Elements of Expertise: Lawyers' Impact on Civil Trial and Hearing Outcomes*

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Abstract

A large sociological literature on legal professions identifies lawyers as gatekeepers of justice, particularly through formal legal procedures such as litigation. Nevertheless, empirical research presents a divided and uncertain picture of how – and, indeed, whether – lawyer representation affects the outcomes of ordinary litigation involving members of the public. Conclusions from past work are bedeviled by a lack of clear theory about what lawyers' work in litigation entails and by aspects of research design. Conceptualizing the work of litigation in terms of professional expertise, I conduct a theoretically grounded synthesis of the findings of existing studies of lawyers' impact on case outcomes. Using an innovative combination of statistical techniques -- meta-analysis and non-parametric bounding -- the present study transcends limitations of previous work to reveal a domain of consensus for lawyers' effect on case outcomes and to examine why this effect varies across extant studies. For the fields of law studied to date, knowledge of substantive law explains surprisingly little of lawyers' superior performance relative to lay people who represent themselves. Instead, for the range of problems studied, lawyers' impact is greatest when they assist in navigating relatively simple (to lawyers) procedures and where their presence assists the court in following its own rules.

INTRODUCTION

While many Americans express ambivalence about lawyers' motives for providing their services to the public – particularly about whether lawyers value their fees more than justice (Galanter 1998; Hengstler 1993; Leo J. Shapiro and Associates 2002) -- most believe that attorneys help their clients through their knowledge of the law (Leo J. Shapiro and Associates 2002). The public's views are paralleled in the academy: Access to legal services has been a central element of most scholarly thinking about the public's access to justice, and a large sociological literature on legal professions identifies lawyers as gatekeepers of justice through law, particularly through formal legal procedures such as litigation (Sandefur 2008).

Nevertheless, empirical research presents a divided and uncertain picture of how – and, indeed, whether -- lawyers affect the outcomes of ordinary litigation involving members of the public.[1] Conclusions from past work are bedeviled by a lack of clear theory about *how* and *why* lawyers might affect case outcomes and by aspects of research design. The observational design of most work in this area makes it impossible to distinguish causality from selection; and, most studies'

[1] The term "ordinary litigation" comes from the landmark Civil Litigation Research Project. Its Principal Investigators meant this term to include the typical business of state courts and federal courts (Trubek *et al.* 1983-1984: 82-83). I use it in a similar sense, but construe "ordinary" from the perspective of the public, meaning the typical kinds of court and court-like civil processes that people become involved in. These are the kinds of cases with which most lawyers, courts and tribunals are very familiar, but such cases rarely make the news, nor are they featured much in the polemical debates about lawyers and litigation (Trubek *et al.* 1983-1984: 83).

[2] I take this term from Manski (1995:29).

focus on a single court or kind of case makes it difficult to assess what lawyers are doing in general that may affect how adjudication turns out.

The present paper provides theory and methods to address this gap, the closing of which is central both to scholarly understanding of law as a profession and to civil justice policy. Conceptualizing litigation in terms of professional expertise, I conduct a theoretically grounded synthesis of the findings of existing studies of lawyers' impact on case outcomes. Using an innovative combination of statistical techniques -- meta-analysis and non-parametric bounding -- the present study transcends limitations of previous work to reveal a "domain of consensus"[2] for lawyers' effect on case outcomes and to examine why this effect varies across extant studies. The analysis reveals that, in certain types of cases, lawyers affect case outcomes less through knowledge of substantive law than through their familiarity with basic procedures. In addition, in some instances, lawyers appear to affect case outcomes because their presence on a case acts as an endorsement of its merits and their presence in a courtroom encourages the court to follow its own rules. In these instances, lawyers' relevant expertise is less substantive (their knowledge of the law) than relational (their relationship to the court).

The implications of the present research are not only theoretical. Lawyers' monopoly on appearance and representation in the United States remains strong, while many thousands of people go unrepresented every year in matters that can lead to bankruptcy, penury, homelessness, and lost custody of their children (Consortium on Legal Services and the Public 1994). The

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[2]

findings of this research suggest that expanded public access to representation might substantially affect the aggregate outcomes of these proceedings, with many more members of the public prevailing than is currently the case. However, because lawyers' principal contribution in the kinds of cases studied to date does not rest on a high degree of specialized legal skill, greater access to representation could have a powerful impact even if those representatives were not qualified attorneys. In many of the kinds of cases where members of the public routinely represent themselves, nonlawyer advocates such as union representatives and paralegals may be as effective as qualified lawyers at affecting the outcomes of trials and hearings. The potential consequences of expanding access to representation in civil trials and hearings are substantial, but the findings of this research reveal such advocates may not always need to be attorneys.

Lawyers' Expertise and Access to Justice

In a society where people are permitted to pursue their own cases in court without the assistance of attorneys[3], the link between access to lawyers and access to justice rests on a central premise: Law's complexity creates barriers to those not schooled in it. This premise informs both policy advocacy and social science. Proponents of expanded civil legal aid hold that attorneys, as they advocate for their clients, facilitate the effective airing of relevant facts and the use of appropriate legal means – for example, doctrines, motions, and legal arguments –and so produce outcomes that are more legally accurate than those achieved when people without legal qualifications try to represent themselves (*e.g.,* Abel 2006; Cooper 1979; Engler 2006; Hagen 1983; Hammer and Hartley 1978; Udell and Diller 2007; William E. Morris Institute for Justice 2005). Without lawyer representation, people whose cases merit a judgment in their favor might nevertheless lose, because they did not know how to communicate those merits effectively in the terms and through the means that courts and judges understand.

Sociologically inclined observers, by contrast, tend to focus on the legal indeterminacy of litigation's outcomes. From this perspective, results are seen less through the lens of technical accuracy and more as the result of a contest of equally or unequally matched parties (*e.g.,* Black 1989; Galanter 1974). Because, at least formally, courts treat as equivalent unsophisticated or inexperienced parties who self-represent and parties who are represented by attorneys,

[33] In the United States, individuals have the legal right to represent themselves in many courts and administrative tribunals. In other countries, some courts require that all parties be represented by attorneys (Regan 1999).

represented or experienced parties are presumed to gain an advantage that is independent of the merits of any particular case, through their greater knowledge of legal substance and proper procedure (Black 1989; Galanter 1974; Ellwell and Carlson 1990; Yngvessen and Hennessey 1975; Wheeler *et al.* 1987; Kritzer and Silbey 2003). In both of these accounts -- that which holds that lawyers' affect case outcomes by making them more accurate and that which holds that lawyers' effect comes through advantaging the parties who secure their representation -- lawyers' expertise is central to understanding how they affect trials and hearings and, ultimately, the public's access to justice.

Expertise exists when possession of the knowledge and skills necessary to perform certain tasks involves a degree of specialization and of devoted training that generates unequally distributed understanding (Abbott 1988; Freidson 1986, 1994; Goode 1957; Larson 1977; Parsons 1968). Expertise proliferates in modern complex societies with their highly differentiated divisions of labor, as famously illustrated in Weber's (1946 [1918]: 139) example of the streetcar, daily ridden and relied upon by people who cannot operate it, design it, explain the physical principles by which it works, draft the documents incorporating the companies that construct it or craft the instruments that finance it. Expertise is the "least common denominator" of professional occupations (Freidson 1994: 157), in recognition of which fact professional services are sometimes conceptualized as "credence goods." The signal quality of these goods is that consumers cannot evaluate providers' performance: producers of credence goods identify and treat problems that their clients do not know how to solve and may not even recognize that they confront (Darbi and Karni 1973; Dulleck and Kerschbamer 2006). Sociological theories of the

role of expertise in professional work highlight two elements of professional expertise, one reflecting knowledge of professional theories, concepts and tools and the other reflecting skill at navigating the social context in which professional work takes place.

Substantive expertise. Concerned with professions' peculiar categories and theoretical frameworks, substantive professional expertise is abstract and "principled" (Barley 1996: 425, 429). In the case of law, this expertise includes understanding both of the content of the law and the use of legal procedure. Substantive law includes statutes, doctrines and relevant past cases as well as general legal principles that might apply to a given case, while procedural complexity reflects the challenge of getting a legally constructed problem through a formal legal process -- the forms, motions, pleadings, hearings and so forth that must be completed accurately, appropriately and on time in order for other members of the staff of the civil justice system to process the dispute. Navigating and using legal procedures and legal documents requires understanding what kinds of information count as evidence, how evidence may be presented, how to construct legal arguments, when to file them, and the like.

Professionals' such as lawyers first act when confronted with a potential client is a transformation from the mundane into the professional: sorting out the professional from the nonprofessional aspects of a client's situation and translating natural problems into professionally comprehensible problems that can be understood and manipulated using a profession's conceptual tools (Abbott 1988: 44-52; for law specifically see, *e.g.,* Hosticka 1979; Korobkin and Guthrie 1997; Kritzer 2004; Lederman and Hrung 2006: 1246-51; Mather,

McEwan, and Maiman 2001; Sandefur 2001; Sarat and Felstiner 1995). In a dispute about child custody in a divorce, for example, many aspects of a participant's experience – hostility, hurt, anger, feelings of betrayal – are not comprehended by law and do not have legal treatments or solutions (Mather, McEwan , and Maiman 2001; Sarat and Felstiner 1995; see also Lens 2007; Mertz 2007; Scheppele 1994), but some part of the problem as experienced by the client has legal aspects and can be conceptualized in legal terms, such as adultery, battery, or the best interests of a child. Identifying the legal problem or problems and discerning how they may be handled using legal techniques involves the use of substantive expertise. Different areas of law and different problems will vary in the degree to which they require greater or lesser degrees of substantive expertise.

Relational expertise. The specific contexts in which professional work is conducted, such as courtrooms, hospitals, and accounting offices, present a second dimension of professional challenge, as professionals must understand how to navigate the relationships involved in getting their work done (Barley 1996). While substantive professional expertise is abstract and principled, relational expertise is "situated" and "contextual" (Barley 1996: 425, 429). Being relationally expert requires understanding the social distribution of knowledge and professional and paraprofessional discretion within the specific human relationships through which professional work takes place (Barley 1996): knowledge of, for example, how patient a specific judge will be with a plaintiff's rambling explanation of why she is in court, how responsive a particular nurse will be to an order from a physician as opposed to direction through consultation, or which of five computer programmers on a given project is the one to consult

about a resolving a certain problem. The explicit curriculum of professional training – for example, constitutional law, anatomy, homiletics, fluid dynamics – typically does not include this material; nevertheless, it can be essential for work's successful conduct (Barley 1996; for law specifically, see, *e.g.,* Eisenstein and Jacob 1977; Feeley 1992; Kritzer 1998a; Monsma and Lempert 1992; Sullivan *et al.* 2007; Szmer, Johnson and Sarver 2007: 281).

To investigate the role of specifically legal, or substantive expertise in creating lawyers' impact on case outcomes, I assess available evidence about lawyers' impact on the judgments issued in civil trials and hearings by analyzing the results of extant research in a meta-analysis. Then, I evaluate the hypothesis that any "lawyer effect" is created by demands for substantive legal expertise. I do this by comparing evidence of lawyers' impact on the outcomes of trials and hearings across studies of similar design involving legal problems that have different levels of substantive legal complexity, and by comparing the impact of lawyers to that of representatives who are not legally qualified, such as social workers, paralegals, and union representatives. This analytic strategy allows for investigation of the role that expertise plays in creating lawyers' impact. Identifying the role of substantive legal expertise in lawyers' impact on case outcomes is one innovation of the study.

Another innovation of the study is how it responds to challenges presented by the research design of previous work. All but one of the extant studies of lawyers' impact on civil case outcomes is observational: researchers allowed lawyers and clients to pair up (or not) without interference, rather than randomly assigning people to the conditions of lawyer representation,

nonlawyer representation, and self-representation. Research reveals that the observed distribution of cases across lawyers, nonlawyers and self-representing parties results from complex matching processes. Many factors, some of them unrelated to the case at hand, affect whether a case will receive lawyer representation. While organizations seem to choose forms of representation as a matter of policy for all cases of a given type (Block and Streiber 1987), some evidence suggests that people choose forms of representation based on their own assessment of how complex their case will be, electing to handle cases themselves when they believe them to be relatively straightforward (Sales *et al.* 1992). On the other side of the desk, distinct groups of lawyers employ different criteria when selecting cases from those offered by potential clients. Contingent fee lawyers, who are paid for their services by a proportion of any award or settlement, select individual cases based on whether they think they can establish liability, whether they believe they can make money off of the case, and on their assessment of the risks and potential rewards in their already existing portfolio of cases (Kritzer 2004; Michelson 2006; Trautner 2006, 2009). Lawyers who are paid by the hour appear to consider potential clients in light of their own current and anticipated workload, and they sometimes select cases based on their assessment of clients' ability to pay, for instance by requiring a retainer (Mather *et al.* 2001: 148-149; Seron 1996:123). Lawyers paid by their clients are not the only attorneys who are selective about which cases they take. For example, legal aid lawyers, salaried and providing services to their clients free of charge, are more likely to take cases when they believe the issue at hand is disputable (Monsma and Lempert 1992). Thus, whether a lawyer takes an individual client's case can depend both on aspects of the case itself and on factors completely unrelated to it, such as the expected value of other cases the lawyer may be serving or characteristics of

clients themselves, such as their wealth (Sandefur 2008). These selection processes appear to differ across fee structure, kinds of clients, and areas of law.

In quantitative analysis using observational data, a conventional means of taking factors such as these into account would be to attempt to measure them, control for them statistically and then estimate the net relationship between the treatment – here, being represented by an attorney -- and some dependent variable, such as whether or not a party wins the case (Cook and Campbell 1979; Davis 1985). For example, in the present case one might collect for each case measures of monetary stakes, client income, and case complexity, as well as measures describing the pool of lawyers that might take each case. Then one could estimate the relationship between representation and case outcome net of these measures. Contemporary twists on this basic strategy include sophisticated statistical corrections for selection bias and techniques of propensity score analysis (*e.g.,* Dehejia and Wahba 2002). These strategies work well when the selection process of interest is well-understood and when good measures of the prior factors are available. Unfortunately, neither of these conditions holds here. As noted above, our understanding of selection processes is basic, founded on a handful of studies in a few areas of law. Among the body of representation research, few studies collect or present measures of cases' or representatives' characteristics, and none of the case-level data necessary to estimate such selection models are publicly available.

When selection processes are known to be present but incompletely understood or poorly measured, nonparametric techniques can be used to determine bounds within which extant work

suggests the causal effect of interest must fall. I draw on such techniques to construct the logically possible bounds that available data indicate for the magnitude and direction of the effect of lawyer representation on an adjudicator's decision. These bounds establish a "domain of consensus" for lawyers' effect, given that the data are representative of the population of interest (Manski 1995: 29). As a measure of the impact of lawyers on case outcomes, the bounds have two highly desirable qualities: they are consistent with a body of research rather than a single study, and they are responsive to the implications of the research design of extant work.

Observational research designs result in the collection of data in which processes of both selection – what cases get attorneys or other representatives – and influence – how do attorneys or other representatives *change* what happens in trials and hearings – are confounded in the reported results. To handle this aspect of research design, I draw on techniques for bounding effect sizes when selection processes are known to be present but are not or cannot be measured. I produce bounds for the magnitude of lawyers' effect on case outcomes under three sets of assumptions about how cases are selected into the condition of representation by attorneys: (1) selection processes are completely unknown; (2) whatever selection processes may be, they cannot result in cases that are represented by attorneys turning out worse than they would have without lawyer representation. This might be termed a "no harm assumption": whatever it is lawyers do, on average they do no harm to their clients' chances of winning their cases; (3) selection is exogenous to the effect that representation has on the outcome. In effect, this final assumption holds that the matching of cases to different kinds of representation is a random process with respect to the likelihood that a case will win -- it as if some invisible hand randomly

assigned different cases to the different conditions of lawyer representation, nonlawyer representation, and self-representation.

DATA AND METHODS

The central analytic strategy of the paper combines in a novel way theory-driven meta-analysis, or quantitative research synthesis (Cooper and Hedges 1994; Goldfarb *et al.* 2002; Rosenthal 1991; Stanley 2001), with econometric techniques that enable analysts to construct bounds for the magnitude of causal effects when selection processes are known to be present but poorly measured or understood (Manski 1989, 1990, 1993, 1995). In a meta-analysis, the unit of observation is the study. Meta-analysis is a powerful technique for assessing the state of the art in a research area and for summarizing existing knowledge about contested questions (Cooper and Hedges 1994; Hedges and Olkin 1985). When the original data from extant studies are not available, as is the case in the literature considered here, meta-analysis is an invaluable means of producing new, more general knowledge.

Data

The studies of representation's impact reviewed here comprise every known published[4] quantitative analysis of the relationship between attorney representation and civil trial or hearing

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[44] For purposes of this review, publication is broadly construed to mean that an organization judged the report to be fit for public consumption. Thus, the universe of published literature includes reports put out by foundations, agencies and congressional committees, as well as work that has gone through some form of independent editorial

outcomes in the United States. To identify this universe, a research assistant and I first searched the title, keyword and abstract fields of electronic literature databases in law and the social sciences for terms such as "representation," "lawyers" and "case outcomes." This strategy is a conventional meta-analytic search technique (Reed and Baxter 1994; White 1994), which in the present case could not alone capture the literature. Representation research is interdisciplinary, reflecting the work of scholars in law, political science, sociology, and social work. Authors in one discipline have often been unaware of previous work by authors in another, and thus common terminology has not yet developed. Therefore, after we had identified an initial group of studies of the effects of legal representation on hearing outcomes, we inspected the footnotes and references in those articles in search of additional material. We also queried authors of extant representation studies and received additional leads.

The search revealed that, over four decades, 42 empirical studies of the relationship between representation and adjudicated civil case outcomes in the United States have been published in law reviews, Congressional reports, policy bulletins, peer review journals, and monographs. From these, I selected for inclusion in the meta-analysis those that met the following criteria: (i) The report included quantitative summaries of the outcomes of civil contests that were formally adjudicated – that is, actually taken to trial and heard -- in courts or tribunals somewhere in the United States; (ii) On at least one side of the cases were parties who could potentially appear unrepresented by any agent, i.e., private individuals; (iii) Study authors collected a representative

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review. A minority of representation studies have been peer-reviewed, as most appear either in law reviews or in foundation or agency reports.

sample of cases; (iv) The information reported permitted construction of measures of the number of cases won and lost by the type of representation used. I did not exclude studies that distinguished between represented and unrepresented parties on only one side of a dispute, as this would have eliminated many otherwise eligible studies. Typically, the studies take the perspective of a focal party, usually a person facing a business, a landlord, or a government agency. Seventeen studies, comprising just over 18,000 adjudicated civil cases, provide the data for the meta-analysis.[5]

The exclusion rate for studies is on par with that of meta-analyses in other subfields, and is not surprising given the diversity of disciplines and lack of mutual reference among the body of existing work (see, for example, Crain and Mahard [1983], Jones and Dindia [2004], Sirin [2005]). The majority of excluded studies are so because pieces of information essential to the meta-analysis are not recoverable from published work, though some are also excluded for reasons of study design. The most common reason studies were excluded was because they provided insufficient information to distinguish cases represented by lawyers from cases represented by nonlawyer advocates; ten studies were excluded for this reason. Another common reason studies were excluded was that they did not present outcome information in a way that distinguished prevailing from losing parties: five studies were excluded for this reason.

[5][5] Included studies are listed in Table 1. The following were excluded as ineligible: Block and Steiber 1987; Colvin 2011; Ellwell and Carlson 1990; Greiner and Pattanayak 2011; Gunn 1995; Hagen 1983; Hammitt 1985; Hensler *et al.* 1991; Hollingsworth *et al.* 1973; Kerwin 2004; Kritzer 1998d; LaFree and Rack 1996; Lederman and Hrung 2006; Monsma and Lempert 1992; Popkin 1977; Reide 1987; Rolph *et al.* 1985; Rubin 1980; Sales *et al.* 1992; Schoenholtz and Jacobs 2001; Whitford 1985; William E. Morris Institute for Justice 2005; Yale Law Journal 1972-73; Yngvessen and Hennessey 1975; Zirkel and Breslin 1995.

Four studies were excluded because they presented insufficient information to enable construction of the outcome measure; for example, there might be no report of the number of cases in the study. Two studies were excluded because it was not possible to distinguish focal parties who were organizations from focal parties who were private individuals. Two studies were excluded because it was not possible to distinguish cases that were actually heard and tried from those that settled. Two studies were excluded because representation status did not vary for focal parties who were individuals, so no information existed to compare outcomes for represented and unrepresented individuals. One study was excluded because it employed a non-representative sample of cases.

The studies included in the meta-analysis and those excluded involve similar fields of law, with one exception. Substantively, both included and excluded studies prominently feature areas of classical poverty law (Nice and Trubek 1997), such as welfare "fair hearings" to contest reduction or denial of benefits and evictions from rental housing. Both groups of studies also include a range of civil justice problems faced across the population, including tax appeals, small claims, and various problems of employment law, such as employee grievances, unemployment claims, and social security disability insurance reconsideration hearings. Both pools of studies include research conducted between the mid 1960s and the first decade of the 21st century. The principal difference between the pools of excluded and included studies is that the latter includes no studies in immigration law. The extant immigration studies identified all employ the federal government's definition of a legal representative, which includes not only fully-qualified attorneys but also individuals without legal training who have been certified to practice in immigration courts (Executive Office for Immigration Review 2009). Table 1 lists the included

studies, the number of cases included in each, and a description of what constitutes a "win" for the purposes of the meta-analysis.

[Table 1 about here]

From each study, I collected a variety of information, including details of research design and characteristics of the hearing forum and substantive field of law involved. To this information, I added measures collected from other sources of the requirements of legal expertise. Table 2 reports this information, both in the form of cross-study averages and as the same quantity calculated when each study is weighted by the proportion of total cases that it contributes to the sample. This latter quantity represents the average characteristics of cases. Panel A of the table reports on elements of study design. A single study, contributing 1% of the total cases, randomly assigned cases to the conditions of lawyer representation and no representation (Seron *et al.* 2001); the remaining studies are observational, allowing focal parties to match with the status of lawyer-representation, non-lawyer representation or self-representation as parties and attorneys chose.[6] They heyday of this literature was the '60s and '70s, a period of great optimism about the power of law to ameliorate poverty and effect desirable social change (Sandefur 2008). Most of the studies (65%) were conducted in this era.

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[66] Three-quarters (75%) of the studies provide information about the relationship between representation and case outcomes both at the zero order and net of one or more controls. Unfortunately, however, no consensus exists about what these controls should be, and they thus differ widely from study to study, depending on the practical interests and theoretical concerns of different researchers – ranging from, for example, the representation of the focal parties' opponents, to the amount of money at stake, to whether the case seemed to turn on questions of law or questions of fact, to whether or not someone consulted a lawyer before representing him or herself.

Panel B reports on characteristics of the settings in which the studies took place. Each study is of a single type of forum, such as housing court or labor arbitration tribunal. The average win rate across studies is 40% for focal parties, with 40% of the total cases observed won by these parties. Self-representation is common across the studies, with an average of 79% of the parties appearing in each study representing themselves, and self-representation by the focal party characterizing 78% of the observed cases. Representation by nonlawyer advocates (NLAs) , permitted in only some fora, is less common in the extant studies. Such advocates can include law students, labor union staff, paralegals, social workers or friends or family of the litigant. Not all kinds of NLAs may appear in every setting; no eligible study distinguished between different kinds of NLAs in reporting findings. An average of 3% of the focal parties in each study were represented by NLAs and NLA representation characterized 8% of the observed cases.

[Table 2 about here]

Panel C reports on professional expertise requirements: these measures become the meta-independent variables in the analysis. For each study, requirements for substantive professional expertise are measured in three ways: by an indicator of the complexity of the relevant field of substantive law, an indicator of procedural complexity in that field, and an indicator of how adjudication is organized in the forum investigated. Each study was coded for the general field of law entailed in the cases observed; as noted above, Table 1 reports this information for each study included in the analysis. The measure of substantive law complexity comes from a survey of a group of experts – professors of law at Northwestern University Law School and American Bar Foundation research specialists on the legal profession. For 42 fields of law, these experts were asked,

> The legal doctrines, cases, statutes, and regulations involved in some types of practice are characteristically more difficult, complex, and intellectually challenging than are those in others. Would you say that the degree of intellectual challenge presented by the *substance* (as opposed to the strategic considerations) of this type of work is very great, higher than average, average, lower than average, or very little?

The ratings for each field were standardized to the distribution of ratings for all fields, with 50 indicating the average score and each ten point change indicating one standard deviation (Heinz *et al.* 2005: Table 4.3). Taking this standardized score as the measure of the substantive legal complexity of the type of law involved in each study, one sees that extant representation studies have investigated fields of law that, in comparison with the full scope of lawyers' work, experts believe involve low to moderate complexity in the applicable law: all of the fields are within one standard deviation above and two standard deviations below the mean, a range from 32 to 56 on the standardized scale. The vast majority of cases (99%) and studies (94%) are in fields of law that are average or below average in substantive law complexity as rated by these experts. In the meta-analysis, I distinguish between fields that are above average (one study in a field rated 56), average (five studies in fields rated from 48 to 49) and below average (nine studies in fields rated from 32 to 42).

The measure of procedural complexity comes from surveys of lawyer-practitioners in each field of law. The 1995 Chicago Lawyers Survey, a random sample of people eligible to practice law with offices in the city of Chicago (Heinz *et al.* 2005), asked lawyers to rate their own practices in terms of the degree to which someone without legal training or experience could easily understand the documents and procedures. The procedural complexity measure is lawyers'

average rating on a scale indicating the extent to which the procedures and documents involved in the work required so much specialized skill and knowledge that they could not be understood by an educated layperson. Raters are attorneys who reported devoting at least 25% of their total work time to that field of law. That is, for each field the measure is practitioners' average response to the item below:

> Different kinds of law require different kinds of professional activities. [Below are] a series of paired statements that describe different demands made on the lawyer. These are presented as polar opposites. Please circle the number that best represents your position in relation to the two opposites. If the situation in your practice is midway between poles, circle code 3; if your situation is at one or the other extreme, circle 1 or 5; if your position leans somewhat to either pole, circle 2 or 4.

A	B
The type and content of my practice is such that even an educated layman couldn't really understand or prepare the documents.	A para-professional could be trained to handle many of the procedures and documents in my area of law.

1 2 3 4 5

In computing the procedural complexity measure, the scale was reverse coded, so that higher ratings indicated greater complexity. As with the measure of substantive law complexity, the ratings for each field were standardized, with 50 indicating the average score and each ten point change indicating one standard deviation. In terms of their procedural complexity, the fields investigated by the studies are average or below average relative to the scope of lawyers' work: the range extends from 43 to 51. In the meta-analysis, I distinguish between studies in fields of

law with procedural complexity scores below average (43, comprising 7% of cases and 12% of studies) and about average (46-51, comprising 93% of cases and 88% of studies).

Complexity ratings are highly stable over the period covered by the extant representation studies. Because the Chicago Lawyers Surveys were administered in both 1975 and 1995, it is possible to compare experts' and practitioners ratings of the complexity of substantive law and legal procedure for those fields of law that were included in both surveys (see Heinz *et al.* 2005: pp. 86-88). For both types of legal complexity, the measures used in the meta-analysis are correlated at 1.0 between 1975 and 1995: those fields of law that were rated above average, below average, or about average in 1975 were also rated, respectively, above average, below average, or about average in 1995 (see also Heinz *et al.* 2005: 328 n. 10).

A second element of procedural complexity reflects the way that adjudication itself is organized. Traditional trial courts are relatively "advocate-centered": the action is driven by the parties and their representatives, who are responsible for identifying the relevant legal issues, presenting the evidence and otherwise developing the case (Krtizer 1998b:27). Adversarial courts expect and understand highly stylized ways of presenting information and making argument; people inexperienced in courtroom advocacy are often unaware of or unfamiliar with these expectations (Conley and O'Barr 1990; Genn 1993; O'Barr and Conley 1988). Adversarial adjudication requires that parties understand how to present their cases in legally comprehensible terms and in a formal legal style. Small claims courts and tribunals, on the other hand, were designed to be more inquisitorial: the action is meant to be driven more by the adjudicator, who takes a role in

asking for specific information and intervenes to assist parties in developing their cases. Rules of evidence are typically relaxed, and information can be presented less formally. The intent of these so-called "nonadversarial" fora was that pursuing claims would be simpler, less costly and more accessible to people not represented by lawyers (Genn 1993; Yngvessen and Hennessey 1975). Eight (or 47%) of the studies, contributing 37% of total cases, investigate representation in traditional trial courts, while 6 studies are of tribunals and 3 are of small claims courts, with these two types of more inquisitorial fora providing 63% of the cases in the analysis.

Methods

Taking completed studies as data means that their design determines the precision of the conclusions one can draw. The vast majority of representation studies are observational, following representatives and their clients and people who represent themselves only after these actors have begun to work together or try to go it alone.[7] A central difficulty for calculating a

[77] Reliance on observation as a research design for studies of lawyer representation reflects both practical and ethical concerns. Observational studies can employ administrative records as a source of data, through which much larger samples can be collected with substantially lower expense than is required for a study in which disputants are selected randomly and then provided counsel or left to pursue their cases on their own. For lawyers who might participate in such experimental studies, random assignment may raise ethical issues: some lawyers are uncomfortable with random assignment, feeling that they cannot responsibly deny services to clients who, in their professional judgment, need or could benefit from them, except for reasons of inadequate resources. Seron *et al.* (2001) allude to the complications created for experimental design by lawyers' ethical concerns. An alternative, sensitive to this version of lawyer ethics, is Johnsen's (1999) "action research" for the study of legal needs. In action research, legally competent interviewers provide services to subjects at the same time that they collect information about respondents' problems. Because all research subjects receive service, action research addresses some of the

treatment effect, such as the impact of lawyers on case outcomes, from observational data is the problem of selection (Cook and Campbell 1979; Manski 1995:19-50).

Selection bias is a pervasive problem for causal analysis. Accordingly, statisticians and econometricians have developed a common language for discussing causality in observational data, the counterfactual framework (Winship and Morgan 1999). This framework draws upon the treatment and control designations of experimental research and rests upon the assumption that all observed units of analysis have potential outcomes in both treatment and control states, "even though they can actually only be observed in one state" (Winship and Morgan 1999:662). Formally, for each unit we observe a Y^T, the outcome under the condition of treatment, *or* a Y^C, the outcome under the condition of control, but we assert that for each unit of analysis there exists the outcome we do not observe: for each observed Y^T there is a potential Y^C, and vice-versa. The effect of treatment on the outcome can then be defined as the difference between Y^T and Y^C for each observation, or

$$\delta = Y^T - Y^C$$ (Winship and Morgan 1999: 663).

This difference, δ, or, more typically, an estimate of its true average in the population based upon a sample, is what a researcher interested in causation wants.

challenges to professional ethics posed by experimental studies, but at the cost of selecting on the independent variable of principal interest.

The challenge is that observational data do not provide enough information to calculate δ, because each observation provides only one Y, that for the state it actually experienced. Thus, it is possible to think of the problem as one of insufficient information, *viz.*, as a problem of identification. In the analyses that follow, I draw on Manski's (1989, 1990, 1993, 1995) work on identification problems to estimate the impact of lawyers on case outcomes, by using data to determine the bounds within which outcomes would fall under a counterfactual state of affairs in which lawyer representation were universal. I do this by comparing the range of possible outcomes we could observe if cases that did not receive the treatment had received it to the outcomes actually observed in the studies. This amounts to comparing outcomes under the current policy of selection into representation with potential outcomes under a widely embraced "civil Gideon" policy[8], a state of affairs in which all focal parties facing the studied types of civil litigation would be represented by attorneys. In addition to being useful for illustrative purposes, the Universal Lawyer Representation (ULR) counterfactual is practically significant: it is a potential legal reform surrounded by considerable activity and debate in the United States (Abel 2006; Engler 2006; Gunn 1995; Scherer 1988).

The bounds for the causal effect are estimated *ceteris paribus,* including the "stable unit treatment value assumption" (Winship and Morgan 1999:663). The estimate of the causal effect is accurate if one assumes that changing the status of any given unit of analysis would not affect the potential outcomes for other units. The substantive implication is that the effect estimates are

[88] The proposal takes its name from the famous *Gideon v. Wainwright* (1963) United States Supreme Court Case that found a right to counsel for defendants in criminal cases.

not precise predictions of the impact of social policy changes. [9] For example, some evidence suggests that when even a few civil defendants start to appear with lawyers in fora where defendants have been previously unrepresented, judges change their behavior to more accurately apply the law across the board – at least while the attorneys are in the courtroom -- thereby changing the potential outcomes for self-represented defendants (Fusco, Collins and Birnbaum 1979). In addition, changing the representation practices of focal parties might also change the behavior of their opponents. For example, if all tenants facing eviction were suddenly provided with lawyers, landlords might change their behavior by moving to universal representation themselves or by in more instances negotiating solutions informally with tenants before pressing for full adjudication (Lazerson 1982). The difference between outcomes in an hypothesized counterfactual state of affairs and the outcomes we observe now provides information about the *status quo* effect of lawyers on case outcomes, but may be a misleading guide to the empirical consequences of implementing a policy such as universal representation.

I calculate the effect of lawyers on case outcomes given three specifications of prior information about selection into representation. The prior information is provided by assumptions, which are increasingly restrictive and progressively narrow the bounds within which data suggest the effect of lawyers on case outcomes must fall. The widest bounds reflect no assumptions about the

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[99] This assumption is very common in social scientific research. Any prediction based upon a model assumes that that model holds – for example, typical questions such as, What would be the difference between employed men's and women's wages at age 50 if women never left the labor force to care for children?, are answered by assuming that nothing else would change if women did not stop out of work.

relationship between selection into representation and the probability of winning one's case. In the second specification, the lower bound of lawyers' effect can be fixed given the assumption that lawyers at least do no harm to their clients' chances of winning their cases. Finally, I calculate a point estimate for the effect of representation, under the assumption that securing representation is exogenous to winning.

I follow the common practice of expressing effect sizes in terms of average difference, calculating two sets of average differences: those between lawyer representation and self-representation and between lawyer representation and representation by nonlawyer advocates (NLAs). I employ odds ratios as these are a convenient and easily interpretable measure of magnitude (Fleiss 1994). When an odds ratio is 1, there is no average difference between cases with lawyers and those without: the odds of winning with a lawyer are just as good (or bad, as the case may be) as the odds of winning without one. If this ratio is larger than 1.0, lawyer representation is associated with a larger probability of winning than is the case in the comparison group, with the size of relationship represented in the size of the odds ratio. If the odds ratio is less than 1.0, parties represented by lawyers are less likely to prevail than are parties in the comparison group.

Each study provides information about the number of cases won under different conditions of representation, as described in Figure 1. All studies provide the number of cases won by focal parties represented by attorneys (L_1) and the number lost by focal parties represented by attorneys (L_2). All studies provide either the number of cases won and lost by focal parties

represented by non-lawyer advocates (NLA_1 and NLA_2, respectively), or the number of cases won and lost by self-represented focal parties (SR_1 and SR_2, respectively); a few provide win-loss information for both self-represented focal parties and those represented by non-lawyer advocates. These quantities are sufficient to construct meta-analytic nonparametric bounds for the magnitude of the effect of lawyers on case outcomes (Manski 1995:10-50). Figure 2 reports quantities from a single study

[Figure 1 about here]

Bounds given no information about selection. Manski (1995:28-31) terms the bounds estimated with the least restrictive assumptions "worst case" bounds – worst in the sense that they provide the widest interval within which the treatment effect must fall; I term these "no information" bounds. Without information about selection into representation, we are left with what is logically possible. It is logically possible that *status quo* selection processes result in an optimal match of cases with representatives, in the sense that cases get matched to the form of representation that maximizes the probability that focal parties win. This could happen, for instance, if people were both very good at guessing how lawyer representation would affect the outcomes of adjudication in their specific cases and if lawyers were widely accessible to those who wanted them. Under a hypothetical policy of universal lawyer representation, people who would prudently have chosen to represent themselves or to contract with nonlawyer representatives would be forced to be represented by lawyers, whose work could actually reduce

their probability of winning. [10] Alternatively, *status quo* selection processes could reflect existing constraints of information or other resources on focal parties' choices. This could happen, for instance, if many people currently observed self-represented or represented by NLAs had done so through ignorance, because they did not understand that a lawyer would benefit them, or through lack of access to attorneys, whether because they could not afford one or could not find one (see, *e.g.,* Consortium on Legal Services and the Public 1994: Table 4-6; Blacksell, Economides and Watkins 1991). Under such constraining circumstances, potentially every person observed representing him or herself or being represented by an NLA could, if represented by a lawyer, have received a better outcome, including having won his or her case.

For the set of cases observed represented by lawyers or by focal parties themselves, a policy of universal representation would place the probability of winning between the "no information" bounds of

$$p_{\text{lower bound}} = (L_1)/ (L_1 + L_2 + SR_1 + SR_2)$$

and

$$p_{\text{upper bound}} = (L_1 + SR_1 + SR_2)/ (L_1 + L_2 + SR_1 + SR_2)$$

[1010] This is more plausible than it perhaps sounds, under certain circumstances. Observers have found that when lawyers are overly formal or adversarial in settings where such behavior is not the norm, this behavior can antagonize adjudicators in a way that disadvantages the lawyer's client (Kritzer 1998a; Monsma and Lempert 1992).

For the set of cases observed represented by lawyers and by nonlawyer advocates, a policy of universal representation would place the probability of winning between the "no information" bounds of

$$p_{\text{lower bound}} = (L_1)/(L_1 + L_2 + NL_1 + NL_2)$$

and

$$p_{\text{upper bound}} = (L_1 + NL_1 + NL_2)/(L_1 + L_2 + NL_1 + NL_2)$$

The real difference between what we observe and what we would observe if everyone had a lawyer and nothing else changed lies somewhere in between; but, if we accept these studies as empirical evidence, we must accept that the real difference lies between those bounds (Manski 1995:50).

No harm bounds. One could impose a more restrictive assumption about selection into representation, by assuming that focal parties' outcomes could never be worse with universal lawyering than what we have observed when lawyers represent only some people (Manski 1995:44-45). Put differently, one might assume that, whatever else lawyers do, they on average do not harm their client's chances of winning their cases. Under this assumption, observed success rates are the lower bound of what we would see under a counterfactual universal lawyer representation program; the upper bound remains the same as in the prediction involving no assumptions about selection.

For the set of cases observed represented by lawyers or by focal parties themselves a policy of universal lawyer representation would place the probability of winning between the "no harm" bounds of

$$p_{\text{lower bound}} = (L_1 + SR_1) / (L_1 + L_2 + SR_1 + SR_2)$$

and

$$p_{\text{upper bound}} = (L_1 + SR_1 + SR_2) / (L_1 + L_2 + SR_1 + SR_2)$$

For the set of cases observed represented by lawyers and by nonlawyer representatives, a policy of universal lawyer representation would place the probability of winning between the "no harm" bounds of

$$p_{\text{lower bound}} = (L_1 + NL_1) / (L_1 + L_2 + NL_1 + NL_2)$$

and

$$p_{\text{upper bound}} = (L_1 + NL_1 + NL_2) / (L_1 + L_2 + NL_1 + NL_2)$$

Exogeneity bounds: point estimate. One could impose an even more restrictive assumption, that the observed matching of representation with parties is random with respect to the probability of winning (Manski 1995:41-43). In substantive terms, this would mean that highly winnable cases would be just as likely to be represented by lawyers as cases that are sure losers; there would be no relationship between the probability of winning and the probability of lawyer representation.

If this were true, the effect of lawyers on case outcomes would be the observed difference between lawyer-represented and other cases, since – by assumption – these cases differ systematically in no other ways that might affect their probability of winning. For the set of cases observed represented by lawyers and by focal parties themselves, a hypothetical policy of universal representation would place the probability of winning for all parties at the observed probability for winning among lawyers, or

$$p_{\text{point estimate}} = [(L_1)/(L_1 + L_2)]*[(L_1+L_2)/(L_1+L_2+SR_1+SR_2)] + [(L_1)/(L_1 + L_2)]*[(SR_1+SR_2)/(L_1+L_2+SR_1+SR_2)]$$

For the set of cases represented by lawyers and NLAs, a policy of universal lawyer representation would place the probability of winning at

$$p_{\text{point estimate}} = [(L_1)/(L_1 + L_2)]*[(L_1+L_2)/(L_1+L_2+NL_1+NL_2)] + [(L_1)/(L_1 + L_2)]*[(NL_1+NL_2)/(L_1+L_2+NL_1+NL_2)]$$

under this assumption.

In calculating effect measures, I compare predicted to observed case outcomes within each study, and then average across studies. Formally, I calculate the observed odds of winning for each pool of cases,

$$O^{a}_{i} = (p^{a}_{i} / (1-p^{a}_{i})$$

where p is the observed share of focal parties in study i who win their cases, and a indexes whether the pool of cases is those represented by lawyers and NLAs or by lawyers and self-representing focal parties. The predicted outcome reflects the odds that focal parties would win under a condition of universal representation, given specific assumptions about how selection processes condition case outcomes. Formally,

$$O_i^{a,\, b,\, c} = (p_i^{a,\, b,\, c} / (1-p_i^{a,\, b,\, c})$$

where i indexes the study, a indexes the case pool, b indexes the assumption, and c indicates the lower or upper bound. The effect of lawyers on case outcomes is calculated as the ratio of the predicted odds of winning under universal lawyer representation to the observed odds of winning, or

$$OR_i^{a,\, b,\, c} = [p_i^{a,\, b,\, c} / (1-p_i^{a,\, b,\, c})] / [(p_i^{\,a} / (1-p_i^{\,a})]$$

The OR's calculated from each study are then summarized by taking their weighted average using the Mantel-Haenzel estimator, which is appropriate when the data include some small cell sizes, as is the case here (Fleiss 1994: 256; Hauck 1989). Each study is weighted by the proportion of total cases it contributes; thus, studies with larger sample sizes contribute more

information than studies with smaller sample sizes (Fleiss 1994; Matt and Cook 1994). I refer to these odds ratios collectively as the *potential impact* of lawyers on case outcomes.

FINDINGS

Figure 2 reports the observed differences in outcomes between lawyer-represented cases and cases without attorneys from each of the studies included in the meta-analysis. As the Figure shows, the range is enormous. In comparison with cases in which people represent themselves, cases represented by lawyers are between 17% (1.17) and 1380% (13.79) more likely to win. This variation is not a simple consequence of study design. The calculated differences come from studies that report on random samples or censuses of cases, and all are observational with one exception. The arrow indicates the single study that randomly assigned focal parties to the conditions of lawyer-representation or self-representation (*i.e.,* Seron *et al.* 2001). The findings from this study are not clearly distinct from other studies: As is evident, it finds a difference in the middle of the observed range (4.44). Comparing lawyer represented cases and cases with NLA representation, one sees that the range of magnitudes of difference between them is much smaller, but also that this range is still quite wide. In comparison with NLA-represented cases, cases with lawyer advocates are between about equally likely (.98) and 341% (3.41) more likely to win. In no study do we observe that cases with lawyers on average do worse than cases represented by nonlawyers or pursued by people who represent themselves.

[Figure 2 about here]

Tables 3 and 4 report bounds for the effect of lawyer representation on case outcomes, across the whole population of studies and controlling for measures of expertise requirements. Table 3 compares cases with attorneys with those in which people self-represent, thus providing information about lawyers' impact relative to lay people, while Table 4 compares cases with attorneys to those with NLAs, providing information about lawyers' impact relative to nonlawyer advocates. The first row of Table 3 reports the average "no information," "no harm" and exogeniety estimates of lawyers' potential impact based on the combined studies. The "no information" bounds reflect a state of no prior information – no assumptions, no theory, no body of past research – about the relationship between the likelihood of winning a case and the likelihood of having a particular type of representation. Across the cases (reflecting the weighted average), the average difference we would expect under a condition of universal lawyer representation, *ceteris paribus,* is somewhere between focal parties being 80% less likely to win their cases than at present (OR=.2) and roughly 139 times more likely to win their cases (OR=138.6).

Under the assumption that whatever lawyers do they do no harm, we can fix the lower bound of the estimates at 1.0: by assumption, whatever we would observe under a condition of universal lawyer representation, it could result in focal parties winning no fewer cases than they actually did under the condition of partial representation. If we accept this assumption, then we accept that the true effect of lawyers on case outcomes is, on average, somewhere between no effect and increasing focal parties' probability of winning by up to 139 times. The final column in the table reports the weighted average of the effect of lawyers on case outcomes under the

assumption that the probability of representation is exogenous to the probability of winning. Under this assumption, the effect of lawyers on case outcomes is to increase the probability of winning by about 540% (OR=5.4) on average.

The remaining rows of the table compare average estimates of the impact of lawyers on case outcomes controlling for measures that assess the scope for legal expertise to make a difference: complexity of substantive law, complexity of procedure, and forum type. If substantive law complexity were playing a substantial role in creating lawyers' impact, one would expect a decrease in the potential impact of lawyers on case outcomes as complexity decreased, but this is not what one finds. Instead, the relationship is reversed: higher substantive law complexity is associated with a smaller potential impact of lawyers on cases. Under the assumption of exogeneity, lawyers' potential impact would be to increase focal parties' chances of winning their cases by an average of 2.4 times (OR=2.4) in the most substantively complex field studied (personal income tax), in comparison with an increase of 2 times (OR=2.0) in fields of average complexity, and by more than 8 times (OR=8.5) in fields with the lowest observed complexity of substantive law. The fields that lawyers rate as least complex in substantive law are those in which people represent themselves at the highest rates observed. This means that the bounds of lawyers' potential impact are very wide. Under the assumption of no information about selection into representation, a policy of universal representation could increase the probability of focal parties' winning by as large as a factor of 230 (OR=229.9) in the *least substantively complex* fields of law; conversely such a policy could substantially reduce focal parties' chances of winning in these cases, by more than three-quarters (OR=.23). Smaller potential impact of lawyers on case outcomes appears in fields of average substantive law

complexity. Here, given no assumptions about current selection into representation, universal representation would result in somewhere between 90% fewer (OR=.10) and 4020% (OR=40.2) more cases won by focal parties. In the most complex field studied to date, personal tax, lawyers' potential impact ranges from reducing the probability of winning by half (OR=.5) to increasing it more than 8-fold (OR=8.2). The "no harm assumption," which holds that whatever lawyers do, they do not harm their clients' chances of winning, simply places the lower bound of lawyers' potential impact at effectively zero (OR=1.0); the upper bounds remain the same: largest for the least substantively complex areas of law, smallest for fields in which substantive law is above average in its complexity.

A different pattern obtains for procedural complexity: more procedurally complex cases show larger potential impacts of lawyers on case outcomes than do less complex cases. This finding obtains whether the measure of procedural complexity reflects lawyers' ratings of the work in that field of law or the way the adjudicatory forum is organized. Fields of law that lawyers rate as having average procedural complexity show larger potential impacts of lawyers on case outcomes than do those they rate as below average. In less procedurally complex fields, the upper bound of the no information and no harm assumption estimates is a 16-fold improvement in focal parties' chances of winning (OR=15.8). By comparison, the upper bound of these estimates for fields of average complexity is 147.7. Under the assumption of exogeneity, the magnitude of lawyers' potential impact is more than 4-times greater (4.1=5.7/1.4) in fields of average procedural complexity than in field of below average complexity.

Similarly, lawyers' potential impact is greater in adversarial fora than in simplified fora. Rates of self-representation are higher, on average, in the trial courts included in the studies, so the intervals within which lawyers' potential impact will fall are, again, consequently wider. In tribunals and in small claims courts, as was the intention of the reformers who developed these fora, lawyers' potential impact is smaller – but still quite substantial. Under the assumption of exogeneity, for example, lawyers' potential impact is to double focal parties' chances of winning (OR=2.0) in tribunals and small claims courts, but to increase those chances by more than 10-fold (OR=10.7) in traditional trial courts. The average size of lawyers' potential impact under the assumption of exogeneity is more than five times as large in trial courts as in simplified fora (5.4=10.7/2.0).

Table 4 reports on measures of lawyers' potential impact in comparison with nonlawyer advocates (NLAs). The first finding of note is that, across the board, the magnitude of potential impact is much smaller when one compares the results of lawyers' work to that of advocates who may be experienced and trained but are not legally qualified. With no information or assumptions about selection, given the data, a policy of universal lawyer representation that replaced NLAs with attorneys would produce outcomes in which focal parties would be, on average, between 50% (OR=.5) less likely to win across cases and 420% (OR=4.2) more likely to win. Under the assumption that representation is exogenous to the probability of winning, replacing NLAs with lawyers would raise the probability of winning by an average of 40% (OR=1.4). Lawyers' average higher win rates than nonlawyer advocates, but the differences are much smaller than those observed when comparing the results of lawyers' work to the results when lay people represent themselves.

In contrast with the comparison of lawyers to self-represented litigants, the comparison of lawyers to NLAs reveals a more traditional picture of the nature of lawyers' expertise. The general pattern is that greater substantive expertise requirements are consistently associated with larger potential impacts of attorneys, but the findings depend upon the assumptions employed. Under the assumption of exogeneity, the relationship between substantive expertise requirements and lawyers' impact is quite orderly. For complexity of substantive law, the largest potential impact of attorneys is found in the most substantively complex field of law (OR=3.2) and the smallest potential impact found in the least complex (OR=1.2). Under the no information and no harm assumptions, the largest potential impacts of lawyers are found in fields of average complexity (OR = [.3, 4.6]). The findings for complexity of documents and procedure are orderly under all assumptions. Under the no information and no harm assumptions, greater procedure and document complexity is associated with a greater potential impact of attorney representation (OR=[.4, 2.7] for below average fields vs. OR = [.5, 4.6] for average fields under the assumption of no information about selection). Under the assumption of exogeneity, fields of average procedural complexity show larger somewhat impacts of lawyers (OR= 1.5) than fields of below-average procedural complexity (OR=1.2).

The second measure of procedural complexity, forum type, also reveals a pattern of impact that depends upon one's assumptions about which cases get lawyer representation. Under the assumption of exogeneity, the forum that approximates a traditional trial court finds an impact of lawyers that is roughly double that found in studies of tribunals (OR=3.2 vs. 1.3). Under the no harm and no information assumptions, the larger potential impacts of attorneys are found in tribunals. Under the no harm assumption, Universal Lawyer Representation would

change focal parties chances of winning in tribunals somewhere between 0% (OR=1.0) and 430%, while ULR would result in an increased likelihood of winning of somewhere between 0% and 380% in the single trial court in which NLAs have been studied.

Discussion

The findings of the meta-analysis are striking in two respects. First, they reveal a potentially very large impact of lawyer representation on case outcomes. Given three different sets of assumptions about how cases are matched with representation, a synthesis of available evidence indicates that the effect of giving more people access to attorneys would be potentially to radically change the outcomes of adjudicated civil cases. This potential impact is notable when lawyers' work is compared to that of nonlawyer advocates (Table 4), and spectacular when compared to lay people's attempts at self-representation (Table 3). Lawyers' potential impact is substantial even in fields of law that lawyers themselves do not perceive to be particularly complex. Access to lawyers – particularly for people who are currently representing themselves – could significantly change the face of the justice meted out in US civil courts.

In the types of cases analyzed here, which involve ordinary litigation in lower courts and administrative tribunals, lawyers assist their lay clients by managing procedures that lawyers themselves do not find particularly complex. At the same time, managing complex substantive law appears to explain little of lawyers' superior performance relative to self-representing lay people. Indeed, when their work is compared to the work of self-represented litigants, lawyers' impact varies inversely with the complexity of the substantive law involved in the cases. It is in the least substantively complex fields of law where one observes the largest potential impact of

lawyer representation. Here, the results are a partial inversion of the substantive expertise account: it is in fields of law that involve less complex substantive law where one observes larger potential impacts of lawyer representation. Why might this be?

One potential explanation is that, while the barriers to effective lay participation in litigation are not particularly high *from lawyers' perspective* in the studies extant (see Table 2), they are high enough to substantially disadvantage many people who attempt to represent themselves. For the uninitiated, litigation is an often complex experience difficult to navigate from the first moment of attempting to file a suit or claim or of receiving a notice to appear as a respondent (*e.g.,* Conley and O'Barr 1990; Engler 1999; Lens 2007, 2009; O'Barr and Conley 1988). Self-represented litigants are often observed to make elementary errors, such as failing to make an argument, to address the other side's argument, or to bring to trial important pieces of evidence like copies of a lease or tax receipts (Hagen 1983; Kritzer 1998c; O'Barr and Conley 1988). Such mistakes can lead to losing the case on its apparent merits or to dismissal, particularly in more traditional hearing settings where fewer allowances may be made for lay people's lack of knowledge and experience. This understanding of the professional expertise requirements of litigation is probably an important explanation for why lawyers' impact vis-à-vis self-represented litigants is so much larger than their impact in comparison with NLAs: Paralegals, social workers, union representatives and other professional advocates are likely to know fundamentals that lay people may not (Kritzer 1998a). This understanding also explains why procedural complexity varies positively with lawyers' impact, and why lawyers' potential impact is larger in traditional trial courts than in settings where legal formalities are relaxed. However, while this back-to-basics understanding of legal expertise would explain a finding of

no relationship between variation in substantive law complexity and the size of lawyers' potential impact vis-à-vis self-represented people – all levels of required expertise would be too high for most lay people to surmount -- it cannot account for the inverse relationship actually observed across the studies.

The puzzle can be resolved by revisiting the role of relational expertise in creating the consequences of professional work. Relational expertise reflects skill at negotiating the interpersonal environments in which professional work takes place. The studies in which one observes the largest differences in the outcomes of lawyer-represented and self-represented cases appear in settings where over half of focal parties represent themselves. Lawyer representation may act as an endorsement of lower status parties that affects how judges and other court staff treat them and evaluate their claims, perhaps because staff believe represented cases are more likely to be meritorious. This interpretation is consistent with, but distinct from, findings of lawyers' impact in studies of higher courts. Arguments that lawyers' impacts reflect their personal reputations hinge on recognition of the relational context of professional work: lawyers who appear repeatedly before the same court may come to be seen as reliable, knowledgeable and trustworthy by judges, who then give their arguments greater credence than those proffered by unknown attorneys (Haire, Lindquist and Harley 1999; McGuire 1995; Szmer *et al.* 2007).

In these lower courts and administrative tribunals, the mechanism creating the impact of lawyers would also be reputation, but in the barest sense: the presence of any lawyer, as opposed to no lawyer at all, signals something important about a case to the other people involved in processing it. The presence of a lawyer on one's case would then be a kind of symbolic relational expertise. Ironically, to the extent that this is an important mechanism creating lawyers' impact,

that impact would be obviated by universal representation, as the presence of an attorney *per se* would no longer signal anything to court staff.

Providing a credibility endorsement for lower status clients is not all that lawyers do in these settings. Evidence of some of the largest potential impacts of lawyers on case outcomes emerges from settings in which cases are treated perfunctorily or in an ad hoc fashion by judges, hearing officers and clerks. In eviction courts, dockets are often packed with, for example, as many as 167 cases scheduled for a 3 hour session (Chadha 1996:8). Accordingly, observed hearing times are short, with the average time consumed by each case often 2 minutes or less (Abell Foundation 2003:2; Doran *et al.* 2003: 4; Reide 1987: Table 1; William E. Morris Institute for Justice 2005:2). In part, these low processing times reflect high rates of tenant default, but they also reflect the fact that most tenants are unrepresented and that unrepresented tenants are treated quite summarily. Observers in such settings often report that judges short cut the law: They do not hold landlords to statutory burdens of proof (Chadha 1996:16-20; William E. Morris Institute for Justice 2005); they fail to examine eviction notices to confirm their validity and proper service (Doran *et al.* 2003:4). In some courts, parties are rarely sworn in before giving testimony (Doran *et al.* 2003:4). Judges often do not require landlords to rebut self-representing tenants' defenses to eviction or otherwise do not recognize their defenses (Chadha 1996: 21-24; Fusco, Collins and Birnbaum 1979: 111; Mosier and Soble 1973-74: 63; see also Bezdek 1992). Observational studies of immigration courts report that standards of evidence and criteria of evaluation are inconsistent and vary from case to case. In these courts, "[r]estrictive evidentiary and procedural rules are applied… on an ad hoc and unpredictable basis; for example, excluding or discounting hearsay evidence, requiring applicants to give short, yes or no

answers, or refusing to allow narrative answers" (Anker 1991:271, 273). A substantial part of lawyers' impact in these settings may simply be to make hearing officers and their staff follow the rules and procedures that are supposed to govern their conduct. Having a court or tribunal simply follow its own rules, rather treat focal parties summarily or prejudicially, may enhance these parties' probability of winning their cases.

Conclusion

In a comprehensive meta-analysis of extant studies comprising more than 18,000 adjudicated civil cases, I assessed evidence for whether and, if so, how lawyers affect case outcomes in litigation. Drawing on techniques from econometrics that enable estimation of treatment effects from non-experimental data, I calculated lawyers' impact under three sets of plausible assumptions about selection into the condition of having an attorney. This impact is potentially quite large. The average observed difference across studies reveals that lawyer-represented focal parties are more than 5-times more likely to prevail in adjudication than self-represented litigants, and 40% more likely to prevail than parties represented by non-lawyer advocates. Employing sociological theories of professional expertise, I investigated whether demands for specifically legal expertise – understanding of substantive law, of legal documents, and of legal procedures -- explained lawyers' impact. The evidence suggests that the kinds of expertise that matter differ depending on whether lawyers' work is compared to the work of nonlawyer advocates, such as paralegals and union representatives, or to self-represented litigants. Knowledge of substantive law and legal procedure likely explains part of lawyers' superior performance relative to nonlawyer advocates, but some of these expertise demands bear

an inverse relationship the magnitude of lawyers' impact relative to self-representation. Instead, for the range of problems studied to date, lawyers' impact is largest when lower status people appear in hearings where perfunctory treatment of cases is standard operating procedure or the court's adherence to the law is ad hoc. In these settings, lawyers appear to assist their clients, in part, by simply assisting courts in following their own rules. The potential consequences of expanding access to civil representation are thus substantial, but such advocates may not always need to be attorneys.

This study has focused principally on the theoretical implications of the elements of lawyers' expertise, but there are methodological and practical implications as well. Precisely identifying the magnitude of lawyers' impact will require either research that measures many aspects of how cases are selected into different forms of representation, or that randomly assigns cases and clients to the conditions of lawyer representation, nonlawyer representation and self-representation. The present study indicates that, whatever the research design, the context of each specific court or tribunal and the complexity of the law and procedure involved play significant roles in shaping lawyers' impact on how cases turn out. New studies should attend carefully to how court and tribunal staff treat self-represented litigants, and to the extent to which judges and hearing officers adhere to formal adversarial procedures and to other rules that dictate their role. These aspects of context clearly shape how adjudication turns out, and must be taken into account in interpreting the findings of this new work.

Winning in adjudication is not all that lawyers help their clients do. They also negotiate, advise, and counsel (*e.g.,* Kritzer 2004; Luban 1988; Mather *et al.* 2005; Sarat and Felstiner 1995; Seron 2001). Further, they get their clients to actually appear at hearings, rather than fail to

attend and so lose by default (Larson 2006). But litigation in courts and administrative hearings is the principal means of definitive dispute resolution available to Americans with civil justice problems (Sandefur 2009), and it is at the core of lawyers' professional jurisdiction. It is striking, therefore, that only modest levels and only some kinds of legal expertise appear to matter in a number of kinds of ordinary litigation.

The policy implications are significant. Lawyers' monopoly on appearance and representation in the United States remains strong, while many thousands of people go unrepresented every year in matters that can lead to bankruptcy, penury, homelessness, and lost custody of their children (Consortium on Legal Services and the Public 1994). The findings of the present study can give guidance about where scarce legal aid resources may be directed to obtain greatest impact. Providing all litigants with attorneys would be one way to level the playing field, but the findings of the present study suggest that simplifying forms and procedures, educating judges and hearing officers to obey the law, and relaxing the requirements of adversarial fora could also be means of reducing the impact of attorneys on case outcomes . In a number of instances, nonlegal representatives appear to function, on average, about as effectively as lawyers. Further relaxing lawyers' monopoly on representation might thus be an effective means of increasing the fairness and accuracy of the judgments produced in civil courts and tribunals.

REFERENCES

Abbott, Andrew. 1988. *The System of Professions: An Essay on the Division of Expert Labor.* Chicago, IL: University of Chicago Press.

Abel, Laura K. 2006. "A Right to Counsel in Civil Cases: Lessons from *Gideon v. Wainwright.*" *Clearinghouse REVIEW of Journal of Poverty Law and Policy* July-August: 271-280.

Abell Foundation. 2003. "A System in Collapse: Baltimore City Suffers from an Overwhelmingly High Caseload of Tenant Evictions." *The Abell Report* 16(2):1-8.

Anker, Deborah E. 1991. "Determining Asylum Claims in the United States: Executive Summary of an Empirical Study of the Adjudication of Asylum Claims before the Immigration Court." Pp. 268-91 in *Refugee Policy: Canada and the United States,* edited by Howard Adelman. Toronto: York Lands Press Ltd.

Barley, Stephen R. 1996. "Technicians in the Workplace: Ethnographic Evidence for Brining Work into Organizational Studies." *Administrative Science Quarterly* 41(3):404-441.

Bezdek, Barbara. 1992. "Silence in the Court: Participation and Subordination of Poor Tenants' Voices in the Legal Process." *Hofstra Law Review* 20:533-605.

Black, Donald. 1989. *Sociological Justice.* New York, NY: Oxford University Press.

Blacksell, Mark, Kim Economides and Charles Watkins. 1991. *Justice Outside the City: Access to Legal Services in Rural Britain.* Essex: Longman Scientific and Technical.

Block, Richard N. and Jack Stieber. 1987. "The Impact of Attorneys and Arbitrators on Arbitration Awards." *Industrial and Labor Relations Review* 40(4):543-555.

Chadha, Lisa Parsons. 1996. "Time to Move: The Denial of Tenants' Rights in Chicago's Evication Court." Chicago, IL: Lawyers' Committee for Better Housing, Inc.

Columbia Journal of Law and Social Problems. 1968. "Representation in Child-Neglect Cases: Are Parents Neglected?" *Columbia Journal of Law and Social Problems* 4:230-254.

Colvin, Alexander J.S. 2011. "An Empirical Study of Employment Arbitration: Case Outcomes and Processes." *Journal of Empirical Legal Studies* 8(1):1-23.

Conley, John M. and William M. O'Barr. 1990. *Rules versus Relationships: The Ethnography of Legal Discourse.* Chicago, IL: University of Chicago Press.

Consortium on Legal Services and the Public. 1994. *Report on the Legal Needs of the Low- and Moderate-Income Public.* Chicago, IL: American Bar Association.

Cook, Thomas D. and Donald T. Campbell. 1979. *Quasi-Experimentation: Design and Analysis Issues for Field Settings.* Boston, MA: Houghton Mifflin Company.

Cooper, Laura. 1979. "Goldberg's Forgotten Footnote: Is There a Due Process Right to a Hearing Prior to the Termination of Welfare Benefits When the Only Issue Raised is a Question of Law." *Minnesota Law Review* 64:1107-1179.

Cooper, Harris M. and Larry V. Hedges. 1994. *The Handbook of Research Synthesis.* New York, NY: Russell Sage Foundation.

Crain, Robert L. and Rita E. Mahard. 1983. "The Effect of Research Methodology on Desegregation-Achievement Studies: A Meta-Analysis." *American Journal of Sociology* 88(5):839-854.

Darbi, Michael R. and Edi Karni. 1973. "Free Competition and the Optimal Amount of Fraud." *Journal of Law and Economics* 16(1):67-88.

Davis, James A. 1985. *The Logic of Causal Order.* Sage University Paper Series on Quantitative Applications, no. 55. Thousand Oaks, CA: Sage.

Dehejia, Rajeev H. and Sadek Wahba. 2002. "Propensity Score Matching Methods for Non-experimental Causal Studies." *The Review of Economics and Statistics* 84(1):151-161.

Doran, Karen, John Guzzardo, Kevin Hill, Neal Kitterlin, Wangfeng Li, and Ryan Liebl. 2003. "No Time for Justice: A Study of Chicago's Eviction Court." Lawyers' Committee for Better Housing, Chicago-Kent School of Law, Illinois Institute of Technology. Retrieved November 26, 2007. (http://www.lcbh.org/pdf/full_report.pdf)

Dulleck, Uwe and Rudolf Kerschbamer. 2006. "On Doctors, Mechanics, and Computer Specialists: The Economics of Credence Goods." *Journal of Economic Literature* 44(1):5-42.

Eisensetein, James and Herbert Jacob. 1977. *Felony Justice: An Organizational Analysis of Criminal Courts.* Boston, MA: Little, Brown and Company.

Ellwell, Suzanne E. and Christopher D. Carlson. 1990. "The Iowa Small Claims Court: An Empirical Analysis." *Iowa Law Review* 75:433-538.

Engler, Russell. 2006. "Shaping a Context-Base Civil Gideon from the Dynamics of Social Change." *Temple Political and Civil Rights Law Review* 15(3): 697-718.

Engler, Russell. 1999. "And Justice for All – Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators and Court Clerks." *Fordham Law Review* 67(5):1978-2070.

Executive Office for Immigration Review. 2009 "Fact Sheet: Who Can Represent Aliens in Immigration Proceedings." Office of Legislative and Public Affairs, US Department of Justice. Retrieved October 20, 2010. (www.usdoj.gov/eoir)

Feeley, Malcolm. 1992. *The Process is the Punishment: Handling Cases in a Lower Criminal Court.* New York, NY: Russell Sage Foundation.

Fleiss, Joseph L. 1994. "Measures of Effect Size for Categorical Data." Pp. 245-260 in *The Handbook of Research Synthesis*, edited by Harris Cooper and Larry V. Hedges. New York, NY: Russell Sage Foundation.

Friedson, Eliot. 1986. *Professional Powers: A Study in the Institutionalization of Formal Knowledge.* Chicago, IL: University of Chicago Press.

Freidson, Eliot. 1994. "Are Professions Necessary?" Chapter 9 in *Professionalism Reborn: Theory, Prophecy, and Policy.* Chicago, IL: University of Chicago Press.

Fusco, Anthony J., Jr., Nancy B. Collins, and Julian R. Birnbaum. 1979. "Chicago's Eviction Court: A Tenants' Court of No Resort." *Urban Law Annual* 17:93-132.

Galanter, Marc. 1974. "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change. *Law and Society Review* 9:95-160.

Galanter, Marc. 1998. "The Faces of Mistrust: The Image of the Lawyer in Public Opinion, Jokes, and Political Discourse." *University of Cincinnati Law Review* 66:805-45.

Genn, Hazel. 1993. "Tribunals and Informal Justice." *The Modern Law Review* 56(3):393-411.

Goldfarb, Robert S., H.O. Stekler, David Neumark, and William Wascher. 2002. "Meta-Analysis." *The Journal of Economic Perspectives* 16(3):225-227.

Goode, William J. 1957. "Community Within a Community: The Professions." *American Sociological Review* 22(2):194-200.

Greiner, D. James and Cassandra Wolos Pattanayak. 2011. "What Difference Representation? Offers, Actual Use, and the Need for Randomization." *Yale Law Journal* (in press).

Gunn, Stephen. 1995. "Eviction Defense for Poor Tenants: Costly Compassion or Justice Served?" *Yale Law and Policy Review* 13:385-428.

Hagen, Jan L. 1983. "Justice for the Welfare Recipient: Another Look at Welfare Fair Hearings." *Social Service Review* (June):177-195.

Haire, Susan Brodie, Stefanie A. Lindquist, Roger Hartley. 1999. "Attorney Expertise, Litigant Success and Judicial Decisionmaking in the U.S. Courts of Appeals." *Law and Society Review* 33(3):667-85.

Hammer, Ronald P. and Joseph M. Hartley. 1978. "Procedural Due Process and the Welfare Recipient: A Statistical Study of AFDC Fair Hearings in Wisconsin." *Wisconsin Law Review* 1978:145-251.

Hammitt, James K. 1985. *Automobile Accident Compensation. Volume II: Payments by Auto Insurers.* Santa Monica, CA: Rand.

Hannaford-Agar, Paula and Nicole Mott. 2003. "Research on Self-Represented Litigants: Preliminary Results and Methodological Considerations." *The Justice System Journal* 23(2):163-181.

Hartmann, Chester and David Robinson. 2003. "Evictions: The Hidden Housing Problem." *Housing Policy Debate* 14(4):461-501.

Hauck, W. W. 1989. "Odds Ratio Inference from Stratified Samples." *Communications in Statistics* 18A:767-800.

Hedges, Larry and Ingram Olkin. 1994. *Statistical Methods for Meta-Analysis.* San Diego, CA: Academic Press.

Heinz, John P., Robert L. Nelson, Rebecca L. Sandefur and Edward O. Laumann. 2005. *Urban Lawyers: The New Social Structure of the Bar.* Chicago, IL: University of Chicago Press.

Hengstler, Gary A. 1993. "Vox Populi: The Public Perception of Lawyers: ABA Poll." *ABA Journal* September:60.

Hensler, Deborah R., M.Susan Marquis, Allan F. Abrahamse, Sandra H. Berry, Patricia A. Ebener, Elizabeth Lewis, E.Allan Lind, Robert J. MacCoun, Willard G. Manning, Jeannette A. Rogowski, Mary E. Vaiana. 1991. *Compensation for Accidental Injuries in the United States.* Santa Monica, CA: RAND.

Hollingsworth, Earl, William B. Feldman and David C. Clark. 1973. "The Ohio Claims Court: An Empirical Study." *University of Cincinnati Law Review* 4:469-527.

Hosticka, Carl J. 1979. "We Don't Care What Happened: We Only Care about What Is Going to Happen: Lawyer-Client Negotiations of Reality." *Social Problems* 26:599-610.

Johnsen, Jon. 1999. "Studies of Legal Needs and Legal Aid in a Market Context." Pp. 206-232 in *The Transformation of Legal Aid: Comparative and Historical Studies*, edited by Francis Regan, Alan Paterson, Tamara Goriely, and Don Fleming. Oxford: Oxford University Press.

Jones, Susanne M. and Kathryn Dindia. 2004. "A Meta-Analytic Perspective on Sex Equity in the Classroom." *Review of Educational Research* 74(4):443-63.

Kerwin, Donald. 2004. "Charitable Legal Programs for Immigrants: What They Do, Why They Matter and How They Can Be Expanded." *Immigration Briefings* 04-6:1-12.

Kirp, David, William Buss, Peter Kuriloff. 1974. "Legal Reform of Special Education: Empirical Studies and Procedural Proposals." *California Law Review* 62:40-155.

Korobkin, Russell and Chris Guthrie. 1997. "Psychology, Economics and Settlement: A New Look at the Role of the Lawyer." *Texas Law Review* 76:77-141.

Kritzer, Herbert M. 2004. *Risks, Reputations and Rewards: Contingency Fee Legal Practice in the United States.* Stanford, CA: Stanford University Press.

Kritzer, Herbert M. 1998a. "Advocacy Today and Advocacy in the Twenty-first Century." Pp 193-223 in *Legal Advocacy: Lawyers and Nonlawyers at Work.* Ann Arbor, MI: University of Michigan Press.

Kritzer, Herbert M. 1998b. "Unemployment Compensation Appeals." Pp 23-78 in *Legal Advocacy: Lawyers and Nonlawyers at Work.* Ann Arbor, MI: University of Michigan Press.

Kritzer, Herbert M. 1998c. "The Wisconsin Tax Appeals Commission." Pp. 79-110 in *Legal Advocacy: Lawyers and Nonlawyers at Work.* Ann Arbor, MI: University of Michigan Press.

Kritzer, Herbert M. 1998d. "Social Security Disability Appeals." Pp. 110-150 in *Legal Advocacy: Lawyers and Nonlawyers at Work.* Ann Arbor, MI: University of Michigan Press.

Kritzer, Herbert M. 1998e. "Labor Grievance Arbitration." Pp. 151-192 in *Legal Advocacy: Lawyers and Nonlawyers at Work.* Ann Arbor, MI: University of Michigan Press.

Kritzer, Herbert M. and Susan S. Silbey. 2003. *In Litigation: Do the 'Haves' Still Come Out Ahead?* Stanford, CA: Stanford University Press.

LaFree, Gary and Christine Rack. 1996. "The Effects of Participants' Ethnicity and Gender on Monetary Outcomes in Mediated and Adjudicated Cases." *Law and Society Review* 30(4):767-789.

Lazerson Mark H. 1982. "In the Halls of Justice, the Only Justice is in the Halls." Pp. 119-163 in *The Politics of Informal Justice, Volume 1: The American Experience,* edited by Richard L. Abel. New York, NY: Academic Press.

Larson, Erik. 2006. "Case Characteristics and Defendant Tenant Default in a Housing Court." *Journal of Empirical Legal Studies* 3(1):121-44.

Larson, Magali Sarfatti. 1977. *The Rise of Professionalism: A Sociological Analysis.* Berkeley, CA: University of California Press.

Lederman, Leandra and Warren B. Hrung. 2006. "Do Attorneys Do Their Clients Justice? An Empirical Study of Lawyers' Effects on Tax Court Litigation Outcomes." *Wake Forest Law Review* 41:1235-1295.

Lens, Vicki. 2007. "In the Fair Hearing Room: Resistance and Confrontation in the Welfare Bureaucracy." *Law and Social Inquiry* 32(2):309-332.

Lens, Vicki. 2009. "Confronting Government after Welfare Reform: Moralists, Reformers, and Narratives of (Ir)responsibility at Administrative Fair Hearings." *Law and Social Inquiry* 43(3):563-92.

Leo J. Shapiro and Associates. 2002. *Public Perceptions of Lawyers: Consumer Research Findings.* Prepared for American Bar Association Section on Litigation. Retrieved February 9, 2008. (http://www.abanet.org/litigation/lawyers/publicperceptions.pdf).

Luban, David. 1988. *Lawyers and Justice: An Ethical Study.* Princeton, NJ: Princeton University Press.

Manski, Charles F. 1989. "Anatomy of the Selection Problem." *Journal of Human Resources* 24:343-360.

Manski, Charles F. 1990. "Nonparametric Bounds on Treatment Effects." *American Economic Review* 80:319-323.

Manski, Charles F. 1993. "Identification Problems in the Social Sciences." *Sociological Methodology* 23:1-56.

Manski, Charles F. 1995. *Identification Problems in the Social Sciences.* Cambridge, MA: Harvard University Press.

Mather, Lynn, Craig A. McEwen, and Richard J. Maiman. 2001. *Divorce Lawyers at Work: Varieties of Professionalism in Practice*. New York, NY: Oxford University Press.

Matt, George E. and Thomas D. Cook. 1994. "Threats to the Validity of Research Synthesis." Pp. 503-520 in *The Handbook of Research Synthesis*, edited by Harris Cooper and Larry V. Hedges. New York, NY: Russell Sage Foundation.

McGuire, Kevin T. 1995. "Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success." *The Journal of Politics* 57(1):187-96.

Mertz, Elizabeth. 2007. *The Language of Law School: Learning to 'Think' Like a Lawyer*. New York, NY: Oxford University Press.

Michelson, Ethan. 2006. "The Practice of Law as an Obstacle to Justice: Chinese Lawyers at Work." *Law and Society Review* 40(1):1-38.

Monsma, Karl and Richard Lempert. 1992. "The Value of Counsel: 20 Years of Representation before a Public Housing Eviction Board." *Law and Society Review* 26(3):627-667.

Mosier, Marilyn Miller and Richard A. Soble. 1973-1974. "Modern Legislation, Metropolitan Court, Miniscule Results: A Study of Detriot's Landlord-Tenant Court." *University of Michigan Journal of Law Reform* 7:9-70.

Nehemekis, Peter R., Jr. 1933. "The Boston Poor Debtor Court – A Study in Collection Procedure." *Yale Law Journal* 41:461-590.

Nice, Julie A. and Louise G. Trubek. 1997. *Cases and Materials on Poverty Law: Theory and Practice.* St Paul, MN: West Publishing.

O'Barr, William M. and John M. Conley. 1988. "Lay Expectations of the Civil Justice System." *Law and Society Review* 22:137-61.

Parsons, Talcott. 1968. "Professions." In *International Encyclopedia of the Social Sciences*, edited by David L. Sills, 12:536-47. New York: Macmillan Company and The Free Press.

Popkin, William D. 1977. "The Effect of Representation on Nonadversary Proceedings – A Study of Three Disability Programs." *Cornell Law Review* 62(6):989-1048.

Reed, Jeffrey G. and Pam M. Baxter. 1994. "Using Reference Databases." Pp. 57-70 in *The Handbook of Research Synthesis*, edited by Harris Cooper and Larry V. Hedges. New York, NY: Russell Sage Foundation.

Regan, Francis. 1999. "Why Do Legal Aid Services Vary Between Societies? Re-examining the Impact of Welfare States and Legal Families." Pp. 179-204 in *The Transformation of Legal Aid: Comparative and Historical Studies,* edited by Francis Regan, Alan Paterson, Tamara Goriely and Don Fleming. Oxford: Oxford University Press.

Reide, Jerome L. 1987. *Justice Evicted.* New York, NY: American Civil Liberties Union.

Rolph, John E, with James K. Hammitt, Robert L. Houchens, and Sandra S. Polin.1985. *Automobile Accident Compensation. Volume 1: Who Pays How Much How Soon?* Santa Monica,CA: Rand.

Rosenthal, Robert. 1991. *Meta-analytic Procedures for Social Research.* Revised edition. Newbury Park, CA: Sage Publications.

Rubin, Murray. 1980. "The Appeals System." *Unemployment Compensation and Research,* vol. 3. National Commission on Unemployment Compensation. Washington, DC: GPO.

Ruhnka, John C. and Steven Weller, with John A. Martin. 1978. Small Claims Courts: A National Examination. Williamsburg, VA: National Center for State Courts. Retrieved November 26, 2007. (http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/civil&CISOPTR=0)

Sales, Bruce D., Connie J. Beck, and Richard K. Haan. 1992. "Is Self-Representation a Reasonable Alternative to Attorney Representation in Divorce Cases?" *Saint Louis University Law Review* 37:553-605.

Sandefur, Rebecca L. 2001. "Work and Honor in the Law: Prestige and the Division of Lawyers' Labor." *American Sociological Review* 66(3):382-403.

Sandefur, Rebecca L. 2008. "Access to Civil Justice and Race, Class and Gender Inequality" *Annual Review of Sociology* 34:339-58.

Sandefur, Rebecca L. 2009. "The Fulcrum Point of Equal Access to Justice: Legal and Nonlegal Institutions of Remedy." *Loyola of Los Angeles Law Review*.

Sarat, Austin. 1976. "Alternatives in Dispute Processing: Litigation in a Small Claims Court." *Law and Society Review* (Spring):337-376.

Sarat, Austin and William L.F. Felstiner. 1995. *Divorce Lawyers and Their Clients: Power and Meaning in the Legal Process.* New York, NY: Oxford University Press.

Scheppele, Kim Lane. 1994. "Manners of Imagining the Real." *Law and Social Inquiry* 19:995-1022.

Schoenholtz, Andrew I. and Jonathan Jacobs. 2001. "The State of Asylum Representation: Ideas for Change." *Georgetown Immigration Law Journal* 16(4):739-772.

Seron, Carroll, Gregg Van Ryzin, Martin Frankel, and Jean Kovath. 2001. "The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment." *Law and Society Review* 35(2):419-434.

Seron, Carroll. 1996. *The Business of Practicing Law: The Work Lives of Solo and Small-Firm Attorneys.* Philadelphia, PA: Temples University Press.
Sirin, Selcuk R. 2005. "Socioeconomic Status and Academic Achievement: A Meta-Analytic Review of Research." *Review of Educational Research* 75(3):417-53.

Stanley, T.D. 2001. "Wheat from Chaff: Meta-analysis as Quantitative Literature Review." *The Journal of Economic Perspectives* 15(3):131-150.

Steadman, John Montague and Richard S. Rosenstein. 1972-1973. "'Small Claims' Consumer Plaintiffs in the Philadelphia Municipal Court: An Empirical Study." *University of Pennsylvania Law Review* 121:1309-1361.

Subcommittee on Social Security of the Committee on Ways and Means. 1975. "Report of the Disability Claims Process Task Force." Pp. 1-124 in *Recent Studies Relevant to the Disability Hearings and Appeals Crisis.* Washington, DC: GPO.

Sullivan, William M., Anne Colby, Judith Welch Wegner, Lloyd Bond, Lee S. Shulman. 2007. *Educating Lawyers: Preparation for the Profession of Law.* San Francisco: Jossey-Bass.

Szmer, John, Susan W. Johnson, and Tammy A. Sarver. 2007. "Does *the* Lawyer Matter? Influencing Outcomes on the Supreme Court of Canada." *Law and Society Review* 41(2): 279-304.

Trautner, Mary Nell. 2009. "Personal Responsibility v. Corporate Liability: How Personal Injury Lawyers Screen Cases in an Era of Tort Reform." *Sociology of Crime, Law and Deviance* 12: 203-30.

Trautner, Mary Nell. 2006. *Screening, Sorting and Selecting in Complex Personal Injury Cases: How Lawyers Mediate Access to the Civil Justice System.* PhD thesis. Department of Sociology, University of Arizona.

Trubek, David M. Austin Sarat, William L.F. Felstiner, Herbert M. Krtizer, Joel B. Grossman. 1983-1984. *UCLA Law Review* 31:72-127.

Udell, David and Rebekah Diller. 2007. "Access to Justice: Opening the Courthouse Door." Brennan Center for Justice White Paper. New York University. Retrieved visited December 6, 2007. (http://www.brennancenter.org/dynamic/subpages/download_file_48493.pdf)

Weber, Max. [1919] 1946. "Science as a Vocation." Pp. 129-156 in *From Max Weber: Essays in Sociology*, edited by H.H. Gerth and C. Wright Mills. New York, NY: Oxford University Press.

Wheeler, Stanton, Bliss Cartwright, Robert A. Kagan, and Lawrence M. Friedman. 1987. "Do the 'Haves' Come Out Ahead? Winning and Losing in State Supreme Courts." *Law and Society Review* 21(3):403-446.

White, Howard D. 1994. "Scientific Communication and Literature Retrieval." Pp. 41-56 in *The Handbook of Research Synthesis,* edited by Harris Cooper and Larry V. Hedges. New York, NY: Russell Sage Foundation.

Whitford, William C. 1985. "The Small-Case Procedure of the United States Tax Court: A Small Claims Court that Works." *Law and Social Inquiry* 1984:797-828.

William E. Morris Institute for Justice. 2005. Injustice in No Time: The Experience of Tenants in Maricopa Housing Court. Phoenix, AZ: William E. Morris Institute for Justice. Retrieved November 26, 2007. (http://www.lawhelp.org/Program/729/LocalResources.cfm?pagename=Maricopa%20County%20Eviction%20Study)

Winship, Christopher and Stephen L. Morgan. 1999. "The Estimation of Causal Effects from Observational Data." *Annual Review of Sociology* 25:659-706.

Yale Law Journal. 1972-1973. "Legal Services and Landlord Tenant Litigation: A Critical Analysis." *Yale Law Journal* 82:1495-1511.

Yngvesson, Barbara and Patricia Hennessey. 1975. "Small Claims, Complex Disputes: A Review of the Small Claims Literature." *Law and Society Review* (Winter):219-274.

Zirkel, Perry A. and Philip H. Breslin. 1995. "Correlates of Grievance Arbitration Awards." *Journal of Collective Negotiations* 24(1):45-54.

Cases Cited

Gideon v. Wainwright 372 U.S. 335 (1963)

Table 1. Study, Type of Case, Number of Cases, Outcome Measure and Field of Law

Study *Type of case*	N	Outcome measure *Field of Law*
Chadha 1996 *Evictions*	536	Tenant awarded possession or landlord's claim involuntarily dismissed *Real estate: Landlord/Tenant*
Columbia Journal of Law and Social Problems 1968 *Child neglect*	141	Respondent retains custody of child *General family*
Cooper 1979 *Welfare fair hearings*	280	Successful petition to prevent reduction of welfare benefits *General family: poverty*
Doran et al. 2003 *Evictions*	256	Judgment for tenant *Real estate: Landlord/Tenant*
Fusco, Collins and Birnbaum 1979 *Evictions*	1061	Judgment for tenant *Real estate: Landlord/Tenant*
Hall 1991 *Evictions*	283	Judgment for tenant *Real estate: Landlord/Tenant*
Hammer and Hartley 1978 *Welfare fair hearings*	1065	Successful petition to prevent reduction of welfare benefits *General family: poverty*
Kirp, Buss and Kuriloff 1974 *Special education certification hearings*	25	Parent successfully contest special education determination and placement of child *Civil litigation: personal*
Krtizer 1998b.i *Unemployment compensation appeals: appeal initiated by employee*	5459	Unemployment compensation awarded *Employment: Unions/employees*
Krtizer 1998b.ii *Unemployment compensation appeals: appeal initiated by employer*	2454	Unemployment compensation awarded *Employment: Unions/employees*
Kritzer 1998c *State income tax appeals*	170	Appeal of tax bill fully successful *Personal income tax*
Kritzer 1998e *Labor grievance arbitration*	569	Union grievance sustained *Employment: Unions/employees*
Mosier and Soble 1973-74 *Evictions*	4094	Judgment for tenant *Real estate: Landlord/Tenant*
Ruhnka et al. 1978 *Small claims*	983	Judgment for plaintiff *Civil litigation: personal*

Study *Type of case*	N	Outcome measure *Field of Law*
Sarat 1976 *Small claims*	109	Plaintiff receives at least 1/3 of original claim *Civil litigation: personal*
Seron et al. 2001 *Evictions*	200	Judgment for tenant *Real estate: Landlord/tenant*
Steadman and Rosenstein 1972-1973 *Small claims consumer cases*	67	Judgment for consumer plaintiff *Consumer: consumer/debtor*
Subcommittee on Social Security of the House Ways and Means Committee 1975 *Social security disability hearings*	427	Denial of social security benefits reversed *Employment: unions/employees*

Table 2. Study Characteristics and Meta-Independent Variables: Percentages of Cases and Studies (N's in parentheses)

		Cases	Studies
A. Study Design			
Random assignment	Researchers randomly assigned subjects to different types of representation, including self-representation	1% (200)	6% (1)
Period of observation 1960s-1970s 1980s-1990s 2000-2010s	Dates observed cases were adjudicated	47% (8,452) 52% (9,471) 1% (256)	65% (11) 29% (5) 6% (1)
B. Setting characteristics			
Overall win rate	Percentage of observed cases won by focal parties	40%	40%
Self-representation	Percentage of observed cases in which focal parties self-represent	78% (15,450)	79%
Non-lawyer representation	Percentage of observed cases in which focal parties are represented by non-lawyers	8% (822)	3%
Facing an institutional repeat player	Opposing party is a single institution that participates in every case	11% (1,967)	29% (5)
C. Meta-Independent Variables			
Substantive expertise			

Substantive law complexity Above average (56) Average (48-49) Below average (32-42)	How complex is the substantive law involved in the field of law, as rated by legal experts.	1% (170) 49% (8,909) 50% (9,100)	6% (1) 18% (3) 77% (13)
Procedural legal complexity Average (46-51) Below average (43)	How complex are the documents and procedures involved in the field of law, as rated by lawyers practicing in the field.	93% (16,834) 7% (1,345)	88% (15) 12% (2)
Tribunal	Forum is a tribunal	57% (10,279)	35% (6)
Small claims court	Forum is a small claims court	6% (1,159)	18% (3)

Notes: Quantities are based on 17 studies comprising 18,179 adjudicated cases. All information is from the studies themselves, with the exception of the measures of substantive and procedural legal complexity, which are taken from the 1995 Chicago Lawyers Survey (Heinz *et al.* 2005).

Figure 1. Information on Representation Status and Case Outcomes Necessary to Construct Effect Measures

Focal parties with attorneys	Focal parties with nonlawyer advocates	Focal parties self-representing
L_1 = number of cases won	NLA_1 = number of cases won	SR_1 = number of cases won
L_2 = number of cases lost	NLA_2 = number of cases lost	SR_2 = number of cases lost

Figure 2. Observed Differences in Win Rates across Studies, Comparing Lawyer-Represented Litigants with Self-Represented Litigants and Litigants Represented by Nonlawyer Advocates (NLAs): Odds Ratios

Notes: The arrow indicates the single study that randomly assigned focal parties to the conditions of self- and lawyer representation (Seron et al. 2001); all other studies are observational. Some studies contribute more than one observation. Studies comprise 18,179 adjudicated civil cases.

Table 3. The Impact of Lawyers on Case Outcomes: Predicted Case Outcomes if Universal Lawyer Representation (ULR) Replaced Existing Self-Representation, by Legal Expertise Requirements and Assumptions about Selection into Lawyer Representation. Odds ratios indicating the average change in the likelihood that focal parties would win their cases if ULR were implemented. Weighted Mantel-Haenszel odds ratios.

	Potential Impact of Universal Lawyer Representation		
Professional Expertise Requirements	Assume no information about selection into lawyer representation	Assume lawyers "do no harm" to chances of winning	Assume representation exogenous to winning
All Cases	[.2, 138.6]	[1.0, 138.6]	5.4
Substantive Expertise			
Substantive law complexity			
Below average	[.23, 229.9]	[1.0, 229.9]	8.5
Average	[.1, 40.2]	[1.0, 40.2]	2.0
Above average	[.5, 8.2]	[1.0, 8.2]	2.4
Procedure and document complexity			
Below average	[.1, 15.8]	[1.0, 15.8]	1.4
Average	[.2, 147.7]	[1.0, 147.7]	5.7
Adversarial forum			
Simplified (tribunal or small claims court)	[.1, 35.7]	[1.0, 35.7]	2.0
Traditional	[.3, 299.7]	[1.0, 299.7]	10.7

Notes: The quantities in the table reflect the predicted difference between the win rates observed in past studies of lawyers' impact on case outcomes and predicted win rates under a hypothetical policy of universal lawyer representation (ULR). Each column calculates the impact of ULR under a different set of assumptions about how cases are selected into the condition of being represented by an attorney or into self-representation. From left to right, the assumptions are progressively restrictive, and thus narrow the bounds that the data indicate comprise the impact of lawyers on case outcomes. N= 16 studies, comprising 17,216 cases. One study of unemployment compensation appeals contributes two observations, one for cases in which the focal party initiated the appeal and one for cases in which the focal party is a respondent to an appeal.

Table 4. The Impact of Lawyers on Case Outcomes: Predicted Case Outcomes if Universal Lawyer Representation (ULR) Replaced Existing Nonlawyer Advocate Representation, by Legal Expertise Requirements and Assumptions about Selection into Lawyer Representation. Odds ratios indicating the average change in the likelihood that focal parties would win their cases if ULR were implemented. Weighted Mantel-Haenszel odds ratios.

	Potential Impact of Universal Lawyer Representation		
Professional Expertise Requirements	Assume no information about selection into lawyer representation	Assume lawyers "do no harm" to chances of winning	Assume representation exogenous to winning
All Cases	[.5, 4.2]	[1.0, 4.2]	1.4
Substantive Expertise			
Substantive law complexity			
Below average	[.4, 2.7]	[1.0, 2.7]	1.2
Average	[.5, 2.6]	[1.0, 4.6]	1.4
Above average	[.7, 3.8]	[1.0, 3.8]	3.2
Procedure and document complexity			
Below average	[.4, 2.7]	[1.0, 2.7]	1.2
Average	[.5, 4.6]	[1.0, 4.6]	1.5
Adversarial forum			
Simplified (tribunal or small claims court)	[.5, 4.3]	[1.0, 4.3]	1.3
Traditional	[.7, 3.8]	[1.0, 3.8]	3.2

Notes: The quantities in the table reflect the predicted difference between the win rates observed in past studies of lawyers' impact on case outcomes and predicted win rates under a hypothetical policy of universal lawyer representation (ULR). Each column calculates the impact of ULR under a different set of assumptions about how cases are selected into the condition of being represented by an attorney or by a non-lawyer advocate. From left to right, the assumptions are progressively restrictive, and thus narrow the bounds that the data indicate comprise the impact of lawyers on case outcomes. N=6 studies, comprising 2,023 cases. One study of unemployment compensation appeals contributes two observations, one for cases in which the focal party initiated the appeal and one for cases in which the focal party is a respondent to an appeal.