

Jerry Ellig Response to Comments of Peter Strauss on Ellig Study

While I appreciate Prof. Peter Strauss's immense scholarly contributions to the field of administrative law, I believe his criticism of my ACUS report on Agency Economists misses the mark. I will respond to each point in turn.

1. Prof. Strauss first asserts that "The most important empirical work underlying the paper comprises three case studies," and then proceeds to claim that the report's conclusions are invalid because the case studies are of independent agencies. I disagree. In addition to said case studies, the report includes a summary of published research that is based almost entirely on interviews of economists in executive branch agencies, a summary of an econometric study that employs two comprehensive data sets of regulations exclusively from executive branch agencies, and new interviews I conducted with economists and other officials in six executive branch agencies that account for about 90 percent of major regulations. Thus, the conclusions in the report are based on a thorough consideration of both executive branch and independent agencies.

a. The claim that the report's conclusions are inappropriate because some agencies are required by executive orders to conduct economic analysis and others are not is a distinction without a difference. The report explores the relationship between organization of economists and the quality and consideration of economic analysis in all types of agencies – whether they conduct economic analysis as a result of requirements in executive orders, in statutes, or of their own volition because they believe regulatory decisions informed by economic analysis constitute good public policy. Depending on the agency, there may be differences in the form the economic analysis takes, such as a full Regulatory Impact Analysis, a benefit-cost analysis, a cost-effectiveness analysis, an economic feasibility analysis, or one of the myriad economic analyses of specific facts and circumstances that inform specific regulatory decisions. Nevertheless, the issues of organization and management the report addresses are universal issues relevant to any regulatory agency that conducts economic analysis. Economics is economics.

Of course different agencies in different circumstances may find that different forms of organization, practices and procedures for managing their economists are optimal. The conclusions in Section IV of the report respect this diversity. I point out the strengths and weaknesses of each organizational structure and suggest practices and procedures that can complement the strengths and mitigate the weaknesses of each organizational structure.

1.b. The next criticism claims that the results of the report are somehow invalid because it does not consider the relationship between economists and other types of scientists in agencies that rely heavily on other sciences. The scope of the report explicitly specified by ACUS was to assess the effects of the organization and management of economists on the quality of economic analysis and its use by decision-makers. The scope did not include assessment of every possible input into regulatory decisions. I will note, however, that to the extent that scientists and other subject matter experts are located in program offices, the study's assessment of the pros and cons of locating economists in program offices should apply similarly to economists' collaboration with scientists and other subject matter experts, as well as attorneys, in the program offices.

1.c. This paragraph repeats the claim that the study is somehow invalid because it did not extensively consider the relationship between economists and other scientists – a topic outside the specified scope of the study. The paragraph also attempts to downplay the significance of the interviews conducted for the study by characterizing them as “interviews with a few agency officials.” This is a mischaracterization of the report.

The purpose of this type of interview research is to gain in-depth insight and perspective through conversation, not to conduct a survey and tally large numbers. Nevertheless, the report clearly states that I interviewed 15 senior economists and 10 senior non-economists, which is much more than “a few.” By comparison, the discussion of economic analysis in the most authoritative prior study of this subject, Stuart Shapiro’s *Analysis and Public Policy* (2016), is based on interviews with a similar number of economists (16). The other major interview study, by Richard Williams (2008), appears to be based on interviews with 12 economists. I believe my interviews with a total of 25 senior individuals makes the ACUS report the most extensive interview-based research yet conducted on the specific topic of organizational structure and economic analysis.¹

2. I am well aware of Regulatory Policy Officers, Regulatory Reform Officers, and the requirements of the current administration’s executive orders on regulation. The individual agency officers concerned are of course key decision-makers and are central to implementing an administration’s regulatory strategies. In that capacity, they are part of the intended audience for this report, rather than subjects of the study. The report’s contracted scope was the organization and management of economists in regulatory agencies, not the design of the regulatory agency’s decision-making apparatus for regulatory strategy.

The final full paragraph claims that the executive orders on regulatory analysis and review “control choices by agencies” about the organization and management of their economists. This is erroneous. The executive orders outline the analytical requirements executive branch agencies must satisfy and establish agency and OMB responsibilities in the development and review of regulations. In no way do these executive orders direct how agencies must organize or manage their economists.

¹ Shapiro also interviewed 16 environmental assessors, but those interviews dealt with the quality and use of environmental impact assessments, not economic analysis.