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Decision Making in the Hidden Judiciary: Institutions, Recruitment, and Responsiveness Among U.S. Administrative Law Judges

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This article examines the decisional motivations of state and federal administrative law judges. On the basis of the analysis of the survey responses of 265 state and federal administrative law judges (ALJs), we found that ALJs' views toward the propriety of deferring to external stimuli (such as their agencies, public opinion, or to the elective branches of government) differ considerably in their exercise of quasijudicial authority. To determine the sources of this variation, two different conceptual models were tested, the first drawn from the "rational-actor" variation of the New Institutionalism school of decision making, and the second adapted from the "articulation model of judicial selection." Although the rational actor model accounts for some portion of the variation observed, the alternative articulation model was superior in its predictive ability. These findings suggest that although institutional constraints are by no means irrelevant, the socialization process that ALJs undergo has an important impact on their feelings of responsiveness to a broad range of external actors. The authors discuss these findings in the broader normative context regarding judicial independence and bureaucratic responsiveness.

As with any judge, administrative law judges (ALJs) must make decisions that potentially impact the lives of individuals in significant ways. Similar to other judicial actors, the decisions ALJs render must reflect the facts presented by individuals in the hearing, as well as the dictates of law as they appear in the applicable statute or regulation at hand. Yet, all jurists can be confronted with uncertainty in the facts presented and laws and regulations that fail to provide sufficiently clear guidance in all cases. When the facts of a case are indeterminative and/or the applicable law permits multiple interpretations, upon what criteria do ALJs

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tend to base their decisions? Do they tend to agree on the extent to which public sentiment and agency interests, for example, come into play, or do ALJs differ widely in this respect? If there are substantial differences among ALJs on this matter, what accounts for these observed differences? These are the two specific questions investigated here. In what follows, we explore how ALJs might be affected by the demands of the elected branches, their own agency, and those interested parties outside of the government.

Although administrative law judges (ALJs) are not nearly as well-known as their adjudicator colleagues who sit in "regular courtrooms" (known as Article III judges),[1] ALJs are both many in number and play an important role in American government. There are over 1,000 ALJs at the federal level, and thousands more work in state agencies throughout the country (Schreckhise, 2016). ALJs perform some functions that are very much akin to those of Article III judges; they preside over cases (mostly regarding business regulation enforcement and benefits distribution), take testimony, decide case outcomes, and publish written opinions. Some ALJs even wear judicial robes and insist upon being called "your honor" during formal proceedings. While in many respects they are "judicial" in their orientation, they are nonetheless employees of the executive branch of government.[2]

Through analyses of survey data collected from 265 ALJs, we inquire into the broad range of cues to which ALJs respond in decision making in their day-to-day work. We test the explanatory potential of two distinct models adapted from studies examining the decisional motivations of Article III judges. Doing so sheds light on the nature of individual level decision making in public agencies.

BUREAUCRATIC DECISION MAKING

What motivates public administrators to render the decisions they do has been the topic of a considerable amount of research and discussion. Thirteen decades ago, the field of public administration was founded upon the core notion that purely administrative decisions could be made by politically neutral experts making decisions that were distinct from the politically oriented ones preoccupying the elected branches (e.g., Goodnow, 1900, pp. 17–26; White, 1926, 1–13; Wilson, 1887). Still in its infancy, the field was swaddled by the rational managerial perspective and nursed by studies of scientific management and principles of managerial efficiency that borrowed heavily from business management (e.g., Gulick, 1937). As public administration matured during the middle of the twentieth century, the field faced a crisis as highly respected figures such as Dwight Waldo noted famously that public administrators made politically important decisions in the course of their work as well. No longer confined to the figurative playpen of administrative principles, the field of public administration began to imagine a larger world, one where public administrators' independently derived decisions have potentially significant ramifications for the efficient and effective implementation of important public policies. The fact that unelected public administrators were making those often weighty decisions carried significant implications for the operations of representational democracy in the United States (Lowi, 1969).

Neutral expertise-based decision making was suspect because it might appear at times to be unresponsive to the wishes of the duly elected branches of government and the public

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(Kaufman, 1969; Knott & Miller, 1987; see also Spicer, 2015). This sense of having lost democratic control was exacerbated by the growing realization that in the United States public administrators, in fact, make many important decisions that collectively affect the lives of virtually all Americans. Some critics of the growing policy-formation role of public administrators questioned the very notion that administrative experts could in fact render politically neutral decisions. Some of these critics have argued convincingly that the values and viewpoints held by subgovernment interest group allies, the agency's leadership, or inherent in the training, specialized expertise, and/or policy preferences of the agency's personnel unduly color the use of administrative discretion (Allison, 1969, pp. 144–85; Downs, 1967, pp. 88–89; Holden, 1966; Katzman, 1980, pp. 36–85; Lowi, 1979, pp. 42–63; Wilson, 1989, pp. 179–192).[3] Still others (e.g., Waldo, 1971) argued public administrators ought to focus proactively on issues related to social equity (Luton, 2003).

At least at the aggregate, agency level, a series of studies have effectively cast doubt on these dire assessments of the dangers of bureaucratic power and lack of responsiveness to democratic accountability. Specifically, "principal-agent" studies beginning with Moe (1982, 1985) and expanded upon by others (Beck, 1984; Chubb, 1985; Scholz & Wei, 1986; Scholz & Wood, 1998; Scholz, Twombly, & Headrick, 1991; Weingast & Moran, 1983; Wood, 1988, 1990, 1992; Wood & Waterman, 1991, 1993. See also Derthick, 1990) have demonstrated that federal and state agencies are greatly influenced by their external political environment and their range of administrative discretion is tightly bounded. Whenever there is a change in the presidential (or gubernatorial) administration (or party in control of the White House) or in the composition of Congress (or state legislature), public agencies tend to alter their behavior in ways that correspond with changes in policy directions set in the elective branches of government. Based on such evidence, principal-agent oriented scholars have argued that the institutional powers of each branch provide an effective tool for directing and controlling the bureaucratic elements of the American administrative state. Presidential powers of appointment, Congress acting within its roles of confirming appointments and setting budgets, and through their work in oversight committees, seem entirely able to shape the broad outlines of the behavior of the federal bureaucracy over time. Using predominantly longitudinal research designs, these studies have found, for example, that when a conservative administration entered the White House, or when there was a significant conservative shift in a Congressional oversight committee, federal agencies became less active in their enforcement efforts; the opposite is true when there was a liberal shift in the White House or oversight committees. Consequently, the principals (Presidents and Congress) are able to shape the behavior of agents (the agencies) through the use of institutional mechanisms, and thus they largely ensure compliance with the policy preferences of elected branches of government.

The principal-agent studies have provided considerable evidence that agencies are not immune from outside pressure. In order to better understand the actual dynamics of how executive branch actors respond to outside influence, we extend the range of inquiry to explore the dynamics taking place at the individual citizen level. Although the elected branches of government have at their disposal established institutional mechanisms to ensure agencies' compliance, we contend that the principal-agent literature paints an incomplete picture of why individuals in public agencies behave the way they do. This is the case for a

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couple of reasons. First, the principal-agent studies have focused exclusively on the behavior of regulatory agencies such as the Environmental Protection Agency and the Occupational Safety and Health Administration. To date, we know of no study examining the behavior of agencies engaged in providing benefits such as Social Security Disability Income.

A second reason is reflected in the candid sentiment expressed by past Food and Drug Administrator David Kessler. Kessler was appointed by President George H. W. Bush, but it was not until President Bill Clinton entered the White House that the FDA pursued active regulation of tobacco products. When asked why he waited until a Democrat was in office, his response was simple, but quite telling. He said, "[I]t's one thing when a regulator goes out and says nicotine is a drug. It's another thing when a regulator and a President of the United States make that statement" (Fritschler & Rudder, 2007, p. 139). We contend that other public administrators have a similar *internalized* notion of their role in the broader political system, anticipating what others expect of them.

The following sections address the likelihood of other noteworthy actors in governmental agencies sharing a similarly internalized notion of what is appropriate use of administrative discretion; chief among them are administrative law judges. Although ALJs represent a somewhat unique set of decision-makers by virtue of their official quasijudicial role, it could be argued that the difference between their work and the work of other public administrators is more a matter of degree and less of substance. The laws and agency rules ALJs and other public agency officials apply are often complex and vague, requiring a substantial degree of expertise in the use of administrative discretion. As such, both groups possess a well-known and broadly documented degree of discretion when interpreting laws, regulations, and administrative guidelines. We examine the extent to which ALJs take into account the demands and concerns of other actors inside and outside of government when doing their work. We then present two theories that can explain why some ALJs do so more than others.

ADMINISTRATIVE LAW JUDGES

The federal government and most state governments employ administrative law judges. ALJs in the federal government are hired and assigned to agency positions by the U.S. Office of Personnel Management (OPM), and they are considered to be employees of the executive branch. However, the protections they receive from political influence tend be considerably more extensive than is the case with most other executive branch employees. Federal ALJs cannot be removed from their positions without "due cause," and any such removal can occur only after a hearing before the Merit System Protection Board (MSPB). In addition, the compensation of ALJs is established by statute, and that remuneration is not subject to agency determination.[4] In some states, administrative law judges do not receive these particular protections. In other states, ALJs are housed in a "central panel" agency [typically called the Office of Administrative Hearings] to further ensure the decisional independence of hearing officers (see Rich & Brucar, 1983). Still other states employ some ALJs in central panels while employing the rest in agencies that are parties to the cases the judges hear, similar to the practice of the federal government.

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Although considered to be employees of the executive branch, administrative law judges constitute a distinct class of bureaucratic actors. They possess certain important characteristics that set them apart from other executive branch officials. Perhaps most notable among these traits is the fact that they perform *judicial* functions in their work. The vast majority of ALJs are trained as lawyers. Their primary function is to preside over disputes in cases coming before them.

By reviewing some noteworthy cases decided by state and federal ALJs, it is possible to gain a fair impression of their functions in the broader administrative law system. For example, in April 2016, an ALJ for the Federal Energy Regulatory Commission found that Shell Energy of North America defrauded the state of California for the amount of $1 billion when negotiating a contract with the state during the 2001 energy crisis (Kaften, 2016).[5] In 2014, an ALJ for the Illinois Educational Labor Relations Board found that administrators for Southern Illinois University had negotiated in bad faith with staff and faculty during a labor dispute in 2011, a decision which ultimately led to the board requiring the university to pay $1.9 million in back pay to its employees affected by the negotiations in question (Legal Monitor Worldwide, 2014). Occasionally, ALJs even rule on high-profile, hot-button topics. In April, for example, a New Jersey ALJ ruled that U.S. Senator Ted Cruz, born in Canada to an American mother, does meet the U.S. Constitution's definition of a "natural born citizen." Accordingly, Senator Cruz was found to be eligible to become President, and his name could appear on the ballot for the New Jersey Republican party presidential primary.[6] Although not all cases that come before ALJs are as broad in scope and carry such great monetary impact as these cases, the cases in question do, at the very least, illustrate that on many occasions ALJs do render decisions that can have a noteworthy societal and/or governmental impact.

The decisional independence of administrative law judges has been a topic of some interest among scholars and government officials alike (Weiner, 1999). Some scholars have expressed concern over the ability for executive branch employees to ensure due process for the individuals who come before them. They contend that ALJs can be unduly influenced by the interest of the agencies for which they work when making their decisions (Felter, 1997; Litt, 1997; Lubbers, 1981; Musolf, 1994; see also Barry & Whitcomb, 1987, pp. 220–221). These concerns stem from the nature of the position American administrative law judges hold *within agencies* while ostensibly being obligated to hear and decide the cases brought to them in a genuinely unbiased and substantially equitable manner.

At the same time, however, the substantial protections ALJs enjoy from undue agency interference have led some other scholars and public administration practitioners to conclude the very opposite—namely, that ALJs tend to lack effective oversight, and are thus unaccountable to the public in whose trust they serve through agency directives (GAO, 1979, 1992, 1997a, 1997b; Koch, 1994; see also Lubbers, 1981, pp. 124–127). Because ALJs are exempted from traditional agency performance appraisal processes (at the federal level and in many states), and because legislation does require a hearing before the MSPB (at the federal level) and substantial documentation to remove a recalcitrant ALJ from his or her position, ALJs are said by some to enjoy too much freedom in conducting their own operations. This freedom has led some administrative observers to conclude that too often ALJs have become obstacles in the accomplishment of the mission of their agencies. These critics tend

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to argue—among them are included the leadership of the U.S. General Accounting Office/ Governmental Accountability Office and the Administrative Conference of the United States—that reform of the existing system of administrative law judge management is called for sooner rather than later. On the other hand, some lower level or non-ALJ federal government adjudicators have most jealously observed the ALJ's independence. The National Association of Immigration Judges, the labor union for federal immigration judges, who make up by far the largest population of non-ALJ administrative adjudicators at the federal level, has lobbied Congress to elevate immigration judges to the same status as ALJs.[7] Congress has increasingly relied on these sub-ALJ adjudicators, causing one administrative law scholar to complain that "[n]on-ALJ adjudicators are sprouting faster than tulips in Holland" (Lubbers, 1996, p. 71).

DATA COLLECTION AND RESULTS

To determine whether administrative law judges hold relatively uniform or rather divergent views regarding responsiveness owed to political and citizen-based interested parties, a total of 526 questionnaires were sent by fax to ALJs serving in state and federal agencies. Of these, a total of 265 were returned.[8] The administrative law judges surveyed included all non-Social Security federal ALJs, a random sample of these Social Security Administration ALJs, and all the ALJs serving in the states of Washington and Oregon.

To assess their sentiments regarding decisional independence and document their orientation toward the proper role of the ALJs in the decisional process, all survey respondents were asked to indicate what they thought the proper roles in their administrative adjudications were for external actors, such as the general public, their host administrative agencies, and highly affected interest groups. The ALJ survey respondents were also asked to assess the degree to which a range of specific factors affect their own decisions—such as the needs of the agency, the desire to protect taxpayers' money, the inclination to help those in society who are less fortunate, and concern that their decision could be overturned by their host agency. Finally, survey respondents were asked to state how they viewed their role in the broader public policy process. They were asked if they viewed their role as being one of implementing policy, one of closely following agency policy, or one of assisting the agency in the fulfillment of its policy agenda.[9]

Results from the set of questions wherein the ALJs were asked how their concern for certain actors might influence decisions they make in the process of adjudicating disputes in administrative law are reported in Table 1. The findings suggest that considerable variation exists among the adjudicators surveyed on these questions. They differed with respect to the proper place in their decision making for public welfare considerations, for the wishes of the state legislature or Congress, and for the affected agency's priorities. When survey respondents were asked about potentially relevant external and internal environmental factors, ALJs tended to respond that there are a host of influences other than those associated with a mechanical application of the law to the facts in the case which typically come into play. With respect to these multiple factors, ALJs tend to be particularly concerned with the wishes of the legislature or Congress, and with the needs of the parties involved in the dispute; they

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TABLE 1.
Tabular Results for External Stimuli and Actors in Decision Making ($n = 265$)

	Very Important				*Not Important*
The wishes of the legislature/Congress[a]	42.7	19.8	15.8	4.7	17.0
The needs of those parties involved in the dispute	42.2	23.4	16.0	5.3	13.1
The welfare of the public	36.5	24.5	19.1	8.7	11.2
My decision was made in an efficient manner	30.2	42.7	22.5	3.1	1.5
My decision helps those in society who are less fortunate	6.3	8.2	30.6	22.4	32.5
Your agency's priorities	5.9	12.6	27.2	18.8	35.6
My decision considers the needs of my agency	3.9	5.9	27.5	28.2	34.5
Interest groups are most often a valuable source of information in hearing cases	3.6	8.0	30.0	26.0	32.4
My decision saves taxpayers money	1.9	5.1	20.2	26.8	45.9
The preferences of the governor/president	0.4	2.1	10.2	18.3	68.9
Following agency policy[b]	22.7	22.7	28.7	11.6	14.3
Implementing policy	18.4	21.2	29.2	15.6	15.6
Assisting your agency in fulfilling its policy agenda	12.0	12.9	30.1	19.7	25.3

[a]Respondents were asked: "When rendering your decisions, how does concern for the following impact your choice?"
[b]Respondents were asked: "Please indicate how you view your role in each of the following?"

express considerably less concern for the needs of either their host agency or the interest of the chief executive (i.e., the President or state governor). In short, the ALJs in our federal and two-state samples did not accord the same level of importance to all external considerations. Some ALJs were quite committed to equating *independence* with the *turning of a blind eye* to external factors in their decisional process, while other ALJs demonstrated the need for demonstrating some degree of responsiveness to the needs and concerns of other actors and affected parties.

Although it is important to know that ALJs differ in their decisional criteria and in the view they hold about their own role in the policy process, this observation provides only a part of the story. What is needed for a more complete understanding are some explanations for this variation. To accomplish this, the several aforementioned survey items will be combined to create an additive dependent variable. This multiple-item measure will minimize any potential bias deriving from undue reliance on any one of the contributor items (Likert, 1932; Singleton et al., 1988, pp. 363–366; Spector, 1992, p. 6; see also Babbie, 1992, p. 166; McIver & Carmines, 1981, p. 14). Figure 1 displays a histogram of the composite variable given the label "Judicial Independence," which we derived from the ALJs' responses to the questions presented in Table 1.[10] The ALJs who received the highest score were those who were most likely to assert their decisional independence and base their decisions exclusively on how they saw the law and viewed the facts of the case. ALJs who received the lowest scores were those most likely to include a broader range of interests in their decisions. Although they still felt they were deciding the case on the merits, they would more likely

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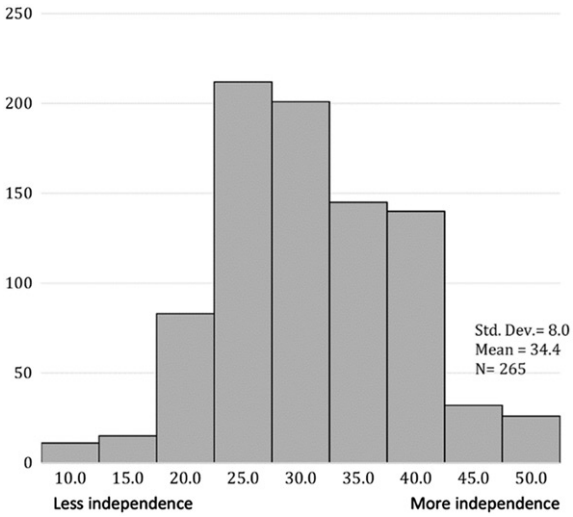

Figure 1. Histogram of Index of ALJ Decisional Independence. Individuals received a higher score if they stated it was unimportant their decisions reflected the following: the wishes of the legislature/Congress, the needs of those parties involved in the dispute, the welfare of the public, their agency's priorities, and the preferences of the governor/president. They also received a higher score if they stated it was unimportant that their decision was made in an efficient manner, helps those in society who are less fortunate, considers the needs of his/her agency, said interest groups were a not valuable source of information, and considered it unimportant his/her decision saves the taxpayer money. They also received a higher score if they did not view their job as one requiring following and implementing policy, and assisting his/her agency with fulfilling its policy agenda

place the merits of the case in the context of a broader societal good, the concerns of those in their agency's hierarchy, and/or the concerns of the non-agency parties involved in the case.

Administrative Law Judges as Strategic Actors

The public law application of Strategic New Institutionalism offers one possible explanation for this variation. The variation could come from the different types of institutional protections some ALJs enjoy as opposed to others. Those who are the least protected would be the least independent—in a sense, responsiveness is forced on them out of fear of reprisal from their agency or elsewhere in the political structure; conversely, those who are the most highly protected have the least worry about retaliation and can be the most independent. Strategic New Institutionalism has been applied to Article III judges. This theory posits that judges have policy preferences, but notes that judges will consciously sacrifice portions of a preferred immediate outcome if they believe that doing so will render a favorable outcome over the long-term. In the words of Epstein and Knight (1998, p. 10), strategic judges "realize their ability to achieve their goals depends on a consideration of the preferences of the other actors, the choices they expect others to make, and the institutional context in which they act."

Strategic judges seek to maximize the impact of their decisions by working within political constraints, strategically anticipating reactions to their decisions by others in the policy

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process; consequently, they often decide in ways that fall short of their most preferred position. From this perspective, judges (both Article III and administrative) could decide cases in contrary to how they personally prefer, but do so under threat of a reversal by a higher court. Operating in a more constrained environment than Article III colleagues, administrative judges may also be forced to contend with the divergent views of a wide range of external actors. Whereas federal Article III judges enjoy their positions essentially for life and do so largely free from any concern external pressure other actors can apply, administrative judges, by contrast, work in the executive branch of government and in that environment operate with awareness of a host of potential influences.

These influences include the preferences of the governor/President or the head of their agency, unions or associations representing employees, interested legislators and legislative committee staff, to name a few. To be sure, ALJs are prohibited from engaging in *ex parte* communication,[11] however, these external actors could quite clearly influence ALJs' general approach to deciding cases brought before them. For example, an agency head who publicly stresses the "runaway costs" of a program for which the ALJ decides cases may make it less likely for an ALJ to render a decision that exacerbates this situation. By contrast, a President who stresses the need to better serve the needs of a program's beneficiaries (e.g., veterans) may see the opposite effect.

A number of studies of Article III judges have corroborated the contention that justices act strategically within institutional constraints (e.g., Hall & Brace, 1989; Spiller & Gely, 1992). For example, Brace and Hall (1990) found in a series of studies of dissent rates in state courts of last resort that liberal justices facing elections were most unlikely to dissent when sitting in conservative states featuring short terms of office because they did not wish to face a hostile electorate reacting to their opinion (see also Brace & Hall, 1993, 1997; Hall & Brace, 1992, 1996, 1999). Brace and Boyea (2008) similarly found that elected state supreme justices were more responsive to public opinion in capital punishment cases sentences than were appointed justices (see also Knight & Epstein, 1996; Langer, 2003; Murphy, 1964). By analyzing drafts of U.S. Supreme Court decisions, Maltzman and his colleagues found that justices modified the language of opinions in order to build and secure majority votes on the court (Maltzman, Spriggs, & Wahlbeck, 2000).

Because the protections granted to the ALJs from their agencies in the three different governments studied here vary (and even notably differ within states), we can determine whether their sense of *judicial independence* is a product of those legal-institutional mechanisms. In Washington, some of the surveyed ALJs were housed in their own agency—the Office of Administrative Hearings (OAH)—that hears cases for numerous state agencies. These ALJs were moved from individual agencies into their own "central panel" to minimize any possible interference from the agency for which the ALJ was hearing the case. The agency itself is usually a party in the case, of course. Other ALJs in Washington still worked directly for the agency whose cases they are hearing. All of the Washington ALJs surveyed outside of the OAH only enjoyed standard merit service protections from political pressures– that is, they can be removed for cause. The Oregon surveyed ALJs had pay set by their employing agency, could be transferred by the agency, could be evaluated for their performance, and disciplined by their agency.

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TABLE 2.
Protections by Agency for ALJs

	Central Panel Agency	*Pay not Set by Agency*	*Agency does not Conduct Performance Evaluations*	*No public Evaluation by Attorneys*
Washington				
Office of Administrative Hearings	X			X
Public Employment Relations Commission		X		X
Department of Labor and Industries		X		X
Board of Industrial Insurance Appeals		X		X
Department of Licensing		X		X
Department of Health		X		X
Insurance Commissioner		X		X
Utilities & Transportation Commission		X		X
Social & Health Services		X		X
Employment Security Department		X		X
Board of Industrial Appeals		X		X
Environmental Hearings Office		X		X
Oregon				
Dept. of Consumer & Business Services		X		
Employment Relations Board				X
Human Resources				X
Bureau of Labor and Industries				X
Liquor Control Commission				X
Public Utilities Commission				X
All Federal		X	X	X

Although not housed in a central panel agency, federal ALJs still receive a good deal of protection from external influence. The ALJs' compensation is not set by their agency, they cannot be transferred, removed, or disciplined without a hearing before the Merit System Protection Board, and they are the only employees of the federal government who are by statute exempt from performance appraisals (see Table 2).

If these independence-promotive protections are effective sources of "insulation" vis-à-vis agency pressures, then judges not serving in a central panel independent of their agency should feel their decisional independence is the most subject to agency pressure. Further, because the Washington State OAH ALJs are housed in a central panel, they ought to feel their decisional independence is the most protected from agency pressure—more so than would be the case with even the relatively highly protected federal ALJs.

As a consequence of this range of institutional settings for ALJs who are the subjects of study here, specific hypotheses can be generated regarding the effects that these institutional mechanisms have on the decisional independence of ALJs. If this view holds, administrative law judges who are institutionally the most protected from influence will be the ALJs who feel most free to decide cases as they see fit given their assessment of the case facts and relevant laws and regulations. Conversely, those ALJs who are the least protected institutionally

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can be expected to be the most prone to take into account the preferences of their host agency and/or other external actors.

Four individual measures of ALJ "protections" were included in the analysis: (1) whether or not the ALJ served in a central panel agency; (2) whether or not their agency can set their compensation; (3) whether or not their agency can evaluate them; and (4) whether or not they are evaluated by external parties.[12] We posit the following three relationships between each of these items and each ALJ's Judicial Independence score:

H1: Administrative law judges housed in central panel agencies will have higher Judicial Independence scores than those who are not housed in central panel agencies.

H2: Administrative law judges who work in agencies that set their pay will have lower Judicial Independence scores than those who work in agencies that do not set ALJ pay.

H3: Administrative law judges who are evaluated will have lower Judicial Independence scores than those who are not evaluated.

Some scholars have noted that demographic factors—specifically, race/ethnicity and gender—play a role in policy decision making. Past studies of women in government have found, for example women legislators tend to take into consideration more of the concerns of their constituents when making decisions than is the case for male legislators (see Thomas 1994, pp. 60–67). Examinations of "representative bureaucracy" have generally found that minorities and occasionally women make decisions differently than their White and male counterparts. For the most part, these studies have found that minority public administrators tend to render decisions that more likely benefit underserved populations, for example (Hindera, 1993a, 1993b; Selden, 1997; Selden, Brudney, & Kellough, 1998; Sowa & Selden, 2003). Similarly, studies of judicial decision making have found some, albeit limited, evidence that women decide cases differently than do men and minorities decide cases differently than do nonminorities (Boyd, Epstein, & Martin, 2010; Collins & Moyer, 2008). For these reasons, we include in our models demographic measures, including race/ethnicity and gender.

Because the results from this analysis could be affected by other variables, additional control measures were included in a multivariate analysis. These control variables include the type of hearings the ALJ conducts, and several conventional demographic indicators—namely, political party affiliation, ideology and age of the respondent. Past research has linked party affiliation and ideology to Supreme Court justices' decisions (e.g., Segal & Spaeth, 2002); however, such findings have not been extended to lower courts (Songer, Segal, & Cameron, 1994).

The results observed from the OLS regression models featuring "protections" measures onto the indexed dependent variable for ALJ decisional independence are displayed in Model 1 in Table 3. The OLS model's Pearson's correlation coefficient is a modest 0.419. This model explains roughly 20% of the variance, and the adjusted R^2 is 0.174.

It is apparent from the findings reported in Model 1 that the protections from influence afforded to ALJs do indeed demonstrate some predictive power over the independence-relevant attitudes of ALJs. The variables indicating whether they can be evaluated by their

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TABLE 3.
OLS Models of Decisional Independence (n = 265)

	Model 1		*Model 2*		*Model 3*	
	Protections		*Articulation*		*Combined*	
	Coef.	*SE*	*Coef.*	*SE*	*Coef.*	*SE*
Constant	20.723***	6.016	29.671***	5.462	38.161*	17.817
Serve in central panel	8.598	4.822				
Agency sets pay	−4.813	4.617			13.334	11.233
Agency can evaluate	3.647*	1.593			−3.996	14.179
External evaluation	8.078**	2.817				
External Initiation Index			−0.427***	0.074	−0.421***	0.074
Contestedness Ratio[a]			−0.113	0.060	0.848	4.223
Competitiveness Index			3.781	2.064	0.167*	0.075
Minimum pay[b]			−0.283**	0.106		
Prestige of law school			1.858*	0.757	1.896*	0.756
Previous govt. job			−5.106***	0.902	−5.054***	0.902
Regulatory hearings[c]	0.255	0.714	0.164	0.824	0.179	0.823
Benefits hearings	1.583	1.279	0.127	1.556	−0.658	1.647
Labor hearings	−0.996	1.079	−2.250	1.434	−2.711	1.467
Other hearings	−1.530	2.033	−0.394	2.079	−1.130	2.137
Male[d]	−1.073	0.947	−1.480	1.102	−1.671	1.109
White[e]	6.702***	1.101	0.149	2.071	0.199	2.068
Republican[f]	4.294***	0.803	7.830***	0.991	7.824***	0.990
Conservative[g]	−4.675***	0.761	−6.257***	0.905	−6.157***	0.906
Age	0.160***	0.044	0.234***	0.053	0.230***	0.053
r	0.419		0.590		0.593	
R^2	0.175		0.348		0.352	
Adj. R^2	0.154		0.319		0.322	

Notes: Dependent variable is the Index of ALJ Decisional Independence. Individuals who received a higher value for that variable stressed more decisional independence.

*$p < 0.05$; **$p < 0.01$; ***$p < 0.001$.

[a]Contestedness Ratio = number of positions/number hired. Thus, the higher the score for the ratio, the more contested the position.

[b]Expressed in thousands of dollars.

[c]ALJs were coded as participating in each of the four types of hearings if they indicated they at least "occasionally" participated in that type of hearing.

[d]Men were coded as "1," and women were coded as "0."

[e]White/Caucasian ALJs were coded as "1." All other racial and ethnic groups were coded as "0."

[f]Republicans were coded "1" and Democrats were coded "0."

[g]Conservatives were coded "1" and liberals were coded "0."

agency and by external interested parties demonstrate statistically significant effects on the orientations of ALJs, albeit in the direction opposite than was expected. Administrative law judges who can be evaluated— by either their agency or external parties—possess higher Judicial Independence scores than their colleagues who are not evaluated by these actors.[13] Although the coefficient for the variable indicating whether an ALJ serves in a central panel agency is positive, at $p = 0.075$, it fails to reach the standard level of statistical significance;

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along similar lines, no clear relationship emerges between an agency setting its ALJs' pay and an ALJ's Judicial Independence score (a higher score on the dependent variable reflects the individual expressed greater decisional independence) Although no relationship seems to exist between the type of hearings ALJs hold and their Judicial Independence scores, it is very important to observe that demographic control variables included in the analysis also have a noteworthy effect. It should be noted that older, White ALJs, Republican ALJs, and those ALJs whose political attitudes fall on the liberal side of the political spectrum are more likely to stress their decisional independence than are their younger, minority, Democratic and conservative counterparts.

From the evidence presented in the above analysis, the first model appears to produce at best limited evidence in its support. Administrative law judges' feelings of decisional independence are clearly not a direct function of the character of institutional decision-making protections established around the ALJ position. Two of the four types of institutional protections investigated here produce statistically significant evidence of their efficacy—however, in the *opposite* direction from what was expected. Adjudicators who are evaluated by their agency or by individuals outside of it are actually more likely to stress their decisional independence than ALJs who are not evaluated. Moreover, even the highly touted central panel agency system (e.g., Rich & Brucar, 1983) seems to account for little of the variation; from the evidence adduced from the ALJ survey it is clear that being located in an independent agency (all things being equal) will not necessarily make an ALJ feel more independent in his or her decision making.

Administrative Law Judges as Products of Selection

As an alternative explanation, we applied a model that was originally developed to explain the behavioral predispositions of Article III judges. Researchers in public law have long endeavored to link judges' predilections to the method by which they were selected. For example, this line of research attempted to determine whether judges who are selected by governors (as opposed to being elected judges) decide cases differently than those who are not (Cannon, 1972; Dubois, 1980; Jacob, 1964). The *articulation model* developed by Sheldon and Lovrich (1991), and expanded and applied by Sheldon and Maule (1997), turns the focus of this line of research away from trying to explain the characteristics and behaviors of judges in each of the different selection systems and toward assessing the impact the entire recruitment system has on the judicial candidate emerging victorious in the process of selection. This articulation model is premised on the view that the selection process constitutes an important socializing influence on the individual passing through its multiple phases. The articulation model recognizes the importance of both the informal and the formal steps followed in the recruitment process used for selecting judges for the bench.

Specifically, Sheldon and Lovrich (1991) and Sheldon and Maule (1997) divide the selection process into three distinct phases. The first phase is *initiation,* when a candidate first decides to seek a judicial position. An individual can decide to become a judge wholly on their own –- a self-initiator –- or they can be prodded into seeking a position by the local and state bar association, by their friends and close associates, by elected officials, by family members, or by other sitting and/or former judges. The second phase of the process is

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screening, whereby a candidate's qualifications are assessed against competitors and against prevailing standards. Candidates can be rated against each other through a bar poll, or against absolute standards (e.g., not qualified, qualified, well qualified) such as occurs in the well-known rating process used by the American Bar Association for federal court nominees. The final step in the selection process is *affirmation,* when a candidate is ultimately chosen to fill a judicial post—either through appointment (legislative, gubernatorial, or merit commission) or popular election (partisan or nonpartisan).

Using this understanding of the phases in the selection process, we can now examine what transpires in each of the stages. Specifically, we can note the level of *articulation* present in each of the three phases. We can examine the level of *participation* demonstrated by a number of common participants in each stage, the level of *contestedness* present by the number of candidates vying for the vacant judicial position, and the level of *competitiveness* or closeness of the competition (especially in the final stage of affirmation).

To apply the articulation model, we must both assess the level of articulation in the process of ALJ recruitment, and we must determine the likely nature of behavioral predispositions held by those who have survived the process. To assess the level of articulation associated with an ALJ's path to office, in the ALJ survey questionnaire we examined each of the stages in the selection process—initiation, screening, and affirmation—and established the level of participation, competitiveness, and contestedness of each stage as recalled by the survey participant.

To test hypotheses regarding the effects of selection process articulation on judicial decisional predispositions, additional indicators were included on the ALJ survey questionnaire that were derived from those developed for use with Article III judges by Sheldon and Lovrich (1991). Subsequently, with the independence/external influence measures obtained from the ALJ respondents, comparisons could be made between those ALJs from systems with "high" articulation selection procedures and those featuring rather "low" articulation selection procedures.

Competition for a federal ALJ position is somewhat more rigorous than it is for the state-level ALJ positions. All federal ALJs must have a bare minimum of seven years of experience (most applicants have substantially more) as either a trial attorney or judge before they qualify for application to the ALJ corps. In many states, such as Washington and Oregon, it is the case that not all administrative adjudicator positions require a law degree (experience in a policy area or a graduate degree can substitute), and the positions that do require a law degree and legal practice background normally do not require nearly as extensive trial experience as is demanded of their federal counterparts; in most cases, only two years of trial experience is required of applicants in both Oregon and Washington.

To assess recall on the number of participants involved in the initiation stage of the process, ALJs were asked in the survey to indicate the importance of other recruitment process actors in prompting them to seek an ALJ position. The number and importance of each of the actors was then combined into an additive scale we dub the "External Initiation Index."[14] To assess the contestedness of the positions, the agencies for whom the ALJs work supplied the number of applicants seeking consideration for each open ALJ position over the course of the last year (the U.S. Office of Personnel Management, Office of Administrative Law

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Judges supplied the relevant information for the federal government). From these figures, we derived a "Contestedness Ratio" for each respondent's ALJ position. The larger the number, the more competition existed for the position.[15]

Another set of variables was investigated in order to assess the degree of competitiveness associated with each of the ALJ's positions in each agency. To complement the Contestedness Ratio, indicators were included that would take into account the requirements for an ALJ position, and the aspects of that position which would draw the attention of the most attractive candidates. Doing so serves two purposes. First, these measures can take into account any self-selection bias affecting the Contestedness Ratio; those positions requiring more substantial credentials would see their Contestedness Ratios confounded by the smaller pool of eligible candidates, and thus hinder the formation of an accurate picture of the effect of contestedness on the attitudes of ALJs. Second, having a better picture of the general level of competitiveness associated with an ALJ position would give us a clearer idea of how such competition would affect the decisional attitudes of ALJs.

The first of these selection process competitiveness measures represents a straightforward five-item index of competition-induced features of an ALJ position. These features include whether the position held by the survey respondent includes the word "judge," or carries the formal title "administrative law judge." Having the title of ALJ, or having a title with the word judge in the job description, would presumably confer greater prestige on the position (and thus encourage more competition for the position). Next, the requirements for the position were included in the index—whether the position required passing the bar exam, a law degree, and passing a written qualifying exam. All five of these separate measures were summed to create a complete "Competitiveness Index" for the position.

Additional indicators were collected and included in the analysis, which could reflect further the level of competition experienced by ALJs surveyed in seeking the ALJ position, including the minimum starting pay listed for the adjudicator position. The underlying logic for the inclusion of such a measure rests on the assumption that higher paying jobs would attract more qualified candidates.[16] Finally, as a measure of the ALJ as individual job candidate, two distinct indicators were employed—namely, the prestige of the law school[17] that they attended and whether or not they had held a previous government position.

In short, if attitudes about decisional independence are indeed a product of the overall initial recruitment, screening, and final selection processes, then those individuals with the most independent attitudes will be the ones who were the *least prompted by others* to seek their position. Additionally, they will be the ones who were the *products of the least contested positions*, and will be the ones coming to the position the *most qualified.* From these notions, we test the following falsifiable hypotheses:

H4: Administrative law judges with higher External Initiation Ratios will have lower Judicial Independence Index scores.

H5: Administrative law judges in positions with higher Contestedness Ratio scores will have lower Judicial Independence scores.

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H6: Administrative law judges in positions with higher Competitiveness Ratio scores will have lower Judicial Independence scores.

Additionally, we expect ALJs who serve in positions with higher pay, and who come to the position more qualified by having served in a previous government position, and who were presumably more attractive candidates by virtue of having attended a more prestigious law school will have higher Judicial Independence Index scores. The performance of this articulation model, also presented in Table 3, represents a substantial improvement over the "protections" model previously discussed. The percentage of variance explained (R^2) has nearly doubled to 35%. Even when adjusting for the larger number of variables included in this regression analysis, the articulation model still explains over twice the amount of variance explained by the protections model.

As expected, with respect to external actors the larger the number involved and the more significance attached to their influence in one's recruitment to be an ALJ, the more open ALJs felt to the consideration of a broad range of factors in their decisional process. The more they were encouraged by others to become an ALJ, the more likely the ALJ was to stress the importance of taking into consideration the demands of others when rendering decisions. Additionally, the more prestigious the school of the ALJ's legal training, the more likely they are to stress the importance of their decisional independence as an ALJ; however the opposite effect is true for ALJs who held a prior government job.[18] As was the case in the first multivariate analytical model, in the second "articulation theory" model the demographic indicators and one of the types of hearings produced statistically significant impacts along with the several variables devised to test the articulation theory. ALJs who stressed their decisional independence were more likely to be older and Republican. The more liberal the ALJ (all things being equal), the more likely an ALJ was to stress his or her independence as well.

Two variables did not reach conventional levels of statistical significance, but they nonetheless are worth mentioning. The first is the Contestedness Ratio. Its coefficient is the predicted direction, suggesting that ALJs who faced little competition for their position indeed had higher Judicial Independence scores. However, the p-value was at a $p = 0.060$, tantalizingly close, but insufficient to allow us to conclude the relationship is indeed in the indicated direction. Similarly, the Competitiveness Index variable had a p-value of 0.068. Although the coefficient for the Competitiveness Index was in the opposite direction from what we hypothesized, further exploration of both variables is warranted.

Model 3 in Table 3 provides results from a combined model, including variables from both Models 1 and 2. Caution should be taken when viewing these results, however, because some of the variables were excluded due to multicollinearity concerns. Nonetheless, with this caveat understood the relationship between an ALJ's Judicial Independence score and her/his External Initiation Index appears robust. Even when taking into account some of the variables in the protections model, ALJs who were prompted more by others to seek their position tend to stress their "blind eye" type of independence less and tend to take more into account concerns from a broader range of actors. Similarly, having held a previous government job was associated with lower Judicial Independence scores, as were the same demographic controls included in the Articulation Model.

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DISCUSSION

These findings tell us a couple of noteworthy things about bureaucratic responsiveness in general. First, many of those who make decisions in citizen complaints heard in public agencies are not immune from outside influence. Over 60% of administrative judges said it was either "important" or "very important" their decisions reflected the wishes of the legislature/Congress and the needs of the public. Second, not all outside influences received the same treatment. Concern for the wishes of governors or Presidents was shared by only a small minority of ALJs. Similarly, only small numbers of ALJs expressed a concern for their agencies' priorities. At the same time, ALJs as a group were concerned with making efficient decisions. Perhaps most surprising of all, ALJs as a group were not monolithic in their outlook. Some ALJs were oriented toward taking into consideration a wide variety of concerns beyond the immediate case facts and applicable law and regulations, others thought these outside concerns were unimportant aspects of the work to be done in resolving the dispute.

The findings reported here inform us further as to why agencies and those who work in them behave as they do. Instead of the image of the often-portrayed unresponsive neutral expert, the survey findings reveal instead a portrait of those who are tasked with making decisions often taking into account a wide variety of concerns when doing their work. If they did not take into account varied external concerns, the values on our indexed dependent variable would be highly skewed to the right of the histogram in Figure 1. Instead, the distribution portrayed in the histogram approximates a normal distribution. Some chose the options reflecting the greatest amount of independence; others chose the opposite. Most chose options that put them somewhere in the middle of the possible range of the indexed variable.

Our findings also provide additional insight into the dynamics of bureaucratic responsiveness, supplementing the findings of studies in the principal-agent line of research. These studies have found that at the agency level, agencies are responsive to changes in party control of the legislature and the executive branch. The authors of these studies have largely attributed the budget process, oversight, and executive appointments as the primary means by which the elected branches are able to ensure the agencies bend to their will. Although we cannot rule out completely the possibility concern for these institutional mechanisms of control are lurking in the back of the minds of the ALJs, there is nothing from our analyses to suggest this is the case. When asked if they thought the concerns of the legislature was important, they simply responded that they did and, did so at rates similar to the rates by which they stated the concerns of the parties in the dispute were a concern to them. It is also worth noting that in follow-up interviews we conducted with some of the survey participants, none stated they were concerned with legislative oversight committees or the budgetary process.

In addition to documenting that many ALJs take into account various external considerations when deciding cases, our study provides insight into the reasons why these rates varied among the ALJs. From the analyses presented in this article, it is clear that when the articulation model is compared against a "protections" model it renders a somewhat more complete and statistically efficacious explanation for ALJ attitudes. The predictive model featuring aspects of the level of articulation of the selection process accounted for a much larger percentage of the variance in the dependent variable devised to assess ALJ attitudes toward

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decisional independence. It can be said with some degree of confidence that the number of participants involved in the initiation stage likely does impact ALJs' feelings about their decisional independence. Although it is clearly the case that the articulation model does offer greater explanatory power, the protections model first tested ought to not be discounted entirely. The protections most ALJs enjoy from external influence on their decisional independence do play some role in structuring their attitudes, in particular the protection against being evaluated by their agency, as well as being evaluated by actors outside of the agency. Why the relationship is in the direction opposite from what was expected warrants further investigation, although it is reasonable to speculate that when facing external review it makes sense to "go strictly by the book" and turn "a blind eye" to putatively relevant, but not directly provided for, considerations in one's exercise of discretion. Although the protections model offers some explanatory power, it is important to note the tabular results from Table 1 indicate that most ALJs in our sample stated their agency had little direct influence on their decisions. Most ALJs said their agencies' priorities or needs were relatively unimportant vis-à-vis the doing of justice in the case at hand as they viewed it. This is truly noteworthy because, despite the plausible concerns (e.g., Felter, 1997; Musolf, 1994) that agencies could be a source of undue influence on ALJ decisions, our findings suggest this is not the case in practice.

Some of the demographic variables produced significant results. In Model 1, White ALJs were more likely to stress their decisional independence, while minorities were less likely to do so. Although the relationship ceases to be statistically significant in the other two models, this does somewhat reflect the findings of past studies of how minority officials view their work. Representative bureaucracy theory maintains that agencies tend to be more responsive to the public if the personnel who staff administrative agencies are more diverse (Selden, 1997; Sowa & Selden, 2003). Not all of the items used in our external stimuli variable are measures of public responsiveness, but several, items specifically measuring concern for "the welfare of the public," those "who are less fortunate," and the "needs of the parties in the dispute" are rather clear measures of public responsiveness. The fact that White ALJs report less concern for these values than do minority ALJs seems to confirm that ALJs behave similarly to other bureaucrats in terms of exercising discretionary authority.

The predictive power of some of the other demographic variables was unexpected. Younger ALJs were less likely to stress their decisional independence than older ALJs. Perhaps experience in the position breeds greater independence and a track record of fairness in case processing permits greater confidence as one moves on in an ALJ career. The reasons why decisional independence is related to an ALJ's party affiliation and political ideology remain unclear and were the least anticipated findings of the study. Further research is required to better understand the dynamics at play here.

CONCLUSION

The research approach presented here can be used in subsequent analyses for other types of actors who make authoritative decisions based on professional discretion. For example, it could be used to examine the attitudes and behavior of other types of key individuals *within*

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public agencies and the effects of selection processes on important executive actors at the *top of agencies*. How might levels of articulation in the selection processes in place affect the attitudes of important elected and appointed *local government* officials such as prosecutors and sheriffs who are responsible for implementing programs that affect a broad range of interests? County executives, city managers, police chiefs, land use planning office directors, and even local public school superintendents and principals would all be good subjects of study. Because these individuals must resolve a number of oftentimes competing demands from disparate constituency groups and residents, the means by which these officials were recruited and selected could have similar effects as were observed in the case of administrative law judges.

Our findings have normative implications. First, we find that ALJs take into account a variety of concerns when rendering their decisions. As a group, our respondents stated that they wanted their decisions reflected in the wishes of the legislature, the needs of the parties in the dispute, and the welfare of the public. This suggests that ALJs as a group tend to not only be responsive, but are responsive to different constituencies. We contend the fact that ALJs are responsive comports well with the notion of "public service" (e.g., Denhardt, 1993). However, this sense of general responsiveness may seem to conflict with the notion of judicial independence, that is, their decisions merely reflected the law and the facts in the case and ignored any external constituencies. If indeed ALJs are responsive to certain parties or organizations, then the notion of providing due process is subverted when evidence and the law take a back seat to pleasing groups in a particular hearing. However, we contend it is very unlikely this is the case. This is because the most likely potential source of undue *direct* influence on an ALJ's decisions—his or her own agency—does not seem to factor significantly in their decisions. Neither the needs of ALJs' agencies nor their agencies' priorities were a notable source of external stimuli for most ALJs. ALJs were instead *generally* responsive to a wider range of actors.

When examining the multiple roles ALJs must play, one might ask: what is the nature of public service in this context? Is it executing the will of the majority? Is it ensuring due process for the individuals involved in the case before the ALJ? Administrative law judges are put in the position to have to do both simultaneously. Rosenbloom, Carroll, and Carroll (2004) argue that public administration cannot function without recognizing constitutional values. Ideally, this notion would serve as a guide for ALJs. They would respond to the demands of the constitutional branches, while protecting constitutional rights of due process for the individuals that come before them. Our findings, for the most part, suggest this is indeed the case. ALJs stated they were concerned with both the needs of the parties in the dispute and the needs of the legislature or Congress in roughly equal proportions.

NOTES

1. The name "Article III Judge" is derived from the article in the U.S. Constitution establishing the judicial power of the United States.
2. The placement in the executive branch of government was a product of political compromise when Congress was establishing the federal ALJ corps in 1946 (called at the time "Hearing Examiners"). After 1946, all states

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followed the federal government's lead in this regard. At the federal level, the Hearing Examiners' title was officially changed in 1972 to Administrative Law Judge.

3. See Triantafillou (2013, pp. 177–180), for a comprehensive review of the critiques of bureaucratic neutrality.
4. 5 U.S.C. §701. Note that many states have similar protections from undue interference or influence for ALJs.
5. Although the decisions of nearly all ALJs are reviewable within the agency (usually by the agency head or a review council within the agency), their decisions do carry a substantial degree of weight and are nearly always sustained in practice.
6. *Victor Williams v. Ted Cruz,* No. Ste. 5016-16 (April 12, 2016). See ruling: http://media.philly.com/documents/Judge's+ruling+Ted+Cruz+to+remain+on+NJ+ballot.pdf (accessed May 13, 2016).
7. See the testimony from Judge Dana Leigh Marks, president of the NAIJ to the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, June 17, 2010: https://judiciary.house.gov/_files/hearings/pdf/Marks100617.pdf (accessed May 13, 2016).
8. The overall response rate for all ALJs in the sample was 50.3%. The SSA ALJs' sample had a response rate of 58.1%; Oregon's ALJs' response rate was 48.7%; Washington's ALJs' response rate was 45.5%; and the non-SSA federal ALJs' response rate was 44.3%. The individual names and fax numbers of the ALJs included in the sampling frame were obtained by the authors via the agency's personnel officer, or from other agency employees (for all non-Social Security Administration federal ALJs), a state personnel officer (for all Oregon ALJs and non-central panel ALJs in Washington), or through a departmental directory (for both Washington's central panel organization, the Office of Administrative Hearings, and for the Social Security Administration).
9. Not included from the list of questions are ones that attempt to assess the impact of the case facts, statutory, and regulatory law in guiding the ALJs' decisions. Such matters were quite deliberately excluded from the ALJ survey questionnaire, because the respondents could have construed the other items as being rival criteria when rendering a decision. It is reasonably assumed that case facts, statutory, and regulatory law provisions will be the primary driving forces behind all decisions rendered by ALJs.
10. n of cases $=265$; Cronbach's $\alpha = 0.756$.
11. 5 U.S.C. §557 WAC, 480-07-310; OAR 137-003-0600.
12. It should be noted that other "protection" variables were dropped from the equation, due to collinearity concerns. These include whether or not the ALJ can be dismissed, promoted, or disciplined by his or her agency.
13. The finding that ALJs who are externally evaluated could be a reactionary response to such an evaluation, as one anonymous reviewer pointed out. Although we have no means by which to test this possibility with the data we have, the results from follow-up interviews suggest this is a possibility. At least one externally-evaluated ALJ was not happy with the situation and stated he made it a point to ensure his decisions did not reflect this fact.
14. On the survey instrument, respondents were asked to use a 5-point Likert-type scale to rate the relative importance of certain groups of individuals in prompting them to seek an ALJ position. The groups included in this listing were: their family, instructors in law or graduate school, coworkers, previous supervisors, their agency's chief ALJ, other ALJs, members of the public, or representatives of an interest group. The scale values indicated for each of these groups were added together ("not important" was coded 1, "very important" was coded 5) to calculate the index score.
15. The Contestedness Ratio was derived by subtracting from one the ratio of applicants to the number of positions in each agency.
16. It should be noted that there is substantial variation across the levels of pay for the ALJs included in this study. Federal ALJs begin at roughly twice the salary of many of their Washington and Oregon state-level peers.
17. The ALJs' law school *alma maters* were compared against the 1998 *U.S. News and World Report's* law school ranking index. If the respondent attended a school rated in the top 25 schools in the rankings, they were coded "1." If they did not fall in this group, they were coded "0." If respondents indicated they had attended more than one law school, the most highly rated law school was coded for the analysis.
18. The only statistically significant variable in the regression equation that was not in the expected direction was the one indicating whether the ALJ had served in a previous government position. If they had served in such a position, they were more likely to feel open to outside influences on their decisions. The reasons for this association will require additional analyses, but it is reasonable to speculate that their prior governmental

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experience has sensitized them to the benefit of diverse perspectives in understanding reasonable trade-offs between efficiency and equity in specific cases in dispute.

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REFERENCES

Allison, G. T. (1969). Conceptual models and the cuban missile crisis. *American Political Science Review*, *63*, 689–718. doi:10.2307/1954423
Babbie, E. (1992). *The practice of social research* (6th ed.). Belmont, CA: Wadsworth.
Barry, D. D., & Whitcomb, H. R. (1987). *The legal foundations of public administration*. St. Paul: West Publishing.
Beck, N. (1984). Domestic political sources of American monetary policy, 1955–82. *Journal of Politics*, *46*, 786–817. doi:10.2307/2130856
Boyd, C. L., Epstein, L., & Martin, A. D. (2010). Untangling the causal effects of sex on judging. *American Journal of Political Science*, *54*, 389–411. doi:10.1111/j.1540-5907.2010.00437.x
Brace, P., & Boyea, B. D. (2008). State public opinion, the death penalty, and the practice of electing judges. *American Journal of Political Science*, *52*, 360–372. doi:10.1111/j.1540-5907.2008.00317.x
Brace, P., & Hall, M. G. (1990). Neo-institutionalism and dissent in state supreme courts. *Journal of Politics*, *52*, 54–70. doi:10.2307/2131419
Brace, P., & Hall, M. G. (1993). Integrated models of judicial dissent. *Journal of Politics*, *55*, 914–935.
Brace, P., & Hall, M. G. (1997). The interplay of preferences, case facts, context, and rules in the politics of judicial choice. *Journal of Politics*, *59*, 1206–1231. doi:10.2307/2998598
Cannon, B. (1972). The impact of formal selection processes on the characteristics of judges – reconsidered. *Law & Society Review*, *6*, 579–593. doi:10.2307/3052949
Chubb, J. E. (1985). The political economy of federalism. *American Political Science Review*, *79*, 994–1015. doi:10.2307/1956245
Collins, T., & Moyer, L. (2008). Gender, race, and intersectionality on the federal appellate bench. *Political Research Quarterly*, *61*, 219–227. doi:10.1177/1065912907306467
Denhardt, R. B. (1993). *The pursuit of significance, strategies for managerial success in public organizations*. Belmont, CA: Wadsworth.
Derthick, M. (1990). *Agency under stress: The social security administration in American government. Washington, DC: The* Brookings Institution.
Downs, A. (1967). *Inside bureaucracy*. Boston: Little, Brown, & Co.
Dubois, P. L. (1980). *From ballot to bench: Judicial elections and the quest for accountability*. Austin, TX: University of Texas Press.
Epstein, L., & Knight, J. (1998). *The choices justices make*. Washington, DC: CQ Press.
Felter, E. L. Jr. (1997). Maintaining the balance between judicial independence and accountability in administrative law. *The Judges Journal*, *36*, 22–23.
Fritschler, A. L., & Rudder, C. E. (2007). *Smoking and politics: Bureaucracy centered policymaking*. Upper Saddle River, NJ: Pearson.
GAO (1979). *Management improvements in the administrative law process: Much remains to be done (GAO/FPCD-79-44)*. Washington, DC: Government Printing Office.

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GAO (1997a). *Social security disability: SSA must hold itself accountable for continued improvement in decision-making*. Report to the Chairman, Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives (GAO/HEHS-97-102).
GAO (1997b). *Social security disability: SSA actions to reduce backlog and achieve more consistent decisions deserve high priority* (GAO/T-HEHS-97-118).
GAO (1992). *Social security: Racial difference in disability decisions warrants further investigation GAO/HRD-92-56*. Washington, DC: Government Printing Office.
Goodnow, F. J. (1900). *Government and politics: A study in government*. New York: Russell & Russell.
Gulick, L. H. (1937). Notes on the theory of organization. In L. Gulick & L. Urwick (Eds.), *Papers on the science of administration* (pp. 3–45). New York: Institute of Public Administration, Columbia University.
Hall, M. G., & Brace, P. (1989). Order in the courts: A neoinstitutional approach to judicial consensus. *Western Political Quarterly*, *42*, (1), 391–407.
Hall, M. G., & Brace, P. (1992). Electoral politics and strategic voting in state supreme courts. *American Journal of Political Science*, *54*, 427–446.
Hall, M. G., & Brace, P. (1996). 'Justices' response to case and facts: An interactive model. *American Politics Quarterly*, *24*, 237–261. doi:10.1177/1532673X9602400206
Hall, M. G., & Brace, P. (1999). State supreme courts and their environments: Avenues to general theories of judicial choice. In C. Clayton & H. Gillman (Eds.), *Supreme court decision-making: New institutional approaches* (pp. 281–300). Chicago: University of Chicago Press.
Hindera, J. J. (1993a). Representative bureaucracy: Further evidence of active representation in the EEOC district offices. *Journal of Public Administration Research and Theory*, *3*, 415–429.
Hindera, J. J. (1993b). Representative bureaucracy: Imprimis evidence of active representation in the EEOC district office. *Social Science Quarterly*, *74*, 95–108.
Holden, M. (1966). 'Imperialism' in bureaucracy. *American Political Science Review*, *60*, 943–951. doi:10.2307/1953767
Jacob, H. (1964). The effect of institutional differences in the recruitment process: The case of state judges. *Journal of Public Law*, *13*, 104–119.
Kaften, C. (2016). ALJ ruling: Shell, Iberdrola defrauded California consumers of over $1 billion. *Energy Manager Today*, April 18.
Katzman, R. A. (1980). *Regulatory bureaucracy: The federal trade commission and antitrust policy*. Cambridge, MA: The MIT Press.
Kaufman, H. (1969). Administrative decentralization and political power. *Public Administration Review*, *29*, 3–15. doi:10.2307/973980
Knight, J., & Epstein, L. (1996). The norm of *Stare decisis*. *American Political Science Review*, *40*, 1018–1035. doi:10.2307/2111740
Knott, J. H., & Miller, G. J. (1987). *Reforming bureaucracy*. Englewood Cliffs, NJ: Prentice Hall.
Koch, C. H. Jr. (1994). Administrative presiding officials today. *Administrative Law Review*, *46*, 271–295.
Langer, L. M. (2003). Strategic considerations and judicial review: The case of workers' compensation laws in the American states. *Public Choice*, *116*, 55–78. doi:10.1023/A:1024263103610
Legal Monitor Worldwide (2014). Administrative law judge rules SIU bargained in bad faith; owes $1.9 million in compensation. (August 5). 2014.
Likert, R. (1932). A technique for the measurement of attitudes. *Archives of Psychology*, *22*, 140.
Litt, N. (1997). Doing it with mirrors: The illusion of judicial independence. *The Judges Journal*, *36*, 27–29. 47.
Lowi, T. (1969). *The end of liberalism: The second republic of the United States*. New York: Norton.
Lowi, T. (1979). *The end of liberalism: The Second Republic of the United States* (2nd ed.). New York: Norton.
Lubbers, J. S. (1981). Federal administrative law judges: A focus on our invisible judiciary. *Administrative Law Review*, *33*, 109–131.
Lubbers, J. S. (1996). APA-adjudication: Is the quest for uniformity faltering? *Administrative Law Journal*, *10*, 65–74.
Luton, L. S. (2003). The tale that wagged the dog: is the progressive era the foundation of American public administration? *Administrative Theory & Praxis*, *24*, 439–456.
Maltzman, F., Spriggs, J. F., & Wahlbeck, P. J. (2000). *Crafting law on the supreme court: The collegial game*. New York: Cambridge University Press.

المنارة للاستشارات
www.m

McIver, J. P., & Carmines, E. G. (1981). *Unidimensional scaling*. Beverly Hills, CA: Sage.
Moe, T. M. (1982). Regulatory performance and presidential administration. *American Journal of Political Science*, *26*, 197–224. doi:10.2307/2111036
Murphy, W. F. (1964). *Elements of judicial strategy*. Chicago: University of Chicago Press.
Musolf, L. (1994). Administrative law judges: A 1948 snapshot. *Administrative Law Review*, *46*, 257–269.
Rich, M., & Brucar, W. E. (1983). *The central panel system for administrative law judges: A survey of seven states*. Chicago: American Judicature Society.
Rosenbloom, D. H., Carroll, J. D., & Carroll, J. D. (2004). *Constitutional competence for public managers: Cases and commentary*. Boston, MA: Cengage Learning.
Scholz, J. T., Twombly, J., & Headrick, B. (1991). Street-level political controls over federal bureaucracy. *American Political Science Review*, *85*, 829–850. doi:10.2307/1963852
Scholz, J. T., & Wei, F. H. (1986). Regulatory enforcement in a federal system. *American Political Science Review*, *80*, 1249–1270. doi:10.1017/S0003055400185090
Scholz, J. T., & Wood, B. D. (1998). Controlling the internal revenue service: Principals, principles, and public administration. *American Journal of Political Science*, *42*, 141–162. doi:10.2307/2991750
Schreckhise, W. D. (2016). Administrative law judges and agency adjudication. In M. Dubnick & D. Bearfield (Eds.), *Encyclopedia of public administration and public policy* (3rd ed.) (pp. 1–5). New York: Taylor and Francis.
Segal, J. A., & Spaeth, H. J. (2002). *The supreme court and the attitudinal model revisited*. New York: Cambridge University Press.
Selden, S. C. (1997). *The promise of representative bureaucracy: Diversity and responsiveness in a government agency*. New York, NY: Routledge.
Selden, C., Brudney, J. L., & Kellough, J. E. (1998). Bureaucracy as representative institution: Toward a reconciliation of bureaucratic government and democratic theory. *American Journal of Political Science*, *42*, 717–744.
Sheldon, C. H., & Lovrich, N. P. (1991). State judicial recruitment. In J. B. Gates & C. A. Johnson (Eds.), *The American courts: A critical assessment*. Washington, DC: CQ Press.
Sheldon, C. H., & Maule, L. S. (1997). *Choosing justice: The recruitment of state and federal judges*. Pullman, WA: Washington State University Press.
Singleton, R. J., Straits, B. C., Straits, M. M., & McAllister, R. J. (1988). *Approaches to social research*. New York: Oxford University Press.
Songer, D. R., Segal, J. A., & Cameron, C. M. (1994). The hierarchy of justice: Testing a principal-agent model of supreme court-circuit court interactions. *American Journal of Political Science*, *38*, 673–696. doi:10.2307/2111602
Sowa, J. E., & Selden, S. C. (2003). Administrative discretion and active representation: An expansion of the theory of representative bureaucracy. *Public Administrative Review*, *63*, 700–710. doi:10.1111/1540-6210.00333
Spector, P. E. (1992). *Summated rating scale construction: An introduction*. Newbury Park, CA: Sage.
Spicer, M. W. (2015). Neutrality, adversary argument, and constitutionalism in public administration. *Administrative Theory & Praxis*, *37*, 188–202. doi:10.1080/10841806.2015.1053363
Spiller, P. T., & Gely, R. (1992). Congressional control or judicial independence: The determinants of U.S. supreme court labor-relations decisions, 1949-1988. *The RAND Journal of Economics*, *23*, 463–492. doi:10.2307/2555900
Thomas, S. (1994). *How women legislate*. New York: Oxford University Press.
Triantafillou, P. (2015). The politics of neutrality and the changing role of expertise in public administration. *Administrative Theory & Praxis*, *37*, 174–187. doi:10.1080/10841806.2015.1053362
Waldo, D. (1971). Foreword. In F. Marini (Ed.), *Toward a new public administration: The minnowbrook perspective (pp. xii–xix)*. Scranton, NY: Chandler Publishing Company.
Weiner, J. (1999). Unionbusting flunks out (Editorial). *The Nation*, *268*, 7–8.
Weingast, B. R., & Moran, M. J. (1983). Bureaucratic discretion or congressional control? Regulatory policymaking by the federal trade commission. *Journal of Political Economy*, *91*, 765–800. doi:10.1086/261181
White, L. D. (1926). *Introduction to the study of public administration*. Upper Saddle River, NJ: Prentice Hall.
Wilson, J. Q. (1989). *Bureaucracy: What government Agencies do and why they do it*. New York: Basic Books.
Wilson, W. (1887). The study of administration. *Political Science Quarterly*, *2*, 197–222. doi:10.2307/2139277
Wood, B. D. (1988). Principles, bureaucrats, and responsiveness in clean air enforcements. *American Political Science Review*, *82*, 212–234.

المنارة للاستشارات
www.m

Wood, B. D. (1990). Does politics make a difference at the EEOC?. *American Journal of Political Science*, *34*, 503–530. doi:10.2307/2111459

Wood, B. D. (1992). Modeling federal implementation as a system: The clean air case. *American Journal of Political Science*, *36*, 40–67. doi:10.2307/2111424

Wood, B. D., & Waterman, R. W. (1991). The dynamics of political control of the bureaucracy. *American Political Science Review*, *85*, 801–850. doi:10.2307/1963851

Wood, B. D., & Waterman, R. W. (1993). The dynamics of political bureaucratic adoption. *American Journal of Political Science*, *37*, 497–528. doi:10.2307/2111382

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