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Organizational Scarring, Legal Consciousness, and the Diffusion of Local Government Litigation Against Opioid Manufacturers

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Abstract

Between 2017 and 2020, local government attorneys' offices in the United States filed a surge of lawsuits against opioid manufacturers, distributors, and retailers. Aimed at recovering the costs of the opioid epidemic, this "affirmative litigation" was a novel action for most of them. Participation necessitated a tectonic shift in how they conceptualized their roles vis-à-vis the law. To understand how this occurred, we use a mixed-methods approach that draws on in-depth interviews and event-history analysis. Our investigation reveals the importance of "organizational scarring," wherein an organization develops a lingering sense of having been wronged by another entity—a feeling that persists via an organizational narrative but does not shape organizational action until much later. Here, scarring resulted from the Big Tobacco lawsuits. As many localities perceived it, states' distribution of settlement money unfairly disadvantaged them. This scar was activated when the possibility of opioid litigation arose, triggering distrust of state legal action and causing local government attorneys to reconceptualize affirmative litigation as befitting their roles—which facilitated their decisions to sue. Our findings not only shed light on a tactic that local governments are increasingly using to respond to public health crises, but also inform research on organizational learning, diffusion, and legal consciousness.

Keywords

legal consciousness, local government action, opioid epidemic, organization theory, practice diffusion

In 1996, a little-known drug manufacturer named Purdue Pharma introduced a long-lasting, opioid-based painkiller called OxyContin. Prescriptions skyrocketed as the company convinced pain management experts that OxyContin was "the right tool for the job of pain relief" (Pryma 2022:18). Yet, contrary to the company's assurances about the product's

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safety, signs of widespread addiction soon emerged. Between 2001 and 2021, over 628,000 deaths were attributed to opioid overdoses (Spencer, Minino, and Warner 2022). In addition to the immeasurable toll of lost lives, the opioid epidemic imposed heavy financial burdens on governments, including the provision of emergency healthcare and responses to addiction-related crime.

Federal and state governments took limited legal action to combat the epidemic,[1] but it was not until nearly two decades after the drug's introduction that *local* governments—cities and counties—initiated legal action on a broad scale. The first lawsuit was brought in 2014 by two California counties alleging that Purdue and other opioid manufacturers created a public health nuisance by using deceptive marketing practices and downplaying the drug's risks (Haffajee 2020; Haffajee and Mello 2017). In 2017, locally-led litigation against opioid manufacturers, distributors, and retailers began to diffuse rapidly throughout the United States. Less than 12 months later, there were enough similar suits that the U.S. Judicial Panel on Multi-District Litigation (MDL) consolidated them, creating an unprecedented "negotiation class" of local governments.[2] In addition to portending an eventual legal settlement and likely payout, the MDL evidenced the suits' widespread diffusion. By the end of December 2020, 56 percent of U.S. counties (1,746 out of 3,142) had filed lawsuits.

Lawsuits of this type, in which governments initiate legal action as plaintiffs against large companies to vindicate the public interest, are known as "affirmative litigation" and have generally been rare among local government attorneys' offices (Monea 2019). Historically, local government attorneys perceived their professional domain as fundamentally "defensive" (e.g., representing the county when it is sued for breach of contract or violating civil rights; see Swan 2018), whereas affirmative litigation is seen as more "aggressive" and even anti-business. To date, local government attorneys have rarely "gone after" big business (Lemos 2021:971). The primary plaintiffs for large-scale legal action seeking to hold corporations—such as mortgage lenders (Totten 2015) and asbestos manufacturers (Hensler 2006)—accountable for widespread harms were usually individuals (via class action lawsuits) or state attorneys general.

Thus, beyond requiring litigative capacity and expertise that local government attorneys typically lack, engaging in affirmative litigation like the opioid lawsuits required a tectonic shift in how local attorneys conceptualized their roles vis-à-vis the law. This shift implicates a concept that sociolegal scholars term "legal consciousness": the set of social processes that constitute "the way in which the law is experienced and interpreted by specific individuals as they engage, avoid, or resist the law and legal meanings" (Silbey 2001:8626). Given these formidable obstacles, what shaped local government attorneys' decisions to initiate opioid litigation, resulting in lawsuits by over half of U.S. counties?

Organizational research on practice adoption and diffusion, aimed at understanding how social structures shape the spread of policies, practices, technologies, and strategies across a population of organizations, provides a partial answer (for reviews, see Naumovska, Gaba, and Greve 2021; Strang and Soule 1998). A fundamental insight from this literature is that practices gain legitimacy as they proliferate, fueling further adoption (DiMaggio and Powell 1983; Tolbert and Zucker 1983). Once a critical mass of local attorneys' offices had filed suits, those who had not yet done so might begin to view these actions as appropriate and even necessary. But explaining the surge of suits by the hundreds of earlier filers is more difficult. Diffusion research posits that functional factors (e.g., the desire to increase efficiency or mitigate harm) typically motivate the earliest adopters (Kraatz and Zajac 1996; Mansfield 1961; Strang and Macy 2001; Tolbert and Zucker 1983), but such drivers do not fully explain how local government attorneys came to see this instance of affirmative litigation as appropriate, given its historical misalignment

with their role perceptions. Although it is widely recognized that "incompatibility with cultural values can block . . . adoption" (Rogers 2003:241), little is known about the processes and factors involved in surmounting this barrier.

The widespread initiation of opioid lawsuits, despite local government attorneys' perceptions that affirmative litigation was beyond their professional repertoire, provides an opportunity to better understand the factors that affect organizational decision-makers as they consider adopting novel practices, and to generate insights regarding the processes that constitute legal consciousness within organizations. Given the process-oriented nature of our research question, we adopted a mixed-methods approach (Fine and Elsbach 2000; Singleton and Straits 1999). To generate potential explanations for local attorneys' decisions, we first conducted semi-structured interviews with local government attorneys throughout the United States who varied in their approaches to the opioid suits. Then we systematically tested these explanations by analyzing a unique longitudinal dataset of all opioid lawsuits filed by local governments between January 2017 and December 2020.

Our analyses reveal the importance of a novel factor, which we call *organizational scarring*. This term denotes a lingering sense of one's organization having been wronged by another entity in the distant past. This abiding impression of injury or injustice resides in an organizational narrative (Vaara, Sonenshein, and Boje 2016), a story or account that circulates among organizational members and eventually becomes common knowledge even among people who did not directly experience the harm. The scar persists, lacking any immediate effects but retaining the ability to come to the fore and shape action when sufficiently analogous events arise. If and when that occurs, the organizational narrative within which the scar resides colors how organizational members view the current situation, negatively shaping their expectations of others' behavior. Scarring is a form of organizational learning; it involves drawing on prior experiences to inform present-day decisions and actions. Unlike most forms of organizational learning, however, a scar only shapes action through a delayed affective response, rather than spurring the immediate development of new routines, practices, or capabilities.

Local governments were scarred by state governments in the late 1990s, when state attorneys general led litigation against the four major tobacco manufacturers ("Big Tobacco"). Responding to the public health crisis caused by tobacco addiction, states sued on behalf of the state government as well as their constituent local jurisdictions, eventually receiving a settlement of $240 billion (Rabin 2001; Traylor 2010). Because lawsuits proceeded at the state level, state governments were responsible for apportioning the settlement funds. In some places, this apportionment caused little friction. But in others, counties and cities were so galled at what they perceived as the state's insufficient and inappropriate distribution of funds that it created a scar, which persisted via an organizational narrative about the source of the harm. This scar negatively affected local jurisdictions' expectations of state-level actors, spurring distrust when an analogous situation arose years later—even in cities and counties where no one working in the office had been employed there during the tobacco litigation.

Organizational scarring exemplifies how the social processes that constitute legal consciousness can shape organizational behavior. When the opioid suits began, most local government attorneys still thought state governments were the most appropriate actors to engage in this kind of lawsuit. Yet the distrust created by the Big Tobacco litigation gave localities pause about allowing the opioid litigation to unfold in the same way. In the time since the Big Tobacco suits, there had been other widespread corporate harms, from asbestos to lead paint, that in a legal sense *could* have spurred affirmative litigation on the part of cities and counties, but these harms did not activate the scar. By contrast, the

opioid cases were too strikingly analogous *not* to recall Big Tobacco (Engstrom and Rabin 2021): a group of large companies had manufactured a highly addictive substance that individuals consumed directly, had hidden information about the health harms of that substance, and city and county hospitals and emergency responders had been heavily burdened.

Given these similarities and the desire to avoid a repeat of the Big Tobacco outcomes, local attorneys began to reconsider whether their involvement in affirmative litigation against opioid manufacturers might be warranted after all. If their core professional purpose was to protect and defend their cities and counties, then perhaps—given the perceived injury to localities from the tobacco settlements—affirmative litigation would not be "aggressive," but a way to *defend* their localities from having the state take the litigative lead again and keep the money the counties felt they were rightfully due. Local attorneys began to draw heavily on this reasoning, many of them recasting the opioid litigation as a means of protecting or defending their city or county. This shift in the attorneys' legal consciousness provided a crucial underpinning for the decision to engage in opioid litigation.

The notion of organizational scarring arose clearly and organically in our qualitative research, and our quantitative analyses provide systematic evidence of its effects net of other established drivers of local government action, such as the magnitude of harm, constituents' political leaning, and social influence (Dokshin 2016; Steil and Vasi 2014; Vasi and Strang 2009). Our results hold in analyses using state-level indicators of organizational scarring in the full population of U.S. counties, as well as in subsamples with finer-grained county data.

Overall, our analysis explicates a key factor underpinning the unprecedented wave of locally-led legal action that sought recompense from corporations for the costs of the opioid epidemic. In doing so, we spotlight a litigation tactic that is growing among local governments (Morris 2016), having subsequently been used to address challenges such as the climate crisis (Hersher 2022) and e-cigarettes (Schroth and Proshansky 2025). In addition, our investigation enhances the organizational learning literature by specifying a novel way that prior experiences can shape organizational actions. We also offer insights for research on diffusion, shedding light on how negative experiences can prompt organizations to reframe their assessment of practices that run counter to longstanding beliefs. Finally, we contribute to the legal consciousness literature by showing how legal consciousness takes shape over time within an organization through relational experiences.

BACKGROUND AND LITERATURE REVIEW

To set the stage for our investigation of how local governments became involved in opioid litigation, we first provide a brief overview of the historical role of local government attorneys. We then consider sociological research in the areas of diffusion and legal consciousness, which each provide foundational insights pertinent to understanding the initiation and spread of opioid litigation but leave critical pieces unexplained.

Historical Role of Local Government Attorneys

In the United States, county- and city-level civil legal representation traditionally serves two major functions: representing the jurisdiction in transactions (e.g., purchasing real estate for government buildings or contracting with service providers) and defending it against litigation (e.g., suits for unlawful termination of employment, violation of civil rights, or breach of contract) (Monea 2019). Although local jurisdictions vary in terms of size and resources, historically these offices rarely engage in affirmative litigation—they do not typically initiate legal action against a large business under a theory that the

company has caused widespread harm to the county or its constituents (Lemos 2021; Monea 2019). Counties are often plaintiffs on transactional and other routine matters, such as enforcing the terms of a construction contract or a civil code, but these types of actions are not considered affirmative litigation (Renne 2017). Until the mid-2010s, the rare exceptions occurred primarily in larger, well-resourced, or politically progressive municipalities (Swan 2018). For example, San Francisco engaged in several such suits, including suing payday lenders for alleged financial abuses in 2007 and suing the National Arbitration Forum for unlawful arbitration practices in 2008 (Morris 2010). But in general, before the opioid crisis, affirmative litigation was outside the repertoire of most city and county attorneys' offices.

Organizational Practice Adoption and Diffusion

Because opioid litigation can be viewed as the widespread adoption of a novel organizational practice, we consider insights from the literature on practice adoption and diffusion as we build toward an explanation of this phenomenon. At the organizational level, practice adoption occurs as organizational decision-makers become aware of a novel practice and decide whether adoption will help them achieve key organizational goals, such as performance, efficiency, or social legitimacy (Briscoe and Murphy 2012). In other words, adoption decisions involve interpretation and assessment (Strang and Soule 1998). One of the most widely accepted tenets of diffusion research is the idea that the factors involved in such interpretation and assessment differ over time (Tolbert and Zucker 1983). In the early stage of diffusion, functional factors, like the desire to increase efficiency or mitigate harm, drive adoption decisions (Kraatz and Zajac 1996; Mansfield 1961; Strang and Macy 2001; Tolbert and Zucker 1983). Later, as more organizations adopt, legitimacy builds. This social proof positively affects decision-makers' assessment of practices, fueling wider adoption and mitigating the predictive power of functional factors (DiMaggio and Powell 1983; Greenwood, Suddaby, and Hinings 2002).

In general, adoption of a novel practice is more likely when it has been "theorized," meaning a causal model links a practice to desirable outcomes (Strang and Meyer 1993). By providing a plausible account by which adoption will lead to positive outcomes, theorization draws on norms of rationality to make a practice more appealing (Greenwood et al. 2002). As a result, theorization facilitates widespread adoption (Davis and Greve 1997). According to Strang and Soule (1998), much theorization is externalized in public discourse, as the media, professional groups, and social movements promulgate new practices. In the case of local government action, political coalitions and nonprofit organizations may shape theorization and diffusion of policies (Brandtner 2022; Dokshin 2016; Martin 2001; Steil and Vasi 2014; Vasi and Strang 2009).

Yet, theorization is not a sufficient condition for adoption, as organizations may respond differently to the same institutional cues. As Strang and Meyer (1993:493) note, "theorization is a strategy for making sense of the world. As such, it is employed in individual-specific ways by potential adopters themselves." In other words, even when a new practice is theorized, organizations may react differently to it based on a range of organizational characteristics that shape susceptibility to adoption. Naumovska and colleagues (2021:393) suggest that examining these sources of variation more deeply is an important next step in this area of research, noting that organizational histories and learning seem especially promising as sources of heterogeneity in the adoption of novel practices. Likewise, we suspect that these factors might help explain why organizational actors, such as local government attorneys' offices, would adopt practices they initially view as inconsistent with their professional roles.

Legal Consciousness

Local government attorneys' offices had to make interpretive decisions regarding whether their participation in opioid lawsuits was the right course of action. To better understand the behavior of local government attorneys, we turn to the sociolegal literature on legal consciousness—the ongoing, dynamic social processes that constitute people's relationships with law (McCann 1994:7), including how individuals experience and interpret law, legality, and legal meanings (Silbey 2001:8626).

To date, the legal consciousness literature has paid little attention to how organizations decide what their appropriate roles, rights, and responsibilities are vis-à-vis the law. We do not know whether beliefs and orientations toward law can "live" within an organization, such that its members absorb and transmit socially produced beliefs and understandings that carry beyond an individual. Instead, research has focused on how legal consciousness shapes the experiences of lay individuals. For example, scholars have examined working-class Americans' experiences with courts and mediation (Merry 1990), how public harassment shapes the way people think about law (Nielsen 2006), and which factors affect claims-making among first-generation immigrants (Abrego 2011). A small body of recent work, generally outside the United States, has examined the legal consciousness of lawyers, explaining how their professional roles are shaped and constrained by ties to people and institutions (Liu 2016; Liu and Halliday 2016). This work echoes earlier law and society research on the organizational factors, professional relationships, and role understandings that limit a more robust realization of law's "on-the-books" promises (Alschuler 1975; Blumberg 1967; Sarat and Felstiner 1989; on a distinct but related note, see Kennedy 1980).

Much of the earliest sociolegal work on legal consciousness documented variation in legal actions and attitudes among particular groups and categories of actors (Silbey 2005:324). Later, researchers began to operationalize legal consciousness as an "ongoing, dynamic process" rather than a static variable or category (McCann 1994:7). One of the most important directions this research has taken is the examination of social processes that underlie the production of legal consciousness. Legal consciousness has always been considered in social context (see, e.g., Gallagher 2006; Hoffmann 2003; Marshall 2005), but its inherent relationality was brought to the fore in Young's (2014) theorization of "relational" legal consciousness, which contained a more granular consideration of legal consciousness as a product of socially contingent and socially produced understandings (for an overview of the relational roots of legal consciousness, see Chua and Engel 2019:344–45). In the past decade, relational legal consciousness has been explicitly theorized as the socially contingent, embedded processes by which legal consciousness is created (Chua and Engel 2019; Young 2014; Young and Chimowitz 2022). Operationalizing legal consciousness as relational has led to its more fulsome examination among both laypeople and those who enforce and enact the law, and in social contexts ranging from families (Wang 2019) to welfare fraud enforcement agencies (Headworth 2020) to prosecutors' engagement with the public on social media platforms (de Sa e Silva 2022).

Despite this growing scholarship, legal consciousness has rarely been considered in *organizational* context, except to the extent that institutional structures, norms, and characteristics affect individual legal consciousness. For example, Larson (2004) examines how regulatory implementation norms in the global securities industry shape brokers' legal consciousness and consequent market behavior, and Hoffmann (2003) shows how organizational structures within taxicab companies affect workers' legal consciousness and workplace grievance resolution. But whether the processes that constitute legal consciousness can be said to "reside" within an organization—or by what mechanisms this would occur—is not well understood. Local

government lawsuits against opioid manufacturers offer an ideal site for understanding the production, maintenance, and transformation of legal consciousness within an organization.

QUALITATIVE STUDY: INTERVIEWS WITH COUNTY ATTORNEYS

Given that prior literature did not enable us to generate testable hypotheses regarding why and how local government attorneys reconceptualized their participation in affirmative litigation, we used a mixed-methods approach (Fine and Elsbach 2000; Singleton and Straits 1999). The first part of this approach was to formulate explanations inductively. To develop a deeper understanding of county attorneys' involvement in the opioid litigation, and specifically the social and cultural contours of their decision-making, we conducted semi-structured, in-depth interviews with city and county attorneys. These interviews probed attorneys' beliefs about the law, their understanding of their institutions' role in the legal landscape, the decision-making processes surrounding the opioid litigation, and the local cultural and political landscape of the opioid crisis.

Methods

We selected interview subjects using a statistically nonrepresentative stratified sampling model (Trost 1986) to ensure that the attorneys we interviewed were drawn from counties that were diverse along numerous lines: population size and density, racial composition, political leaning, and number of opioid deaths per capita. Because these interviews were exploratory, we were not seeking a representative sample; we were aiming to draw from a variety of perspectives. We included jurisdictions that entered the litigation at different points in our period of interest (2017 to 2020), as well as jurisdictions that did not join the litigation.

Attorneys are notoriously reluctant to discuss ongoing lawsuits, and our response rates were unsurprisingly low (Krieger and Sheldon 2015), albeit higher than expected, about 20 percent. We conducted 34 interviews: 29 with city and county attorneys from 18 states[3] and five with private attorneys. We were vague about the subject of the interview in our initial outreach, explaining that we were researching "local government lawsuits." Most interviews took place after a few outreach attempts, and attorneys often questioned us to ensure we were not journalists or Big Pharma employees. Additionally, because interviews took place in the early days of the Covid-19 pandemic, offices were short-staffed and did not regularly return correspondence. Nonetheless, in all but one jurisdiction where we were able to speak directly with an attorney, they consented to be interviewed about the opioid litigation. The rate of callbacks did not appear to differ based on jurisdictional characteristics such as size or region. For all these reasons, although it remains theoretically possible that our interviewees differed in some systematic way from local government jurisdictions in general (see Small and Calarco 2022), we found no reason to suspect this was so.

Semi-structured interviews were conducted by one of the authors and three trained research assistants[4] over six months in late 2020 and early 2021. Interviews followed interviewees' lines of thought while covering key areas, including the role of local government attorneys, their beliefs about affirmative litigation, the effects of the opioid epidemic in their region, their jurisdiction's decision-making processes about the litigation, and the extent of their day-to-day involvement in the opioid lawsuits. (See the Appendix for our interview protocol.) Interviewees spoke on the condition of confidentiality.[5] Except in a handful of cases where participants requested to speak by phone, interviews were conducted via Zoom. Most interviews lasted one to two hours. Because the number of interviews was relatively small, we coded interviews and managed codes by hand. Themes fell into a few areas relevant to potential explanations for local jurisdictions' involvement in the opioid lawsuits, which we detail below.

Overview of Results

Early in our interviews, one theme consistently emerged—and in over half of our total interviews, it actually did so before we raised the topic ourselves. Local attorneys analogized the opioid litigation to the tobacco lawsuits of the 1990s, in which the states had sued the four largest tobacco manufacturers on behalf of themselves and their constituent jurisdictions. We begin our description of the qualitative results by discussing how the tobacco lawsuits created what we conceptualize as an "organizational scar." We detail the various processes by which the scar was reactivated in the context of the opioid crisis.

Source of the Scar: Local Government Experiences of the Big Tobacco Litigation

Under the 1998 Master Settlement Agreement (MSA) between states and tobacco companies, states received annual payments totaling around $240 billion over a 25-year timeframe (Rabin 2001). It was widely presumed these funds would go toward reducing tobacco use and improving public health through education and cessation programs (Berman 2018). However, the MSA did not formally specify or restrict how states spent the money (Redhead 1999), so states could determine how to allocate the funds to benefit their constituent jurisdictions.

Some city and county attorneys described the settlement distribution with equanimity, characterizing it as appropriate, unremarkable, or saying they never heard much about it. For example, one county attorney in Colorado (whose jurisdiction did not file suit in the opioid litigation[6]) said, "To tell you the truth, I don't know how [the tobacco settlement] came down. All I know is that we got some tobacco money for those purposes and it was always geared toward heath education." A county attorney in Washington State (also from a non-filing jurisdiction) said he did not know how the tobacco money was used and had no "particular feelings" about it. An attorney from Minnesota (another nonfiler) and an attorney from Indiana said they had never heard much about the tobacco settlement, either.

However, most of our interviewees had a different experience. Some believed their state had funded tobacco cessation and prevention programs ineffectively, or spent the money on items unrelated to tobacco. For example, an Oregon county attorney said that although some of the tobacco settlement money had been used appropriately, much of it had not:

> They spent some [of the tobacco settlement] money on raises for themselves. They spent it on witness fees to prop up the witness fee program. They got into the grease over their management of the public employment retirement system, so they took some of the money and spent it on buffing up and backing up the retirement system. They spent $40 million of it on a computer upgrade for DMV that finally failed and they had to sue the manufacturer! . . . The money's been spent on things other than tobacco.

Our interviewees' more common complaint—one more than half of them expressed—was that the state retained an unfair portion of the tobacco settlement. As one Arizona attorney told us, "The tobacco litigation was handled at the state level and, candidly, unfortunately was resolved at the state level, with none of those resources really flowing directly back [to the county]." A Tennessee attorney said, "It was apportioned to the states based on population and that sort of thing. By the time it got watered down to the smaller counties like this, we didn't see much, if any." A Midwestern attorney said they "didn't really get any local funds" from the settlement. And a city attorney in New England said they received funds from the state for only about a year, although the funds should have been ongoing: "After [the first year] the [state] really converted all of the funds for use by the state."

As our interviewees perceived it, states were structurally tasked to consider smaller

jurisdictions' interests by allocating a fair share of the settlement to offset cities' and counties' tobacco-related health and education expenditures, but failed to do so. This narrative, which attributes the lack of funding for anti-tobacco programs to counties' decisions to trust states with the Big Tobacco litigation, circulated among local government attorneys. As a result, interviewees—many of whom had not even been working for the government at the time of the litigation—often expressed the sentiment that their jurisdictions had been wronged by the state. This lingering sense of having been harmed in the past typifies *organizational scarring*.

The initial scarring did not lead to any short-term response. It did not seem to immediately sour the state-local relationship, and local attorneys' offices did not develop capabilities related to affirmative litigation, despite numerous issues that could have warranted such action (e.g., climate change, lead paint, PFAS chemicals). If the scar imparted organizational "lessons," they were not codified in routines, policies, or programs. In this sense, organizational scarring operates differently from extant models of organizational learning, which entail "encoding inference from history into routines that guide behavior" (Levitt and March 1988:319). Instead, on the surface, nothing seemed to change.

Experiences of the Opioid Epidemic

Responding to questions regarding the local impact of the opioid epidemic, interviewees reported that it shook communities to their core. They had been acutely aware of opioids' effects long before litigation was on the horizon, because they had been witnessing the epidemic first-hand for years. A Tennessee county attorney told us:

> Opioid use is one of those things that crosses socioeconomic lines and geographic areas and it affects everyone, from the poor to the rich, it's a constant struggle. I don't think any family is isolated from it. I talk with people in the community and it seems like every family knows somebody that's got a problem with addiction to opioids.

Lives were lost, families were shattered, and counties were financially burdened as law enforcement and medical facilities scrambled to keep up with increased property crime, overdoses, and treatment needs. City and county attorneys lamented "reckless overprescription" (a Minnesota attorney) and said that opioids' "devastating" toll (a Pennsylvania attorney) were common knowledge. One described watching one of his own law student interns become addicted to opioids, turning her life into a "downward spiral." Another attorney choked back tears as he explained that his own son had died from an overdose.

Alongside their communities' inundation with opioids, county attorneys became aware that the epidemic was having a profound impact nationwide. Several interviewees mentioned seeing media coverage of overdoses, and professional materials about opioids abounded in legal publications. One attorney recalled a 2016 article in *Minnesota Lawyer* magazine detailing the spike in opioid-related deaths and the "pill mills" that contributed to the problem. A city attorney in California recalled a striking series of articles in the *Los Angeles Times* that he had discussed with his colleagues and counterparts in other cities. Other attorneys mentioned specific television shows, movies, or news coverage.

It was not long before the analogy between tobacco and opioids became pervasive in these attorneys' professional worlds and in the media. As they recounted it, the parallels were undeniable. Tobacco and opioids were both harmful, highly addictive products whose harm and addictiveness were knowingly downplayed by the large corporations who manufactured and marketed them. As a Washington attorney told us, the "conceptual similarity" was clear: "It's sort of transparently obvious that in the tobacco litigation context . . . they knew it was much more dangerous than they let on . . . and in the opioid context it turns out it's actually

the same, right?" As overdoses mounted, the next logical question was: would mass litigation follow here, too? For some attorneys, the possibility occurred to them before they heard it elsewhere. Others first encountered the idea in the media, from co-workers, from their counterparts in other counties, from law firm solicitations, or at meetings with state officials. For many, it was a combination of sources. For example, a city attorney from New England said that several firms solicited his office, but by that time, he had talked to his counterparts in other cities and "was definitely open to it because of what I'd seen on *60 Minutes*. So I was [already] looking for the potential for a lawsuit." As such, it appears that county attorneys experienced the prospect of opioid litigation as a novel practice that had been "theorized" (Strang and Meyer 1993): the idea of lawsuits as a possible solution was culturally available.

According to our interviewees, it soon became clear that most state attorneys general intended to follow the same plan they had followed in the tobacco litigation over 20 years earlier: work with private firms to litigate on behalf of the state and its constituent jurisdictions. Some state attorney general's offices called meetings with local jurisdictions to explain their litigation plans and ideas for apportioning settlements. Many city and county attorneys, however, told us that by that time they were already disinclined to trust state actors with the lawsuits.

Relational Activation of Distrust from an Organizational Scar

Given the number of years between the tobacco litigation and the opioid litigation, many local attorneys had no direct experience of the Big Tobacco lawsuits. Nonetheless, the scar persisted at the organizational level. It was a piece of institutional history—a narrative attorneys shared in offhand remarks, in discussions with colleagues, and at professional meetings. Although the tobacco settlement had waned as a subject of everyday conversation, the scar it left was activated when similar conditions arose in the context of opioids. County attorneys' predictions of how their state-level counterparts would behave in an opioid settlement were colored by the "shadow of the past." Consistent with research on interorganizational trust (Poppo, Zhou, and Ryu 2008; Swärd 2016), the residual effects of these negative experiences resurfaced, sparking a profound situational distrust of state-level actors.

As county attorneys considered their options, they recognized that *not* filing meant allowing the state to file on their behalf. In deciding how to proceed, city and county attorneys talked among themselves—not only within their own offices, but also among neighboring counties and counties of similar size in their state. In part through these processes, local attorneys' distrust of the state government was reactivated. One Arizona attorney told us he had been unaware of the tobacco litigation until the possibility of the opioid litigation arose. At that point, colleagues who had worked for his office since the 1990s urged him to think carefully before allowing the state to litigate on his county's behalf. He explained, "The members—a couple of the members of my board at the time, thankfully, were involved in government in some way at the time [of the tobacco litigation] and remembered." This interaction prompted him to reach out to his counterparts in other counties. He soon realized that "the tobacco litigation was . . . the lesson that everybody had learned. . . . I think that's why you see so many cities and counties directly involved."

A Nevada county attorney said that when the opioid litigation began to emerge, "The cities and the counties were all chatting with each other, going, 'Hey guys, what are you doing? What are *you* doing?'" He told us this was consistent with local attorneys' normal practice: "Lawyers are interesting intellectual thieves. We will steal from each other in a heartbeat! Everybody does it. . . . It's good to get other people's opinions on things and see what they think." Similar collaboration, both formal and informal, was described by nearly

every interviewee. In their conversations with other attorneys about the opioid litigation, the tobacco settlement arose again and again. An attorney from the Pacific Northwest described the discussion among county attorneys in his state:

> We started talking about it amongst us county attorneys [in the state county association board meetings, other in-person meetings, and via online chat, email lists, and informal one-on-one communication, such as phone calls]. The issue became, do we let the state file? . . . Or do we file separately first? We looked into the tobacco litigation, which I think is a comparable situation, a big statewide lawsuit against this company or group of companies who were pushing kind of a nasty product. And so what we decided was we thought the county could do better if we sued separately than if we sued as a member of the state. We talked back and forth.

"Doing better" meant a larger share of the recovery and more control over how the settlement money was spent. Counties had borne enormous costs from the epidemic, from strained county hospitals to increased law enforcement and emergency response expenses. If opioid companies were going to pay, cities and counties wanted to *be* paid.

According to our interviewees, some state governments realized that counties might be reluctant to let the litigation proceed at the state level, and held meetings to explain their approach, urging counties and cities to forgo individual involvement. But the scar of the tobacco settlements made local attorneys wary. For example, a New Mexico county attorney said the tobacco litigation made it difficult to trust the state attorney general's promises that city- and county-level needs would be taken seriously:

> The Attorney General . . . indicated that he'll protect and equitably share any award with counties and municipalities that might participate. But we received that same assurance from a predecessor Attorney General in the tobacco litigation and counties didn't get squat. Some counties are willing to trust this Attorney General to do a better job of representing our interests. Others of us are not so willing.

An Oregon attorney expressed skepticism as well: "We're *so* paranoid. The state was saying, we could set up a [fair mechanism for distributing the opioid settlement] and we said no—you're not going to touch it. The money won't even pass through your hands. That's the level of distrust that we have." He elaborated:

> We had a Zoom meeting with the [state] Attorney General's office. . . . They said, "It seems like there's a little hostility." And we just said, [sarcastically] "*Really*? How did the tobacco master settlement work out? How was that money spent?" . . . [The AG's office was] basically saying, "Hey you dumb shits, have we got a deal for you! You're going to agree to give us all the money from the opioid settlement." . . . And again, there's just out-and-out distrust because of . . . what the state has done with [the tobacco] settlement money in the past.

The attorneys' descriptions illustrate the relational and socially embedded processes through which the organizational scar surfaced and gained importance in their decision-making. By itself, though, even this intense reactivation of distrust was insufficient to compel local attorneys to file suit against the opioid companies. Two key barriers still needed to be overcome: a capacity deficit and their historical understanding of their own appropriate role as legal professionals.

Private Firms Fill the Capacity Deficit

Most of our interviewees reported that their jurisdictions had not engaged in affirmative litigation before the opioid suits. Two had sued lead-paint manufacturers and a handful of western counties had participated in lawsuits related to the use of natural resources

(timber land management and water allocation). But they believed that they lacked the expertise, experience, and staffing to participate in the opioid litigation on their own:

> You need experience in mass tort litigation to do this and you need to have the office resources to help. There's a lot of discovery involved in it, and I mean, you're talking about trailer pools of documents and things like that which a small-town attorney just couldn't handle it. There's no way—you don't have time in the day to do it. (county attorney, Tennessee)

> The idea of [our city] undertaking this task on its own would require us to have a very significant conversation regarding the allocation of resources. . . . I just don't think it's at all feasible. (city attorney, small city, Midwest)

> This is the type of litigation that's *highly* specialized. So, because of our size we were looking for outside counsel to handle this as much as possible. (city attorney, New England)

With one exception (an attorney for a large city with a dedicated affirmative litigation department), our interviewees believed it was impossible to face Big Pharma's deep pockets with no outside help. Some jurisdictions proactively sought outside counsel or invited firms to "pitch" them. Some county attorneys' associations streamlined the process, inviting firms that were already involved in the litigation to make presentations. At the same time, local attorneys were also *being* pitched: receiving phone calls, pamphlets, and solicitations.

Even though they had never participated in affirmative litigation, many of our interviewees were no strangers to working with firms. Resource and staffing limitations meant some counties already used private counsel to handle certain types of litigation, albeit nothing of this magnitude. For example, an attorney for an urban county in the West told us, "In the office we'll handle property issues, planning issues, some personnel issues. . . . Any civil rights litigation or other litigation is usually farmed out to . . . other attorneys." A Tennessee county attorney explained that they "farm out negligence cases" because they are too cumbersome for his office. But regardless of whether they were accustomed to collaborating with private counsel, nearly all the attorneys with whom we spoke took it as a given that if their jurisdiction signed onto the lawsuit, an outside firm would be involved. Their professionalization as law students and lawyers already lent them familiarity with law firm work (Curtis 2000), such that engaging law firms created no new tensions and required no new narratives in the way they understood law.

Firms represented cities and counties on a contingency fee basis: if the jurisdiction lost, the firm bore the cost of litigation; if they won, the firm would get a sizeable cut of the settlement, usually around one third. Some interviewees viewed law firms' involvement positively. A Colorado county attorney explained he was happy to work with a firm because the litigation "would be a struggle for us to handle alone." An Arizona county attorney told us, "For small communities it's been kind of a godsend." Other attorneys viewed firms' involvement as simply a necessary evil. One county attorney from a Southwestern state sighed, telling us, "The winner of tort litigation from a monetary position is typically . . . these law firms." Nonetheless, he decided that his county's chances of recovery were better if he partnered with a big firm. A Minnesota county attorney told us, "I thought it was *ridiculous* that the opioid litigation be driven by cities and counties rather than the state." But he, too, partnered with a private firm after concluding that it was his county's best chance for a recovery. Whether they worked with private firms eagerly or reluctantly, the decision was not one cities and counties took lightly. As with the tobacco litigation (Phillips et al. 2013:1044), there was no shortage of firms to do the work. Whether a jurisdiction ultimately

filed suit, and whether they solicited firms or were solicited *by* firms, every interviewee described easy access to private firms for the litigation. This availability solved the capacity problem: firms would assume the risk and provide the labor.

The Final Barrier: A Shift in Organizational Legal Consciousness

The organizational scar from the tobacco payouts made local government attorneys wary of allowing state governments to handle the opioid litigation, and the availability of private attorneys offered them the capacity to claim a seat at the table, but they still faced an important final barrier: the belief that affirmative litigation fell outside their proper professional role. Local attorneys explained that historically, their role was "defensive," not "aggressive":

> Any suit that we might bring typically would involve . . . county property, either a county road, a county building. We just don't initiate much litigation. (Tennessee county attorney)

> Most of our lawsuits are defense. (New England city attorney, explaining that the only claims in which his city was a plaintiff were county-level breach of contract claims)

> We represent and do all things *county*. [We defend] any lawsuits that are brought against the county. . . . Enforc[ing] a contract the county has, those would be [the only] situations where we would initiate litigation . . . primarily we [defend] claims and lawsuits. (Alabama county attorney)

Most of our interviewees had not previously viewed their offices as the proper body to "go after" big companies for constituents' welfare. One attorney explained that county offices deal with "small money" issues like tax foreclosure complaints, not "big money" issues. Their usual litigative fare included contracts with vendors, property maintenance cases, and building code violations. Depending on the size and structure of the office, criminal matters sometimes fell within these attorneys' purview, too. But only rarely, most explained, were they plaintiffs. When that occurred, as one Tennessee county attorney told us, "[It's more like] property maintenance cases . . . not about mass tort cases like this. . . . It's *rare* for a [local] governmental entity to be involved in that kind of stuff." Indeed, he had initially been reluctant to engage in what he feared was "frivolous" litigation, inappropriate for a county attorney. For him and many others, their legal consciousness regarding their own role as institutional actors had to develop further before they felt comfortable engaging in affirmative litigation.

But over time, catalyzed by the tobacco litigation scar, local attorneys came to reframe involvement in the opioid litigation as fundamentally *defensive*. In their minds, the litigation would happen anyway; if they let the state control it, were they really doing their best to protect their county? The subtlety of this shift was underscored by attorneys' descriptions of their participation. Although the media commonly talked about counties "going after" Big Pharma, interviewees rarely used this language. They cast their participation in defensive terms, referring instead to "protecting" their county, "defending" their jurisdiction, or "controlling [their county's] destiny." An attorney from Tennessee said he had to make sure his county's fair share of the opioid proceeds did not get "gobble[d] up" by the state. A city attorney from New England told us:

> My concern [about letting the state AG sue on the local government's behalf] was how the tobacco litigation got handled . . . for the most part the money that was recouped remained in the coffers of state government. . . . That's kind of how the decision was made that, let's try to look out for ourselves. Let's see if we can have a seat at the table for negotiations that might occur.

Other city and county attorneys talked in similar "seat-at-the-table" terms, explaining they had to make sure their jurisdiction's needs were represented in any settlement distribution. This shift in their legal consciousness allowed them to view affirmative litigation—at least, in this situation—as *protective*:

> I can tell you that at least the sentiment that I've seen across the board with a lot of folks with regard to the [opioid litigation], is that there is kind of a fierce protecting of the municipal rights and the municipalities being able to control their destinies and what those monies look like. (county attorney, Washington)

> Part of our explanation was, look, this [lawsuit] is also good because it will ensure that [our] county doesn't go unrepresented in any settlement negotiations. And, you know, if you're not seated at the table, you're probably what's for dinner. (county attorney, Arizona)

In this way, local attorneys recast the suits not as aggressive action against opioid companies, but as *defensive* action that would protect their jurisdiction's interest in light of states' anticipated actions—a means for counties to guard their rightful payouts. This framework tapped into local attorneys' self-concept as protectors of their jurisdictions and offered a way to think about the opioid litigation as consistent with this role. Defending their cities and counties came, for many, to seem the only reasonable way forward. A Massachusetts attorney explained, "No matter what you do, there's only going to be so much money. But the closer you are to the . . . decision making, then the greater the ability to influence, you know, a good result for [my jurisdiction]." Interviewees drew explicitly on the scar of the tobacco settlement to explain why participation in the opioid litigation was a logical extension of their mission as defenders of their jurisdiction:

> *A:* The counties do not trust the state with money. They point to all the things that they misspent the tobacco money on.
> *Q:* I see. So how did that influence your decision about how you were going to approach the opioid litigation?
> *A:* That's why we did it! [Laughs.] *We* initiated it, *we'll* get the money, and *we'll* decide how it's spent! (county attorney, Oregon)

Local attorneys came to see their involvement as a way to protect their county's interests by preempting a wrong. This process reduced the dissonance between their typical litigative roles and the prospect of "going after" Big Pharma as plaintiffs. Through the meaning-making prompted by the organizational scar of the tobacco litigation, local attorneys' legal consciousness was shaped such that they came to see affirmative litigation as consistent with a "proper" defensive role.

Additional Factors Contributing to Filing Decisions

In addition to the role of the organizational scar left by the tobacco lawsuits, our interviews touched on processes that extant literature suggests could be associated with the decision to file a lawsuit. In particular, we wanted to know about the role of politics, based on prior work suggesting that alignment with the prevailing political climate and support from local constituencies may prompt governments to take action (Steil and Vasi 2014). Our focus on politics was also driven by sociological research that characterizes professional groups, such as lawyers, as attuned to jurisdictional concerns over which sets of actors have legitimate control over a particular problem (Abbott 1986). Here, county action might be driven by a desire to claim power from state-level actors. We discuss each possibility in turn.

Political influence. We expected that attorneys who represented politically conservative jurisdictions might hesitate to bring

a lawsuit that made their office appear anti-corporate or overly litigious, especially if the county attorney there was elected, not appointed. Legal scholarship also suggests that political affiliation plays a key role in attitudes toward local litigation (Lemos 2021:972). But our interviews turned up little evidence that partisan politics was a major factor. Across all regions, attorneys insisted that the opioid epidemic's severity made the filing decision transcend party lines. For example, a Montana attorney from a majority-Republican county told us the opioid epidemic "strikes across boundaries," and a Nevada attorney from a Democratic-leaning county explained there was support for the suits because "[p]oliticians from both sides, from the left and the right, Republicans, Democrats and Independents—I think they would *all* say there's . . . an opioid epidemic going on."

A Washington county attorney from an overwhelmingly Republican county discussed this phenomenon in more depth:

> When the opioid litigation was first getting started, I think there would have been lots of people, particularly conservative people, who would have been suspect or skeptical. . . . But over the course of several years, there's been a lot of stuff about the opioid crisis and I think probably political winds have long since changed, and now in 2021 when you ask this question, I don't think there are a lot of people, even in conservative areas, who think that it's a mistake to be part of the opioid litigation.

Only one attorney said that political opposition played a role in his county's decision-making (in his county, the decision not to file). He explained that in his rural county, people saw opioid deaths as the responsibility of individual opioid users, not manufacturers or distributors, and generally believed that "those people *should* have died because they were drug addicts and it's not the corporation's fault that they put it into their bodies, and so we aren't going to support that even if it gives us money." He was the only exception. Interviewees from liberal jurisdictions did not describe any major interest in the lawsuits from their constituents—let alone pressure to file.

Professional jurisdiction. We also considered whether and how the decision to file a lawsuit might have been affected by jurisdictional concerns or motivations. As applied to the legal profession, the sociological work on professional jurisdiction emphasizes jurisdictional conflict: battles over which actors have legitimate standing to address certain issues or engage in certain types of work (Abbott 1986). Because state attorneys have more historical claim to affirmative litigation, it is theoretically possible that city and county attorneys would be deterred from action if their state had "staked out" a claim by filing suit. Alternatively, it is possible that county filings could be seen as an attempt to shift professional jurisdiction or usurp power from state attorneys. However, interviewees did not describe their actions in these terms, nor did they evince a desire to change their power relationship with the state.

Summary of Explanations for Quantitative Examination

Our interviews show that organizational scarring inflicted by limited allocation of the tobacco settlement to local governments negatively shaped county and city attorneys' expectations of how state-level actors might behave in an analogous situation, heightening their distrust. The scar provided an important impetus for local government attorneys to reconsider their sense of their offices' role, opening a path to participation in affirmative litigation. Discussions with proximate peers informed their decision-making, and logistical support provided by private law firms facilitated participation. The extent of opioid-related harm a county had sustained also underpinned the decision to file. Partisan politics and jurisdictional concerns, our interviews suggest, were minor factors. However, given the potentially sensitive nature of political topics and

jurisdictional motivations, our interviewees may have been less candid about or less aware of these potential drivers. Thus, we incorporate them in our quantitative analyses.

QUANTITATIVE STUDY: ANALYSIS OF LAWSUIT FILINGS

Our interviews provide a rich sense of county attorneys' perspectives on the factors that drove their participation in the opioid lawsuits, but these data are subject to important limitations. In particular, they capture a non-representative sample and reveal only the drivers that county attorneys believed were important and were willing to disclose. Thus, we complement the interviews with a deductive approach, and use quantitative analyses of archival data to analyze possible explanations.

To test whether organizational scarring stemming from the tobacco settlements was systematically associated with opioid litigation net of other important factors, we assembled a unique dataset of lawsuits filed by U.S. counties against opioid manufacturers, distributors, and pharmacies. We then performed event-history analysis on the full population of U.S. counties between January 2017 and December 2020.

Sample

We treat counties as our primary unit of analysis and systematically collected information on whether and when each of the 3,142 U.S. counties or county equivalents first filed any lawsuit against an opioid manufacturer, distributor, or pharmacy.[7] We supplemented those data with relevant control variables, described below (Table 1 reports summary statistics for the variables used in our analyses). Our data for some of the most important of these variables (e.g., cumulative opioid deaths) exist at the month level. Therefore, we constructed our dataset so our unit of analysis is the county-month. Our final dataset includes 147,784 county-month observations spanning January 2017 to December 2020, as we ended data collection after observing no new filings between September 2020 and December 2020.

Dependent Variable

Our aim was to capture whether a county's population was represented in opioid litigation. In most counties, participation entailed the county attorney filing a lawsuit. However, we also accounted for the rarer situations in which cities took the lead, representing a similar underlying population. Thus, in addition to identifying county filings, we also identified cities with populations greater than 25,000 in each of these counties and determined whether and when they filed. We then coded a county as having filed if either the county or a city within the county had done so; our results are robust to exclusively considering counties.

Assembling these data entailed a multi-step process, as no comprehensive list of opioid lawsuits exists. We used the National Prescription Opiate Litigation as a starting point. This lawsuit is a form of multi-district litigation (MDL 2804) that on December 5, 2017, consolidated more than 2,000 pending lawsuits from counties and other parties (e.g., cities, unions) against opioid manufacturers, distributors, and pharmacies under a single judge who oversees pretrial motions. A law student and a trained undergraduate research assistant identified all cases consolidated into MDL 2804—including cases filed before and after the initial consolidation—and then used Bloomberg Law to identify the case number and filing date for each. These filings constitute a majority (82.2 percent) of counties that have filed.

We then sought to identify counties that had filed lawsuits but not joined MDL 2804. We did so in two ways. First, we compiled a master list of all defendants listed in the MDL (e.g., Purdue Pharma, Amerisource Bergen Drug Corporation, Walgreens, Cardinal Health). We then used the legal database Westlaw to identify all cases filed against any of these companies between January 2017 and December 2020. We used that list to identify additional opioid cases involving counties or

Table 1. Summary Statistics and Correlations of Variables by County

	Variable	Mean	SD	Range	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1.	County lawsuit[a]	.29	.45	[0, 1]	1															
2.	State lawsuit[a]	.61	.48	[0, 1]	.28	1														
3.	Opioid deaths (per 10,000)	9.63	8.68	[0, 82.2]	.17	.00	1													
4.	Population (logged)	10.38	1.43	[5.02, 16.13]	.22	.01	.15	1												
5.	Population share white	83.31	16.36	[9.1, 100]	−.05	−.12	.01	−.19	1											
6.	Income (logged)	10.81	.25	[9.91, 11.82]	−.01	−.08	.05	.41	.23	1										
7.	Age	40.94	5.24	[21.5, 66]	−.06	−.06	.00	−.38	.36	−.10	1									
8.	Education	34.36	7.24	[5.5, 55.6]	−.02	−.00	.00	−.44	.15	−.50	.30	1								
9.	Income inequality	.45	.04	[.26, .66]	.09	.11	.00	.11	−.40	−.43	−.11	−.11	1							
10.	State population (logged)	19.48	.91	[17.13, 21.33]	.08	.00	.02	.28	−.08	.06	−.08	−.06	.06	1						
11.	State Democratic control	.48	.15	[.21, .84]	.13	.01	.10	.16	.07	.06	.13	−.01	−.02	−.07	1					
12.	Proportion Democrats	.39	.15	[.03, .91]	.12	−.00	.07	.37	−.49	.04	−.14	−.25	.25	.04	.30	1				
13.	Voter turnout	.43	.08	[.13, .91]	.01	.04	.00	−.10	.15	.31	.49	−.18	−.12	−.23	.15	.18	1			
14.	Lawsuit within 50 miles	.12	.32	[0, 1]	.12	.05	.04	.06	−.03	−.02	−.02	.04	.02	.06	.02	.02	−.02	1		
15.	Tobacco C&P (prop'n settlement)	.08	.16	[0, 1.64]	−.04	.01	−.02	.03	−.03	.04	.03	−.09	.02	−.09	−.08	.01	.06	−.05	1	
16.	Tobacco C&P (prop'n CDC)	.16	.18	[0, 1.01]	−.08	.01	−.06	−.05	−.02	.15	.01	−.19	−.01	−.34	.02	.08	.14	−.10	.56	1

[a]Average of county-months. As of October 2020, 56 percent of counties and 97 percent of states (all except Nebraska) had filed a lawsuit.
Note: Values shown for 110,384 county-months. The number of observations in all tables reporting event-history analyses is smaller because organizations that adopt a lawsuit leave the risk set. Tobacco C&P denotes tobacco cessation and prevention spending.

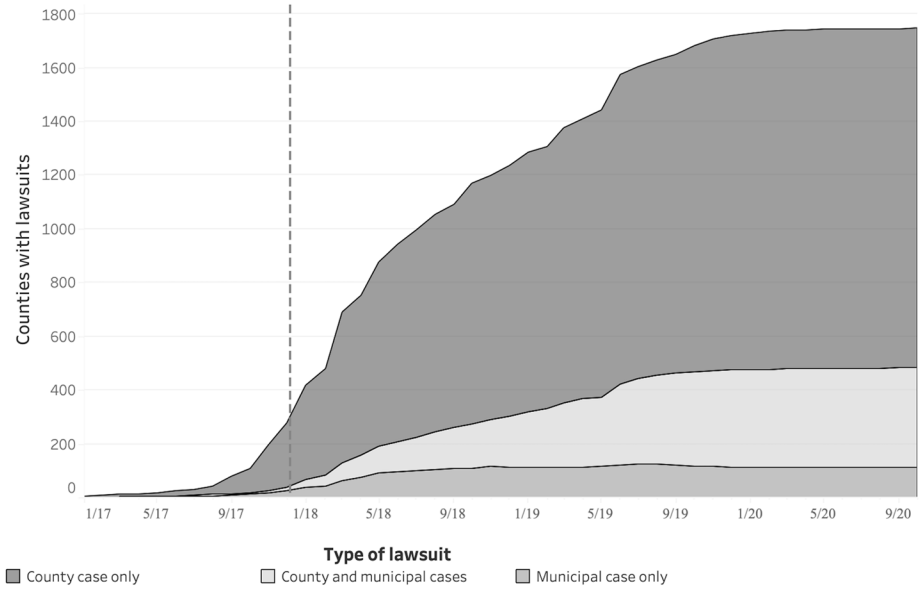

Figure 1. Cumulative Number of County and City Lawsuits Against Opioid Manufacturers, 2017 to 2020

Note: Vertical line indicates the multi-district legislation (MDL), which consolidated individual lawsuits and lowered the bar for local governments to file a lawsuit.

cities that had not joined the MDL. As a final check to ensure the comprehensiveness of our data, two law students conducted Google searches on words related to opioid litigation and the name of each county not listed in the MDL or identified via our Westlaw search, as well as the largest city located in that county. If the search indicated that a local government in the county had filed a suit (typically in a press release or news story about the filing), the students then used Bloomberg Law to identify the case number and filing date.

In total, we identified 1,746 counties (56 percent of 3,142 counties) in which either the county or a city located in the county had filed suit by December 2020. Of these, the county initiated the suit alone in 71.67 percent of cases, and the county and a city both filed in 19.95 percent of cases. Counties where only a city filed were in the minority (8.38 percent of counties). Filings in our data occurred between January 2017 and September 2020, not considering the first two locally-led opioid cases filed in 2014. Figure 1 depicts the cumulative number of opioid lawsuits over time. The rate of new filings increased sharply in 2017 and 2018 before flattening in the second half of 2019. We found no new filings between September 2020 and December 2020. A geographic depiction of filings over time, presented in Figure 2, shows that lawsuits were scattered across the United States, with clusters in the South, Appalachia, and parts of the Midwest, Northeast, and California.

Independent Variables

Organizational scarring (state-level tobacco cessation and prevention spending as a proportion of tobacco settlement funds). As defined earlier, organizational scarring refers to a latent sense of one's organization having been wronged by another entity in the past—a negative emotional residue that persists via a narrative account of a situation that caused harm. Our interviews pointed to dissatisfaction with the perceived unfair and inadequate distribution of tobacco settlement funds as the source of the scar that colored how local attorneys approached the prospect of opioid litigation.[8] With the exceptions of

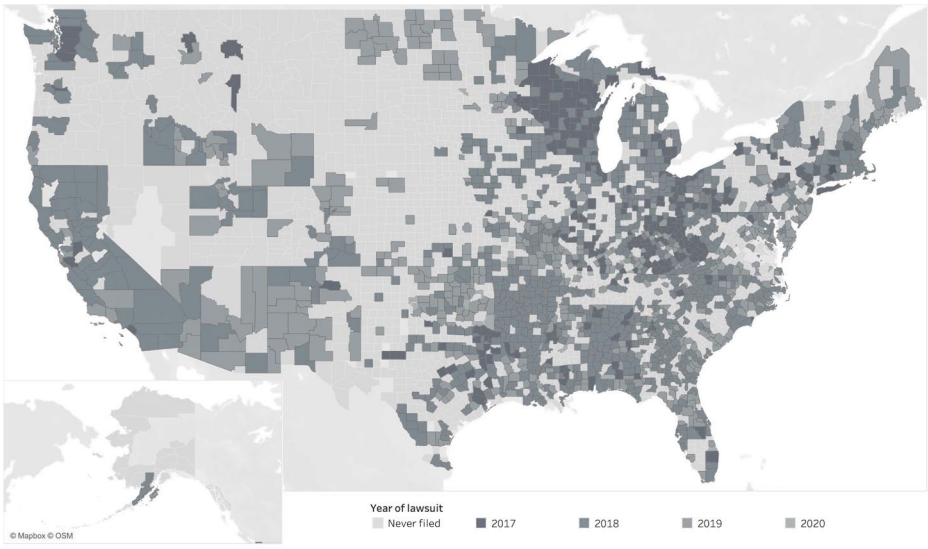

Figure 2. U.S. Counties, by Filing Status and Year of Opioid Lawsuit Filing
Note: Map illustrates author's data using base map from Tableau, Mapbox, and OpenStreetMap made available under the Open Database License (https://www.openstreetmap.org/copyright).

California and New York, state governments did not transfer allocations from the tobacco settlements directly to county governments as lump-sum payments. Instead, county governments would have felt the effects of the settlement money (or lack thereof) through state-funded programs with a local presence. County officials should have been especially attuned to funding for tobacco cessation and prevention (C&P), as almost every attorney general involved in the settlements publicly expressed an intention to devote a significant portion to reducing tobacco use and mitigating associated health problems (Berman 2018). However, the settlement agreement did not stipulate how funds would be spent, and in some years, states spent more than half the tobacco money on state budget shortfalls and debt service (Shames 2007). At least 18 states fully or partially securitized their payouts, meaning they took a lump sum payout—often to cover budget deficits—under the agreement that future payments would go directly to bondholders (Adler et al. 2016).

The county attorneys we interviewed expressed frustration that tobacco prevention and cessation programs remained underfunded despite states' promises, and many county attorneys believed they had not received their fair share. Thus, to proxy the extent to which counties were "scarred" by receiving what they perceived as an inadequate share of the state's settlement funds, we used the amount spent by a state on tobacco cessation and prevention programs, as a proportion of the tobacco settlement funds received by each state. Complicating this measure is the tobacco settlement's stipulation that the settlement money would be distributed annually for 25 years, rather than as a single lump sum. For our base models, we use the annual proportion in that same year, as this amount would likely have made the scar particularly salient to the extent that local government officials were actively connecting current spending with the litigation and settlement event from two decades before. However, in later models, we demonstrate how our results are largely insensitive to the time period in which we define this variable. Given the formidable barriers to directly and comprehensively capturing each county's sense of having been scarred, we believe this measure is a reasonable proxy.

Data on tobacco cessation and prevention spending are compiled by the Center for Tobacco-Free Kids, a nonprofit advocacy organization focused on reducing smoking rates. The Center collects data on state spending from state tobacco control program staff and state-based advocates. Data on settlement amounts come from the National Association of Attorneys General. On average, between 2000 and 2020, states spent only 10.3 percent of their settlement money on tobacco cessation and prevention programs (8.5 percent from 2017 to 2020). In robustness checks, we use two alternative measures: annual state spending on tobacco cessation and prevention programs, as a proportion of the CDC-recommended amount for the state (with an average of 39.9 percent between 2000 and 2020 [16.5 percent from 2017 to 2020]) and as a dollar amount per capita.

One limitation is that these measures are available only at the state level for most counties. Fortunately, in supplementary analyses, we can leverage more fine-grained county-level data on the distribution of tobacco settlement funds in two large states—California and New York—where the allocation of settlement money for each county was determined in advance. We use each county's proportion of the state tobacco settlement as a county-level covariate in supplementary analyses.

To illustrate the meaning of differences in C&P spending levels as a share of tobacco settlement funds, we present several examples of states that fall in different parts of the distribution. At the low end is Missouri, which over the first five years after the settlement spent 69 percent of its settlement funds on budget shortfalls and used most of the rest to replace funds cut from the state's Medicaid Program. Only $1.8 million out of $966 million was spent on tobacco-related programs, including enforcement of youth access to tobacco, a tobacco retailer education program, and tobacco prevention programs (McCaskill 2006). Near the middle of the distribution is Pennsylvania, which spent 12 percent of tobacco settlement funds on C&P programs prior to 2013, and 4.5 percent thereafter. The remainder of the money primarily went to health insurance and other health programs. Of the C&P spending, at least 70 percent must be used for grants to primary contractors to develop local programs in service areas; the remaining funds are used for statewide programs (Markosek 2017). At the high end of the distribution is Arkansas, which allocated 32 percent of settlement money in 2016 to tobacco C&P programs; the remainder went to Medicaid expansion, the Arkansas Biosciences Institute, and "targeted state needs." The state's tobacco-related funds went toward four goals that follow CDC best practices: decreasing youth initiation, decreasing secondhand smoke exposure, providing cessation opportunities for anyone who wants to quit, and addressing tobacco use in disparate populations (Arkansas Tobacco Settlement Commission 2016).

Pre-MDL. Prominent models of diffusion (e.g., Tolbert and Zucker 1983) suggest the factors driving practice adoption often vary in importance over time. Here, the consolidation of extant lawsuits into the MDL seemed a salient inflection point. Lawsuits filed earlier, prior to the MDL, required more legal work and arguably more amenability to departing from the traditional role of local government counsel. In contrast, by the point of MDL class certification in December 2017, the opioid suits were much more widely legitimized. Moreover, the creation of the MDL signaled a likely payout, which may have changed counties' calculations regarding the costs and benefits of participation. The MDL consolidation also falls close to the date of the national emergency declaration.[9] For these reasons, we believe it distinguishes early movers from late-stage adopters. We therefore include an indicator variable for whether the period was before or after extant opioid lawsuits were consolidated into the MDL on December 5, 2017. By interacting this indicator with relevant variables, we can observe differences in effects before versus after initiation of the MDL.

Control Variables

Opioid-related deaths. To control for local variation in the impact of the opioid

epidemic, we include a variable capturing monthly cumulative opioid-related deaths per capita in the county since 2010.[10] As our window of observation begins in 2017—when local government lawsuits against opioid manufacturers began to spread—this variable initially captures the total number of deaths between 2010 and 2016, then adds the number of additional deaths for each month of observation. We obtained data on opioid-related deaths from the National Center for Health Statistics (NCHS), a division of the Centers for Disease Control (CDC). Because publicly available mortality data is censored for privacy reasons, we obtained the uncensored individual-level data on all deaths in the United States after signing a data user agreement with the NCHS.

Using the individual-level death data, we followed prior approaches to identify all opioid-related deaths (Cornaggia et al. 2022; Spencer et al. 2022). First, we identified records with the following drug-overdose-related codes: drug poisonings (overdose) accidental (X40–X44), drug poisonings (overdose) suicide (X60–X64), drug poisonings (overdose) homicide (X85), and drug poisonings (overdose) undetermined (Y10–Y14). Second, among individuals who died from overdoses, we identified those listed as involving illicit opioids—opium (T40.0) or heroin (T40.1)—or prescription opioids, other opioids (T40.2), methadone (T40.3), or other synthetic narcotics (T40.4). We include illicit opioids because people often become initially addicted to prescription opioids, then transition to illicit substitutes due to their lower price or easier access. Using the county of residence listed for each deceased individual, we totaled opioid-related deaths by county-month. To generate a per-capita measure, we divided total cumulative opioid-related deaths by total population in the county and then lagged this indicator by one month. Results are similar if we instead use monthly deaths or start counting the cumulative measure later than 2010.

Population characteristics. To control for features of the population that could make counties more likely to join a lawsuit, we included multiple county-level variables from the American Community Survey (five-year estimates): population (logged for skewness), racial composition (population share identifying as white), median household income (logged for skewness), median age, education (population share whose highest level of educational attainment was high school), and income inequality (Gini coefficient). At the state level, we controlled for population (logged).

Political dynamics. To consider the political preferences and engagement of county residents, we included county-level data on the outcome (proportion Democrat) and voter turnout of the 2016 presidential election from David Leip's Election Atlas. To capture state-level political preferences, we included an indicator of Democratic state senate control over a four-year period, drawn from the Correlates of State Policy dataset (Grossmann, Jordan, and McCrain 2021). Finally, to consider the possibility of jurisdictional motivations, we included an indicator of whether the state had filed its own lawsuit against opioid manufacturers by the current month.[11]

Spatial dynamics. To assess geographic spillovers, we took into consideration whether a lawsuit was filed in the previous month in any county within 50 miles from the focal county. We measured distances using the NBER county distance database. Results were robust to spillovers from counties within 25 miles, within the same state, and when lawsuits were measured cumulatively rather than lagged.

Estimation Methods

Because we study a binary outcome (i.e., whether a county filed an opioid lawsuit or not) and our sample consists of a panel of counties that spans multiple years, we considered using panel logistic regression. We report logistic regression results as a robustness check, but a major drawback of that estimation approach is that it cannot account for the right-censoring in our data (i.e., 44 percent of counties had not filed by the end of our observation window). Failure to adjust for

this could bias our results (Box-Steffensmeier and Jones 2004).

Fortunately, event-history models, which use a hazard function to estimate the probability of some event occurring within a short interval of time, conditional on the event not yet having occurred, are designed to address this issue (Woolridge 2010). In this case, we start with the population at risk of initiating a lawsuit—all U.S. counties (excluding the three that filed in 2014)—and model each county's monthly hazard of doing so. In addition to accounting for right-censoring, event-history models allow us to exploit the fine-grained data we have on whether and when counties filed lawsuits. Our approach follows the standard method used in diffusion research (Strang and Tuma 1993).

We use Cox proportional hazard models to estimate the hazard rates because the exact date of adoption is known, and because Cox models require fewer assumptions than parametric specifications (Alison 2014; Box-Steffensmeier and Jones 2004). Formally, the hazard rate describes the probability of an adoption occurring at t as follows, with T indicating the time of the event and t being the realization of T, which characterizes the arrival time to the event T:

$$h(t) = \frac{\Pr\left(t \le T \le (t + \Delta t) | T \ge t\right]}{\Delta t}.$$

The hazard rate is derived from the survival rate, which indicates the chances of not adopting a lawsuit beyond any given point in time based on the distribution of adoptions over time: $t = 1 - F_{(t)}$. We modeled the hazard rate based on the following theorized diffusion process:

$$h_{c(t)} = h_{0(t)\exp}\left(\mathrm{X}_{ct}\mathrm{B}_{cs} + \mathrm{Z}_k\delta_{\mathrm{k}}^{'}\right).$$

In this formula, $h_{c(t)}$ represents the hazard rate of adopting a lawsuit at time t for a county c that has not adopted a lawsuit yet, $h_{(t)}$ represents the baseline hazard rate at t, X represents a vector of explanatory variables with parameter estimates B_{cs}, and Z_k includes a vector of additional control variables with parameter estimates $\delta_k^{'}$.

The Cox model assumes effects are time-invariant (i.e., effects are an average over time) (Alison 2014), which does not allow us to examine a key possibility suggested by diffusion research (Tolbert and Zucker 1983), namely that the effects of some variables might differ over time—particularly, before versus after lawsuits were consolidated in the MDL. Thus, we follow standard approaches in this literature (Dokshin 2016; Vasi and Strang 2009) and interact key explanatory covariates with a function of time, here specified as the period before the MDL (relative to the period post-MDL). Our primary coefficients of interest are the parameter estimates B_{tvc}, which indicate how the time-interacted explanatory variables affected the hazard of adopting a lawsuit prior to the MDL:

$$\mathrm{h}_{c(t)} = h_{0(t)\exp}\left(\mathrm{X}_{ct}\mathrm{B}_{cs} + \mathrm{X}_{ct} \times \text{preMDL } \mathrm{B}_{tvc} + \mathrm{Z}_k\delta_{\mathrm{k}}^{'}\right).$$

We also ran supplementary analyses using logistic regression to model the probability of a lawsuit by the county or city government in county c through the following function:

$$\frac{\mathrm{p}_{ct}}{1 - \mathrm{p}_{ct}} = \alpha_t + \mathrm{X}_{ct}\mathrm{B} + \mathrm{Z}_k\delta_k^{'},$$

where α_t is the intercept at any given time, X is the matrix of explanatory variables, B is a vector of parameter estimates, and Z_k is a set of k controls with $\delta_k^{'}$ coefficients.

The models also include clustered standard errors by state to account for the fact that some state-level influences, such as the state's tobacco cessation and prevention spending, were experienced equally by all counties in a state. Variance inflation factors under 3 for all variables indicated that multicollinearity was not an issue.

Results

Descriptive findings. To provide initial insights into the relationship between organizational scarring and opioid lawsuit filings, we first examine the raw data. Figure 3 depicts

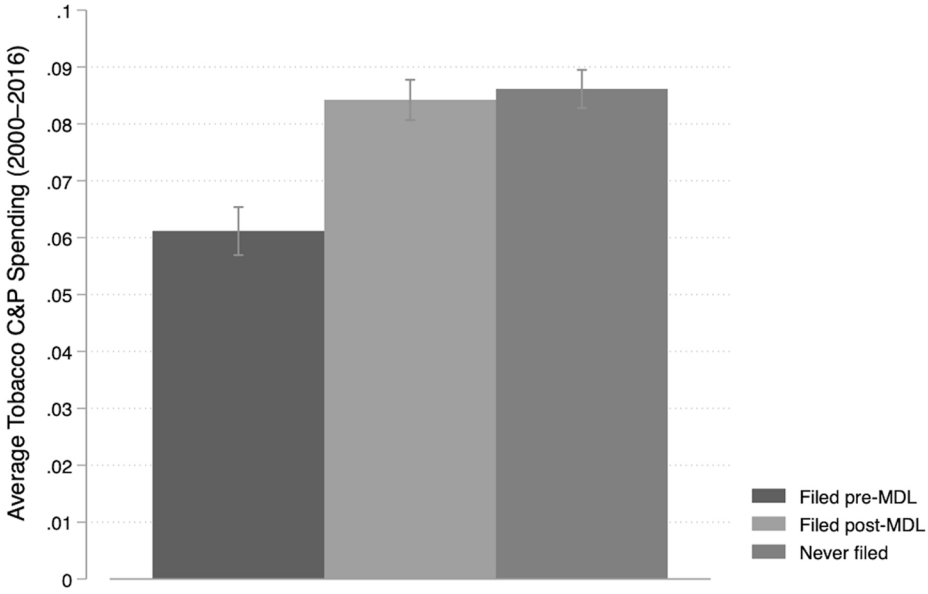

Figure 3. Average Tobacco Cessation and Prevention Spending (Proportion Settlement, Average for 2000 to 2016) for Counties That Filed in the Pre-MDL Period, the Post-MDL Period, and Did Not File

our proxy for organizational scarring—the proportion of tobacco settlement monies directed toward tobacco cessation and prevention (C&P) programs—for counties that filed opioid lawsuits before the MDL, filed after the MDL, and never filed, respectively. This depiction of the average proportion of settlement funds spent on tobacco C&P before the wave of opioid lawsuits provides evidence supporting the relationship suggested by our qualitative work: organizational scarring from tobacco litigation influenced the earliest filers of lawsuits against opioid manufacturers. On average, for counties that filed before the MDL, a much lower proportion of their state's tobacco settlement monies were directed toward tobacco C&P, compared to counties that filed after the MDL or not at all. This pattern suggests a relationship between organizational scarring and the likelihood of filing a lawsuit in the pre-MDL period. Importantly, this insight emerges directly from the raw data and does not rely on any particular model specification. However, relationships that are evident in the raw data may not account for potential confounding factors. For this, we turn to regression frameworks.

Baseline model. Model 2.1 of Table 2 establishes a baseline for understanding the factors that influenced the county-level initiation of opioid-related lawsuits between January 2017 and December 2020. Five control variables stand out as significant predictors of lawsuits. First, larger counties (by population) were quicker to sue, consistent with the idea that larger local governments have greater administrative capacity to respond to social and environmental problems ($\beta = 0.601$; $p < 0.001$) (Bettencourt 2013; Brandtner and Suárez 2021). Second, counties with lower average household income tended to bring lawsuits earlier ($\beta = -0.273$; $p < 0.001$), which could suggest either that poorer counties faced greater financial strain from the opioid epidemic or they saw more potential to benefit from settlement funds. Third, counties with greater voter turnout—an indicator of civic engagement—were more likely to file a lawsuit ($\beta = 0.217$; $p < 0.05$). Fourth, the number of opioid-related deaths per capita predicts the timing of lawsuits in both the pre-MDL and post-MDL periods ($\beta = 0.146$; $p < 0.05$), with the interaction term indicating the effect was greater in the earlier period

Table 2. Coefficients of Cox Model Estimates of the Adoption of Litigation Against Opioid Manufacturers between January 2017 and October 2020, with State's Proportion of Tobacco Settlement Spent on Cessation and Prevention (C&P)

	Model 2.1	Model 2.2
Opioid deaths	.146*	.145*
	(.073)	(.073)
Opioid deaths	.328**	.303*
× pre-MDL	(.116)	(.124)
Population	.601***	.612***
	(.077)	(.079)
Population share white	.004	.001
	(.079)	(.079)
Population share white	.449	.429
× pre-MDL	(.230)	(.232)
Income	−.273***	−.278***
	(.072)	(.074)
Age	−.142*	−.133*
	(.066)	(.064)
Education	.109	.100
	(.080)	(.080)
Income inequality	.064	.063
	(.044)	(.044)
State population	.075	.065
	(.083)	(.088)
State Democratic control	.131	.120
	(.102)	(.112)
State lawsuit	.044	.034
	(.217)	(.225)
Proportion Democrats	−.025	−.026
	(.087)	(.087)
Voter turnout	.217*	.220*
	(.099)	(.105)
Lawsuit within 50 mi.	.148***	.144***
	(.031)	(.030)
Tobacco C&P (prop'n settlement)		−.029
		(.039)
Tobacco C&P (prop'n settlement)		−.990**
× pre-MDL		(.377)
Observations	80,385	80,385
AIC	25,324.68	25,300.46
df	15	17

Note: Standard errors are in parentheses and clustered by state.
*$p < 0.05$; **$p < 0.01$; ***$p < 0.001$ (two-tailed tests).

($\beta_{\text{pre-MDL}} = 0.328$; $p < 0.01$).[12] This finding suggests that counties with higher opioid-related death tolls had a stronger impetus to act early, but this effect diminished as lawsuits gained legitimacy during the post-MDL period. Fifth, counties were more likely to file a lawsuit after neighboring counties within 50 miles did so ($\beta = 0.148$; $p < 0.001$). Supplementary models show these findings hold for counties within 25 miles or within the same state. These findings suggest that counties were sensitive to geographically proximate lawsuits, as the qualitative interviews detailed, with county attorneys viewing them as a source of information and a signal to act.

The statistically insignificant variables are equally revealing. Demographic characteristics, such as a county's education level or

income inequality, did not affect the timing of legal action. Similarly, we find no evidence that political preferences at either the county or state level played a role. This aligns with our qualitative evidence that local governments did not perceive the opioid epidemic as a "liberal" or "conservative" issue. Additionally, whether the state government had filed its own lawsuit did not predict local filings. This result corresponds with our qualitative evidence that counties filed lawsuits not to preempt state-level actions or to expand their professional jurisdiction, but to secure a seat at the table in the event of a settlement.

In Model 2.2, we tested for the role of organizational scarring. The results indicate that, during the pre-MDL period, counties in states that directed a smaller proportion of their tobacco settlement funds toward mitigating tobacco's harms were more likely to file a lawsuit in the opioid context ($\beta_{\text{pre-MDL}} = -0.990; p < 0.01$). The magnitude of this effect is substantial: a standard deviation increase in the proportion of tobacco settlement funds spent on C&P efforts corresponds to a 66.8 percent decrease in the hazard rate of filing. In other words, the hazard rate for a county in a state with one standard deviation higher spending was 33.2 percent of the hazard rate for a county in a state with lower spending. This supports the idea that in the early stages of the opioid litigation wave, the scar effects of the tobacco lawsuits played a critical role in counties' decisions to file lawsuits. The analyses in Table 2 highlight significant interactions between the pre-MDL period and our core variables of interest (i.e., opioid-related harm and organizational scarring). However, our findings remain robust when we interact all variables with the pre-MDL indicator, as shown in Appendix Table A1.

In summary, our models suggest that during the early stages of the opioid litigation, organizational scarring stemming from the state's inadequate distribution of tobacco settlement funds toward tobacco C&P programs played an important role in shaping counties' filing decisions. Both before and after the MDL, the amount of harm (i.e., opioid deaths), social dynamics (i.e., actions of neighboring jurisdictions), civic engagement (i.e., voter turnout), economic need (i.e., proxied by income level), and administrative capacity (i.e., proxied by population) shaped counties' filing decisions. Notably, we find no evidence that political dynamics or jurisdictional concerns were driving factors.

Supplementary analyses. We now turn to supplementary analyses to examine the robustness of our findings. First, we consider whether our key finding could be an artifact of how we captured organizational scarring. Our primary measure varies by year, reflecting the annual adjustments states can make to their distribution of tobacco settlement monies. This raises the possibility that states changed their allocations in response to the emerging opioid lawsuits, perhaps inferring that localities were filing due to dissatisfaction with the legacy of the tobacco settlement. To account for this, we constructed an alternative time-invariant measure of tobacco C&P (as a proportion of settlement funds) in the year 2017, when opioid lawsuits began to emerge. Results using this measure are displayed in Table 3. Model 3.1 uses the time-invariant tobacco C&P variable, and the consistent results suggest that within-state changes in tobacco spending during the observation period do not explain the observed effects. Model 3.2 further shows that the findings are similar when we use an alternative measure of organizational scarring: the state's spending on tobacco C&P relative to the level recommended by the Centers for Disease Control and Prevention. Model 3.3 takes a different approach, proxying organizational scarring with per capita spending on tobacco C&P programs. This accounts for the possibility that localities were more attuned to the absolute amount of money allocated to tobacco mitigation efforts, rather than relative proportions. Results are robust to this alternative measure as well.

Finally, Model 3.4 addresses a potential limitation of our analysis: the possibility that our key indicators of tobacco settlement spending, measured at the state level, may be capturing other, unmeasured state-level characteristics.

Table 3. Coefficients of Cox Model Estimates of the Adoption of Litigation Against Opioid Manufacturers between January 2017 and October 2020, with Alternative Measures of Tobacco Spending During and Prior to the Opioid Lawsuits

	Model 3.1	Model 3.2	Model 3.3	Model 3.4
Tobacco C&P (prop'n settlement) 2017	−.018			
	(.106)			
Tobacco C&P (prop'n settlement) 2017 × pre-MDL	−.580*			
	(.248)			
Tobacco C&P (prop'n CDC)		−.008		
		(.108)		
Tobacco C&P (prop'n CDC) × pre-MDL		−.523*		
		(.255)		
Tobacco C&P spending per capita ($M)			−.017	
			(.126)	
Tobacco C&P spending per capita ($M) × pre-MDL			−.565*	
			(.286)	
Tobacco MSA payments to county (prop'n settlement)				.053
				(.047)
Tobacco MSA payments to county (prop'n settlement) × pre-MDL				−.098***
				(.004)
County controls	Yes	Yes	Yes	Yes
State controls	Yes	Yes	Yes	Yes
CA and NY dummies	No	No	No	Yes
Observations	80,385	80,385	80,385	2,637
AIC	25,303.19	25,309.30	25,309.36	631.57
df	17	17	17	17

Note: Standard errors are in parentheses and clustered by state.
*$p < 0.05$; **$p < 0.01$; ***$p < 0.001$ (two-tailed tests).

Nationwide county-level measures of tobacco settlement allocations are unavailable, but we leverage more detailed data from California and New York, where the proportion of the state's tobacco settlement allocated to each county in a given year is available.[13] Model 3.4 shows the likelihood of a county filing a lawsuit as a function of its proportion of the state's tobacco settlement funds, controlling for county-level variables and including state fixed effects. The results indicate that counties receiving a smaller share of the state's tobacco settlement (i.e., counties experiencing greater scarring) were more likely to file an opioid-related lawsuit during the pre-MDL period ($\beta = -0.098$; $p < 0.001$). This finding is consistent with our main results on the full population of counties, further supporting the robustness of the relationship between organizational scarring and early opioid lawsuits.

Logistic regression. Next, we adopted an approach that focuses less on the instantaneous hazard of filing a lawsuit and more on whether a county filed at all. Specifically, we used logistic regression to estimate the likelihood of a county filing a lawsuit by December 2017 (the pre-MDL period) and the likelihood of the remaining counties filing lawsuits by December 2020 (the post-MDL period). The results, displayed in Table 4, echo the findings from the event-history analysis: organizational scarring played a significant role in shaping counties' decisions to file lawsuits during the early, pre-MDL period—before the MDL normalized litigation.

One possible concern with the previous models is that the unit of analysis is the county, but the key independent variable is at the state level. Model 3.4 addressed this concern by focusing on the two states (California and

Table 4. Coefficients of Logistic Regression Estimates of the Adoption of Litigation Against Opioid Manufacturers Before and After the MDL

	Model 4.1	Model 4.2
	Before MDL; Filed Lawsuit by Dec. 2017	After MDL; Filed Lawsuit After Dec. 2017
Opioid deaths	.469***	.185
	(.123)	(.112)
Population	.595***	.885***
	(.137)	(.086)
Population share white	.399	−.012
	(.288)	(.122)
Income	−.369*	−.293**
	(.177)	(.097)
Age	−.382***	−.077
	(.103)	(.096)
Education	.304	.047
	(.162)	(.102)
Income inequality	−.084	.132
	(.161)	(.074)
State population	.354	−.125
	(.228)	(.112)
State Democratic control	.087	.148
	(.186)	(.214)
State filed lawsuit	.126	−.125
	(.154)	(.129)
Proportion Democrats	.171	−.045
	(.286)	(.108)
Voter turnout	.545*	.038
	(.249)	(.117)
Share of lawsuit in state		.762***
		(.182)
Tobacco C&P (prop'n settlement)	−1.086*	.330
	(.439)	(.235)
Constant	−3.092***	.290*
	(.336)	(.139)
Observations	2,973	2,716
AIC	1,514.62	3,089.56
df	14	15

Note: Standard errors are in parentheses and clustered by state.
*$p < 0.05$; **$p < 0.01$; ***$p < 0.001$ (two-tailed tests).

New York) where county-level measures of the independent variable are available, but another way to mitigate this concern is to conduct the analysis at the state level. To do so, we calculated a new dependent variable: the percentage of counties within each state that filed lawsuits by the end of December 2017 and by the end of December 2020. We then ran OLS regression models predicting the percentage of counties filing as a function of organizational scarring and relevant control variables. The results, shown in Table 5, serve as an extreme robustness check, given the significant reduction in the number of observations (fewer than 50).[14] Nevertheless, our findings hold: states that allocated a smaller proportion of their tobacco settlement funds to C&P programs saw a greater percentage of their counties filing lawsuits during the pre-MDL period.

Exploratory analysis of recency effects. The annual nature of the tobacco

Table 5. Coefficients of OLS Regression Estimates of the State's Share of Counties that Adopted Litigation Against Opioid Manufacturers Before and After the MDL

	Model 5.1	Model 5.2
	Before MDL; Filed Lawsuit by Dec. 2017	After MDL; Filed Lawsuit by Sep. 2020
Opioid deaths (cumulative, state)	.049*	.007
	(.023)	(.038)
Income	.020	–.005
	(.015)	(.040)
State population	.001	.075
	(.011)	(.046)
State Democratic control	.007	.086*
	(.009)	(.034)
State filed lawsuit[a]	.021	
	(.030)	
Tobacco C&P (prop'n settlement)[a]	–.047*	–.040
	(.020)	(.056)
Constant	.066**	.574***
	(.022)	(.038)
Observations	49	48
R^2	.27	.23
AIC	–64.31	12.11
df	6	5

Note: Standard errors are in parentheses.
[a]By September 2020, all states had filed lawsuits.
*$p < 0.05$; **$p < 0.01$; ***$p < 0.001$ (two-tailed tests).

settlement payments to states provides a unique opportunity to explore additional questions about the persistence of organizational scarring. Although many interviewees expressed feeling shortchanged by the tobacco settlements, most were not in their current roles when the payouts began in 2000. This raises intriguing possibilities: perhaps sentiments from those early years were passed down from employee to employee, or perhaps the annual nature of the payouts sustained feelings of maltreatment. We explore these possibilities by examining the relationship between annual historical C&P funding and the likelihood of filing an opioid lawsuit. Figure 4 shows the results of 18 regressions, each using a time-invariant measure of C&P spending for a specific year since 2000, when settlement payments began. Interestingly, the effect of C&P spending becomes statistically significant beginning in 2010. This finding suggests the tobacco scar is not rooted in a lack of spending on smoking C&P immediately after the tobacco settlement, but is instead tied to more recent allocation decisions. Although exploratory, these analyses highlight how ongoing reminders of perceived past injustices can shape an organization's current actions, even if the earliest experiences of harm become less salient.

Additional robustness checks. We ran models incorporating a variety of additional control variables to account for potential alternative explanations for our findings (see Appendix Table A2). Here we highlight the controls we believe are the most important. First, to capture possible career-related motivations of county officials, we included controls for whether the county attorney and/or county government were elected or appointed. Second, beyond the financial indicators already included in our main models, we further address fiscal considerations by incorporating debt-to-revenue ratios and healthcare budgets at the county and state levels. Third, although our interviewees emphasized that private legal representation to address resource gaps was readily available to all, we accounted for possible variation in the

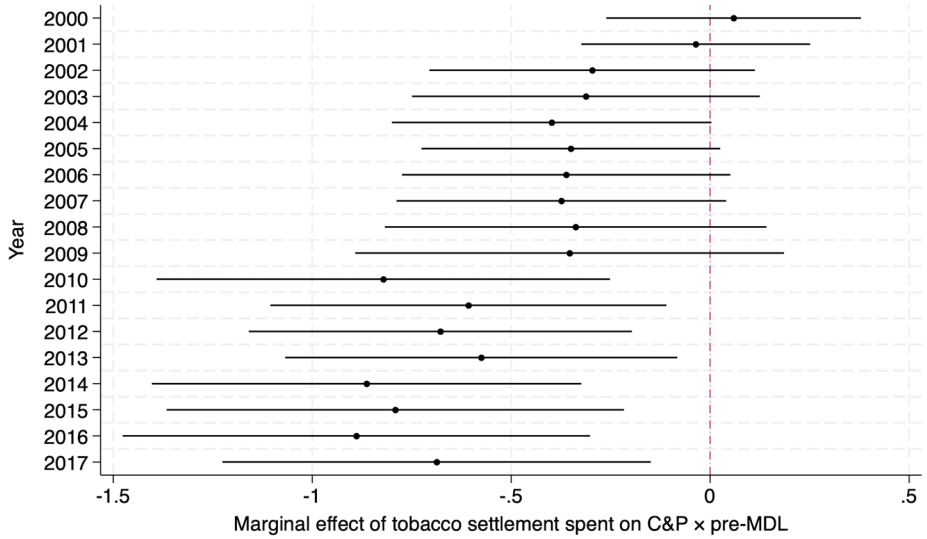

Figure 4. Coefficient Plot of the Marginal Effect of the Proportion of the Tobacco Settlement Spent on C&P (by Year) on the Hazard of Adopting a Lawsuit Against Opioid Manufacturers in the Pre-MDL Period
Note: 95 percent confidence intervals.

local availability of private law firms by including the volume of civil and criminal cases, respectively, in the county. Fourth, in addition to the indicator of whether the state had already filed suit, which is included in our main models, we aimed to capture political and jurisdictional concerns (i.e., power struggles) more broadly. Reasoning that jurisdictional concerns might be heightened when counties and states diverge politically, we included an indicator of whether the county was more Democratic than the state.

Finally, we considered whether counties were more likely to file not only when geographically proximate counties had filed recently, as shown in our main models, but also when filing was more common among politically similar counties. To do so, we included the proportion of counties with the same political preference (predominantly Democratic or Republican) as counties that had already filed. Appendix Table A2 also reports models including geographic controls, variables indicating different approaches to handling the opioid epidemic, violent crime rates, and more. Appendix Table A3 shows that our results are robust to focusing on county-initiated lawsuits alone, excluding lawsuits by cities within those counties. Together, these robustness checks demonstrate a consistent effect of the tobacco scar in the pre-MDL period, across a range of alternative measurement approaches and model specifications.

DISCUSSION

Our analyses explicate how and why local government attorneys came to play a prominent role in the historic wave of litigation against opioid manufacturers, despite the fact that they had traditionally considered this form of action to be beyond their professional domain. The opioid litigation was the first instance in which these attorneys adopted affirmative litigation *en masse* to gain recompense from corporations, although there was no shortage of harmful issues in response to which they might have deployed this tactic earlier (e.g., asbestos, lead paint, e-cigarettes, climate change, PFAS contamination). One crucial factor leading local attorneys to act was that the similarities between opioids and tobacco, as well as the specter of possible state-led lawsuits, activated a scar left by the decades-earlier state litigation against Big Tobacco. This scar manifested through a narrative that circulated among local

government attorneys, attributing what they perceived as the insufficient and unfair allocation of tobacco settlement funds to the fact that states led that litigation.

Confronted with the possibility of history repeating itself, local government attorneys revised their long-held belief that affirmative litigation was inappropriate for their offices due to its "aggressive" nature. By drawing on other aspects of their role, they recast opioid litigation as defensive, and compatible with their roles as jurisdictional protectors. This reframing, driven by organizational scarring, was a crucial factor underpinning the decisions of counties that filed early suits. As the number of filings grew, the legitimacy of local participation increased, influencing more counties to join the wave of opioid litigation from 2017 to 2020. Using a combination of qualitative and quantitative methodologies enabled us to provide a nuanced understanding of this complex social phenomenon, shedding light on the interplay of historical legacies, organizational dynamics, and local decision-making in shaping the wave of opioid litigation.

The organizational scar we observed in this case reflects a more general scenario in which one organization develops a lingering sense of having been wronged by another entity in the distant past—a negative emotional residue that does not spur any immediate organizational action, such as the building of new capabilities. When such a scar develops, affective responses—such as distrust of the offending entity—take root within the scarred organization, only becoming activated and informing behavior in analogous situations years later. We view organizational scarring as a novel construct, broadly applicable to a variety of phenomena, that can deepen our understanding of both intra-organizational processes and inter-organizational dynamics.

When and where might scarring be more likely to affect future organizational action? Our empirical focus on a single case was generative in illuminating scarring as a novel form of organizational learning and providing a rich understanding of its contours in the context of opioid litigation, but this focus constrains our ability to definitively specify the scope conditions under which scarring would shape future action. Nonetheless, key aspects of the construct's definition suggest some speculative possibilities. First, an organizational scar can only inform future behavior if the scar becomes embedded in the organization, such that it persists. Factors that promote stronger organizational memories, such as organizational cultures where lessons are passed down despite turnover, may heighten the likelihood of scarring affecting future action.

Second, to affect an organization's actions, the scar must be reactivated and come to the fore. We suspect reactivation is more likely when the prior experience that led to the scar is viewed as highly relevant to present-day challenges—for example, when the circumstances are seen as analogous. This suggests that scarring will be more likely to affect behavior among organizations that experience similar events with infrequent periodicity. For example, scarring may be more likely to occur in relationships between firms and their key suppliers, such as employee unions or other major resource providers. In those cases, a negative experience many years earlier can color an organization's approach in similar circumstances. Of course, similarities between the past and present can also be socially constructed, a fact that highlights opportunities for institutional entrepreneurs who wish to either shape organizational narratives regarding past events (Coraiola et al. 2023) or strategically frame present-day problems.

Third, because organizational scarring is inherently relational—arising between an organization and another entity—the tendency for scarring to affect action may be systematically related to the characteristics of an organization's network. Organizations with denser network ties may be more likely to experience scarring, due to their greater exposure to relational dynamics. In the case at hand, the scar originated with one entity (i.e., the state) and affected counties' actions toward that same actor. However, we could also imagine scenarios where a negative experience with one entity many years earlier leads to a response years later toward other organizations of the same type. Finally, resource

constraints may condition the extent to which scarring translates into organizational action. In the case at hand, private attorneys provided counties with crucial capacity and expertise, which is not unusual in the domain of public sector law. However, future research is needed to understand how frequently resource constraints limit organizations from acting in the wake of being scarred.

Contributions to Research on Learning and Historical Influences on Organizations

Prior research has established numerous ways the past affects an organization's present-day actions. The organizational learning literature, for example, highlights how organizational actors interpret and draw inferences from past experiences, encoding those inferences into routines and capabilities that shape subsequent action aimed at meeting organizational goals (Levitt and March 1988). Related research streams highlight particular ways this may occur. The literature on organizational imprinting, for instance, emphasizes firms' development of capabilities in response to environmental conditions during their founding or other sensitive periods and demonstrates how such capabilities often persist beyond their utility (for reviews, see Marquis and Qiao 2024; Marquis and Tilcsik 2013). Similarly, research on the concept of institutional legacies highlights how capabilities developed by organizations in one domain during an earlier period can leave a lasting residue of skills and proclivities that shape subsequent action in different domains much later (Greve and Rao 2014). Greve and Rao (2012), for example, demonstrate how the founding of mutual fire insurance and savings banks in early-nineteenth-century Norway created a legacy of collective civic action. This legacy contributed to higher rates of founding cooperative stores almost a century later.

Organizational scarring falls under the broad umbrella of organizational learning, as it involves prior experiences informing future decisions and entails lessons that reside within the organization, rather than within any particular individual. However, scarring—despite its connection to organizational learning—is distinct from existing forms of learning in two key ways. First, the organizational learning literature emphasizes that lessons from prior experiences are encoded in new organizational routines and capabilities (Levitt and March 1988). Thus, if learning had occurred in the wake of the Big Tobacco lawsuits in the conventional sense, counties might have developed affirmative litigation capacities or established relationships with private firms immediately after the settlements, preparing themselves to better handle similar situations in the future. However, organizational learning in that sense did not occur. Instead, the experience of the Big Tobacco settlement payouts was encapsulated in an organizational narrative that circulated among attorneys; scarring left a lingering sense of having been wronged—a feeling that persisted without prompting immediate action. This emotional residue was only activated years later, when a similar situation arose. As such, organizational scarring represents a distinct form of learning: it encapsulates the negative emotional residue of a prior event, which shapes present-day perceptions of and actions toward other parties. Crucially, this occurs absent any formal routines, policies, or structures codifying the lessons of the past.

A second distinctive feature of organizational scarring is its focus on how a history of negative relations, rather than positive ones, can shape organizational behavior. Prior research predominantly emphasizes the latter, showing how productive past interactions between organizations foster positive perceptions, leading to greater cooperation and trust (Uzzi 1999). Here, we instead draw inspiration from a smaller body of work demonstrating the enduring effects of negative relations. For example, Nunn and Wantchekon (2011) show that individuals whose ancestors belonged to ethnic groups heavily targeted during the nineteenth-century slave trade exhibit lower levels of trust today. We extend this idea, showing the important behavioral implications of negative histories in an organizational context. Specifically,

local attorneys viewed state actors warily with respect to their potential role in the opioid litigation, a sentiment rooted in the scars of the Big Tobacco settlements. This distrust led local attorneys to take preemptive action to protect their counties' interests. Our research presents a nuanced picture of how such negative historical experiences translate into concrete organizational behaviors.

Contributions to Diffusion Research

Our research enriches understanding of diffusion processes in multiple ways. First, our qualitative data help elucidate the factors and processes that underpin adoption decisions, responding to Kennedy and Fiss's (2009:898) call for "a more direct examination of adoption motivations . . . [to] enhance understanding of the mechanisms behind the diffusion process." Although many studies have made valuable inferences about adopters' motivations by analyzing variation in key characteristics such as size or age (e.g., Lounsbury 2001), researchers have rarely had access to data that provide direct insights into how decision-makers approach adoption decisions. Our qualitative data are ideally suited to shed light on the motivations and considerations driving adoption decisions. Moreover, our quantitative analyses complement and systematically validate these insights.

By highlighting scarring from prior experience as an important organizational characteristic that shapes the evaluation of a novel practice, our research also responds to Naumovska and colleagues' (2021:398) observation that "organizational differences are understood to be important and are frequent sources of control variables in models of diffusion processes; however, they have received little explicit theoretical attention and empirical investigation." Our work provides valuable insight into an important source of variation in diffusion processes and underscores that explanations of heterogeneity in adoption that focus solely on features of the practice to be adopted are likely incomplete. Rather, we show that organizations can evaluate the same novel tactic differently, based on their prior experience. This underscores the importance of considering historical and contextual factors as key drivers of variation in diffusion processes.

Finally, our research highlights the fluid nature of evaluation involving novel practices. Even practices that are initially seen as anathema to an organization can be viewed in a different light with the right motivation. Thus, while diffusion scholars are correct to suggest that practices are less likely to diffuse when they are inconsistent with an organization's values or cognitive frames (Jacqueminet 2020; Kraatz, Flores, and Chandler 2020), the relationship is not static or deterministic.

Contributions to Legal Consciousness Research

Our findings also enhance the legal consciousness literature. Prior research has rarely considered how the processes that constitute legal consciousness shape the legal decision-making of organizations, such as local governments. Organizational scarring offers new theoretical scaffolding for what we might think of as an "organizational" or "institutional" legal consciousness: the processes that constitute how a group of actors within an organizational space come to conceptualize and hold beliefs about the law. The relational processes we described illustrate the creation and development of a collective "commonsense understanding" of the law (Nielsen 2006:9). Here, we contribute to the legal consciousness literature by explicating the ways organizational legal consciousness can change not only relationally but longitudinally. Local government attorneys' legal consciousness was shaped by organizational scarring: they drew on their longstanding sense of themselves as defensive actors, and on the narrative brought to the fore by the parallels between the tobacco and opioid litigation. These processes enabled local attorneys to expand their sense of their appropriate litigative role against big business.

Capitalizing on the strengths of multiple research methods lets us provide an unprecedentedly detailed elucidation of how relational

legal consciousness (Chua and Engel 2019; Young 2014; Young and Chimowitz 2022) works in practice: how the legal consciousness of a particular actor, or set of actors, is constructed through relationships and interactions with multiple social and professional groups. Here, we build on Silbey, Huising, and Coslovsky's (2009) discussion of Brazilian prosecutors' responses to widespread civil harms, such as pollution caused by manufacturing processes. Silbey and colleagues (2009:222) explain that although the prosecutors are individual actors who file lawsuits, they are also relational actors within an organization who "form a community of professionals with a collective mandate and thus can share information, experience, and tactics across cases to build both local and more general solutions." They are relationally enabled and relationally constrained.

Our findings also build on the modest extant literature about the legal consciousness of legal professionals (e.g., Kennedy 1980; Liu 2016; Liu and Halliday 2016) to explain the importance of attorneys' social embeddedness within and beyond their professional communities as key to their participation in the opioid litigation. The attorneys we interviewed are individuals who make decisions on behalf of a jurisdiction, of course. But in our interviews, they emerge as members of professional communities who share information and expertise and construct collective understandings. Their interpretation of the tobacco litigation was formed and re-formed within multiple socially embedded contexts. Thus, the relational aspects of legal consciousness are a critical link between potentially actionable claims and actual legal claims (Berrey, Nelson, and Nielsen 2017; Morrill et al. 2010; de Sa e Silva 2022), and they provide a model for understanding the set of phenomena we might think of as an "organizational legal consciousness" within the broader relational legal consciousness framework.

We also offer evidence that paying attention to the role of emotion in legal consciousness—here, distrust—"offers a clearer, more granular example of how sociolegal scholars might analyze the mechanisms that constitute the production of relational legal consciousness" (Young and Chimowitz 2022:257). Relationality was especially important given interviewees' strong sense of their professional role as defensive legal actors. It was only over time that relational processes surrounding the interpretation of an organizational scar allowed local attorneys to recast an action that would once have been seen as aggressive or anticorporate—suing big business—as a defensive action compatible with their roles and commitments to their localities.

The Future of Affirmative Litigation

Given that over half of local U.S. jurisdictions have now engaged in affirmative litigation at least once, this form of legal action—albeit still relatively rare—has entered the repertoire of actions that local governments may take to redress public harms. Organizationally, they now have a narrative about "defensive" engagement in affirmative litigation, which will shape the processes that constitute their legal consciousness going forward. *How* it will do so remains to be seen. States have a long history of engaging in such action—and continue to do so, as evidenced by their suits against social media companies for their role in the teen mental health epidemic, for one (Stempel, Bartz, and Raymond 2023)—but affirmative litigation is newer to most local governments. The opioid litigation may well mark the beginning of a new era of local government litigation. A few examples, such as lawsuits holding oil companies accountable for their role in the climate crisis (Hersher 2022), suing gun manufacturers for their role in mass shootings (Hutchinson 2022), and bringing claims against makers of e-cigarettes (Schroth and Proshansky 2025) point to this possibility. In addition, some private law firms are building out practice areas devoted to various types of municipality-led affirmative litigation,[15] and nonprofit organizations, such as the National League of Cities, are paying more attention to this tactic.[16] The specter of having to face affirmative litigation may serve as a complement to the role of social movements (King and Soule 2007) or

ratings and rankings (Sharkey and Bromley 2015) in affecting firms' behaviors.

The question of which government entities participate in affirmative litigation has important ramifications for whose voices are heard when settlement funds are dispersed, underscoring a need for sociological research on government action to broaden its traditional focus on administrative or legislative action. Future research could investigate why some local governments opt for litigation over legislative and administrative approaches, or employ them strategically as a complement. In addition, researchers should examine which types of social problems are seen as suitable for addressing with affirmative litigation, and by whom. For example, quantifiability of harm may be key; more diffuse or indirect harms may be less amenable.

Limitations

First, although prior research attuned us to the possibility that different factors might be important before versus after the MDL's formation (Tolbert and Zucker 1983), we could not directly compare local government attorneys' own accounts before and after this salient event, as our interviews began in 2020. Additionally, given our findings, in retrospect it would be interesting to gather qualitative data using matched pairs of otherwise-similar counties that experienced different levels of organizational scarring due to being situated on opposite sides of a state border. Future researchers on this topic may want to consider a matched-pair design.

Second, our interviews suggested that private law firm involvement provided logistical support and expertise that facilitated counties' ability to file suits. We were unable to operationalize this factor directly in our quantitative analyses, although we approximated it using available data by controlling for factors associated with law firm proximity (i.e., population density), a county's potential suitability as a plaintiff due to harm incurred (i.e., opioid overdose deaths), and legal activity in general (i.e., the number of civil and criminal cases in a county). Our results were robust to accounting for these factors. Moreover, our interviews suggested that *all* counties had ready access to law firm involvement and suggested no variation along these lines. The availability of private law firms does not seem to account for our results, but future work could examine these actors' role more closely.

A third limitation is that our proxy for organizational scarring, the proportion of tobacco settlement funds that states allocated to cessation and prevention programs, is at the state level. Ideally, we would have captured this with a county-level measure. Although we could locate no national data source that tracks tobacco settlement funds at this level, we replicated our findings using county-level data for California and New York, the only two states for which these data are available. Our findings involving the scarring caused by the tobacco settlements are also consistent across our quantitative measures and interview data. Despite these limitations, our use of both quantitative and qualitative methods provides compelling evidence as to the importance of organizational scarring in local governments' decisions regarding the opioid litigation.

Conclusion

Overall, our study sheds light on organizational scarring, a key factor that prompted counties to participate in opioid litigation, resulting in an unprecedented wave of locally-led legal action aimed at gaining recompense from opioid manufacturers. We argue that scarring falls under the broad umbrella of organizational learning, which emphasizes how past experiences shape present-day actions. However, scarring is distinctive in that an affective sense of frustration and distrust persisted for many years only via an organizational narrative, rather than being immediately codified into routines designed to prevent the recurrence of a negative experience. Nonetheless, this feeling shaped organizational action when a parallel situation arose decades later. We hope our findings set the stage for future consideration of how historical events can shape present-day relations and actions, and how the processes that comprise legal consciousness within organizations can evolve over time.

APPENDIX

Interview Questions

- [Feel free to do warm-up questions that turn out to work for you—how long they have been in the office, whether they grew up in the county, how they came to hold the job, etc.]
- If their county brought a suit:
  - ____ County is involved in the opioid litigation, right?
  - How did your involvement come about?
    - [Try to determine whether it was something they thought of or came upon, or whether an attorney came and pitched it to them. Ask detailed follow-ups. Find out who, how they made contact, what the decision process was like. If they had an attorney come to them, ask if they knew the person before, if the person was connected to a big law firm, etc. The point is to try to figure out the ecology of the litigation. You may have to ask several questions about this, especially if it's the case that they were basically approached by a friend/political ally they already trusted. Make sure not to use any stigmatizing/judgmental language.]
    - Is the outside counsel that you're working with part of one of the big law firms involved in the case, or are they more of a go-between between you and the big firm? How does that all work?
  - Did you file a suit before the MDL, or did you directly join the MDL?
  - How did you decide whether to join?
    - Any downsides/reasons not to file?
    - Were people in your county supportive, or is this not necessarily something you need to consider?
    - Did you talk to any other counties' counsel? Like, is this something you would coordinate with nearby counties about? Or other counties? How would this work?
    - Why do you think *every* county isn't joining the MDL?
    - Are there any associations or meetings that let you talk to county counsel from other counties?
  - How much do you, personally, end up being involved in the day-to-day work of this lawsuit? Does it take a lot of county time and resources? [Trying to figure out if they basically outsource all the work to outside counsel.]
  - Is this the first time your county has ever been involved in what some lawyers call "affirmative litigation," bringing a lawsuit on behalf of people in the county who have been harmed by some entity? Or has that not usually been your role?
  - What was the opioid landscape like in your county?
    - Do/did people of all political leanings consider it a crisis?
  - If they are part of the MDL:
    - Did you consider filing a suit with state claims, outside of the MDL?
- If their county didn't bring a suit:
  - Has your county ever been involved in what I've heard some people call "affirmative litigation," bringing a lawsuit on behalf of people in the county who have been harmed by some entity? Or is that not really your office's role?
  - Did you consider bringing an opioid lawsuit and/or joining the MDL?
    - Are counties around you doing it? Why do you think they're doing it?
    - Why did you decide not to?
    - Did anyone (e.g., attorneys) approach you and ask you to sign on or offer to represent you?
- How many attorneys work in your office? How much do county resources affect the kinds of lawsuits you can bring? [Trying to get at: do they love the idea of affirmative litigation but don't have the resources to do it, or do they simply not see it as their role?]
- Your state got a settlement in the tobacco litigation, right? How did that all work, like did the state divvy the settlement amount up to the counties?
  - Did you feel like it was done fairly? How did the state decide who got what?
  - How did other counties in the state seem to feel about the way the tobacco settlement shook out?
  - [May need follow-ups to determine, did anything that happened in the aftermath of the tobacco lawsuits affect their decision-making re: the opioid lawsuits?]

- Do you think that the tobacco lawsuit, the opioid lawsuits, are these kinds of things appropriate for counties to bring—or who would bring these in an ideal world?
- When you're deciding whether to bring some kind of lawsuit, whom do you coordinate with? Other counties? State AG? Local officials? Cities? Others?
- Are you appointed? By whom?
- If I want to understand how these kinds of lawsuits work for counties, particularly in the opioid case but also in general, what else should I be asking you that I haven't asked yet?

Appendix Tables

Table A1. Coefficients of Cox Model Estimates of the Adoption of Litigation Against Opioid Manufacturers between January 2017 and October 2020, with All Variables Interacted with the Pre-MDL Period

	Model A1.1	
	Main Effect	× pre-MDL
Opioid deaths	.151*	.304*
	(.074)	(.130)
Population	.619***	–.094
	(.083)	(.137)
Population share white	–.020	.555
	(.082)	(.283)
Income	–.299***	.141
	(.085)	(.243)
Median age	–.117	–.153
	(.066)	(.141)
Education	.074	.204
	(.080)	(.205)
Income inequality	.070	–.082
	(.045)	(.193)
State population	.049	.196
	(.097)	(.220)
State Democratic control	.126	.040
	(.125)	(.209)
State filed lawsuit	.028	–.238
	(.221)	(.551)
Proportion Democrats	–.078	.393
	(.087)	(.355)
Voter turnout	.203	.157
	(.106)	(.346)
Lawsuit within 50 mi.	.134***	.101
	(.029)	(.117)
Tobacco C&P (prop'n settlement)	–.031	–1.008*
	(.040)	(.463)
Observations	80,385	
AIC	25,287.51	
df	28	

Note: Standard errors are in parentheses and clustered by state.
*$p < 0.05$; **$p < 0.01$; ***$p < 0.001$ (two-tailed tests).

Table A2. Coefficients of Cox Model Estimates of the Adoption of Litigation Against Opioid Manufacturers between January 2017 and October 2020, Showing That Main Results Are Robust to Various Additional Control Variables

Model	Variable	Coefficient	Coefficient × pre-MDL	Tobacco C&P	Tobacco C&P × pre-MDL	*N*
Geographic Patterns						
A2.1a	Regional patterns (ref. = Northeast)					
	Midwest	.679**	−.008	−.028	−.867*	80,385
		(−.263)	(−.698)	(−.043)	(−.43)	
	South	.682*	−.737			
		(−.283)	(−.71)			
	West	.267	−.55			
		(−.355)	(−.644)			
A2.1b	Rural (ref. = non-rural county)	.141	−.151	−.03	−.988**	80,385
		(−.093)	(−.243)	(−.039)	(−.376)	
Career Incentives						
A2.2a	Elected county government	.013	.081	−.029	−.985**	80,385
		(−.07)	(−.271)	(−.039)	(−.38)	
A2.2b	Elected county attorney	−.009	−.003	−.057	−.93*	32,272
		(−.136)	(−.503)	(−.036)	(−.383)	
Fiscal Considerations						
A2.3a	County debt-to–revenue ratio	.021	.087	−.035	−.918**	77,527
		(−.032)	(−.082)	(−.039)	(−.354)	
	State debt-to-revenue ratio	−.109	.375**			
		(−.118)	(−.137)			
A2.3b	County health budget	−.004	.075	−.031	−.998**	80,237
		(−.013)	(−.09)	(−.038)	(−.38)	
	Avg. municipal health budget	.015	−.118			
		(−.012)	(−.349)			
Lawyer Activity in County						
A2.4	Criminal cases	.015	−.097	−.046	−.875*	80,385
		(−.015)	(−.084)	(−.024)	(−.359)	
	Civil lawsuits	.168***	−.051			
		(−.047)	(−.037)			
Organizational Ecosystem						
A2.5	Companies	.017	.104	−.03	−.996**	80,385
		(−.031)	(−.096)	(−.039)	(−.366)	
	Nonprofits	−.157*	.22			
		(−.068)	(−.251)			
Jurisdictional Concerns						
A2.6	County more Democratic than state	−.011	.269	−.029	−.988**	80,385
		(−.148)	(−.158)	(−.04)	(−.362)	
Politically Influenced Diffusion						
A2.7	Share lawsuits in same-party counties	.243*	−.999	−.016	−1.013**	80,385
		(.101)	(.967)	(.037)	(.371)	
Approach to Addressing the Opioid Epidemic						
A2.8a	Treatment centers per capita	.006	−.082	−.029	−.981**	80,385
		(−.025)	(−.127)	(−.039)	(−.377)	
A2.8b	Drug courts	.051	.051	−.031	−1.032**	80,385
		(−.029)	(−.071)	(−.039)	(−.371)	
Crime Rates						
A2.9	Violent crimes	−.034	−.251	−.03	−1.030**	76,754
		(−.04)	(−.171)	(−.039)	(−.371)	
Racial Dynamics						
A2.10	Opioid deaths white	−.003	−.406	−.027	−1.003**	21,266
		(−.166)	(−.49)	(−.039)	(−.366)	

Note: Standard errors are in parentheses and clustered by state. The number of observations fluctuates due to data availability and variable construction. Proportion of white victims of opioid deaths requires at least one death in the county and month. County and state debt-to-revenue measures from the Economic Census have missing values. Information about appointment or election of county attorney general comes from an ICMA survey with moderate response rate, but without reason to believe that data availability is systematically biased. All models include the full set of controls included in our main models.
*$p < 0.05$; **$p < 0.01$; ***$p < 0.001$ (two-tailed tests).

Table A2 reports the effects of our main models with the inclusion of various additional control variables. For the sake of parsimony, we report only the coefficient of the additional variable and that of the organizational scarring variable (tobacco C&P as a proportion of settlement funds), as well as their respective interactions with the pre-MDL period.

- Models A2.1a and A2.1b account for geographic variation in the propensity to file opioid litigation, first examining regional patterns and then assessing distinctions between rural versus urban counties.
- Models A2.2a and A2.2b examine potential career-related motivations county attorneys might have had to file a lawsuit, based on governance-related differences, including whether counties have elected heads of government or attorneys general.
- Models A2.3a and A2.3b assess fiscal considerations by incorporating indicators of county and state debt-to-revenue-ratio as well as health budgets at the county and municipal levels from the Census of Government.
- Model A2.4 accounts for the total number of criminal cases and civil lawsuits filed in a county's courts. This approximates the availability of lawyers in the county, as well as the relationship between a jurisdiction's general level of legal activity and participation in the opioid litigation.
- Model A2.5 includes indicators of organizational ecosystem characteristics, such as the number of company headquarters and the number of nonprofit organizations, to explore how organizational demography and civic capacity influence outcomes.
- Model A2.6 proxies for potential jurisdictional motivations that should be more salient when state and local officials diverge politically, using an indicator of whether a county is more Democratic than its state.
- Model A2.7 considers the share of lawsuits filed in counties with the same political preference for the Republican or Democratic party, to capture the political dynamics of diffusion.
- Models A2.8a and A2.8b examine different approaches to addressing the challenges of the opioid epidemic. Model A2.8a includes per capita treatment centers in the county. Model A2.8b adds an indicator for the presence of drug courts to capture variations in judicial infrastructure that might correspond to more punitive approaches.
- Model A2.9 examines violent crime rates as a potential correlate of legal action, given they may have increased the perceived seriousness of the opioid epidemic or the costs of addressing it.
- Model A2.10 further accounts for the possibility that race considerations are driving the results by including an indicator for opioid deaths of white individuals.

Across all models in Table A2, the effect of the tobacco scar in the pre-MDL period remains consistent, despite inclusion of a wide variety of control variables representing a vast range of alternative explanations. Put together, these results give us confidence that our findings are robust.

Table A3 tests how our findings are affected by the inclusion of lawsuits by cities in our analyses. (Recall that we coded counties as having filed if either the county initiated a lawsuit or a city with a population of greater than 25,000 did so.) This additional analysis considers the possibility that cities might best be treated as a separate category of litigant, and that counties should only be considered to have filed a lawsuit if the county government itself did so. This robustness is perhaps to be expected given that counties account for the majority of filings in our data.

Table A3. Comparing Coefficients of Cox Model Estimates of the Adoption of Litigation Against Opioid Manufacturers between January 2017 and October 2020 for Counties versus Counties and Cities as Plaintiffs

	Model A3.1: Counties and Cities	Model A3.2: Counties Only
Opioid deaths	.145*	.076
	(.073)	(.072)
Opioid deaths	.303*	.391**
× pre-MDL	(.124)	(.126)
Population share white	.001	–.008
	(.079)	(.076)
Population share white	.429	.519*
× pre-MDL	(.232)	(.248)
Share Democrats	–.026	–.070
	(.087)	(.090)
Voter turnout	.220*	.217
	(.105)	(.111)
Prev. lawsuit within 50 mi.	.144***	.135***
	(.030)	(.033)
Tobacco C&P (prop'n settlement)	–.029	–.020
	(.039)	(.043)
Tobacco C&P (prop'n settlement)	–.990**	–.819*
× pre-MDL	(.377)	(.370)
County controls	Yes	Yes
State controls	Yes	Yes
Observations	80,385	82,871
AIC	25,300.46	23,902.32
df	17	17

Note: Standard errors are in parentheses and clustered by state.
*$p < 0.05$; **$p < 0.01$; ***$p < 0.001$ (two-tailed tests).

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Editors' Note

To avoid any possible conflict of interest, the *ASR* Editors were not involved in the evaluation of this paper. The entire review process was handled by a Deputy Editor who is unaffiliated with the University of Massachusetts, Amherst.

Notes

1. For example, federal officials and a handful of state attorneys general filed *criminal* lawsuits against Purdue Pharma, most significantly a 2007 case that resulted in three top company executives pleading guilty to "misbranding," that is, making inaccurate claims that OxyContin was less prone to abuse than other opioids. The company agreed to pay $600

million in fines to the federal government, as well as $20 million to 26 states (Gluck, Hall, and Curfman 2018; Meier 2007, 2018). Yet Purdue continued marketing a new formulation of the drug, and overdose deaths soared.

2. The MDL panel is designed to increase efficiency in federal district pretrial litigation by consolidating cases in multiple jurisdictions if pending actions are similar enough that trying them separately would simply duplicate aspects of litigation, such as discovery. MDL is a fairly reliable path to settlement (Gluck and Burch 2021).
3. We spoke to six city attorneys and 23 county attorneys.
4. Interviewers were trained to think of themselves as "trusted outsiders" (Bucerius 2013; Rios, Carney, and Kelekay 2017).
5. To preserve confidentiality, we do not name these attorneys, nor the firms, institutions, or organizations for which they work. When we refer to specific states or counties, we preserve respondents' anonymity to the degree of their preference. For example, some preferred we name only their region, not their state.
6. Approximately six of our interviewees said their jurisdictions had not filed. For this reason, we designate non-filers but not filers.
7. Some regions or states contain "boroughs" or "parishes" rather than "counties," but these are largely equivalent.
8. All states took action against Big Tobacco in the 1990s. Forty-six states were signatories to the Master Settlement Agreement, and four states signed their own tobacco settlement agreements prior to the MSA. Thus, it is not possible to contrast counties in states that had experience with the tobacco settlements versus those that did not.
9. President Trump officially declared the opioid crisis a "public health emergency" on October 26, 2017.
10. Following Cornaggia and colleagues (2021), we capture the extent of the crisis using mortality data rather than prescription data for three reasons. First, high mortality rates imply a high addiction rate, whereas high prescription rates could simply reflect a greater presence of particular health conditions. Second, full-population county-level data are available for deaths but not for prescriptions. Third, mortality rates can be cleanly linked to counties via the residence of the person who died, whereas individuals may obtain prescriptions in counties where they do not live.
11. States could file a lawsuit on the basis of damages they had incurred; counties could do the same on the basis of their own expenses. Thus, lawsuits by the two parties are not mutually exclusive.
12. Different lags for this variable produce consistent results. We also tested whether opioid-related deaths in a particular part of the population, such as among white individuals, had a differential effect, but we found no such evidence (see Appendix Table A2, Model A2.10).
13. We draw on data from the U.S. General Accounting Office (2001) that reports the agreed-upon split among counties. In California, the state, counties, and four largest cities (Los Angeles, San Diego, San Francisco, and San Jose) entered into a memorandum of understanding with the state to coordinate lawsuits before the Master Settlement Agreement (MSA). In New York, the state passed a consent decree providing a share to each county and New York City based on the share of Medicaid costs, population, and specific considerations. We excluded the boroughs of New York City from consideration because the GAO does not report the split among these boroughs. Settlement funds received by Californian cities were allocated to the counties where they are located; the results are robust to this choice.
14. *State Democratic control* is missing for Nebraska and Washington, DC, which results in the omission of those units from our analyses. However, the results are the same if those two territories are included and the variable is dropped.
15. See https://milberg.com/practice-areas/state-and-local-government/.
16. See https://www.nlc.org/article/2024/05/28/recent-litigation-activity-that-local-governments-should-know-about/.

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