

Refugees burdened by inexperienced lawyers

June 22 2015, by Kim Horner

Immigrants seeking asylum are better off without a lawyer than with a poor quality one, according to a new study by three political science researchers at UT Dallas.

Having an attorney is one of the strongest predictors of whether an applicant will win political [asylum](#), previous research has shown. But the UT Dallas researchers found that simply having a lawyer is no guarantee. The attorney's capability is a primary factor in whether an applicant will win asylum or be deported.

The research by Dr. Banks Miller, assistant professor, Dr. Linda Camp Keith, associate professor, and Dr. Jennifer Holmes, associate professor and head of the [political science](#) program, was published in the March edition of Law & Society Review. The three professors, all in the School of Economic, Political and Policy Sciences, also are authors of the 2015 book, Immigration Judges and U.S. Asylum Policy.

The professors analyzed cases involving 1,234 attorneys and law firms that participated in 197,704 asylum cases from 1990 to 2010. With assistance from undergraduate student researchers Andrew Craven and Diep Truong, they identified characteristics including whether the lawyers graduated from top schools, had an immigration specialization or had any sanctions, in addition to their experience and prior success in immigration cases.

Lawyers from elite schools fared no better than other lawyers, although few were in the sample. In addition, the research found that more than 8

percent of the attorneys had been disciplined either by their state bar associations or the Executive Office for Immigration Review. Past success in immigration cases was the strongest predictor of a lawyer's future success, according to the study.

The study notes that the threshold to practice immigration law is often low. Only four states with large immigrant populations, including Texas, offer immigrant law certifications.

"We find that certification doesn't matter anyway," said Miller, an expert in the judicial process.

Some of the most successful lawyers in asylum cases appeared only once and likely worked for a client pro bono, perhaps through a nonprofit organization. Because of that, the researchers recommend that communities leverage the work of nonprofits that work with high-quality volunteer attorneys.

Immigrants seeking asylum do not have a right to a government-funded attorney. Miller said the government has the advantage in those cases because its lawyers typically outmatch immigration attorneys in experience and expertise.

Asylum cases can be difficult to win, in part, because victims of persecution or torture often lack evidence from their native countries, said Holmes, an expert in Latin American political violence. Evidence of past persecution can be important in proving the likelihood of future persecution. Judges, who face high caseloads, often are in the difficult position of having to make decisions based on little evidence.

"If you're fleeing for your life, you're not going to stop and document everything," Holmes said. "It's very frustrating for people in these proceedings. They left quickly; they don't have a lot of evidence; it's

really their story."

The authors said they hope their findings will help inform immigration policy, including proposed reforms that would provide applicants with the right to a court-appointed attorney.

"Our study suggests that just having the funds available for an attorney for representation may not have the intended effect," said Keith, an expert in political repression. "It might just draw more of these individuals who want to raise a large number of fees."

More information: "Leveling the Odds: The Effect of Quality Legal Representation in Cases of Asymmetrical Capability." *Law & Society Review*, 49: 209–239. doi: 10.1111/lasr.12123

Provided by University of Texas at Dallas

Citation: Refugees burdened by inexperienced lawyers (2015, June 22) retrieved 28 June 2024 from <https://phys.org/news/2015-06-refugees-burdened-inexperienced-lawyers.html>

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