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When Advocates Become Adjudicators: Tracing the Effects of Prosecutorial and Public Defense Experience on Judicial Decision Making

We assess the influence professional background – specifically, having been a prosecutor or a public defender – exerts on decision making by federal district court judges. Focusing on search and seizure cases, we analyze nearly 1500 motions to suppress evidence from 2000 to 2022. In addition to controlling for judicial ideology and a judge's prior experience as a prosecutor or public defender, we utilize matching to address endogeneity concerns related to one's ability to self-select into one of these positions—which may itself be influenced by that individual's ideological predispositions. We find that having been a former prosecutor, as well as the length of time that service spans, makes a judge significantly more likely to rule against a motion to

suppress. Former public defenders are significantly more likely to grant that suppression motion, though their propensity to do so is not affected by the length of time served in that capacity.

Keywords: judicial decision making; social background theory; prosecutors; public defenders; federal district judges;

Many progressives view the courts as being inhospitable fora for the accused. This skepticism is an outgrowth of multiple arguments, but a primary one rests on two reinforcing factors related to the identity of those in charge of the proceedings: federal judges frequently possess prosecutorial experience, but there are far fewer former public defenders on the bench. To people like Chris Kang, a former Obama adviser on judicial selection who now heads a progressive judicial reform organization, one contributor to this imbalance is a double standard about the relationship between professional background and one's perceived capacity for fairness on the bench. As he puts it, "almost nobody ever asks a prosecutor or a corporate lawyer whether or not they could be fair, as if those are neutral professions or neutral sorts of perspectives" (Serino, 2022). Others have emphasized the importance of having a range of professional perspectives on the courts. As one example, former U.S. District Judge Nancy Gertner credits her criminal defense background with giving her a unique perspective from which to ask questions and make observations. "I added the experience" she said, "of walking into the courtroom with your client and walking out of the courtroom with him in chains" (Alder, 2021).

This empirical reality, which has traditionally characterized judicial selection by presidents regardless of political party, is not new.[1] Yet many, especially on the political left, echo famed civil rights attorney William Kuntsler's view that: "concentrating on prosecutors' offices as a source of judicial talent" not only "belie[s] the appearance of equal justice, but it also reinforces the widespread notion that the Establishment maintains its control by seeing to it that

those who once enforced its laws become the judges of those accused of violating them" (Kuntsler, 1986). More than three decades after Kuntsler's observation, approximately four former prosecutors sit on the federal bench for every one judge with some sort of criminal defense background (Neily, 2019).

Just prior to President Joe Biden's inauguration, incoming White House Counsel Dana Remus announced that the new administration sought to change that imbalance*,* especially in the trial courts that effectively have the conclusive word on virtually all federal cases: "With respect to U.S. District Court positions, we are particularly focused on nominating individuals whose legal experiences have been historically underrepresented on the federal bench, including those who are public defenders, civil rights and legal aid attorneys, and those who represent Americans in every walk of life" (Neidig, 2020). Consistent with this pledge, fifteen months into his administration Biden had nominated 27 current or former public defenders to the federal courts (Raymond, 2022).

It is much too early to assume that professional experience will someday rival the prominence of race and gender when it comes to conceptualizing what diversity means in the context of judicial selection. But regardless of whether attention to professional experience proves enduring or ephemeral, we should know – and we can learn much more about – the potential consequences that this imbalance has for defendants on trial in the federal courts. There are intuitive reasons to think the substantial overrepresentation of former prosecutors among federal judges ought to affect the substance of their rulings. After all, most people "have a strong intuition that a person's prior professional experiences are likely to influence not only their worldview but also their approach to particular cases" (Neily, 2019). As Robinson (2011, 144)

points out, however, evidence of this intuitive link that is so often posited by the media and members of the public has been harder to come by in academic studies.

Our objective here is to determine the influence professional background – specifically the experience of having been a prosecutor or a public defender – exerts on judicial decision making in a legal area where both the cases and issues in them are likely to be salient to those identities. To the extent such effects are shown to exist empirically, we must then wrestle with several other interrelated questions: Do both these positions affect judicial choice in significant ways, or is one consequential while the other is not? Is the impact of professional background explained by the length of *time* or experience one logs as a prosecutor or public defender, a judge's mere *presence* in that professional role, or some combination of the two? Might the relative balance of those considerations differ for prosecutors and public defenders? And, finally, to what extent are the answers to these questions impacted by the possibility that different types of individuals may enter the ranks of prosecutors and public defenders in the first place?

To answer these questions, we utilize originally collected data in nearly 1500 search and seizure cases decided by the U.S. District Courts from 2000 to 2022. In addition to the clear potential of these criminal cases to connect theoretically with the professional backgrounds we focus on, well-established protocols for coding important case-specific attributes in this area permit us to control for legal variation that could limit the ability to make valid inferences about relationships between our key constructs of interest (e.g., Segal, 1984; Scherer, 2005). Finally, we rely on a matching technique to address endogeneity concerns related to a judge's ability to self-select into one of these positions—which may itself be influenced by that individual's ideological predispositions.

We begin with a brief description of social background theory. After describing several early assessments of prosecutorial service's potential to impact decision making on federal appellate courts, we pivot to more recent and more methodologically sophisticated treatments of how the attributes of race and gender have been shown to impact decision making. We then return to the contemporary literature on the effects of prosecutorial service and more nascent work on criminal defense background. Next, we articulate our hypotheses, and the data and methodological strategy we use to test them. Finally, we discuss our results, their implications, and possible avenues for further research.

Judges and Social Background Theory

In simplest terms, social background theory "seeks to leverage the idea that we are a product of our identity and our experiences" to explain judicial decision making (George & Weaver, 2017, 286). Nested within this framework are background factors linked to *attributes* such as race, gender, or religion as well as various life *experiences* like education or occupation (George & Weaver, 2017). The prominence given to ideological or partisan influences on judicial behavior, while deserved, makes it easy to forget that explorations of judicial background began long ago.

Nagel (1962) investigated appellate judges' votes in criminal cases and found that former prosecutors were less likely to favor criminal defendants than those who lacked that prior career experience.[2] Additional studies (see, e.g., Johnston, 1976; Ulmer, 1975; Tate, 1981; Tate & Handberg, 1991) from this era focused on U.S. Supreme Court justices and have been summarized as presenting a "clear, if moderate effect" in line with the intuition that those with prosecutorial experience judge defendants more harshly than those without it (Robinson. 2011, 144). However, these early studies, while illuminating, should be read with some caution due to

their near-exclusive focus on appellate judging (for an exception, see Ashenfelter, Eisenberg, & Schwab, 1995) as well as the nature of their methodological approaches.

Several other early studies also tested the impact of attributes such as race and gender on decision making, but contemporary examinations of these constructs introduced sophisticated methodological techniques to isolate their potential *causal* impact on decision making. Consider Boyd, Epstein, and Martin's (2010) study, which leveraged multivariate matching to find that sex causes both individual and panel effects on the federal appellate courts within the area of sex discrimination. Kastellec's (2013) work extends this general approach to race and finds that black judges are more likely to support affirmative action policies – again, an issue set where salience likely differs across the attribute under examination – than their nonblack colleagues.

The above studies analyzed the U.S. Courts of Appeals; Boyd's (2016) examination of decisions on motions in EEOC discrimination cases, by contrast, focuses on the federal district courts. There, using a different methodological approach, she finds effects for these attributes, again in ways that generally correspond with intuition. Both female and black judges are significantly more likely to decide motions in pro-plaintiff ways than their colleagues in sex discrimination cases; black judges are especially likely to favor plaintiffs in cases involving allegations of race discrimination.

Two takeaways from the Boyd et al. (2010) and Kastellec (2013) studies relate directly to our approach in this manuscript. The first is that each suggests the impact of social background variables on judicial decision making is likely to be confined to substantive areas that are particularly salient to the underlying attribute or experience. Indeed, Boyd et al. (2010) probed the effects of sex on judging in 13 legal areas but uncovered a significant causal effect in just one: sex discrimination cases. This expectation has motivated other investigations as well (e.g.,

Boyd, 2016; Robinson, 2011). The second is methodological, inasmuch as the two pieces utilize matching to employ an explicit framework for causal inference. As we unpack more below, although ideology falls outside the scope of social background theory (George & Weaver, 2017, 286), potential endogeneity concerns remain because an individual's propensity to become a prosecutor or public defender is unlikely to be randomly distributed across ideology.

Harris and Sen's (2022) recent manuscript on criminal sentencing is, to our knowledge, the first study to carefully consider the potential effects of prior professional experience as a public defender on trial court decision making. Similar to the recent appellate studies noted above, these authors employ a framework designed to isolate issues of causality and measure several outcomes related to criminal punishment. They conclude that, all else equal, judges with previous experience as a public defender mete out shorter and less punitive sentences than those without such experience. Though primarily motivated by the lack of attention to public defender experience on the courts, the authors do examine the relevance of former prosecutorial status. There, to a less consistent degree, the opposite pattern emerges– former prosecutors tend to be more punitive than their colleagues. As Harris and Sen suggest, their work speaks to debates about criminal sentencing as well as the impact of judicial backgrounds in decision making.

Like Harris and Sen we are interested in the impact of judicial background on the decision making of federal trial court judges, but our study differs from theirs in several significant ways. First, we assess the implications of prosecutorial or public defender experience on motions concerning the exclusion of evidence on Fourth Amendment grounds in federal trials themselves. In some ways, this look at suppression motions within a criminal trial is analogous to Boyd's approach on civil law motions (Boyd, 2016). Second, in addition to capturing this prior experience dichotomously, we also code the length of time in years that an individual spent

in the relevant professional environment. This allows us to consider not just the possibility that one's *experience* as a prosecutor or public defender could impact decision making in important instances, but that the length of *time* they devote to that type of legal advocacy could be consequential for the magnitude of its effects. Our belief is that time in one of these positions likely correlates with the extent to which an individual adopts views that are characteristic of those who serve in the position. Further, it is likely that beyond a certain point the signaling value of service in a position declines so that those who remain as, for example, a prosecutor for an extended period of time do so out a deeper commitment to the position. Therefore, time in service may be an important indicator of the extent to which an individual has taken on the viewpoint characteristic of prosecutors or public defenders, about which we say more below.

Social Background and Federal District Court Decision Making

Decision making by federal district judges is distinct from the job of their appellate counterparts in important ways (Kim et al., 2009, 84-85; Miller & Curry, 2022). As trial-level decision makers in the federal system, it is the district court's responsibility to judge the relevance and admissibility of evidence, hear testimony and objections, rule on motions, and establish findings of fact (e.g., Kim et al., 2009). In addition, trial judges make decisions over the life of a case, and therefore hold "numerous discretion-filled behavioral opportunities" to affect case outcomes (Boyd, 2016, 790). As indicated above, we focus on one such opportunity: trial judges' rulings on motions to exclude evidence from criminal prosecutions on Fourth Amendment grounds – a decision that is often determinative of whether a defendant can ultimately be convicted.

There are at least two general ways an individual's prior experience as a prosecutor or public defender might be relevant to judicial decision making on the federal trial courts. The first

pertains to self-selection. For example, given the strong historical association between prosecutorial service and selection to the federal judiciary – and at least a nascent similar trend taking hold for public defenders in the current administration – it may be that individuals who wish to be federal judges will pursue such prior positions in order to signal an interest in government work more generally or in an effort to enhance their attractiveness to decision makers involved in the selection process. Relatedly, those who are drawn to a prosecutorial (or public defender) career may be inherently more (or less) ideologically conservative, "tough on crime," and pro-prosecution than those who are not (Berryessa, Dror, & McCormack, 2021).

Apart from any self-selection that may occur, professional training could socialize individuals to think in certain ways. Just as judges who regularly hear criminal cases may form the impression that the vast majority of defendants are guilty (see Baum, 2011, 36) or police officers may overestimate rates of criminality, so too might we expect a prosecutor-turned-judge to possess views that are different from someone who has represented criminal defendants. At the same time, those with public defender backgrounds may be more inherently skeptical of the government's arguments in some criminal cases. Or, as federal trial judge and former public defender Richard Boulware phrased it, "I have the privilege to have experienced how frequently our system can feel unfair to individuals who don't have the same access to resources as other individuals" (Alter, 2021).

Another significant reality of trial court decision making is that, as the intake courts of the federal system, many of the cases heard there – or at least the motions made within those cases – are weak or one-sided. As Boyd (2016, 791) puts it, most such matters will be easily resolved on legal considerations alone: "Any trial court dataset that includes a high proportion of these inherently weak cases is therefore likely biased against finding judge-specific effects due to

the swamping effects of these 'easy' cases…" That may be particularly true when it comes to motions to exclude evidence in search and seizure cases, where some criminal defense attorneys "bring unwinnable motions to suppress" as a matter of course (e.g., Kagan, 1996, 34). In order to examine the possibility that service as a prosecutor or public defender matters to decision making by federal trial judges, we must therefore look to cases where there is at least some room for reasonable disagreement about the "correct" legal answer.

To account for this concern, we initially limited our assessment to district court decisions that were appealed to the circuit courts. Then, similar to Scherer's (2005) approach in examining the U.S. Courts of Appeals, we restrict our focus to cases that are at least somewhat non-consensual – that is, cases in which a dissent or a concurrence was identified at the appellate level and/or in which the Court of Appeals reversed the trial court's ruling on the suppression of evidence.[3] This strategy yielded a sample of 1,445 search and seizure cases decided by 720 U.S. District Court judges from 2000 to 2022.

In an effort to isolate the effects of prosecutorial and/or public defender experience,[4] we use the case as our unit of analysis and control for judicial ideology and a series of case facts. We measure judicial ideology by utilizing the approach developed by Giles, Hettinger, and Peppers (2001), which Boyd (2015) has extended to the district court context.[5] The specific case controls incorporated for search and seizure cases involved coding whether or not a warrant was present, whether a search was limited in nature, and the location or environment of the search (e.g., a home, vehicle, luggage, border search). We also include demographic indicators for whether the judge is Black or a woman and a measure of the ideology of the circuit in which the district court is situated. These variables are described more fully in the appendix. The models also include fixed effects for years and circuits.

Data, Hypotheses, and Methods

As noted above, it is important to consider the potentially endogenous relationship between ideology and our independent variables of interest: experience as a prosecutor or as a public defender. It is potentially true that those attracted to work as prosecutors are more conservative than other judges, while those attracted to work as a public defender are more liberal than average. Descriptively, this is the case in our data. Those who have some prosecutorial service are significantly more conservative than those who do not ($p<0.001$), and those who serve as public defenders are significantly more liberal than those who never serve as public defenders ($p<0.000$). Figure 1 below illustrates this confounding relationship. However, it is also possible that service as a prosecutor is simply a way for an individual to signal interest in government service as an attorney or a judge (e.g., Harris & Sen, 2022). We take a multi-pronged approach to try to untangle what we term the *self-selection effect* (the differential attraction of conservative and liberals to these positions) and the *signaling effect* (that service as a prosecutor is primarily about signaling interest in further government work and not an ideologically tinged decision).

[Figure 1 here]

To help understand how ideological self-selection might affect our results we use a matching approach that allows us to reduce the potential effect of ideological imbalance across the positions as a threat to inference. The approach we use is known as inverse probability weighted regression adjustment (IPWRA).[6] The goal is to use matching techniques to create weights for each observation, which are then used with standard regression techniques to create balanced data. We matched observations on the characteristics of judges that can be considered

as arising before treatment (here self-selection into the position of prosecutor or public defender)—ideology, race, and gender. We have included ideology in the matching process as it is the main source of confounding in our research design. However, we have also included gender and race as these characteristics may be correlated with decisions to become a prosecutor or a public defender as well. Following the advice of experts (e.g., Stuart, 2010; Woolridge, 2010), we estimated a number of different variable combinations in our matching approach and settled on the combination of variables listed in Table 1 below. Although we investigated interactions between all of the variables including in the matching process the combination shown below induced the best balance, where "best" involves picking the treated and control groups with the least covariate imbalance (Stuart, 2010). For each variable, the imbalance present in the raw data is substantially reduced in the weighted data. Table 1 shows that there is a significant positive difference in ideology for those who choose to become prosecutors compared to those who do not (0.179), but that after matching that difference is essentially zero. Similarly, with respect to service as a public defender, we see that those serving are significantly more liberal (-0.644) than those who do not and that the imbalance is significantly reduced, though not gone, in the matched data (0.032).

[Table 1 here]

To get a better grasp on the possibility of signaling, we utilize time in the position as an indicator of commitment to the job. Our presumption is that beyond a certain point, the signaling value of remaining in these positions declines significantly. We do not, a priori, have a sense of how long that will be—we prefer to let the data tells us if it can. In the naïve regression context, we operationalize time of service as a simple count of years, but for the matching process we have to bin the time in service (as we discuss further below).

Results

We estimated a series of models using a naïve regression and utilizing a matching approach. Results for the variables of interest across these specifications are displayed in Table 2 (matching results only)[7] and in Figure 2 below. Model 1 shows the regression for matching on previous service as a prosecutor, while Model 2 displays the results for matching on previous service as a public defender. As a reminder, we expect that service as a prosecutor will make an individual more likely to vote to uphold a search while service as a public defender will reduce that tendency. Also, it is important to note that in the analyses the comparison group is all individuals who are not prosecutors in model 1 (looking for the effects of service as a prosecutor) and all individuals who are not public defenders in model 2 (looking for effects of service as a public defender). The left panel in Figure 2 displays the results from the naïve logit regression. Results here are largely consistent with expectations. Service as a prosecutor increases the likelihood of voting to uphold a search by 5 [0.1, 9.8] percentage points (throughout, 95% confidence intervals are in brackets). Moving from 2 years of service as a prosecutor (the 10th percentile in the data) to 17 years of service as a prosecutor (the 90th percentile) increases the likelihood of a vote to uphold a search by 8 [2.5, 14.5] percentage points. Service as a public defender reduces the likelihood of voting to uphold a search by 10.8 [-20, -1.5] percentage points. We find no corresponding effect for length of service as a public defender. As an initial matter, then, we have reason to expect that these characteristics are consequential for district court judge decision making.

[Table 2 here]

[Figure 2 here]

Yet there is reason to question the naïve results, because selection into both positions may be driven by underlying ideological proclivities. To reduce this endogenous relationship's threat to inference we undertake the IPWRA matching approach described above. As a reminder, this process involves two steps. First, we estimate a weight for each observation that induces balance between the treated and control groups. The weights are inverse to the probability of treatment, so in the prosecutor treatment regression we expect that liberals who also serve as prosecutors will be more heavily weighted (since they are less likely to be treated). Second, we then use those weights in estimating the regressions. Results of this process are displayed in the right panel of Figure 2; full model results are available at page 4 of the appendix. Mimicking the results from the naïve regression we find that service as a prosecutor increases the likelihood of upholding a search by 4.7 [0.1, 9.4] percentage points and that service as a public defender reduces the likelihood of upholding a search by 13.5 [-24, -3.4] percentage points.

To include years in service in either position as potential treatments we need to bin the length of service, since using a continuous variable as a treatment can induce dimensionality concerns in the matching process (see, e.g., Iacus et al., 2009). For prosecutors we create three groups: service from 1-5 years, service from 6-10 years, and service for more than 10 years. Each of these categories constitutes about 1/3rd of the data on service as a prosecutor. With fewer observations we have fewer bins for service as a public defender – from 1-5 years and more than five years. These two groups divide the public defender service data roughly in half. The matching results clearly suggest that short service as a prosecutor is unlikely to affect subsequent voting on motions to suppress a search, but service beyond five years can perhaps be seen as more than a mere signaling device. Service for 5 years or less as a prosecutor is unlikely to increase conservative voting, with an effect centered on zero (0 [-8, 8]). Those who serve

between 6 and 10 years are 9.4 [2.6,16.3] percentage points more likely to vote to uphold a search, while those serving more than 10 years are 10.9 [3.4, 18.5] percentage points more likely to vote to uphold a search. There is no statistically significant difference between the 6-10 category and the 10+ category. This evidence suggests that there are two types of people serving as prosecutors. The first group, serving a short period of time before moving to a different position, are no more or less likely to be conservative in their subsequent decision making. Those who evince some commitment to the position by serving more than five years in prosecutorial positions are much more likely to vote to uphold a search. Given the matching approach used here we can say that these results are unlikely to be the product of ideologically-driven selection effects. Lengthy service as a prosecutor seemingly makes one more conservative on search and seizure cases, all else equal.

Turning to time in service as a public defender, the results suggest that any service as a public defender is likely to indicate significantly more liberal voting in search cases. We can say this because the difference between minimal service (1-5 years) and substantial service (5+ years) is not itself significant. Service from 1-5 years reduces the likelihood of upholding a search by 12.3 [-24, -0.6] percentage points while lengthier service (5+ years) reduces the likelihood of upholding a search by 18.6 [-29, -8.6] percentage points. The failure to find a difference based on length of service may be a result of a relatively small-N in each category, but it is also consistent with the notion that service as a public defender is more likely to be driven by ideological commitments. Alternatively, brief service as a prosecutor is probably more indicative of career motivations, unlike lengthy service as a prosecutor.

Conclusion

Our findings demonstrate that a judge's prior professional background is consequential for decision making on suppression motions in the federal trial courts. As we see it, these results are meaningful in at least three respects. From a substantive perspective, they serve as evidence that the social background theory can be a robust predictor of judicial behavior in important circumstances. The results also validate many of the concerns opinion leaders have expressed about the capacity for former prosecutors to be evenhanded toward the accused once they don the judicial robe. These findings also suggest that recent efforts by the Biden administration to enhance the diversity of judicial background by seeking out former public defenders for federal judgeships "may contribute to minimizing overall bias in the criminal-legal system" (Berryessa, Dror, & McCormack, 2022, 3).

At the same time, given our significant findings about the influence of public defender status on suppression motions, tapping a greater proportion of public defenders for the bench seems unlikely to reduce the bias of individual judges in individual cases – it is probably more accurate to think about it offsetting or canceling pro-prosecution bias at the macro-level even as it introduces a level of bias against the government in particular cases. From a methodological standpoint, our confidence in these conclusions is strengthened by the use of matching to ameliorate the threat that endogenous, ideologically-driven selection effects might pose to our results. Furthermore, incorporating both an individual's presence and her length of service in a position allows us to push further and consider the mechanisms that may underlie social background's influence in this context.

This last point is important from a policy perspective; we think it matters that there appear to be two types of district judges serving as prosecutors – one group which serves a short time and moves on to a different position, and a second that accrues years of experience. On the

other hand, former public defenders vote similarly regardless of how long they served in that capacity. This suggests public defenders are drawn to that position more by ideological commitment than career motivation; those who serve briefly as prosecutors probably do so for career-related reasons, even as those who remain in that role for many years probably do so out of ideological affinity.

The above is also consistent with the fact that prosecutorial experience has long been the "conventional" path to federal judicial service. Will the Biden administration's commitment to professional diversity in the selection of judges elevate the occupation of public defender to a more recognized path to judicial service? If it becomes a more mainstream path for potential judges, strategic individuals will probably gravitate to that position as a signal as well. And this, at least in theory, could ultimately produce the same two types of district judges that seem to emerge from prosecutorial service.

The fact that we observe a distinction amongst former prosecutors around the five-year mark raises the obvious question why fewer years of service has no evident effect. Though it may relate, in part, to the notions of ideological commitment vs. career signaling, an additional explanation could be that it takes around this length of time for individuals to be cognitively socialized as prosecutors. As Berryessa, Dror, and McCormack (2022, 5) describe it, this prosecutorial socialization "may lead them to adopt specific schemas about and approaches toward legal contexts, such as distinct views about constitutional protections, precedent, and law's flexibility and limits, which in turn could shape later judicial behavior and decision-making."

In any event, our results suggest that Republican political opposition to putting public defenders on the bench may be more ideologically justified, or at least more straightforward,

than Democratic resistance to promoting prosecutors. According to our findings, only a subset of those with prosecutorial experience – those with more than five years – are likely to threaten liberal ideological goals, rather than former prosecutors as a whole. Though we cannot discount the possibility that former public defenders are equally pro-defendant due to a relatively small sample size, it does suggest progressive concerns about the proportion of prosecutors on the bench may be somewhat exaggerated.

Finally, while we have demonstrated important effects in the area of search and seizure, scholars should consider the extent to which these results are mirrored in other areas. Recent work demonstrates the significance of these occupations for criminal sentencing (Harris & Sen, 2022), and it seems likely to be influential in additional areas of criminal law that we would expect to be highly salient to former prosecutors and public defenders. Extending investigations to topics such as *Miranda* issues or *habeas corpus* cases will be important if we are to gain a more comprehensive picture of the circumstances under which these types of prior occupations have implications for judicial decision making and, ultimately, the fates of federal criminal defendants.

Notes

1. As Sheldon Goldman (1974, 220) demonstrates, approximately 45% of Presidents Johnson and Nixon's appointments to the federal district and appellate courts possessed some form of prosecutorial experience.
2. With respect to what social background theory generally terms "attributes," Nagel's sole significant finding was that Protestants were less likely to favor defendants in these cases than were self-identified Catholics.

3. To be precise, we searched Westlaw for criminal cases that contained the phrase "search and seizure." Then, within those results, we performed three additional searches – cases that contained the word "reverse," the word "dissent" and/or the word "concur."
4. To code these variables, we searched the Federal Judicial Center's Biographical Database of Article III Judges (available at www.fjc.gov). District judges whose biographical information included references to state (e.g., district or state's attorney) and/or federal (U.S. Attorney or Assistant U.S. Attorney) were identified as prosecutors. We did not include Attorneys General as prosecutors; civil litigation comprises a preponderance of the work in most AG positions (e.g., Clayton, 1994), and we felt this exclusion yielded a purer test of social background theory in this context. In coding public defenders, we were careful to exclude those whose biographies indicated an association with civil legal aid.
5. This approach appreciates the importance of senatorial courtesy to district court appointments, and assigns judges the ideological (DW Nominate) score of the relevant senator(s) when they are the same party as the nominating president. Where senatorial courtesy does not exist, the judge is given the ideological score for the nominating president. Despite recent relaxation of the deference historically afforded to home-state senators via the blue slip process on federal appellate court nominees, the Senate has maintained its respect for that deference on district court nominations throughout the time period we examine (e.g., Miller, 2021).
6. The IPWRA approach is said to be doubly-robust. This means that if either the matching regressions or the regressions estimating effects using the matched data are correctly

specified, then the estimators will still be consistent. This is another reason we have chosen this approach.

7. Results for the logit model are presented in the appendix.

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Figure 1: Potential Endogenous Relationship

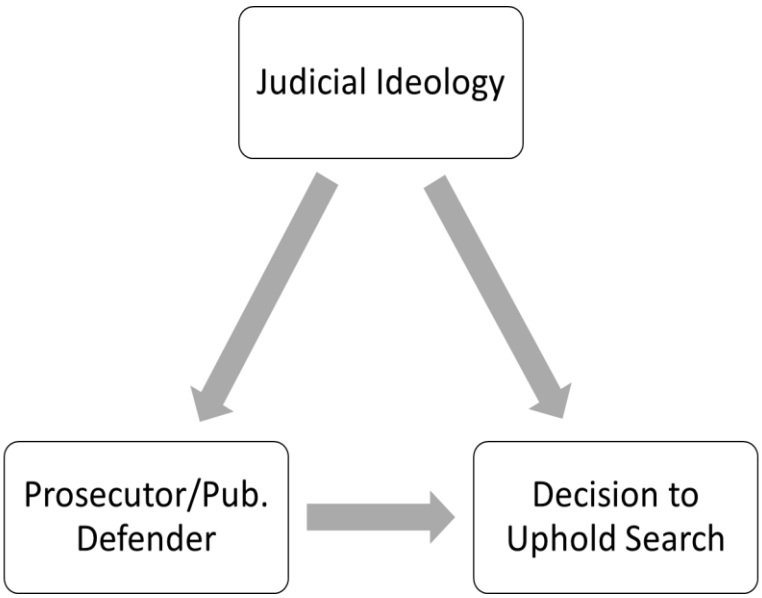


Table 1: Covariate Balance after Matching

Prosecutor Balance	Raw	Weighted
Ideology	0.179	0.006
Black	0.074	-0.003
Woman	0.162	0.002
Public Defender Balance	**Raw**	**Weighted**
Ideology	-0.644	0.032
Black	0.398	-0.072
Woman	0.001	-0.069

Table 2: Matching Regression Results

	Model 1: Prosecutor		**Model 2: Pub. Defender**	
	Coeff.	Robust S.E.	Coeff.	Robust S.E.
Average Treatment Effect	0.052*	0.025	-0.140*	0.067
Outcome Model (Treat = 0)				
Judge Ideology	1.01**	0.29	1.08**	0.24
Public Defender	-0.61	0.40	---	---
Prosecutor	---	---	0.32	0.17
Home	---	---	---	---
Car	-0.49*	0.24	-0.38	0.21
Luggage	-0.31	0.36	-0.25	0.33
Person	-0.35	0.39	-0.58	0.33
Warrant	-0.56*	0.23	-0.56**	0.19
Limited	-0.01	0.37	0.30	0.32
Border	-0.37	0.42	-0.49	0.39
Circuit Ideology	-0.96**	0.32	-0.79**	0.28
Woman	0.24	0.23	0.21	0.19
Black	-1.01**	0.29	-1.06**	0.23
Outcome Model (Treat = 1)				
Judge Ideology	1.04**	0.40	0.08	1.23
Public Defender	-0.66	0.41	---	---
Prosecutor	---	---	1.22	0.75
Home	---	---	---	---
Car	-0.51	0.36	-1.04	0.64
Luggage	-0.28	0.62	-0.99	1.25
Person	-1.34*	0.54	-1.33	0.86
Warrant	-0.77*	0.32	-1.29	0.75
Limited	1.23*	0.54	0.15	0.96
Border	-0.38	0.65	0.40	0.91
Circuit Ideology	-0.13	0.44	0.12	0.75
Woman	0.00	0.32	0.22	0.66
Black	-0.96**	0.32	-0.12	0.61
Treatment Model				
Judge Ideology	0.68*	0.28	-1.83**	0.71
Woman	0.47**	0.22	-0.186	0.52
Black	0.37	0.28	0.84	0.45

* $p<0.05$; ** $p<0.01$ (all two-tailed)

Figure 2: Results Graphing

