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## PATTERNS AND TRENDS IN FEDERAL PRO SE DEFENSE, 1996-2011: AN EXPLORATORY STUDY

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## ABSTRACT

Data regarding rates and trends in pro se criminal litigation are scarce, and no comprehensive analysis has been conducted of federal criminal case court data. This is the first study of patterns and trends in federal court pro se cases based on the Federal Judicial Center's Integrated Data Base (1996-2011). The questions addressed in the data analysis include: (1) What is the longitudinal trend in the rate of criminal pro se defense in federal courts? (2) In what types of criminal cases do pro se defendants appear? (3) What is the success rate of pro se defendants as compared to represented parties? And, (4) Is there a relationship between federal defender caseloads and the rate of pro se defendants in the federal courts? Two circuits and three district courts within those circuits exhibit a particularly high rate of pro se defense. Interestingly, the states in which these districts are located are those which have had a historically poor record of state court indigent defense, raising questions regarding the relationship between the quality of indigent defense in state courts and federal courts. Further research is suggested to explore the reasons for the unusual pattern discerned in federal pro se defense, trial outcomes, and the nature and extent of indigent defendants' dissatisfaction with federal defenders and other forms of indigent defense as provided under the Criminal Justice Act.

## I. INTRODUCTION

A surge in pro se civil litigation was documented beginning in the late 1990s.<sup>2</sup> The growth in pro se litigation has continued since then in the U.S., as well as in Commonwealth countries, spurred in part by the 2008 economic downturn. This movement has been the subject of numerous state and national conferences convened by the bench and the bar, court administrators, and clerks of court. State supreme and local courts have also convened numerous court futures and access-to-justice task forces and committees that have studied pro se litigation. As a consequence, state and federal courts have met the challenge of accommodating unrepresented civil litigants by starting to collect data on the subject, and by establishing new rules, forms, educational programs, and self-help centers to assist and

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2. Jona Goldschmidt, Barry Mahoney, Howard Solomon, and Joan Green, MEETING THE CHALLENGE OF PRO SE LITIGATION: A REPORT AND GUIDEBOOK FOR JUDGES AND COURT MANAGERS 8-9 (1998), *available at* <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/accessfair/id/106>.

provide equal access to justice for them.<sup>3</sup>

The same, however, cannot be said for pro se defendants in criminal cases. While there are scattered, incomplete collections of pro se civil litigation data in a small number of jurisdictions, most of which are limited to certain types of cases (typically, small claims, domestic relations, and landlord-tenant), no state publishes reports containing data on pro se criminal defendants. Fortunately, federal case data collected by the clerks of court in all the federal district courts is available to those interested in studying the criminal pro se phenomenon. The data are collected by the Administrative Office of the U.S. Courts, compiled by the Federal Judicial Center, and the National Archive of Criminal Justice Data<sup>4</sup> at the Inter-University Consortium for Political and Social Research (ICPSR), University of Michigan – Ann Arbor, maintains the data for restricted public access.<sup>5</sup>

We conducted an exploratory analysis of these data for the years 1996-2011 (being the only years with useable data reflecting the type of defense representation)<sup>6</sup> to answer the following research questions:

(1) How many criminal cases have been heard by federal courts during this period? In how many of these do defendants represent themselves? Has the type of representation (i.e., appointed, retained, pro se) of federal defendants changed over time?

(2) In what federal circuits, states, and districts do federal pro se defendants most frequently appear? Does the pattern of growth in pro se criminal defense over time resemble that of civil pro se litigation?

(3) Is there evidence that defendants appear pro se because they were dissatisfied with, and then discharged, their appointed or retained counsel?

(4) In what types of criminal cases do pro se defendants most frequently appear?

(5) Is there a relationship between the number of federal public

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3. The National Center for State Courts' *Center on Access to Justice for All* website contains a wide range of information on these initiatives. See <http://www.ncsc.org> (last visited June 27, 2013).

4. See NATIONAL ARCHIVE OF CRIMINAL JUSTICE DATA, <http://www.icpsr.umich.edu/icpsrweb/NACJD/>

5. *Federal Court Cases: Integrated Database Series*, INTER-UNIVERSITY CONSORTIUM FOR POLITICAL AND SOCIAL RESEARCH, <http://www.icpsr.umich.edu/icpsrweb/series/72>

6. Other researchers studying federal criminal cases have noted that “[d]ata describing counsel at filing or initiation were not used because they were incomplete or unavailable.” Caroline W. Harlow, *Defense Counsel in Criminal Cases* (Bureau of Justice Statistics, Special Report) (November, 2000), available at <http://www.bjs.gov/content/pub/pdf/dccc.pdf> (last visited June 27, 2013), at 2.

defenders or their caseloads and the number of pro se defendants?

(6) How are pro se-defended cases terminated, in general? What are the outcomes of such cases that make it to trial?

(7) What explains the high rate of pro se defense in the three federal district courts with the greatest number of pro se defendants? And, why are the three federal districts with the highest pro se defense rate located in three states which, until recently, were known for being among those states with the worst record of providing adequate indigent defense?

## II. LITERATURE REVIEW

Anyone working in the area of research into pro se litigation knows that court data regarding the phenomenon is scant. There are several court reform organization web sites which have general information for civil pro se litigants, including informational materials about navigating the court system, and reports concerning certain categories of cases experiencing high rates of pro se litigation.<sup>7</sup> The National Center for State Courts' (NCSC) web site<sup>8</sup> is the best source of data on pro se litigation. It, however, only reports limited data provided to it by 9 states.<sup>9</sup> The Texas Access to Justice Commission's web site provides additional data for Maryland and Texas, and the results of a couple of judges' surveys about the pro se phenomenon.<sup>10</sup> A further search of the web sites for every state court administrator offices reveals that no state reports data on criminal pro

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7. See, e.g., American Judicature Society, <http://www.ajs.org/judicial-administration/access-to-justice/pro-se-forum/> (Pro Se Forum); THE FUND FOR MODERN COURTS. FROM ARREST TO APPEAL: A GUIDE TO CRIMINAL CASES IN THE NEW YORK STATE COURTS, (2005) available at [http://moderncourts.org/files/2013/10/criminal\\_court\\_guide.pdf](http://moderncourts.org/files/2013/10/criminal_court_guide.pdf); NAVIGATING OR GETTING THROUGH THE PENNSYLVANIA COURTS, PENNSYLVANIANS FOR MODERN COURTS, <http://www.pmconline.org/node/213>. See also HOW CRIMINAL CASES WORK, CALIFORNIA COURTS, <http://www.courts.ca.gov/1069.htm> (last visited Apr. 21, 2013) (California's courts web site contains a useful description of the criminal case process, but not to the extent of information a pro se defendant would need to actually represent him or herself).

8. *Self-Representation Resource Guide*, NAT'L CENT. FOR STATE CTS., <http://www.ncsc.org/Topics/Access-and-Fairness/Self-Representation/Resource-Guide.aspx> (last visited Feb. 27, 2015); see also *Welcome to the Center*, CENTER ON CT. ACCESS TO JUST. FOR ALL, <http://www.ncsc.org/microsites/access-to-justice/home> (aiming at providing judges and court administrators with information on self-representation programs).

9. *Welcome to the Center*, CENT. ON CT. ACCESS TO JUST. FOR ALL, <http://www.ncsc.org/microsites/access-to-justice/home> (These states are California, Connecticut, Idaho, Minnesota, Nebraska, New Jersey, South Carolina, and Washington).

10. *Forms for Pro Se Litigants*, TEX. ACCESS TO JUST. COMMISSIONN, <http://www.texasatj.org/forms-pro-se-litigants> (last visited April 11, 2013) (providing that additional civil pro se data is necessary for Maryland and Texas).

se case processing. Several law review articles have appeared analyzing civil pro se data for a particular district. But, these studies focus exclusively on the growth in pro se prisoner and non-prisoner civil cases.<sup>11</sup>

The socio-legal literature includes a number of longitudinal studies of trial courts between 1974 and the early 1990s.<sup>12</sup> These studies – found equally in the legal anthropology and law and society literature – were addressed to the question of whether there is any support for modernization theory, that is, the notion that, as society develops, the increase in societal complexity is paralleled by an increase in the use of law.<sup>13</sup> These studies generated others such that the literature devolved into debates about whether the social complexity/law relationship is linear or curvilinear,<sup>14</sup> and whether there was any common agreement as to what a “case” was for research purposes.<sup>15</sup> None of these longitudinal studies were concerned with criminal, much less, pro se, litigation.<sup>16</sup> The lone but thorough study analyzing both state and federal pro se criminal case data is *Defending the Right of Self-Representation: An Empirical Look at the Pro Se Felony Defendant*, by Professor Erica Hashimoto.<sup>17</sup>

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11. See, e.g., Timothy D. Thompson, *Note: Non-Prisoner Pro Se Litigation in the United States District Court for the Eastern District of Kentucky: Analyzing 2004 and 2007 Cases from Filing to Termination*, 99 KY. L. J. 601 (2010/2011); Jonathan D. Rosenbloom, *Exploring Methods to Improve Management and Fairness in Pro Se Cases: A Study of the Pro Se Docket in the Southern District of New York*, 30 FORDHAM URB. L. J. 305 (2002); Spencer G. Park, *Note: Providing Equal Access to Equal Justice: A Statistical Study of Non-Prisoner Pro Se Litigation in the United States District Court for the Northern District of California in San Francisco*, 48 HASTINGS L. J. 821 (1997).

12. See, e.g., Lawrence Friedman, *Courts Over Time: A Survey of Theories and Research*, in EMPIRICAL THEORIES ABOUT COURTS (1983), Keith O. Boyum and Lynn Mather (eds.); Joel Grossman and Austin Sarat, *Litigation in the Federal Courts: A Comparative Perspective*, 9 LAW & SOC'Y REV. 321 (1974-1975).

13. See HENRY SUMNER MAINE, *ANCIENT LAW - ITS CONNECTION WITH THE EARLY HISTORY OF SOCIETY AND ITS RELATION TO MODERN IDEAS* (1861); MAX WEBER, *ON LAW IN ECONOMY AND SOCIETY* (1954), Max Rheinstein (ed.).

14. See generally, Stewart Macaulay, *Non-Contractual Relations in Business: A Preliminary Study*, 28 AM. SOC. REV. 55 (1963); DONALD BLACK, *THE BEHAVIOR OF LAW* (Academic Press Inc. 1976).

15. See also, Herbert Jacob, *Presidential Address: Trial Courts in the United States: The Travails of Exploration*, 17 LAW & SOC'Y REV. 407 (1983) (discussing the uncertainty about the unit of analysis when studying trial courts); see also Patrick Peel, *Renewing the Longitudinal Study of Trial Courts: Law and Society in Conversation with Legal History*, submitted to Law & Society Association annual meeting, Honolulu, HI (2012) (arguing that sociolegal scholars should be conversant with legal history literature, and renew their study of trial courts).

16. See, e.g., John Stookey, *Trials and Tribulations: Crises, Litigation and Legal Change*, 24 LAW & SOC'Y REV. 497, 503, n. 3 (1990) (“While the superior court does have criminal jurisdiction, such cases were not included in this analysis.”).

17. Erica J. Hashimoto, *Defending the Right to Self-Representation: An Empirical Look at the Pro Se Felony Defendant*, 85 N.C. L. REV. 423 (2007)[hereinafter Hashimoto, 85 N.C.L.

*A. The Hashimoto Study*

Professor Erica Hashimoto's study sought in part to find evidence to support assumptions often made about pro se defendants, namely, that (1) the outcomes of pro se cases are worse than those of represented (felony) defendants; (2) most pro se defendants are mentally ill; and (3) there are no good reasons that might lead pro se defendants to represent themselves.<sup>18</sup> We will focus on her analysis of the first and third of these assumptions which she tested.

The federal court data Hashimoto examined were drawn from two sources. One was what she called the "Federal Court Database" (FCD), the same one used in the present study, but which included data for a shorter time period, 1998-2003.<sup>19</sup> There were 622 pro se cases in Hashimoto's FCD data base.<sup>20</sup> Her second source of data was the "Federal Docketing Database" (FDD), which she described as consisting of entries in federal criminal case docket sheets that are filed electronically in the U.S. Courts' PACER system, many but not all of which were available from WESTLAW.<sup>21</sup> The small sample of only 208 pro se cases in the FDD "was dictated in part by the labor-intensive process of identifying defendants for inclusion," i.e., those cases wherein the defendant represented him or herself at the time of trial, plea, or dismissal, which she noted was hampered by incomplete docket sheets.<sup>22</sup>

The state court data base (SCD) used by Hashimoto, like the FCD, is maintained by the National Archive of Criminal Justice Data at the University of Michigan.<sup>23</sup> The data, collected in a prior study, consists of 234 cases drawn from cases prosecuted in forty of the 75 most populous U.S. counties in six even-numbered years between 1990 and 2000.<sup>24</sup> Thus,

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Rev 423]; see also, Erica J. Hashimoto, *Defending the Right to Self-Representation: An Empirical Look at the Pro Se Felony Defendant* (2006). *Popular Media*. Paper 10. [http://digitalcommons.law.uga.edu/fac\\_pm/10](http://digitalcommons.law.uga.edu/fac_pm/10) (visited April 21, 2013).

18. Hashimoto, *supra* note 17, at 441. (On the mental illness question, Hashimoto used competency evaluations as a proxy for the existence of "overt signs of mental illness," and concluded that "the overwhelming majority of pro se defendants in this database did not exhibit sufficiently bizarre behavior to receive even a baseline evaluation..." *Id.* at 456-58. Less than 22% of the pro se defendants were ordered to undergo an evaluation; interestingly, in over one-half of those cases the defendant was ordered to be evaluated after he or she invoked their right of self-representation. *Id.* at 458.)

19. *Id.* at 438-39.

20. *Id.* at 452, Table 2.

21. *Id.* at 440-41 n. 79.

22. *Id.* at 442.

23. *Id.* at 439.

24. Hashimoto, 85 N.C.L. Rev 423, *supra* note 17, . at 440.

the size of these samples of pro se cases, i.e., 622, 208, and 234, was relatively small.<sup>25</sup> Using these data, Hashimoto calculated that the rate of self-representation in the federal and state courts was roughly 0.3% to 0.5%.<sup>26</sup>

Additional, important findings were that (1) dissatisfaction with appointed or retained counsel was the apparent reason for self-representation in over 50% of the federal pro se cases, based on data showing these defendants were first appointed counsel, but then discharged them,<sup>27</sup> (2) more than 10% of the pro se defendants chose self-representation because of an apparent desire to speak for themselves, rather than trusting lawyer to do so,<sup>28</sup> and (3) 65% of the pro se defendants went to trial, additionally supporting the theory that at least some of the defendants proceeded pro se because of quality-of-counsel concerns.<sup>29</sup>

On the issue of case outcomes in state cases, of the pro se defendants who pleaded guilty, 53% pleaded guilty to felonies and 47% pleaded guilty to misdemeanors.<sup>30</sup> In contrast, 84% of represented defendants pleaded guilty to felonies, and 16% pleaded guilty to misdemeanors.<sup>31</sup> The acquittal rate of pro se defendants (expressed as a percentage of those going to trial) was identical to that of represented defendants (22%); however, a much lower percentage (56%) of pro se defendants who went to trial were convicted of felonies than the percentage (90%) of represented defendants

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25. While the pro se cases contained in the FCD and SCD are the universe in those data bases, the cases in the FDD (drawn from WESTLAW's federal docketing sheets) are not necessarily representative of all federal pro se cases because Hashimoto notes that search terms were used to identify such cases, but those search terms may create some selection bias. *Id.* at 446. She also notes a variety of limitations of her data sources, such as missing data regarding competency evaluations ordered (SCD and FCD), and type of representation (missing in approximately half of the cases in the SCD and the FCD). *Id.* at 444.

26. *Id.* at 447.

27. *Id.* at 460.

28. *Id.* at 463.

29. *Id.* at 466. Further evidence that defendants are increasingly complaining about the quality of their legal representation can be found by conducting an online search of the WESTLAW NEXT legal resource database to find the number of reported cases in the federal courts (at all levels) of defendants filing appeals or other post-trial petitions complaining of ineffectiveness of counsel. This was done using this search query: "ineffective assistance of counsel"& DA(aft 12-31-170 & bef 01-01-1980). This search was limited to the 1971 to 1980 time period. The search was repeated for the three subsequent decades. Thus, for these past four decades 1971-1980, 1981-1990, 1991-2000, and 2001-2010, the search yielded 891, 4,334, 8,980, and 9,011 cases, respectively. *See* WESTLAW NEXT, <http://www.next.westlaw.com> (last visited April 19, 2015) (accessible only by subscription).

30. Hashimoto, 85 N.C.L. Rev 423, *supra* note 17, at 449.

31. *Id.*

convicted of felonies at trial.<sup>32</sup> The acquittal rate measured as a percentage of the total number of pro se defendants (rather than the percentage who went to trial) was also higher for pro se defendants (2%) than the represented defendants (1%).<sup>33</sup> Hashimoto concluded that, “while the data do not prove that pro se felony defendants in state court achieve *better* results than represented defendants, they certainly undermine the assumption that decisions to engage in self-representation necessarily lead to bad outcomes.”<sup>34</sup>

In contrast, federal pro se defendants did not achieve rates of success comparable to the state court defendants, but they also did not appear to have done significantly worse than represented federal defendants.<sup>35</sup> According to the FCD, 9% of the pro se defendants (N = 57) went to trial, in contrast with only 4% of the represented defendants (N = 7,322).<sup>36</sup> Four (7%) of the 57 pro se defendants were acquitted, while 1,169 (16%) of the represented defendants were acquitted.<sup>37</sup> Using percentages of the total number of pro se and represented defendants (rather than those going to trial), the rate of acquittals for pro se defendants (0.64%) is slightly higher than that of represented defendants (0.61%), prompting the author to conclude that pro se defendants “do not seem to be faring significantly worse than their represented counterparts.”<sup>38</sup>

An examination of the pro se defendants in the FDD found that the trial rate (66%) was over 15 times that of the represented defendants in the FCD.<sup>39</sup> Using a rate measured by examining the number of defendants acquitted as a percentage of all federal defendants in the data set, the pro se defendants had a success rate of 0.96%, as compared to the represented defendants’ rate of 0.61%, indicating the pro se defendants “were as successful as the represented defendants.”<sup>40</sup> Thus, using defendant acquittal as a measure of a “successful outcome,” Hashimoto’s study seemed to disprove the current assumption that the outcomes of pro se-defended cases are not as successful as cases of represented defendants.<sup>41</sup>

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32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.* at 451-52.

36. *Id.* at 452. N refers to count.

37. *Id.*

38. Hashimoto, 85 N.C.L. Rev 423, *supra* note 17, at 452.

39. *Id.* at 453.

40. *Id.*

41. Hashimoto’s study was cited in *Indiana v. Edwards*, 554 U.S. 164 (2008), in which the Supreme Court held that a trial judge was authorized to impose unwanted counsel on a pro se



*B. Analysis of Federal Criminal Case Data*

Like Hashimoto, we examined the Federal Court Cases: Integrated Data Base.<sup>42</sup> While Hashimoto examined the cases from this data set terminated over a five year period (1998-2003), we examined cases from a fifteen-year period (1996-2011).<sup>43</sup>

1. How Many Pro Se Defendants are There?<sup>44</sup>

We began our analysis by calculating the total number of terminated felony cases during the period 1996-2011.<sup>45</sup> Table 1 reflects the number of all felony cases terminated during this period by year.

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defendant due to potential unfairness in his trial which may result because of his mental condition, which was somewhere between being competent to stand trial and insane:

Indiana has also asked us to overrule *Faretta*. We decline to do so. We recognize that judges have sometimes expressed concern that *Faretta*, contrary to its intent, has led to trials that are unfair. . . . But recent empirical research suggests that such instances are not common.

See, e.g., Hashimoto, *Defending the Right of Self-Representation: An Empirical Look at the Pro Se Felony Defendant*, . . . (noting that of the small number of defendants who chose to proceed *pro se*—“roughly 0.3% to 0.5%” of the total, state felony defendants in particular “appear to have achieved higher felony acquittal rates than their represented counterparts in that they were less likely to have been convicted of felonies”).

*Id.* at 178-79 (citations omitted).

42.

<http://www.icpsr.umich.edu/icpsrweb/ICPSR/studies/4348?permit%5B0%5D=AVAILABLE&q=Federal+Court+Cases%3A+Integrated+ICPSR+4348&paging.rows=25&sortBy=3&paging.startRow=26>. (visited May 23, 2013) (explaining the purpose of the data base) (“[T]o provide an official public record of the business of the federal courts. The data originate from district and appellate court offices throughout the United States. Information was obtained at two points in the life of a case: filing and termination. The termination data contain information on both filing and terminations, while the pending data contain only filing information.”) (explaining further) (“Starting with the year 2001, each year of data for Federal Court Cases is released by ICPSR as a separate study number. Federal Court Cases data for the years 1970-2000 can be found in FEDERAL COURT CASES: INTEGRATED DATA BASE, 1970-2000 (ICPSR 8429).”) (Explaining that these data are available only upon the execution of a Restricted Data Use Agreement approved by the National Archive of Criminal Justice Data at the ICPSR. In addition, “The unit of analysis for the criminal data is a single defendant.”)

43. Unfortunately, the data for the years 1970 through 1995 was unusable. They were excluded from the analyses because of a high rate of missing data. Specifically, type-of-counsel was missing in roughly 50% of cases across the study period.

44. Throughout the study, number of cases refers to the number of unique defendant/case combinations in the dataset. Thus, if one case had multiple defendants, each defendant/case combination for that case was included. Similarly, if one defendant had multiple cases, each defendant/case combination for that defendant was included.

45. A case was designated as a felony case if any of the original charges included a felony.

**Table 1. Number of Terminated Felony Cases, by Year (1996-2011)<sup>46</sup>**

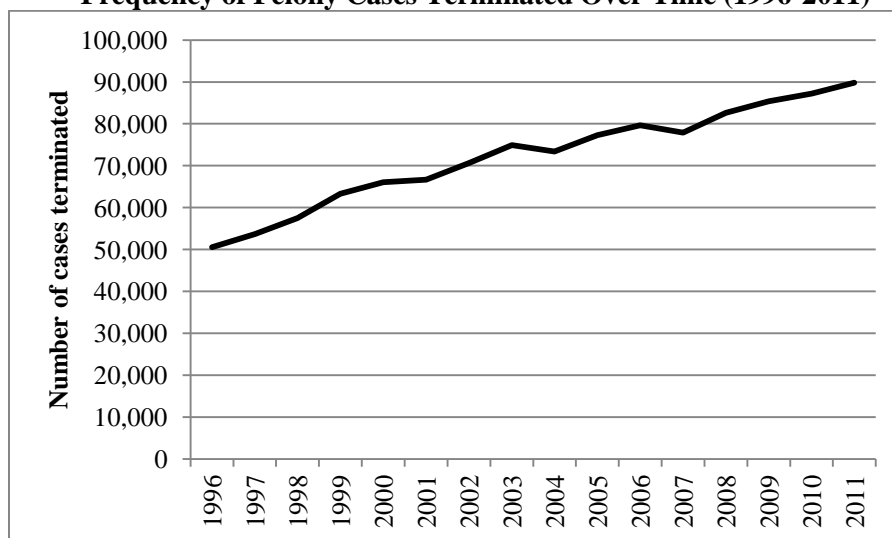
<b>Year</b>	<b>Number of cases</b>
1996	50,533
1997	53,672
1998	57,458
1999	63,304
2000	66,014
2001	66,691
2002	70,659
2003	74,921
2004	73,362
2005	77,259
2006	79,644
2007	77,929
2008	82,652
2009	85,358
2010	87,220
2011	89,784
<b>Total</b>	<b>1,156,460</b>

Table 1 indicates that the federal courts' criminal caseload has dramatically increased over the study period, rising approximately 78% between 1996 and 2011. Figure 1 below reflects the change in the frequency of felony criminal cases over time.

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46. Federal Court Cases: Integrated Data Base (1970-2012), available at <http://www.icpsr.umich.edu/icpsrweb/ICPSR/series/00072/studies?archive=ICPSR&sortBy=7> (visited March 23, 2015) (hereinafter FCC).

**Figure 1.**  
**Frequency of Felony Cases Terminated Over Time (1996-2011)**<sup>47</sup>



While the frequency of felony cases has increased dramatically over this 15 year period, pro se defendants constitute a relatively small number compared to represented defendants.

Table 2 indicates the number of pro se cases in comparison to those involving represented defendants.

**Table 2.**  
**Type of Representation at Felony Case Termination**<sup>48</sup>

Type of Counsel	Number of Cases	Percent of Cases
Retained	302,241	26.0%
Public Defender	401,498	34.7%
Panel Attorney	425,022	36.7%
Pro Bono Attorney	388	.03%
Pro Se	2,375	0.2%
Missing	25,936	2.2%
Total	1,156,460	

As Table 2 shows, pro se defendants represented only 0.2% of all

47. FCC, *supra* note 46.

48. FCC, *supra* note 46.

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felony criminal cases, or 2,375 cases over a fifteen-year period. The largest proportion of criminal defendants (71.4%) was represented by a combination of federal public defenders, and panel attorneys appointed under the Criminal Justice Act.<sup>49</sup> Counsel was privately retained in 26% of the cases. Representation data were missing from 2.2%, or 25,936 of the cases in the data set.

## 2. How Has the Type of Defense Representation Changed Over Time?

Table 3 below reflects the type of counsel in the terminated felony cases, by year.

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49. See 18 U.S.C. § 3006A. (Paragraph (a) of the statute establishes an obligation for all federal district courts to establish a plan “for furnishing representation for any person financially unable to obtain adequate representation.” “Panel attorneys” under the Act are attorneys who are “designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan.” Paragraphs (g)(2) and (g)(3), respectively, of the Act authorize the Federal Public Defender, or a non-profit Community Defender Organization, as the source of appointed counsel.) (“The key distinction between the CDOs [community defender organizations] and the FPDOs [federal public defenders organizations] is that the CDOs are a ‘nonprofit defense counsel service’ staffed by non-federal government employees and governed by a board of directors, and the FPDOs are federal employees governed by the U.S. District Court.”)

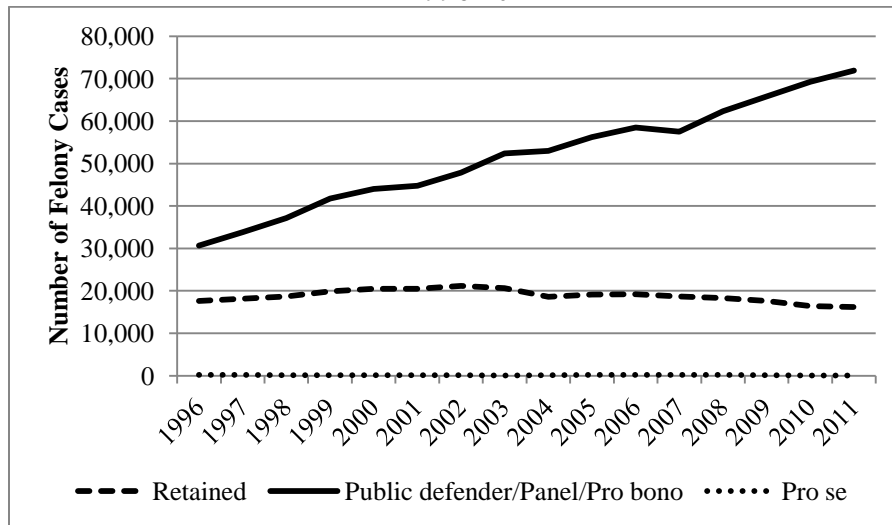
**Table 3.**  
**Type of Representation at Felony Case Termination, by Year<sup>50</sup>**

Year	Retained Counsel	Public Defender	Panel Attorney	Pro Bono Attorney	Pro Se
1996	17,647	13,149	17,492	38	181
1997	18,150	14,956	18,874	19	188
1998	18,692	16,854	20,248	21	153
1999	19,860	19,152	22,558	23	98
2000	20,467	20,890	23,080	31	139
2001	20,474	21,000	23,728	32	126
2002	21,200	22,697	25,161	31	131
2003	20,664	25,841	26,496	26	88
2004	18,574	26,133	26,819	53	152
2005	19,140	27,355	28,872	26	213
2006	19,228	28,297	30,136	20	227
2007	18,705	27,892	29,554	24	200
2008	18,300	31,517	30,814	7	179
2009	17,587	34,235	31,583	10	144
2010	16,400	35,329	33,896	13	84
2011	16,153	36,201	35,711	14	72
Total	301,241	401,498	425,022	388	2,375

As Table 3 shows, the number of pro se defendants decreased through the 1990s, before increasing through the mid-2000s. The number represented by federal public defenders, panel attorneys, or pro bono counsel increased significantly since the mid-1990s, rising roughly 134% between 1996 and 2011. At the same time, the number of federal defendants represented by retained counsel has remained relatively stable since the mid-1990s. Figure 3 shows the changes in the number of felony cases by type of representation over time.

50. FCC, *supra* note 46. The table excludes missing cases.

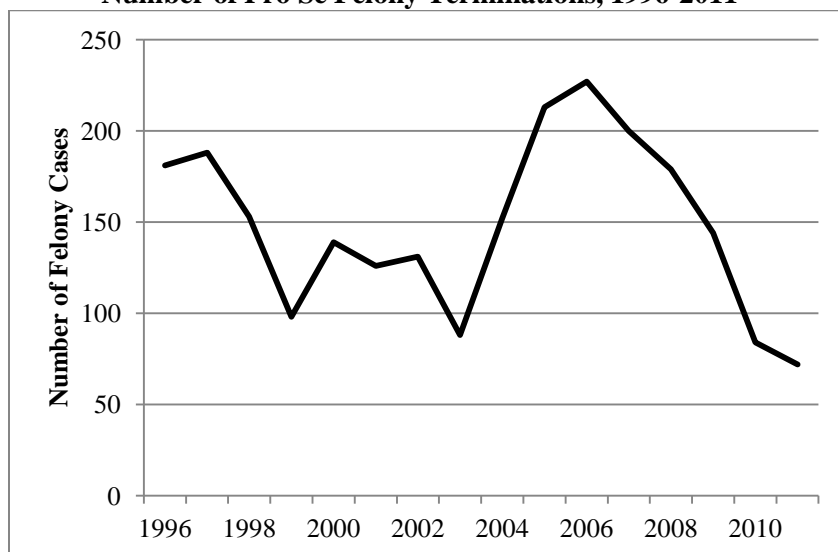
**Figure 2.**  
**Type of Representation at Termination of Felony Case,**  
**1996-2011<sup>51</sup>**



Barely visible in Figure 2 is a third dotted line showing the very low count of pro se felony defendants relative to represented defendants. When separately reproduced in Figure 3, the data line reflects a high degree of variability.

51. FCC, *supra* note 46.

**Figure 3.**  
**Number of Pro Se Felony Terminations, 1996-2011<sup>52</sup>**



The cases number in the 180-range in 1996-97, drop to 98 in 1999, rise to the 130-range from 2000 to 2002, drop to 88 in 2003, begin rising again substantially in 2004 from 152 to a high of 227 in 2006, before decreasing again to 174 in 2007 and steadily thereafter to 72 in 2011. Viewed as a percentage of all cases, pro se defendant cases began at a high of 0.4% in 1996-97, ending as 0.2% in 2011. This figure is close to Hashimoto's estimate of 0.3% to 0.5% reported in her study.

### 3. Which Circuits, States, and Districts Have the Most Pro Se Defendants?

We wanted to know in which federal circuits and states federal pro se defendants most frequently appear. In addition, we wanted to understand why the frequency of pro se defendants rose so suddenly after 2002, and then dropped so much after 2005.

Table 4 shows the number of pro se defendants by circuit, in descending order.

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52. FCC, *supra* note 46.

**Table 4.**  
**Number of Felony Cases with Pro Se Defendant,**  
**by Federal Circuit, 1996-2011<sup>53</sup>**

Circuit	Number of Felony Cases	Percent of all felony cases within Circuit
Fifth Circuit	610	0.3%
Eleventh Circuit	513	0.5%
Third Circuit	262	0.5%
Ninth Circuit	241	0.1%
Fourth Circuit	189	0.2%
Sixth Circuit	164	0.2%
Tenth Circuit	133	0.2%
Seventh Circuit	117	0.3%
Second Circuit	63	0.1%
Eighth Circuit	44	0.1%
First Circuit	27	0.1%
District of Columbia	12	0.2%

The Fifth and Eleventh Circuits, which include all of the southern and southeastern states, are far ahead of the other circuits, with 610 and 513 pro se defendant cases, respectively. The Third and Ninth Circuits are close at 262 and 241, respectively. The D.C. Circuit has the least number at 12. Table 5 shows the ten states in which federal pro se defendants most frequently appear.

**Table 5.**  
**Number of Felony Cases with Pro Se Defendant, by State, 1996-2011**

State	Number of Felony Cases	Percent of all felony cases within State
Texas	610	0.2%
Georgia	513	1.4%
Pennsylvania	262	0.7%
Florida	241	0.2%
Louisiana	189	0.8%
North Carolina	164	0.4%
California	133	0.7%
Tennessee	117	0.3%
Oklahoma	63	0.8%
Illinois	44	0.2%

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53. FCC, *supra* note 46.



Consistent with Table 4, showing the Fifth and Eleventh Circuits having had the highest frequency of pro se defense, Table 5 shows that the States of Texas (Fifth Circuit) and Georgia (Eleventh Circuit), located in those respective circuits, have had by far the greatest number of pro se defendants of any circuit or state. Florida, also in the Eleventh Circuit, is fourth among the states in numbers of pro se defendants.

As to the sudden rise and fall in pro se defense, Table 6 presents the number of pro se cases by federal circuit and year over the fifteen-year period studied.

**Table 6.**  
**Number of Felony Cases with Pro Se Defendant, by Circuit,**  
**1996-2011<sup>54</sup>**

Year	DC	1st	2nd	3 <sup>rd</sup>	4th	5th	6th
1996	0	2	1	29	10	54	12
1997	1	0	4	11	6	74	27
1998	0	1	1	12	3	48	29
1999	0	0	1	14	4	27	11
2000	0	2	5	17	31	40	6
2001	0	0	2	22	28	37	2
2002	0	0	3	34	7	29	6
2003	0	6	1	22	6	22	3
2004	11	6	14	16	7	43	9
2005	0	3	5	14	17	62	17
2006	0	4	8	23	9	44	11
2007	0	2	2	15	8	62	9
2008	0	0	5	11	20	23	6
2009	0	1	2	7	18	23	5
2010	0	0	5	10	10	15	3
2011	0	0	4	5	5	7	8
Total	12	27	63	262	189	610	164

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54. FCC, *supra* note 46.

Year	7th	8th	9th	10th	11th	Total
1996	17	4	17	28	7	181
1997	10	4	18	20	13	188
1998	9	2	10	17	21	153
1999	11	1	11	7	11	98
2000	4	2	15	11	6	139
2001	2	5	15	2	11	126
2002	4	4	27	10	7	131
2003	3	2	11	7	5	88
2004	5	5	10	6	20	152
2005	10	0	27	6	52	213
2006	6	1	11	6	104	227
2007	2	2	17	0	81	200
2008	5	5	24	3	77	179
2009	14	3	10	3	58	144
2010	7	2	8	1	23	84
2011	8	2	10	6	17	72
Total	117	44	241	133	513	2,375

Between 2003 and 2004, the number of pro se felony cases increased by 72%, from 88 cases in 2003 to 152 cases in 2004. The Fifth and Eleventh Circuits accounted for 50% of this increase. In 2005, the number of pro se cases increased another 40%, to 213 cases; again, the Fifth and Eleventh Circuits accounted for 56% of the overall increase. Finally, in 2006, the number of pro se cases increased by just 4 cases, to 227 cases; the Eleventh Circuit accounted for 78% of the increase. In one year, the number of pro se cases in the Eleventh Circuit increased 100%, from 52 cases in 2005 to 104 cases in 2006. Between 2004 and 2009 – peak years in the number of pro se felony cases – the Fifth and Eleventh Circuits accounted for 58 percent of all pro se felony cases terminated.

We dug deeper to find out which particular federal district courts experienced the most pro se cases during the peak period reflected in Figure 3 and Table 6. Table 7 below presents the data showing the three districts with the highest number of pro se defendants between 2004 and 2009, the peak years in the number of pro se cases: the Southern District of Texas; the Northern District of Georgia; and the Middle District of Florida. These three district courts accounted for more than half of all pro se cases in the U.S. during this period.

**Table 7.**  
**Number of Felony Pro Se Cases in Three Districts, 2003-2009<sup>55</sup>**

State	2003	2004	2005	2006	2007	2008	2009	2010
Texas – Southern	9	27	32	31	55	16	8	6
Georgia – Northern	0	3	27	51	46	56	55	15
Florida - Middle	1	3	21	50	31	19	1	4
Total Cases ALL Districts	88	152	213	227	200	179	144	84
Percent of Pro Se Cases Accounted for by TX-S, GA-N, and FL-M	11.3%	21.7%	46.9%	58.1%	66.0%	50.8%	44.4%	29.7%

As noted earlier, Hashimoto posited that state court pro se defendants represent themselves because they are dissatisfied with – and have discharged – their appointed defense counsel.<sup>56</sup> She pointed to data showing that pro se defendants were first represented, but later in the case they discharged their attorneys.<sup>57</sup>

Using a similar approach, we examined all cases in which defendants were pro se at termination. We looked to see how these cases started – if they started as pro se at filing or started as either retained or appointed counsel. There were missing annual data for the type-of-representation-at-filing variable in 27% of the cases. Of the total 2,375 pro se cases, this information was only available for 1,733 (73%) cases.

As seen in Table 8, in the three districts with the most pro se defendants, those who were pro se at termination were more likely to start pro se at filing than in other districts (i.e., 88.1%, 86.2%, and 76.4%, respectively, compared to 61.4% for all other districts)..

55. FCC, *supra* note 46.

56. Hashimoto, 85 N.C.L. Rev 423, *supra* note 17, at 463-64.

57. *Id.*

**Table 8.**  
**Type of Counsel at Filing for Felony Cases with Pro Se Defense**  
**at Termination, by District, 1996-2011<sup>58</sup>**

	Retained	Public Defender	Panel Attorney	Pro Bono Attorney	Pro Se
Florida-Middle	4 (3.0%)	6 (4.5%)	6 (4.5%)	0 (0.0%)	118 (88.1%)
Georgia – Northern	9 (3.2%)	16 (5.7%)	14 (5.0%)	0 (0.0%)	243 (86.2%)
Texas – Southern	12 (5.1%)	33 (13.9%)	11 (4.6%)	0 (0.0%)	181 (76.4%)
All other districts	119 (11.0%)	123 (11.4%)	175 (16.2%)	0 (0.0%)	663 (61.4%)

This result was surprising, as we had expected our data to resemble Hashimoto's, which showed that most pro se defendants had previously discharged their attorneys, thus evidencing their disappointment with appointed counsel. However, as Table 8 shows, the proportion of pro se defendants in the districts of interest who were self-represented *both* at filing and termination ranged from about 76% to 88%. In only 3-5% of the cases in each of these districts did the defendant begin with appointed counsel, and finish pro se. These data would appear to reflect not so much disappointment with appointed counsel, as much as complete distrust of attorneys at the outset of the criminal case.

#### 4. In What Types of Cases Do Pro Se Defendants Most Frequently Appear?

We examined the data to determine in what types of criminal cases pro se defendants were most likely to appear. Table 9 lists the ten forms of crimes that involve the highest number of pro se defendants.

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58. FCC, *supra* note 46.

**Table 9.**  
**Number of Felony Cases with Pro Se Defendant, by Offense Type,**  
**1996-2011<sup>59</sup>**

State	Number of Cases	Percent of All Cases within Offense Type
Conspiracy to commit a drug offense	370	0.3%
Wire Fraud	280	0.4%
Firearms offenses	246	0.3%
Manufacture/delivery of a controlled substance	207	0.2%
Immigration	189	0.1%
Money laundering	75	0.6%
Embezzlement	64	0.4%
Tax fraud	57	0.6%
Bank robbery	56	0.3%
Conspiracy against the U.S.	40	0.3%
Other offense	791	0.2%

Three of the top four crimes constitute what we might characterize as street crimes, while the crimes in the lower part of the table (except for robbery) we might call white-collar crimes. Noteworthy is the relatively high number of immigration law violations. The Administrative Office of the U.S. courts reports (for 2011) that “Growth occurred in openings of representations in immigration cases—nearly all involving illegal entry by aliens—and in cases in which prisoners convicted of crack cocaine offenses sought reductions of their sentences under a recent amendment to the federal sentencing guidelines.”<sup>60</sup> This might explain peak period of pro se defense noted in Figure 3.

5. Is There a Relationship between the Number of Federal Public Defenders and Their Caseloads, and the Rate of Pro Se Representation?

We were curious to learn whether there is a relationship between the number of federal defenders or their caseloads, and the rate of pro se defense.

59. FCC, *supra* note 46.

60. *Criminal Justice Act*, UNITED STATES COURTS, <http://www.uscourts.gov/Statistics/JudicialBusiness/2012/criminal-justice-act.aspx> (last visited April 3, 2015).

**Table 10. Number of Federal Defenders and their Caseloads, and Number of Pro Se Defendants**

Year	Number of Public Defenders <sup>61</sup>	Public Defender Caseload <sup>62</sup>	Number of Pro se Defendants <sup>63</sup>
2003	1,013	55.55	88
2004	1,087	52.74	152
2005	1,127	53.32	213
2006	1,163	53.37	227
2007	1,196	51.52	200
2008	1,259	52.43	179
2009	1,322	53.40	144
2010	1,368	54.73	84
2011	1,384	56.04	72

The number of federal defenders was only available for the years 2003 through 2011, and Table 10 shows a gradual increase in those positions. Their caseloads have fluctuated, ranging from a low of 51.52 cases to a high of 56.04 in 2011. Curiously, the numbers of pro se defendants increased in the same time period from a low of 88 in 2003 to a high of 227 in 2006, and thereafter decreasing steadily to 72 in 2011. There does not, therefore, appear to be a relationship between these variables.

#### 6. What Are the Outcomes of Pro Se-Defended Cases?

Turning to the question of case outcomes, Table 11 presents outcomes by type of representation.

61. E-mail from Daine Goldberg, Defender Services IT, Case Management Systems Office Administrative Office of the U.S. Courts, to Jona Goldschmidt (May 14, 2013, 02:30 CST) (on file with author). These data reflect the annual average number of federal defenders nationwide.

62. Judicial Business of the U.S. Courts, Table K-1, Summary of Representations, by District, <http://www.uscourts.gov/Statistics/JudicialBusiness/archive.aspx> (last visited April 3 2015). Caseload was calculated as number of felony and misdemeanor cases initiated in a given year divided by the average monthly number of public defenders in that year.

63. FCC, *supra* note 46.

**Table 11.**  
**Case Outcome, by Type of Representation**<sup>64</sup>

Type of Counsel	Case Outcome				
	Dismissed	Acquitted at Trial	Guilty Plea	Guilty at Trial	Other
Retained	6.1%	1.1%	87.3%	4.9%	0.6%
Public defender/Panel/Pro bono	5.1%	0.6%	90.6%	3.4%	0.3%
Pro se	16.9%	0.8%	64.2%	14.8%	3.3%
Total	5.4%	0.7%	89.6%	3.9%	0.4%

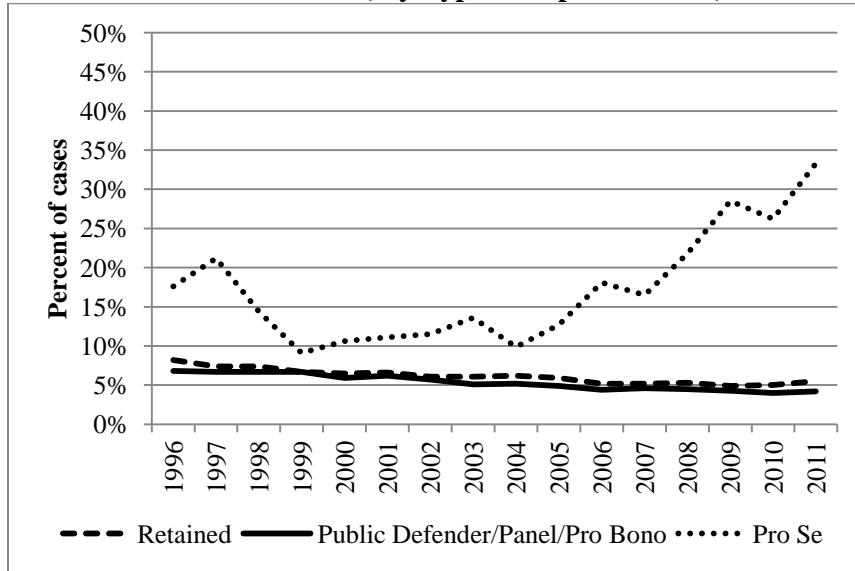
Table 11 shows that cases involving pro se defendants are dismissed or deferred at a much higher rate than cases with represented defendants (roughly 17% versus 5-6%). Represented defendants, either retained (87%) or appointed (91%), are more likely to enter a guilty plea than pro se defendants (64%). When going to trial (bench or jury), pro se defendants (15%) were more likely to be found guilty than defendants with retained (5%) or appointed counsel (3%). In examining the rates of acquittal at trial, the rate is highest for retained (1.1%); the proportion of acquittals in appointed counsel (0.6%) cases were slightly lower than that for pro se defendants (0.8%). This finding contradicts Hashimoto's finding, which was that pro se defendants have about an equal chance of being acquitted at trial as represented defendants.

Figure 4 below shows the dismissal rates for all felony cases over time. As dismissal rates for cases involving retained or appointed counsel have generally decreased over time, dismissal rates for pro se defendants has increased.

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64. FCC, *supra* note 46.

**Figure 4.**  
**Percent of Cases Dismissed, by Type of Representation, 1996-2011<sup>65</sup>**



By 2011, roughly 33% of cases involving pro se defendants were dismissed, compared to just over 5% of those with represented defendants.

At the same time, as shown in Figure 5, the percent of cases resulting in a finding of guilt has decreased significantly for pro se defendants over time. But it has remained relatively stable for cases involving represented defendants.

65. FCC, *supra* note 46.



**Figure 5.**  
**Percent of Cases Resulting in Finding of Guilt, by Type of Representation, 1996-2011<sup>66</sup>**

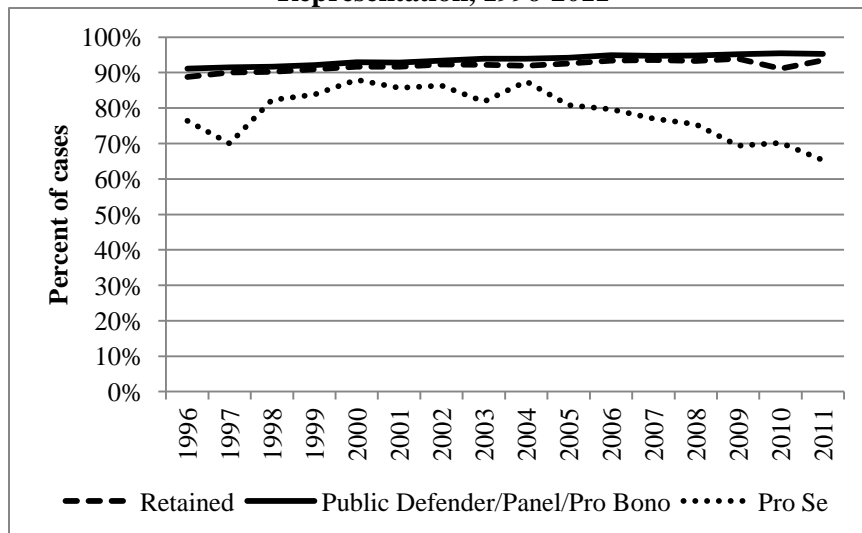


Table 12 shows case outcomes for cases that make it to a bench or jury trial. These data include only those cases that were not dismissed or otherwise disposed of prior to trial.

66. FCC, *supra* note 46.

**Table 12.**  
**Trial Outcome by Type of Representation<sup>67</sup>**

Type of Counsel	Trial Outcome			
	Acquitted by Court	Guilty by Court	Acquitted by Jury	Guilty by Jury
Retained	735 (4.1%)	658 (3.6%)	2,606 (14.4%)	14,129 (77.9%)
Public defender/Panel/Pro bono	1,034 (3.1%)	1,609 (4.9%)	3,650 (11.0%)	26,756 (81.0%)
Pro se	4 (1.1%)	19 (5.1%)	14 (3.8%)	333 (90.0%)
Total	1,773 (3.4%)	2,286 (4.4%)	6,270 (12.2%)	41,218 (80.0%)

As Table 12 shows, pro se defendants are more likely to be found guilty by either a jury or the court than represented defendants. At trial (bench or jury), 95% of cases involving pro se defendants result in a guilty finding, compared with 82% of those involving retained counsel and 86% of cases involving appointed counsel. This finding, too, contradicts Hashimoto's finding that pro se defendants are as likely to be acquitted at trial as represented defendants. In our data base, there were not enough cases involving pro se defendants to examine trends over time.

### III. DISCUSSION AND CONCLUSION

This first exploratory study of pro se defense in the federal courts has yielded a set of interesting findings in answer to the research questions posed. There is evidence of a dramatic 78% increase in felony case terminations between 1996 and 2011. Of the 1,156,460 felony cases, most defendants were represented by appointed (71.5%) or retained (26%) counsel, while only 0.2%, or 2,375, appeared pro se at termination. The number of pro se cases did not follow a linear pattern. Rather, we saw that their number fluctuated, with the highest numbers found in the periods from 1996-97, and 2003-06.

67. FCC, *supra* note 46.

Since then, the number of cases with pro se defendants has sharply declined. In contrast, cases with appointed counsel rose steadily (134%) during the period under study, while those with retained counsel have remained stable.

The Fifth and Eleventh Federal Circuit Courts have experienced the highest numbers of pro se defendants by far compared to all other circuits, at 610 and 513, respectively, as compared to the First and D.C. Circuits, which had the lowest numbers at 27 and 12 cases, respectively. Texas (610) and Georgia (513) comprised the entirety of pro se cases in the Fifth and Eleventh Circuits, with Florida (241), also in the Eleventh Circuit, coming in with the fourth highest count. The U.S. District Courts for the Southern District of Texas, the Northern District of Georgia, and the Middle District of Florida were the courts in those states with the highest number of pro se cases. We speculate on some possible reasons for these high rates of pro se defense during the 2003-06 time period below.

Pro se defendants were found in a wide range of criminal cases. These ranged from ordinary street crimes involving drug trafficking, to immigration offenses, and white collar offenses such as tax and wire fraud. As to the number of pro se defendants in relation to federal defenders and their caseloads, we found no relationship.

Pro se defendants were much more likely to have their cases dismissed (for reasons not reflected in the data set) than appointed or retained counsel. They were also the least likely to plead guilty. At trial, pro se defendants were more likely to be found guilty (in a plea or trial) than those with retained or appointed counsel. They were acquitted at a rate slightly higher than defendants with appointed counsel, but not as high as those with retained counsel. The pro se defendants' rate of guilty findings has been steadily decreasing. But they are more likely to be found guilty by a jury or trial court than defendants with retained or appointed counsel. This last finding is in direct contradiction to Hashimoto's study results, which indicated that pro se defendants are as likely to achieve a positive outcome (acquittal) as defendants with retained or appointed counsel.

In other respects, our study has illuminated additional aspects of pro se defense which require further study. As noted earlier, the states in which the federal districts with the highest rate of pro se defense are located among those with the historically poorest records of *state* indigent defense.<sup>68</sup> We cannot be sure of the reasons for the high rates of federal pro

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68. Texas and Georgia have in fact been criticized for their low spending on indigent state court defense, and other deficiencies. See, e.g., Texas Appleseed Fair Defense Project, *The Fair Defense Report: Findings and Recommendations on Indigent Defense Practices in Texas* (December, 2000), at 1-2, available at [http://www.texasappleseed.net/pdf/projects\\_fairDefense\\_fairreport.pdf](http://www.texasappleseed.net/pdf/projects_fairDefense_fairreport.pdf) (visited October 23, 2013)

se defense in these states and districts within them, short of conducting interviews or surveys of those pro se defendants. It is plausible, however, that a high level of dissatisfaction with appointed counsel existed among indigent defendants in the state courts in those states (prior to recent reforms),<sup>69</sup> and that this contributed to the high levels of complete distrust

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(noting that attention from to that state's indigent system increased during the 1999-200 time period because of "court decisions and media reports which spotlighted severe examples of inadequate indigent defense," and reports that raised "serious questions about the overall quality of indigent defense procedures in Texas"); Press Release from Office of [Texas] State Senator Rodney Ellis, *Bipartisan Coalition Unveils Texas Fair Defense Act—Comprehensive Legislation Will Overhaul Texas' Indigent Criminal Defense System* (February 14, 2001) (noting that Texas ranks second to last in the nation in per-capita spending on indigent criminal defense); Diane Jennings, *The Quality of Justice: Defense of indigents criticized in Texas, Bush, others call appointee system sound*, *The Dallas Morning News* (September 16, 2000) (summarizing long-standing criticisms of the Texas system of indigent defense, and noting that the "inconsistent quality of justice that varies not only from county to county, but also from court to court.") available at [www.texasappleseed.net/pdf/projects\\_fairDefense\\_defense\\_indigents.pdf](http://www.texasappleseed.net/pdf/projects_fairDefense_defense_indigents.pdf) (last visited May 26, 2013); See E. Wycliffe Orr, Sr., ACLU Blog, *Georgia's Indefensible Indigent System—A Defense in name Only?* (September 21, 2010) (noting the widespread deficiencies of the Georgia indigent defense system) available at <http://www.microsofttranslator.com/BV.aspx?ref=IE8Activity&a=http%3A%2F%2Fwww.acslaw.org%2Ffacsblog%2Fgeorgia%25E2%2580%2599s-indefensible-indigent-defense-system-%25E2%2580%2593-a-defense-in-name-only> (visited May 26, 2013). (explaining that Texas and Georgia rely largely upon contracted legal services from private attorneys, which have been widely criticized.); Office of Justice Programs, Bur. of Justice Statistics (BJS), *Contracting for Indigent Defense Services: A Special Report* (April, 2000) available at [www.ncjrs.gov/pdffiles1/bja/181160.pdf](http://www.ncjrs.gov/pdffiles1/bja/181160.pdf) (last visited May 26, 2013); For anecdotal evidence about Georgia's inadequate system of state-appointed, i.e., assigned private counsel, see Amy Bach, *ORDINARY INJUSTICE: HOW AMERICA HOLDS COURT* (2009) (describing the poor representation produced by various flawed assigned counsel systems, and noting that "There are three basic systems for providing attorneys. It is difficult to rank them comparatively by quality since all three are flawed and tend to come apart when underfunded, poorly staffed, or subject to the whimsy of judges and prosecutors."); the BJS also reports that, while 76% of state prisoners in 1991 were represented by assigned counsel, 54% of federal prisoners had similarly been appointed private counsel. Office of Justice Programs, Bur. of Justice Statistics, *Selected Findings: Indigent Defense* (February, 1996) available at [bjs.gov/content/pub/pdf/id.pdf](http://bjs.gov/content/pub/pdf/id.pdf) (last visited May 26, 2013).

69. In 2001, Texas enacted the *Fair Defense Act*, now codified at Tex. Code Crim. Proc. art. 26.04 (2013), which in part established the Texas Task Force on Indigent Defense (renamed in 2011 as the Texas Indigent Defense Commission), which establishes minimum standards of quality for indigent defense, monitors and assists counties in meeting those standards, and attempts to bring consistency, quality control, and accountability to indigent defense in Texas. Spangenberg Group, *Recent News: The Spangenberg Group Works With the Texas Task Force on Indigent Defense* (undated), available at [http://www.spangenberggroup.com/Texas\\_task\\_force.html](http://www.spangenberggroup.com/Texas_task_force.html) (last visited October 23, 2013).

In 2003 the Georgia *Indigent Defense Act*, O.C.G.A. § 17-12-8 (2003), was enacted, which established the Georgia Public Defender Standards Council. The council, located within the judicial branch, oversees a new statewide indigent defense system to ensure adequate and effective legal representation is provided. This replaces the old system whereby indigent defense was administered at the local level in 159 counties. Under the statute, circuit public defender offices are staffed by full time attorneys with "sufficient experience in the defense of criminal

of appointed counsel by the many pro se defendants in the *federal* courts who, as we found, appeared pro se from the outset of the case.

We examined the indigent defense plan in the three districts with the highest numbers of pro se defendants to see whether they had any unusual features which might explain the high rate of pro se defense in these districts. All federal district courts are required to file such plans with their circuit's Judicial Council pursuant to the Criminal Justice Act (CJA).<sup>70</sup> We observed that the plans submitted by the three districts of interest closest in time to the peak period of pro se defense have one common feature. They all contain a provision requiring that, in addition to the federal defender (or community defender) organizations created to accept indigent representation, 25% of the annual appointments are to be assigned to the private bar (the panel attorneys).<sup>71</sup>

The districts differed, however, on the requirements for attorneys to become members of the CJA panel. The plan for Northern District of Georgia requires panel attorneys to have been admitted to practice for seven years, including three years of felony trials, and to have tried at least two capital cases, at least of which was to a jury. The Southern District of Texas plan requires panel attorneys to “have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence and the United States Sentencing Guidelines.” Additional requirements of five years or practice, three of which were in “actual trials of felony prosecutions” exist for capital cases appointments.

Finally, The Middle District of Florida requires panel attorneys who have “sufficient competence to furnish high quality representation,” be familiar with the aforementioned rules, have taken a course on the Sentencing Guidelines, have attended at least one course on federal court criminal practice, and have participated in at least one jury trial, and have attended a continuing legal education course annually on the sentencing guidelines and other aspects of federal criminal practice. Thus, it appears that lawyers may become panel members with three years of experience in the first two districts, and have appeared in at least one jury trial and taken

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cases.” Spangenberg Group, *recent News: New Statewide Indigent Defense System in Georgia*, available at [http://www.spangenberggroup.com/Indigent\\_System\\_Georgia.html](http://www.spangenberggroup.com/Indigent_System_Georgia.html) (last visited June, 10, 2013).

70. 18 U.S.C. § 3006A (2012).

71. See U.S. District Court, Middle District of Florida, *Criminal Justice Act Plan* (April 30, 2004, and January 20, 2011) (establishing a Federal Public Defender organization), at 3; U.S. District Court, Northern District of Georgia, *Plan of the United States District Court for the Northern District of Georgia Pursuant to the Criminal Justice Act of 1964, as Amended* (January 3, 2005) (establishing a Community Defender Organization), at App. D-9; U.S. District Court, Southern District of Texas, *Criminal Justice Act Plan* (December 15, 2005) (establishing a Federal Public Defender organization), at 7.

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some educational courses in the third. We suspect but cannot be sure that these relatively low standards for trial experience has something to do with the level of (dis)satisfaction indigent defendants have when a panel attorney is appointed for them.

Further research on pro se defense should include surveys or interviews of these defendants to determine with greater specificity the reasons for self-representation. These studies will help us determine whether it is really dissatisfaction with – or complete distrust of – lawyers generally, or public defenders, that prompts self-representation in criminal cases, or are there other reasons? Research is also needed to find out why some states have such a higher rate of pro se defense than others, and how the rate of federal pro se defense compares to that in state courts. Is the rate of self-representation a measure for the quality of representation afforded to indigent criminal defendants? If so, this suggests that federal districts with high rates of pro se defense may want to examine the quality of the representation they afford in their indigent defense systems.

Federal courts have drawn their attention recently to the poor quality of indigent defense in the state courts, and one judge may soon appoint a federal monitor to insure reform of such systems.<sup>72</sup> The same oversight should also be considered in those districts with high rates of self-representation to ensure that federal defendants are similarly not deprived of their Sixth Amendment right to the effective assistance of counsel.

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72. See *Wilbur et al. v. City of Mt. Vernon et al.*, 989 F. Supp. 2d 1122 (W.D. Wa. 2013), where the court found that a systemic Sixth Amendment violation, and granted injunctive relief, reforming two municipalities' indigent defense systems: "It has been fifty years since the United States Supreme Court first recognized that the accused has a right to the assistance of counsel for his defense in all criminal prosecutions and that the state courts must appoint counsel for indigent defendants who cannot afford to retain their own lawyer. The notes of freedom and liberty that emerged from Gideon's trumpet a half a century ago cannot survive if that trumpet is muted and dented by harsh fiscal measures that reduce the promise to a hollow shell of a hallowed right." *Id.* at 1137. See also, L. Jay Jackson, *When the Defenders Are the Plaintiffs: Miami-Dade's overburdened PD's office may decline new clients, Florida court says*, ABA JOURNAL (October, 2013), at 14-15 (describing the ruling in *Public Defender, Eleventh Judicial Circuit of Florida v. State of Florida*, 115 So. 2d 261 (Fla. 2013)).