

Why Study HLAB Offers?

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We recently became aware that HLAB President Rachel Lauter and HLAB Faculty Director David Grossman had written an email to the clinical list-serve addressing our paper “What Difference Representation?”. The email has been posted to various locations in the blogosphere. Because the email expresses criticisms of the paper that we also have received from one or two other sources, we thought we would take the opportunity the email presented to clarify certain issues. For example, President Lautner and Professor Grossman echo reactions we have received from another legal aid provider when they say that our study produced “only limited information,” and that more (and more useful) information would be available if we would just analyze the data properly. We explain here that the analysis the email (and one or two other legal services providers) have advocated is statistically invalid, and that in any event the data required for it do not presently exist and cannot at this time be ethically collected. As ought to be clear by now, we have the greatest respect for the students of HLAB, including President Lautner, and HLAB’s clinical faculty, including Professor Grossman. We are using President Lautner and Professor Grossman’s email as a convenient foil representative of a few other comments we have received.

The substance of our response can be captured in the answers to two questions.

1. **Why study the effect of offers of HLAB representation?** All agree that the effect of actual use of representation is interesting, although as we will explain, perhaps less so than one might think at first. But why study the effect of HLAB offers?
2. **Why not compare those who got offers *from any source, not just HLAB* to those who did not get any such offers?** This is what

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President Lauter, Professor Grossman, and a few others have suggested. Why not make this comparison?

We also answer one final question:

3. So how can we find out about the effect of offers from other service providers?

We address each question in turn.

1 Why study the effect of offers from a particular service provider?

There are two basic reasons. The first is when trying to figure out whether some treatment is worthwhile, one must consider the way in which that treatment is delivered. One cannot simply consider whether the treatment “works” in some abstract sense without considering what the delivery mechanism does to its effectiveness.

An analogy (admittedly imperfect): suppose that laboratory experiments demonstrate that a chemical kills a certain kind of intestinal parasite, in the sense that when the chemical is placed in a petri dish with the parasite’s cells, the latter die at high rates. Should the FDA approve, on the basis of such tests, a drug company’s proposal to market an oral pill containing the chemical to the public?

In other words, on the basis of lab tests, can we go from Figure 1 to Figure 2?

We hope not. Among other things, we do not yet know what will happen when the chemical is introduced into the body via an oral pill. Perhaps the chemical metabolizes into something else in the stomach before it can reach the intestine, and that something else might be ineffective in killing the parasite or even harmful to the patient. Perhaps to be effective the chemical must be introduced directly into the intestine. Or perhaps the relevant drug company, try as it might, cannot formulate an effective way to deliver the chemical. The point is that even if the chemical is in some sense “works” on parasitic cells, the mechanism by which the chemical is delivered is critical to deciding whether the chemical can form the basis of an effective treatment.

If we want to evaluate the effectiveness of a real-world treatment, which is surely a highly relevant (perhaps the most important) question for a policy maker deciding whether to fund an intervention associated with this chemical,



Figure 1: The chemical works in the lab, but . . .



Figure 2: . . . would you necessarily eat it?

then we cannot look only or even primarily to how the chemical behaves in the lab. We must instead look to how a treatment based on that chemical (including a delivery mechanism) works in the real world.

Here, in our rough analogy, actual use of representation is the chemical in the lab, and an offer of HLAB representation is the delivery mechanism. The causal effect of the offer measures the effectiveness of HLAB's program because offers of representation are what HLAB provides to its client base. Of course, HLAB makes offers because it wants to provide actual representation, but the fact is that it can do so only by offering representation. In this country, no legal services provider has the capacity to force potential clients

to be represented (by its own staff or otherwise), nor could it prevent those randomized not to receive an offer from finding legal assistance elsewhere. Thus, to assess the effectiveness of a legal services program, we should first focus on the causal effect of an HLAB offer.

So that's the first reason for why we study the effect of HLAB offers. What's the second reason? The second reason we study HLAB offers is because that's what we can study. The HLAB offer was what was randomized. Actual use of representation was not randomized.

To see why this is important, think about who accepts an HLAB offer of representation, and who tries to find alternative representation if turned down by HLAB. Borrowing a framework developed by statisticians analyzing medical data, we think there are three types of people:

1. **Rotten Apples:** People who, even if they receive HLAB offers, will not end up represented. Some clients simply fall off the face of the Earth, and despite HLAB's (or any service provider's) best efforts, they cannot be found. For now, we call these people "Rotten Apples," because they cannot be represented.¹
2. **Regular Apples:** People who will be represented if they receive an HLAB offer but who, if turned down, will NOT go find representation from a second source. It may be these people have the stuffing, organization, and persistence to take one shot each at getting representation, but give up after that one shot. Or it may be that they have nowhere else to turn if they do not get the HLAB offer. For now, we call these people "Regular Apples."
3. **Ripe Apples:** People who will not take "no" from the universe. If they don't get an offer of representation, they WILL get representation from somewhere else. For now, we call these people "Ripe Apples."

In general, any client pool has a combination of Rotten Apples, Regular Apples, and Ripe Apples. The great thing about randomization is that it assures that the treated group, the group that received HLAB offers, has roughly the same combination of Rotten, Regular, and Ripe Apples as does

¹By using the phrase "Rotten Apples," we are making a statistical point that we can relate to pictures. We mean to imply nothing about the lives or circumstances or worth of persons who do not respond to a legal services provider after an offer is made. Such persons may be deserving of representation in a dignity and due process sense. Our point here is only that the fact that a legal services provider cannot contact a potential client after making an offer of representation to him/her may provide statistical information about how likely he/she is to have a good case, or how likely he/she is to be able to develop that case or assist in its development.

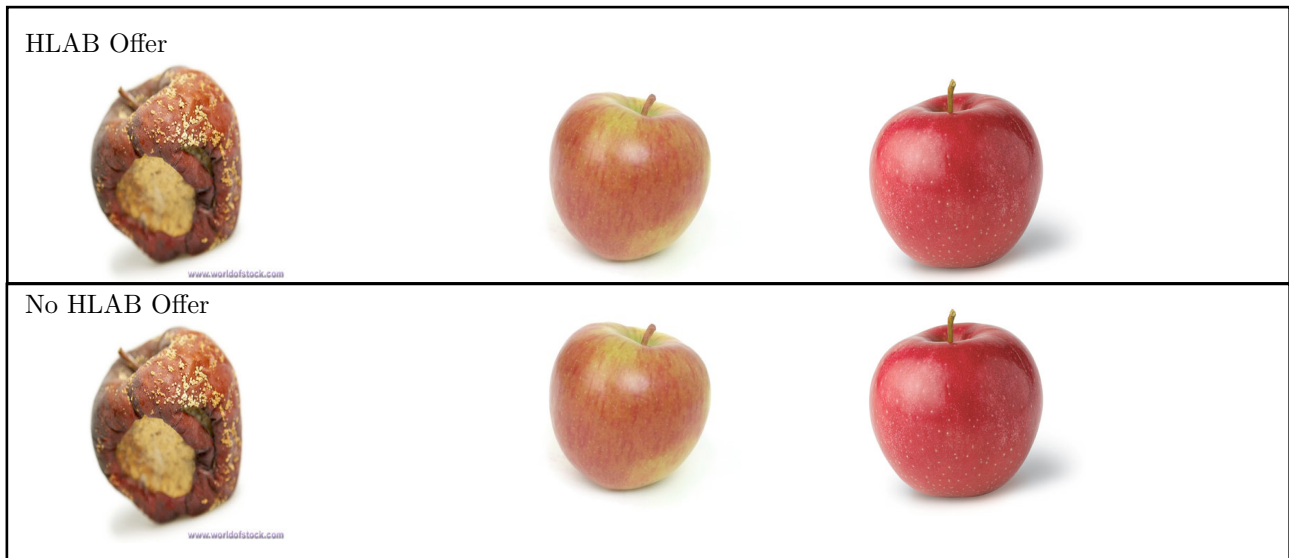


Figure 3: This what we get when we focus on HLAB offers: Both groups have all types of apples, a fair comparison.

the control group (just as the treatment and control groups have roughly the same combination of whites, blacks, and Hispanics, and high drop-outs, high school graduates, and college graduates). That's what randomization does. And it's important because Rotten Apples may have worse cases, or be less likely to win their cases, or be less able to assist a lawyer. Why? Being transient, or unresponsive, or hard to reach, or not as careful, are all traits that may affect one's ability to win, or the likely facts in one's case. Similarly, Ripe Apples may be people who are super-responsible, super-energetic, which might make them more likely to have better facts (about why they left work, for example) or be better able to develop those facts. So, if we focus on the group that received HLAB offers versus the group that did not receive HLAB offers, the randomization assures that we're getting the comparison in Figure 3: Both groups have all types of apples, as they should. And the fact that the offer and no-offer groups have roughly the same mix of apples (due to randomization) is what allows us to attribute any average differences in case outcomes to what does differ between the groups, namely, the offer of representation.

But suppose we were to compare those who got representation to those who did not. What then? Well, that would mean we'd have to take out the Rotten Apples from the group who got HLAB offers and move them to the control, or unrepresented, group. After all, the Rotten Apples are rotten precisely because they did not end up represented, even though they got HLAB offers. It also means that we'd have move the Ripe Apples from the control group

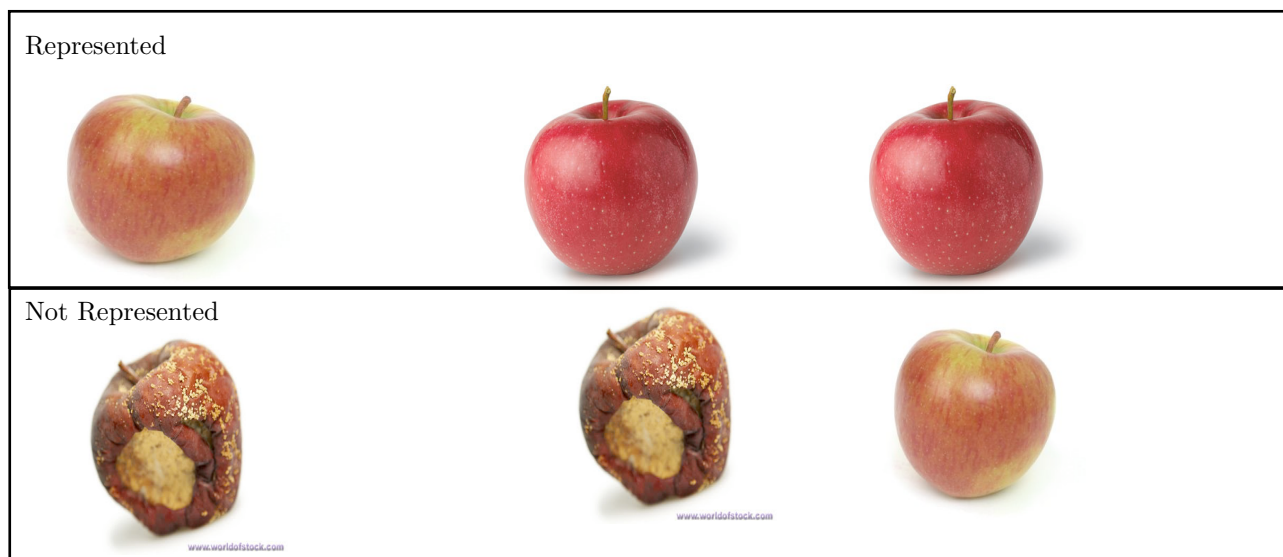


Figure 4: This what we get when we focus on who got actually represented: We aren't sure this is fair.

up to the treated/represented group, because the Ripe Apples made sure they were represented even though they did NOT get HLAB offers. So we end up comparing a group with no Rotten Apples and a double helping of Ripe Apples, those are the represented, to a group with a double helping of Rotten Apples and some Regular Apples, the unrepresented. See Figure 4. Is that a fair comparison? We think it may not be; again, it depends on whether Rotten Apples (those who are impossible to reach or do not take advantage of representation when offered) have weaker cases, or are less able to develop those cases. Or on whether Ripe Apples (those who persist until they find representation) are more likely to win because they are hard workers by nature.

To be clear, we think that if we could infer the effect of actual use of representation, that would be good to do. Knowing the effect of actual use would be helpful because it might help us figure out how to make offers more effective. Suppose it turns out that HLAB offers are not effective. If actual use of representation is really effective but we can't get people to actually use it, then we might try to convince offerees of the benefits of accepting representation. If, on the other hand, actual use of representation is not that effective, then maybe one thinks about changing the way that representation is provided.

We tried. We did our best to get an answer on the effect of actual use of representation. It's a hard statistical problem, for the reason the paper explains. We couldn't get much of an answer on win/loss, although we did

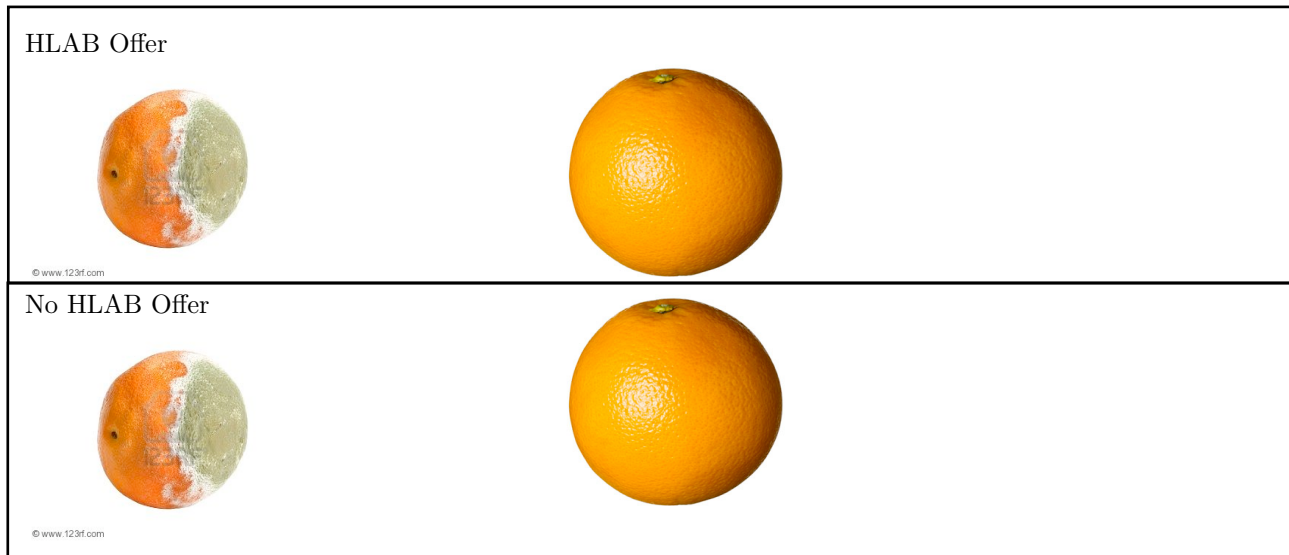


Figure 5: This what we get when we focus on HLAB offers: Both groups have two types of oranges, a fair comparison.

get an answer on delay (actual use does cause a delay).

2 OK, so why not compare those who got offers (from ANYONE) to those who got no offers (from anyone), as President Lauter, Professor Grossman, and a few others have suggested?

The first reason why it makes no sense to compare offers (from anywhere) to no-offers (from anywhere) is that doing so might lead people to think that our dataset has information on the effect of an offer (from anywhere). It doesn't. We have data only on unemployment claimants who called HLAB. We have no information, no data at all, on people who contacted and/or got offers from other service providers without going to HLAB. If someone went to another service provider but never called HLAB, we never saw that person in our study. In other words, our data only have information on the effect of an HLAB offer, not an offer (from anywhere). That is because HLAB was the only unemployment service provider who worked with us. And as explained above, if we want to know the effect of an HLAB offer, we should do the comparison in Figure 3.

Well, OK, one might say, one can at least compare those who got offers from anywhere versus those who did not *for the group that contacted HLAB*. It's not clear to us why that comparison is interesting, but at least two service providers have suggested that this is what they want, and they clearly know more than we do about delivering legal services. Furthermore, suppose

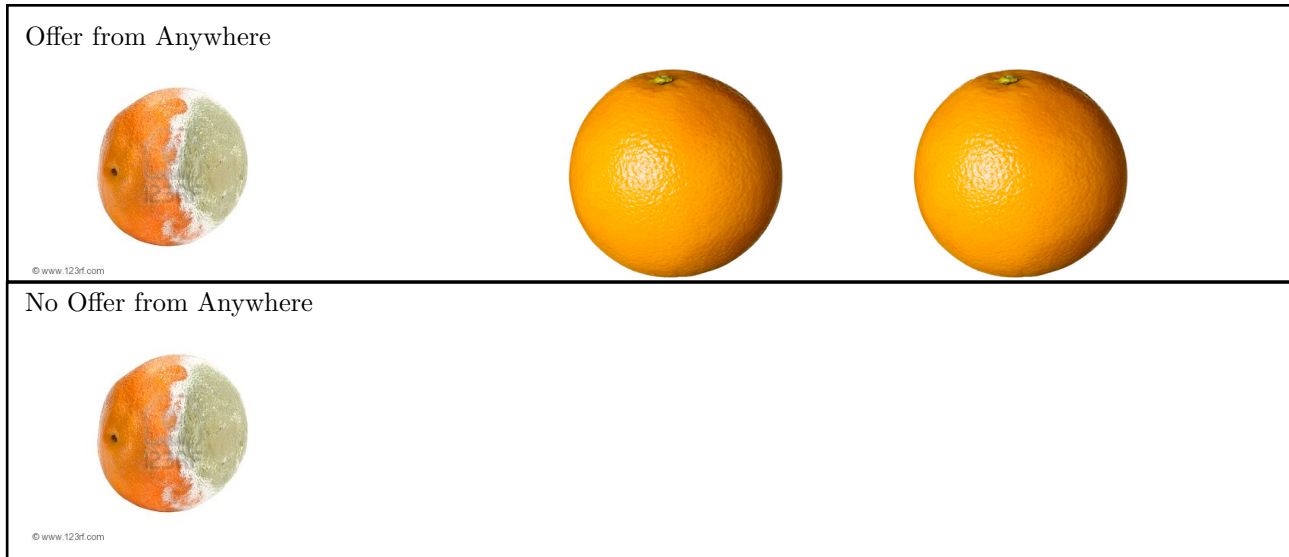


Figure 6: This what we get when we focus on comparing offers from anyone (treated) to no-offers from any source (control). We're not sure this is fair.

we could make this comparison (actually, we can't, we don't have the data and cannot now get it).² Would this be a fair comparison? Probably not. The reason is, again, we only randomized offers from HLAB, not offers from anywhere.

Since we used apples before, we'll now talk in terms of . . . wait for it . . . oranges. With the apples, we needed three types, but for the oranges, we need only two:

1. Moldy Oranges: People who have the time, the organization, etc. to make exactly one attempt to get an offer only. If an offer comes from HLAB, great. If no HLAB offer is forthcoming, they do not search for another.³
2. Ripe Oranges: Those who refuse to let the universe say no to them; if no HLAB offer is forthcoming, they have the persistence, the organizational skills, the articulateness, etc., to get another one. And, again, the persistence, organizational skills, and articulateness might suggest that the Ripe Oranges have better facts, or are better able to develop those facts, than the Moldy Oranges.

²President Lauter and Professor Grossman's email, by stating that "one would need to reanalyze Professor Greiner's data" to make this comparison, might be read to suggest that we already have data on whether people who were randomized to receive an HLAB offer got an offer from somewhere else, and that we'd just have to analyze it the right way. No so. We do not have information on who in the no-HLAB-offer group got an offer somewhere else. And the unemployment claimants who consented to participate in our study did not consent to having their names shared with anyone else, so we could not now obtain this information by asking other legal services providers whether they made offers to these claimants.

³Again, we are attempting to make a statistical point here in a way that gives us easy and striking pictures to use. We don't intend to suggest the persons in this category are less worthy in any way at all.

With that in mind, if we focus only on who got an HLAB offer versus who did not get an HLAB offer, we get the comparison in Figure 5, which seems fair to us: both groups have a mixture of Moldy and Ripe Oranges.

But suppose we compare those who got an offer from anyone to those who did not get an offer from anyone. Now we have to move the Ripe Oranges to the offer group, so that the offer group has a double dose of Ripe Oranges, while the no-offer group has only Moldy Oranges. See Figure 6. Fair comparison? We are doubtful that it is.

3 So how can we find out about the effect of offers from other service providers?

These other service providers can accept our invitations to participate in an evaluation.