

Race and Gender Bias in Three Administrative Contexts: Impact on Work Assignments in State Supreme Courts

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Do certain types of administrative processes better inhibit race and gender prejudices that may surface in the public workplace? We compare the effects of three distinct administrative settings on race, gender, and other biases in the workload assignments of state supreme court justices—important public policy making settings that have been understudied in public administration. In particular, we model the extent to which majority opinion-writing assignment processes exhibit prejudice in states that use randomized assignments, rotated assignments, or fully discretionary assignments, respectively. Our findings confirm that administrative process matters. We use theories of status characteristics and administrative oversight to explain the relationship between administrative context and workload assignment patterns. Based on data from all 50 states, we discover that prejudice exists but that certain administrative processes serve better than others to suppress race and gender biases.

Our study explores whether certain types of administrative processes in the public workplace can inhibit managers from acting on personal race- and gender-based prejudices. Public administrators routinely face competing value priorities (Kaufman 1956; Rosenbloom 1983), and these can include personal biases and self-interests (Bendor and Moe 1985; Brewer 2003; Miller 2000). Scholars and practitioners therefore have an abiding interest in public servants' discretion and factors that influence the exercise thereof.

Research on street-level bureaucrats (Lipsky 1980) suggests that public administrators exercise discretion in a variety of ways.¹ Public servants make choices that are other-serving, often assuming the role of citizen advocates (Maynard-Moody and Leland 2000; Maynard-Moody and Musheno 2000), even if it means acting beyond the rules (Keiser 1999; Maynard-Moody and Musheno 2003). Extending representative bureaucracy theory, researchers (Bradbury and Kellough 2008; Meier and Bohte 2001; Selden 1997; Wilkins 2007) also demonstrate that public servants can use discretion to actively improve services and outcomes for citizens of their own gender, race, or ethnicity. At other times, public servants choose to be rule-adhering agents of the state (Maynard-Moody and Musheno 2000)² or to use their discretion to advance partisan politics (Keiser 1999), often

We are indebted to three anonymous reviewers for their careful and constructive criticism and for their meaningful suggestions and encouragement. Their feedback helped us to improve this manuscript in many ways. Any shortcomings are, of course, our own responsibility. Address correspondence to the author at rc@uga.edu.

¹ For a more complete review of the varying perspectives, see Wenger and Wilkins (2009, 314–6).

² Maynard-Moody and Musheno (2000) are careful to note that these roles (state- vs. citizen-centered agents) are simultaneous, even if agents do not always recognize the duality of their roles.

ignoring client needs and preferences. In the extreme, “rogue agents” use discretion to punish, exclude, and disentitle citizen clients (Lipsky 1980; Maynard-Moody and Musheno 2003). Rogue agents “give in to favoritism, stereotyping, and routinizing and use the rules to discourage and harass citizens” (Wenger and Wilkins 2009, 315). Indeed, several studies (e.g., Wenger and Wilkins 2009; Wilkins 2007) find evidence that links discretion to gender-biased citizen outcomes.

A variety of individual, organizational, institutional, and other contextual factors shape the extent and direction in which public servants might exercise their discretion (for a helpful review see Wenger and Wilkins 2009, 315–6). Our particular interest is the extent to which administrative context and processes shape how personal race and gender biases manifest themselves in the public workplace. For example, Wenger and Wilkins (2009) recently explored the impact of automated administrative processes on agent discretion and gender bias. In their study, they found that automating the manner by which unemployment insurance claims were processed curtailed agents’ ability to discriminate, as they had been, against female applicants.

This article extends such inquiry in several ways. First, we explore the impact of other types of administrative processes on prejudices in the public workplace. Our data allow us, for example, to explore other routines that include work assignments based on random-, rotation-, and discretion-based administrative processes. Second, we examine race- as well as gender-based biases. To our knowledge, scholars have not simultaneously explored these common biases as a function of varying administrative processes. Finally, we extend our analysis to important policy settings that have been understudied in public administration, state high courts. Indeed, courts continue to play an important role in checking the effects of race and gender discrimination in society from both a legal (e.g., enforcing civil rights statutes) and representative bureaucracy perspective. To the former, Hettinger, Lindquist, and Martinek note the existence of a link between race, gender, and individual judge behavior in observing that “race and gender . . . shape a judge’s policy goals and objectives” (2003, 223). For example, scholars suggest that racial minority and female judges may be more sympathetic to litigation involving civil rights violations than are nonminority judges (Farhang and Wawro 2004).

Our article continues by offering a brief review of how race and gender biases might manifest themselves generally and in the public sector. Drawing on a theory of status characteristics as well as work on the monitoring and expression of prejudice, we hypothesize how three different administrative processes might influence race and gender biases in assigning opinion writing in state supreme courts. We then present our analyses and discuss implications for administrative practice and research.

PREJUDICE, MONITORING, AND PROCESS

Prejudice

Although some of this journal’s readership may remember when society openly supported—whether legally, economically, or customarily—gender and race discrimination, *explicit* biases in the post-Civil Rights era have declined (Goldin 1985; Quillian 2006). However, scholars (e.g., Dovidio, Evans, and Tyler 1986; Greenwald and Banaji 1995; Quillian 2006) have since identified the persistence of *implicit* biases and stereotyping. Quillian explains that “even among persons who hold a sincere belief in race blindness, images and depictions of members of racial groups learned beginning in childhood are

influential on their thinking. Similar forms of implicit attitudes are also at play in nonracial situations, including implicit gender biases . . .” (2006, 323).

Whether explicit or implicit, evidence of these biases has been documented across disciplines and in a variety of study subjects. The general public (Huddy and Terkildsen 1993; Peffley, Hurwitz, and Sniderman 1997; Sanbonmatsu 2002; Sigelman et al. 1995), NBA referees (Price and Wolfers 2007), police (Smith and Alpert 2007), and public policy elites (Haynie 2002; L. R. W. Mattei and F. Mattei 1998) employ gender and racial stereotypes.

Status characteristics scholarship (Ridgeway et al. 2009; Wagner and Berger 1997) explains how race and gender stereotypes might implicitly shape decision-making. According to this theory, race and gender are status cues that may signal individuals to subconsciously assume that members of nonmajority classes are of different status than majority class members (Biernat and Kobrynowicz 1997). These status stereotypes often result in diminished expectations of competence for minority-classed groups (Fridkin and Kenney 2009; Haynie 2002; Sigelman et al. 1995). In the public arena, for example, Haynie (2002) finds that state legislators perceive African-American colleagues as less effective, and Lawless (2004) finds that individuals tend to devalue the competence of women candidates and office holders when salient issues are involved (e.g., national security). Furthermore, in studies of state and federal civil service, researchers confirm that women and racial minorities occupy disproportionately fewer leadership and decision-making positions than do white men (Guy 1993; Kelly et al. 1991; Riccucci 2009).

Monitoring, Rules, and Prejudice

Scholars also find that prejudice can vary according to the degree of monitoring in a setting where attitudes about race or gender might be expressed. In general, this research demonstrates that public and semipublic settings introduce a social desirability dynamic that can alter the expression of bias. For example, assessment of women (Streb et al. 2008, assessing support for a female president) and blacks (Krysan 1998) in “public” settings (e.g., face-to-face interviews) is far less prejudicial than in settings (e.g., self-administered survey) that allow a more private expression of attitudes. This research also suggests that the social desirability effect is strongest for more educated respondents (Krysan 1998) but is otherwise invariant across demographic groups (Streb et al. 2008).

Research on the role of rules and discretion is also informative here and explains the effects of monitoring from a perspective based less on social desirability and more on administrative oversight. Perhaps the best-known work in this area is the pioneering research by Davis (1969) suggesting the role of oversight as a key condition to balance administrative discretion and ensure effective adherence to rules. Authors in this area observe that rules are most effective at eliminating bias when administrative systems incorporate both *constraining* rules and *checking* rules (Davis 1969; Epp 2009; Walker 1993). The former concerns those constraints that “prescribe norms, set standards, [and] define limits,” whereas the latter checks are intended to “enforce the former” (Epp 2009, 25) by, for example, systematically exposing to mutual and hierarchical oversight whether administrative agents are abiding by the constraining rules.

On the issues of race and gender discrimination and prejudice, we can think of fewer administrative contexts in the United States that would be more steeped in norms of equal protection than courts of law. Indeed, these norms are taught to judges as law students,

codified in the universally controlling language of the Constitution, and reinforced regularly in the numerous appeals to adjudicate society's equal protection violations. These norms are not self-enforcing, however, so checking rules, which we view as analogous to monitoring (discussed previously in this section), also play a critical role. Taken together, we are interested in how discretion, constraining rules and norms, monitoring/checking rules, and prejudice interact within and are shaped by differing administrative processes.

Linking Administrative Process, Monitoring, and Prejudice in State Supreme Courts

Public management scholars have noted the varying effects of structural context on organizational behavior (e.g., O'Toole and Meier 1999, contrasting management in hierarchical and networked structures; Rubin and Kellough 2012, contrasting traditional and alternative personnel structures). In the administrative workload of state supreme courts, we have the opportunity to test the varying effects of three different types of administrative contexts/processes on race and gender biases in the assignment of writing the majority opinion. More specifically, do eligible³ female and/or black judges receive disproportionately fewer writing assignments depending on the structure of the administrative process?

We explain in greater detail, below, the significance of receiving the assignment to write the majority opinion but are reminded that “the task itself does not presume a particular structural arrangement” (O'Toole and Meier 1999, 510). Indeed, states have chosen markedly different ways to structure the assignment process. Twenty-two states use a procedural arrangement based on rotating the writing assignment, 13 states randomly assign the writing task, and 15 states use a procedural arrangement based on discretion.

We thus extend the work on status characteristics and bias in public administration (Maynard-Moody and Musheno 2000; Wenger and Wilkins 2009) to three different administrative contexts. Building on the notion that organizational context can shape the expression of discretion, but noting that rules cannot eliminate such discretion (Dias and Maynard-Moody 2007), we expect that even among policy elites, like state supreme court justices, race and gender attitudes may result in a disproportionate distribution of writing assignments among eligible justices. Status characteristics theory suggests that this may be the result of diminished expectations of competence⁴ for black and female justices. We therefore anticipate that eligible blacks and women will receive fewer majority opinion–writing assignments.

Notwithstanding this general expectation, our previous review of the influence of social desirability, monitoring, and rules on race and gender attitudes suggests more nuanced effects. In other words, we expect race and gender biases to be strongest in those administrative contexts that are least “open” or subject to monitoring and checking rules, where social desirability effects are likely to be minimal.

For example, in states using rotation to assign majority opinion writing, the decision algorithm is fairly straightforward. Eligible justices simply receive assignments in turn, regardless of the nature of the case or characteristics of the justice. Because these are small groups,⁵ the members are able to monitor and quickly comprehend departures from the

3 In our models, we control for “eligibility” by stipulating that our subjects are members of the majority coalition in a particular case (i.e., only members of the majority coalition would be eligible to write the majority opinion).

4 Recall Haynie's (2002) work demonstrating that white state legislators ascribe lower competence and diminished effectiveness to their black peers.

5 Typically, state courts of last resort decide cases in five, seven, or nine judge panels.

structure of the rotation process. The well-known rule, combined with straightforward detection of any departures from that rule, would make it socially undesirable to depart from the rotation norm in order to satisfy race or gender bias. We therefore hypothesize:

H1: In states using rotation-based assignment procedures, race- and gender-bias will be statistically insignificant. Eligible female and black justices will receive as many writing assignments as eligible male and white justices.

Assigning majority opinion writing randomly should, like rotation, discourage race- and gender-biases. If enforced, randomization can “eliminate behavioral incentives and, as such, is a tool for fighting corruption” (Goodwin 1992; Samaha 2009, 21). However, unlike assignment by rotation, random assignment is difficult to monitor. Irregular chance-based processes can conceivably mask any departures from equitable distribution in short-term random patterns. Rolling a six-sided die, for example, often favors (or omits) a particular number in the short term. Similarly, eligible minority judges may not be able to easily discern if they were being bypassed in a particular case based on (1) an irregular/random pattern or (2) a departure from randomness motivated by another’s race- or gender-bias. Because of the possibility of the latter, we hypothesize that:

H2: In states using random-based assignment procedures, race- and gender-bias may be statistically significant because of the difficulty of monitoring, resulting in eligible female and black justices receiving fewer writing assignments than eligible male and white justices.

States that use discretion-based assignment procedures present yet another administrative context in which to explore the potential manifestation of race and gender attitudes. In these states, as in the US Supreme Court, the chief justice most frequently assigns the opinion. Scholars suggest that when a chief justice has the ability to assign an opinion, he or she may be motivated to select a writer whose policy preferences match their own (Baum 1997; Maltzman, Spriggs, and Wahlbeck 2000; Rohde and Spaeth 1976; Segal and Spaeth 2002). At the same time, opinion assignors must balance court norms of efficiency, equal workload among justices, collegial harmony (Baum 1985; Maltzman et al. 2000; Maltzman and Wahlbeck 1996), and responsiveness to accepted social norms (Rosenberg 1991). Building on this work, we expect that discretionary assignment would, on the one hand, allow the freest expression of an assigning justice’s race- and gender-biases. On the other hand, we expect these personal biases to be checked by the relative public nature of the decision setting. The setting not only allows others to openly monitor an assignor’s choices but also exposes the assignor to the pressures of social desirability and court-based norms. Because of these countervailing dynamics (discretion vs. monitoring), we are left with little theoretical guidance in establishing a hypothesis in our chosen setting. Nevertheless, we feel that, on balance, the discretionary nature of assignment in these states may facilitate race and gender biases, albeit dampened by social desirability.

H3: In states using discretion-based assignment procedures, race- and gender-bias will be detectable such that eligible female and black justices will receive slightly fewer writing assignments than eligible male and white justices.

In summary, whether bias is intentional, we hypothesize that it may be more manifest when not exposed to monitoring and social scrutiny. This is the proposed link we draw

between procedural context and bias: Administrative processes that include monitoring and easy detection of deviation will be more effective in discouraging prejudice. Before introducing data and methods by which we test these hypotheses, we briefly review the importance of opinion assignments.

THE SIGNIFICANCE OF MAJORITY OPINION ASSIGNMENTS

The assignment to write the majority's opinion has long been recognized (Brenner 1982; Murphy 1964; Ulmer 1970) as one of the major tools for shaping judicial, and consequently, public policy. Slotnick succinctly summarized the nature of this influence (1979, 60): "It is the majority decision where controlling constitutional principles are established and broader policy directives beyond the immediate case are often fashioned. Thus, the designation of the majority opinion writer has critical significance for the kinds of public policy that ultimately emerge." Even judges have admitted that assignment is more than a matter of protocol (Douglas 1972) but an instrument that can be used to advance a particular agenda or policy position (Bonneau et al. 2007; Maltzman and Wahlbeck 1996). Moreover, opinion assignment should matter even if the other judges have the opportunity to author separate opinions or modify the assignee's opinion. Although one might intuitively expect this type of bargaining to lead to compromises over the opinion content, thereby making the actual author less relevant, this is unlikely to happen and certainly does not minimize the importance of opinion assignment. As Lax and Cameron (2007) explicate, due to the costs of authoring persuasive alternative opinions, the assignee can still craft opinions that reflect their own preferences.

These observations are true for state supreme courts as well. Through policy articulated in majority opinions, state supreme courts have promoted "major initiatives involving, among others, school finance, the rights of defendants, and the right to privacy" (Wise and Christensen 2005, 582). For example, a narrow majority of the Connecticut Supreme Court issued *Sheff v. O'Neill* (1996, 238 Conn. 1), a landmark school desegregation case that continues to shape how schools are organized and funded in Connecticut.

In part, because a substantial amount of work has examined assignment processes at the US Supreme Court, which hears a relatively small number of cases, our chosen laboratory comprises individual state courts of last resort (hereafter state supreme courts). In 2007, state supreme courts collectively disposed of nearly 65,000 appellate cases and nearly 10,000 original cases (National Center for State Courts 2009). The significance of these courts as the final arbiters of state policies is well established (Brace and Hall 2001a; Kagan et al. 1977; Tarr and Porter 1988; Williams and Units 1999). Recent scholarship (Bonneau et al. 2007; Brace and Hall 2009; Devins 2010; Emmert 2009; Gibson 2008; Hall 2005, 2009a, 2009b; Hall and Bonneau 2006; Songer and Tabrizi 2009; Woodruff 2010) reaffirms not only the policy potency of state supreme courts but also the dynamics that shape the state supreme courts' influence.

Given that state supreme court majority opinions contain important policy pronouncements, and the content of the opinion is a function of preferences of the author (e.g., Farhang and Wawro 2004), the assignment process is of particular importance. Surprisingly, beyond the description by Hall (1990) of the variations in the assignment procedures across states, no one has systematically examined the factors that influence this process.

DATA, METHODS, AND MEASURES

In our effort to do so, we use data from *State Supreme Court Data Project* by Brace and Hall (2001b). These data contain decisions from all 50 state supreme courts between 1995 and 1998.⁶ Mentioned previously, 13 states use random assignment, 22 states use rotated assignments, and 15 states use discretionary assignments (see table 1). In addition, the database contains biographical information for all justices (over 400) who sat during this same time period. Although limited in scope of time, we see at least two advantages unique to these data. First, we are able to link judge and decision data to information about procedural context to explore the influence of states' variation in assignment methods. Second, because we can link assignments to the race/gender of assignees, we are able to use observational data to detect the impact of race and gender attitudes that may be implicit or otherwise difficult to capture with survey data.

After some initial analysis that focused on states using random assignments, we also collected a limited amount of qualitative data in these states by contacting each of the 13 to

Table 1
State Supreme Courts Assignment Types, 1995–98

State	Assignment Rule	Assignment Decisions	Total Cases	State	Assignment Rule	Assignment Decisions	Total Cases
Alabama	Rotation	5,302	797	Montana	Rotation	4,735	800
Alaska	Rotation	2,478	525	Nebraska	Rotation	5,284	797
Arizona	Discretion	1,050	216	Nevada	Rotation	2,960	599
Arkansas	Rotation	5,461	800	New Hampshire	Random	2,644	558
California	Discretion	2,497	356	New Jersey	Discretion	2,876	500
Colorado	Discretion	4,992	677	New Mexico	Rotation	1,020	255
Connecticut	Discretion	3,097	595	New York	Random	3,864	574
Delaware	Discretion	1,100	296	North Carolina	Rotation	2,864	417
Florida	Rotation	5,719	799	North Dakota	Rotation	3,900	790
Georgia	Rotation	5,349	797	Ohio	Random	5,249	754
Hawaii	Discretion	1,378	275	Oklahoma	Rotation	3,686	534
Idaho	Random	2,343	471	Oregon	Discretion	1,973	318
Illinois	Rotation	3,141	456	Pennsylvania	Discretion	3,751	636
Indiana	Discretion	3,186	585	Rhode Island	Rotation	3,173	768
Iowa	Rotation	3,664	700	South Carolina	Rotation	2,999	607
Kansas	Discretion	4,193	599	South Dakota	Random	2,674	545
Kentucky	Discretion	3,307	483	Tennessee	Random	1,841	393
Louisiana	Random	3,121	488	Texas	Random	6,807	719
Maine	Rotation	4,979	798	Utah	Rotation	1,624	329
Maryland	Discretion	3,392	488	Vermont	Rotation	2,445	505
Massachusetts	Discretion	3,817	714	Virginia	Random	3,355	475
Michigan	Random	2,072	305	Washington	Random	3,455	440
Minnesota	Rotation	3,850	573	West Virginia	Rotation	3,945	797
Mississippi	Random	6,098	797	Wisconsin	Random	2,826	417
Missouri	Rotation	2,570	371	Wyoming	Discretion	3,240	655

6 Although we would like to examine race and gender effects more recently, these data linking judge and case characteristics are unique and are only recently becoming widely used.

probe how their random assignments were administered. These data are discussed in greater detail below in our discussion of the findings.

Dependent Variable and Method

Equitable Assignment

Our data are arranged so that a justice's participation in the case is the unit of analysis. We naturally only included those justices that voted with the majority in the cases since they are the only eligible authors of the opinion of the court. The dependent variable, case assignment, is coded 1 if a judge is assigned to write the majority opinion and 0 if the judge is not assigned. By the way of illustration, on a supreme court with seven justices voting in the majority, each case would have seven entries, with one of these cases marked "1" on the dependent variable. This explains why assignment decisions outnumber total cases in table 1. Our preceding specification and inclusion of only eligible judges allow us to detect whether certain types of judges—based on our independent variables (see below) of sex, race, age, training, tenure, ideology, etc.—received disproportionately more or fewer writing assignments. We can therefore explore whether status cues shape the equitable distribution of writing assignments.

Because the dependent variable is dichotomous, we estimate our models with logistic regression techniques. We model each procedural context (random, rotation, and discretion) separately to assess the impact on race- or gender-motivated assignment in these settings. Given the structure of our data, autocorrelation is a particular concern. For example, with multiple observations (one for each judge in the majority) per case, if our model incorrectly predicts the assignment outcome for one judge, the error could correlate with errors in predicting other observations within the same case. Similarly, unobserved court-level factors could result in correlated error structures for observations within courts. To account for intraclass error correlation within cases, we estimated White–Huber robust standard errors clustered by case (Wooldridge 2002).⁷ Additionally, within each of the three models,⁸ we included state-level fixed-effects dummy variables⁹ to account for

7 Following arguably the most sophisticated existing study of majority opinion assignment (Maltzman and Wahlbeck 2004), as an alternative to clustered standard errors, we also estimated a random effects model with case cluster. The results of all hypotheses tests for the main and control independent variables were identical to those in the models we chose to present.

8 Alternatively, instead of using separate models for each of the assignment regimes, one could pool the data, analyzing all 50 states together. In brief, we did this as an additional robustness check and found that none of our conclusions with respect to our hypotheses changed. We also note the following for readers who might be particularly interested in the pooled analysis. First, we included dummy variables for two of the three regimes (e.g., rotation and discretion) and multiplied each dummy variable separately with each of the covariates. For example, the model with rotation and discretion dummy variables included Tenure, Tenure \times Random, and Tenure \times Discretion. The coefficient for the Tenure variable then reflected the effects of tenure on opinion in the reference category regime—in the rotation states. The multiplicative term Tenure \times Random, conversely, estimated the effects of tenure in random assignment states compared to the effects of tenure in rotation states. Of course, interpretation of the pooled model becomes relatively more complex. First, to estimate the overall effects of the independent variables in each regime (as opposed to effects of the variable in the regime compared to the reference category), we had to include a model for each regime. Additionally, each pooled model included more than three times as many nonfixed effects covariates. In return for this dramatic loss of parsimony, we gained little. Again, when we estimated the pooled models, the results conform with the findings of the nonpooled models presented herein.

9 The dummies are used in each model (see tables 3 and 4) but, to display parsimonious models, are not reported.

the intraclass error correlation within courts.¹⁰ We also verified that our models were robust to the potential for correlated errors across study years.¹¹

Independent Variables

Judge Characteristics

To determine whether a judge's race or gender influences opinion assignment, we use dichotomous variables to indicate whether a justice is (1 = *black male judge*) or (1 = *white female judge*).¹² Table 2 reports descriptive statistics for these and other variables discussed below.

Beyond race and gender, there are naturally other "status" heuristics that court staff may use to evaluate a judge's competence to use an important policy tool—like authorship of a majority opinion. These other status characteristics include education, age, experience, and ideology.

We measure education dichotomously by indicating whether the justice attended a prestigious law school (*Elite law school* = 1) as measured by Slotnick (1983). Based on previous research (Moore 1968; Slotnick 1983), we expect as a counter hypothesis that prestigiously trained justices will be more likely to receive the writing assignment. We measure experience continuously (*Tenure at decision* = years) as the number of years between a justice's appointment and the year of the decision. We also include a dichotomous measure for experience/status to indicate whether the justice in question is chief (*Chief*

10 There is, of course, a third possible cause of autocorrelation in our data: the judges. Most of the judges sit in the majority in multiple cases, and it is possible that errors explaining the assignment to a judge in one case could be correlated with errors in other observations for that judge. Given the total number of judges in the data (several hundred in each subset we analyzed), combined with the nature of the data, we could not account for all types of autocorrelation simultaneously. Indeed, mixed models of random and fixed effects did not converge. Similarly, fixed-effects models (for both states and judges) with clustered standard errors for the case did not converge. We did, however, estimate the models with state-level fixed-effects while clustering by judge. In the random and rotation models, the changes in the results were minor: the results of the hypotheses tests for the main independent variables did not change and the changes in the hypotheses tests for the controls were minor (most were still significant at the 0.05 level; at worst, the significant controls in the presented models were significant in the judge-clustered models at the 0.063 level or less). The changes in the discretion models were more severe. Although the results of the hypotheses tests regarding the black male judge variables were consistent with those that we presented, the white female judge results did change. Specifically, the findings that contradicted our theory—that women judges are more likely to receive the opinion (in the model with all cases and in the nonsalient cases)—disappears. The coefficients are no longer significant, even at the 0.10 level. The gender finding that was consistent with our theory—that women are less likely to receive the assignment in salient cases (based on the statistical significance of the interaction of white female judge and salience)—is also less robust but still statistically significant at the 0.10 level. Additionally, although all the controls were significant in the discretion models we presented, three of the five are not close to statistically significant in the models that cluster the standard errors by judge. Of course, we are not concerned with the statistical significance of the controls. Overall, although this robust check slightly diminishes our findings regarding one of our main hypotheses in one model (inferences regarding the interaction of salience and white female judge is now less certain), it also strengthens our findings regarding another hypotheses (i.e., in these models, there is no evidence that white females are more likely to receive the assignment under any conditions).

11 To account for this possibility, we also estimated the models using year fixed effects. The resulting estimates were substantively indistinguishable to those estimates in the more parsimonious models that we chose to present.

12 There were an insufficient number of black female judges to explore assignment and the intersectionality of race and gender. Similarly, due to the small number of Latinos and Asian Americans overall (1% each) as well as the small number of states with Latinos (6%) and Asian Americans (2%), we were also unable to explore these groups. Indeed, in some assignment subsamples, we had no Latinos and/or no Asian Americans. To enhance parsimony and facilitate interpretation, we excluded all observations unless the judge was white or an African American male.

Table 2
Descriptive Statistics

	Mean	SD	Minimum	Maximum
Dependent variable				
Judge assigned to write opinion = 1	0.141	0.348	0	1
Independent variables				
Black male judge = 1	0.070	0.256	0	1
White female judge = 1	0.236	0.425	0	1
Chief judge = 1	0.151	0.358	0	1
Age at decision	57.244	9.208	39	82
Ideological extremism = upper end of scale	21.686	12.927	0.060	48.75
Elite law school = 1	0.189	0.391	0	1
Tenure at decision	8.353	6.615	0	37
Salient case = 1	0.084	0.278	0	1

judge = 1). Drawing on US Supreme Court research (Brenner and Hagle 1996; Maltzman et al. 2000; Slotnick 1979), we expect that chief justices and more experienced judges will be more likely to receive the writing assignment. Although *age* (visible characteristic) and *tenure* (nonvisible characteristic) are not highly correlated,¹³ we expect that older judges (*Age at decision* = years old at decision) will be more likely to receive the assignment (Slotnick 1979).¹⁴ Finally, we expect that judges of moderate ideology will be more likely to receive the writing assignment than very conservative or very liberal judges (Bonneau et al. 2007; Danelski 1968). Our measure, *Ideological Extremism*, is continuous. Higher values reflect ideological extremism (regardless of direction) and lower values indicate moderation. The justice’s ideology is measured using the party-adjusted surrogate judge ideology score developed and discussed in full by Brace, Langer, and Hall (2000). The variable reflects both the ideology of the state and the partisanship of the individual justice.

Case Characteristics

We also entertain that possibility that case characteristics may condition the likelihood of assignment (Epstein and Knight 1998; Maltzman and Wahlbeck 2004). It may be, for example, that status characteristics (whether race, gender, experience, or ideology; Unah and Hancock 2006) matter more when assigning an important case opinion. The primary

13 Given both the inclusion of state-level fixed effects, multiplicative terms (see Brambor, Clark, and Golder 2005), variables measuring related concepts (e.g., age and tenure), high multicollinearity is always a concern. However, the variance inflation factors (VIFs) for all the variables are relatively low. The highest VIF in any model, for one of the state dummy variables, is 3.18, well below troublesome levels (see Gujarati and Porter 2009). Moreover, in half the models, the highest VIF was under 1.5.

14 It is possible that age and/or tenure are nonlinearly related to opinion assignment. For example, due to various biases, younger and older judges might be perceived as less competent compared to middle-aged jurists. To account for this potential parabolic relationship, we estimated the models including squared terms for the age and tenure variables. In the rotation assignment models, we observed no evidence of a parabolic relationship of any kind. In the other two analyses of the other two assignment processes, we observed some evidence of parabolic relationships. In other words, in some of the models, one or more of the coefficients (for the stand alone term and the squared term) were statistically significant. However, the direction of the coefficients varied by assignment process. Most importantly, the inclusion of either squared term had no effect on the hypotheses for the main independent variables (or the other control variables). For that reason, along with the mixed results and the desire for more parsimonious models, we chose not to include the squared age and tenure terms.

indicator we use to measure case importance is case salience. A common measure for salience in lower courts (Hettinger, Lindquist, and Martinek 2004, 2006; Lindquist, Haire, and Songer 2007), including state supreme courts (Graves and Teske 2002), is whether an amicus brief has been filed (*Salient case* = 1). To test for possible conditional relationships, we included the salient case variable, as well as two multiplicative terms: *black male judge* \times *Salient case* and *White female judge* \times *Salient case*.¹⁵

ANALYSIS

Using the preceding measures, we conducted two analyses to test the likelihood of unbiased majority opinion assignment in the three procedural contexts (rotation, random, and discretion).¹⁶ The first analysis focuses on whether judge status characteristics have any detectable influence on the assignment process. Table 3 reports the results of this inquiry. The second analysis focuses on whether case characteristics condition assignment—specifically whether assignment bias manifests itself differently in salient cases. Table 4 reports the results of this inquiry.

Status Characteristics in Three Administrative Settings

The results in table 3 suggest that status characteristics matter differently, depending on the administrative context. In states using rotation to assign opinion writing, minority (i.e., black male and white female) judges were no more or less likely to receive the writing assignment than other eligible judges. For example, black male judges were no less likely to receive a writing assignment than white male judges (the excluded reference category). This nonfinding supports H1 about rotation-based assignment. Ease of detection and simplicity of the assignment rule appear to eliminate the possibility of race or gender prejudice in the assignment process. Beyond race and gender, contrary to expectations, age served as a negative status cue, although a substantively minimal one. With each additional 4.5 years of age

15 Of course, it is possible that case salience conditions the effects of our other independent variables. If that is true, one might consider splitting the samples into salient and nonsalient cases. As a robust check, we split the samples and then estimated the models in all three assignment regimes. Using this method, we found no evidence of an interaction—at least not the one posited. Instead, the results in the nonsalient models mirrored the results in our table 3, whereas the results in the salient case samples were quite different. None of the controls were significant, and the main independent variable coefficients in the rotation and discretion models were not significant. The only evidence of an interaction: we did observe the expected relationships for black males and white females (though the coefficient was only significant at the 0.055 level) in so-called random assignment courts in salient cases but did not observe a statistically significant relationship in nonsalient cases. Overall, although we still find support for the salience interaction in one context (random assignment), the lack of observed interaction (at least the one posited) in the other contexts, or among any of the controls in any contexts, suggests that there is no need to split the samples further. Moreover, the counterintuitive findings suggest that the results are a function of the different sample sizes (as noted in table 2, only 8.4% of the cases are salient). Finally, we tested whether there were indeed interactions between salience and the control variables by estimating models including multiplicative terms (multiplying the control by the salience variable) for each control. The results suggest there is little reason for including these multiplicative terms. First, the models do not change the results of our hypotheses tests for our main independent variables (or controls). Also, across the three models, only 2 of 15 controls (chief justice and tenure in the discretion model) exhibited signs of a conditional relationship. Weighing the limited utility gained from including the additional multiplicative terms for our control variables with the obvious loss in parsimony, we chose not to present those models.

16 With the exception of salience, all our independent variables have a predicted unidirectional impact on likelihood of assignment (e.g., tenure should increase likelihood of assignment). We therefore use one-tailed significant tests at the $p < 0.05$ level of impact, unless otherwise noted in the individual tables.

Table 3
Logistic Regression Model of Whether Judge Characteristics Impact Work Assignments

Variables	Rotation Assignment			Random Assignment			Discretion Assignment		
	Coefficient	RSE	Effect	Coefficient	RSE	Effect	Coefficient	RSE	Effect
Black male judge	0.087	0.051	0.011	-0.132*	0.066	-0.022	-0.258*	0.078	-0.038
White female judge	-0.022	0.033	-0.003	-0.082*	0.046	-0.014	0.142 ⁺	0.047	0.024
Chief judge	-0.119*	0.033	-0.014	-0.075	0.051	-0.013	0.169*	0.042	0.028
Age at decision	-0.004*	0.002	-0.004	-0.006*	0.002	-0.010	0.011*	0.003	0.013
Ideological extremism	-0.002*	0.001	-0.004	-0.003*	0.002	-0.007	-0.005*	0.001	-0.010
Elite law school	0.005	0.037	0.001	0.137*	0.051	0.024	0.218*	0.043	0.037
Tenure at decision	0.001	0.002	0.001	-0.004	0.004	-0.005	-0.010*	0.003	-0.012
Constant	-1.487*	0.107	—	-0.788*	0.141	—	-1.84*	0.165	—
N (case clusters)	71,749	—	—	38,909	—	—	35,146	—	—
	(13,806)	—	—	(6,927)	—	—	(7,381)	—	—
Nagelkerke R2	0.021	—	—	0.026	—	—	0.025	—	—

Note: State fixed-effects dummies not reported; errors clustered by case. Effect = predicted probability, where change in probability for continuous variables = \pm SD/2, for dichotomous = 0 \rightarrow 1.
* $p < .05$, one-tailed, in hypothesized direction.
⁺ $p < .05$, two-tailed, but opposite of hypothesized coefficient.

Table 4
Logistic Regression Model of Whether Case Salience Moderates Work Assignments

Variables	Rotation Assignment		Random Assignment		Discretion Assignment	
	Coefficient	RSE	Coefficient	RSE	Coefficient	RSE
Black male judge	0.099	0.053	-0.072	0.068	-0.240*	0.083
White female judge	-0.018	0.034	-0.087*	0.048	0.179 ⁺	0.050
Black male judge × salient case	-0.171	0.188	-0.550*	0.203	-0.117	0.225
White female judge × salient case	-0.055	0.142	0.044	0.120	-0.250*	0.127
Salient case	0.179*	0.039	0.345*	0.048	0.167*	0.034
Chief judge	-0.119*	0.033	-0.070	0.051	0.169*	0.042
Age at decision	-0.004*	0.002	-0.007*	0.002	0.011*	0.003
Ideological extremism	-0.002*	0.001	-0.003*	0.002	-0.005*	0.001
Elite law school	0.007	0.037	0.132*	0.051	0.212*	0.043
Tenure at decision	0.001	0.002	-0.004	0.004	-0.010*	0.003
Constant	-1.501*	0.107	-0.821*	0.142	-1.856*	0.047
<i>N</i>	71,669	—	38,873	—	35,109	—
Nagelkerke R ²	0.021	—	0.026	—	0.026	—

Note: State fixed-effects dummies not reported; errors clustered by case.

* $p < .05$, one-tailed, in hypothesized direction.

⁺ $p < .05$, two-tailed, but opposite of hypothesized coefficient.

(=SD/2, see Age in table 2), a judge is 0.4% less likely to receive the assignment. Also contrary to our expectations, chief judges were 1.4% less likely to receive an assignment in rotation-based states. As expected, ideologically extreme judges were also less likely to receive a rotation assignment—0.4% for every 6.5 points toward conservative or liberal extremes.

In states using random assignment, status characteristics appear to influence assignment. Black male judges were over 2% less likely, and white female judges were almost 1.5% less likely, to receive writing assignments than white male judges—the excluded category. This suggests the possibility that bias can surface when deviations from administrative protocols (randomized assignments) are difficult to detect and monitor. Using qualitative data, we speculate, in the discussion that follows, how these deviations might occur.

Beyond race, we find that age serves as a negative status cue; with each additional 4.5 years of age, a judge is 1% less likely to receive a writing assignment in random-based states. In these same states, ideologically extreme judges were also less likely to receive a rotation assignment—0.7% with every 6.5 points toward the spectrum's extremes. Although elite training did not serve as a cue in rotation states, it did in random-based states. As predicted, judges trained at elite law schools were 2.4% more likely to receive the assignment than nonelite alumni.

In states where justices have discretion in making the writing assignment, every status characteristic in our model influences the decision. We specifically found some evidence to support H3 and some to contradict. In support of H3, eligible black male judges were almost 4% less likely to be assigned a case than eligible white male judges. On the other hand, white female judges received a disproportionate number of assignments, as expected, but contrary to expectations in H3, female judges were 2.4% more likely to be assigned a case. Although we can only speculate, our findings potentially provide evidence for other research suggesting that (1) race stereotypes are activated before gender stereotypes

(Ito and Urland 2003), which may explain their primacy in discretionary opinion assignment or (2) gender's effects are shaped by the courts'-specific cultural context (Turco 2010), which may be more sensitive to gender than race equity in discretionary assignment. Engaging these possibilities are tasks for future research.¹⁷

Beyond race and gender, chief justices were more likely to be assigned (2.8%), as were older judges (1.3 for every 4.5 years) and judges that went to elite law schools (3.7%). Ideologically extreme judges were less likely to receive an assignment (1% for every one half of a standard deviation away from the mean), as were judges with advanced tenure (1.2% for every 3.3 years of tenure beyond the mean).

The Conditioning Effects of Case Salience

We were also interested to see whether case importance (i.e., salience) conditions the assignment process in the three different procedural settings. This allows us to extend our understanding of prejudice to not only routine decisions but also to significant decisions that are likely to have the most noticeable administrative and policy impact.

Table 4 demonstrates that for rotation-based states, case salience has no interactive effects. In other words, black males and white women were no more or less likely to receive an assignment in either salient or nonsalient cases. The same is not true, however, for assignments in "random" states and states using discretion. We found a significant interaction between case salience, race, and gender in the former and case salience and gender in the latter. In random states, black male judges and white female judges were less likely than white male judges to receive a salient opinion assignment.¹⁸ In discretion states, although white women were slightly more likely to receive the average writing assignment (table 3), white women were actually less likely to receive the assignment when the case was important/salient.

To better understand the substantive importance of these findings, we calculated the conditional effects of assignment—the differences in the probability the judge would be assigned the opinion—in salient versus nonsalient cases.¹⁹ Because changes in predicted probabilities of rare events belie their substantive importance, we also calculated percentage changes in predicted probabilities. Table 5 reports these results and we discuss case salience's effects in states using random assignment and then in discretion-based states.

Salience in States Using Random Assignment

Echoing previous findings that partially supported H2 black judges are less likely (6%) to receive the majority opinion—writing assignment in nonsalient cases. However, the use of

17 We also recognize that although status characteristics explain inequitable assignment in some administrative contexts, the discretionary use of status characteristics may lead to other outcomes unrelated to equity (e.g., decreased chance of a decision being overturned in a federal appellate court). Although we are unable to explore this in the current data, we recognize the value of a more thorough exploration of the outcomes related to the discretionary use of status characteristics.

18 White women were no more or less likely than white men to receive an assignment in a salient case.

19 To calculate the conditional probabilities, we used Stata's *prvalue* command, developed by Long and Freese (2001) as part of the *spost* postestimation suite of commands. So doing, we were able to focus on salience's conditioning effects on race and gender while controlling for all the variables in our model. We also note alternative specifications of salience's impact as discussed in footnote 13.

Table 5
Postestimation Results of Probability of Assignment When the Case Is Salient

Random states				
	To black male judge	To white male judge	Difference	% Change
Salient cases	0.080	0.140	-0.060*	-43
Nonsalient cases	0.097	0.103	-0.006	-6
Discretion states				
	To white female judge	To white male judge	Difference	% Change
Salient cases	0.135	0.140	-0.005	-4
Nonsalient cases	0.095	0.103	-0.008*	-8
Discretion states				
	To black male judge	To white male judge	Difference	% Change
Salient cases	0.185	0.219	-0.034	-16
Nonsalient cases	0.164	0.193	-0.029*	-15
	To white female judge	To white male judge	Difference	% Change
Salient cases	0.204	0.219	-0.015	-7
Nonsalient cases	0.222	0.193	0.029 ⁺	15

Note: % Change: The percent difference between the probability of the assignment of minority (black male; white female) judge and a white male judge. This is derived as follows: $100 \times (\text{Probability of assignment to the minority judge} - \text{Probability of assignment to the white judge}) / (\text{Probability of assignment to the white male judge})$.

* $p < .05$, one-tailed, in hypothesized direction.

⁺ $p < 0.05$, two-tailed, but opposite of hypothesized coefficient.

status cues is especially prolific in important cases. In salient cases, black male judges are 43% less likely, than white male judges, to receive the majority opinion-writing assignment. We view this as fairly strong and substantively meaningful evidence that case characteristics can condition the assignment process, even in random administrative contexts. The direction of this moderation suggests that white male judges, in accordance with the theory of status characteristics, are favored to write the majority opinion in higher profile cases. Salience also conditions the use of gender cues in random states, where white women are 8% less likely to receive a nonsalient assignment.

We interpret these interactions between salience, race, and gender as further support for H2. Even in settings where rules dictate random assignment, racial and gender biases can occur. Furthermore, race-biased assignments surface most prolifically in salient cases when a premium may be placed on competence and where it seems race-based cues are used to identify that competence via status characteristics theory.

Salience in States Using Discretionary Assignment

Assignments in discretion-based settings also suggest that case salience matters to the process by which judges use status cues. In state courts using discretion-based assignments, black male judges were 15% less likely than white male judges to receive the writing assignment in the most common types of cases (i.e., nonsalient cases). In salient cases, there is also a difference in assignment probability in the hypothesized direction (blacks receiving fewer assignments), but the difference does not meet our chosen significance threshold.

Salience also conditions gender cues in discretion-based assignments. In the vast majority of cases (nonsalient), women were 15% more likely to receive the assignment than white males. However, in salient cases, women received fewer assignments as we hypothesized, but again, the difference does not meet our chosen significance threshold. As we

discussed previously, one possible explanation of salience's conditioning of gender cues is that the ability to openly monitor the assignor may encourage a socially desirable over assignment of opinion writing to female judges. However, what is remarkable is that this pattern disappears when the case is important.

Together, the conditioned race and gender findings suggest a deeper more nuanced support for H1–H3 than we had discovered before considering case salience.²⁰ Unlike the random- and discretion-based process, judges in states using rotation-based assignment were neither influenced by race nor by gender cues. This finding held true even when we considered case salience. Race and gender did matter, however, in states where monitoring/checking was difficult (random and discretion states) and where social desirability potentially shaped assignment (discretion states). In addition, the influence of race and gender in these states was both tempered and concentrated by case salience.

We conclude this section with a reminder about our analysis and interpretation. One could argue that the observed tendency of random and discretionary assignment processes to result in fewer assignments to black males and white females to be an artifact of the possible tendency for these judges to disproportionately dissent from the majority coalition, thus limiting their opportunity to receive the opinion assignment. Although there is mixed evidence that this may be the case in other courts (Hettinger et al. 2004), we explicitly control for this possibility by limiting our estimation sample to only those judges who are already in the majority and thus eligible for assignment.²¹

DISCUSSION

Taken together, these findings are important for at least three reasons. First, we provide evidence from a relatively understudied area (state supreme courts) that status characteristics influence important administrative decisions even among policy elites like state supreme court justices. We further note that these important policy makers are quite often the very ones trusted to decide, define, and interpret the Constitution's protections of equitable treatment. Depending on the administrative setting—rotation, random, discretion—we found evidence of bias based not only on race and gender but also on other cues such as age, ideology, position, tenure, and elite training.

Second, the importance of the administrative decision, which we measured using case salience, influenced the extent of prejudicial decision-making. As theory led us to expect, higher stakes writing assignments negatively prejudiced black and female judges. In

20 It is possible that a handful of states are driving the observed results in the random and discretion states. We account for this in part by including the state-level fixed effects. We also tried to test for this (in models that are not presented) by multiplying the main independent variables (black male, white female, and the salience multiplicative terms) by each state dummy. Interestingly, the only observed effect appeared to be in the rotation cases, where some of the State \times White female judge and State \times Black male judge multiplicative term coefficients were statistically significant. In the random and discretionary assignment states, this was not the case. The only significant state dummy multiplicative term coefficients appeared to be those with salience but without gender and race.

21 One might argue that there are still selection effects since we are only examining those judges that decide to vote in the majority. To account for this, we also estimated the models using a Heckman's selection probit model. The results of the Heckman model were, if anything more robust, suggesting that our findings are not driven by possible selection effects. Given that the interpretation of the Heckman models is more complex and that the presentation and interpretation would consume significant journal space, and that the results suggest that there are no selection effects, we chose not to present the Heckman models.

random-based states, black male judges received disproportionately fewer important writing assignments. In discretion-based states, white female judges received disproportionately more routine (nonsalient) writing assignments but did not receive disproportionately more important (salient) writing assignments.

Finally, and most importantly, we extend earlier evidence to suggest that the use of status cues varies as a function of administrative context. Just as an automated-based administrative context curbed gender bias in unemployment insurance claim processing (Wenger and Wilkins 2009), we found that the rotation-based administrative context was most effective in promoting race and gender equality in opinion-writing assignments—even in salient cases.

Why might this be? Presumably, recognizing the policy importance of the decision to assign the majority opinion, the assigner potentially acts like any other street-level bureaucrat. When they are monitored effectively, their discretion is limited by the administrative context. For rotation states, we surmise that the simplicity of the rotation-based rule, combined with the ability to easily detect deviations, creates an administrative context that minimizes the likelihood of shirking and/or prejudice. Should the assigner not follow the rotation pattern, the prejudice is obvious, and sanctions could then be applied. This is consistent with our findings. In rotation states, black men and white women are just as likely to receive the majority opinion assignment as white males. Indeed, none of the measures of competency in rotation states have the posited effects in rotation states. Additionally, the only discretionary hypothesis that received any support—the tendency not to assign the opinion to ideological extremists—had a small substantive effect. Applying the theory by Davis (1969) of oversight and discretion, rotation-based administrative contexts appear to effectively combine strong constraint and checking rules: Race and gender prejudice is precluded by a simple rotation (constraint) rule that is enforceable by a relatively straightforward and strong checking/monitoring process (see table 6).

Random-based and rotation-based assignment states share a common strong constraint rule: gender- and race-neutral assignment, whether through rotated or randomized selection (see table 6). For this reason, we might intuitively expect the same race- and gender-neutral assignment patterns over time that we saw in the rotation-based states. However, in our theory development, we have raised the possibility that, unlike contexts using rotation methods, shirking and/or prejudicial behavior is less apparent in a random system. The absence of effective monitoring or a checking rule, combined with the policy importance of the assignment decision, particularly in salient cases, creates a context in which judges as street-level bureaucrats theoretically have more discretion adhering to randomized processes. Empirically, we found evidence that this occurs. Judges in random assignment contexts appear to utilize three competency heuristics in the manner we posited: the prestige of the judge's law school alma mater, as well as race and gender characteristics.

The evidence, therefore, demonstrates that the presence of constraint rule structures (e.g., automated or randomized processes) alone may not be sufficient to curb race and gender biases. Our finding confirms those of studies in other areas (Davis 1969; Epp 2009; Walker 1993). Checking rules or the ability to monitor and detect deviations is critical—a lesson we draw from both our quantitative analysis and our attempt to qualitatively explore how deviations might be introduced.

For states using random-based assignment, we contacted each supreme court's administrative court office trying to learn more about how bias might be introduced. In most cases,

Table 6
Administrative Assignment Contexts and Rules: Theory and Results

	Administrative Method Used to Assign Opinion Writing		
	Rotation	Random	Discretion
Theoretical framing			
Constraining rule	Strong <i>Race/gender neutral</i>	Strong <i>Race/gender neutral</i>	Weak <i>Case-by-case; not constrained to general neutrality</i>
Checking/monitoring	Strong <i>Predictable deviation</i>	Weak <i>Difficult to predict deviation</i>	Weak <i>Case-by-case discretion makes 'deviations' difficult to identify</i>
Empirical evidence			
Status bias in normal cases	Race neutral Gender neutral	Negative ^a race bias Negative gender bias	Negative race bias Positive ^a gender bias
Status bias in salient cases	Race neutral Gender neutral	Negative race bias	Positive gender bias disappears

^aBy negative bias, we mean that the minority in question is underassigned (e.g., black judges receive disproportionately fewer writing assignments than white judges); by positive bias we mean the minority in question is overassigned.

our electronic and phone inquiries and follow-ups went unanswered. However, some states replied by simply restating the relevant portion of their rules or practices, without elaboration. For example, a representative of South Dakota’s Supreme Court simply stated, “cases are randomly drawn and assigned from a cowboy hat.” Virginia’s Supreme Court reiterated that

Prior to each session of the Court, the assignment of the cases is determined by lot. Seven slips of paper are prepared by the Clerk of the Court with one slip bearing the number “1” and the remainder being blank. The slips are placed in a hat and the member of the Court (or a proxy) drawing the marked paper is assigned the first case on the docket. The remaining cases are assigned to the justices in descending order of seniority until all cases are assigned.

Only one of our respondents, Washington, suggested the possibility of deviation from their practice of “double-blind assignment in the conference room in the presence of the chamber’s law clerks.” For certain types of cases (death penalty, bar and judicial discipline, and appeals as to the recall elected officials), Washington assigns by rotation. We reran our models with and without Washington and found no meaningful differences from our original models. For state courts of last resort, we can identify neither specific cheating mechanisms nor alternative explanations for race bias in random-based states beyond the theory of status characteristics and monitoring that we have developed here. This is certainly one of the limitations of this study.

Of course, from a Weberian perspective, there are potentially great theoretical benefits in assigning a complex and important task to the most competent person—regardless of the administrative context. The normative problem occurs, however, when the cues (like race and gender) used to determine competency are faulty and/or morally unacceptable. This raises a second limitation of our study. We leave to others the task of exploring whether

decisions written by black male and white female judges are less “competent.” In our own sample of opinions issued in state courts of last resort, we cannot conceive of a way to empirically test this assertion using typical methods (e.g., whether the higher court overturns the decision). However, we do note some evidence suggesting that minority judges are more sympathetic to certain types of cases (Farhang and Wawro 2004) and that a judges’ policy goals may be influenced by their race and gender (Hettinger et al. 2003). Neither of these observations, however, suggest a guiding rule for the use of race or gender in majority opinion assignment.

This brings us to our final administrative context. In states using discretion-based assignment, processes assignors are allowed significant latitude. Indeed, in these states alone were all the status cues, for which we had data, significant and in the posited direction. In other words, without strong constraint and checking rules, assignors use a broad range of status cues to make their decisions on a case-by-case basis (see table 6). Again, although there may be practical benefits to this system, we found empirical evidence that the judges assigning the opinions were influenced by race and gender biases.

Although discretionary assignment revealed a pattern of systematically bypassing black judges, it also revealed, contrary to theory, systematically favoring female judges. However, when we accounted for case salience, the findings went in the direction hypothesized. In other words, female status was a stronger negative cue in important cases than it was a positive cue in nonsalient cases. Perhaps, this bidirectional behavior with respect to female judges can be explained by assignors’ desire to generally behave according to societal norms (even favoring female assignments)—at least when cases are nonsalient. Or perhaps, other stereotypes beyond competency are triggered by gender. For example, the opinion assigner may subconsciously believe women will tend to complete the tasks faster and are therefore more likely to assign the task to women in nonsalient cases.

CONCLUSIONS

Our study is not without limitations. Our findings with respect to gender and race biases generally follow the direction status characteristics theory suggests, but we cannot determine the extent to which they are generalizable to other court, agency, or cultural contexts. Furthermore, our findings are admittedly based on a unique, but older, data set. Although status characteristic theory continues to be relevant, we were unable to test how race and gender attitudes may have changed over the last decade on the state supreme courts.

To this end, we see as useful future research that would explore current attitudes relative to the intersectionality of status characteristics (e.g., Collins and Moyer 2008). More broadly, we hope that future work will continue to explore the impact that additional administrative contexts have on fostering decision-making that is unprejudiced by status cues.

Our findings also raise several policy and management implications. First, even among policy elites trained in the law, bias is evident across a range of status characteristics. Previous studies have separately confirmed the link between agent discretion and racial/ethnic outcomes (e.g., Hinderer 1993; Meier, Stewart, and England 1989; Pitts 2007) and between agent discretion and gender outcomes (e.g., Keiser et al. 2002; Meier and Nicholson-Crotty 2006; Wenger and Wilkins 2009; Wilkins 2007). Here, we offer positive evidence that bias shapes decision-making in an integrated model of gender, race, and other human capital characteristics across three administrative different settings.

Second, administrative context and process shapes behavior within public organizations (O'Toole and Meier 1999; Rubin and Kellough 2012). Our findings here suggest that context influences the use of status characteristics to make administrative decisions. We perceive the link between administrative context and prejudicial behavior to be, at least in part, a function of constraining and checking rules.

Third, the constraints of the administrative context alone may be insufficient to eliminate bias (Dias and Maynard-Moody 2007). Effectively constraining prejudicial behavior appears to also require effective monitoring. Prejudice based on status characteristics can be pervasive enough to manifest itself despite constraint rules working to the contrary. For example, our findings call into question the effectiveness of randomized administrative controls as a means to curb race and gender biases where the effectiveness of such controls in discouraging discretion is important for managing a broad variety public policy programs and concerns. These potentially include—and should be tested in future research—airport security screenings, vehicle safety, financial accounting, border security, workforce safety (e.g., drug screening), census collection, and policy program experiments.

In addition to administrative context, we are reminded that promoting a positive organizational culture of inclusiveness and equity through other means is also important to discourage prejudices (Cox and Blake 1991; Riccucci 2002) that may be shaped by, but poorly supported, status cues.

In short, public administrators should be cautious about relying too heavily on oversight mechanisms and procedures that are not easily monitored for deviation. Returning to Davis's distinction between types of rules (1969), our findings suggest that constraining norms discouraging judges' personal race and gender biases may not be enough without checking rules to ensure that compliance is open to monitoring. At least in the opinion-assignment context, rules so designed can virtually eliminate race and gender biases. Louis Brandeis's memorable observation that sunshine is an effective disinfectant is certainly appropriate here but with an important addition. The disinfecting power of sunshine is more powerful when its energy is focused by effective rules that both constrain and monitor.²²

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22 We are indebted to an anonymous reviewer for the deft articulation of this particular insight.

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