)
Judge Commission Year	0.006*** (0.001)	3.664 (4.288)	0.002 (0.004)
Num.Obs.	689 495	29 718	29 718
R2	0.062	0.099	0.053
R2 Adj.	0.062	0.095	0.048
R2 Within	0.002	0.001	0.001
R2 Pseudo			
AIC	629 194.7	403 052.0	-3021.0
BIC	630 922.7	404 297.0	-1776.1
Log.Lik.	-314 446.331	-201 376.019	1660.501
FE: as.factor(District.x)	X	X	X
FE: as.factor(Committee.Congress)	X	X	X
FE: as.factor(Month)	X	X	X
FE: as.factor(Year)	X	X	X

+ p < 0.1, \* p < 0.05, \*\* p < 0.01, \*\*\* p < 0.001

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