

**Biasing Access to Justice:  
A Social Psychological and Experimental Investigation of  
the Signaling Effect of Pro Se Status**

**INTRODUCTION**

Each year, millions of indigent and middle-income Americans encounter the civil justice system *pro se*, without legal representation (Legal Servs. Corp.; 2009; Rhode, 2004, 2009). For many Americans, supply-side problems prevent access to counsel—in practice, many attorneys are financially unwilling or unable to represent individuals with potentially meritorious legal claims; for many Americans, demand-side problems also prevent access to counsel—many Americans are financially unable to pay for legal representation (Albiston & Sandefur, 2013; DOJ 2010). Troublingly, when individuals press their claims *pro se*, they fail at virtually every stage of civil litigation (Nielsen & Nelson, 2005). Unrepresented claimants are less likely to receive early settlement offers and much more likely to have their case dismissed. By and large, *pro se* claimants fail to receive materially meaningful access to justice. The past decade has witnessed a renaissance in the empirical study of such access-to-justice problems (Albiston & Sandefur, 2013; Sandefur, 2010). As of yet, however, psychological science has not been harnessed to investigate the consequences of access-to-justice barriers or to examine the schemas, stereotypes, and biases that lawyers and legal officials hold of *pro se* parties.

In this contribution to the access-to-justice symposium, we draw upon psychological science and experimental methods to investigate the vexing problem of why *pro se* claimants fare so poorly within the civil justice system. Specifically, we harness social psychological theories and methods to investigate these pressing access-to-justice questions: Does a claimant's *pro se* status have a signaling effect on lawyers and legal officials, even after controlling for case quality and merit? Do lawyers and legal officials hold negative stereotypes and schemas about *pro se* claimants? And finally, if so, is the signaling effect of *pro se* status a function of socialization within the legal profession: do law-trained individuals, such as law students and lawyers, perceive *pro se* claimants differently than members of the lay public? By asking these questions and casting light on answers, we seek to contribute to a broader and deeper understanding of access to justice and to reveal psychological barriers that *pro se* claimants face, which meaningfully affect their material outcomes.

We examine the signaling effect of *pro se* status in the federal civil rights context, specifically in the context of a female employee who asserts a claim of sex discrimination under Title VII. In doing so, we conduct a social psychological experiment with members of the public, law students, and lawyers, which holds the quality and merit of the claimant's case constant, and subtly manipulates the presence or absence of her *pro se* status. This psychological experiment is designed to demonstrate the extent to which the mere presence or absence of counsel alters perceptions of a

claimant and her claim, thereby affecting an important material outcome, mainly the settlement a claimant ultimately obtains. While we examine these psychological processes in the federal civil rights context, we conclude by calling for socio-legal research in a wide range of civil justice contexts, including family law, landlord tenant, small-claims court, and for quantitative and qualitative research investigating how a claimant's *pro se* status intersects and interacts with other social identities, including their race, national origin, gender, and socio-economic status (Sandefur, 2008).

## **EMPIRICAL PERSPECTIVES ON THE PRO SE PHENOMENON**

### **Prior Empirical Studies on the Effect of *Pro Se* Status Across the Civil Justice System**

A rising tide of Americans experience the civil justice system without legal representation, even when basic human needs are at stake (ABA, 2006; DOJ 2010; Engler, 2010; Legal Servs. Corp. 2009; Rhode, 2001, 2009). While the right to counsel is guaranteed under the Constitution to those who face felony charges (*Gideon v. Wainwright*, 1963; *Argersinger v. Hamlin*, 1972), the right to counsel does not apply in civil proceedings (*Lassister v. Dep. of Social Serv. of Durham County*, 1981; *Turner v. Rogers*, 2011).

Troublingly, though countless Americans encounter the civil justice system without counsel, most prior empirical studies demonstrate that claimants who fail to secure legal representation suffer worse legal and material outcomes than those who do (Kerwin, 2004; Sandefur, 2010; Schoenholtz & Jacobs, 2001; Seron, 2001). For example, a meta-analysis of a 12 prior studies revealed that securing legal representation increased the likelihood of receiving a favorable legal outcome by as little as 19 percent to a factor of 13.79, depending on the complexity of the legal context, procedures, and problems involved (Sandefur, 2010). This meta-analysis demonstrated that, in fields of average complexity in trial courts, *pro se* claimants are on average 6.5 times more likely to lose than counseled claimants.

Civil justice researchers offer several reasons why unrepresented parties fare worse than counseled parties. For example, counseled claimants receive the benefit of lawyers whose legal expertise may guide claims through complex legal thickets, thereby resulting in better outcomes (Kritzer, 1998; Lederman & Hsung, 2006; Sandefur, \_\_\_\_). Second, lawyers may lend not only substantive and procedural knowledge, but strategic expertise on how, where, and when to best harness procedures (Shanahan, et. al., \_\_\_\_), and relational expertise when interacting with legal officials and court personnel (Sandefur, \_\_\_\_). Third, lawyers may choose clients with stronger cases, seeking to spend time and resources on cases of higher value (Sandefur, 2010). Relatedly, fourth, the type of person who successfully secures legal representation may have different personality traits and communication skills than one who fails (Sandefur, 2010).

Fifth, unrepresented claimants may experience confusion with complex documents and procedures. Indeed, court surveys reveal that, despite the existence of self-help counters in some courts, unrepresented claimants feel that court staff fail to provide them sufficient assistance. A final concern is that legal officials and law-trained individuals may hold negative attitudes about or biases against *pro se* litigants (Landsman, 2009, 2012). Troublingly, these negative attitudes are not confined to concerns about management and efficiency. Legal officials describe *pro se* claimants as having a variety of worrisome personal characteristics (Landsman, 2009, 2012). Some legal officials perceive *pro se* claimants as irrational people who bring frivolous claims. Taken together, each of these explanations may explain the divergent material outcomes between represented and *pro se* parties in particular contexts.

Most quantitative studies that examine access to justice are archival in nature (Albiston & Sandefur, 2013). That is, most prior empirical studies study the effect of legal representation by comparing and contrasting case histories using court records. For researchers wishing to isolate the causal effect of legal representation, however, one difficulty is disentangling whether *pro se* parties fare more poorly than counseled parties *because of* the presence or absence of legal representation or *because of* attorney case selection effects. Regarding case selection, lawyers may choose to represent cases of higher quality and merit. Several randomized control studies have sought to disentangle these causal influences by randomly assigning unrepresented claimants to receive counsel. For example, Seron et. al. (2001) randomly provided and assigned counsel to unrepresented tenants awaiting hearings in landlord-tenant cases before the Manhattan housing court. This study revealed a robust effect of legal representation: counseled claimants were more than four times more likely than *pro se* tenants to retain possession of their apartments (Seron et. al., 2001). Another experiment revealed only a modest improvement in outcomes for poor clients (Stapleton & Teitelbaum, 1972) and a third found that an offer of representation by a law student actually delays resolution of poor clients' claims without increasing their probability of success (Greiner & Pattanayak, 2012; Selbin et. al., 2012).

Taken together, these prior studies suggest that the causal effect of legal representation may be amplified or attenuated depending on the particular legal complexities and civil context at issue. Moreover, these prior empirical studies underscore the importance of controlling for the effect of case quality and merit when causally investigating the signaling effect of *pro se* status.

### ***Pro Se* Phenomenon in the Federal Civil Rights and Employment Discrimination Context**

One civil justice context of particular concern is the civil rights context. Like other areas of civil justice, the number and percentage of *pro se* claimants in federal civil rights cases has risen sharply (Kaiser & Quintanilla, 2014; Nielsen et. al., 2010). For example, although the Administrative Office of the U.S. Courts reports that the uncounseled rate in U.S. federal district

courts across all civil cases (excluding prisoner petitions) is 10.9%, Bloomberg Law's database reveals that of the 12,619 federal employment discrimination cases filed in 2013, 24.1% were filed uncounseled. Thus, for these cases, the *pro se* rate has risen from approximately 20% (Myrick et. al., 2012) to 24% over the past decade (Kaiser & Quintanilla, 2014). Prior research, moreover, highlights racial disparities in the rate at which claimants secure counsel: African Americans, Hispanic Americans, and Asian Americans are less likely than Whites to secure representation (Myrick et. al., 2012). These disparities persist even after controlling for plaintiffs' occupational status, gender, age, type of discrimination, and EEOC assessment of the case's strength (Myrick et. al., 2012).

The problem is that *pro se* parties who assert federal employment discrimination claims rarely receive materially meaningful access to justice. Among claimants who reach dispositive motion stages, those who proceed *pro se* almost invariably lose (Berger, 2005; Nielsen et. al., 2010; Quintanilla, 2011). Indeed, prior studies reveal that *pro se* parties are three times more likely to have their cases dismissed on the pleadings, twice as likely to have their cases dismissed summary judgment, and far less likely to receive early or comparable settlements (Nielsen et. al., 2010). Legal officials tend to explain these trends by suggesting that, given the existence of fee-shifting statutes that compensate attorneys who bring successful claims, these *pro se* litigants are irrational people with frivolous claims. While fee-shifting statutes do award fees to attorneys who represent prevailing plaintiffs (Albiston & Nielsen, 2006; Farhang & Spencer, 2012), a variety of structural and doctrinal barriers imposed in the last decade sharply decrease the incentive for attorneys who wish to represent civil rights claimants with legitimate grievances (Albiston & Nielsen, 2006; Brake & Grossman, 2007; Nelson, Berry, & Nielsen, 2008; Resnik, 2011). Despite these rising supply-side barriers, legal officials appear to hold negative stereotypes and schemas about *pro se* civil rights claimants.

## **Psychological Science and the Signaling Effect of *Pro Se* Status**

In this contribution, we investigate a social psychological explanation for the material disparities between counseled and *pro se* civil rights claimants: mainly, we investigate the degree to which legal officials and lawyers, in fact, hold negative schemas, stereotypes, and biases against *pro se* parties who bring civil rights claims. We hypothesize that the mere presence of a claimant's *pro se* status (*i.e.*, conversely a claimant's lack of counsel) sends a powerful signal that influences the psychology of how legal officials perceive, appraise, and value a *pro se* party's claims. While anecdotal evidence suggests that legal officials and lawyers hold negative schemas about *pro se* parties, as of yet there has been no social psychological or experimental research of this phenomenon. This project begins to close this gap by connecting access to justice with psychological science.

To investigate the signaling effect of *pro se* status, we conducted a social psychological experiment using realistic EEO files in a Title VII sex discrimination case. In the Title VII case, a high-tech company, Atlantic Technologies, failed to promote a female computer programmer, Ms. Smith, to a manager position, in circumstances that were ambiguous, potentially suggesting misconduct. We were interested in both whether the signaling effect of *pro se* status altered the schemas, stereotypes, and expectations about the claimant and her claim and whether the signaling effect of *pro se* status altered a meaningful material outcome--the size of settlement awarded to the claimant.

To research these questions, we harnessed a mixed-method design with two factors. We first manipulated the between-subject factor of the presence/absence of counsel. That is, participants were randomly assigned to review a Title VII file in one of the two conditions: Ms. Smith was either *pro se* or counseled. Because the psychological experiment held case quality (merit) constant, and randomly assigned participants into a condition in which the claimant was either *pro se* or counseled, the experiment allowed an internally valid and robust causal test of the signaling effect of *pro se* status.

Second, we harnessed a within-subject factor: mainly each participant reviewed the Title VII case at three successive dispute stages: the pre-suit demand stage, the summary judgment stage, and the trial stage. This within-subject factor represented the concept of the dispute pyramid (Galanter, 1983; Miller & Sarat, 1980). Prior research reveals that employment discrimination grievances have a steep attrition from the dispute pyramid, disproportionately falling out of the civil justice system at early stages of the pyramid (Nielsen & Nelson, 2005). While we theorized that the size of the claimant's settlement award would increase as she persisted in the dispute pyramid toward trial, this within-subject factor allowed examination of the signaling effect of *pro se* status across multiple stages of the dispute pyramid.

We conducted the above mixed-method experiment with three different populations: the lay public, law students, and lawyers. We recruited members of the lay public online, law students at a large, public Midwestern law school, and lawyer graduates of the law school who practice employment discrimination (EEO) law. Given research on the socialization effects of law school and the transmission of professional values and attitudes within law schools (Erlanger & Klegon, 1978; Mertz, 2007), we theorized that the signaling effect of *pro se* status might be a phenomenon that emerges as a function of socialization in the legal profession (Friedman, 1985; Sarat & Felstiner, 1995, 1988).

Last, because the EEO file entailed a sex discrimination claim, we directly examined the effect of participant gender. Prior social psychological and political science research has evidenced gender differences in how men and women perceive and evaluate ambiguous instances of sex

discrimination (Boyd et. al., 2010; Kaiser et. al., 2010; Major et. al., 2003; Rutte et. al., 1994). Therefore, we examined gender differences in the perception and valuation of the claimant and her claim

## Primary Hypotheses

*Signaling Effect of Pro Se Status.* We hypothesized that, holding case quality and merit constant:

1. *Pro se* claimants will nevertheless receive worse material outcomes (*i.e.*, smaller settlement awards) than counseled claimants.
2. Legal actors will hold negative schemas, stereotypes, and expectations about *pro se* claimants.

*Legal Socialization.* We also hypothesized that:

1. Bias against *pro se* parties will emerge as a function of socialization into the legal profession and will intensify with professional socialization. While the public may not exhibit the signaling of *pro se* status, law-trained individuals will exhibit bias, negative schemas, and negative stereotypes against *pro se* claimants.

*Gender Differences.* Finally, we hypothesized that:

1. Gender differences would emerge in the evaluation of the claimant and her claim with male participants evaluating the claimant and her claim more harshly than female participants.

## RESEARCH OVERVIEW

### METHOD

**Participants.** Given that we examined whether the signaling effect of *pro se* status is a function of legal socialization, we conducted the study with three different populations: the lay public, law students at a large Midwestern law school, and lawyer graduates of the law school who practice employment discrimination (EEO) litigation. By holding the law school constant, the latter sample allowed an internally valid and more controlled examination of the legal socialization hypothesis.

The study was first conducted with adult members of the general public recruited online on Amazon Mechanical Turk (Casler et. al., 2013; Paolacci, 2010). Our original sample consisted of 190 participants, but 33 participants were excluded from our analysis for not completing all three dispute stages in the survey or for failing the attention or manipulation checks. Our final sample (N=157) consisted of 65 females and 92 males who had, on average, completed at least some courses at a 4-year university. Participants self-identified as White/European American (81.5%),

Black/African American (5.7%), Latino/a (2.5%), Asian American/Pacific Islander (5.7%), Native American (0.6%), or Bi/Multi-Racial (3.8%).

The study was next conducted with law school students. Our original sample consisted of 228 participants, but 30 participants were excluded from our analysis for not completing all three dispute stages in the survey or for failing the attention or manipulation checks. Our final sample ( $N=198$ ) consisted of 90 females and 108 males.

Last the survey was conducted with 50 lawyers who graduated from the large Midwestern law school and who practice employment discrimination (EEO) law. Eleven participants were excluded from our analysis for not completing all three stages or for failing the attention or manipulation checks. Our final sample ( $N=39$ ) consisted of 16 females and 23 males. A full description of the demographics of each sample is presented in the Appendix.

**Materials and Procedure.** We harnessed a mixed-design experiment with one between-subject factor (*i.e.*, *pro se* vs. counseled status of the claimant) and one within-subject factor (*i.e.*, stage of the dispute). After providing their informed consent, participants were randomly assigned to either the *pro se* condition or counseled condition, where participants then reviewed a realistic Title VII file involving a claim of sex discrimination at three chronological stages, representing the within-subject aspect of the experiment: the pre-suit demand stage, summary judgment stage, and trial stage. After reviewing the Title VII case file at each chronological stage, participants answered psychological measures turning on their perceptions of the claimant and her EEO claim and indicated the settlement award that the defendant should provide.

In further detail, in both the *pro se* and counseled conditions, participants read virtually the same materials, except for the subtle manipulation of whether the claimant was counseled versus *pro se*. At the presuit demand stage, participants reviewed a realistic law firm memorandum describing the plaintiff's failure-to-promote claim and her presuit demand for relief. The law firm memorandum was from an associate to a partner at the law firm representing the defendant. Participants were asked to put themselves in the shoes of the partner receiving the memorandum. The format, length, and content of the memo were based upon realistic internal law firm memos. Next, at the summary judgment stage, participants reviewed a bench memorandum prepared by a law clerk for a judge regarding the defendant's motion for summary judgment, which sought to dismiss the plaintiff's failure-to-promote claim. While similar to the internal memorandum, the bench memorandum provided additional details about the plaintiff's employment, such as the general requirements for the promotion and the timeline of the events. The format, length, and content of the bench memorandum were based upon examples of bench memorandums created by federal law clerks in civil rights cases. Finally, at the trial stage, participants were provided a realistic trial summary. While similar to both the internal memorandum and bench memorandum, the trial

summary offered additional details about the testimony and evidence at trial. We designed these realistic Title VII materials so as to promote a high degree of external validity (*see* Appendix).

After participants reviewed the materials at each stage, and completed the related measures, participants answered a manipulation check ensuring that they understood whether the plaintiff had secured counsel or not, and two attention checks ensuring that they understood what they read. Finally, they were asked to provide demographic information (*see* Appendix).

## **Measures.**

*Settlement Amount Awarded.* We were primarily interested in the divergent material outcomes between *pro se* claimants and counseled claimants; therefore, our primary dependent measure asked participants to select the appropriate size for the defendant's settlement offer to resolve the dispute. At each stage of the dispute process, participants selected values between \$0 and \$75,000 for the amount they felt was appropriate. An open-ended question then asked participants to explain why they selected the amount they chose.

*Perceived Merit of the Sex Discrimination Claim.* At each dispute stage, participants appraised the *merit*, *plausibility*, and *believability* of the failure-to-promote claim, e.g., "Please rate the merit of Ms. Smith's gender discrimination claim." Participants rated these three items on a seven-point scale ranging from 1 (Not at all) to 7 (Very). We conducted exploratory factor analyses to ensure that these three items load onto a single factor of perceived merit at each dispute stage. Afterward, these three items were averaged to create a perceived merit composite for each stage: presuit demand ( $\alpha = .87$ ), summary judgment ( $\alpha = .92$ ), and trial ( $\alpha = .95$ ), with higher scores indicating greater perceived merit of the sex discrimination claim.

*Schemas and Stereotypes about the Claimant.* At the first dispute stage possible--*i.e.*, the presuit demand stage--we asked participants to engage in a person-perception task, designed to assess schemas, stereotypes, and expectations about the claimant. Participants completed 9 person-perception measures that evaluated their schemas of the plaintiff on several dimensions, including: *warmth*, *competence*, *considerate person*, *complainer*, and *would hire*. A complete list of the measures is included in the Appendix. We provide a brief description of the measures and dimensions below. Participants completed all measures using a seven-point scale ranging from 1 (Not at all) to 7 (Very), except for *would hire*:

*Warmth and Competence.* Participants were asked to rate claimant as *warm* and *competent*. These two dimensions were drawn from social psychological research on the Behaviors from Intergroup Affect and Stereotypes (BIAS) map which links discriminatory behavioral tendencies to the contents of group stereotypes and emotions (Cuddy, Fiske, & Glick, 2007; Schultz & Maddox, 2013).



*Considerate Person.* Participants also rated the plaintiff on two-items, *considerate* and *compassionate*, which assessed their schemas and stereotypes of her as *considerate person* (Kaiser & Miller, 2001, 2003; Shelton & Stewart, 2004). After conducting an exploratory factor analysis to ensure that these two items loaded onto a single factor, the two items were averaged to create a considerate-person composite ( $\alpha = .89$ ).

*Complainer.* Participants also rated the claimant on three-items, *complainer*, *troublemaker*, *argumentative*, which assessed their schemas of the claimant as a *complainer* (Kaiser & Miller, 2001, 2003; Shelton & Stewart, 2004). After conducting an exploratory factor analysis, the items were averaged to create a composite of the claimant as a *complainer* ( $\alpha = .86$ ).

*Hireability.* Last participants rated whether they *would hire* the claimant using a seven-point scale ranging from 1 (Strongly Disagree) to 7 (Strongly Agree). This measure assessed participant schemas about the plaintiff's hireability and the degree to which they would affirmatively choose to employ her (Kaiser & Miller, 2001, 2003; Shelton & Stewart, 2004; Unzueta et. al., 2014).

## RESULTS

We began by analyzing the signaling effect of *pro se* status on the settlement awards received by the claimant who alleged sex discrimination. Our research design called for a three-way mixed design ANOVA (Field, 2009) to be conducted on each population: the public, law students, and EEO lawyers. The first factor was the between-subject factor of whether the claimant was *pro se* versus represented. The second factor was the within-subject factor of dispute stage (*i.e.*, the stage at which the participant reviewed the claimant's case: presuit demand, summary judgment, or trial). We treated the second factor as a repeated measure because each participant reviewed the case at these three time points as the case progressed within the dispute pyramid. The third factor was the between-subject factor of participant gender.

We offer a brief roadmap of the results presented. First, we report the results of this three-way mixed design ANOVA, turning first to the signaling effect of *pro se* status and the effect of dispute stage for each population. Next, we report the results of participant gender for each population. After presenting the results of this mixed-design ANOVA, we then report analyses conducted to examine the legal socialization hypothesis. Last, we conclude by presenting results on the extent to which the signaling effect of *pro se* status and participant gender affect the schemas and stereotypes that law-trained individuals hold of claimants and their claims.

### Examining the Signaling Effect of *Pro Se* Status

*Public.* Turning first to the lay public, the mixed-design ANOVA revealed that the main effect of *pro se* status on settlement awards was marginally significant,  $F(1, 154) = 3.86, p = .051$ . Strikingly, however, the pattern was the reverse of the hypothesized effect: across dispute stages, the public awarded the claimant *more* when she was *pro se* than counseled by an average of \$8,066, 95% CI [-\$45, \$16,177].

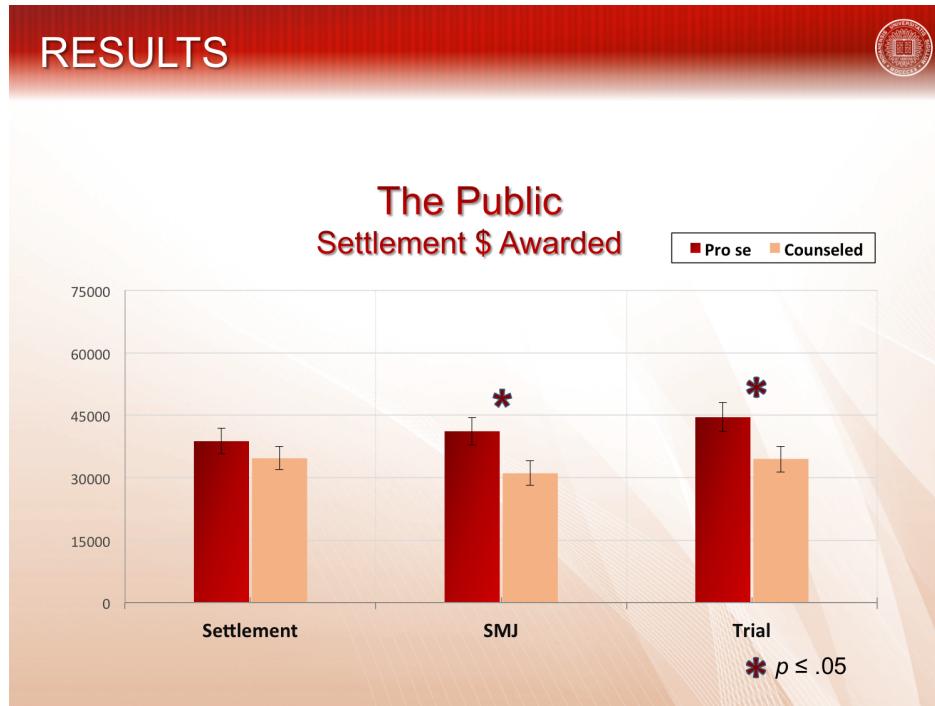
The effect of *pro se* status at the presuit demand stage was not significant,  $t(1, 156) = .98, p = .331, \eta_p^2 = .00$ . Even so, the public awarded significantly *more* settlement dollars to the *pro se* claimant ( $M = \$38,128, SD = \$27,076$ ) than the counseled claimant ( $M = \$31,516, SD = \$28,148$ ) at summary judgment,  $t(1, 156) = 2.26, p = .025, \eta_p^2 = .03$ . At summary judgment, the difference in the estimated marginal means *in favor of* the *pro se* claimant was \$10,060, 95% CI [\$1,283, \$18,836]. Moreover, the public awarded significantly *more* settlement dollars at trial to the unrepresented claimant ( $M = \$41,616, SD = \$28,317$ ) than counseled claimant ( $M = \$34,860, SD = \$29,793$ ),  $t(1, 156) = 2.14, p = .034, \eta_p^2 = .03$ . At trial, the estimated difference<sup>1</sup> *in favor of* the *pro se* claimant was \$10,079, 95% CI [\$793, \$19,365].

Regarding the dispute stage at which the plaintiff's claim was reviewed, Mauchly's test indicated that the assumption of sphericity had been violated,  $\chi^2(2) = 27.90, p = .000$ , therefore degrees of freedom were adjusted using Greenhouse-Geisser method of correction ( $\epsilon = .86$ ). Results revealed that the amount the public awarded the claimant in settlement dollars was marginally affected by the stage at which the file was reviewed,  $F(1.71, 264.00) = 3.09, p = .055, \eta_p^2 = .02$ . Even so, pairwise comparisons indicated that *only* the difference between settlement awards at summary judgment and trial was significant (*i.e.*, meaning that for the public, the difference between settlement dollars awarded presuit and at trial was not significant.) See Appendix.<sup>2</sup>

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<sup>1</sup> For the sake of brevity, we refer hereinafter to the difference in the estimated marginal means as the estimated difference.

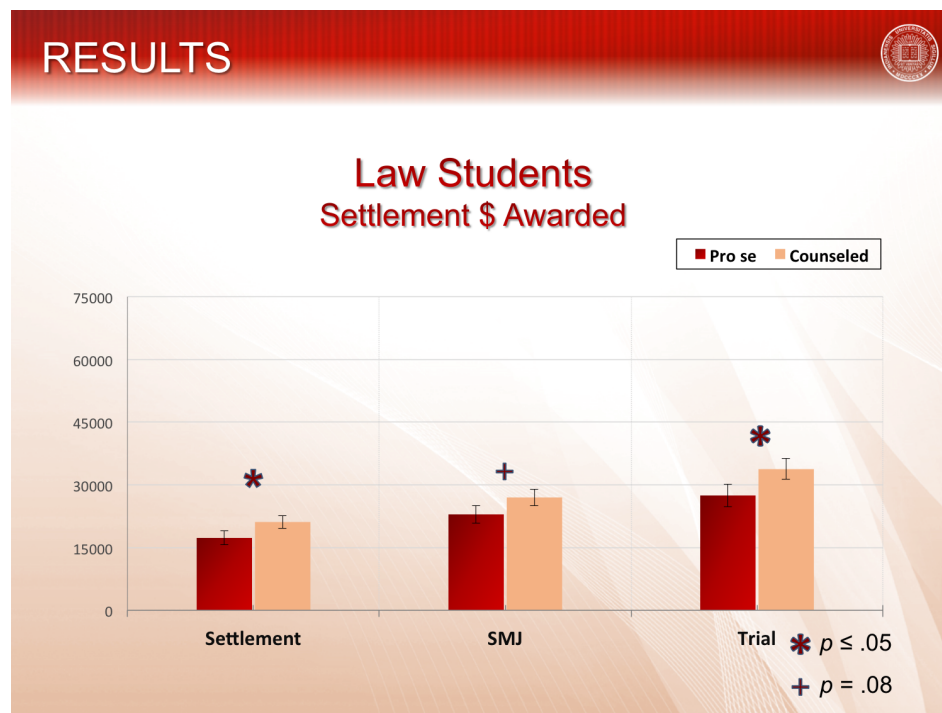
<sup>2</sup> We observed a marginally significant interaction between the dispute stage and the *pro se* status manipulation,  $F(1.71, 264.00) = 2.81, p = .070, \eta_p^2 = .02$ .



*Law Students.* Turning to law students, the mixed-design ANOVA revealed that the main effect of *pro se* status on settlement awards was marginally significant,  $F(1, 187) = 3.40, p = .067, \eta_p^2 = .02$ . Yet for law students, the hypothesized signaling effect of *pro se* status emerged. On balance, law students awarded the claimant *less* when she was *pro se* than when counseled. Across dispute stages, the estimated difference operating against the *pro se* claimant was  $-\$4,709$ , 95% CI  $[-\$9,745, \$327]$ .

Law students awarded *less* settlement dollars at the presuit demand stage to the *pro se* claimant ( $M = \$17,573, SD = \$13,659$ ) than the counseled claimant ( $M = \$20,429, SD = \$17,116$ ),  $t(1, 187) = -1.67, p = .097, \eta_p^2 = .02$ . At the presuit demand stage, the estimated difference was  $-\$3,778$ , 95% CI  $[-\$8,241, \$684]$ . Law students awarded *less* settlement dollars at the summary judgment stage to the *pro se* claimant ( $M = \$17,573, SD = \$13,659$ ) than the counseled claimant ( $M = \$20,429, SD = \$17,116$ ). The estimated difference of  $-\$3,997$ , 95% CI  $[-\$9,645, \$1,690]$  was not statistically significant,  $t(1, 187) = -1.38, p = .168, \eta_p^2 = .01$ . Finally, law students awarded *less* settlement dollars to the *pro se* claimant at trial ( $M = \$27,933, SD = \$25,454$ ) than the counseled claimant ( $M = \$32,709, SD = \$25,756$ ),  $t(1, 187) = -1.72, p = .087, \eta_p^2 = .02$ . At trial, the estimated mean difference was  $-\$6,371$ , 95% CI  $[-\$13,678, \$936]$ .

On the effect of dispute stage, because Mauchly's test again indicated that the assumption of sphericity had been violated,  $\chi^2=49.11, p = .000$ , we used within-subjects estimates from the Greenhouse-Geisser correction method ( $\epsilon = .81$ ). Settlement awards were significantly affected by the stage at which law students reviewed the dispute,  $F(1.62, 303.56) = 35.52, p = .000, \eta_p^2 = .16$ . Pairwise comparisons revealed that all three dispute stages differed in settlement amounts with awards increasing as the claimant proceeded within the dispute pyramid. That is, law students awarded *more* settlement dollars at summary judgment than at the presuit demand stage ( $p = .000$ ), and *more* settlement dollars at trial than at summary judgment ( $p = .000$ ).<sup>3</sup> See Appendix.



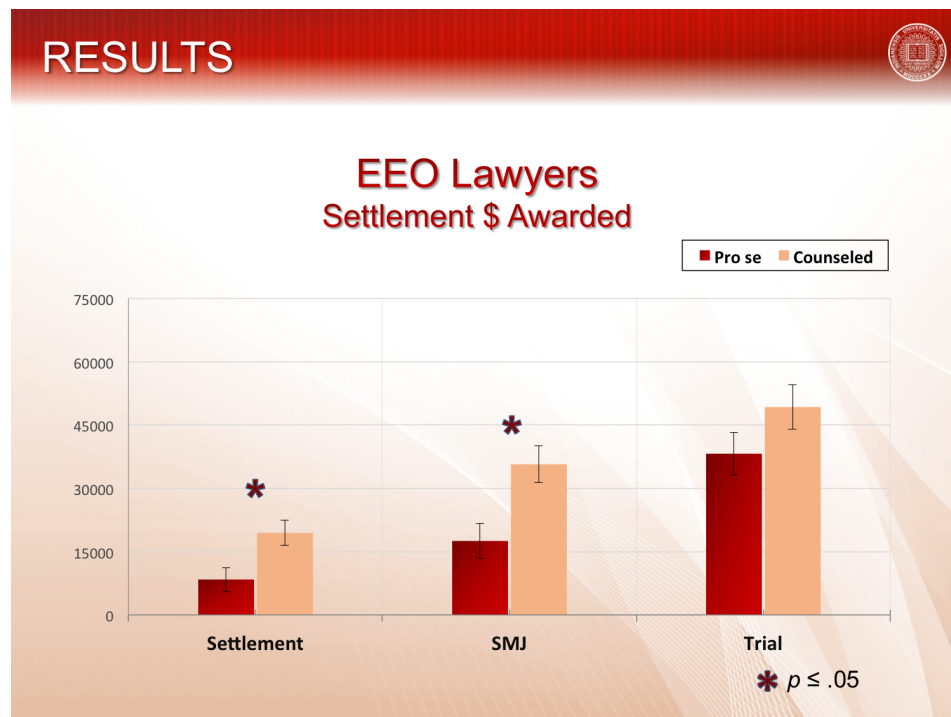
*Lawyers.* Turning last to EEO lawyers, the mixed-design ANOVA revealed a powerful and statistically significant signaling effect of *pro se* status,  $F(1, 36) = 7.784, p = .008, \eta_p^2 = .18$ . EEO lawyers awarded the claimant *far less* when she was unrepresented than when counseled. Across dispute stages, the estimated difference in settlement awards operating against the *pro se* claimant was  $-\$13,450, 95\% \text{ CI } [-\$23,227, -\$3,627]$ .

More robustly than with law students, the differences in settlement amounts emerged in the direction theorized by the signaling effect of *pro se* status: mainly, EEO lawyers awarded significantly *far less* in settlement dollars at the presuit demand stage to *pro se* claimants ( $M = \$7,967, SD =$

<sup>3</sup> There was no significant interaction effect between the *pro se* status and the dispute stage,  $F(1.62, 303.56) = .55, p = .540, \eta_p^2 = .00$ .

\$9,359) than counseled claimants ( $M = \$19,461$ ,  $SD = \$15,384$ ),  $t(1, 36) = -2.70$ ,  $p = .011$ ,  $\eta_p^2 = .17$ . At the presuit demand stage, the estimated difference was  $-\$11,070$ , 95% CI  $[-\$19,399, -\$2,742]$ . EEO lawyers also awarded far *less* settlement dollars to the *pro se* claimant on the eve of a summary judgment decision ( $M = \$15,660$ ,  $SD = \$18,061$ ) than the counseled claimant ( $M = \$35,705$ ,  $SD = \$19,887$ ),  $t(1, 36) = -3.04$ ,  $p = .004$ ,  $\eta_p^2 = .21$ . At summary judgment, the estimated difference was  $-\$18,173$ , 95% CI  $[-\$30,286, -\$6,060]$ . Finally, EEO lawyers awarded less settlement dollars to the *pro se* claimant ( $M = \$35,749$ ,  $SD = \$24,326$ ) than counseled claimant ( $M = \$42,013$ ,  $SD = \$24,005$ ) after the close of evidence at trial. Even so, at trial, the difference between the estimated means was not significant  $t(1, 36) = -1.52$ ,  $p = .137$ ,  $\eta_p^2 = .06$ .

Finally, on the effect of dispute stage, we used the Greenhouse-Geisser correction method ( $\epsilon = .792$ ), and results revealed that settlement awards were significantly affected by the stage at which EEO lawyers reviewed the dispute,  $F(1.58, 57.03) = 49.52$ ,  $p = .000$ ,  $\eta_p^2 = .58$ . All three dispute stages differed with settlement awards increasing as the claimant proceeded within the dispute pyramid. EEO lawyers awarded *more* settlement dollars at the summary judgment than at the presuit demand stage ( $p = .000$ ), and *more* settlement dollars at trial than at summary judgment ( $p = .000$ ).<sup>4</sup> See Appendix.



## Discussion

<sup>4</sup> There was no significant interaction effect between the *pro se* status and the dispute stage,  $F(1.74, 62.53) = .92$ ,  $p = .391$ ,  $\eta_p^2 = .03$ .

When viewed in totality, these analyses reveal the emergence of a signaling effect of *pro se* status among law students and a substantial signaling effect among lawyers. Across the law student and EEO lawyer samples, the mere presence of a claimant's *pro se* status caused a substantial decrease in the settlement awarded at each successive stage of the dispute pyramid: pre-suit demand, summary judgment, and trial. In marked contrast, the public, on balance, awarded claimants higher settlement awards when *pro se* than when counseled. These results suggest that the observed main effect of *pro se* status may be a product of socialization in the legal profession. To examine the latter theory, we conducted a direct test of the legal socialization hypotheses, which we report after presenting the gender differences that emerged.

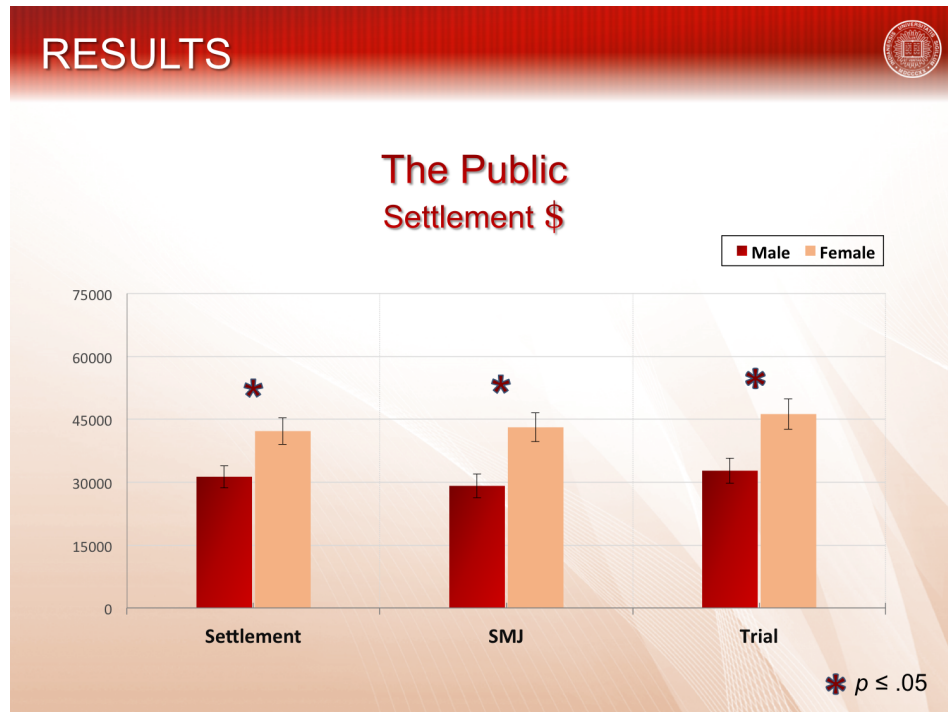
### Examining Gender Differences in the Evaluation of Sex Discrimination Claims

We next report the gender differences revealed by the three-way mixed design ANOVA for each population. As previously discussed, prior research suggest that males and females may evaluate a female claimant's ambiguous claims of sex discrimination differently.

*Public.* Turning first to the public, the mixed-design ANOVA revealed a significant main effect of participant gender on the settlement awarded,  $F(1, 154) = 9.45, p = .003, \eta_p^2 = .06$ . Males awarded the claimant *less* than female members of the public. Collapsing across dispute stages, the estimated difference in settlements awarded between male and female participants was -\$12,789, 95% CI [-\$21,009, -\$4,569].<sup>5</sup> Moreover, males awarded the claimant significantly less settlement dollars than females across all three dispute stages. At the presuit demand stage, this gender difference was -\$10,878, 95% CI [-\$19,206, -\$2,549],  $t(1, 154) = -2.58, p = .011, \eta_p^2 = .04$ . At summary judgment, the gender difference was -\$13,995, 95% CI [-\$22,889, -\$5,101],  $t(1, 154) = -3.11, p = .002, \eta_p^2 = .06$ . At trial, the gender difference was -\$13,495, 95% CI [-\$22,906, -\$4,085],  $t(1, 154) = -2.83, p = .005, \eta_p^2 = .05$ . For the sake of brevity, we provide descriptive statistics on these gender differences for each population in the Appendix.

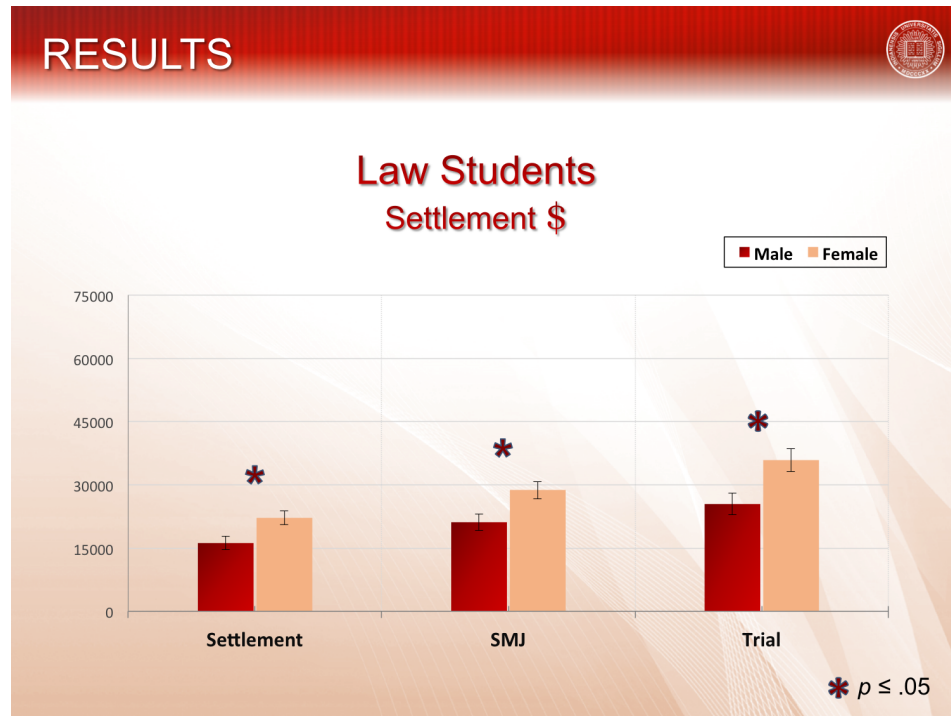
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<sup>5</sup> Across all populations, gender differences were not qualified by an interaction on whether the claimant was *pro se* or counseled. *See* Appendix.



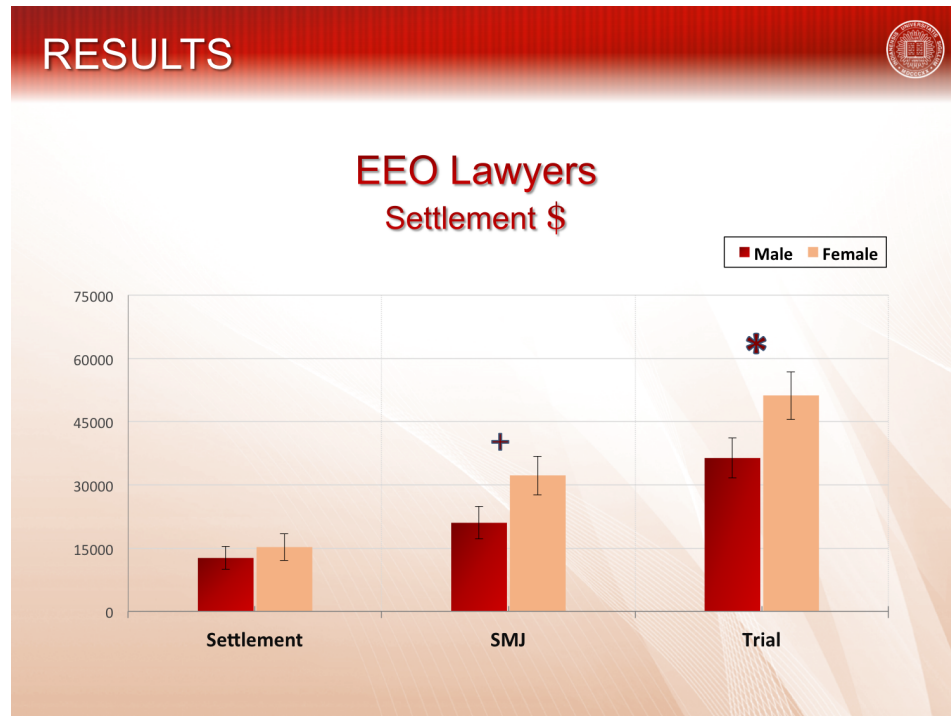
*Law Students.* Turning next to law students, results again revealed a significant main effect of participant gender on settlement amounts awarded,  $F(1, 187) = 9.83, p = .002, \eta_p^2 = .05$ . That is, male law students awarded the plaintiff significantly *less* than female law students across all dispute stages: the estimated gender difference was  $-\$8,003$ , 95% CI  $[-\$13,040, -\$2,967]$ . These gender differences emerged at all three dispute stages. At the presuit demand stage, the gender difference was  $-\$6,014$ , 95% CI  $[-\$10,477, -\$1,551]$ ,  $t(1, 187) = -2.66, p = .009, \eta_p^2 = .04$ . At summary judgment, the gender difference was  $-\$7,590$ , 95% CI  $[-\$13,258, -\$1,922]$ ,  $t(1, 187) = -2.64, p = .009, \eta_p^2 = .04$ . At trial, the gender difference was  $-\$10,405$ , 95% CI  $[-\$17,715, -\$3,099]$ ,  $t(1, 187) = -2.81, p = .005, \eta_p^2 = .04$ .





*Lawyers.* Turning last to EEO lawyers, the mixed-design ANOVA revealed a marked, albeit marginally significant, main effect of participant gender on settlement amounts awarded,  $F(1, 36) = 3.80, p = .059, \eta_p^2 = .10$ . Male EEO lawyers awarded Ms. Smith *less* than female lawyers across dispute stages: the estimated difference in settlements awarded between male and female participants was  $-\$9,518, 95\% \text{ CI } [-\$19,427, \$391]$ . While the gender difference at the pretrial demand stage was not significant, a large albeit marginally significant gender differences emerged at summary judgment and trial. At the presuit demand stage, the gender difference was  $-\$2,537, 95\% \text{ CI } [-\$10,978, \$5,904], t(1, 36) = -.61, p = .546, \eta_p^2 = .01$ . At summary judgment, the gender difference was  $-\$11,230, 95\% \text{ CI } [-\$23,506, \$1,047], t(1, 36) = -1.86, p = .072, \eta_p^2 = .09$ . At trial, the gender difference was  $-\$14,788, 95\% \text{ CI } [-\$29,811, \$235], t(1, 36) = -2.00, p = .054, \eta_p^2 = .10$ .





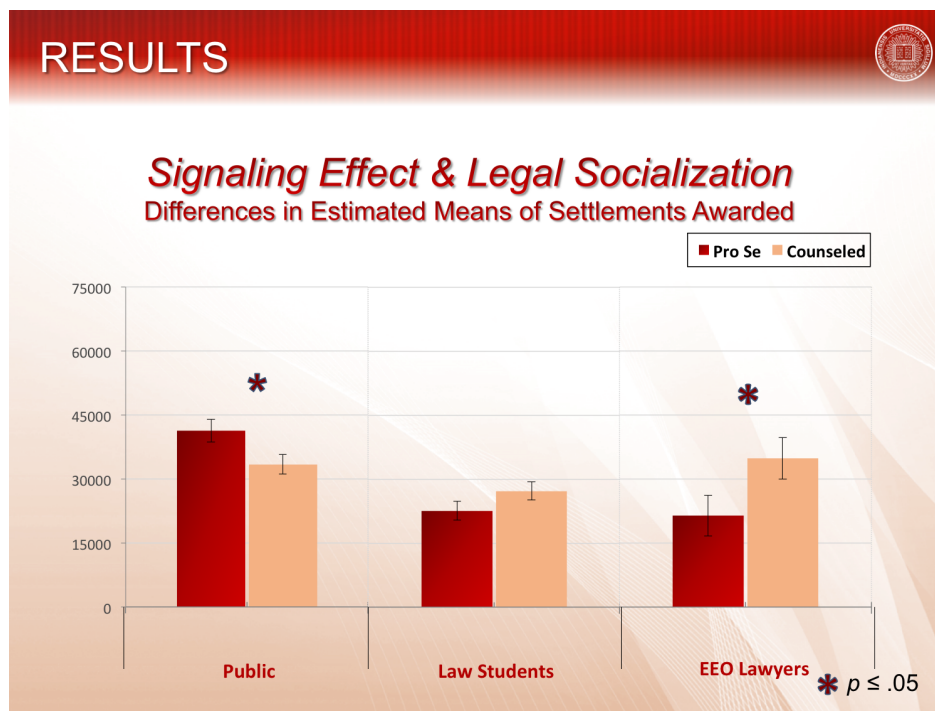
## Discussion

In summary, our findings reveal gender differences in the evaluation and valuation of the claimant's sex discrimination claim across all three populations. These gender differences are consistent with and build on prior psychological research revealing gender disparities in the way members of the public perceive ambiguous claims of sex discrimination. Across all three populations, males awarded the plaintiff smaller settlement awards than females. Like the public, law-trained individuals exhibited gender differences in the valuation of the failure-to-promote claim. Even so, these gender differences may attenuate with socialization in the legal profession. To directly examine this possibility, we conducted a direct test of the socialization hypothesis, a test to which we now turn.

### Examining the Effect of Socialization in the Legal Profession

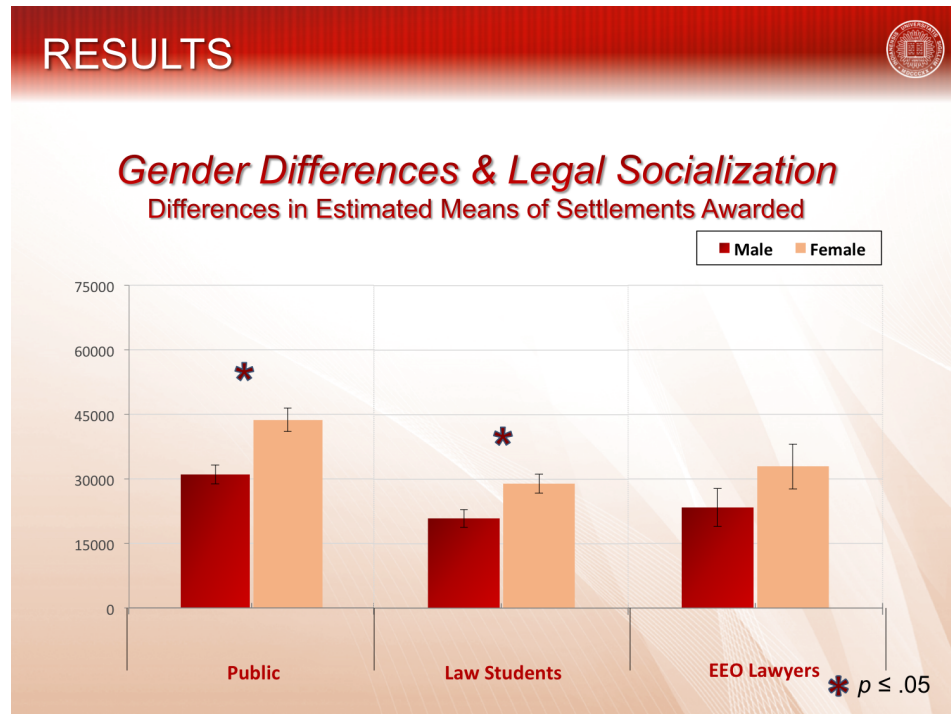
After conducting the above three-way mixed design ANOVA, we then examined the effect of legal socialization on settlements awarded by conducting a four-way mixed-design ANOVA. In this mixed design, we again harnessed dispute stage as a repeated-measure factor, but this time we included three between-subject factors: *pro se* status, participant gender, and population. As scaffolding for the reader, we present our analysis on the effect of legal socialization in the following order: first on the signaling effect of *pro se* status, second on the settlement value associated with scaling the dispute pyramid, and last on gender differences across populations.

*Legal Socialization and the Signaling Effect of Pro Se Status.* The mixed-design ANOVA revealed a significant interaction effect between *pro se* status and population,  $F(2, 374) = 5.61, p = .004, \eta_p^2 = .03$ . Across dispute stages, the public awarded *pro se* claimants *more* settlement dollars than counseled claimants, an estimated difference of \$7,901 95% CI [\$1,024, \$14,777],  $F(1, 374) = 5.10, p = .024, \eta_p^2 = .01$ . Whereas, law students awarded *pro se* claimants *less* settlement dollars than counseled claimants (not statistically significantly less), with an estimated difference of -\$4,674 95% CI [-\$10,658, \$1,309],  $F(1, 374) = 2.34, p = .125, \eta_p^2 = .00$ . Last, EEO lawyers awarded *pro se* claimants markedly and significantly *less* settlement dollars than counseled claimants, an estimated difference of -\$13,386 95% CI [-\$26,792, \$20],  $F(1, 374) = 3.855, p = .050, \eta_p^2 = .01$ . Decomposing the interaction, contrasts revealed that the magnitude of signaling effect of *pro se* status differed when contrasting the public with law students, \$12,576, 95% CI [\$3,460, \$21,691],  $F(1, 374) = 7.36, p = .007$ , and when contrasting the public versus lawyers, \$21,287, 95% CI [\$6,220, \$36,354],  $F(1, 374) = 7.717, p = .006$ . However, these contrasts revealed that the signaling effect for law students and lawyers was statistically equivalent, \$8,711.751, 95% CI [-\$5,969.3, \$23,393],  $F(1, 374) = 1.362, p = .244$ . To summarize, while the public appears to evaluate uncounseled claimants more favorably than counseled claimants, law school students begin to perceive counseled claims as having greater value than *pro se* claims, and the signaling effect of *pro se* status was sharp among EEO lawyers.



*Legal Socialization and the Dispute Pyramid.* The mixed-design ANOVA also revealed a significant interaction effect between population and dispute stage. By effect of dispute stage, we mean the degree to which scaling the dispute pyramid affects the size of settlement awarded. Because Mauchly's test indicated that the assumption of sphericity had been violated,  $\chi^2(2)=85.65, p = .000$ , the Greenhouse-Geisser correction method was used to estimate within-subjects effects ( $\epsilon = .83$ ). Results revealed an effect whereby the claimant's ascent of the dispute pyramid interacted with the population evaluating the case, thereby influencing the amount of settlement dollars awarded,  $F(3.319, 620.66) = 16.84, p = .000, \eta_p^2 = .08$ . For example, while law students and lawyers awarded the claimant *more* settlement dollars as she scaled the dispute pyramid from the presuit stage to trial, Pillai's trace ( $\Lambda_{\text{Pillai}} = .12$ )  $F(2, 373) = 25.13, p = .00, \eta_p^2 = .12$ , and Pillai's trace ( $\Lambda_{\text{Pillai}} = .15$ )  $F(2, 373) = 33.00, p = .00, \eta_p^2 = .15$ , respectively, the public awarded the claimant amounts presuit that did not differ from amounts awarded at summary judgment or trial, Pillai's trace ( $\Lambda_{\text{Pillai}} = .011$ )  $F(2, 373) = 2.019, p = .134, \eta_p^2 = .01$ . See Appendix. That is, while scaling the dispute pyramid did not affect the public's valuation of the claim, ascent of the dispute pyramid affected law students and lawyers valuation of the claim. In brief, law-trained individuals appear to value claims that ascend the dispute pyramid as having more monetary value.

*Gender Differences.* With regard to the gender differences, the mixed-design ANOVA did not reveal a significant interaction effect between participant gender and population,  $F(2, 374) = .503, p = .605, \eta_p^2 = .00$ . Across dispute stages, on average, males awarded the sex discrimination claimant less than females. Male members of the public awarded *less* settlement dollars than females, an estimated difference of  $-\$12,674$  95% CI  $[-\$19,550, -\$5,797]$ ,  $F(1, 374) = 13.13, p = .000, \eta_p^2 = .03$ . Male law students awarded *less* settlement dollars than female law students, an estimated difference of  $-\$8,038$  95% CI  $[-\$14,022, -\$2,054]$ ,  $F(1, 374) = 6.98, p = .009, \eta_p^2 = .02$ . Among EEO lawyers, male lawyers awarded *less* settlement dollars than female lawyers, an estimated difference of  $-\$9,511$  95% CI  $[-\$22,917, \$3,895]$ ,  $F(1, 374) = 1.946, p = .164, \eta_p^2 = .00$ . Because the mixed-design ANOVA did not reveal a statistically significant interaction, we cannot infer that the marked gender differences in settlements awarded within each population varied enough between populations to find that socialization attenuates these gender differences. To summarize, we cannot infer that the gender differences among the public are diminished by socialization within the legal profession.



## Discussion

Taken together, consistent with the legal socialization hypothesis, these findings highlight first that the signaling effect of *pro se* status appears to be a phenomenon socialized by the legal training and the profession. While members of the public did not assign less value to the plaintiff's claim because of her unrepresented status, law-trained individuals awarded the *pro se* claimant must less because of her *pro se* status. For law-trained individuals the mere presence of a claimant's *pro se* status caused a downward valuation of the claim. As a result, the signaling effect of *pro se* status meaningfully affects the material relief that a plaintiff will likely obtain. Second, and analogously, socialization in the legal profession influences whether individuals assign greater settlement values to claims that scale the dispute pyramid. Third, however, legal socialization did not statistically attenuate the gender differences across populations. Having revealed that law-trained individuals exhibit the phenomenon of the signaling effect, we next sought to examine whether the signaling effect of *pro se* status affects the schemas, stereotypes, and expectations that law-trained individuals hold of *pro se* claimants and their claims.

## Examining Whether *Pro Se* Status Shapes Schemas and Stereotypes About Uncounseled Claimants

Does a claimant's unrepresented status affect the schemas and stereotypes that law-trained individuals hold about that *pro se* claimant or their claim? To examine this question, we investigated

the responses of law-trained participants (*i.e.*, law students and lawyers). Below, we present results first for the perceived merit of the claim and then schemas and stereotypes about the claimant.

*Perceived Merit of the Claim.* At each dispute stage, law students and lawyers evaluated the perceived merit of the plaintiff's claim. The grand means on the 7-point Likert scale for each stage were presuit demand ( $M = 4.62, SD = 1.06$ ), summary judgment ( $M = 4.57, SD = 1.30$ ), and trial ( $M = 4.70, SD = 1.40$ ). As these merit scores hover slightly above the midpoint of the scale, this suggests that this sex discrimination case was perceived as moderately strong.

To evaluate the effect of *pro se* status and participant gender on these merit scores, as with our analysis with settlement awards, we conducted a three-way mixed design ANOVA using *pro se* status, participant gender, and dispute stage as factors. Interestingly, the mixed-design ANOVA did not reveal a main effect of *pro se* status on perceived merit scores,  $F(1, 233) = .16, p = .686, \eta_p^2 = .00$ . However, the analysis did reveal a main effect of participant gender, such that law-trained males ascribed the claim less merit than law-trained females ( $M_e = 4.42, SE = .10$  vs.  $M_e = 4.91, SE = .11$ ), meaning that participant gender significantly affected the perceived merit of the sex discrimination claim,  $F(1, 233) = 11.41, p = .001, \eta_p^2 = .05$ . These gender differences were not qualified by an interaction with the claimant's *pro se* status,  $F(1, 225) = .36, p = .549, \eta_p^2 = .00$ . In sum, *pro se* status did not influence the perceived merit of the plaintiff's claim (which we held constant between conditions by design), but males rated the plaintiff's claim as less meritorious than females at each stage of the dispute pyramid. See Appendix.

*Schemas and Stereotypes about the Claimant.* We next investigated the schemas and stereotypes that law-trained participants hold of *pro se* claimants by conducting a two-by-two factorial ANOVA on the person-perception measures: *warmth and competence*, *considerate person*, *complainer*, and *hireability*. Because both *pro se* status and participant gender exert independent main effects on material outcomes, we included both factors, and their interaction, in the model.

*Warmth and Competence.* Law students and lawyers appraised the warmth and competence of the claimant at the earliest stage possible, the presuit demand stage. On balance, these law-trained individuals rated the plaintiff lower than the mid-point on warmth ( $M = 3.51, SD = .80$ ), but moderately high on competence ( $M = 5.11, SD = 1.10$ ). This pattern signifies that, on balance, participants perceived the sex-discrimination claimant as being somewhat unlikeable, but somewhat competent.

On *warmth*, the ANOVA did not reveal that the claimant's *pro se* status dampened schemas of her warmth,  $F(1, 231) = .05, p = .821, \eta_p^2 = .00$ , nor did the analysis reveal that participant gender significantly affected schemas of her warmth,  $F(1, 231) = .33, p = .566, \eta_p^2 = .00$ , nor did the analysis reveal an interaction between these two factors,  $F(1, 231) = .11, p = .736, \eta_p^2 = .00$ .

Troublingly, however, the ANOVA revealed that the claimant's *pro se* status significantly dampened schemas and expectations about her *competence*, ( $M = 4.96$ ,  $SD = 1.10$  vs.  $M = 5.26$ ,  $SD = 1.09$ ),  $F(1, 233) = 4.59$ ,  $p = .033$ ,  $\eta_p^2 = .02$ . Analyses did not reveal gender differences in schemas about competence,  $F(1, 233) = .92$ ,  $p = .337$ ,  $\eta_p^2 = .00$ , nor was the main effect of *pro se* status qualified by an interaction,  $F(1, 233) = .41$ ,  $p = .520$ ,  $\eta_p^2 = .00$ . *See* Appendix. In short, the claimant's *pro se* status influenced schemas and diminished expectations about her competence, but not her warmth. For law-trained participants there was no gender difference on these two dimensions.

*Considerate Person.* Law students and lawyers on average appraised the plaintiff as a somewhat inconsiderate person ( $M = 3.61$ ,  $SD = .83$ ). Like the warmth measure, the ANOVA did not reveal that the claimant's *pro se* status affected perceptions of her considerateness,  $F(1, 231) = .83$ ,  $p = .363$ ,  $\eta_p^2 = .00$ , or that participant gender affected perceptions of her considerateness,  $F(1, 231) = .01$ ,  $p = .924$ ,  $\eta_p^2 = .00$ , nor did analyses reveal an interaction between these two factors,  $F(1, 231) = 1.57$ ,  $p = .212$ ,  $\eta_p^2 = .01$ . *See* Appendix. Neither *pro se* status, nor participant gender, appeared to influence perceptions about whether the claimant was a considerate person.

*Complainer.* Law-trained participants assessed the degree to which they perceived the plaintiff to be complainer ( $M = 3.34$ ,  $SD = 1.30$ ) on average. While the ANOVA did not reveal that the claimant's *pro se* status affected schemas about whether she is a complainer,  $F(1, 233) = .86$ ,  $p = .356$ ,  $\eta_p^2 = .00$ , males perceived the sex-discrimination plaintiff to be more of a complainer than females ( $M = 3.52$ ,  $SD = 1.27$  vs.  $M = 3.11$ ,  $SD = 1.32$ ),  $F(1, 233) = 6.23$ ,  $p = .013$ ,  $\eta_p^2 = .03$ . The analysis did not reveal that this gender difference was qualified by an interaction with *pro se* status,  $F(1, 233) = .47$ ,  $p = .494$ ,  $\eta_p^2 = .00$ . *See* Appendix. That is, law-trained males perceived the claimant to be more of a complainer than females.

*Hireability.* Finally, law students and lawyers rated the degree to which they would hire the claimant ( $M = 4.28$ ,  $SD = 1.26$ ) on average. Unlike the other person-perception measures examined, here, the ANOVA revealed both a main effect of the claimant's *pro se* status that decreased schemas of her hireability ( $M = 4.46$ ,  $SD = 1.28$  vs.  $M = 4.08$ ,  $SD = 1.22$ ),  $F(1, 232) = 6.86$ ,  $p = .009$ ,  $\eta_p^2 = .03$ , and that males perceived the plaintiff to be less hireable than females ( $M = 4.11$ ,  $SD = 1.33$  vs.  $M = 4.49$ ,  $SD = 1.14$ ),  $F(1, 232) = 6.88$ ,  $p = .009$ ,  $\eta_p^2 = .03$ . The main effects of *pro se* status and participant gender were not qualified by an interaction,  $F(1, 232) = .02$ ,  $p = .894$ ,  $\eta_p^2 = .00$ . *See* Appendix. Of concern, both *pro se* status and participant gender significantly affected schemas and expectations of whether the claimant was hireable.

## Discussion

In summary, these analyses did not reveal that *pro se* status influenced the perceived merit of the sex discrimination claim (which was viewed as moderately strong and held constant between conditions). Nor did *pro se* status diminish schemas and expectations about the claimant's warmth or considerateness, who law-trained participants perceived, on average, as being somewhat unlikeable.

Instead, the signaling effect of *pro se* status causally affected schemas, stereotypes, and expectations that law-trained individuals held about the claimant's *competence* and *hireability*. Law-trained persons, on average, perceived the claimant as moderately competent. However, when unrepresented, the claimant's *pro se* status decreased expectations and beliefs about her competence and hireability. Last males and females differed on their perception of the merit of the claim, along with their schemas of whether the claimant was a complainer and hireable.

## GENERAL DISCUSSION

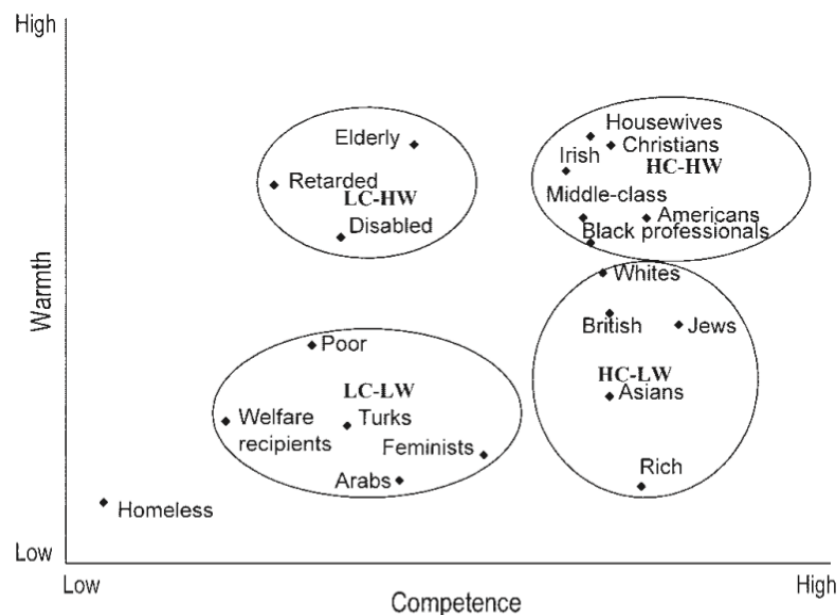
Taken together, the experiments conducted underscore a social psychological explanation for the divergence in material outcomes between *pro se* and counseled claimants in the federal civil rights context. Not only do lawyers convey legal expertise to clients, and select cases of higher quality and merit, but in the civil rights context, the mere absence of counsel sends a powerful signal that shapes the psychology of how legal officials and lawyers value claimants and their claims. Legal officials and lawyers hold schemas, stereotypes, and biases that operate against unrepresented parties who bring civil rights claims. In short, a civil right claimant's *pro se* status sends a powerful signal about that claimant and their claim.

The findings illuminate a psychological explanation for the divergence in material outcomes between *pro se* and counseled parties, one that offers support for the signaling effect hypothesis. The psychological experiments held constant the civil right claimant's case, thereby controlling for the merit and quality of her claim and controlling for case selection effects. While the signaling effect of *pro se* status did not impact the perceived merit of the claim (held constant by design), the signaling effect robustly influenced the perceived monetary value of the *pro se* party's claim. Unlike the public, law-trained individuals steeply discounted the value of the *pro se* party's claim at virtually every stage of dispute handling: the pre-suit demand stage, summary judgment, and trial. As a result, the *pro se* claimant obtained smaller settlement awards and diminished material outcomes. As suggested by the signaling effect hypothesis, *pro se* status affects the value ascribed to claimants and their claims.

Moreover, the mere presence or absence of a claimant's *pro se* status affected a variety of perceptions and appraisals of the claimant, including stereotypes, schemas, and biases that operated to her disadvantage. The pattern of results is troubling in light of research on the BIAS map (Cuddy



et. al., 2007). On balance, the claimant was moderately disliked, and perceived as moderately competent. Significantly, for law-trained individuals, *pro se* status diminished perceptions of the claimant's competence, hireability, and intelligence. As such, social psychological research suggests that *pro se* status may alter where claimants reside on the BIAS map. The presence of *pro se* status (i.e., conversely the absence of counsel) may shift claimants from moderate-competence, low-warmth on the BIAS map to low-competence, low-warmth, as indicated below. Research on the BIAS map suggests that, like welfare recipients and the poor, *pro se* claimants may be treated with contempt and disgust, which may manifest as either active or passive harm (e.g. neglect) (Cuddy et. al., 2007). Consistent with this theory, one lawyer explained, "... the procedural hurdles, hostile case law, overworked judges, and unsavvy *pro se* plaintiffs, along with the paucity of evidence in this case, make the entire scenario extremely unlikely to work out for Ms. Smith."



**Figure 2.** Scatter plot and cluster analysis of groups on competence and warmth ratings. HC-HW = high-competence, high-warmth; HC-LW = high-competence, low-warmth; LC-HW = low-competence, high-warmth; LC-LW = low-competence, low-warmth.

Another lawyer explained, when providing the *pro se* claimant a \$11,000 settlement award, "Not represented by counsel. It's meaningful but not so large that it will cause her to reevaluate her claim and hire counsel." Another lawyer stated, when offering the *pro se* claimant a \$0 settlement at summary judgment, "You can't settle with those who have no case as it brings more cases. But if management insisted, now is the time to do it." Similarly another lawyer stated, upon providing the *pro se* claimant a \$2,610 settlement at summary judgment, "Token amount to make the case go away." Finally, one lawyer who awarded the *pro se* claimant \$35,000 after the presentation of evidence at trial and on the eve of jury deliberations, explained:



A settlement offer here needs to reflect the weight of the evidence and the relative weakness of Atlantic's case. However, the fact that Ms. Smith is a *pro se* plaintiff must be considered. The offer cannot be so substantial as to communicate to her that Atlantic believes she has [won]. They want to keep alive in her mind the fear that she might lose and walk away with nothing--a fear that likely would be very small if she were represented.

These results also support the theory that the signaling effect of *pro se* status is a function of socialization within the legal profession. Turning first to the public, there was no signaling effect disadvantaging unrepresented claimants. To the contrary, unrepresented claimants held a slight advantage at the summary judgment and trial stages, where the public offered higher settlement awards to unrepresented plaintiffs. Unlike law-trained individuals, members of the public apparently do not hold negative schemas and stereotypes about unrepresented litigants. To be sure, this pattern of results is inconsistent with how *pro se* parties, in fact, fare throughout the civil justice system. Future work should examine these paradoxical perceptions of the public.

Those socialized within the legal profession assigned less value to the plaintiff's claim when she was *pro se* than when counseled. This pattern is consistent with unrepresented parties receiving poorer material outcomes within the civil justice system. We theorized that the signaling effect may be a product of socialization within the legal profession both because these individuals have more pronounced schemas and expectations about self-represented litigants (perhaps based on prior experiences with self-represented claimants, or perhaps based on knowledge of how legal officials value and greet *pro se* claims) or because the signaling effect is a form of ego-centric, self-serving professional bias. Our research design allowed us to test the degree to which populations with different levels of professional socialization into the legal profession exhibited the signaling effect: the public, law students of a large Midwestern law school, and EEO lawyers who had graduated from the same large Midwestern law school. By holding the law school constant, we avoided the possible confound of professional socialization by different institutions of legal education. While law-trained individuals hold more pronounced schemas and stereotypes about unrepresented civil rights claimants, we believe that future qualitative and quantitative research should interrogate the content of and sources of these schemas, expectations, and biases. Further research, moreover, may investigate the point at which these schemas, stereotypes, and biases begin to emerge and any reasons or ecological bases for their formation.

Finally, the study revealed another problematic psychological effect that female civil rights claimants must contend with--gender differences in the perception of claimants and valuation of their sex-discrimination claims. Males ascribed less value to the sex-discrimination claimant than females, and males were more likely to derogate the claimant as a complainer, less hireable, and to perceive her failure-to-promote claim as less meritorious.

## CONCLUSION

In light of the signaling effect of *pro se* status, and the psychological barriers that *pro se* parties encounter, existing access-to-justice interventions may be insufficient to ensure materially meaningful outcomes. Many proposed solutions to the access-to-counsel gap accentuate the need to provide uncounseled parties with easier to complete forms, simplified procedures, or better information about legal procedures. To be sure, these access-to-justice remedies assist uncounseled parties in stating claims, decrease confusion, and lend a sense of perceived fairness, allowing them to voice their claims and to be heard (Zimmerman & Tyler, 2010). These existing remedies are important and should be maintained.

Yet *pro se* civil rights claimants suffer disproportionately worse material outcomes at all stages of the dispute pyramid, including early stages, even when EEO forms are made widely available and employed by unrepresented claimants (Quintanilla, 2011). So long as legal officials and lawyers hold negative stereotypes, schemas, and biases that operate against unrepresented parties in the civil rights contexts, existing self-help solutions may amount to only a partial remedy. Self-help remedies fail to address the psychological biases and barriers that *pro se* claimants contend throughout the civil justice system.

Our research reveals that law-trained individuals and legal officials may engage in the ultimate attribution error vis-a-vis *pro se* parties (Hewstone, 1998; Ross & Nisbett, 1991). That is, in the civil rights context, legal officials and lawyers attribute a variety of personality characteristics to unrepresented parties, including negative schemas and stereotypes, such as incompetence and irrationality. Legal officials and lawyers may neglect supply-side barriers in securing counsel, such as recent changes to the landscape of legal structure, economic factors, and other constraints that make representing civil rights claimants less economically viable and feasible. Moreover, a variety of demand-side barriers shape whether claimants ultimately secure counsel.

Given the psychological consequences of *pro se* status, the problem underscores interventions that deals directly with the psychological nature of this phenomenon: education with legal officials about *pro se* parties. Solutions could raise awareness about the negative stereotypes and schemas held about *pro se* parties and the supply-side and demand-side difficulties in obtaining counsel in particular legal contexts. Moreover, legal education, CLE, and judicial CLE should grapple with the gender difference in perceptions of sex discrimination claimants and claims as well.

We concur with other scholars who have contributed to this symposium: the time is ripe to reenvision and reinvigorate access-to-justice research. In particular, we believe that this is an

extraordinary moment to connect empirical access to justice research with psychological science. Psychological science has become a hub science (\_\_\_\_) offering powerful theories and methods to explore the vexing access-to-justice problems that remain unresolved. Left largely unexplored are a variety of powerful psychological processes affecting access-to-justice, including how legal officials perceive, appraise, and evaluate *pro se* claimants and the psychological consequences of denying the public access to justice.

While this contribution has revealed the signaling effect of *pro se* status in a failure-to-promote case, future research is warranted to examine the intersectional nature and potential double disadvantage of particular civil rights claimants and parties. For example, some classes of claims may be discounted more than others, such as civil rights claims. There is an open question about whether the signaling effect occurs in other civil justice context: in the family law context, the small claims court context, the landlord–tenant context, for example. Moreover, research has revealed that one-shot players fare more poorly against repeat players. Power differentials may aggravate the signaling effect of *pro se* status, including when opposing parties are themselves represented by well-versed counsel (Shanahan et. al., \_\_\_\_). Finally, in the civil rights context, existing research reveals racial disparities, with African Americans, Hispanic Americans, and Asian Americans less likely than Whites to obtain representation (Myrick et al., 2012). Future study must examine the possibility of double disadvantage or interactions that exacerbate the signaling effect depending on the race and ethnicity of the claimant. Further research should examine how different social identities (e.g., race, national origin, ethnicity, gender, class, immigration status, sexual orientation) exacerbate the signaling effect of *pro se* status, a wide vista and expanse that remains unexplored (Sandefur, 2008; cf. Deibels & Czopp, 2011).

In conclusion, we offer evidence and cast light on this gap in the literature, but a tremendous amount of investigation remains. In the future, we believe that the biases held against *pro se* parties should be examined by both explicit and implicit measures and that, beyond law students and lawyers, research should be conducted directly with state and federal judges. Further, future research should harness multiple modes of inquiry, extending beyond quantitative measurement to include qualitatively evaluating the content of the schemas and stereotypes by law-trained officials of *pro se* parties. By casting light on answers to these questions, a broader and deeper understanding of what access to justice means and the psychological consequences of a *pro se* claimant's lack of counsel will emerge. This evidence-based understanding will offer the next generation of interventions that can better counteract the biases, schemas, and stereotypes *pro se* parties encounter and contend within the civil justice system.

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