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ABSTRACT

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), it was found that ALJs differ considerably in their views toward the propriety of deferring to external stimuli (such as their agencies, public opinion, or to the elective branches of government) in their exercise of quasi-judicial authority. To determine the source of this variation, two different conceptual models were tested, the first drawn from the "rational-actor" variation of the New Institutionalism school of thought on political 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 which ALJs undergo has an important impact on their feelings of responsiveness to a broad range of external actors. We discuss these research findings in the broader normative context of judicial independence and bureaucratic responsiveness.
INTRODUCTION

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 law as it appears in the applicable statute at hand; yet all jurists can be confronted with uncertainty in the facts presented and laws that fail to provide sufficiently clear guidance in all cases. When the facts of a case are indeterminative and/or the applicable law permits of multiple interpretations, upon what criteria do ALJs tend to rely 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 this difference? These are the two 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 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 judges1), ALJs are both a great 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 which 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,

1 The name “Article III Judge” is derived from the article in the U.S. Constitution establishing the judicial power of the United States.
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 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 might respond in their official decision-making in their day-to-day work. In doing so, we will test the explanatory potential of two quite distinct models adapted from studies examining the decisional motivations of Article III judges.

**ADMINISTRATIVE LAW JUDGES**

Both the federal government and 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 U.S. Merit Systems Protections Board (MSPB). In addition, the compensation of federal ALJs is established by statute, and that remuneration is not subject to agency determination.³ In some states, such as Oregon, administrative law judges have not been accorded these particular protections. In other states, such as Washington, some of the state’s ALJs are housed in a “central panel” agency [the Washington Office of Administrative Hearings] to further ensure the decisional

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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 followed the federal government’s lead in this regard. At the federal level, Hearing Examiners’ titles were officially changed in 1972 to that of Administrative Law Judge.

³ 5 USC 701. Note that many states have similar protections from undue interference or influence for ALJs.
independence of hearing officers (see Rich & Brucar, 1984); other Washington State ALJs are housed within individual agencies as is the case in the federal government.

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 U.S. 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).4 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 (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

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4 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.
Republican party presidential primary. Although not all cases which 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 (Litt 1997; Lubbers 1981; Felter 1997; Musolf 1994; see also Barry & Whitcomb 1987: 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 1997a, 1997b, 1992, 1979; Koch 1994; see also Lubbers 1981: 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 OPM (at the federal level) and substantial documentation to remove a recalcitrant ALJ from his or her position,

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ALJs are said to enjoy too much freedom in conducting their own operations. This freedom has led some administrative observers to conclude that much too often ALJs have become obstacles in the accomplishment of the mission of their agencies. These critics tend to argue — among these vocal and articulate critics are included 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 adjudicators, have jealously observed and supported the ALJs' independence. The *National Association of Immigration Judges*, the labor representative organization for the nation’s immigration judges (who make up the largest population of non-ALJ administrative adjudicators at the federal level), has lobbied the Congress to elevate immigration judges to the same status as ALJs. 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, 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

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agencies. Of these, a total of 265 were returned. 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 to document their orientation towards 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 parties such as the public, their host administrative agencies, and affected interest groups. The ALJ survey respondents were also asked to assess the degree to which a range of specific factors affect their 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, 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 by following legislative intent, one of closely following agency policy precedents, or one of assisting the agency in question in the fulfillment of its policy agenda.

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7 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 Washington’s central panel organization, the Office of Administrative Hearings and the Social Security Administration).

8 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 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 assumed that case facts, statutory, and regulatory law provisions will be the driving forces behind all decisions rendered by ALJs.
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 survey findings clearly 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 policy 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 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 express considerably less concern for the needs of their agency or the interest of the chief executive (i.e., the U.S. 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 one
part of the larger story. What is needed for a more complete understanding is an explanation for this variation. To accomplish this, the several aforementioned survey items were combined to create an additive dependent variable. This multiple-item measure minimizes any potential bias deriving from undue reliance on any one of the contributor items (Likert 1932; Singleton et al. 1988, 363-6; Spector 1992, 6; see also McIver & Carmines 1981, 14; Bibbie 1992, 166). Figure 1 displays a histogram of the composite variable Judicial Independence we derived from the ALJs’ responses to the questions presented in Table 1.  

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 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.

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INSERT FIGURE 1 HERE

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9 N of cases = 265; Cronbach’s Alpha = .756.
One possible explanation for this 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. Scholars have found this to be the case with Article III judges. 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; they clearly did not wish to face a hostile electorate reacting to their counter-majoritarian opinions (Brace & Hall, 1993, 1997; Hall & Brace, 1992, 1996, 1999). Brace and Boyea (2008) similarly found that elected state supreme court justices were quite responsive to public opinion in sentences on capital punishment cases, while appointed justices were not nearly as responsive (see also Murphy, 1964; Knight & Epstein, 1996; Langer 2003; Szmer et al. 2007).

Because the protections granted to the ALJs from their agencies in the three different governments studied here do vary substantially (and even notably differ within states), we can determine whether their sense of judicial independence is a partial product of those legal-institutional mechanisms. In Washington, some administrative law judges are housed in their own agency — the Office of Administrative Hearings (OAH) — that hears cases for numerous mid-sized and smaller state agencies. These ALJs were moved from individual agencies into their own “central panel” to minimize any possible interference from the agency for whom the ALJ was hearing the case. The agency itself is usually a party and/or
has a stake in the outcome of the case, of course. Other ALJs in Washington still work directly for the agency whose cases they are hearing. In the large agencies outside of the OAH in Washington, and in all the Oregon agencies that use ALJs, the ALJs only enjoy standard merit service protections from political pressures -- that is, they can be removed for cause as can all other state employees.

Oregon’s ALJs are subject to closer agency supervision than are Washington ALJs. Their pay is set by their employing agency, they can be transferred by the agency, the agency can evaluate their performance, and it can even discipline them. Further, one agency -- the Oregon Workers’ Compensation Board -- solicits evaluative assessments and comments every four years from attorneys practicing before the Board’s ALJs. The agency makes the results public for each ALJ who is specified in the findings, by name.

Although not housed in a central panel agency, federal ALJs still receive a good deal of protection from external influence as well. The ALJs’ compensation is not set by their agency, they cannot be transferred, removed or disciplined without a hearing before the U.S. 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 non-OAH Washington ALJs and their Oregon counterparts ought
to 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 testable 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 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; 4) and whether or not they are evaluated by external parties.¹⁰ We posit the following three relationships to obtain 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.

¹⁰ 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.
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.

Because the results from this analysis could be affected by other variables, several 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, gender, race, political party affiliation, ideology and age of the respondent.

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 reported in Table 3. The OLS model’s Pearson’s correlation coefficient is a modest .419. This model explains roughly 20 percent of the variance in ALJ Judicial Independence, and the Adjusted R-Square is .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 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 -- either by their agency or by external parties -- possess higher Judicial Independence scores than their colleagues who are not evaluated by these actors. Although the coefficient for the variable indicating whether an ALJ serves in a central panel agency is positive, at $p=.075$, it fails to reach the standard level of statistical significance; along similar lines, no clear relationship emerges between an agency setting its ALJs’ pay and an ALJ’s Judicial Independence score. 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, Democratic ALJs, and those ALJs whose political attitudes fall on the conservative side of the political spectrum are more likely to stress their decisional independence than their younger, minority, Republican and liberal counterparts.\footnote{The predictive power of these variables was not expected. These unexpected findings suggest that perhaps similar relationships exist between demographics and adjudicative decision-making independence as is known to be the case with demographic characteristics and attitudes towards the proper accessibility of governmental decision-making held by members of the general public. For example, researchers have found younger individuals support better access to channels of government decision-making (Inglehart, 1988, 1990, 66-103). Similar patterns can be seen for people on the inside of government. For example, women legislators tend to support enhanced public access to legislative deliberations at the state level. There has been some evidence presented to suggest that 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, 60-7). Determining exactly why these demographic indicators have an effect on the decisional attitudes of administrative adjudicators shall be the goal of future research.}

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 (Hb)**

As an alternative explanation, we applied a model which 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 (Jacob 1964; Cannon 1972; Dubois 1980). The *articulation model* developed by Sheldon and Lovrich (1991), and expanded and applied by Sheldon and Maule (1997) in subsequent work, 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 towards 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 several phases which persists into service on the bench. 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 nation's courts.

Specifically, Sheldon and Lovrich (1991) and Sheldon and Maule (1997) divide the selection process into three distinct phases. The first phase is **initiation** where 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 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 **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** where a candidate is ultimately chosen to fill a judicial post -- either through appointment (legislative, gubernatorial, or merit commission) or 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, contestedness, and competitiveness of each stage.

To test hypotheses regarding the effects of selection process articulation on judicial decisional predispositions, additional indicators were included on the ALJ survey 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 both the states of 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 labeled the “External Initiation Index.” 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 previous year (the U.S. Office of Personnel Management, Office of Administrative Law 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.

Another set of variables was also 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.

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12 On the survey instrument, respondents were asked to use a five-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, co-workers, 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.

13 The Contestedness Ratio was derived by subtracting from one the ratio of applicants to the number of positions in each agency.
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 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 ALJs experienced in seeking their positions, 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.\textsuperscript{14} Finally, as a measure of the ALJ as individual job candidate, two distinct indicators were employed -- namely, the prestige of the law school\textsuperscript{15} which 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 \textit{least prompted by others} to seek their position. Additionally, they will be the ones who were the \textit{products of the least}

\textsuperscript{14} 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.

\textsuperscript{15} The ALJs’ law school \textit{alma maters} were compared against the 1998 \textit{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.
contested positions, and will be the ones coming to the position the most qualified. From these notions, we test the following falsifiable hypotheses:

\[ H_4: \text{Administrative law judges with higher External Initiation Ratios will have lower Judicial Independence Index scores.} \]

\[ H_5: \text{Administrative law judges in positions with higher Contestedness Ratio scores will have lower Judicial Independence scores.} \]

\[ H_6: \text{Administrative law judges in positions with higher Competitiveness Ratio scores will have lower Judicial Independence scores.} \]

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.

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The performance of this model in Table 4 represents a substantial improvement over the “protections” model previously discussed. The percentage of variance explained (R Square) 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.\textsuperscript{16} 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=.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.

\textsuperscript{16} 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.
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, due to the fact that some of the variables were excluded due to multicollinerarity concerns. Nonetheless, the relationship between an ALJ’s Judicial Independence score and her/his External Initiation Index appear 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 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 Articulation Model.

**DISCUSSION AND CONCLUSION**

From the analyses presented in this article it is clear that when the articulation model is compared against a “protections” model it renders a considerably more complete and statistically efficacious explanation for ALJ attitudes relating to Judicial Independence. 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 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 not be discounted entirely. The protections 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.

The research approach presented here can be used in subsequent analyses for other types of actors who make authoritative decisions. For example, it could be used to examine the attitudes and behavior of other types of key individuals within public agencies and the effects of selection processes on important executive actors at the top of agencies. For example, 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, planning office directors, and even 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.
REFERENCES


Dubois, Philip L. 1980. *From Ballot to Bench: Judicial Elections and the Quest for Accountability*. Austin, TX: University of Texas Press.


Figure 1

Histogram of Index of ALJ Decisional Independence

Std. Dev. = 8.04
Mean = 30.9
N = 865
Table 1

Tabular Results for

External Stimuli and Actors in Decision Making

(N=265)

<table>
<thead>
<tr>
<th></th>
<th>Very Important</th>
<th>Not Important</th>
</tr>
</thead>
<tbody>
<tr>
<td>The wishes of the Legislature/Congress(^{17})</td>
<td>42.7</td>
<td>19.8</td>
</tr>
<tr>
<td>The needs of those parties involved in the dispute</td>
<td>42.2</td>
<td>23.4</td>
</tr>
<tr>
<td>The welfare of the public</td>
<td>36.5</td>
<td>24.5</td>
</tr>
<tr>
<td>My decision was made in an efficient manner</td>
<td>30.2</td>
<td>42.7</td>
</tr>
<tr>
<td>My decision helps those in society who are less fortunate</td>
<td>6.3</td>
<td>8.2</td>
</tr>
<tr>
<td>Your agency’s priorities</td>
<td>5.9</td>
<td>12.6</td>
</tr>
<tr>
<td>My decision considers the needs of my agency</td>
<td>3.9</td>
<td>5.9</td>
</tr>
<tr>
<td>Interest groups are most often a valuable source of information in hearing cases</td>
<td>3.6</td>
<td>8.0</td>
</tr>
<tr>
<td>My decision saves taxpayers money</td>
<td>1.9</td>
<td>5.1</td>
</tr>
<tr>
<td>The preferences of the governor/president</td>
<td>0.4</td>
<td>2.1</td>
</tr>
<tr>
<td>Following agency policy(^{18})</td>
<td>22.7</td>
<td>22.7</td>
</tr>
<tr>
<td>Implementing legislative policy intent</td>
<td>18.4</td>
<td>21.2</td>
</tr>
<tr>
<td>Assisting your agency in fulfilling its policy agenda</td>
<td>12.0</td>
<td>12.9</td>
</tr>
</tbody>
</table>

\(^{17}\) Respondents were asked: “When rendering your decisions, how does concern for the following impact your choice.”

\(^{18}\) Respondents were asked: “Please indicate how you view your role in each of the following.”
### Table 2: Protections by Agency for ALJs

<table>
<thead>
<tr>
<th>Washington</th>
<th>Central Panel Agency</th>
<th>Pay not set by agency</th>
<th>Agency does not conduct performance evaluations</th>
<th>No public evaluation by attorneys</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office of Administrative Hearings</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Public Employment Relations Commission</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Department of Labor and Industries</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Board of Industrial Insurance Appeals</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Department of Licensing</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Department of Health</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Insurance Commissioner</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Utilities &amp; Transportation Commission</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Social &amp; Health Services</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Employment Security Department</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Board of Industrial Appeals</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Environmental Hearings Office</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

| Oregon | X | | |
| Dept. of Consumer & Business Services | | | |
| 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 |
Table 3

OLS Models of Decisional Independence

N=265

<table>
<thead>
<tr>
<th></th>
<th>Model 1 Protections</th>
<th>Model 2 Articulation</th>
<th>Model 3 Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Coef.</td>
<td>S.E.</td>
<td>Coef.</td>
</tr>
<tr>
<td>Constant</td>
<td>20.723***</td>
<td>6.016</td>
<td>29.671***</td>
</tr>
<tr>
<td>Serve in central panel</td>
<td>8.598</td>
<td>4.822</td>
<td></td>
</tr>
<tr>
<td>Agency sets pay</td>
<td>-4.813</td>
<td>4.617</td>
<td></td>
</tr>
<tr>
<td>Agency can evaluate</td>
<td>3.647*</td>
<td>1.593</td>
<td></td>
</tr>
<tr>
<td>External evaluation</td>
<td>8.078**</td>
<td>2.817</td>
<td></td>
</tr>
<tr>
<td>External Initiation Index</td>
<td>-0.427***</td>
<td>0.074</td>
<td>-0.421***</td>
</tr>
<tr>
<td>Contestedness Ratio</td>
<td>-0.113</td>
<td>0.060</td>
<td>0.848</td>
</tr>
<tr>
<td>Competitiveness Index</td>
<td>3.781</td>
<td>2.064</td>
<td>0.167*</td>
</tr>
<tr>
<td>Minimum pay</td>
<td>-0.283**</td>
<td>0.106</td>
<td></td>
</tr>
<tr>
<td>Prestige of law school</td>
<td>1.858*</td>
<td>0.757</td>
<td>1.896*</td>
</tr>
<tr>
<td>Previous govt job</td>
<td>-5.106***</td>
<td>0.902</td>
<td>-5.054***</td>
</tr>
<tr>
<td>Regulatory hearings</td>
<td>0.255</td>
<td>0.714</td>
<td>0.164</td>
</tr>
<tr>
<td>Benefits hearings</td>
<td>1.583</td>
<td>1.279</td>
<td>0.127</td>
</tr>
<tr>
<td>Labor hearings</td>
<td>-0.996</td>
<td>1.079</td>
<td>-2.250</td>
</tr>
<tr>
<td>Other hearings</td>
<td>-1.530</td>
<td>2.033</td>
<td>-0.394</td>
</tr>
<tr>
<td>Male</td>
<td>-1.073</td>
<td>0.947</td>
<td>-1.480</td>
</tr>
<tr>
<td>White</td>
<td>6.702***</td>
<td>1.101</td>
<td>0.149</td>
</tr>
<tr>
<td>Republican</td>
<td>4.294***</td>
<td>0.803</td>
<td>7.830***</td>
</tr>
<tr>
<td>Conservative</td>
<td>-4.675***</td>
<td>0.761</td>
<td>-6.257***</td>
</tr>
<tr>
<td>Age</td>
<td>0.160***</td>
<td>0.044</td>
<td>0.234***</td>
</tr>
<tr>
<td>R</td>
<td>0.419</td>
<td>0.590</td>
<td>0.590</td>
</tr>
<tr>
<td>R Square</td>
<td>0.175</td>
<td>0.348</td>
<td>0.352</td>
</tr>
<tr>
<td>Adj. R Square</td>
<td>0.154</td>
<td>0.319</td>
<td>0.322</td>
</tr>
</tbody>
</table>

*p<.05; **p<.01; ***p<.001.

19 Contestedness Ratio = number of positions/number hired. Thus, the higher the score for the ratio, the more contested the position.
20 Expressed in thousands of dollars.
21 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.
22 Men were coded as “1,” and women were coded as “0.”
23 White/Caucasian ALJs were coded as “1.” All other racial and ethnic groups were coded as “0.”
24 Republicans were coded “1” and Democrats were coded “0.”
25 Conservatives were coded “1” and Liberals were coded “0.”