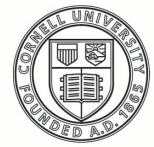

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The Devil Is in the Details: Attorney Heterogeneity and Employment Arbitration Outcomes

J. Ryan Lamare
University of Illinois at Urbana-Champaign

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Keywords

employment arbitration, outcomes, attorney heterogeneity, alternative dispute resolution

Disciplines

Human Resources Management | Labor and Employment Law | Labor Relations

Comments

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Abstract

Conventional wisdom holds that hiring a lawyer will improve outcomes for non-union employees who take individual rights complaints to arbitration. However, the limited amount of empirical scholarship into this topic has rarely accounted for the concurrent influence of employer representatives, or for the presence and effects of employee and employer attorney heterogeneity. I analyze all arbitration awards rendered within the securities industry from the implementation of its ADR program through the late-2000s, and first find that hiring an attorney benefits employees only in the rare cases that employers do not also include an agent. I then account for attorney selection into cases by limiting the analysis to only claims that involved attorneys. I use biographical records for each lawyer to explore attorney heterogeneity in education, expertise, gender, experience, and other characteristics. I examine longitudinal changes in attorney characteristics over time, and empirically test how these differences affect outcomes. I find that many employee and employer attorney characteristics vary and have grown more pronounced over time, and several of these variations shape outcomes. I conclude that although hiring an attorney may not redress power imbalances within employment arbitration, more nuanced analyses reveal that they are important to the system and certain types of lawyers can provide important benefits.

Conventional wisdom holds that, when parties engage in arbitration within the workplace context, it is necessary to include an agent who will represent each party's interests. In labor arbitration, agents are usually union representatives, management-side labor relations experts, and sometimes attorneys. In non-union employment arbitration, these agents are almost exclusively lawyers. The value representatives bring to arbitration may stem from their skills and expertise in applying knowledge of employment law, their familiarity with the arbitral forum, and their ability to avail of resources to help influence the arbitration process in such a manner that the outcome will favor their clients. Since employment arbitration cases involve issues regarding the interpretation and execution of substantive laws, it can be argued that attorneys are especially vital within this context.

For employees, hiring a lawyer might also help to redress some of the known power imbalances they face, as one-time participants in arbitration, relative to employers, who are typically frequent users of the system. For example, arbitration providers like the American Arbitration Association (AAA) and the Financial Industry Regulatory Authority (FINRA) exhort all potential clients, and especially employees, to consider hiring representatives. In its guidebook entitled *Representing Yourself in Employment Arbitration: An Employee's Guide*, the AAA holds that "workplace disputes…can be difficult to present without the assistance of an attorney." FINRA, which handles securities arbitration cases and comprises the setting for this study, also recommends in its dispute resolution guide that employees include an agent.[1] The conclusion drawn by these and other providers echoes the assumption that representatives are

[1] See the FINRA document entitled *Find an Attorney or Other Legal Representation* at the following website: http://www.finra.org/ArbitrationAndMediation/FINRADisputeResolution/OptionsforInvestors/FindanAttorney/ (accessed September 29, 2017).

vital to employment arbitration, and that unrepresented parties (and employees in particular) are at a disadvantage.

A central component of some research in support of policies promoting arbitration has focused on the value attorneys add. For instance, a key line of reasoning within Estreicher's influential article in support of pre-dispute employment arbitration programs argued that the lower costs and relative informality of arbitration, when compared against litigation, would reduce barriers to effective attorney representation for average employees who may not otherwise be able to find quality representation in a court system (Estreicher 2001). However, empirical examinations of how attorneys shape arbitration outcomes are rare, largely due to a lack of available data. Of the few studies that address the role of attorneys in the non-union setting, analyses are often restricted to dichotomous examinations of the presence or absence of employee representatives alone. Consideration is rarely given to either the offsetting effects of employer agents or the influence of attorney heterogeneity in terms of education, specialist expertise, experience, employment status, and other characteristics. Given the limited understanding of the effects of attorneys in employment arbitration, authors like Colvin (2011) and Colvin and Pike (2014) have argued for more nuanced research into the subject.

In this paper, I empirically analyze two decades' worth of arbitration awards rendered under the securities industry (FINRA) system for cases filed between 1986 and 2007. I initially examine the extent to which employees and employers use attorneys, and how this usage affects outcomes. I then highlight the need to account for the selection of attorneys into cases in order to gain a clearer understanding of representation effects in arbitration. To overcome selection concerns, I limit the core analyses, which constitutes the majority of the paper's findings, to only cases where both sides included attorneys. Within this subset, I append the FINRA data using

information collected from the biographies of thousands of individual lawyers to examine whether employee and employer attorneys are heterogeneous in their characteristics, whether this heterogeneity has changed over time, and how these differences affect outcomes. In so doing, I hope that this paper adds both theoretical and empirical value to our understanding of the competing forces that affect employment arbitration outcomes.

Theory and Literature

The extent to which lawyers affect non-union arbitration outcomes is not well-understood. Those studying access to justice recognize the value inherent within dispute resolution systems (Rhode 2004; Rubinson 2004), and many authors have provided practical insight into how representatives can serve their clients in these systems (Cooley 2003; Zimmerman 2003; Golann 2009). As noted, advocates of public policies favoring the expansion of employment arbitration have emphasized that the low cost of the forum lends itself to greater equity because it reduces barriers facing employees when seeking to hire quality representation (Estreicher 2001). However, aside from a small number of scholars who have assessed the role of representation in mediation (McEwan 1995; Bingham et al. 2001; Wissler 2009), until recently scant empirical research was available on the actual frequency and influence of representation. Sternlight (2009: 385) laments that the dispute resolution field knows "very little about the extent to which participants in arbitration are represented by attorneys, nor the degree to which legal representation in arbitration is significant." Colvin (2011: 20) echoes these sentiments, calling for "further investigation of the impact of representation or lack thereof" in non-union arbitration. His call for research into the issue is driven partly from a belief that access to attorneys might help to ameliorate some of the concerns that have been raised regarding inequalities and power imbalances within employment arbitration forums (2011: 15-16). Colvin

(2011: 16) also notes that employee representation may be particularly valuable in employment arbitration systems, relative to public forums like the courts, since judges in litigation "may view themselves as having a greater public obligation to protect the interests of the self-represented," whereas private arbitrators may feel no such obligation.

A general criticism levied at arbitral forums is that employers enjoy inherent advantages over employees because of their familiarity and experience within these systems. These advantages may be a product of naturally-occurring differences between single employees and large, well-resourced firms (Hill 2003; Sherwyn et al. 2005). Or, they may be a function of biases within arbitration systems that allow arbitrators to favor employers in order to gain future business (Bingham 1997, 1998; Colvin 2011; Colvin and Gough 2015). The broad consensus of many scholars is that, whether intentional or not, non-union arbitration systems provide an uneven playing field for all sides.

In an effort to help reduce these imbalances, employees are often encouraged to hire agents (attorneys) to represent them. Attorneys bring into arbitration the skills and familiarity generally unavailable to one-time employees. Therefore, according to recent research (Choi et al. 2010, 2014; Colvin 2008, 2011; Colvin and Gough 2015), unrepresented individuals may be especially disadvantaged within arbitration systems, while those who include attorneys fare better. This research has determined that self-represented employees may be less likely to know when to settle with employers and, since they have less experience in arbitrator selection, unrepresented employees may also allow employers to pick more employer-friendly arbitrators. This generates lower win rates and reduces awards among unrepresented individuals.

However, aside from a small number of empirical studies into the issue, our current understanding of the manner in which attorneys shape employment arbitration is still lacking.

Although recent scholarship (Gough 2017) has examined factors that might influence employee-side attorney selection into cases, very little scholarship into employment arbitration has examined the extent to which employers also use agents and how employer attorneys shape arbitration outcomes. Employment arbitration research has rarely also considered the presence of heterogeneity between lawyers and the possible effects of these differences on outcomes *after* accounting for factors that might influence attorney selection into claims.

The closest comparable study comes from Colvin and Pike (2014), who provided descriptive findings on the presence of representation in 449 employment arbitration cases administered by the AAA in California in 2008. They found that nearly a third of all employees covered by employer promulgated arbitration resolved their complaints without having an attorney present, which is a slightly larger amount of self-representation than that found in studies of the court system (Nelson et al. 2010). Those that entered arbitration without a lawyer were less likely to win anything at all, and received lower payouts. Additionally, Colvin and Pike (2014) examined the presence of one aspect of variation in attorney characteristics, which is attorney and firm specialization in employment law. Theirs is the only study of which I am aware that has linked biographical attorney information with employment arbitration outcomes, and they found descriptive evidence that just over half of the employee attorneys in their sample specialized in employment law, while three-quarters of employer-side attorneys listed employment law as a primary area of practice. I use the Colvin and Pike (2014) results as a key foundation upon which this study builds. My study builds upon this framework by introducing a wider context, a longitudinal timeframe, and by including an array of measures of attorney heterogeneity. I also use a multivariate empirical model to attempt to isolate attorney effects while accounting for other factors that contribute to arbitration outcomes.

Representation Effects outside the Employment Arbitration Context

Although employment arbitration research has not focused extensively on the role of representatives, line of research related to representation effects are present within the labor arbitration context as well as the litigation context. Within labor arbitration, Block and Steiber (1987) were the first to examine how representatives affected outcomes in unionized grievance arbitration. They found that including representatives served to benefit both employers and unions in discharge cases, but only if the other side did not also have representation. Wagar (1994) found similar results in labor discipline/discharge cases within the Canadian context (though neither Ponak (1987) nor Thornicroft (1994) found statistical significance when looking at grievance arbitration cases in Canada). Ashenfelter et al. (2013) applied a prisoner's dilemma theory and framework to the role of representation using data from final-offer interest arbitration awards in New Jersey (also see Ashenfelter and Dahl 2012). Their findings added support to earlier research and concluded that attorneys were inherently "socially inefficient" (Ashenfelter et al. 2013: 403). These inefficiencies emerged because both sides were incentivized to hire attorneys since doing so, as long as the other side chose not to, proved beneficial. However, each side was made worse off once both parties hired agents, given the high cost of involving attorneys and similarity in benefits provided to each side by their attorneys.

The argument that lawyers do not necessarily add value to arbitration outcomes if both parties avail of them adds an important level of nuance to the impressive array of studies into legal representation in criminal and civil disputes, which has broadly concluded that attorneys are vital for several reasons (Stepleton and Teitelbaum 1972; Monsma and Lempert 1992; Engler 1999, 2009; and Seron et al. 2001; Grenier and Pattanayak 2012). First, attorneys are experts who can use their substantive training in the law to influence the dispute resolution process.

Second, attorneys can be repeat players within a legal or arbitral forum, while some clients are only one-time participants. Attorneys are therefore incentivized to perform well within a system in order to develop a reputation that encourages parties to repeatedly hire them. Third, lawyers may be more objective in their decision-making and in their interpretation of information than their clients might be, since attorneys are agents within a dispute rather than principals, and are therefore distanced from the more emotional aspects of a conflict.

A small body of research has explored attorney effects within the securities context, though none has examined employment arbitration. Two studies from the consumer arbitration side of FINRA speak to some degree about the role attorneys play in securities arbitration outcomes. Choi et al. (2010) used FINRA data to assess the extent to which arbitrators who had also served as attorneys differed in their award behaviors from those who had not served as agents in other cases. The authors found that firm-side attorneys who were also arbitrators gave lower awards than others, but the finding was not mirrored by employee-side attorneys who served as arbitrators in other cases.

In a later study, Choi et al. (2014) again returned to the FINRA context, examining correlations between other features of arbitrator background, such as industry/regulatory experience and professional status, and award outcomes. They found that arbitrator characteristics shaped awards, but also that claimants could hire representatives in order to screen obvious conflicts of interest between employers and arbitrators with certain background types. Their findings imply that claimants benefit by including agents, but their analysis of representation is relatively narrow in scope. Although Choi et al. controlled for the presence of employer attorneys, the authors focused primarily on the moderating influence of claimant representation on arbitrator background effects in the consumer setting. In sum, the recent

empirical research into consumer-side securities arbitration provides a useful, albeit somewhat limited, second foundation upon which this analysis builds.

I draw from both the labor arbitration and non-employment securities arbitration literature, as well as the available studies that touch on self-representation employment arbitration in developing the paper's initial expectations. Building upon recent empirical employment arbitration research (namely Colvin 2011; Colvin and Gough 2015; Gough 2017), I hold that claims involving employee attorneys should result in better outcomes for employees. Yet building upon the empirical labor arbitration and consumer-side FINRA studies (namely Block and Steiber 1987; Ashenfelter et al. 2013) as well as the Colvin and Pike (2014) descriptive findings from AAA employment arbitration, I also hold that claims involving employer attorneys will produce better outcomes for firms, so that representatives offset each other in arbitration.

Representation offset might occur for several reasons. One, both sides might hire attorneys who are equally skilled or experienced, which would therefore nullify the relative effect of any one side's attorney. Two, the selection of attorneys into cases is not random. Lawyers have been shown to be more likely to represent clients, especially employees, when the lawyer perceives that the expected value of the client's case will be high. These perceptions are often based on the characteristics of the claim, including the lawyer's beliefs regarding the case's merit and the type of dispute at hand (Gough 2017). The likely non-random selection of attorneys to cases represents an inherent weakness in using dichotomous attorney presence to predict the effects of representation on outcomes. With this concern in mind, after initially testing for attorney offset, I attempt to more carefully examine attorney effects on arbitration outcomes by focusing the majority of my analysis on a subset of cases where *both* employees

and employers avail of representatives. This allows me to account for the selection of attorneys to cases and focus more closely on how attorney heterogeneity affects arbitration outcomes.

Arbitration in the Securities Industry

The securities dispute resolution system is administered by FINRA and includes all registered broker-dealers and the brokerage companies under which they are employed. For much of its history, securities arbitration was handled predominantly by two separate groups: the National Association of Securities Dealers, Inc. (NASD) and the New York Stock Exchange (NYSE). In 2007, these groups were consolidated under a single entity (FINRA). Although there are minor differences between the NASD, NYSE, and FINRA systems, each should be considered functionally equivalent in its structures and processes.[2] Arbitration is mandatory for all registered broker-dealers, except in cases involving discrimination, where employees have been able to litigate claims since 1999.

The FINRA arbitration system currently works as follows. Disputant parties select either a single arbitrator or a panel of arbitrators from a list administered by the Director of Dispute Resolution. Arbitrator lists are now randomized, but for the majority of the time period covered in this paper, arbitrators' names appeared on a rotational basis (arbitrators with obvious conflicts of interest were excluded from any given list). The disputants receive arbitrator background information, and have free access to all the arbitrators' prior awards, though the information provided to disputants was more limited under the period studied. Parties follow a common striking and ranking system of arbitrator selection.

The number of arbitrators involved in any case varies as a function of claim size. For small claims ($25,000 or less in the sample), the process can be streamlined with a single

[2] Including the forum in which the case was adjudicated in the regression models has no effect on the outcomes and is not statistically significant.

arbitrator resolving the dispute absent a hearing. For higher-value claims, a conventional arbitration process occurs, generally consisting of either a single arbitrator (for claims of $50,000 or less) or a panel of three arbitrators (for claims greater than $50,000). The arbitrators are drawn from two groups: industry arbitrators, who have some past ties to the financial industry and have substantive knowledge of securities, and public arbitrators, who have ostensibly no association with the industry. For employment discrimination cases, all arbitrators are public and have met stringent qualifications.

FINRA does not require that parties include representatives in the process, but as noted, attorneys are strongly encouraged, and the agency provides guidance on how to find a suitable lawyer. This information is geared toward individual claimants, under the assumption that the respondent-firm will likely obtain representation and claimants will be heavily disadvantaged if they do not use an agent as well. Employee attorneys are sometimes specialists in employment or securities law, while employer attorneys can operate as in-house counsel or be hired from outside firms. As with many claimant representatives in arbitration and litigation, there is evidence that employee-side attorneys operated on a contingency fee basis, whereby attorneys were paid a proportion of their client's award amounts upon successful completion of the case. Unfortunately, the data do not provide information on the percentage of attorneys who operated on this basis, but many of the most high-profile employee-side lawyers within the data are known to use this fee structure.

Initial Models and Tests of the Data

The unit of observation is any employment claim resolved through arbitration from the inception of the system in the mid-1980s through 2007, which initially totals just over 3,000 awards (excluding missing information reduces the initial sample to 2,597 awards). FINRA

keeps a record of every case that reached the award stage within its system. For each case, FINRA compiles administrative information, including: the names of the employee, employer, arbitrator(s), and attorneys for either side; case filing and award issuance dates; total number of hearing sessions; and hearing location. FINRA also includes substantive information about the case itself, such as: allegations; claim and award amounts; instances where either side requested summary judgement, motions to dismiss the case, or requests from the employee that his or her disciplinary record be expunged; and a limited measure of whether the parties fully or partially settled before the arbitrator reached a decision. Because many case characteristics are likely to be correlated with attorney selection, in testing my initial expectations I include only administrative information as controls (this approach also mirrors the closest prior empirical examination of employment arbitration – see Colvin and Gough 2015). However, later in the paper I will account for both case and administrative information in order to better isolate the effects of attorney characteristic heterogeneity on outcomes.

Across all the analyses, the dependent variables are permutations of arbitrator awards, which I measure three ways. I first consider win rates, i.e. whether arbitrators found any merit to the employee's claim. For claims that were deemed meritorious by arbitrators, I then explore the ratio of awarded compensation to claimed compensation (this dependent variable deliberately excludes items like punitive damages or attorney fees that might artificially increase claim amounts beyond what might be reasonably defensible). Finally, for meritorious claims, I also examine the absolute amount awarded to the employee by the arbitrator. This system of measuring awards is common in arbitration studies and serves to best model arbitrator decision-making, which is thought to operate in two stages, first as a merit threshold decision and then as an award amount choice (see Lamare and Lipsky 2017).

In the first stage of the analysis, the key independent variables are binary measures of representation for the employee and the employer. Employee-claimants (or employer-respondents) receive a 1 if they are represented, and a 0 if they are not. I control for characteristics of the parties involved in arbitration (gender, experience, and professionalization). Gender has been shown to influence arbitration awards, and is measured by using the employee's (and arbitrator's) first name (Bemmels 1988; Scott 1989 and Shadoan 1989; Lipsky et al. 2013). Whether the employer or arbitrator is a repeat player may also influence outcomes, and is measured continuously for each firm (and arbitrator) based on case filing date (Bingham 1997; Colvin 2011; Colvin and Gough 2015; Lamare 2015). I also account for repeated employer-arbitrator pairings based on matching firms and employers, where both the initial and subsequent pairings are counted in the affirmative. This approach follows the Bingham-Colvin method of handling repeat employer-arbitrator pairs (Bingham 1998; Colvin 2011). I control for arbitrator professionalization by assessing whether the arbitrator listed "Esquire" or "JD" after his or her name. All of these factors are cited in prior studies as influencing awards.

I also incorporate time and location fixed-effects within all the regression models. The FINRA system and its rules have changed over time. These changes might affect arbitrator decision-making processes and must be accounted for in modeling awards. The inclusion of time effects helps to partial out the influence of year-by-year differences in the structure of the FINRA system as well as an array of other temporal effects on arbitrator behavior. Similarly, the inclusion of location (state) effects accounts for the possibility that cases arbitrated in a state like Texas might be subject to different rules and procedures than claims heard in, say, California. Location fixed-effects also control for many uncodified differences across the geographic environments under which the securities arbitration system operates (Choi et al. 2010).

Descriptive Information and Initial Findings

Before presenting the empirical findings, I provide some descriptive detail and summary statistics (see Appendix Table 1). Employees were represented by attorneys in arbitration about 82 percent of the time (N=2,139), while employers had attorneys present in 97 percent of their cases (N=2,514). The 18 percent self-representation figure is lower than the 31.4 percent rate found by Colvin and Pike (2014) and is nearly identical to the self-representation rate found in litigation studies (22.5 percent), which may reflect differences between the sample under study (FINRA) and the AAA sample (a point to which I will return in the broader discussion of the findings). The claimant-employee was found to have at least a partially meritorious case in 62.1 percent of awards, which comports reasonably well with similar studies into securities arbitration but is higher than recent empirical analyses using data outside the FINRA setting.[3]

Regarding the initial set of controls, firm-respondents appeared in securities arbitration an average of 16 times over the period studied (in contrast, only 46 employees in total appeared more than once, and only 2 employees appeared more than twice). Arbitrators rendered decisions on an average of 1.75 cases in total. Repeat employer-arbitrator pairs were infrequent: even when using an approach that counts the initial firm-arbitrator match as part of a repeat pairing, employers and arbitrators were matched together multiple times in only 2.5 percent of cases.[4] Arbitrators were overwhelmingly (83 percent) male, and 65 percent identified as lawyers. Finally, employees, like arbitrators, were also overwhelmingly (85 percent) male.

Initial Regression Results

[3] This win rate is higher than that found in recent studies into American Arbitration Association (AAA) rulings (Colvin 2011; Colvin and Gough 2015). It is likely that variations in win rates are explained by compositional differences between the two forums.

[4] This number is much lower than the matched employer-arbitrator pairings found under AAA arbitration, and is likely a product of systematic differences in the way arbitrators are allocated to selection lists between the two forums. In AAA arbitration, arbitrators hear far more cases on average than they do according to the FINRA data.

As with other empirical employment arbitration studies, logistic regressions are used to produce the win rate results, while OLS regressions give the compensation ratio outcomes once merit has been assigned, and negative binomial regressions determine the total award amounts (Colvin and Gough 2015; Lamare 2016; Lamare and Lipsky 2017). The first column within each regression model includes only employee attorney representation effects, and mirrors recent empirical examinations of how representation shapes awards. The second column adds employer attorneys, and the third interacts the two. This interaction term produces an initial test for whether the presence of an attorney on one side is offset by the presence of an attorney on the other side.

As expected from prior studies, employee representation is statistically significant in influencing win rates when considered without concurrently accounting for employer representation. Claims involving employee agents were 82.1 percent more likely to have arbitrators find merit in their cases (β=0.599; S.E.=0.132; $p<.01$). Cases where employees had attorneys present also resulted in significantly higher total award amounts once merit was established (β=2.049; S.E.=0.196; $p<.01$). However, meritorious claims involving employee attorneys received lower relative awards than those deemed meritorious without involving employee attorneys (β=-0.070; S.E.=0.033; $p<.05$), though this finding loses significance once the presence of employer representatives is included in the model.

The initial regressions also indicate that claims are more favorably resolved for firms when they include attorneys. Employees facing employers who were represented by lawyers had 63.5 percent lower odds of receiving a meritorious award in arbitration than did those facing unrepresented firms (β=.-1.009; S.E.=0.277; $p<.01$). Employer representation also dampened

relative, but not absolute, employee awards within meritorious claims (β=-0.342; S.E.=0.054; p<.01).

The interaction terms reveal attorney offset in two of the three arbitration award models. In terms of win rates, relative to instances where neither side hires an agent, if employees include a representative but employers do not, employees gain significantly and are over seven times more likely to prevail in arbitration (β=1.980; S.E.=0.843; p<.05). Conversely, if employers include an agent but employees do not, the employer benefits substantially (β=-0.691; S.E.=0.338; p<.05). However, when both sides retain attorneys, the effects are statistically identical to those cases where neither side hired lawyers. Similar offset is found for relative award amounts once merit has been assigned by the arbitrator. However, employee agents do play a significant role in driving up total award values for meritorious claims. Even if employers also include agents, employees are significantly more likely to be awarded larger sums by arbitrators if merit is found to their claims (β=1.021; S.E.=0.426; p<.05).

[Table 1 about here]

Predicted probability results confirm the notion that win rates vary only in the rare instances where one side includes a representative while the other does not. Table 2 shows that when neither side brought representatives to arbitration, employee win rates were 65.2 percent after including party, time, and location controls. This number climbed to a 92.8 percent win rate in cases where employees used lawyers when employers did not. Conversely, in cases where employers hired attorneys but employees were unrepresented, win rates fell to 49.2 percent. However, in cases where both sides used lawyers, mean win rates were virtually identical to those where neither side had attorneys present, at 64.0 percent.

[Table 2 about here]

How Variations in Attorney Characteristics Affect Outcomes

One interpretation of these initial findings might be that attorneys are socially inefficient in employment arbitration. Each side is individually incentivized to hire representatives, but attorney effects offset each other, yielding outcomes that are identical to those where neither side had representation, but with the added cost of the attorney's fees. However, this interpretation overlooks a crucial problem inherent to studying arbitration outcomes, which is that variations in case characteristics might affect the likelihood of an attorney agreeing to select himself or herself into that particular claim. In other words, it is likely that omitted variables related to the claim itself cause attorneys to choose cases in a non-random way, and these omitted factors could easily explain award variations when interpreting representation effects.

In order to more carefully isolate the effects of attorneys on arbitration awards, for the remainder of this paper I therefore focus only on cases where lawyers were present for both sides. In so doing, I account for the omitted variables that might differentiate an unrepresented claim from a represented one, and turn to an examination of how variations in attorney characteristics shape outcomes when both sides use lawyers. In addition to Colvin and Pike's (2014) analysis of lawyer specialization in employment arbitration, questions regarding attorney heterogeneity and award outcomes have been explored by legal scholars, wherein the consensus is that attorney quality differences affect legal outcomes and are primarily driven by variations in experience, specialization, and skill (Abel 1988; Heinz and Laumann 1994; McGuire 1995; Haire et al. 1999; Johnson et al. 2006). I apply similar assumptions and methods to the study of employment arbitration.

As noted, FINRA includes in its records the name of each side's attorney. I use this information to collect several additional pieces of data about each agent. I capture experience

within FINRA by using the same filing date-based matching method used for employers and arbitrators. I code gender based on first name, and I capture repeated attorney-arbitrator pairings in a manner identical to the firm-arbitrator matched pair variable. Attorney experience has been shown to affect outcomes in litigation (McGuire 1995; Haire et al. 1999). Repeat attorneys may be more likely to identify and select winnable cases and settle those that are unwinnable, and are also more familiar with the processes involved in the forum in which the claim is being heard. Regarding matched attorney-arbitrator pairs, in the employment arbitration context, Colvin (2011) specifically posits that attorney-arbitrator pairings might serve a similar benefit for employees as the employer-arbitrator pairing does for firms. In terms of gender, Lipsky et al. (2013) show that male employee attorneys tend to fare better in securities arbitration, mirroring similar research in the court setting (Hahn and Clayton 1996; Szmer et al. 2010).

Although each of these characteristics might differ across employee and employer attorneys and might in turn affect outcomes, another likely source of variation in outcomes would come from substantive skill differences between the attorneys (Gilson 1984; Kritzer 1998; Mauro 2000; Johnson 2001; Szmer et al. 2007; Szmer and Ginn 2014). Lawyers with greater substantive skills may be more likely to create persuasive legal arguments on behalf of their clients, resulting in better outcomes (Epstein and Kobylka 1992; Coffin 1994; Johnson et al. 2006). I attempt to isolate independent effects of specific proxies for legal skills more directly by examining differences in the educational background, area of specialization, and employment status of the lawyers.

Following from similar studies within the litigation context as well as the Colvin and Pike (2014) framework, in order to examine variations in attorney characteristics I have studied each attorney's biographical record from the Martindale-Hubbell directory of lawyers, which has been

produced yearly since 1868 and provides a wide array of attorney background information (Kritzer 1990; Haire 1998). I supplement and verify this information using records found on the personal websites of each attorney and, for deceased lawyers who no longer appear within the Martindale-Hubbell directory, many obituaries provide enough biographical information to code the necessary variables.

To uncover educational background variations, I use these records to determine the law school from which each attorney in my dataset attended. I then develop a proxy for the attorney's law school quality by taking the median Law School Admissions Test (LSAT) score for admitted students at the attorney's school as of 2015. The LSAT is considered a useful predictor of student performance in law school (Stilwell et al. 2011), and legal scholars find that even small differences in law school rankings, which are driven in large part by admitted students' median LSAT scores, significantly influence perceptions of school quality (Sauder and Lancaster 2006). There is also evidence that school selectivity affects future workplace performance (Dale and Krueger 2002; Abrams and Yoon 2007).[5]

I also use these biographical records to determine whether the attorney listed employment law as a key area of specialization on his/her personal website or as part of his/her Martindale-Hubbell biography. As noted, those who specialize in the subject matter upon which the arbitration is based should be better qualified to represent their clients (Haire et al. 1999; Colvin and Pike 2014). Additionally, I record instances where attorneys were listed as sole practitioners. Although sole practitioners are not necessarily less skilled than those who work for law firms, there is evidence that legal agencies are viewed as more prestigious, and that law school students

[5] As a robustness check, I have also recorded median LSAT scores averaged over a seven-year period from 2001 through 2007 to assess the extent to which these values are consistent across time. Both the 2015 and 2001-2007 seven-year averages for each school come from the Internet Legal Research Group. The correlation between a 2015 median LSAT scores and averaged 2001-2007 scores is 0.98.

are discouraged from embarking on sole practitioner careers because of poorer long-term financial prospects relative to career placement at law firms (Wheeler et al. 1987; Sandler and Williams 1989). Finally, for employer-side attorneys, I also control for whether the lawyer served as in-house counsel. This information comes from the FINRA dataset, which identifies instances where attorneys were in-house or external representatives, as well as the attorneys' own biographical records.

Initial Tests of Variation in Attorney Characteristics

Table 3 details the extent to which employee and employer attorneys differ in their characteristics. Many differences between employee-side and employer-side attorneys are relatively small in magnitude, yet are statistically meaningful. For instance, employee attorneys attended schools with a slightly lower median LSAT score (162, versus 163 for employer attorneys). Employees were slightly more likely to hire lawyers who had FINRA experience (2.4 employee attorney cases on average, versus 2.1 cases for employer attorneys). Additionally, both sides were rarely matched with arbitrators more than once, though this was slightly more common for employee attorneys (1.6 percent) than for employer attorneys (0.7 percent). Both sides also tended to hire employment law specialists about half the time.

Starker differences emerge with regards to employee/employer-attorney pairings, employee/employer-law firm pairings, attorney gender, sole practitioner status, and law firm experience. Employees were rarely matched multiple times with attorneys (1.4 percent) or firms (0.8 percent); conversely, employers were frequently paired with the same attorney (33.8 percent) or firm (42.5 percent). Regarding gender, employers were more diverse in their representatives (21.2 percent female, versus 9.4 percent female for employee attorneys). Additionally, employer attorneys were less likely to be sole practitioners (12.5 percent, versus

33.2 percent for employee attorneys). This is partially explained by firm usage of in-house attorneys: 26.6 percent of employers were represented by in-house counsel. Finally, employers selected law firms that were familiar with FINRA considerably more often than employees (8.4 law firm cases on average, versus 5.0 cases for employee firms).

[Table 3 about here]

Several initial implications emerge. The first is that employees might have attempted to hire seasoned representatives as a way of making up for their own relative lack of experience in the FINRA system. For instance, employees frequently selected lawyers like Jeffrey Liddle (52 cases) and David Wechsler (27 cases), both of whom specifically market themselves as experienced experts in securities employment arbitration.[6] The second is that employers were slightly more diverse in their attorney choices but tended to rely on common firms while rotating representatives within those firms. For example, the most frequent outside representative of employers was Robin D. Fessel of the firm Sullivan & Cromwell, who was involved in 17 total cases, an amount dwarfed by the most heavily-used employee-side attorney, Jeffrey Liddle. As another example, Prudential (the most frequent respondent in the sample) often relied on one of five law firms: Cahill Gordon & Reindel; Keesal, Young & Logan; Seyfarth Shaw; Sonnenschein Nath & Rosenthal; or Proskauer Rose. Within each firm, however, Prudential tended to rotate attorneys. Similarly, Merrill Lynch was heavily represented by the law firm Rubin & Associates, but used a total of twelve different attorneys from this agency alone.

The marked variation in terms of matched employee/employer and attorney/firm pairings is likely a product of natural differences between employee and employer repetition in

[6] Jeffrey Liddle, for example, includes on his website a list of securities employment arbitration award sums for cases where he has been successful. See his biography at http://liddlerobinson.com/attorneys/jeffrey-liddle.html. David Wechsler lists securities employment arbitration as a primary area of expertise on his website. See his biography at http://www.wechco.com/attorneys/wechsler.html (both accessed September 29, 2017).

arbitration. Employees rarely experienced more than a single FINRA arbitration. Therefore, it is unsurprising that less than 2 percent of all employees in the sample were matched multiple times with the same attorney or law firm. However, the same employer frequently relied on the same attorney or firm across multiple cases. In sum, although employees appear to have attempted to counterbalance their lack of experience by hiring well-known securities arbitration attorneys, they remain unable to replicate the familiarity a single employer-attorney pair would have within the system simply given the non-repeat circumstances of most employment arbitration cases.

Finally, the difference in gender ratios of employee and employer attorneys might reflect the hiring practices of securities companies, where a portion of general counsel for employers is required to be female or else the organization might face a discrimination lawsuit. It may also reflect an implicit belief on the employee's behalf that male attorneys perform especially well in securities arbitration. In exploring gender ratios further, I find that the top four most frequent employee-side agents in arbitration were all male. Conversely, three of the top four most frequent employer-side representatives were female. Further, three of the four employer agents were firm-specific in-house counsel, which supports the former explanation for the differences in gender ratios by employee and employer agents.

Variation over Time

The longitudinal nature of the data allow for an opportunity to explore the extent to which employee and employer attorney characteristics have remained static across time. I examine how six characteristics changed from the early-1990s through the mid-2000s: attorney education, employment law specialization, gender, employment status, and repetition by both attorneys and their firms. Figure 1 charts the trends over time for education, specialization, gender, and employment status by employee and employer attorneys.

In terms of education, there is evidence that employer attorneys remained stable across most of the years, trending slightly upward over time. However, the opposite is true for employee attorneys – these individuals attended schools with noticeably lower median LSAT scores over time. While employee and employer attorneys had identical school-based LSAT scores in 1991 (about 162.5), employee LSAT scores dropped to just over 161 by the mid-2000s, while employers attended schools with average LSATs above 163 during this time period. A divergence over time also emerges for attorney gender: employee attorneys tended to be overwhelmingly male in the early-1990s, and this remained the case through the mid-2000s. However, female employer attorneys because increasingly common over time.

In contrast to educational and gender trends over time, both employees and employers tended to hire more specialized attorneys across the years within the sample. In 1991, about 40 percent of attorneys were employment law specialists; this number jumped to nearly 60 percent by 2006. The fit lines indicate nearly identical behavior for both sides in terms of their increasing use of specialists. Similarly, identical trends emerge for employee and employer attorneys with regard to employment status. Sole practitioners were less likely to be used over time by both sides, even though for any given year, employees were more likely to hire sole practitioners.

[Figure 1 about here]

Figure 2 documents the extent to which repeat player attorneys Different results occur at the attorney and firm levels over time for employees and employers. Although both sides were increasingly likely to use repeat player attorneys and firms, employees were more pronounced in their use of experienced attorneys over time, while employers were more pronounced in their use of experienced firms across the years. On balance, these findings indicate significant deviations

between employee and employer attorney characteristics, and substantial heterogeneity in the types of attorneys selected into FINRA arbitration outcomes over the years.

[Figure 2 about here]

Regressing Heterogeneity of Attorney Characteristics on Outcomes

Do differences in employee and employer attorney characteristics help to explain variances in award outcomes? To answer this question, I test the three models of outcomes (win rates, relative awards, and absolute awards) discussed previously, while accounting for unobserved attorney selection into claims by excluding all claims where attorneys were not present for both sides. In addition to controlling for previously noted location, time, and party characteristics, I add several case-specific characteristics to these models in order to isolate attorney effects from other claim effects that are not picked up by accounting for attorney selection. These include the allegation brought by the employee (contractual, statutory discrimination, or other statutory charge), claim size, the total number of hearing sessions, the length of the case from filing to resolution, the presence of arbitrator dissent, and various attorney actions to affect the case, including motions for summary judgement, motions to dismiss the case, requests for employee disciplinary record expungement, and any identified full or partial settlements. Each of these case characteristics might serve to proxy indirectly for aspects of claim strength, so controlling for these helps to isolate attorney education, expertise, and experience effects as unique from case effects.

Within the regressions, attorney educational strength is continuous (based on the median LSAT score of the law school attended). Attorney specialization, gender, sole practitioner status, in-house employer attorneys, and all matched pairings between employees, employers, attorneys, and arbitrators are dichotomous. Experience is treated in two ways. The first measure partials out

all between-attorney differences and considers only within-attorney changes, focusing on variations in within-attorney experience levels. An example of what the within-attorney experience variable captures would be the extent to which an individual attorney like Jeffrey Liddle performs better in the FINRA system the more times he is selected (relative to his own past behavior), perhaps because he has learned how to hone his skills as he receives more cases. This stands in contrast to the second experience measure, between-attorney, which examines the extent to which someone like Jeffrey Liddle's broader experience with securities arbitration (relative to other lawyers) will result in better overall outcomes.

Main Attorney Effects

Table 4 provides the regression results for attorney effects on outcomes after accounting for lawyer selection into cases and several claim characteristics. Regarding win rates, employees using lawyers who attended more selective law schools were more likely to receive stronger outcomes (β=0.015; S.E.=0.008; $p<.05$). Predicted probabilities show that employee attorneys who attended law schools with median LSATs of 150 (about the 44th percentile) were involved in meritorious cases 60 percent of the time, while those who attended schools with median LSATs of 160 (about the 80th percentile) had a 63.1 percent win rate. Raising the median employee attorney school LSAT to 170 (about the 97th percentile) further increased claimant win rates to 66.2 percent. In sum, after accounting for several case and party characteristics, as well as time and geography, employees represented by attorneys emanating from the law schools with the highest median LSAT (173) were 8.7 percentage points more likely to win at least something than those using attorneys educated at law schools with the lowest median LSAT (145). Yet these findings were not mirrored for employer attorneys, where educational selectiveness proxies were not a meaningful predictor of awards.

Specialization in employment law was a significant predictor of award outcomes for both employee and employer attorneys. Employee-side specialists received higher win rates than non-specialists (β=0.384; S.E.=0.107; $p<.01$). Predicated probabilities show that hiring a lawyer who identified as an employment law expert improved employee win rates by 7 percentage points, from 60 to 67.6 percent. This result was somewhat balanced out by employer attorney specialization (β=-0.190; S.E.=0.106; $p<.10$), wherein specialists reduced employee win rates by about 3.8 percentage points.

Regarding between-attorney experience effects on win rates, an initially surprising finding is that employee attorneys with greater average experience fared worse than those with less average experience (β=-0.042; S.E.=0.015; $p<.01$). However, this result is muted by outlier effects, which I expand upon in the discussion section. Regarding within-attorney effects, I find no evidence that individual attorneys improve as they enter into arbitration repeatedly. Nor do I see between-attorney employer experience effects on win rates.

In terms of gender, male employee-side attorneys fared better than females (β=0.419; S.E.=0.183; $p<.05$). Though employer attorney gender was non-significant, female employee attorneys received average win rates of 56 percent, while male employee attorneys were successful 64.5 percent of the time. Additionally, both sides were better off hiring lawyers who were employed by firms, rather than sole practitioners (β=-0.281; S.E.=.110; $p<.01$ for employees with sole practitioner attorneys, and β=0.400; S.E.=.204; $p<.10$ for employers with sole practitioner attorneys). Employee-side sole practitioners were successful 60 percent of the time on average, while those employed by law firms won 65.6 percent of their cases. Conversely, employer-side sole practitioners were successful only 29.5 percent of the time, while those employed by law firms were able to deny employees from winning 37.3 percent of the time.

There was no evidence that in-house attorney status affected awards, nor did matched pairings between parties and their attorneys, or between attorneys and arbitrators.

Once arbitrators assigned merit to a claim, attorney effects on the distribution of awards were mixed and did not always conform to expectations. On the one hand, employee attorneys who attended more selective schools generated higher overall payouts for their clients. Employer attorney-arbitrator matched pairings reduced relative employee awards once merit had been established, and employee-side sole practitioners received lower total award amounts. On the other hand, employer attorney educational proxies and between-employer attorney experience resulted in negative effects for firms in terms of absolute award amounts, and female employer attorneys were better at muting absolute award payouts than were male employer attorneys. For employee-side lawyers, specialization in employment law reduced relative award amounts. All other attorney effects were non-significant once merit had been assigned.

Magnitude of Attorney Characteristics and Interactions

Does the magnitude of differences in each side's characteristics affect outcomes? For instance, if a lawyer who attended a school like Harvard (median LSAT of 173) was facing a lawyer who attended a school like the New England School of Law (median LSAT of 150), would outcomes differ? Similarly, if a highly-experienced attorney was facing off against a one-time attorney in FINRA, what effect might this have on awards? To test these questions, I created variables that measured the magnitude of differences in the educational selectiveness and mean between-attorney experience levels of the two attorneys for a given claim. I took the absolute value of the difference in median LSAT scores and mean experience levels for the two attorneys for each case.

Absolute educational skill differences ranged from 0 (i.e., one attorney graduated from Harvard while the other graduated from Yale) to 27 (i.e., one attorney graduated from Harvard while the other graduated from the Western New England University School of Law). But most commonly, both sides were somewhat closely matched educationally (mean LSAT difference = 7; median difference = 6). Similarly, between-attorney experience differences ranged from 0 (i.e., two one-time attorneys facing off against each other) to 26.5 (i.e., a one-time employer-side attorney going against someone like Jeffrey Liddle), but usually between-attorney experience was closely matched (mean difference = 1.9; median difference = 0.5).

Table 5 provides the results of regressions using education and between-attorney experience as the key variables of interest, rather than independent education and experience measures (all other controls remain). The results indicate that the magnitude of education differences had no effect on outcomes, either in terms of win rates, relative, or absolute awards. However, experience differences did affect outcomes. As one side became more experienced than the other, employee win rates declined (β=-0.034; S.E.=.014; $p<.05$).

[Table 5 about here]

A final parameter of interest is the interaction between attorney education and attorney employment status. The literature has suggested that within the court setting, better educated attorneys, and those who are employed by law firms, should do especially well relative to other lawyers. Within the FINRA arbitration setting, I found independent employee attorney education and job status effects. In order to test whether there are moderated education-employment effects for employee-side attorneys, I have interacted the two variables.[7]

[7] I also interacted several attorney characteristics with year filed given the divergence in characteristics across time noted earlier. However, I found no statistical evidence that time moderated outcomes for the attorney characteristics of interest.

The results indicate statistically significant moderation between education and employment status for employee attorneys with regard to win rates (β=-0.031; S.E.=.017; $p<.10$). Figure 3 shows the predicted probability results of the interaction. The figure indicates that employee attorney education benefits depended on the lawyer's employment status. Sole practitioners did not improve employee win rates even as their educational attainment improved, whereas those employed by law firms followed the expected trend of higher education engendering better results for employees.

[Figure 3 about here]

Discussion and Conclusions

Several points emerge from these results. The first is that both employee and employer representatives serve an important function in employment arbitration. FINRA notes in its guidelines for investors that brokerage firms commonly use attorneys, and therefore claimant should strongly consider hiring a lawyer as well. The evidence from this analysis supports the notion that both sides are indeed made better off by hiring lawyers, and expands upon our limited understanding of attorney effects in arbitration by considering both employee- and employer-side representatives in a more comprehensive empirical manner.

The initial results from this paper showed that, although both sides are independently incentivized to hire attorneys, since, in the absence of a lawyer, the other side performs better, the effects of representation appear to offset each other. On its face, this outcome raises doubts about the possibility that employees might be able to hire representatives in order to redress natural power imbalances facing them when they, as singular entities, enter into arbitration against large companies. However, such a conclusion belies important considerations regarding both the types of cases attorneys are likely to select themselves into and also the nuanced effects

that can be uncovered when exploring how variations in attorney characteristics affect outcomes once the selection of attorneys into claims has occurred.

To uncover these nuances, I have examined whether there are differences in employee and employer attorney characteristics, how these differences changed over time, and how variations in attorney characteristics affect awards, independent of party and case characteristics, time, and location. I find that employees within the FINRA sample sometimes (though not always) hire attorneys with similar backgrounds to those used by employers. Since employees in the securities industry are higher-income white collar professionals (stock brokers) with access to financial resources, they may be able to afford to hire elite legal representatives. This raises the first limitation of this study, which is that the findings may not be generalizable to other dispute resolution systems, particularly where employees are lower-wage and are unable to hire a wider variety of skilled and experienced representatives.

With that limitation noted, an interesting result emerges when looking longitudinally: although employee and employer attorneys were similar in their increasing specialization and employment status over time, they diverged in terms of skills levels (employee attorneys came from lower-LSAT schools over time) and gender (employer attorneys were increasingly female over time). It may be that employee and employer preferences for their attorneys began at relatively similar points but diverged, so that employees came to value reputational pedigree and word of mouth recommendations over school name recognition in choosing their attorneys. This line of reasoning also helps to explain why employees increasingly selected more experienced attorneys relative to employers over time. It may also be that brokerage firms began to value diversity more strongly and, in shifting their preferences in this regard, increased their hiring practices of women attorneys. Conversely, I cannot rule out the possibility that employee-side

attorneys from higher-LSAT schools increasingly preferred to settle their clients' claims at an earlier step in the process, prior to the award stage (and similar reasoning could conceivably also explain the gender findings). I return to the concerns related to using outcomes as the key variable of interest below.

Turning to outcomes, I find evidence that employees can be made better off in arbitration, particularly with regard to the assigning of merit to a claim by an arbitrator and in terms of absolute awards once merit has been determined, by hiring attorneys from more selective law schools, specialists in employment law, and those who work for law firms. By equal measure, employers can improve their outcomes by using lawyers who belong to firms and those who are specialists as well. I find further evidence that employee attorneys perform best for their clients if they concurrently both belong to law firms and also have strong educational backgrounds.

The result that variations in employee attorney education affect win rates, while employer attorney education does not, deserves discussion. The primary driver of beneficial outcomes for firms appears to be the employment status of the attorney, rather than where the attorney went to school or his or her experience. It may be that the selection of the employer-side attorney into firms (particularly those that specialize in securities or employment law) acts as the key screening mechanism for those qualified to know which cases they should take all the way to arbitration and which they should settle prior to awards being issued. As noted, employers tend to use a more limited number of firms in arbitration while rotating attorneys, so the key value for the employer might be whether the attorney belongs to a firm or not. Employees, on the other hand, pick from a wider pool of attorneys, and so there may be more sources of variation in knowledge regarding the merits of a case. Unfortunately, since I am unable to comprehensively capture the extent to which certain attorneys settled cases prior to arbitrators' decisions, I cannot

fully test whether settlement behaviors differ across employee and employer attorneys, which represents a second limitation of the study.

A third result worth discussing is whether more experienced employee attorneys actually perform worse than less experienced agents in FINRA. The regression results would suggest an answer in the affirmative. However, further investigation finds that outliers are driving this result. Specifically, in cases where employees hired the most experienced FINRA agent (Jeffrey Liddle) *employers* were more likely to be successful. If these cases are either controlled for or removed from the analysis, employee attorney experience, as well as the difference in magnitude of experience between attorneys in a given case, become non-significant in influencing awards (controlling for outliers does not affect any other conclusions drawn from the analysis).

Does this imply that employees are making poor choices when hiring high-profile attorneys like Jeffrey Liddle? My interpretation argues otherwise. It is more likely that the very highest profile employee-side attorneys offer their clients a tradeoff – selecting these attorneys might yield very strong financial payouts for clients when their claims have merit, but these types of lawyers are also more likely to risk receiving a lower win rate, and perhaps refusing to settle risky cases early in the process, in order to have a chance at higher absolute awards. In other words, the greater reward of receiving large financial payouts in arbitration by hiring a high-profile lawyer might be counterbalanced by a lower likelihood of winning anything at all. This interpretation is at least descriptively supported within the data – claims carried to arbitration by Jeffrey Liddle, for instance, received payouts of about $1.25 million on average when they were deemed meritorious. Claims brought by all other attorneys that were deemed meritorious received mean payouts of only $169,000. This differences is somewhat inflated by a single award argued by Liddle (*Sawtelle v. Waddell Reed Inc.*) where the payout totaled over $20

million, but the award disparity remains significant even after excluding this case. Further support for this interpretation of a win rate-award amount tradeoff for high profile employee attorneys comes from Liddle's own personal website, where he specifically advertises himself as being capable of winning high-payout cases in arbitration (see Footnote 6).

In conclusion, this examination into the value lawyers provide within employment arbitration advances our understanding of representatives in a variety of nuanced ways. The initial finding indicates that, at least in the securities industry context, employees should not assume that they can overcome systemic bargaining power inequalities simply by hiring an attorney. However, more sophisticated analysis, accounting for the selection of attorneys into certain types of cases, reveals that agents do have substantive value, and on the employee's side, this value varies depending on the lawyer's education, specialist knowledge, gender, and employment status. Rather than supporting the notion that simply hiring a representative can counter imbalances in employment arbitration, this paper demonstrates that the "devil" of attorney benefits for employees indeed lies in the details.

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Table 1: Representation Effects on Arbitration Outcomes

	Win Rates (All Cases)			**Relative Awards (Meritorious Only)**			**Absolute Awards (Meritorious Only)**		
	Coeff. (S.E.) [OR]	Coeff. (S.E.) [OR]	Coeff. (S.E.) [OR]	Coeff. (S.E.)	Coeff. (S.E.)	Coeff. (S.E.)	Coeff. (S.E.)	Coeff. (S.E.)	Coeff. (S.E.)
Employee Representation	0.599*** (0.132) [1.821]	0.676*** (0.134) [1.965]	1.980** (0.843) [7.245]	-0.070** (0.033)	-0.034 (0.030)	-0.002 (0.100)	2.049*** (0.196)	2.017*** (0.203)	1.093*** (0.407)
Employer Representation	---	-1.009*** (0.277) [0.365]	-0.691** (0.338) [0.501]	---	-0.342*** (0.054)	-0.326*** (0.073)	---	0.195 (0.238)	-0.187 (0.301)
EE Rep * ER Rep	---	---	-1.345 (0.858) [0.260]	---	---	-0.035 (0.108)	---	---	1.021** (0.426)
Controls	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
N	2,597	2,597	2,597	1,513	1,513	1,513	1,613	1,613	1,613

Statistically significant at the *** p<.01 **p<.05 or *p<.10 levels.
Robust standard errors are clustered by employer. Controls include: location and time fixed effects, repeat players (employers and arbitrators), repeat employer-arbitrator pairs, employee and arbitrator gender, and arbitrator professionalization. Full regression tables, including all controls, are available on request.

Table 2: How Attorney Presence Affects Win Rates in Arbitration

		Employer	
		No Attorney Present	*Attorney Present*
Employee	*No Attorney Present*	65.2% (N=53)	49.2% (N=405)
	Attorney Present	92.8% (N=30)	64.0% (N=2,109)

Note: Findings are based on predicted probabilities generated from the final regression model reported in Table 1, which includes all controls and clusters results by employer.

Table 3: Overall Differences in Employer and Employee Attorney Characteristics

	Employee Attorneys	**Employer Attorneys**
Median LSAT at Attorney's Law School	162	163
Attorney Specializes in Employment Law	48.7%	51.0%
Attorney's Experience Level in FINRA	2.4 cases	2.1 cases
Percent of Repeat Attorney-Arbitrator Pairings	1.6%	0.7%
Percent of Repeat EE/ER-Attorney Pairings	1.4%	33.8%
Percent of Male Attorneys	90.6%	78.8%
Percent Sole Practitioners	33.2%	12.5%
Percent In-House Counsel (Employer Attorneys Only)	---	26.6%
Law Firm's Experience Level in FINRA	5.0 cases	8.4 cases
Percent of Repeat EE/ER-Firm Pairings	0.8%	42.5%

Note: All differences in characteristics are statistically significant at the .05 level or lower, except specialization in employment law.

Table 4: Effects of Attorney Characteristics on Arbitration Outcomes

	Win Rates (All Cases)	**Relative Awards (Meritorious Only)**	**Absolute Awards (Meritorious Only)**
	Coeff. (S.E.) [OR]	Coeff. (S.E.)	Coeff. (S.E.)
Employee Attorney Education	0.015** (0.008) [1.016]	-0.002 (0.002)	0.019*** (0.007)
Employer Attorney Education	0.003 (0.009) [1.003]	-0.001 (0.002)	0.023*** (0.009)
Employee Attorney Specializes in Employment Law	0.384*** (0.107) [1.468]	-0.047** (0.024)	0.094 (0.107)
Employer Attorney Specializes in Employment Law	-0.190* (0.106) [0.827]	-0.017 (0.027)	-0.020 (0.108)
Employee Attorney Experience (Within)	0.014 (0.022) [1.014]	-0.002 (0.004)	-0.024 (0.019)
Employee Attorney Experience (Between)	-0.042*** (0.015) [0.959]	0.001 (0.003)	0.010 (0.011)
Employer Attorney Experience (Within)	0.011 (0.034) [1.011]	-0.008 (0.007)	0.049 (0.035)
Employer Attorney Experience (Between)	0.010 (0.036) [1.010]	0.005 (0.008)	0.123*** (0.029)
Employee Attorney-Arbitrator Matched Pairing	0.100 (0.321) [1.105]	0.116 (0.085)	0.501 (0.304)
Employer Attorney-Arbitrator Matched Pairing	-0.059 (0.520) [0.943]	-0.115*** (0.037)	-0.258 (0.194)
Employee-Attorney Matched Pairing	0.603 (0.601) [1.828]	0.063 (0.111)	-0.019 (0.256)
Employer-Attorney Matched Pairing	-0.077 (0.140) [0.926]	0.010 (0.029)	-0.139 (0.124)
Male Employee Attorney	0.419** (0.183) [1.520]	-0.029 (0.044)	0.080 (0.144)
Male Employer Attorney	-0.032 (0.132) [0.968]	0.029 (0.028)	0.256** (0.123)
Employee Attorney is Sole Practitioner	-0.281*** (0.110) [0.755]	-0.034 (0.024)	-0.157 (0.107)
Employer Attorney is Sole Practitioner	0.400* (0.204) [1.491]	0.012 (0.030)	0.018 (0.134)
In-House	0.029	0.002	-0.050

Employer Attorney	(0.156) [1.030]	(0.032)	(0.136)
Controls	Yes	Yes	Yes
N	1,790	1,058	1,141

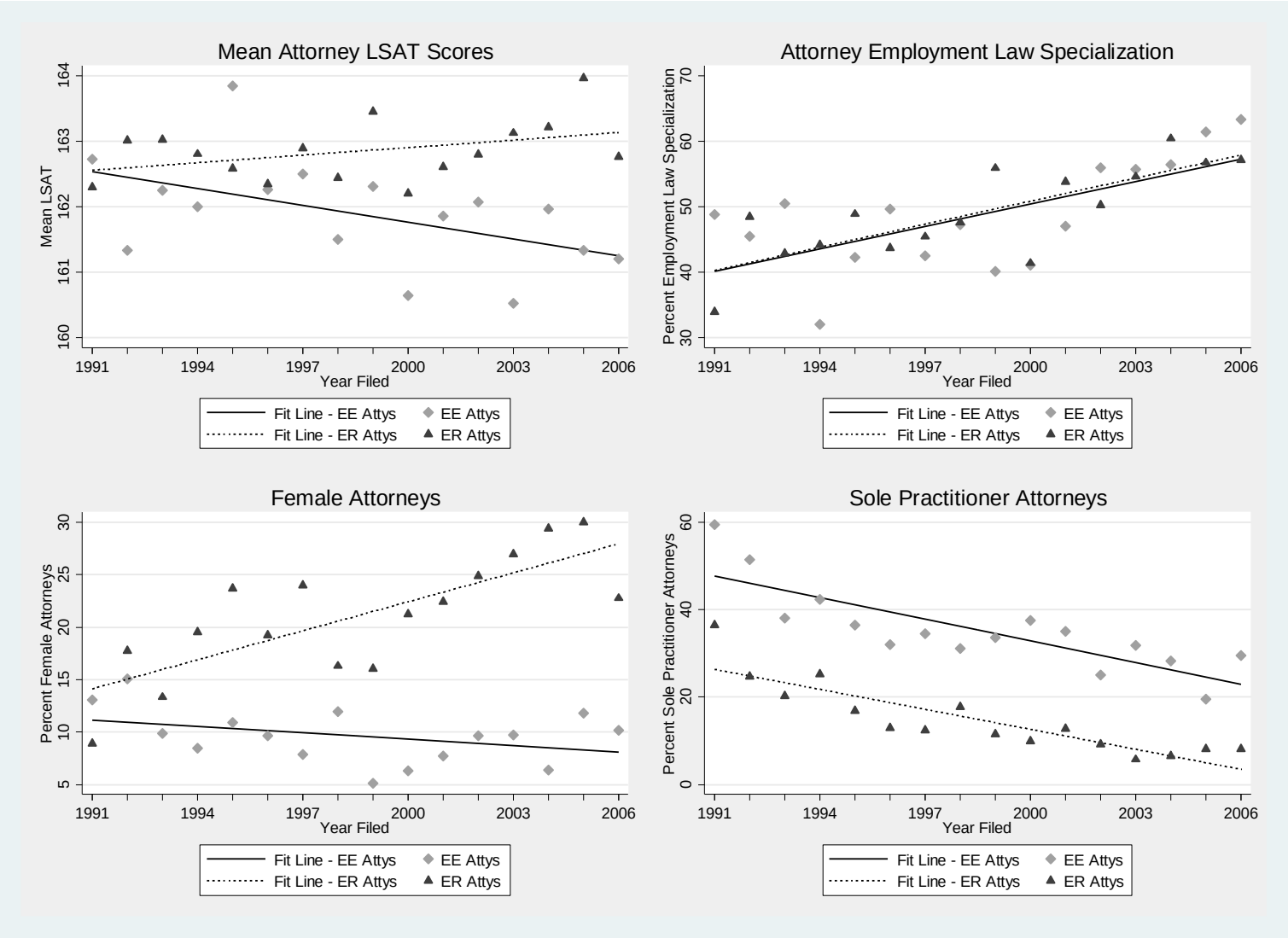
Statistically significant at the *** p<.01 **p<.05 or *p<.10 levels.
Robust standard errors are clustered by employer. Controls include: location and time fixed effects, repeat employers, repeat arbitrators, repeat employer-arbitrator pairs, employee and arbitrator gender, arbitrator professionalization, allegation, claim size, number of hearing sessions, case duration, requests for punitive damages, requests for record expungement, motions to dismiss, motions for summary judgement, identified instances of full or partial settlement, and any arbitrator dissent. Full regression tables, including all controls, are available on request.

Table 5: Testing the Magnitude of Differences in Attorney Characteristics on Outcomes

	Win Rates (All Cases)	**Relative Awards (Meritorious Only)**	**Absolute Awards (Meritorious Only)**
	Coeff. (S.E.) [OR]	Coeff. (S.E.)	Coeff. (S.E.)
Education (Highly Similar to Highly Different)	-0.008 (0.011) [0.992]	0.000 (0.002)	0.013 (0.009)
Between-Attorney Experience (Highly Similar to Highly Different)	-0.034** (0.014) [0.966]	0.000 (0.003)	0.002 (0.011)
Controls	Yes	Yes	Yes
N	1,790	1,058	1,141

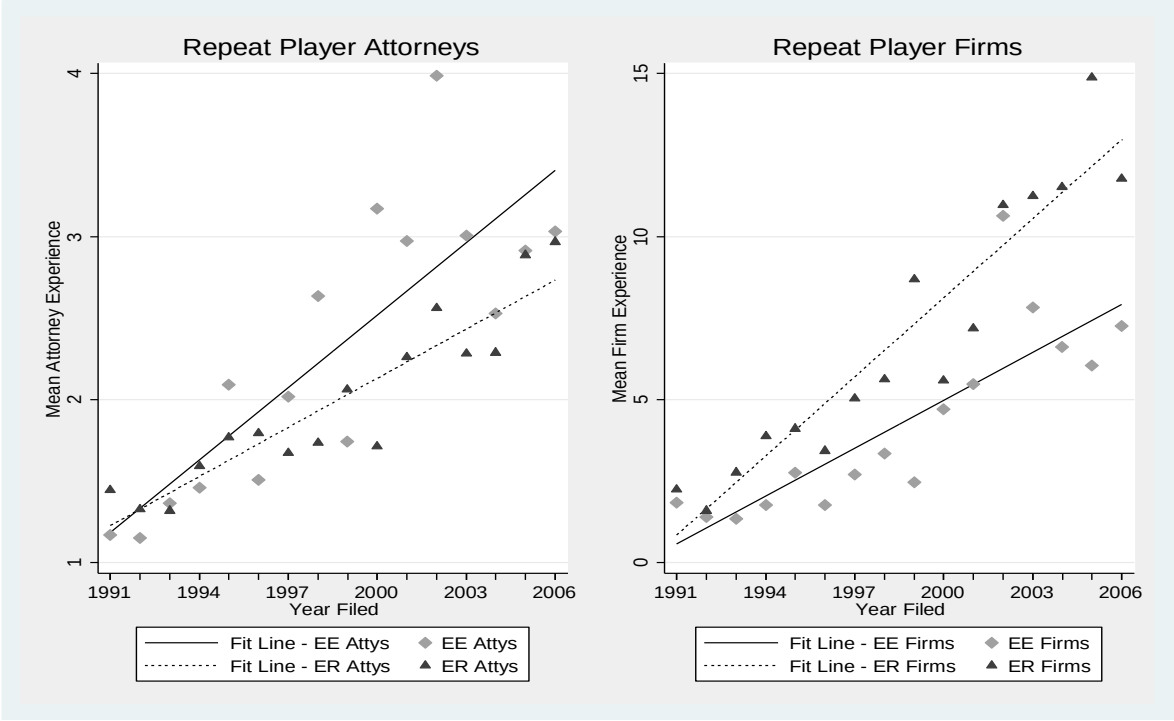
Statistically significant at the *** p<.01 **p<.05 or *p<.10 levels.
Robust standard errors are clustered by employer. Controls include: other attorney effects, location and time fixed effects, repeat employers, repeat arbitrators, repeat employer-arbitrator pairs, employee and arbitrator gender, arbitrator professionalization, allegation, claim size, number of hearing sessions, case duration, requests for punitive damages, requests for record expungement, motions to dismiss, motions for summary judgement, identified instances of full or partial settlement, and any arbitrator dissent. Full regression tables, including all controls, are available on request.

Figure 1: Variations in Attorney Skill, Specialization, Gender, and Employment by Time (1991-2006)



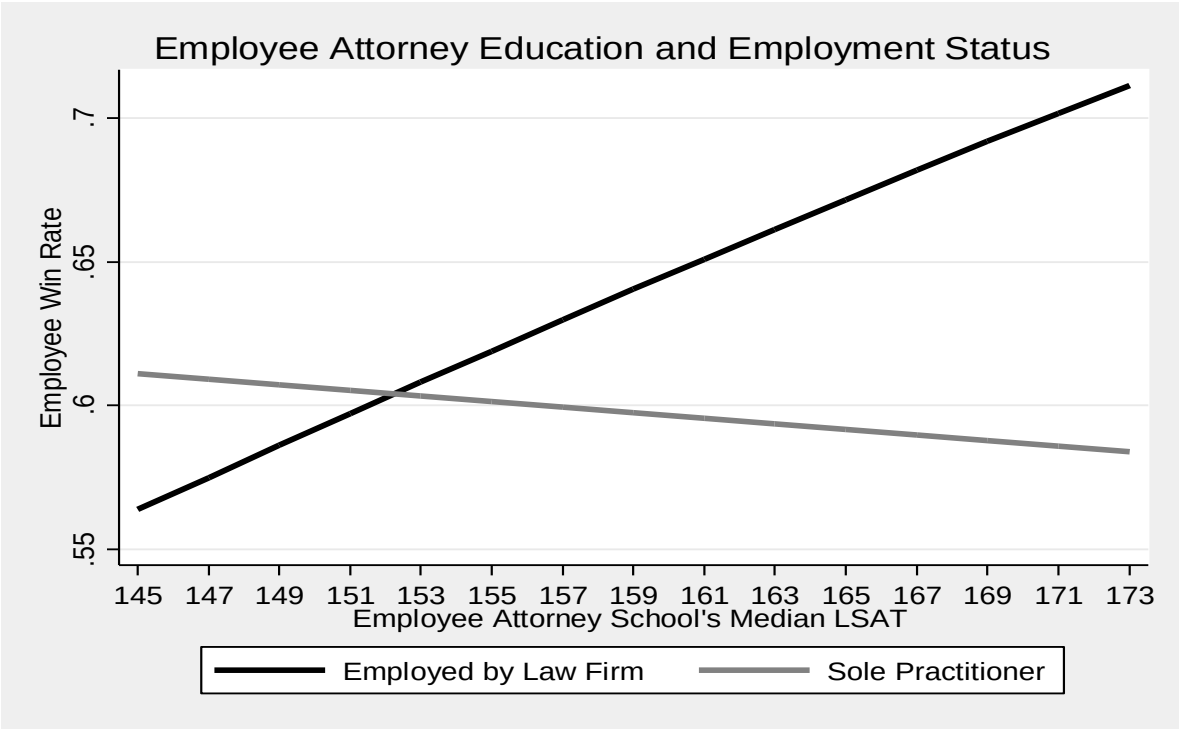
Note: Although the empirical analysis includes awards decided for claims filed prior to 1991 and later than 2006, I constrain the longitudinal figures to 1991-2006 filings because this timeframe gives the most complete picture of year-by-year changes within the FINRA system.

Figure 2: Variations in Repeat Player Attorneys and Firms by Time (1991-2006)



Note: Although the empirical analysis includes awards decided for claims filed prior to 1991 and later than 2006, I constrain the longitudinal figures to 1991-2006 filings because this timeframe gives the most complete picture of year-by-year changes within the FINRA system.

Figure 3: Moderation between Employee Attorney Education and Employment Status



Note: $p<.10$ for the overall interaction (β=-0.031; S.E.=0.017).

The Devil Is in the Details:
Attorney Heterogeneity and Employment Arbitration Outcomes
Appendix Table 1

Appendix Table 1: Summary Statistics for All Variables

Variable	Mean	Std. Dev.	Min.	Max.
DEPENDENT VARIABLES				
Win Rates (All Cases)	0.621	0.485	0	1
Relative Awards (Meritorious Only)	0.376	0.382	0	1
Absolute Awards (Meritorious Only)	190.657	757.905	0	20411.12
INDEPENDENT VARIABLES (ALL REGRESSIONS)				
Employee is Represented	0.824	0.381	0	1
Employer is Represented	0.968	0.176	0	1
Repeat Employer	15.729	28.229	1	165
Repeat Arbitrator	1.747	1.561	1	17
Repeat Employer-Arbitrator Pairing	0.025	0.157	0	1
Male Arbitrator	00833	0.373	0	1
Arbitrator is Lawyer	0.650	0.477	0	1
Male Employee	0.850	0.357	0	1
Arkansas	0.003	0.052	0	1
Arizona	0.013	0.114	0	1
California	0.113	0.316	0	1
Colorado	0.019	0.136	0	1
Connecticut	0.002	0.039	0	1
District of Columbia	0.010	0.101	0	1
Florida	0.089	0.284	0	1
Georgia	0.017	0.128	0	1
Hawaii	0.002	0.039	0	1
Iowa	0.002	0.039	0	1
Illinois	0.047	0.212	0	1

Indiana	0.003	0.052	0	1
Kentucky	0.005	0.068	0	1
Louisiana	0.006	0.078	0	1
Massachusetts	0.033	0.178	0	1
Maryland	0.005	0.068	0	1
Michigan	0.018	0.132	0	1
Minnesota	0.015	0.123	0	1
Missouri	0.013	0.112	0	1
Mississippi	0.001	0.028	0	1
North Carolina	0.014	0.117	0	1
Nebraska	0.003	0.052	0	1
New Jersey	0.008	0.087	0	1
New Mexico	0.002	0.048	0	1
Nevada	0.004	0.062	0	1
New York	0.349	0.477	0	1
Ohio	0.019	0.137	0	1
Oklahoma	0.008	0.087	0	1
Oregon	0.005	0.071	0	1
Pennsylvania	0.031	0.173	0	1
Phone	0.074	0.261	0	1
Tennessee	0.010	0.098	0	1
Texas	0.042	0.201	0	1
Utah	0.003	0.052	0	1
Virginia	0.007	0.081	0	1
Washington	0.006	0.076	0	1
Wisconsin	0.004	0.062	0	1
1991 or earlier	0.022	0.147	0	1

1992	0.031	0.174	0	1
1993	0.054	0.227	0	1
1994	0.067	0.249	0	1
1995	0.078	0.268	0	1
1996	0.064	0.244	0	1
1997	0.070	0.255	0	1
1998	0.058	0.234	0	1
1999	0.053	0.224	0	1
2000	0.058	0.233	0	1
2001	0.069	0.253	0	1
2002	0.076	0.266	0	1
2003	0.073	0.260	0	1
2004	0.062	0.242	0	1
2005	0.062	0.240	0	1
2006	0.050	0.217	0	1
2007	0.022	0.148	0	1
ADDITIONAL INDEPENDENT VARIABLES (ATTORNEY SUBSET ONLY)				
Employee Attorney Education (LSAT)	161.920	7.020	145	173
Employer Attorney Education (LSAT)	162.865	6.743	145	173
EE Attorney is a Specialist	0.487	0.500	0	1
ER Attorney is a Specialist	0.498	0.500	0	1
EE Attorney Experience (Between)	2.367	4.273	1	26.5
EE Attorney Experience (Within)	0	2.677	-25.5	25.5
ER Attorney Experience (Between)	2.057	1.905	1	10
ER Attorney Experience (Within)	0	1.391	-9	9
EE Attorney-Arbitrator Repeat Pairing	0.016	0.160	0	2
ER Attorney-Arbitrator Repeat Pairing	0.008	1.113	0	2

EE-Attorney Repeat Pairing	0.014	0.116	0	1
ER-Attorney Repeat Pairing	0.332	0.471	0	1
Male EE Attorney	0.906	0.292	0	1
Male ER Attorney	0.782	0.413	0	1
EE Attorney is a Sole Practitioner	0.336	0.472	0	1
ER Attorney is a Sole Practitioner	0.136	0.343	0	1
ER Attorney is In-House Counsel	0.266	0.442	0	1
Non-Statutory Allegation			0	1
Statutory Allegation (Non-Discrimination)	0.053	0.224	0	1
Statutory Allegation (Discrimination)	0.133	0.340	0	1
Amount Claimed (Deflated)	2276.661	10681.11	0.001	309038.9
Number of Hearing Sessions	7.155	10.276	0	201
Case Duration (Days)	521.553	321.871	7	3206
Punitive Claim	0.252	0.434	0	1
Request for EE Record Expungement	0.127	0.333	0	1
Motion to Dismiss	0.135	0.342	0	1
Motion for Summary Judgement	0.031	0.173	0	1
Full or Partial Settlement Recorded by Arbitrator	0.075	0.264	0	1
Any Arbitrator Dissent	0.036	0.186	0	1