Leveling the Odds: The Effect of Quality Legal Representation in Cases of Asymmetrical Capability

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How much does attorney quality influence the outcome of cases in which one litigant is significantly more capable than the other? Using a unique dataset of all asylum merits decision from 1990 to 2010, we find that high quality representation evens the odds for asylum applicants and that not being represented by legal counsel is actually better than being represented by a poor lawyer. In this analysis, we draw on a modified party capability theory and create new measures of attorney capability. We find that variation in attorney capability is a primary driver of the disparity in asylum outcomes in U.S. immigration courts and that a likely causal mechanism for this influence is the judge-specific reputation of an attorney.

In 2011, immigration attorney Vahid Shariati was disbarred for over 100 violations of the D.C. Rules of Professional Conduct in cases involving eleven clients. A number of the violations involved failure to file an asylum application in a timely fashion (thereby causing clients to potentially miss an opportunity for asylum) and lying to clients about having filed applications in a timely fashion, including providing false government receipts to indicate timely filing.[1] Shariati's unethical conduct is relatively extreme, but it brings to the fore questions about the extent to which attorney capability affects the outcome of asylum cases and whether the effect of attorney capability at the trial level differs from its effects at the appellate level. We investigate these general questions using a unique dataset of all asylum merits decision from 1990 to

2010. We find that not being represented by legal counsel is actually better than being represented by a poor lawyer and that variation in attorney capability is a primary driver of the disparity in asylum outcomes in U.S. immigration courts. Furthermore, we show that high capability legal counsel is able to even the odds in this type of litigation between one-shot litigant asylum seekers and the repeat player federal government. Our findings have policy implications for debates about reforming the process of adjudicating asylum claims in the U.S. as well as for understanding the ways in which attorneys for disadvantaged clients can potentially level the odds of success in trial court-like settings.

We turn to the judicial politics literature and examine these questions in the context of party/lawyer capability theory. This literature focuses on stratification in the legal profession (repeat players/one-shotters and have/have-nots dichotomies) which has been demonstrated to influence success in litigation (see for example, Abrams and Yoon 2007; Galanter 1974; McGuire 1995; Haire et al. 1999; Szmer et al. 2007). The scholarship provides us with a foundation to understand attorneys' ability to influence asylum case outcomes. We argue that in asylum cases, repeat player and one-shotter party status is held constant, with the U.S. government always a repeat player and the asylum seeker a one-shotter. Thus, the asylum seeker is always the underdog relative to the federal government. Nevertheless, we argue that capable legal counsel can offset this asymmetrical power relationship. In particular, we find that past success in asylum cases is the strongest predictor of future success. More importantly, we distinguish between overall past success and judge-specific past success. Our findings suggest that judge-specific attorney reputation drives the results.

Past research has shown that aliens who apply for asylum within the U.S. immigration courts with the assistance of legal counsel have a much greater chance of being granted asylum than do aliens who petition without the aid of an attorney (Keith, Homes, and Miller et al. 2013; McKeown and McLeod 2009; Miller et al. 2014b; Ramji-Nogales, Schoenholtz, and Schrag 2007, 2009). This fact has engendered a serious push for reform, including movement toward a *Gideon*-like rule for asylum cases. At first glance, this reform seems reasonable given the complexity of immigration law and the difficulty in navigating the U.S. asylum system, coupled with high stakes for applicants. The legal strictures in asylum cases are loose because both the facts and the law are vague (Baum 2010; Legomsky 2010). The *sine qua non* of asylum law is whether the applicant has a "well-founded fear of persecution" if they were returned to their sending country. But, as Law (2005: 830) notes, "the indeterminacy of the governing

legal standards" in asylum cases leaves judges "to define vague yet crucial terms-'political,' 'persecution,' 'well-founded fear,' 'more likely than not'-on a case-by-case basis" with "precedent provid[ing] only limited guidance, given the dependence of asylum claims on case-specific facts" and the norm that immigration judges (IJs) do not issue written opinions.

Legal representation seems to be a key component of fairness and consistency in asylum cases, yet we know from the dataset we have constructed for this project that over 8% of all of the attorneys coded in our data have been disciplined by either their state bar associations or the Executive Office for Immigration Review (EOIR). The true rate is higher since many state bars either do not release disciplinary information or only publish infractions from a limited period of time. One of the most notorious lawyers in our sample is Martin Resendez Guajardo, who was suspended twice in California before giving up his license in response to new charges in 2008. His associate, Christopher Stender, took over the firm and continued with the clientele. The city of San Francisco sued to close the firm because it was alleged that their practice consisted of "charg[ing] big money and mak[ing] big promises to resolve clients' immigration situations, then do little-to-nothing but cash the checks" (Samaha 2012). The vulnerability of non-citizens in immigration proceedings is well known, whether it is due to high volume lawyers such as Frank Liu in New York, who has been repeatedly chastised by the courts for his "seriously deficient work" (Liptak 2008) or immigration lawyers like California's Miguel Gadda (disbarred in 2002), who routinely collected steep fees up front, overpromised results, and then failed to provide even rudimentary legal service (Rivlin 2006). Moreover, we know that immigration attorneys receive the lowest ranking by federal judges in terms of quality of counsel (Posner and Yoon 2011). Additionally, government lawyers typically outmatch immigration attorneys in terms of experience and expertise (Posner and Yoon 2011). These facts raise an important question that has significant normative (fairness and consistency) and policy implications (in terms of proposed reforms) which are also theoretically salient to our broader understanding of the role of lawyers in U.S. courts and the question of whether the quality of legal counsel affect the likelihood an alien wins.

We begin this article with a brief discussion of some salient characteristics of the immigration bar and its regulation. We then examine party (lawyer) capability theory to set the foundation for our exploration. But because of its assumptions, which are largely based on appellate practice, we adapt the theoretical assumptions to the institutional context in which attorneys practice in asylum cases: high caseload and fact-intensive trials. We then set out

our research design, which includes addressing the issue of selection bias, and discuss the results of our analysis. Finally, we address the theoretical and policy implications that arise from our study.

The Immigration Bar

We discuss three aspects of the immigration bar to establish the context in which we apply party capability theory: who can practice immigration law, how this practice is regulated, and the role of representation within immigration hearings. First, the overall threshold for practicing immigration law is quite low relative to other areas of law—one simply needs an unencumbered law license (Barnes 2003). In most states, attorneys can self-identify as being immigration attorneys. Only four immigrant-heavy states offer certification as a specialist in immigration law (Texas, California, Florida and North Carolina).[2] Second, regulation of attorneys practicing immigration law is sparse. It is difficult for key actors, such as IJs, to file complaints of ineffective counsel directly to state bar associations. Instead, IJs must go through the DOJ's General Counsel (Shannon 2009). The standards set by the Board of Immigration Appeals (BIA) for aliens filing an ineffective assistance of counsel claim are fairly high and include first a filing with the relevant state bar association. Of course, asylum seekers who are denied relief and deported are unlikely to be able to file a grievance. Adding to this difficulty, BIA case law regulating an ineffective assistance of counsel claim has been in flux in the last decade.

The need for adequate counsel in immigration cases, and in asylum hearings in particular, is quite apparent. McKeown and McLeod (2009: 287) posit that "underrepresentation and poor quality of representation in immigration proceedings are but two of the trends noted frequently in federal appellate case law and showcased by the American Bar Association (ABA)." They claim "at every stage of immigration proceedings...the presence of competent counsel improves the efficiency of case processing and the administration of justice (289)." Noncitizens are particularly vulnerable to the problem of ineffective and unscrupulous counsel, and as Shannon (2009: 622) notes, the exploitation of immigrants is "merely a symptom...of the

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[2] According to the ABA, only these four states allow for certification as a specialist in immigration law. In these states certification involves passing a day-long test on the intricacies of immigration law and so is a costly signal. A number of states provide for certification as specialists beyond the programs in California, Florida, North Carolina and Texas, but none allow for specialization in immigration law. In addition, there are a handful of national programs that provide for certification, but none focus on immigration law (see http//www.americanbar.org/groups/professional_responsibility/committees_commissions/specialization/resources/resources_for_lawyers/sources_of_certification.html).

larger problem of inadequate access to competent legal counsel by foreign nationals." Barnes (2003) argues that the most basic issue here is trustworthiness; immigrants are simply in a terrible position to evaluate the claims made by lawyers and are often naïve about what lawyers can and cannot do for them. The stakes are high in immigration proceedings and deportation can be a consequence of inadequate counsel. The U.S. Supreme Court itself has observed this, noting that "deportation is a drastic measure and at times the equivalent of banishment and exile" (as cited in McKeown and McLeod 2009: 289). The stakes in asylum cases are even higher.

Competent counsel provides benefits. McKeown and McLeod (2009: 289-90) argue skilled advice may divert noncitizens from the court system into other alternatives and that "once the noncitizens are in the system, it is easier for IJs and administrative or judicial staff to deal with representatives who understand the procedural intricacies and substantive complexities of the system." Further- more, they argue that "just outcomes are more likely as well when effective counsel is present, because the facts necessary to a fair determination of the case will be developed, presented, and tested in light of the relevant law (289-90);" whereas, those without repre- sentation or with an ineffective attorney may be unaware of how to impart even the most fundamental information (290).

Despite evidence of counsel's effect on asylum grants, merely having legal counsel does not guarantee effective legal advice. McKeown and McLeod (2009: 289) argue, "beyond the signifi- cance of the presence of legal counsel, the quality of representation in immigration litigation is of vital consequences" and once con- trolled for, "the differential outcomes associated with the presence of effective counsel are likely to be even more pronounced." They conclude that ineffective counsel is worse than not having an attor- ney. Moreover, they posit "efforts to improve the fairness and con- sistency of immigration adjudication must focus on improving the quality of immigration counsel, not simply the availability of coun- sel alone" (288). However, no empirical study that we are aware of has examined the effect of the capability of counsel in these types of cases. We turn next to party capability literature and draw on its various approaches to inform our theoretical understanding and empirical examination of lawyer capability in asylum cases.

Party (Lawyer) Capability Theory

A substantial body of literature has documented and explored the implications of the stratification of the U.S. legal system over the last thirty years, both in the terms of the parties in litigation, and subsequently in terms of legal counsel. The exploration

began with the seminal work of Mark Galanter in 1974, in which he delineated a dichotomous typology of parties—one-shotters and repeat players—who vary in their resources, goals, and the strategies with which they play the litigation game. One-shotters are "claimants who only have occasional recourse to the courts" and repeat-players are those "who are engaged in many similar litigations over time" (97). Thus, a spouse in a divorce case is a one-shotter, and the federal and state governments, as well as large corporations, which are likely to find themselves in court repeatedly over time, are repeat-players. Galanter also distinguishes between "haves" and "have-nots." The two dichotomies differ in their focus. The repeat-player/one-shotter distinction focuses on the abilities of the types of parties before the court to shape the law in their favor over the long term and to gain both substantive and procedural knowledge of the courts in which they appear. Generally speaking repeat-players and the "haves" enjoy a multitude of advantages, which contribute to empirically demonstrated greater probability of winning they enjoy over "have-nots" and "one-shotters" (see Galanter 1974; Wheeler et al. 1987; Haire et al. 1999). The federal government consistently enjoys such advantages; whereas, the typical asylum applicant does not.

While Galanter's focus was largely on the parties to the litigation, we follow McGuire (1995) who argued that attorneys are themselves repeat players, and who thus shifted the focus in the literature from party capability more specifically to lawyer capability and its effect on the likelihood of winning in litigation. We believe that at the level of legal counsel, the government counsel remains the "upper dog" or "have" relative to the asylum seeker's legal counsel. While we know there is some variation in capability of government counsel in immigration court, Posner and Yoon's (2011) survey of federal judges demonstrated the disparity in quality of counsel between government attorneys and immigration attorneys was the largest of any of area of law. Thus, in asylum hearings the haves and have-nots are likely held constant, and we turn our attention instead to the potentially more important variation in legal capability that may enhance the ability of the "have-not" asylum seeker to level the playing field in litigation with the "have" government. Party or lawyer capability theory is an important starting point, but when we examine the institutional context of asylum decision making some of the theoretical assumptions no longer hold or are weakened considerably. This is because the party/lawyer capability literature has primarily focused on appellate judges with a general jurisdiction who lack specialized expertise in any specific area of law and hear comparatively few cases. This article represents a significant application and test of the party capability theory at the trial level.

Two broad characteristics of attorney capability emerge from the literature—expertise and experience. Kritzer (1998) delineates these characteristics along two dimensions of expertise—substantive expertise and process expertise.[3] Substantive expertise is conceptualized as specialization in a substantive area law, such as immigration law. Substantive expertise is argued to be of value in areas of law in which the judges may not be as well informed, especially judges on courts with general jurisdiction (Mauro 2000; Rehnquist 2002; Szmer, Johnson, and Sarver 2007). Expert attorneys are more likely than generalists to possess superior understanding of the intricacies of the law, and are likely "more skillful in framing the issues and fact patterns in accordance with relevant precedent" (Haire et al. 1999). Experience has been demonstrated to matter in two ways (1) the attorney is able to build a reputation for veracity over time and concomitantly develop trust among the judicial actors (McGuire 1995; Kritzer 1998; Haire et al. 1999; Szmer et al. 2007) and (2) the attorney is able to develop a familiarity with the judges' ideological proclivities that allows him or her to tailor arguments for the specific judges before whom they practice (Kritzer 1998; Haire et al. 1999; Mauro 2000).

We have somewhat mixed expectations about how judicial specialization may affect the operation of attorney capability. On one hand, we know that asylum cases can be quite complex. We expect that immigration specialist attorneys are better than a nonspecialist in representing an asylum seeker. For instance, a specialist might be better able to establish core components of the case, such as the credibility of their client's testimony with respect to the potential for persecution on return to a sending country. An immigration specialist might be more capable of making a new and nuanced application of emerging jurisprudence, such as that around domestic violence or female genital mutilation. Or such a specialist may be more aware of the complications of authenticating critical documents, which is a time-consuming process that is required for documents from some countries but not for others, depending on the country's treaty status with the U.S. and other factors.

We also know that IJs most often come to the bench lacking substantive expertise in immigration law. Until recently, the qualifications set by the attorney general only required that the candidates have 7 years of prior legal experience and, although recent reforms now require that new IJs pass a written examination demonstrating familiarity with immigration law, scholars report that the exams are a very low threshold in terms of substance

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[3] We treat process expertise as analogous to experience in a particular court—i.e., familiarity with the subtleties of practice in particular venues.

and process (TRAC Immigration 2009). Thus, it remains likely that IJs come to the bench lacking specialized knowledge of immigration law. On the other hand, we expect that given their caseload, IJs—who typically decide more than a thousand cases a year—would quickly become substantive experts in their field, and would not be as reliant on the expertise of attorneys practicing before them. Thus, our expectations in regard to substantive expertise are mixed. However, our exploration has to take into account one other factor—the lack of substantive weight in claiming to specialize in immigration law. If substantive expertise matters in asylum cases, it will matter less than has been typical in the attorney capability literature, and the effect could even be negative given the possibility that unscrupulous lawyers may take advantage of the easy claim and the vulnerability of asylum seekers. Thus, any beneficial effect is likely a wash, with the possible exception of the four states with certification. Therefore, we derive the following hypothesis:

> Hypothesis One: Having an attorney with specialization in immigration law will have no effect on the likelihood of the asylum applicant being granted relief.

We believe that the core dimension of capability for attorneys practicing in asylum cases is most likely to be experience, although we conceptualize experience differently than the capability literature. In the context of asylum hearings, we argue that immigration attorneys would have the same underlying need to establish a personal reputation of reliability, especially in the smaller and mid-sized immigration courts in which attorneys are recognizable as frequent litigators. The role of reliable, credible information from trusted repeat players is especially valuable in the asylum decision making process where credibility determinations are extremely difficult to make because, as Martin (2000) observes, the "basic facts in any particular [asylum] case are highly elusive" and "the adjudicator has to decide what happened in a distant country" with only two imperfect sources general human rights country reports and the personal testimony of the asylum seeker. Moreover, Alexander (2006: 19) suggests that immigration courts routinely lack evidence as "the witnesses, objects, and documents that could prove or disprove a fear of persecution, for example, are likely beyond reach oversees" and "indeed, the ability to gather evidence may be blocked by the very government alleged to be the persecutor." Therefore, we have the following hypothesis:

> Hypothesis Two: While experience will increase the odds of success, it does so with diminishing returns.

In the lawyer capability literature the experience of a repeat player attorney is typically conceptualized as the number of previous cases before a tribunal (e.g., McGuire 1995; McAtee and McGuire 2007). Typically this measure is transformed in some way to account for the fact that there might be diminishing returns to experience—beyond having a few cases under your belt each additional case should teach you little. Again, because this literature has focused on appellate courts (but see, e.g., Abrams and Yoon 2007), there has been little concern with the institutional context of trial attorneys, such as attorney workload, which might actually reduce the capability of the attorney. This is especially important in immigration law because attorneys do not work on contingency fees and case billings are relatively small. The incentive to take on a large number of cases is greater, and thus some attorneys may take more cases than they are capable of handling competently, especially given the difficulty of filing ineffective counsel claims. Thus, workload becomes a mitigating influence and leads us to the following additional hypothesis:

> Hypothesis Three: The greater the attorney's workload, the lower the probability of success will be.

An additional factor in immigration cases makes the literature's conceptualization of experience as prior number of cases problematic in our study. We know that bad immigration attorneys tend to take and try lots of cases (McKeown and McLeod 2009). In fact, in a 1997–1998 study of New York immigration courts based on EOIR data and interviews with lawyers, judges and respondents, Mottino (2000: 38) provides evidence that some of the worst immigration lawyers were those with the highest caseloads. The author found that "classified among the very bad [lawyers] were high-volume, private-practice lawyers, many of whom appear to be associated with travel agencies, who have little or no contact with their clients" and who were "described as individuals who 'do not prepare, do not know immigration law, and do not care.'" Furthermore, Mottino's study demonstrated that many respondents were targeted by these bad "low-cost, high volume" lawyers just as they walked into court. Thus, we believe this dimension of party capability would be better conceptualized as prior attorney success in asylum cases rather than mere experience. As the attorney presents and wins cases before a particular immigration court his or her reputation grows, as does the perception of credibility and reliability in regard to the information the attorney is presenting in the hearing. This benefit should play out particularly strongly in asylum hearings where

reliable information and the credibility of the parties are critical and yet illusive components of a case. Successful attorneys may also develop a reputation for taking particularly meritorious cases. The opposite would hold for attorneys who repeatedly bring cases to the court and lose. Thus, we derive the following hypothesis:

> Hypothesis Four: The accumulation of prior success in asylum hearings will increase the level of success in subsequent cases generally.

We argue that this effect may apply even more in regard to prior success before a particular immigration judge, as the exposure and concomitantly enhanced reputation would be specific to the individual judge. In addition to the benefits detailed above, we would also expect, as did Kritzer, that the attorneys would have an increasingly better sense of the particular immigration judge's proclivities and better developed judge-specific strategies. Higginbotham (1988), a federal court of appeals judge, argued that in the small percentage of cases in which the outcome is unclear, determinations may be influenced by judicial attitudes. Therefore, an attorney who has acquired "the necessary sensitivity to [to individual judges' attitudes] through episodic adventures" into the court can influence the case holding (182-83, as cited in Haire et al, 1999: 672). Thus we derive our fifth hypothesis:

> Hypothesis Five: The accumulation of prior success in asylum hearings before a particular judge will increase the level of success in subsequent cases before that judge.

Resources

We also believe that there are additional resources that may enhance attorney capability. First, attorneys who work for NGOs have available to them resources that private practice attorneys do not, such as a larger staff, funds to hire expert witnesses, and more time to go through more extensive document authentication, for example. In addition, most NGOs are likely to have more than one attorney and would likely employ pro bono assistance, as well, thus potentially reducing the workload effect. Finally, in-house counsel within an NGO would likely benefit from the reputation of the NGO and its success in immigration court. In an earlier analysis of a Texas human rights NGO, the non-profit's overall success rate of 80% was considerably higher than average Dallas immigration court grant rates of 22% to 45%

(Keith and Holmes 2009). This is similar to Mottino's (2000: 23) impression of NGOs in New York immigration courts "there is general agreement throughout the immigration community that non-profit agencies not only provide high-quality representation but also work effectively with judges, INS attorneys, and other legal professionals."[4]

> Hypothesis Six: Having an attorney who works with an NGO will increase the likelihood of the asylum applicant being granted relief.

One might also expect that some of the same benefits would accrue to an attorney who works for a law firm, particularly in regard to resources. Other expectations seem to mitigate such a relationship. For example, workload may be an issue for these attorneys as the firm is likely to have expectations in regard to billings. Palmer et al. (2005) found that 10 law firms had almost 35% of the petitions for review before the Second Circuit and the top 20 law firms represented almost 47% of the petitions. Each of these offices had more than 100 cases pending. It is possible that attorneys may benefit from the reputation of the firm as well, although we expect the effect would be less than with an NGO, and it may be that the reputation is negative rather than positive because some firms may attempt to maximize revenue by taking a large number of cases without giving any particular case much attention.

> Hypothesis Seven: Having an attorney who is affiliated with a law firm will increase the likelihood of the asylum applicant being granted relief, but the effect will be diminished relative to that of working with an NGO.

Finally, we believe that attorneys with elite law school education may be more capable attorneys due to the quality of their education and/or they may have the advantage of an enhanced reputation because of the prestige of their law school. We therefore have the following supplemental hypotheses:

> Hypothesis Eight: Having an attorney with a law degree from an elite law school will increase the likelihood of the asylum applicant being granted relief.

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[4] We know that NGOs are highly selective in the clients they choose to represent, thus there is potential for a selection effect. We address this problem in the research design section of the article.

Research Design

Controlling for Attorney Selection of Cases

It is possible that attorneys strategically select cases that they are more likely to win. To control for this possibility, we need to model any possible selection effect that may arise, as such an effect can cause bias in our estimates of the effect of attorney ability on our ultimate dependent variable of interest: whether the applicant receives asylum. Our approach to controlling for the potential of a selection effect is to estimate a Heckman probit selection model, where the selection variable is whether or not an applicant is represented (coded 1 if yes and 0 otherwise). The results of this modeling approach are available in the appendix, but suffice to say that the Heckman probit model does not suggest, under a number of specifications, that a statistically significant selection effect is present. The rho parameter, which measures the degree of correlation between the selection and outcome equations is not statistically significant ($p = 0.206$), which suggests that strategic selection of cases by attorneys is not a concern in this data (Cameron and Trivedi 2009). Furthermore, the Heckman probit model presented in the appendix also shows results for the outcome equation (whether an applicant receives asylum) that are very similar to those we present below using a probit model that does not account for selection effects. We eschew the selection equation below since it is unnecessary and reduces the efficiency of estimates in the outcome equation.

Attorney Capability Model

Dependent Variable

Our dependent variable is the case outcome. Following most of the asylum literature, we code outcomes as one in cases in which the judge makes a grant of asylum, a conditional grant, or some other form of relief. Denial of any form of relief is coded as zero.[5] Because our dependent variable is dichotomous we utilize a probit link function in the following regression. Only cases decided on the merits are included. Our dataset of US asylum cases from 1990 to 2010 was built after numerous

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[5] Previous work (Miller et al. 2014a) has suggested a different conceptualization of the asylum outcome that is more nuanced than a simple dichotomy. While the added nuance is valuable in understanding judicial decision making—the goal of the cited paper—this more nuanced coding of the dependent variable simply adds unnecessary complication in this article, as the results for the models with the dichotomous variable and the more nuanced coding are more-or-less the same.

Table 1. Descriptive Statistics

	Mean	Std. Dev.	Min.	Max.
Lawyer Capability				
Cases Per Year	99	134	1	956
Total Experience (logged)	5.22	1.47	0.69	8.28
Past Success	0.29	0.21	0	1
Judge-Specific Past Success	0.23	0.28	0	0.99
Elite Law School	0.06	0.240	0	1
Cert. Immigraiton Specialist	0.34	0.47	0	1
Law Firm	0.26	0.44	0	1
NGO	0.01	0.12	0	1
EOIR Discipline	0.11	0.310	0	1
Judicial Policy Preference				
Asylum Liberalism	1.39	1.01	0.11	4.08
Human Rights Conditions				
Democracy (Polity)	1.06	0.865	0	2
Human Rights Abuse (PTS-St. Dept.)	3.55	0.800	1	5
US Material & Security Interests				
Log of Trade with US	8.65	3.01	−2.20	13.26
US Military Aid	0.69	0.46	0	1
Top Ten Illegal Immigration	0.22	0.41	0	1
World Bank Development Class	0.71	0.62	0	3
Controls				
Attorney Woman	0.18	0.390	0	1
Judge Woman	0.40	0.49	0	1
English Speaker	0.06	0.25	0	1
Arabic Speaker	0.02	0.14	0	1
National Unemployment (1 Month Lag)	0.05	0.01	0.04	0.10
Democratic Administration	0.33	0.47	0	1
IIRIRA Expedited Removal	0.86	0.34	0	1
IIRIRA One Year Bar	0.82	0.38	0	1
Real ID	0.31	0.46	0	1
Nine Eleven	0.00	0.06	0	1
Affirmative Application	0.66	0.470	0	1
Detention Status	0.22	0.49	0	2
Elapsed Time	152	53	2	240
Number of Observations		197704		

FOIA requests to the EOIR and United States Citizen and Immigration Services. Table 1 includes the descriptive statistics for all of our variables.

Attorney Level Variables

We randomly selected three samples of 500 attorneys, and after eliminating duplications and those attorneys about whom we could not find information, we had a final sample of 1,234 coded attorneys and law firms who participated in 197,704 asylum cases between 1990 and 2010.[6] From the data, we created attorney specific measures of the number of cases per year, logged total cases, overall past success, and judge-specific past success, which constitute our key independent

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[6] The sample of 1,234 attorneys is out of 24,776 distinct attorneys in our database, 5% of the total. This sample represents approximately 35% of all asylum cases decided on the merits during this time period. As is indicated by the comparison of the number of attorneys and cases, a handful of attorneys take an extraordinary large number of cases.

variables.[7] Cases per year is just a count of the number of
cases an attorney tried in the previous 12 months and logged
total cases are the natural log of the total number of cases the
attorney has tried in previous years. Overall past success is a
running tally of the win rate for an attorney. Put differently, it
is a measure of the number of cases won by the attorney
divided by the total number of cases tried, excluding the pres-
ent case from both the denominator and numerator. The mea-
sure includes only those cases occurring before the present
case in the data. Judge-specific past success counts only the
previous win rate for a specific attorney-IJ dyad. The mean
success rate for attorneys overall is 29% and it is 23% for the
IJ-specific measure.

To code attorney demographic information, we relied on the
Martindale attorney profiles (martindale.com) as well as informa-
tion provided by state bar associations. These sources provide
demographic information including year admitted to bar, gender (1
for woman and 0 for man or unknown), whether the attorney
belongs to a law firm (1 if yes, 0 otherwise), whether the attorney is
an immigration specialist (1 if the specialty is listed and 0 if not),
and whether the attorney belongs to an NGO such as Lutheran
Family Services, Human Rights Initiative, or Catholic Charities (1
for yes, 0 for no). We also used the Martindale profiles and state
bar profiles to identify law school attended. From that, we identified
elite law schools if the lawyer graduated from a school listed among
the top 10 law schools in the current U.S. News rankings (Yale,
Harvard, Stanford, Columbia, Chicago, NYU, Penn, Virginia, UC-
Berkeley, and Michigan). To measure if he or she had been disci-
plined professionally, we first tried to identify whether or not the
attorney had been disciplined by their state bar. However, since
state bars do not consistently report discipline, to create a consistent
measure of discipline, we have relied on the Department of Justice's
suspension list provided by the EOIR http//www.justice.gov/eoir/

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[7] We included one additional control on attorney quality in other models not shown
here: whether the attorney belonged to the American Immigration Lawyers Association
(AILA). AILA is the major specialized professional association for immigration attorneys
and approximately 70% of the attorneys in our sample were, at one time, members of the
organization. To be a member of AILA an attorney must apply, be in good standing with a
state bar association and must not be objected to by local chapters of the organization (see
http//www.aila.org/content/default.aspx?docid=1117). Attorneys who are members of
AILA, therefore, make a credible commitment beyond simply espousing specialization in
immigration and asylum law and they are subjected to some degree of scrutiny before being
allowed to become members. Inclusion of an indicator for AILA membership in the models
that follow does not alter our results significantly or substantively. Furthermore, member-
ship in AILA is not a statistically significant predictor of success itself and its inclusion causes
us the loss of approximately 20,000 observations. For these reasons, we omit it in the models
that follow.

discipline.htm (1 if discipline, 0 if not), which we term EOIR discipline.[8] Table 2 below provides descriptive information for each of these included variables as well as those we discuss below.

Judge Level Controls

We have created a measure of asylum liberalism. This is a policy-specific measure of ideology to approximate a judge's predisposition toward immigration issues. This tightly focused proxy is more useful and precise than a general indicator of ideology, such as party of the appointing president. A subject specific approach such as ours is often necessary when scholars study specialized judicial decision makers, because more general approaches may not uncover the relevant ideological dimensions of decision making (Baum 1994; Staudt et al. 2006; Miller and Curry 2009; Miller and Curry 2013; Curry and Miller forthcoming.). In addition, our approach builds on earlier studies that have looked to judges' background characteristics, believing that they represent a socialization process which ultimately results in votes (Gryski et al. 1986). Furthermore, we find strong evidence that the background characteristics that we measure have been used by key actors, such as the attorney general, as cues for the likely policy preferences of asylum adjudicators—both Janet Reno and John Ashcroft used these characteristics to select judges for the BIA. Additionally, we believe that it accounts for the early career selections of some IJs that may indicate an underlying policy proclivity that is subsequently strengthened through additional career socialization. For example, a conservative individual may be more likely to seek out a job as an INS agent or a prosecutor. These career experiences then are likely to reinforce those underlying proclivities.

We have coded 11 career socializing experiences including previous work experience with the INS, the Department of Homeland Security (non-INS), the EOIR, an NGO, an immigration-related NGO experience, the military, a law school, private practice, prior judicial experience, corporate law, or time as a prosecutor. Then, we conducted a factor analysis to create a proxy for a judge's views toward immigration and asylum (for more details, see Keith, et al. 2013). As a control, we also code if the judge is a woman (1 yes, 0 no), as previous research has indicated

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[8] Readers may wonder about the collinearity between the two measures of attorney success, elite law school attendance and whether an attorney was disciplined by the EOIR. The highest correlation is between the two measures of attorney past success, as overall success is correlated with judge-specific past success at $r = 0.64$. None of the other correlations between these variables rise above $r = 0.10$, which is the correlation between overall past success and attendance at an elite law school. In short, none of these correlations are high enough to cause concerns with respect to collinearity (see Kennedy 2008).

Table 2. Probit Regression

	β	Clustered S.E	Effect
Lawyer Capability			
Cases Per Year (−)	**−0.0007**	0.0001	−0.17 [−.21, −.14]
Total Experience (logged) (+)	**−0.057**	0.007	−0.12 [−.15, −.09]
Past Success (+)	**0.728**	0.065	0.18 [.15, .21]
Judge-Specific Past Success (+)	**2.565**	0.072	0.64 [.62, .67]
Elite Law School (+)	0.022	0.019	—
Cert. Immigraiton Specialist (+/−)	0.036	0.028	—
Law Firm (+)	−0.012	0.011	
NGO(+)	**0.191**	0.056	0.05 [.02, .08]
EOIRDiscipline (−)	−0.029	0.017	—
Judicial Policy Preference			
AsylumLiberalism (+)	0.041	0.028	—
Human Rights Conditions			
Democracy (Polity) (−)	**−0.191**	0.013	−0.09 [−.10, −.08]
Human Rights Abuse (PTS-St. Dept.) (+)	**0.129**	0.010	0.15 [.13, .17]
US Material & Security Interests			
Log of Trade with US (−)	**−0.037**	0.004	−0.13 [−.14, −.12]
US Military Aid (−)	**−0.073**	0.017	−0.03 [−.04, −.02]
Top Ten Illegal Immigration (−)	**−0.321**	0.029	−0.06 [−.09, −.08]
World Bank Development Class (+)	**0.061**	0.017	0.07 [.04, .09]
Controls			
Attorney Woman (+/−)	0.015	0.013	—
Judge Woman (+)	**0.127**	0.049	0.03 [.01, .06]
English Speaker (+)	**0.147**	0.032	0.04 [.03, .06]
Arabic Speaker (+/−)	−0.088	0.045	—
National Unemployment (1 Month Lag) (−)	−3.797	0.773	−0.02 [−.02, −.02]
Democratic Administration (+)	**0.057**	0.021	0.01 [.00, .02]
IIRIRA Expedited Removal	**0.133**	0.047	0.03 [.01, .05]
IIRIRA One Year Bar	−0.054	0.038	—
Real ID	**0.076**	0.029	0.02 [.01, .03]
Nine Eleven (−)	**−0.128**	0.067	−0.03 [−.07, −.00]
Affirmative Application (+)	**0.126**	0.016	0.04 [.03, .05]
Detention Status (−)	**−0.222**	0.017	−0.08 [−.10, −.06]
Elapsed Time (+)	**0.002**	0.0004	0.14 [.13, .14]
Constant	−1.104	0.081	
N of Cases		197704	
N of Judges		311	
Wald χ²		5960.53 (p = 0.000)	
PRE		0.45	
Area under ROC		0.86	

  Bolded coefficients are significant at *p* < 0.05 (two-tailed). Standard errors clustered by judge.

that female judges tend to be more likely to grant relief (Keith et al. 2013; Ramji-Nogales et al. 2007). We also tested whether the experience of the IJ affected the rate at which attorneys were able to gain relief for clients but judicial experience is not a significant predictor of relief, nor does it significantly moderate the influence of judge-specific or overall past success and so we leave it out of the models that follow.

Asylum Seeker Controls

In general, very little information on asylum seekers is released by EOIR. The EOIR reports the outcome of the case,

the applicant's country of origin, the language spoken by the applicant, the deciding judge, and name of lawyer (if represented). Thus, we are able to control for some significant factors. We control for language spoken. We expect that English speakers may be more likely to get relief because they can better understand the process, advocate for themselves and because it may be that IJs see them as less likely to be a potential burden on the state (Rottman et al. 2009; Holmes and Keith 2010; Keith et al. 2013; Miller et al. 2014b). We also control for Arabic speakers with mixed expectations. Arabic speakers are more likely to be suspected of potential terrorist connections (making them less likely to receive relief) but at the same time IJs may see some strategic benefit accruing to the U.S. by granting relief to those fleeing regimes in countries in which Arabic is spoken predominantly. We also control for if the applicant filed affirmatively (1) as opposed to defensively (0). An affirmative application is one in which the applicant voluntarily comes forward to apply for asylum as opposed to claiming asylum as a defense to removal. We control for whether the applicant was never detained (0), was previously detained but is now released (1) or is currently detained (2), which we call detained in the following model. We expect that this variable will have a strong negative impact on the likelihood of receiving relief, as those in detention or who have been previously detained will have a more difficult time advocating on their own behalf (Ramji-Nogales et al. 1998) and may be viewed with more suspicion by IJs. We also measure the elapsed time (in months) from the beginning of our dataset (1990), to control for the strong time trends that are present in asylum data (Keith et al. 2013; Keith et al. forthcoming; Miller et al. 2014b).[9] From the applicant's country of origin, we are able to control for a variety of country-specific factors that can signal whether or not an individual's well-founded fear claim is credible. We control for the human rights conditions the country of origin. To do so, we utilize Gibney's five-point measure of state-level personal integrity rights abuse, based specifically on the State Department human rights reports. This measure is one of the standard measures of political repression widely used in the human rights literature (see Wood and Gibney 2010). The scores range from 0, in which rule of law is secure and persecution based on political orientation is extremely rare, to a 4, which represents a common risk of widespread murder, disappearances, and torture.[10] In our model, this variable is referred to as human rights

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[9] In essence, IJs become considerably more likely to grant relief over time. For instance, in 1999 the overall rate of relief was 34%, whereas by 2010 it was 58%.

[10] We have recoded the original five-point scale, which ranged from 1 to 5, so that 0 represents no repression and 4 the maximum level of repression.

abuse. We also control for the level of democratization in the state by including Polity's IV eleven point scale of institutionalized democracy, which we collapse into three categories (democracies (2), anocracies (1), and autocracies (0)) based on the recommendation of the creators of the scale (Marshall and Jaggers 2013). We assume that IJs will associate the threat of persecution with authoritarian regimes.

We control for the material and security interests of the United States that are known to influence asylum policy and decisions (i.e., Rosenblum and Salehyan 2004; Holmes and Keith 2010; Keith et al. 2013; Miller et al. 2014b). Historically, applicants from trading partners and allies are less likely to receive asylum, all things considered. We include four measures (1) logged total bilateral trade between the United States and the home country based on the correlates of war dataset (Barbieri and Keshk 2012), (2) a dummy variable for countries that are recipients of U.S. military aid (USAID 2012); (3) a dummy variable that delineates the top 10 undocumented immigrant sending countries (Rottman et al. 2009); and (4) the World Bank Development level—which is a four-point scale with zero representing the lowest level of development and three the highest to capture the level of economic development in the country of origin. Each of the first three factors is expected to have a negative effect on the probability of a grant of relief while applicants coming from more economically developed nations are expected to be relatively favored in the process.

US National Controls

We include other national level control variables that affect IJs' willingness to grant asylum (Holmes and Keith 2010; Keith et al. 2013; Miller et al. 2014b). First, we include the monthly national unemployment rate (lagged one month, Bureau of Labor Statistics). Some evidence suggests that concern over immigration is primarily premised on concern over what immigrants will do to the labor market (i.e., taking jobs from citizens; Citrin et al. 1997; Cornelius and Rosenblum 2005) and we expect that as unemployment rises the likelihood of getting relief will decrease. We also control for whether there is a Democratic administration with the expectation that the partisanship of the Attorney General might affect IJ decision making if they behave strategically—specifically, when the Attorney General is a Democrat, IJs might be more likely to grant relief to applicants. Finally, we include two dummy variables for applications initiated in the immigration courts prior to two major implementations of IIR-IRA (Illegal Immigration Reform and Immigrant Responsibility Act), which may have strengthened the cases of applicants remaining

in the system due to the winnowing effects of the law. We focus on the expedited removal process in April 1997 and the one-year deadline, which went into effect April 1998. We also control for the Real ID Act, which was passed in May 2005 to limit access to the asylum process from both economic opportunists and potential terrorists through requiring a higher standard of proof in asylum. We include a dummy for September 11, 2001 (called Nine Eleven) with the expectation that there is downward pressure on asylum grants immediately after 9/11.

Analyses

Table 2 presents our attorney capability model. Our model fits the data quite well with a 45% reduction in error and area under the Receiver Operating Curve of 0.86. Our first hypothesis is supported. Obtaining an attorney that specializes in immigration does not improve the probability of a successful outcome, even when we narrow the measure to whether the attorney has been certified in Texas, California, Florida or North Carolina. Thus, asylum cases represent a significant departure from the attorney capability literature, but as we discussed above the difference is likely due to the easy ability of any lawyer to claim expertise without any substance to back up the claim. Contrary to our expectations embodied in hypothesis 2, increasing attorney experience does not improve the applicant's chances of securing relief, indeed increased experience appears to reduce the likelihood of victory. Moving across the range of experience, the most experienced attorney is actually 12 percentage points less likely to garner relief for an applicant than is an inexperienced attorney. Recall that we control for past success independent of experience (our fourth and fifth hypotheses), and it could be that previous experience is, in itself, simply not valuable in asylum hearings or that total experience simply captures a year-to-year pattern of taking a great number of cases (the correlation between the two measures is 0.74). Second, these results also reflect the fact that many one-off attorneys in our data, those who try only one asylum case, are likely pro-bono attorneys who primarily work in other areas of law. Often, these pro-bono attorneys work with established projects or organizations that "provide all necessary legal forms, a copy of the initial intake interview, pertinent human rights reports, access to volunteer translators and direction to other resources" (Schoenholtz and Jacobs 2002: 755). The results for the experience variable suggest that, *ceterus peribus*, these pro bono attorneys are better than more experienced immigration attorneys. This finding has

important implications for suggested reforms, which we discuss below. In regard to our third hypothesis, which posited that attorney caseload was likely a mitigating factor to experience, we do find strong support of this expectation. As the case load of an immigration attorney increases, the likelihood of securing relief for any given client decreases—across the range of our per year case measure the decrease is 17 percentage points. This finding reflects an incentive structure that likely increases the potential of ineffective counsel and unscrupulous practices.

For our fourth and fifth hypotheses, we include two separate measures of past success. The first is our general measure of past success that is simply a running tally of the overall win rate for an attorney before all IJs as of the date of the current hearing. Our second measure is the IJ-specific measure of past success that is a running tally of the win rate for a specific attorney before a specific IJ. Both measures are statistically and substantively significant.[11] The overall success rates for attorneys is positive and, moving across the range of the data, reflects that an attorney with a previously perfect record is 18 percentage points more likely to prevail in a given case than an attorney with no previous wins. More significantly, the IJ-specific measure reflects an enormous difference based on lawyer capability—again moving across the range of the data, an attorney that has previously won every case before a specific IJ is 64 percentage points more likely to prevail in a given case than an attorney who has never won before a particular IJ.[12]

To illustrate the importance of IJ-specific attorney quality, we provide Figure 1 below, which compares four different representation scenarios for an applicant across levels of human rights

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[11] Potentially, we have truncated some amount of attorney success for those lawyers who had extensive immigration and asylum practices before 1990 and it plausible that this truncation affects our results. The simplest way to discern whether or not this is true is to divide the sample to include attorneys only after they have had a period of time to accumulate measured success in our data, estimate a regression equation and determine if the results hold. We estimated a model that included only cases decided from 2000 to 2010, giving us ten years to measure attorney success before entering into the model. Our results for this split sample were essentially identical to those presented in Table 2. We thank a reviewer for this suggestion.

[12] We further tested the effects of judge-specific success by interacting it with IJ experience. In essence, we were concerned that the effects we have uncovered may be mitigated by IJ experience—i.e., that experienced IJs will be less susceptible to better arguments from high quality attorneys than are inexperienced IJs. While the interaction between IJ experience and judge-specific attorney success is statistically significant and in the expected direction (more experienced IJs are less influenced by good attorneys than are less experienced IJs) the substantive effect is less than 1 percentage point when moving from an IJ with 4 years of experience (10th percentile in the data) to one with 17 years of experience (90th percentile). Therefore, there is a slight modifying effect for IJ experience, but it is substantively trivial.
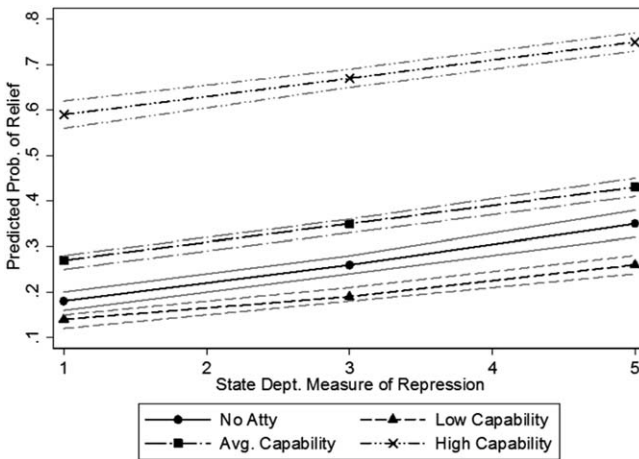
Figure 1. IJ-Specific Success and Levels of State Repression.

repression in the sending country. Holding all of the other variables in our model constant, we simulated the likelihood of receiving relief if an applicant was represented by no attorney (predicted probabilities for this scenario come from a model in which we estimated the generic effects of being represented at all), a poor attorney (defined as one who has won only 4% of previous cases before a given IJ (the 10th percentile in the data)), an average attorney (one who has won 24% of their previous cases before a given IJ (the 50th percentile in the data)), and a good attorney (one who has won 60% of their previous cases before a given IJ (the 90th percentile in the data)). In Figure 1, the gray lines represent 95% confidence intervals. The results are striking. Being unrepresented (solid line, circle markers) appears to make one more likely to receive relief than being represented by a poor attorney (dashed line, triangle markers). Average attorneys (dash-dot line, square markers) are considerably better than no representation. Across the categories of human rights repression, the average attorney is about 9 percentage points better than no attorney. What most stands out in the figure is the extent to which good attorneys (dash two-dot line, x markers) help their clients. A good immigration attorney, as defined above, is on average 32 percentage points better than an average one and about 40 percentage points better than no representation. Put differently, in cases associated with all levels of human rights repression a good attorney is more likely than not to win relief for a client, something that is never true of even the average attorney. This clearly demonstrates Galanter's argument that high quality legal counsel can mitigate the advantages of repeat player/have

litigants. Another startling finding is that having no attorney is consistently more beneficial than having a low quality attorney.[13] This finding has serious policy implications in regard to proposed reforms concerning representation for all asylum seekers, which we discuss more in the section below.

Another way of thinking about the quality of attorneys is to compare the two measures of past success, in an attempt to determine how an overall reputation for success matters with respect to arguments before a specific IJ. This comparison is revealing to the extent that it shows that a large part of the success for quality attorneys is being able to target arguments to specific audiences—here to play to or mitigate the ideological proclivities of IJs, which have been shown to be significant predictors of an IJ's decision to grant or deny relief (Miller et al. 2014b; Keith et al. 2013). Figure 2 below displays the effect of IJ-specific success versus overall success. The effect of overall success is fairly muted and works to shift the intercept, but not alter the slope, for attorneys who are arguing before a specific IJ. In essence, the figure suggests that a large component of attorney success is found in being able to tailor an argument to a specific IJ, perhaps knowing and playing on their proclivities. This finding strongly parallels Kritzer's arguments about so-called process expertise, but the key distinction in our analysis is that in immigration court it is not just mere experience before a judge, but rather having past experience in winning cases before a judge.

Of the other measures of lawyer capability, only practicing for an NGO is a significant predictor of the likelihood of relief. Those who work on behalf of NGOs, at least those whom we can identify, are about 5 percentage points more likely to succeed than those who do not work within NGOs. While we had formally hypothesized that some additional benefits, such as reputation or resources, might adhere to attorneys working in a law firm, we tempered this expectation with the understanding that the typical billings-driven workload might mitigate the effect of additional resources. Our null finding for this hypothesis suggests a wash between the benefits and the limitations of law firm practice. Graduating from an elite law school is not statistically significant in regard to asylum cases, although this may be a function of relatively low numbers of these attorneys in our sample. Two other attorney-specific control variables are also of interest. The variable

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[13] This reinforces Mottino's (2000) finding in the New York City immigration courts which led her to assert that this "research casts doubt on a clear and positive correlation between having counsel and wining relief across the board" (48). It is also in line with the substantive effects found using a similar approach to attorney quality in a study of public defenders in Nevada (Abrams and Yoon 2007).
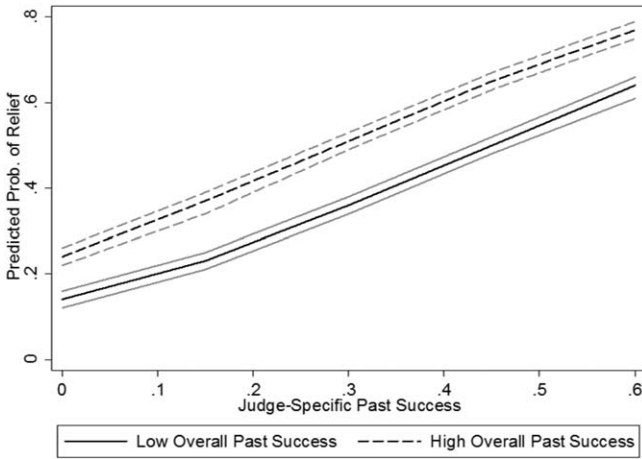
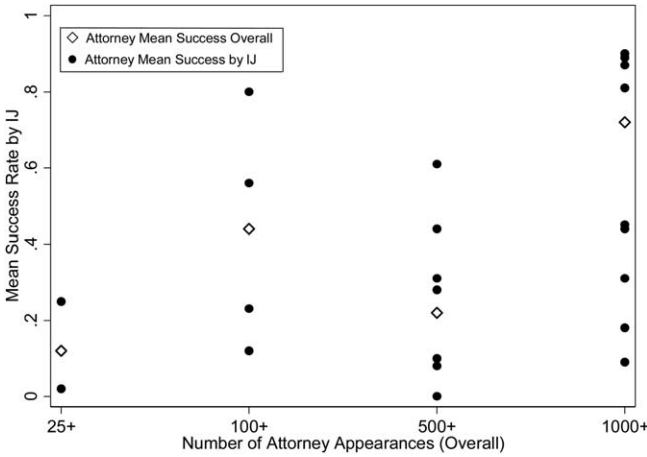**Figure 2. Relationship between Overall an IJ-Specific Past Success.**

Figure 3. Attorney-IJ Dyadic Relationships.

capturing EOIR discipline does not achieve statistical significance, which is surprising since it is a direct negative indicator of attorney capability. Partially this is because a number of attorneys disciplined by EOIR are disbarred from practice and therefore drop out of the sample subsequent to being disciplined. Finally, attorney gender is not a statistically significant for this set of cases.

   Another way to understand the importance of the specific relationship between attorney and IJ is to look anecdotally at those relationships. To do this, we randomly selected four attorneys from the data, one with more than 1,000 appearances, one with more than 500 appearances, one with over 100 appearances, and one with

more than 25 appearances. We then coded all of the success rates for these attorneys with any IJ before whom they had more than 10 appearances—our cut-off at 10 decisions is random and meant to ensure that each cell in the analysis that follows allows for meaningful comparisons. Figure 3 below displays the results of this exercise, with hollow diamonds representing the overall mean for an attorney and filled circles representing IJ-specific averages.

The overall take-away from the above figure is that there is a good deal of variation in rates of success for all of the attorneys. For instance, our attorney with 1,000+ appearances, who has an average win rate overall of 0.72 wins less than 0.45 of the time before five IJs. Similarly, our attorney with 100+ appearances has an overall success rate of 0.56, yet with one IJ he or she has a success rate over 0.80. There is no tight clustering around overall averages for any of the attorneys, with wide variation apparent in the figure across IJs for any given attorney. All of this suggests that there is a great deal of nuance in the relationships between attorneys and IJs, a relationship that is perhaps enhanced by the harried nature of asylum decision making: IJs are left to rely heavily on the ability of attorneys to develop cases, given their extreme workloads.

Discussion

The adjudication of asylum claims presents a unique opportunity to understand a theoretically important question: how much does good legal advocacy matter in otherwise asymmetrical contests between litigants? Here, we find that high quality advocacy is an important predictor of whether asylum applicants, who are otherwise at fairly severe disadvantages vis-à-vis the government, have a decent chance at securing relief. However, the extent to which representation can alter the balance between "haves" and "have-nots" is mitigated by our concomitant finding that low quality representation actually makes an applicant worse off than if they precede pro se. This finding has important implications for policy reforms that call for greatly increased access to counsel for asylum applicants. Unless capable attorneys are likely to participate in the expansion of the system, the effects of such an expansion are unlikely to do much to even the odds of asylum applicants opposed in court by what one scholar of these power disparities referred to as the ultimate government gorilla—the federal government (Kritzer 2003). Our research indicates that the average attorney is only somewhat better than no representation at all—on average the difference between the two is about 9 percentage points. This 9 percentage point difference is only likely to hold if the additional lawyers brought into the system are at least average.

However, at the same time, our finding that attorneys who try just one case in our dataset do quite well, all else considered, indicates that increased pro bono efforts from the bar may be able to do a good deal to even the typically large gap between the government and applicants. This analysis also highlights the positive impact of NGOs on the likelihood of receiving a grant, which suggests that reform efforts to increase representation are more likely to succeed if they are coordinated with (or modeled on) existing asylum related NGOs and pro-bono programs.

Part of the contribution our article makes is the extension of the party/lawyer capability theory beyond the appellate context to a quasi-trial setting in which the outcomes can have dire consequences for the litigant and raise substantive issues of consistency and fairness. We are able to test and identify a particular set of indicators of lawyer quality specifically associated with attorneys practicing in asylum cases, and concomitantly we are able to identify a potential mechanism through which lawyer capability plays out. We recognize that the context of asylum decision-making may be somewhat limited in its generalizability to federal or state trial courts given the heavy caseload IJs face, the vagueness of asylum law, and the indeterminate facts; however, we believe that the context is more generalizable to other specialized courts, such as tax courts, bankruptcy courts, social security hearings and, perhaps, limited jurisdiction state courts. It may even be that our approach is useful in understanding the effectiveness of public defenders that are in an analogous situation (Abrams and Yoon 2007).

The dyadic relationship between an immigration attorney and an IJ offers potential new insight into asylum decision making. We know from our previous work that IJs, under tremendous time-pressure and unsure of the credibility of an asylum seeker, will consider some pieces of information, such as human rights conditions, objectively while other information, such as national interests, is treated subjectively by the IJs. This subjective treatment means that IJ policy preferences matter more in the consideration of, say, national interest than they do for human rights conditions (Keith et al. 2013; Miller et al. 2014b). It may be that the immigration attorney who has a pattern of past success before a specific judge is able to aid the harried IJ in sifting through the various informational cues, adding gravitas to claims of credibility that are typically difficult to assess. An important normative question would be whether within this pair, the attorney is able to shift the IJ into a more subjective assessment where her policy predispositions come into play, or conversely into a more objective assessment in which the law plays a stronger role. Thus, such relationships could potentially intensify the randomness of grants of asylum due to the draw of a particular

IJ, and amplify concerns about consistency and fairness. In any case, we have shown that it is the quality of representation that is more important than simply being represented in the trial court-like setting in which U.S. asylum claims are determined.

Appendix: Heckman Probit Selection Regression

As noted above, we believe that there is at least the potential for asylum attorneys to strategically choose to represent applicants who are more likely to win cases, regardless of the value of their attorney. The most straightforward way to measure this is to use the Heckman procedure to check whether the selection equations (here, whether an applicant is represented by an attorneys) and the outcome equation (whether an applicant receives asylum) have errors that are correlated (Heckman 1979). In general, the two equations use variables that are the same as those described in the article, with two exceptions. First, the dependent variable in the selection equation is whether an applicant for asylum is represented (coded 1 if yes and 0 otherwise). Second, to satisfy the exclusion restriction (see Cameron and Trivedi 2009) we must include a variable in the selection equation that does not appear in the outcome equation. Here, we choose to use an indicator variable for whether the applicant is a Mexican immigrant (coded 1 if yes and 0 otherwise) because such immigrants tends to have an especially difficult time claiming asylum in U.S. immigration courts (Ramji-Nogales et al. 2007).

In addition to the Mexican immigrant variable, we include whether the applicant is proceeding affirmatively, whether they have ever been or are currently detained, the level of human rights abuse in the sending country, the level of democracy, the amount of (logged) trade between the sending country and the U.S., whether the U.S. provides military aid to the sending country, whether the sending country is among the top 10 producers of illegal immigrants, the level of economic development in the sending country (World Bank Development) and whether the applicant speaks English. If attorneys are strategic, we would expect those factors that positively affect the likelihood of receiving asylum to also affect the likelihood an applicant is represented. Lastly, we are most interested in the rho parameter produced by the Heckman selection equations, as a statistically significant rho parameter indicates that the selection and outcome equations are independent of one another. Table A1 below presents the selection equation, outcome equation and rho parameter.

Most importantly among the results, the rho parameter does not achieve statistical significance ($p = 0.206$), indicating failure

Table A1. Heckman Probit Selection Model

Selection Equation Is applicant represented?	β	Clustered S.E.
Affirmative App. (+)	−0.183	0.030
Detained (−)	−0.452	0.025
Human Rights Abuse (+)	0.034	0.014
Democracy (Polity) (−)	−0.127	0.019
Log of Trade with US (−)	0.058	0.005
US Military Aid (−)	0.509	0.038
Top Ten Illegal Immigration (−)	−0.532	0.050
World Bank Development Class (+)	−0.052	0.024
English Speaker (+)	−0.446	0.027
Mexican Immigrant (−)	−1.153	0.073

Outcome Equation Did applicant receive asylum?	β	Clustered S.E.
Lawyer Capability		
Cases Per Year (−)	−0.0007	0.0001
Total Experience (logged) (+)	−0.057	0.007
Past Success (+)	0.728	0.065
Judge-Specific Past Success (+)	2.565	0.072
Elite Law School (+)	0.022	0.019
Cert. Immigration Specialist (+/−)	0.036	0.028
Law Firm (+)	−0.012	0.011
NGO (+)	0.191	0.056
EOIR Discipline (−)	−0.029	0.017
Judicial Policy Preference		
Asylum Liberalism (+)	0.041	0.028
Human Rights Conditions		
Democracy (Polity) (−)	−0.196	0.013
Human Rights Abuse (PTS-St. Dept.) (+)	0.130	0.010
US Material & Security Interests		
Log of Trade with US (−)	−0.035	0.004
US Military Aid (−)	−0.054	0.017
Top Ten Illegal Immigration (−)	−0.344	0.038
World Bank Development Class (+)	0.058	0.019
Controls		
Attorney Woman (+/−)	0.014	0.013
Judge Woman (+)	0.127	0.049
English Speaker (+)	0.127	0.032
Arabic Speaker (+/−)	−0.088	0.045
National Unemployment (1 Month Lag) (−)	−3.797	0.761
Democratic Administration (+)	0.058	0.021
IIRIRA Expedited Removal	0.133	0.047
IIRIRA One Year Bar	−0.054	0.038
Real ID	0.076	0.029
Nine Eleven (−)	−0.127	0.067
Affirmative Application (+)	0.119	0.018
Detention Status (−)	−0.240	0.022
Elapsed Time (+)	0.002	0.0004
Rho	0.076	0.059
Number of observations		302434
Censored observations		104730
Uncensored observations		197704
Wald χ^2		5893.85 ($p = 0.000$)

Bolded coefficients are significant at $p < 0.05$ (two-tailed). Standard errors clustered by judge.

to reject the null hypothesis of no correlation between the equations. This is reflected in the fact that the results for the outcome equation are substantially similar to those presented in Table 2. Although all of the variables included in the selection equation are statistically significant, only a handful are in the

predicted direction, also indicating a lack of strategic selection among asylum attorneys. Of the variables that affect whether an applicant is represented predictably, Mexican immigrant and detention status are the most powerful. Those who are detained at the time of their asylum hearing are represented just 41% of the time, whereas those who have never been detained are represented 74% of the time. Mexican immigrants are represented 30% of the time compared to the 71% rate for non-Mexican immigrants. Both of the indicators of the severity of repression in the applicant's sending country are related to representation in the manner we would expect—as repression increases so too does the likelihood of being represented. Alternatively, most of the material and strategic indicators—with the exception of whether the sending country is among the top 10 producers of illegal immigrants—are incorrectly signed suggesting that attorneys do not frequently take into account these factors in choosing whom they represent. Attorneys are highly unlikely to represent asylum applicants from countries that are top 10 producers of illegal immigrants as those from these countries are represented 56% of the time while non-top 10 applicants are represented 74% of the time. Curiously, English speakers are less likely to be represented, perhaps because they tend to believe they can navigate the asylum system without the assistance of counsel.

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