

## ABSTRACT:

The debate over standards versus rules has been framed as a trade-off between the certainty and lower administrative costs of rules versus the greater flexibility to base decisions on case-specific evidence with standards. In this paper, we argue that even if judges have no ability to directly assess case-specific evidence, standards may create a desirable signaling effect that improves the judge's decision. Even when judges cannot directly observe the merits of the case, if they are not bound by rigid rules, they are more likely to base their decision on the quality of legal representation. When the ex-post effects of the decision matter, and when the decision only affects the parties to the lawsuit, the party that desires the efficient decision has the most to gain, and would be expected to exert the most effort. As a result, this party would be more likely to prevail under a standards based system. We argue that this effect can be a strong argument in favor of a standards based system.

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