PUBLIC SCHOLARSHIP

Learning and Overturning

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Imagine your first day on the job. You sit at your desk—you don't know who anyone is, except maybe your new boss. You don't know where to find the pens or even where the plug is for your laptop. Each day, you come to the office, and you learn a little more. The longer you work, the more efficient and independent you become. You finally figure out what your boss likes, who you can go to for help, and you even learn how to order new pens when you run out. Ultimately, you rely on others less and less, become more confident in your own expertise and skills, and make decisions based on this confidence. Your experience learning on the job is remarkably commonplace, whether you are a tradesperson, doctor, or anything in between.

A recent *APSR* article titled "Judicial Specialization and Deference in Asylum Cases on the US Courts of Appeals" by Maureen Stobb and Joshua B. Kennedy explores the effect of learning on the job. The authors argue that, as federal judges learn more about specific types of cases, or as they gain judicial specialization, their decision-making patterns tend to change. As federal judges see a variety of cases ranging from criminal, civil, to constitutional, they have a general body of knowledge. Because of the generalist nature of their job, federal judges recognize that bureaucratic agencies know more about specific types of cases than they do and thus defer to decisions made by specific agencies. However, repeated exposure to specific types of cases, or specialization, gives judges the tools to be able to understand cases decided by bureaucratic agencies and administrative courts. The authors study this within the context of immigration law and the Board of Immigration Appeals (BIA), which is the highest administrative body in the immigration court system and hears appealed immigration court decisions. Once the BIA a bureaucratic agency reaches a decision, a case can be subsequently appealed, landing before the US Courts of Appeals in front of a federal judge.



As judges become more and more specialized, they tend to rely on the decisions made by bureaucratic agencies less and less, instead relying on their own ability to interpret the facts and law of the case. An important caveat to the specialization process, however, is judicial ideology. While judges may rely less on the bureaucracy as they become more specialized, they tend to act more on their own policy preferences and heuristics to reach decisions. For example, a more liberal judge may be more generous in their interpretation of asylum law and legal facts, while a more conservative judge may do the opposite. Because the BIA commonly upholds asylum denials, this means that the effect of specialization will be more pronounced on liberal judges as compared to conservative judges. In other words, liberal justices will be less likely to defer to decisions made by the BIA.

To investigate the relationship between specialization and case outcomes, the authors collected original data on over 4,000 cases from the US Court of Appeals on asylum claims from the First through the Eleventh Circuit from 2002 to 2017. The authors also created a new measure of specialization, which measures the number of cases that each judge heard before the year each case was decided, as well as a previously used measure of judicial ideology. When they analyze the data, they find that, while greater specialization alone does not change case outcomes, the combination of specialization and ideology does tend to change patterns in case outcomes. As more liberal judges become more specialized, they tend to reject the decisions of the BIA, while more conservative judges tend to agree with the BIA.

Immigration attorneys and judges often liken the cases that pass through the Board of Immigration Appeals to holding death penalty cases in traffic court because of the gravity of the decisions made therein. Migrants who lose their asylum cases must leave the country, and upon returning home, they are subject to the same conditions that forced them to leave. Many are killed. Given the consequences of the decisions that administrative courts often make, understanding the ways in which federal judges respond to bureaucratic agencies and the decisions they make is important, especially as they grow in size, scope, and responsibility. Stobb and Kennedy show us that exposure to specific cases can make certain judges less deferential to prior decisions made by administrative courts, which may be a powerful method to constrain the federal bureaucracy and protect asylum seekers. ■

STOBB, MAUREEN, and JOSHUA B. KENNEDY. 2023. "Judicial Specialization and Deference in Asylum Cases on the U.S. Courts of Appeals." *American Political Science Review*, 1–15. https://doi.org/10.1017/S0003055423001144.

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