

# Randomized Evaluation in Access To Justice: Two Studies in Summary Eviction

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# Outline

- 1 Legal & Research Setting
- 2 These Two Studies
- 3 More Detailed Results



## Legal Setting: The Problem

- US legal system
  - Complicated, multilayered, ubiquitous
  - Fundamental adjudicative model: adversarial
- *Gideon v. Wainwright*: Rt to counsel, felony cases only
  - Theory: obligation on both federal & state gov't
  - Practice
    - High caseloads (100s/lawyer)
    - Low constitutional effectiveness standard
    - RCTs: large type-of-lawyer effects (even capital cases)
- “Civil *Gideon*” efforts: near-complete failure
  - Courts (including SCOTUS) rebuff litigation-based efforts
  - 2006: ABA Resolution, unanimous: Rt to counsel, adversarial proceedings, basic human needs → nowhere
  - Legislative efforts: no current prospect of action



# Legal Setting: The Problem

- Legal aid
  - Political football
  - Recent estimates (???): of those eligible in need
    - 20% seek help, get it
    - 20% seek help, do not get it
    - Remainder: lump it
  - Recently: Great Recession: funding triple-whammy
    - Gov't funding cuts
    - Private donations cut
    - Lower interest rates (!)
- Private sector efforts: pro bono
  - Inadequate
  - Not all (mainly?) focused on those in need



# Legal Setting: Consequences of Problem

- Adjudicative systems awash in self-represented litigants
  - Structurally ill-equipped to handle
    - Adversarial system
    - Restrictions, adjudicatory ethics (real, imagined)
  - Problems
    - Protection of legal rights
    - Accuracy of adjudication
    - Administrative strain
- Responses: Dizzying variety
  - Lawyer-based: **unbundled representation**
  - Provider-but-non-lawyer-based: paralegal, law student rep
  - Court-based: best judicial practices, self-help centers
  - ADR: mediation, early neutral evaluation
  - Internet-based: pleading & discovery forms; direct filing



## Legal Setting: Consequences of Problem

- All responses: One thing in common: Little credible, objective info whether they “work”
  - “Work”?
    - Adjudicatory outputs
    - Participant perception & satisfaction (outcome or process?)
    - Socioeconomic outcomes
  - How to find out?
    - LSC’s research arm defunded in 1980s
    - A2J research fragmented
    - Multiple layers of jurisdictions, limited and inconsistent datagathering
- So now what?
  - Reconstitute a research capacity, access to civil justice
  - Reintroduce good research methodology
    - Qualitative: focus groups, interviews, observation
    - Qualitative: rigorous sample surveys, **RCTs**, cost-benefit



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## Study Background

- Movement to “unbundled” representation
  - Legal aid: several decades old, now dominant model
  - For-profit: Nationwide sweep starting 15-20 years ago
- Question: A class of cases that requires traditional, full rep?
  - “Civil *Gideon*” advocacy
  - Intuitive appeal
  - But evidence?
    - Do these cases exist?
    - Can we find them?
    - Can we find them early?
- Test: Two RCTs, Massachusetts, summary eviction
- Dumpster diving? Not quite, but these were on the cheap





# Massachusetts Summary Eviction: Background

- Evictors seek possession from occupants (NTQ or Comp)
- Supplemental jurisdiction → related monetary claims (e.g. rent arrears) & counterclaims (e.g., conditions)
- Three case types
  - Foreclosing bank/secured trust evicting . . .
    - . . . defaulting homeowner
    - . . . tenant of former homeowner
  - Landlord sues to evict tenant for misconduct
  - Landlord sues to evict tenant nonpayment of rent
- Two courts (outskirts of Boston)
  - District court (fairly general jurisdiction, medium-sized claims)
  - Housing court (specialized, eviction cases only)
- General procedures
  - Summons returned → ten days later = “trial” date
  - Answer & discovery → 14 day
  - First court date = “trial,” but cases settle
  - Judgment, execution



# Systems of Two Court

- **District Court Study**

- Litigants arrive on court hearing dates
- Immediately referred to hallway settlement negotiation
- If unsuccessful, judge cajoles to settlement (mediation rare)

- **Housing Court Study**

- Litigants arrive on court hearing dates
- **Immediately referred to “mediation” before housing specialist**
  - **”Mediation” style: evaluative, predictive, forceful**
  - **Housing specialists also investigated, enforced**
- If unsuccessful (rare), judge cajoles to settlement

- Law administered: complicated

- US Const
- US statutes
- US regs
- MA Const
- MA statutes
- MA regs
- Municipal ordinances



# Limited Assistance Available

## District Court Study

- Outreach, intake: proactive, individualized, timely, screen
- (Almost) all defendants: help given, staff atty, ans. & disc.
- Randomization
  - Treated: Offer, full rep, provider staff atty
  - Control: No such offer
- Lawyering style: aggressive, confrontational, scary

## Housing Court Study

- Outreach, intake: client-initiated, no screen
- Intake at two stages: notice to quit, complaint
- For all defendants sued: help available, staff atty, ans. & disc.
- Randomization
  - Treated: Offer, full rep, provider staff atty
  - Control: Referral to Lawyer For Day Program if/when sued
- Lawyering style: facilitative, deal-brokering



## Study Characteristics

- Fundamental comparison (ITT): Offer of full rep versus receipt of unbundled assistance
- Population size: small
  - District court study: 74 treated, 55 control
  - Housing court study: 85 treated, 99 control
  - Only detect large effects, but that's OK
- Covariate balance, treated versus control
  - District court study: good, some imbalances, adjustment produces no change to inference
  - Housing court study: excellent
- Missing data problems: very small
- Outcome collection
  - Review of court files
  - Telephone contacts (time, possession, but not \$)



# Attorney Usage

## District Court Study

- Plaintiffs/evictors
  - Treated: 86% atty
  - Control: 96% atty
- Defendants/occupants (potential clients)
  - Treated: 97% atty
  - Control: 11% atty

## Housing Court Study

- Plaintiffs/evictors (complaint cases, total figures similar)
  - Treated: 58% atty
  - Control: 55% atty
- Defendants/occupants (potential clients)
  - 82% offered full rep take it
  - Only 7% not so offered find full rep
  - LFTD usage: 57%
  - **Treated group = 12.4 hrs/case, control = 1.7 hrs/case**



# Outcomes We Studied

- Possession variables
  - Possession highly desired: How many want to stay?
    - District Court: 80% (another 15% have no plan)
    - Housing Court: 70% (another 15% have no plan)
  - Actual possession, judgment possession, writ
- Money variables
  - Months of rent, actual money, judgment, writ
- Court burden
  - Case length, motions, judge looks, judge rulings
- In Housing Court: whether NTQ cases reached court (.5 versus .6)



# Fundamental Results

Low Numbers *Good* for Potential Clients

## District Court Study: Huge (offer) effects

- Possession, evictor: treated 35%, control 62% ( $p = .01$ )
- Months rent, evictor: treated -9.4, control -1.9 ( $p = .01$ )

## Housing Court Study: No statistically significant effect (anywhere)

- Possession, evictor\*: treated 67%, control 66% ( $p = .93$ )
- Months rent, evictor: treated -1.8, control -1.6 ( $p = .82$ )



# Fundamental Results

Low Numbers *Good* for Potential Clients

## Side-by-Side Averages

Outcome	Housing Treated	Housing Control	District Treated	District Control
Possession*	.67	.66	.35	.62
Money	-1.8	-1.6	-9.4	-1.9
Jury	.18	.09	.81	.74
Motions	.18	.16	1.4	.81

Challenge to explain simultaneously:

- Null result in housing court study AND
- Why both groups' results in housing court look like **control** group in district court





# Interpretations and Explanations

- Two different ways to interpret
  - Evaluation of relative effectiveness of legal aid programs/models
  - Can we measure justice this way?
- Explanation one: All is well!
  - Two studies may not be comparable
    - Client base: some (but not huge) observable differences
    - Different judges (but adjudicatory styles similar)
    - Unobserved differences (housing stock, landlord practices)
  - Even if are, LFTD = full rep?
- Explanation two: Double, double toil and trouble
  - Outreach, intake, screening
  - Lawyering style
  - “Mediation” program in housing court



# Now What?

- A2J Research: still in rebirth in US
  - Narrow range of outcomes studied
  - Narrow range of interventions studied
  - Narrow range of legal areas
  - Research methodology: room for improvement
  - Need to address! Barriers:
    - Fear
    - Perceived ethical concerns
    - Research capacity
    - Funding & perceptions
- Programmatic
  - Recommendation: some kind of response
  - Recommendation: evaluate the response
  - So far: no programmatic response to these studies (or any other RCT)



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## District Court: Possession Outcomes

Low Numbers *Good* for Potential Clients

	Treated Rate	Control Rate	P-value
Actual Poss, Evictor	.35	.62	.01
Judg Poss, Plaintiff	.18	.77	< .01
Writ Exec Poss, Plaintiff	.12	.60	< .01

Point estimate for treatment effect, actual possession:  $.35 - .62 = -.27$

Interval (from modeling), actual possession, treatment effect:  
(-.39, -.17)



## District Court: Money Outcomes

Low Numbers *Good* for Potential Clients

	Treated	Control	P-value
PlainMonsRentLost	-9.4	-1.9	.01
Judge Amount	-\$1175	\$373	.39 (outliers)
Writ Amount	\$150	\$675	< .01

*Note: PlainMonsRentLost likely a large underestimate*  
Interval (from modeling), PlainMonsRentLost, treatment effect:  
(-13.2, -.7)



## District Court: Court Burden Outcomes

	Treated	Control	P-value
CaseLength, Days	104	69	< .01
CaseLength <sup>2</sup>	2.4	2.2	.01
NumJudgeLooks	1.4	2.0	.04
NumJudgeRulings	.27	.51	.07
NumPreJudMotsPla	.36	.42	.39
NumPreJudMotsDef	1.4	.81	.02
NumTotMotsPla	.43	.66	.13
NumTotMotsDef	1.4	1.1	.29
Jury Trial Demand	.81	.74	.53

# Housing Court: Possession Outcomes

Low Numbers *Good* for Potential Clients

	Treated Rate	Control Rate	P-value
Actual Poss, Evictor*	.67	.66	.93
Judg Poss, Plaintiff	.32	.27	.84
Writ Exec Poss, Plaintiff	.29	.23	.47

Point estimate, actual possession, treatment effect:  $.67 - .66 = .01$   
Interval (from modeling), actual possession, treatment effect:  
(-.09, .07)



# Housing Court: Money Outcomes

Low Numbers *Good* for Potential Clients

	Treated	Control	P-value
PlainMonsRentLost	-1.8	-1.6	.82
Judge Amount	\$903	\$486	.40
Writ Amount	\$494	\$443	.99

Interval (from modeling), PlainMonsRentLost, treatment effect:  
(-1.4, 1.1)





## Housing Court: Court Burden Outcomes

	Treated	Control	P-value
CaseLength, Days	92	71	.17
Log(CaseLength)	4.1	3.8	.19
NumJudgeLooks	2.1	2.1	.77
NumJudgeRulings	.18	.32	.23
NumPreJudMotsPla	.26	.14	.69
NumPreJudMotsDef	.18	.16	.92
NumTotMotsPla	.58	.57	.97
NumTotMotsDef	.37	.34	.89
Jury Trial Demand	.18	.09	.47



# Summary Eviction Background

- Would-be evictors initiate process to evict occupants
  - NTQ: “Notice to Quit”
  - Complaint: Would-be evictor has become a plaintiff
- Ct. cases: Supplemental jurisdiction → related monetary claims (e.g. rent arrears) & counterclaims (e.g., conditions)
- Three case types
  - Foreclosing bank/secured trust seeks to evict . . .
    - . . . defaulting homeowner
    - . . . tenant of former homeowner
  - Landlord seeks to evict tenant, misconduct
  - Landlord seeks to evict tenant, nonpayment of rent
- MA law provides (comparatively) strong protections to occupants
  - E.g., dependent covenants → conditions a defense to NPR
  - E.g., procedural protections (jury, discovery → 14-day stay)



## Limited Assistance Available

- Outreach, intake, screening
  - Outreach: reputation, word of mouth, other service providers
  - Intake: Telephone, professional staff
  - Screening:
    - Potential client must attend meeting in provider's offices
    - Little if any other case screen, *i.e.*, no “can we alter outcome” screen in this study
- (Almost) all occupants: help given, staff atty
  - Instructional session (background, how-to)
  - If lawsuit: Checkbox answer & discovery forms (10-day stay)
- Randomization (**NTQ & Com cases**)
  - Treated: Offer, full rep, provider staff atty
  - Control: Referral to lawyer for the day (LFTD) program
    - Yes (if lit): Hallway settlement negotiations, “mediation”
    - No: Filing motions, court colloquies, arguments



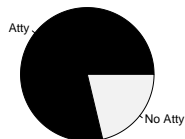
# Housing Court: Attorney Usage

- Plaintiffs/evictors (complaint cases, total figures similar)
  - Treated: 58% atty
  - Control: 55% atty
- Defendants/occupants (potential clients)
  - 82% offered full rep take it
  - Only 7% not so offered find full rep
  - LFTD usage: 57%
  - Treated group = 12.4 hrs/case, control = 1.7 hrs/case

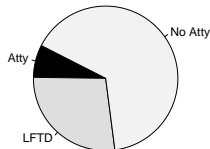


# Housing Court: Attorney Usage: Defendants

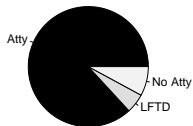
Treated, NTQ



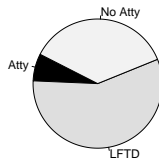
Control, NTQ



Treated, Complaint



Control, Complaint

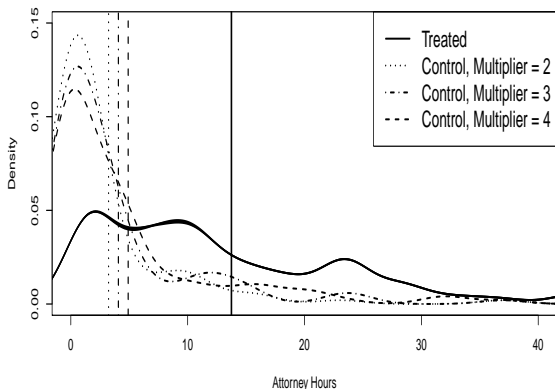


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# Housing Court: Attorney Usage: Defendants Treated versus Control



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Housing Court: 70% (another 15% have no plan)
  - Actual possession, judgment possession, writ
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Number Total Motions, Pla	.58	.57	.97
Number Total Motions, Def	.37	.34	.89
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# Why Randomize?

## Why Retrospective File Reviews = Little Info

- “Selection Effects”
  - Clients choose: self-motivation, articulateness, social networks  
*Real focus on outreach, intake systems*
  - Clients choose: most outrage (strongest facts?)
  - Lawyers choose: strongest facts (even if you don't . . .)
  - Judges choose: most sympathetic facts
- What program is being contemplated? When is the intervention?
- Honest estimates of uncertainty (including missing data)

Will usually be able to detect only big effects: but that's OK!



# Why Study (this Provider's) Offers, not Just Actual Use?

## Two Reasons

- 1 Offers are what a provider actually provides
  - Civil: Don't force potential clients to accept offers
  - Don't prohibit folks not offered from finding rep elsewhere
  - Program evaluation: focus on what program can control, effect of **ITS** outputs
- 2 Offers are what's randomized, not actual use
  - Some offered don't take, some not-offered find elsewhere
  - Nothing random about either of these processes

*Note 1: Debate here mirrors debate had and largely resolved in medicine, political science, economics, sociology, and statistics ("intention-to-treat" v. "as-treated")*

*Note 2: Actual use of rep also interesting*



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# Analogies from Get-Out-Vote Efforts . . . And the NFL

- Get-Out-Vote (actual study)
  - Randomly select households to receive postcard urging vote
  - Track whether household occupants vote
  - What to measure? Two choices
    - ① Effect of MAILING postcard
    - ② Effect of recipients READING postcard (reading info from surveys)

Greiner & Pattanayak: Both interesting!

- NFL: Run versus pass: which more effective for a team?
  - What's the question? CALLING a running play, or an ACTUAL run
  - Remember: Called pass plays often end up in runs, run plays occasionally end up as passes
  - If an offensive coordinator making next set of play calls?

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# Types of Clients Offered Representation



[www.worldofstock.com](http://www.worldofstock.com)



# Types of Clients Offered Representation

Never-taker



[www.worldofstock.com](http://www.worldofstock.com)

Regular



Go-Getter



# Causal Effect of Offers

## Comparison of Treated And Control Groups

Treated/Offered HLAB Rep



Control/No HLAB Offer



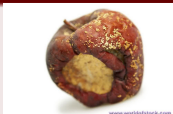
# What About Actual Use of Representation?

We Start With This

## Treated/Offered HLAB Rep



## Control/No HLAB Offer



# Comparing Represented Versus Unrepresented, Part I

"It's Not Our Fault"

## Actually Used Representation



## Did Not Actually Use Representation



# Comparing Represented Versus Unrepresented, Part II

## "But They Got Counsel"

### Actually Used Representation



### Did Not Actually Use Representation

