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**HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA**

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House Bill 1939

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**House Judiciary Committee
Subcommittee On Courts**

**Hershey Public Library
701 Cocoa Avenue
Hershey, Pa 17033**

Monday, January 12, 1998 - 1:10 p.m.

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BEFORE:

**Honorable Daniel Clark, Majority Chairperson
Honorable Jere Schuler
Honorable Joseph Petrarca**

IN ATTENDANCE:

**Honorable Al Masland
Honorable Don Snyder
Honorable Tom Armstrong
Honorable Jerry Birmelin
Honorable Tom Caltagirone
Honorable Kathy Manderino**

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1998-085



1 **ALSO PRESENT:**

2

3 **Brian Preski, Esquire**
4 **Majority Chief Counsel**

5 **David L. Krantz**
6 **Minority Executive Director**

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(Written comments submitted by George J.
Miller, Administrative Law Judge.)

1 **CHAIRPERSON CLARK:** Good afternoon,
2 everybody. My name is Representative Dan Clark,
3 and I am the Chairman of the Judiciary
4 Committee's Subcommittee on Courts and today is
5 the place and time advertised for our public
6 hearing on House Bill 1939.

7 I'd like to thank the Hershey Public
8 Library for providing these facilities for us
9 today. And I'd also like to inform everybody
10 that there'll probably be more than one hearing
11 on this House Bill.

12 And I think today what we want to do is
13 gather up information and understand the concept
14 that House Bill 1939 as proposed by
15 Representative Armstrong would set forth.

16 I think what we'll do right now is I'll
17 start down here to my left and have the other
18 members of the Committee and staff introduce
19 themselves, and then we'll proceed with
20 Representative Armstrong's testimony.

21 **REPRESENTATIVE SCHULER:** Representative
22 Jere Schuler from Lancaster County.

23 **REPRESENTATIVE CALTAGIRONE:** Tom
24 Caltagirone from Berks County.

25 **MR. PRESKI:** Brian Preski, Chief Counsel

1 to the Committee.

2 MR. KRANTZ: David Krantz, Democratic
3 Staff Executive Director.

4 CHAIRPERSON CLARK: Representative
5 Armstrong.

6 REPRESENTATIVE ARMSTRONG: It's not that
7 often I get on this side of the table; and I ask,
8 please, be kind to me. Good afternoon,
9 Chairman Clark and other members of the Judiciary
10 Committee Subcommittee on Courts.

11 I welcome this public hearing in the
12 Subcommittee's focus upon House Bill 1939, which
13 I proudly sponsor. Before I begin to tell you
14 about the bill itself, let me first relate the
15 story of how this legislation came into being.

16 Prior to, but most heavily focused upon
17 during the debate surrounding electric
18 competition within this Commonwealth, I along
19 with Representative Snyder met with a few of the
20 administrative law judges who sit for some of the
21 executive agencies of this Commonwealth.

22 During these meetings, the judges told
23 us of their concerns with the system that did not
24 primarily stress the independence of the
25 administrative law judge when rendering a

1 decision.

2 Given the increased pressures that would
3 arise within the public utility area with the
4 passage of electric competition and the possible
5 future passage of natural gas competition, these
6 judges raised concerns about the independence of
7 the administrative law function.

8 I believe that the independence of the
9 administrative law judge to be able to make a
10 decision is imperative whether the administrative
11 law judge worked for the Public Utility
12 Commission, the Environmental Hearing Board, the
13 Liquor Control Board or whatever agency the ALJ
14 has assigned.

15 One thing that I've recently learned is
16 that we actually have 43 boards that have
17 hearings on administrative law. Not all of them
18 have actual administrative law judges, but
19 there's 43 actual boards that hold hearings.

20 I'm not sitting here saying that the
21 administrative law judges are told or even
22 pressured by the various agencies for whom they
23 work to reach a particular decision in a given
24 case.

25 However, the perception with the public

1 that a conflict of interest between ALJ and the
2 executive agency exists is clear, regardless of
3 whether the conflict is real or the product of
4 conjecture.

5 When the ALJ is called upon to decide a
6 case involving a rate increase or the granting of
7 a new liquor license or an environment variance,
8 the public is best served knowing that the
9 decision will be based upon a fair and impartial
10 airing of both sides of the issue by fair and
11 impartial judges.

12 However, although the judges themselves
13 may be fair and impartial, the discussion that I
14 had with some of them in formulating this
15 legislation clearly indicated that the system was
16 perhaps not as fair and impartial as it should
17 be.

18 As employees of executive agencies, the
19 judges are aware of the current administration's
20 position in the matter they are deciding. Common
21 sense tells us that this is true.

22 For the most part as employees of the
23 agencies, which is usually one side of the
24 current dispute before them, pressure to decide
25 in the agency's favor exists.

1 Now, as I sit here well aware that
2 history tells us that the administrative law
3 judges in this Commonwealth have often issued
4 rulings against the agencies for which they are
5 employed.

6 However, I remember reading newspaper
7 articles after such decisions in which the ruling
8 was accompanied by such adjectives as brave or
9 courageous. Such an air surrounding these
10 decisions should not be allowed to exist.

11 Indeed, the argument can be offered that
12 the current system within Pennsylvania violates
13 due process requirement of a fair trial be
14 conducted by a fair tribunal.

15 The federal government has recognized
16 this problem with the appearance of bias and
17 enacted an independent administrative law
18 procedure act. In fact, we have Congressman
19 Gekas here today to give us some details about
20 that.

21 Therefore, in order to ensure the
22 independence of administrative law function
23 within this Commonwealth, I have reviewed the
24 model act, whose creation you will hear about
25 later this afternoon, and drafted legislation

1 based upon the model act.

2 I'd also like for you to note that
3 Representative Snyder was very helpful and very
4 supportive in the drafting of this legislation
5 And this creates a centralized method and a
6 manner for handling and the disposition of
7 administrative cases within this Commonwealth.

8 Very briefly, this legislation will
9 create the Office of Administrative Hearings as
10 an independent agency within the executive
11 branch.

12 The OAH would be headed by the chief
13 administrative law judge appointed by the
14 governor for a specified term. The chief ALJ
15 could only be removed for cause with notice.

16 In addition to the duties of an ALJ, the
17 chief ALJ would be the head administrator of the
18 OAH and would be in charge of assigning judges,
19 training, coordinating continuing education, and
20 providing a code of conduct for all of the ALJs.
21 Other ALJs would hear cases from specified
22 agencies.

23 They would also have the power to issue
24 subpoenas, administer oaths, control proceedings,
25 engage in or encourage alternative dispute

1 resolution, and perform other necessary acts.

2 In closing, I would like to identify the
3 benefits that will accrue to the Commonwealth
4 with the passage of this legislation. Foremost,
5 the Commonwealth could see a reduction in cost.

6 This legislation and the resulting
7 economy of scale by placing all of the
8 administrative law functions within one
9 centralized body will necessarily reduce the cost
10 expended today by multiple law libraries,
11 computerization, multiple copy machines, multiple
12 facilities, et cetera.

13 The Commonwealth would see a net result
14 in the reduction of cost of running the ALJ
15 system with the passage of this legislation.
16 This legislation will also update the State's
17 poorly designed and antiquated system. Official
18 attention is long overdue for this little known
19 and little publicized area of public policy.

20 Additionally, this legislation would,
21 No. 1, end any appearance of interference upon
22 judicial independence by high ranking agency
23 figures; No. 2, place actual power in the hands
24 of the chief ALJ; No. 3, allow hearings to be
25 conducted by qualified ALJs and not political

1 appointees who would be impartial; No. 4, allow
2 the Office of Administrative Adjudication to take
3 control of personnel functions and remove the
4 potential conflict of interest; and No. 5, place
5 the training and management of ALJ in the hands
6 of experienced judges who understand their
7 powers, duties, and limitations.

8 As an aside, my document before you says
9 there's currently 17 states; but I've learned
10 that it's actually upwards of 25 states have a
11 central panel or independent agency for
12 administrative law judges.

13 Finally, the only argument against this
14 legislation which I have encountered so far is
15 that there exists the possibility that at the
16 beginning of the conversion to a centralized
17 system you could have a public utility rate case
18 before an administrative law judge, heretofore,
19 who has only worked with environmental matters.

20 I believe that this criticism is
21 misleading. While it is true that the ALJs who
22 come into a centralized system at its beginning
23 may not be too versed in all of the matters that
24 possibly come from before them, neither are most
25 judges when they first sit upon our Courts of

1 Common Pleas.

2 Also, any so-called lack of experience
3 would be short-lived as the ALJs receive a wide
4 variety of experience. Also, I am sure that the
5 chief administrative law judge in this start-up
6 period will take the relative experience of the
7 judges into account when assigning matters.

8 Mr. Chairman, Members of Committee, I
9 wish to thank you for this opportunity to speak
10 and will happily answer any questions you may
11 have, if I am able.

12 CHAIRPERSON CLARK: Thank you very much,
13 Representative Armstrong. I think what we'll do
14 is bring everyone up to date with the additional
15 members that have joined our Subcommittee.
16 Beginning here with my left.

17 REPRESENTATIVE BIRMELIN: Representative
18 Birmelin.

19 CHAIRPERSON CLARK: And over to my
20 right.

21 REPRESENTATIVE MANDERINO:
22 Representative Manderino.

23 REPRESENTATIVE BIRMELIN: My immediate
24 right.

25 REPRESENTATIVE MASLAND: Representative

1 Al Masland.

2 CHAIRPERSON CLARK: Does anyone have any
3 questions for Representative Armstrong?
4 Representative Birmelin.

5 REPRESENTATIVE BIRMELIN: Representative
6 Armstrong, the current system of administrative
7 law judges is -- I'm not real familiar with it.
8 If you could tell me whether these law judges
9 reside out of where they work out of, do they
10 have offices throughout the state?

11 REPRESENTATIVE ARMSTRONG: It's my
12 understanding that they're pretty much centrally
13 located here in Harrisburg. But most of the
14 departments -- or maybe I should say that some of
15 the departments have a rather specified office of
16 administrative law judges.

17 Should an individual have a problem or a
18 company with a policy or a rule and it needs to
19 be appealed, some agencies or boards have
20 alternative ways of hearing them to -- even to
21 the extent that they'll call general counsel or
22 the Governor and ask for somebody to volunteer.
23 So it's very varied.

24 The rules are very inconsistent, and
25 this legislation actually attempts to try to

1 streamline that process and to provide a one rule
2 system that everyone knows what's occurring.

3 REPRESENTATIVE BIRMELIN: Is your
4 legislation positive on location in
5 this state? Didn't it address that subject?

6 REPRESENTATIVE ARMSTRONG: Yes. To the
7 degree that I believe that my legislation does
8 not take any offices out of their current
9 geographic locations, they would stay primarily
10 in the city where they are located at this point.

11 REPRESENTATIVE BIRMELIN: Well, I
12 noticed in your testimony you said one of the
13 reasons for saving money would be that you
14 wouldn't have multiple buildings --

15 REPRESENTATIVE ARMSTRONG: Right.

16 REPRESENTATIVE BIRMELIN: -- computers,
17 and things of that sort. But you would still
18 need all that if you had several different
19 locations throughout the state, wouldn't you?

20 REPRESENTATIVE ARMSTRONG: Well, again,
21 to the best of my knowledge -- and some of the
22 administrative law judges can testify to
23 this -- is that those law judges do situate
24 themselves in Harrisburg.

25 Now, I could be wrong on that. But

1 wherever we could streamline the process and
2 bring them together in one building, one
3 location, the attempt is made to do that.

4 **REPRESENTATIVE BIRMELIN:** Well, I know
5 that I have people, like, I live in the
6 northeast. And I have people that occasionally
7 have cases heard in workers comp cases or
8 something of that sort, I guess, before a
9 administrative law judge; and then oftentimes
10 they have to travel all of the way to Harrisburg
11 for those cases to be heard.

12 **REPRESENTATIVE ARMSTRONG:** Right.

13 **REPRESENTATIVE BIRMELIN:** I'm just
14 wondering, and I'm not asking as a question. I'm
15 just wondering out loud if consolidation really
16 is a good thing in that sense in that it makes
17 our constituents travel a great distance at the
18 convenience of administrative law judges or if
19 there's some way to make it a little more
20 convenient for those who live throughout the
21 state to hear these cases.

22 **REPRESENTATIVE ARMSTRONG:** Needless to
23 say, the legislation is in its early stages and
24 is open for any kind of tweaking that the
25 Committee or the House or Senate would like to

1 perform on it to make it even more customer
2 friendly.

3 REPRESENTATIVE BIRMELIN: Thank you.
4 Thank you, Mr. Chairman.

5 CHAIRMAN CLARK: Representative
6 Armstrong, could you tell us what departments or
7 agencies use administrative law judges now?

8 REPRESENTATIVE ARMSTRONG: The ones that
9 I'm familiar with would be the PUC, the
10 Department of Labor and Industry, the Department
11 of Revenue. I know that the Environmental
12 Hearing Board has administrative law judges. I
13 think that's -- I think between the PUC and the
14 Department of Labor and Industry are probably the
15 two biggest areas of ALJs.

16 And again, since we have the benefit of
17 having some ALJs here today, they could be more
18 specific with you as to where those judges are.

19 CHAIRPERSON CLARK: Okay. Thank you.
20 Representative Manderino.

21 REPRESENTATIVE MANDERINO: Thank you.
22 Just two quick questions. Are the LCB hearing
23 examiners considered ALJs?

24 REPRESENTATIVE ARMSTRONG: Yes.

25 REPRESENTATIVE MANDERINO: Or are they

1 different?

2 REPRESENTATIVE ARMSTRONG: Yes.

3 REPRESENTATIVE MANDERINO: And my other
4 question -- and I apologize if it's addressed in
5 the legislation. I did read your comments.

6 Would as structured -- if you made an office of
7 administrative law judges, would judges still be
8 assigned?

9 Like, if I am currently a labor workers
10 comp administrative law judge, will I still be a
11 workers comp administrative law judge or will I
12 now be part of a -- kind of like our courts are
13 now where there might be a civil division and a
14 criminal division and judges can be assigned to
15 different divisions and you can serve five years
16 in the civil division and then get transferred to
17 the criminal division?

18 REPRESENTATIVE ARMSTRONG: Yeah, I think
19 that is what would happen is that we would see
20 the chief administrative law judge assign the
21 case to one of the judges that has the experience
22 in that field. However, if they're overwhelmed
23 in a particular field, they would then attempt to
24 cross-train other judges for that field.

25 REPRESENTATIVE MANDERINO: So you

1 envision it going maybe more broad based as our --

2 REPRESENTATIVE ARMSTRONG: Yes.

3 REPRESENTATIVE MANDERINO: -- as
4 our courts are now as compared to agency
5 specific?

6 REPRESENTATIVE ARMSTRONG: Yes. And I
7 want to pull from the experience that I know even
8 in Lancaster County with Common Pleas Courts, you
9 have certain judges that primarily sit on Family
10 Court, primarily sit on criminal and others.

11 And I see that happening with the
12 administrative law judges that, yeah, they
13 may -- one may be able to decide cases in
14 different fields; but primarily their expertise
15 is in one field.

16 REPRESENTATIVE MANDERINO: Thank you.

17 REPRESENTATIVE ARMSTRONG: If I could
18 also say that that relieves -- that's one issue
19 for the efficiency that can be realized in this
20 system. Whereas today, an administrative law
21 judge in a particular agency, if there's a down
22 time, they're down and they're not actually being
23 used.

24 And they can't be used in another field
25 that might be having an overload because they're

1 working for one particular agency. Here, you can
2 realize the economies of scale there and spread
3 out that load and keep the process moving. Okay.

4 CHAIRPERSON CLARK: Okay. I thank you
5 very much --

6 REPRESENTATIVE ARMSTRONG: Thank you
7 very much, and --

8 CHAIRPERSON CLARK: -- Representative
9 Armstrong for your testimony.

10 REPRESENTATIVE ARMSTRONG: Again, I
11 appreciate your hearing today and the offer for
12 additional hearings should this continue to move
13 forward. I hope it does. Thank you.

14 CHAIRPERSON CLARK: You're quite
15 welcome. You're quite welcome. The next
16 individual to provide testimony to the Committee
17 is the Honorable George Gekas. He's a member of
18 the United States House of Representatives. And
19 I think we're sitting in his district.

20 REPRESENTATIVE GEKAS: Yes. I was going
21 to start off by welcoming you all to our
22 district here. I should have prepared some
23 Hershey Kisses or some other kind of emblem of
24 our being in Hershey, but that would put me into
25 the gift ban category; and I refuse to get

1 involved in that.

2 **REPRESENTATIVE SCHULER:** We should have
3 had a piano.

4 **REPRESENTATIVE GEKAS:** Yes, or a piano.
5 This is very pleasing to me to have the
6 opportunity to come before my fellow legislators,
7 albeit, two different arenas. But the subject
8 matter is one that crosses boundaries, crosses
9 legislatures, and crosses opposing interests in
10 or in opposition to the issue at hand.

11 I suppose that I was asked to appear
12 here so that I could be helpful in your
13 determinations on whether or not to proceed with
14 this legislation.

15 And, actually, I'm going to benefit from
16 the fact that you have invited me here so that I
17 could have additional rationale with which to try
18 to rekindle the issue this year in Washington.
19 So I'm grateful to you already for this
20 opportunity. You're going to be a great help.

21 As I read the bill that is before you, I
22 have to tell you it's better than the legislation
23 which I introduced and which made such headway in
24 the last Congress and which we will be
25 revitalized this spring as we move into the

1 second year of this current session.

2 Yours is better -- your bill is better.
3 The bill that you have before you is better than
4 ours because it's tighter, more artfully drafted,
5 and consolidates the corps of administrative law
6 judges in a way that ours does not.

7 We have in the federal establishment
8 tremendously different problems; although, the
9 idea and the goal might be the same. The
10 problems that we have, I hope, are not as
11 lavishly foisted upon you as they are on us.

12 But we have, for instance, one
13 overweening agency, the Social Security Agency,
14 which in itself houses 1000 administrative law
15 judges.

16 Out of the 13 or 1400 that are in the
17 total establishment, we have 1000 in Social
18 Security. That puts lobby power extraordinaire
19 in the hands of the bureaucrats who run Social
20 Security, whether it be under the Republican or
21 Democrat administrations.

22 That entrenched bureaucracy in Social
23 Security wields a powerful hand and influences
24 the actions of the chief executive in Washington,
25 whether it had been George Bush in the work

1 they've done or Bill Clinton as is currently the
2 case. They have a strong hand.

3 You do not have in Pennsylvania
4 the -- the overbalanced number of administrative
5 law judges in one agency. You have them more
6 dispersed, but the problems are still the same.
7 The agencies have powerful lobbying forces,
8 powerful survival feelings and self-importance.

9 And I say that kindly because we all
10 have to work with them, and they're important to
11 our common goal of serving the public. But they
12 do have these forces working all the time.

13 So in Washington we have had to resort
14 to parliamentary politicking and joint access
15 between the Senate and the House. The Senate
16 passed it unanimously in 1993, but the House
17 balked.

18 The Judiciary Committee, then run by
19 Congressman Rodino (phonetic) of Watergate fame,
20 if you might recall, opposed the concept
21 altogether because they were -- we who looked on
22 with anger at their actions -- they were working
23 with and for the Social Security Administration
24 and other agencies enhancing the role of the
25 bureaucracies we were saying.

1 So the House never moved on it. Then
2 when the Republicans took over, this having been
3 a pet project of mine for a long time, I
4 introduced legislation.

5 And we moved it along to a point where
6 we were ready to go into the final stages until
7 our Senate counterpart, Senator Heflin (phonetic)
8 from Alabama, you will recall, Judge Heflin,
9 asked me to go slow until the last week of the
10 session so that the Senate could use its arcane
11 rulings of anything goes at any time. Hard to
12 describe to you, so I won't even try.

13 But what he was going to do was take the
14 matter and put it into a last-minute omnibus bill
15 and then send it back to us for a unanimous
16 consent adoption.

17 And who was I to argue with him? He was
18 a powerful architect of the original legislation
19 and a powerful individual legislatively in the
20 Senate, and he was going to do -- he failed to do
21 that.

22 It didn't work out, so we were left flat
23 without any legislation. So we had to start over
24 again. The reason I'm telling you this story is
25 that you do not face that kind of classical

1 Washington federal in producing the ultimate
2 legislation that you have before you.

3 The other difference that appears is
4 that in your legislation, as I said, which is
5 sort of airtight and nicely constructed, ours
6 provides for a flexibility in the way that the
7 assignment of judges will occur pursuant to
8 Representative Manderino's question, how they
9 will be referred and assigned to different areas
10 of the law.

11 We allow more flexibility, again, caving
12 in a little bit to the concerns of the Social
13 Security Administration who keep insisting that
14 their judges have so much expertise in their
15 field that they cannot suffer the consequences of
16 having one of their people assigned to a banking
17 examiner issue or something like that.

18 We had to overcome that politically.
19 So we have to make it more flexible. So we form
20 a council of the agency judges to determine how
21 best the assignment of judges will be. But the
22 principle is the same; that is, a separate body
23 of administrative law judges who will be assigned
24 as required to various cases.

25 After all, they will all be trained in

1 the same kind of procedural issues and they'll
2 all be learned in the law and could easily, even
3 if they were a lifetime Social Security
4 Administrative law judge, could easily handle a
5 banking situation because it has to do with fact
6 finding issues of law; and all of those things
7 are compact and very easily compounded by anyone
8 who has had any training at all in administrative
9 law.

10 So with that, I commend you on the fact
11 that your bill is compact. The most valuable
12 testimony you're going to hear today is going to
13 be from Judge Hardwicke who also testified in our
14 Committee, who is the Chief Administrative Judge
15 of Maryland, our sister state, our neighboring
16 state.

17 And it is his testimony that I would
18 have to say inspired the passage in the
19 Committee, in our Judiciary Committee of the
20 legislation which I had proposed.

21 He will give you the verve of his
22 experience already in place in Maryland plus the
23 other twenty-some states that have adopted the
24 system. And it would be a wonderful thing if at
25 some juncture Pennsylvania would marry up with

1 Maryland in this and New Jersey, our other
2 neighboring state, to have this system in place.

3 The reason I'm grateful for that
4 eventual outcome is that I'll have even more
5 evidence on which to base the continued effort on
6 our part to produce a bill in the Congress.

7 In looking over the bill that Tom
8 Armstrong introduced, I have to demonstrate my
9 self-importance as a lawyer to you and just
10 discuss or ask questions about two wordings that
11 to me might need some re-examination.

12 In section 301, which is page 3 of the
13 bill, your bill -- that is, Tom Armstrong's
14 bill -- 1939, it says under the lines 23 and 4,
15 there is create an Office Administrative Hearings
16 as an independent administrative agency.

17 Now, here, this is what I'm wondering
18 about, For the purpose of conducting impartial
19 and fair hearings in contested cases where there
20 is a need to separate the investigatory or
21 prosecutorial function from the adjudicatory
22 function.

23 I don't know if that creates loopholes
24 or open-ended definitions of what can be excluded
25 from this process. And I just ask you as fellow

1 legislators to examine that more closely when the
2 time comes for you to take apart the various
3 provisions of the legislation.

4 And on page 5, this is just a -- almost
5 a whim of mine to tell you about this. Page 5 on
6 the last line where we're talking about the
7 qualifications of the -- of the chief
8 administrative law judge, No. 3 there says in its
9 current language which says, No person shall be
10 appointed service chief unless that person, No.
11 3, is prohibited from engaging in the private
12 practice of law while serving as chief.

13 Now we understand the goal, and it's
14 proper. But I think that the better language
15 should be something like, Shall upon taking the
16 oath of office cease to engage in the private
17 practice of law.

18 I simply say that because when you say
19 it is prohibited, as your current language is, it
20 means to me that there should be another act
21 taken, another action undertaken by somebody
22 before the chief judge must cease practicing law.

23 But if you just make the oath of office
24 the trigger of the cessation of law practice, it
25 would be simpler. That's just, as I say, a

1 lawyer observation. And I would have not felt
2 comfortable with myself if I had not pointed that
3 out to you.

4 The other bit of information that I
5 would want to make a part of the record is that
6 the current Supreme Court Justice Scalia, writing
7 a law review article in 1979, saw the need for
8 the concept which we are discussing here.

9 The perception of fairness, the
10 sometimes apparent and real conflict of interest
11 that permeates the system, the sense of
12 confidence that the public can have over a long
13 period of time in what would be perceived as an
14 independent body of judges in their everyday
15 doings that come before the boards which Tom has
16 asserted here in his testimony.

17 That confidence, all of these cry out
18 for us lawyers, legislators, and public servants
19 to do what we can to bolster that or rebuild the
20 confidence that may have been waning over the
21 last several years by establishing this
22 independent group of judges who in the everyday
23 decisions that they have to make that affect the
24 everyday lives of everyday citizens should have
25 the highest aura of independence and lack of,

1 absence of conflict of interest or even the
2 apparent conflict of interest and thus would
3 merit full consideration by your Committee and
4 later by the entire General Assembly in
5 Pennsylvania.

6 As I say, I want to see Pennsylvania
7 join Maryland and New Jersey in this great
8 adventure. And selfishly, I would want to add
9 Pennsylvania to the column of states that I can
10 point to and say, since these states are leading
11 the way, including my own, there's no need to
12 hesitate any longer in adopting a federal
13 statute.

14 Gerry Ruth in his excellent review of
15 the whole idea and concept has given us
16 additional bullets to fire at this target. And,
17 therefore, I'm more here today to thank all of
18 you for bolstering our chances of passing
19 legislation in Washington.

20 But I must tell you if it means anything
21 of value to you, most of the thinking members of
22 the -- I'm trying to think how many thinking
23 members there are -- but most of the thinking
24 members, at least in the Judiciary Committee,
25 understand the value of what you are hopefully

1 attempting to do at least in considering -- the
2 very least that you're doing is very helpful,
3 considering the legislation. I hope that it goes
4 beyond that.

5 I want to thank Judge Hardwicke,
6 Gerry Ruth, Tom Armstrong, my fellow witnesses,
7 and the others that you will hear who have come
8 from far and wide, actually, to support the
9 legislation.

10 And you then, by virtue of your being
11 here listening to me today, have designated
12 yourselves as resources for me to proceed with
13 our effort in Washington. Thank you very much.

14 CHAIRPERSON CLARK: Thank you,
15 Congressman. I'd like to welcome Representative
16 Don Snyder to our panel, which is ever growing
17 and may be in need of another table here shortly.
18 He's about ready to join us. Representative
19 Petrarca. Does anyone have any questions of the
20 Congressman? Ms. Manderino.

21 REPRESENTATIVE MANDERINO: Thank you --

22 REPRESENTATIVE GEKAS: Wait a
23 minute. Don't my constituents come first?

24 REPRESENTATIVE MANDERINO: Absolutely.
25 Get Representative Schuler in there.

1 REPRESENTATIVE GEKAS: Go ahead. I'm
2 sorry.

3 REPRESENTATIVE MANDERINO: Thank you,
4 and thank you for coming. I'm kind of thinking
5 about this for the first time as I'm hearing
6 testimony. And I'm sure, perhaps, others will
7 address the issue; but if you've given some
8 thought to it, I'd appreciate your insights.

9 My view of things right now is that an
10 administrative law judge is kind of like an
11 internal process. If I have a workers comp claim
12 or whatever and before I can get myself to Common
13 Pleas Court, I have to exhaust my administrative
14 remedies. And an administrative law judge is at
15 a level where that's still part of my internal
16 administrative remedies.

17 What implications, ramifications, if
18 any, to that process -- and internal versus an
19 external process -- does changing and making an
20 independent office of administrative hearings
21 have?

22 REPRESENTATIVE GEKAS: Excellent
23 question because it's an eternal problem; that
24 is, we know that the administrative law system is
25 within the executive branch.

1 If we should spread it out and make this
2 a judicial branch, independent of everybody and
3 anything, so forth, then we are treading a little
4 bit on the separation of powers between the
5 executive in whose bailiwick this is and should
6 remain and the judiciary which is already a
7 separate body.

8 Are we reattaching this body of
9 executive people to the judiciary branch? No.
10 And that is a concept that we must embed in all
11 those who work on this subject. That is that the
12 administrative law judge is now and always will
13 remain, no matter what configuration we put it
14 in, the executive branch.

15 The exhaustion of administrative
16 remedies still will be within the executive, and
17 only if the executive as a whole becomes a
18 subject of an appeal does the matter move into
19 the Judiciary Committee after these
20 administrative law remedies are exhausted. So
21 that -- that question is pertinent.

22 And I hope my answer is helpful at least
23 in all those who have dealt with this that indeed
24 it is still and will always be part of the
25 executive branch. It's just that we segregate

1 them only for the purpose of independence within
2 the executive, not outside of the executive.

3 REPRESENTATIVE MANDERINO: Thank you.
4 Thank you, Mr. Chairman.

5 CHAIRPERSON CLARK: Representative
6 Schuler.

7 REPRESENTATIVE SCHULER: He answered my
8 question.

9 REPRESENTATIVE CALTAGIRONE: I just want
10 to say it's good to see you, Congressman Gekas, a
11 former comrade of ours in the Pennsylvania
12 Legislature, and you're looking very good.

13 REPRESENTATIVE GEKAS: Thank you. I
14 miss the Senate. I miss the House. I miss 6th
15 grade. So I'm always happy to come back to
16 visit. Thanks very much.

17 CHAIRPERSON CLARK: Thank you. The next
18 individual to provide testimony before the
19 Committee, the Honorable Edwin Felter. He is the
20 President Judge of the Central Panel of Colorado,
21 and he's also Co-Chairman of the National
22 Association of Central Panel States.

23 And the Honorable W. J.
24 Hardwicke -- John W. Hardwicke, he's the Chief
25 Administrative Law Judge of the Central Panel of

1 Maryland. You gentlemen can both come up
2 and -- I think I want to get comments from both
3 of you first and then we'll begin our questions.

4 JUDGE FELTER: Chairman Clark, Members
5 of the Committee, it's an honor for me to be here
6 today from Colorado. I hope you don't blame me
7 for bringing in this bad weather. When I got
8 here last night, it was a little warmer.

9 A couple of corrections: I'm the
10 Director and Chief Administrative Law Judge of
11 Colorado's Central Panel and have been since
12 February of 1983. Essentially, this is the
13 longest job I've ever had in my life.

14 I'm also Secretary of the National
15 Conference of Administrative Law Judges of the
16 American Bar Association and our State Practices
17 Committee, which I chaired. And Judge Hardwicke
18 is on it as well. We shepherded the model act
19 through to final passage by the House of
20 Delegates of the ABA.

21 And both Judge Hardwicke and myself, we
22 are -- have been attending the Central Panel
23 Directors Conference for a long time. And I have
24 to correct that I'm not co-chair. We're all
25 chief judges. We agree the only leadership we

1 have is from year to year, whoever hosts the
2 conference is the leader that year.

3 The -- I'll break my remarks up into
4 five parts: The reasons for the creation of a
5 central panel; the national experience; the
6 Colorado experience; cost effectiveness; and the
7 model act, which your House Bill 1939 tracks
8 pretty well.

9 It's a great honor for us to have the
10 great State of Pennsylvania using the model act
11 as a basis. The creation of a State Central
12 Hearing Agency of Administrative Law judges is
13 fundamentally a good government idea, an idea
14 whose time has come.

15 There are approximately 25 central
16 panels in the United States at this time, 23 to
17 25. They're coming on board every day. When I
18 became Chief ALJ of Colorado's Central Panel in
19 1983, there were eight.

20 We hosted the first meeting of Central
21 Panel directors. Our registration fee was
22 \$39.95. It's gone up a little. We were on a
23 real break-even basis at that time. We had a
24 small conference room at the Marriott.

25 Prior -- and I don't want to steal Judge

1 Hardwicke's thunder; but we all admire Maryland
2 because Maryland's Central Panel was created for
3 good government reasons.

4 Prior to the establishment of Maryland's
5 Central Panel in 1989, most central panels were
6 created to address perceived and actual conflicts
7 of interest in which the agencies have the duty
8 to investigate, prosecute, and adjudicate
9 disputes, which is analogous to the District
10 Attorney and the Judge sharing office space.

11 Then in 1989, Maryland Central Panel was
12 created for good government reasons. I think in
13 order to achieve credibility with the public we
14 need several things: We need an adjudication
15 system that works; that's fair; and that the
16 public has confidence in, faith in.

17 Administrative law is executive branch
18 law; and as Congressman Gekas said, it should
19 always remain that way. However, every case to
20 be adjudicated is different, and the law must be
21 applied to the evidence in a fair and evenhanded
22 manner in each specific case because there are
23 different parties. It's not to make
24 the -- necessarily make the government happy.
25 It's to do the right thing vis-a-vis the public

1 and the government.

2 Whenever I'm at a cocktail party and
3 people ask what I do, I'll have to ask them, Do
4 you have five minutes? And I'll explain it. All
5 parties in the public are entitled to quality,
6 timeliness and fairness in the adjudication of
7 public disputes.

8 And, essentially, that's what it is.
9 It's where the government is doing something with
10 the citizen. And the citizen is entitled to a
11 hearing, a fair and impartial hearing at some
12 point.

13 As opposed to the courts, administrative
14 law I always tell people, we are different.
15 We're quicker; we're more efficient. We're lean
16 and mean, so to speak.

17 But in administrative law, ALJs do have
18 an added duty to be mindful of agency policy,
19 appropriate agency policy. And I would submit
20 written policy adopted through the rule-making,
21 process with public notice and an opportunity for
22 the public to be heard and to comment.

23 However, the first loyalty where I guess
24 where the courts get in trouble, sometimes they
25 get to make these constitutional pronouncements.

1 And the next year the general assembly doesn't
2 like those pronouncements, a statute is passed;
3 and that is ultimately the law of the land.

4 However, ALJs are different. We have no
5 constitutional -- we can't pronounce statutes
6 unconstitutional. Our first loyalty is to the
7 statutory law. And if an agency rule is in
8 conflict with the statutory law, our obligation
9 is to give life to the statutory law to reconcile
10 the two, if possible; but if not, the statute
11 prevails.

12 Unwritten agency policy giving an
13 in-house advantage to the agencies and to the
14 state attorneys, unknown and/or unknowable to the
15 public, has no place in administrative law
16 adjudications. It has no place anywhere else.

17 ALJs are supposed to be neutral and
18 impartial to all parties. Central panels make it
19 a lot easier for ALJs to accomplish this than
20 in-house.

21 And you know, there's a perception of
22 the public. A lawyer once told me before your
23 Central Panel in Colorado came into existence,
24 the image of the hearing officer with the tape
25 recorder under his or her arm heading down to a

1 sunless basement room where the result was a
2 foregone conclusion prevailed.

3 He said, My clients were apprehensive
4 about getting a fair hearing. Not anymore. The
5 bar is -- all the attorneys on both sides of the
6 aisle who appear before us feel assured, I mean,
7 it's taken for granted they're going to get a
8 fair hearing.

9 The national experience, as I've said,
10 there are almost 25 central panels. And the
11 newer central panels that are coming into being
12 are coming into being for good government reasons
13 as opposed to some scandal or some perception of
14 conflicts.

15 Colorado's Central Panel came into being
16 22 years ago in 1976. And every state's
17 experience is different. Ours was spun out of
18 workers comp because of perceived conflicts of
19 interest.

20 People were saying, Well, gee, how are
21 we going to get a fair hearing when the agency
22 that's supposed to be saving money from some of
23 the funds who appear before the judges
24 administers those funds and the judges report to
25 the head of that agency? It doesn't look too

1 good.

2 In Colorado, I think I can say at the
3 present time the bar industry and the public
4 don't have any apprehensions about getting a fair
5 and impartial hearing before administrative law
6 judges, which is conflict free, comprised of an
7 identified corps of professional judges who
8 operate neutrally and efficiently.

9 I've heard even parties who lose cases,
10 lawyers have told me they believe they were
11 treated fairly. Of course they don't like the
12 results. Some decisions are always susceptible
13 to criticism.

14 But it's the overall aura of fairness,
15 cost effectiveness. I'll leave a lot of that to
16 Judge Hardwicke since Maryland has had the most
17 recent experience.

18 Colorado's, I can give you some
19 anecdotal information briefly. My
20 predecessor -- God bless her soul -- did a study
21 and compared the average cost of a workers comp
22 case before and after.

23 Two years after the establishment of
24 Colorado's Central Panel, it cost \$2 less per
25 case to handle a workers comp case than before

1 the establishment of the Central Panel. I say
2 that's anecdotal. That's a very limited study.

3 As Representative Armstrong said, an
4 efficiency of scale is achieved when you have a
5 central panel. And you really don't lose
6 expertise. You bring everyone together. You can
7 have one docketing system, one computerized
8 setup, one set of rules where the public can know
9 what the rules of the game are now.

10 I mean, in administrative law when you
11 have the ALJs are hearing examiners and all these
12 agencies with different sets of rules, the
13 average practitioner is going to refer the case
14 to some expert who can find his or her way
15 through this relatively byzantine set of rules.

16 Colorado, we have one -- well,
17 effectively we have two sets of rules for workers
18 comp; but they're easily obtainable from us and
19 for general set of rules of practice before the
20 Colorado Division of Administrative Hearings.

21 The biggest efficiency of scale is
22 centralized hearing agency -- has only one
23 mission -- only one reason for being; and that's
24 to hear and decide cases. We don't get
25 sidetracked.

1 I think if a really in-depth study were
2 done in the ALJs or in the agencies there might
3 be a lot of hidden cost. As Representative
4 Armstrong mentioned, what do they do during the
5 downtime?

6 I'll tell you what we do in the
7 downtime; we can redeploy. We have gradual -- we
8 have cores of experts in areas; but we have
9 gradual cross-training, and we can have someone
10 pinch-hit in another area.

11 Sometimes a quick and dirty
12 area -- Secretary of State -- we get these
13 election disputes that have to be turned around
14 in two weeks. And we're looking for people all
15 the time to do these. And we can go to any area.
16 We don't have downtime. All we're engaged in is
17 hearing and deciding cases efficiently.

18 We go after the work load. If we don't,
19 we're in trouble. I mean, I don't want to get a
20 reputation that, boy, that -- I can tell you one
21 anecdotal before the creation of Central Panel.
22 Some of the agencies had reputations for being
23 notoriously slow in getting decisions out. We
24 can't afford to do that.

25 I mean, the focus is on us knowing all

1 we do is hear and decide cases. If we got behind
2 the eight ball in a decision, I'd start getting
3 calls right and left, What's going on?

4 That isn't even illegitimate
5 interference. It's legitimate. Let's get those
6 decisions out. I don't have any qualms as Chief
7 Judge to start leaning on judges if they get a
8 little behind to hurry up and get the decision
9 out in a reasonable fashion.

10 The model act -- my next point -- I'm
11 just so pleased with this bill. I think
12 Pennsylvania has a unique opportunity to create
13 the central panel that every other central panel
14 has dreamed of that if I could go back in a time
15 machine and have some influence in Colorado, our
16 bill would look like Pennsylvania's bill. It's
17 the thinking of the time.

18 Some of the key provisions that track of
19 the model act -- I'll talk about the key
20 provisions of the model act. And I may not be
21 specifically tuned into the bill at times. But
22 either the governor or the -- it's flexible.
23 Either the governor or the general assembly can
24 exempt certain agencies during a window of time.

25 That was Maryland's experience.

1 Maryland found out that none of the agencies
2 wanted to be exempted from being part of the
3 central panel after a while.

4 Another key provision involves
5 employment protections for the ALJs in order for
6 them to be decisionally independent. I don't
7 like to use the word judicially independent.

8 I've had cabinet officers ask me, Well,
9 what does that mean? You judges can do whatever
10 you want? I said, Absolutely not. We're subject
11 to Code of Judicial Conduct. We have to be
12 efficient.

13 But no one should be able to encroach on
14 the decision-making process of the Judge in the
15 individual case. No one should come and say,
16 Well, I want you to change your decision to meet
17 the -- people are leaning on me.

18 Our whole system is based on that
19 thought. That's security that when that
20 controversy is submitted, you're going to get a
21 decisionally independent decision.

22 Another provision and the preferred of
23 the model act -- I'm a civil servant and I'm the
24 Chief Judge, so I had to compete through the
25 competitive process. I was an administrative law

1 judge who applied for the chief's position way
2 back when.

3 I think Maryland's is better where the
4 governor appoints with the advice and consent of
5 the Senate for a fixed term, during which the
6 chief judge may only be removed for cause upon
7 notice and the right to a hearing thus making the
8 chief judge relatively less subject to political
9 changes than at-will appointees such as cabinet
10 officers.

11 My favorite provision of the model act
12 is the chief administrative law judge has a
13 responsibility of ensuring the decisional
14 independence of the administrative law judges in
15 the central panel.

16 And this provision exists to protect
17 competent, ethical administrative law judges from
18 inappropriate action by, say, a wayward chief
19 administrative law judge.

20 I can't say all chief administrative law
21 judges are going to be as great as John Hardwicke
22 and I, but this also allows for legitimate
23 discipline of incompetent or unethical
24 administrative law judges.

25 One of the provisions of the model act

1 charges the chief with adopting a Code of
2 Judicial Conduct. I've often said you don't even
3 need evaluation criteria, anything other than a
4 Code of Judicial Conduct because people are
5 surprised when I tell them codes of judicial
6 conduct charge judges with being diligent,
7 dispatching their business, being scholarly in
8 the law.

9 All -- most importantly, all of the
10 provisions of the model act ensure appropriate
11 accountability of the central panel to function
12 in a competent manner efficiently and cost
13 effectively and, most importantly, to ensure the
14 public that ALJs are free from inappropriate
15 influences.

16 But the bottom line is central panels
17 because of the collegial process, among other
18 things, enhance ALJ competence, efficiency, cost
19 effectiveness, and most importantly, public trust
20 in government.

21 Now, I know I've given you a bunch of
22 handouts for later study; and my number is there.
23 And if any of you have any questions later on, I
24 put the model act in our last biannual report.

25 We should be doing another sometime this

1 year which some of the facts and figures have
2 changed, but the concepts are basically good in
3 the report.

4 My article, I've given you two versions
5 because one's my favorite version which is more
6 complete which is in the National Association of
7 Administrative Law Judges Journal. The other was
8 published by the Judge's Journal of the American
9 Bar Association.

10 If I must say, it was right behind Chief
11 Justice William Rehnquist's article on Judicial
12 Independence. But they edited me quite a bit,
13 and I had a lot of dialogue with the editor. I
14 didn't recognize the first page that well after
15 you got done. And I said, well, okay.

16 I'm open to any questions at this time.
17 I guess I should -- there was a question about
18 are you going to bring everyone into Harrisburg.
19 Well, there are all kinds of models available.
20 In Colorado, we have regional office to meet the
21 needs and we travel on the road too. We go to
22 them at times.

23 We have an office in Denver where most
24 of the judges are. We have an office in Colorado
25 Springs which is a large population center where

1 we have four judges, some full-time, some
2 half-time. They cover Pueblo. They go down to
3 Pueblo. We have a office in Grand Junction on
4 the western slope that's 200 miles west of
5 Denver.

6 The judge out there sits in Glen Wood
7 Springs, which is halfway between Grand Junction.
8 And he goes down to Durango. That's the longest
9 trip. I mean, that's almost another state.
10 That's almost in New Mexico.

11 We have an office in Fort Collins. The
12 judge up there covers Greeley and Fort Collins.
13 And Boulder is not far from Denver. He rotates
14 into Boulder; Denver judges rotate into Boulder.
15 And we have changes of venue sometimes if all the
16 witnesses are in a location where we don't have
17 any judges, we go there.

18 So it makes -- it's intelligent
19 regionalization and it's flexible to meet the
20 work loads. Expertise, we've covered that
21 gradual cross-training and pinch-hitting.

22 However, one thing, caveat,
23 administrative law judges are different than
24 judicial branch judges because they do ordinarily
25 have more expertise because they're hearing more

1 limited subject matter.

2 And I sit part-time as a judge; and I
3 can -- in workers comp. And I can take -- I call
4 it administrative notice of facts that a judicial
5 branch judge could not, certain medical facts
6 because we hear that over and over again. And no
7 one objects. And -- you know, in a sense, it's
8 an internal executive branch process before it
9 gets to the court.

10 But still that ALJ, the state, has
11 charged the executive branch of giving -- with
12 giving a fair and impartial hearing to all the
13 parties. And that feature's the same. I'm open
14 to any questions.

15 CHAIRPERSON CLARK: Thank you. I think
16 before we get to any questions, why, we'll listen
17 to Judge Hardwicke.

18 JUDGE HARDWICKE: Mr. Chairman, ladies
19 and gentlemen of the Committee, Congressman
20 Gekas -- I believe he's departed. But he was
21 very kind to me when I appeared before his
22 subcommittee in Congress back in 1995.

23 And if you'll look at -- this is the
24 little book of handouts that I've given you. If
25 you look at handout No. 5, it's the green tab, I

1 have a copy of that testimony. And, as a matter
2 of fact, that testimony is fairly well
3 applicable to today's hearing.

4 And I'm not going to run through that,
5 but it's here for you to look at. It goes
6 through many of the things that you've heard
7 Judge Felter say as well as some of the comments
8 that the Congressman made himself.

9 But it is a fairly complete statement of
10 the position that the American Bar Association
11 takes as well as most of the states that have
12 adopted the central hearing agency principles.

13 So I, rather than do that, I want to
14 address my remarks to a lot of the practical
15 questions that you may have about the Central
16 Hearing Agency or the so-called Central Panel.
17 Let me run through this little book of handouts
18 so that you'll see what I put before you.

19 If you'll take Tab 1, Judge Felter
20 referred to the Central Panel meeting at which he
21 presided, I think, way back in 1983. We just had
22 one of those Central Panel meetings in
23 Charleston, South Carolina, in November.

24 Here are the list of states that
25 attended. You'll see that there are 23 states

1 listed that were invited to that conference. And
2 if you'll take a look at the states, you have
3 little states and big states and middle-size
4 states.

5 Some states larger than Pennsylvania.
6 For example, Texas was represented there, Florida
7 which is just slightly behind Pennsylvania in
8 population, New Jersey present, and so forth.

9 So that you can see that the states that
10 have adopted the Central Hearing Agency
11 principle are many and Pennsylvania is coming
12 along into a fairly well-established adjudicatory
13 principle.

14 I've also included a list of all of the
15 attendees at the Charleston meeting. That's the
16 next page over in this red tab. So that if you
17 need to talk to any of these people or correspond
18 with them or have members of your staff to talk
19 to them about how they do it in their states,
20 here's a list of names and addresses so that you
21 can see who is involved and have an opportunity
22 to have your people at the staff level to consult
23 with the various states that have been into this
24 activity.

25 Then if you'll take a look at the second

1 tab -- I'm going to skip the heart of it for just
2 a moment -- but I'll tell you right now that
3 the second tab concerns an analysis made of
4 Maryland's Office of Administrative
5 Hearings that was done by the state legislature
6 in our second and third year.

7 And they came in to audit our
8 procedures to see how we were spending the
9 money, how well we were doing, to make
10 discussions and so forth about our operations.

11 So that at the practical level, you as
12 Pennsylvania legislators can see how the budget
13 folks in Maryland's Department of Budget and
14 Fiscal Planning viewed our operation after it had
15 been established. So you have an opportunity to
16 see exactly what they said about us.

17 I will only say that on Page 1 of this
18 Tab 2 summary, the Department of Budget and
19 Fiscal Planning said agency management is to be
20 commended for successfully consolidating a large
21 number of disparaged hearing units in a
22 professional, well-managed, new agency.

23 So we were new in those days and we were
24 doing things that had not been done before,
25 but that was the analysis. But then I've got all

1 of the recommendations that they gave us for
2 improvement. And I thought maybe you folks in
3 Pennsylvania could take a look and see what
4 needed to be done after we had existed for a
5 couple of years.

6 But I'll skip that and go into Tab 3
7 which is something that I really want to
8 concentrate on with you right now, which is cost.
9 And take a look, not at the first page of Tab 3,
10 which is the cost tab, but look at the second
11 page of Tab 3, which is an overview of Maryland's
12 operation.

13 The overview -- does everybody have
14 this page? -- deals with full-time, part-time,
15 contractual, and the total number of hearing
16 officers.

17 Now, we came into being on January the
18 1st, 1990. And it was interesting that when we
19 came into being I had -- I was the first Chief
20 Judge and still am the Chief Judge in Maryland.

21 And I was based out -- I had never sat
22 as a judge. I had never sat as a hearing officer
23 examiner. As a matter of fact, I was a
24 corporation lawyer in the City of Baltimore.

25 My main experience with Harrisburg was

1 to come up representing polluters or alleged
2 polluters who had to explain themselves up here
3 so that when the Governor of Maryland called me
4 to come down to Annapolis to talk to me in the
5 fall of 1989 I did not know that this legislation
6 had been passed. And he called me down and he
7 said, I'm in a big predicament.

8 The legislature passed this law that
9 says all the hearings in the agencies have got to
10 be held before an officer of administrative
11 hearings. And he said, This is going to come
12 into being on January the 1st, and I don't have a
13 chief judge yet. And he said, I'd like for you
14 to be the chief judge.

15 And I listened to the Governor. And I
16 said, Well, Don, I said, I'm a busy lawyer; and
17 I don't -- I've got clients and court cases. And
18 I don't think I can do it that quickly. He said,
19 Well, how long do you need? I said, I'd like to
20 think about it a week. And so I went back to my
21 office.

22 And the next day, the phone rings. It's
23 the Governor. He said, Have you decided yet?
24 And so Governor Schaefer, whom you may know of or
25 know of, was a do-it-now kind of person. And so

1 he twisted my arm, and so I got involved.

2 And on January the 1st, 1990, all of
3 the hearings of the agencies that we were
4 responsible for were responsible for the hearings
5 that I was. And I was the Chief Judge.

6 But the practicalities of doing it were
7 fairly well developed by us as we went along.
8 For example, we left all of the hearing officers
9 who now became administrative law judges on
10 the -- in their agencies where they were; but we
11 put 'em on my payroll. We consolidated all of
12 the agency payrolls into one large payroll.

13 We were zero-based budgeted. So that
14 the hearing budget that the agencies had had
15 prior to January the 1st, 1990, became my budget.
16 And that's the way we got started. Now,
17 if you'll take a look at the second page of this
18 Tab 3, you'll see exactly what this looked like
19 in dollars and cents.

20 The number of hearing officers prior to
21 the OAH, there were 85 full time and 5
22 contractals. We started off with 74. Now, our
23 original legislation provided that these judges
24 should be grandfathered in to the extent that I
25 felt that they were qualified. And I found some

1 who were not qualified.

2 And according to the original
3 legislation, we endeavored to find positions for
4 them in their agencies. And in most instances,
5 that was done. So that we -- after we were
6 created, we had 74 full-time administrative law
7 judges, formerly hearing examiners, and three
8 part-time.

9 As of the time that this material was
10 prepared, which was just fairly
11 currently -- that is, within the last several
12 weeks -- we now have 54 full-time administrative
13 law judges, four part-time, making a total of 58.

14 Now, as the Chief Judge, I'm in the
15 docket regularly. I have a director of
16 operations who's in the docket regularly. I have
17 a director of quality assurance and quality
18 control who is in the docket regularly.

19 In other words, we have endeavored to
20 avoid creating a monstrous bureaucracy with a
21 number of nonproductive people. And I'll get
22 into exactly how that looks as we go along here.

23 Prior to the OAH, the direct cost of
24 running all of the hearing functions in
25 Maryland was about \$6.8 million. The -- that was

1 the direct cost only.

2 When we allocated to the direct cost the
3 cost of rental, the cost of administration,
4 insofar as we were able to single those costs
5 out, we estimated that the cost of the hearing
6 function was approximately \$8 million prior to
7 the existence of the OAH.

8 In the OAH budget for 1992, it was \$7
9 million. That was our second year of existence.
10 And you can follow these budget numbers on down
11 until the current fiscal, which is fiscal 1999
12 where we are at \$8.5 million.

13 Now, that is not because of bureaucratic
14 growth. It's actually because of additional
15 hearing function responsibility that has accrued
16 to us over the last nine years. But it
17 represents an increase assuming that we're still
18 at zero-based of approximately \$8.5 million, a
19 5.5 percent increase.

20 If you take a look at Maryland's state
21 budget, you can see that budget has increased
22 since 1990 in the amount of 42.2 percent so that
23 we're now at 15.5 billion.

24 I took a look at Pennsylvania's budget
25 the other day before I came to talk to you, and I

1 think Pennsylvania's pushing up toward about \$40
2 billion. I think and I believe you have a
3 population that's up around, what, 12 1/2
4 million. So that you are about 2 1/2 times the
5 size of Maryland.

6 But don't feel that because of the size
7 that everything goes up. There are tremendous
8 savings in size. And whereas we have, I said,
9 administrative costs in our agency of about
10 \$200,000 which are not allocated specifically to
11 the judges but to the cost of personnel and the
12 cost of director of administration and the things
13 that all of you know you have when you have
14 government.

15 You take that 200,000 and our rental on
16 our building is about 800,000. So of this 8
17 million 5, you would allocate about a little over
18 a million dollars to nonadjudicatory functions.
19 And I know you as experienced legislators have
20 got to always say, well, if we create a new
21 agency, you've got all those costs that you're
22 going to have and it's going to be a new
23 bureaucracy, a new boondoggle.

24 It doesn't have to be that way. As you
25 can see from these figures that I presented to

1 you, the savings and the efficiencies will more
2 than give you a break-even, provided it's
3 established in a orderly and a systematic way,
4 which we believe that we have managed to do.

5 And I trust that you won't feel that
6 because Maryland is only, say, a third the size
7 of Pennsylvania in population and budget that it
8 won't work here because you can see that large
9 states like Texas or New Jersey or Florida are
10 able to function possibly more efficiently and on
11 an allocated cost basis and in a better way even
12 than certainly we do.

13 We here in Maryland hear about 50,000
14 cases a year, these 54 administrative law
15 judges. We hear cases in all of Maryland's 23
16 counties and the City of Baltimore.

17 About half of the cases are heard at our
18 headquarters which is near the City of Baltimore.
19 We hear cases for over 20 different agencies in
20 over 200 different state programs.

21 We hear cases in the environmental
22 field; the Health Department; the Board of
23 Physician Quality Assurance; all the state
24 personnel grievances cases; involuntarily
25 admissions to mental institutions; not criminally

1 responsible cases where we're dealing with
2 someone found, in essence, not guilty by reason
3 of insanity; inmate grievance cases from the
4 prisons; child abuse and neglect cases; teacher
5 complaint cases; special education cases; all the
6 entitlement program cases; the Maryland Insurance
7 Administration cases; motor vehicle traffic drunk
8 driving cases insofar as they affect the
9 licensure of citizens to drive vehicles.

10 In other words, we hear all of the cases
11 for all of the agencies of the State of
12 Maryland -- except we do not have workers
13 compensation. And interestingly enough, we don't
14 have Maryland's Public Service Commission, your
15 Public Utilities Commission, which I understand
16 is one of the interested agencies here.

17 So the Maryland program which is agency
18 based and agency geared is basically in place for
19 all of the agencies. We've been in existence
20 for -- now this is our ninth year. The Governor
21 originally in our original statute had the power
22 to exempt an agency upon -- upon his order up
23 until the fourth year of our existence.

24 When we were created, every single large
25 agency in Maryland asked the Governor to exempt

1 us -- to exempt the agency from the bill. The
2 Governor, by that time, had decided he was going
3 to name me.

4 And so he asked me, Should I exempt this
5 agency or that agency? And I urged him not
6 to exempt any agency other than the four-three
7 workers compensation, so forth, which had been
8 statutorily exempted by the Legislature. So he
9 did not.

10 Just before he had the opportunity to
11 give up his exemption powers, he held a cabinet
12 meeting. And he asked the various cabinet heads
13 and agency officials, Which ones of you would
14 like to be exempt from Maryland's OAH? I'll give
15 you a week to think about it.

16 So the next week at the cabinet meeting
17 he asked, Okay, who wants to be exempt? Not one
18 agency sought exemption. And it seems to me that
19 kind of experience at the level of taking the
20 hearing function out of the agency does work.

21 And at another level, every single state
22 in the Union that has adopted the Central Hearing
23 Agency plan of taking the adjudicatory function
24 out of the agency, of all of the states that have
25 adopted it, not one state has abrogated the

1 concept of a central hearing function.

2 So it seems to me, ladies and gentlemen
3 and Members of the Committee and the Legislature,
4 that if the proof of the pudding is in the
5 tasting, you've got some pretty good track record
6 ahead of you. I think that is my basic
7 presentation, but I think you may have a lot of
8 questions to ask us.

9 Let me make one comment. I know you as
10 experienced legislators are always concerned when
11 you enact legislation of this magnitude. And
12 this is a major -- this is a major change in
13 governmental function.

14 Don't try to micromanage what is going
15 to be done by your chief judge or by your central
16 hearing agency. Give them some flexibility to
17 adjust the program to the needs of the state.

18 Different states handle this matter
19 differently depending upon the political climate
20 and the political needs of the state. And the
21 states differ. Judge Felter touched upon
22 regional offices and so forth, and he told you
23 about Colorado.

24 In Maryland, we have one central office.
25 But I have a regional office on the eastern shore

1 in Salisbury, Maryland, and I have one regional
2 office in western Maryland.

3 But our judges travel the entire state.
4 But we do have judges who are headquartered in
5 the far east and the far west. Now in New
6 Jersey, the basic function is handled out of
7 Trenton. But New Jersey has a suboffice, a
8 satellite office in Newark.

9 Florida, interestingly enough, being a
10 long state as it is, you would think that they
11 would have regional offices in Miami or Tampa or
12 whatever. They handle the entire state out of
13 Tallahassee.

14 Florida was set up back in the Indian
15 days, and the upper part of the state was made
16 the capital. And so they do the entire state
17 from Tallahassee, Florida.

18 And they do an awful lot of television
19 closed circuit conference hearings with new
20 computer techniques and so forth out of
21 Tallahassee. So you leave your agencies with
22 flexibility to handle it as they see fit.

23 Get a good chief judge. Someone who has
24 practical experience. Political experience is
25 always useful and helpful. I am a Republican,

1 but I was appointed by a governor who is a
2 Democrat and reappointed for a second
3 six-year term by another Democrat. So that it's
4 fairly nonpolitical in Maryland, and I think it
5 should be.

6 And I like the idea that, as Judge
7 Felter said, I think your statute is on the right
8 track. In Maryland, we do something which I
9 think is interesting. And it's in the Model
10 Statute of the American Bar Association. They
11 allow it as an elective provision -- we have a
12 gubernatorial appointed commission which sits as
13 a kind of informal advisor to myself.

14 And this commission is made up of
15 representatives of the agency, of the attorney
16 general's office, and of the public, including
17 the labor unions.

18 And this commission -- governor's
19 commission sits four times a year; and the
20 agencies have an opportunity to criticize the way
21 we're doing our work. And it gives the agency a
22 legitimate institutional way of dealing with this
23 function.

24 You see, the main reason you create an
25 OAH is to get the adjudication out of agencies.

1 But still the adjudication has got to be
2 conscious of the needs of the agencies and the
3 needs of the executive branch.

4 And so by having a commission which has
5 some agency representatives and public
6 representatives, to criticize not in the context
7 of a specific case but in the general context,
8 gives the -- gives you an opportunity to have a
9 good working relationship between the
10 adjudicators and the executives.

11 And I think it provides a relief valve
12 from agency criticism. Just one final anecdote
13 before I break off. And I was telling you about
14 how the Governor prevailed upon me to do this
15 work.

16 Well in 1992, when we were in the budget
17 crisis, which I suspect that Pennsylvania
18 suffered from also in case some of you are old
19 enough to remember back that far, we, by act of
20 the Legislature, we discontinued a number of
21 personnel functions.

22 And by the statute, we intended that
23 these employees be dismissed by legislative act
24 and that they would not be entitled to separation
25 monies.

1 Well, these -- all of these employees
2 sought separation payments. And so they had
3 hearings which were held before Maryland's OAH.
4 And one of my judges made a decision which went
5 against the State of Maryland, and so following
6 that decision, the phone on my desk rings. And
7 it's my friend the Governor.

8 And he says -- he didn't -- he did not
9 start the conversation off with John or anything
10 like that. He starts off by saying, One of your
11 Goddamn judges just made a decision that cost the
12 State of Maryland \$5 million.

13 And that was the nice part of the
14 conversation. But the point of this is that
15 without a separate adjudicatory function, your
16 decisions in the executive branch -- and you
17 mentioned, ma'am, the requirement that you
18 exhaust your administrative remedies -- you
19 exhaust those administrative remedies and you're
20 not sure that you've got a fair and impartial
21 judge before whom you must exhaust those remedies.

22 And, consequently, you get the agencies
23 involved. The agencies always feel that they're
24 correct, their policies were sacrosanct. And
25 when you have a judge separate from the agency

1 whose sole function is fairness and impartiality,
2 it seems to me that the -- that due process
3 prevails.

4 One final thing and then I'll definitely
5 will quit, the principals of adjudicatory law. I
6 would like you to be aware of an article by Judge
7 Henry Friendly (phonetic) at 123 University of
8 Pennsylvania Law Review -- 123 University of
9 Pennsylvania Law Review at page 1267. It's a
10 1975 article. It's called, Some Kind of Hearing.

11 And he deals with the function of fair
12 play in the adjudicatory process. I'll repeat
13 that cite. It's Judge Friendly, 123 UPA Law
14 Review, page 1267, dealing with the -- all of the
15 ingredients of fairness in the adjudicatory
16 process.

17 That's required reading for all of
18 Maryland's judges. Thank you very much. I
19 appreciate your permitting me to be here. It's
20 always nice to travel up the road. I'm
21 close -- almost as close to you as I am to
22 Annapolis. Thank you.

23 CHAIRPERSON CLARK: Thank you very much.
24 Do we have any questions for either of these
25 Judges? Representative Schuler.

1 **REPRESENTATIVE SCHULER:** Thank you,
2 **Mr. Chairman.** Either one of these gentlemen can
3 sort of enlighten me on the areas that I have
4 concern. In Maryland or in Colorado, the
5 committee that is selected to appoint these
6 administrative law judges through the governor
7 and -- how are they composed?

8 **JUDGE FELTER:** My answer will be easier.
9 We're all civil servants in Colorado; so we go
10 through competitive testing that I was -- my
11 appointing authority is a cabinet officer who was
12 then executive director. They called them
13 secretary executive director of administration.
14 It's now called the Department of General Support
15 Services.

16 So I wound up in the top three -- the
17 executive director got to interview the top three
18 and select one. The administrative law judges
19 themselves, I am the appointing authority; and I
20 do the same thing. There's competitive testing.
21 I get to interview the top three.

22 **REPRESENTATIVE SCHULER:** In other words,
23 they go through some type of a test; and then
24 it's ranked. And then do you have the final
25 decision then of --

1 JUDGE FELTER: From the top three.

2 REPRESENTATIVE SCHULER: -- the top
3 three? Is that similar in Maryland?

4 JUDGE HARDWICKE: I am appointed by the
5 Governor with the advice and consent of the State
6 Senate. I appoint the judges. And the judges
7 are not civil service. They're -- they're in the
8 exempt service. They can only be dismissed for
9 cause, but I have the control of dismissal.

10 REPRESENTATIVE SCHULER: Do you have
11 some criteria that you use --

12 JUDGE HARDWICKE: Yes.

13 REPRESENTATIVE SCHULER: -- in the
14 selection of these?

15 JUDGE HARDWICKE: Yes, I have.

16 REPRESENTATIVE SCHULER: Who sets that
17 up?

18 JUDGE HARDWICKE: I set those criteria.
19 The legislation that created us gave those
20 requirements to me to determine the
21 qualifications.

22 REPRESENTATIVE SCHULER: Okay.

23 JUDGE HARDWICKE: But those are all set.
24 Now, this varies from state to state. Now, in
25 New Jersey, the governor appoints the

1 administrative law judges; so this varies from
2 state to state. Your proposed legislation, I
3 note, has the governor appointing the chief judge
4 with the input from a commission made up of the
5 legislature and others.

6 But I believe your chief judge in
7 Pennsylvania will appoint the judges. I have
8 mixed feelings about that myself. If the
9 governor wanted to appoint the judges and the
10 legislature were to change the law, I would
11 certainly not object to that. I have no problem
12 with it.

13 The Governor's never interfered with my
14 appointment except that, once, we had a vacancy
15 and his office suggested that I interview
16 someone, whom I did interview. And I liked this
17 person. And I hired this person. But later on,
18 I felt that he was not well qualified; and we let
19 him go.

20 And the governor never showed any
21 disfavor because I didn't continue the person.
22 We're pretty nonpolitical here in Maryland.

23 REPRESENTATIVE SCHULER: The other
24 aspect -- the expertise of these judges, in
25 Pennsylvania, we have quite a few agencies. How

1 do you handle that in Colorado?

2 JUDGE FELTER: We -- we have -- it's
3 easier to say what we don't do. We have so many
4 agencies. But we have judges zoned into primary
5 areas of expertise.

6 There's a team that is -- has a lot of
7 expertise in licensing boards: Medical Board,
8 Nursing Board. There's a team that is primarily
9 zoned into workers comp. There's another team
10 that's primarily zoned into state level human
11 services appeal. I --

12 REPRESENTATIVE SCHULER: In other words,
13 they concentrate in one field or specialty.

14 JUDGE FELTER: Right, primarily.

15 REPRESENTATIVE SCHULER: Primarily.

16 JUDGE FELTER: But there's
17 cross-training enough where they can pinch-hit in
18 other areas as the workload may dictate.

19 REPRESENTATIVE SCHULER: That's all I
20 have, Mr. Chairman. Thank you, gentlemen.

21 CHAIRPERSON CLARK: Counsel Preski.

22 MR. PRESKI: Your Honor,
23 just a quick question, I guess, that goes along
24 with the Exhaustion Doctrine that you had talked
25 about before. We see from the federal courts a

1 new reliances upon the Exhaustion Doctrine.
2 Basically, the federal courts won't take cases
3 anymore if you don't exhaust your state remedies.

4 Have you seen, since the central panels
5 in your two respective states would have a better
6 handle on the numbers, any increase in cases? We
7 talked about the budget. We talked about your
8 personnel. But you actually haven't talked about
9 what are the numbers of cases that you're seeing
10 here.

11 JUDGE HARDWICKE: Well, in our regular
12 judiciary fields, first of all, that they have
13 fewer appeals from citizens to the regular courts
14 because there is a feeling among the people who
15 have cases before the administrative tribunals
16 that they're fair and there are far fewer
17 appeals.

18 Second, I would say to you that there
19 are fewer reversals when the cases get into the
20 regular courts. We have regular training
21 programs for all of our judges in writing, in
22 professionalism. We also have the judges to
23 receive training from the agencies in agency
24 policy and so forth.

25 So there is -- there are fewer -- there

1 are fewer cases going to the courts. Now as to
2 the exhaustion of remedies, our work load has
3 actually dropped.

4 There are fewer cases coming
5 into -- into the OAH now than there were when we
6 started. I refer to the number 50,000. The
7 truth is that we have fallen under the 50,000
8 number to fewer cases.

9 Now, why that is true I'm not really
10 certain. We do all of the drunk driving cases
11 insofar as they affect peoples' license to drive.
12 And I don't know what Pennsylvania's experience
13 has been, but there are fewer arrests in that
14 area recently; and there are consequently fewer
15 cases of that sort.

16 So the number of cases has dropped. The
17 complexity of cases seems to have gone up.

18 JUDGE FELTER: Our experience is as far
19 as -- there are a lot fewer appeals to the courts
20 with a central panel because I think the public
21 has more confidence in the results whether they
22 win or lose of the central panel. As a matter of
23 fact, the most interesting court cases in
24 administrative law, we don't have the driver's
25 licenses.

1 They're in the agency in the Department
2 of Revenue. There are some nonlawyer hearing
3 officers who were grandfathered in. And some of
4 the most interesting courts cases there seems to
5 be a high volume of appeals to the courts from
6 the motor vehicle.

7 As to the exhaustion of
8 administrative -- I think the courts have a lot
9 of confidence in the administrative law judge
10 system. Many times, we always take a great deal
11 of joy when the agency may reverse us. And then
12 the courts may reverse them and vindicate the
13 ALJ. But it's taken a long time.

14 The courts used to just schlock it over
15 the final agency action without making a
16 distinction between the ALJ and the agency.
17 Oftentimes, the courts now will say, well, the
18 ALJ was there and heard the evidence. And those
19 fact findings are entitled to a lot of weight.

20 So even as far as the exhaustion, I
21 think the answer to that is they don't -- a lot
22 of cases don't go that far. They just don't go
23 to the courts like they used to. That's it.

24 MR. PRESKI: And to build upon
25 that question, Your Honor, you briefly referred

1 to, I guess, a public perception. Many of the
2 members have many little stories that I get from
3 them, the only time that they really hear from
4 the public with an ALJ decision is when the
5 public doesn't like the decision. What kind of
6 experience have you had with central panels with
7 that kind of public reaction?

8 JUDGE FELTER: Well, you know, I won't
9 kid you. There's always -- there are decisions,
10 a few decisions certain members of the public
11 don't like and they're going to communicate with
12 their representative. I think it's a lot less
13 since the creation of the central panel.

14 And I hear this from members of the Bar
15 that back in the old days we used to be
16 complaining all of time about the hearing officer
17 decision.

18 And now, if -- you know, if they have
19 confidence that the result was arrived at fairly,
20 the judge was thoughtful, considered all the
21 evidence and was fair and balanced, a lot of
22 people say, well, win a few, lose a few.

23 Some people don't. No matter what you
24 say or do, if they lose a case, you're
25 their -- the system is their avowed enemy

1 forever. That's life.

2 MR. PRESKI: Thank you.

3 CHAIRPERSON CLARK: Yes, Representative
4 Petrarca.

5 REPRESENTATIVE PETRARCA: Thank you,
6 Mr. Chairman. Judge Hardwicke, in Maryland, I
7 believe you said that you have two agencies or
8 two areas of agencies that are not under the OAH.
9 Do you think those areas should be in retrospect
10 or hindsight under the OAH? Or are you happy
11 that you have the division there?

12 JUDGE HARDWICKE: We do not have workers
13 compensation. As a theoretical matter, workers
14 compensation is a highly political agency in most
15 states. And I am content to leave it where it is
16 and separate from us.

17 The Public Utilities Commission -- in
18 some states, Public Utilities Commission is in
19 the OAH. I would -- we could handle that very
20 well and I would not mind assuming
21 responsibility.

22 We started off -- this will be
23 interesting to all of you -- with unemployment
24 insurance. And the statute originally gave us
25 the unemployment insurance. Only a couple of

1 states have unemployment insurance in their OAH.
2 Washington State does. That's -- but there's
3 another one which escapes me at the moment.

4 I did not keep unemployment insurance.
5 I relinquished it and asked the legislature to
6 exempt it. And the reason is that in Maryland,
7 our UI is very effective. It has a 94 percent
8 timeliness record. I did not think I could
9 improve on that, so I didn't keep it. But it may
10 come back one of these days.

11 REPRESENTATIVE PETRARCA: I was also
12 thinking of this in terms of cost savings to have
13 everything consolidated.

14 JUDGE HARDWICKE: Yeah. I didn't take
15 anything I didn't think I could improve upon.

16 REPRESENTATIVE PETRARCA: Same judge in
17 Colorado?

18 JUDGE FELTER: I can tell you we have a
19 different mix. Workers comp is 50 percent of our
20 business. It is a political hot potato. We've
21 resisted over the last ten years. There have
22 been movements to move it somewhere, and they've
23 always failed. Somewhere else.

24 There is no all-encompassing central
25 panel that I know of yet. In Colorado, public

1 utilities was a statutory exemption when we were
2 created. All the PUC judges would like to be
3 with us, but we don't get involved in politics.

4 Someone else would have to make that
5 decision. UI is not part of our operation. The
6 guts of it is workers comp, human services,
7 regulatory agencies, secretary of state election
8 disputes. Talk about touchy areas, we could wind
9 up ruling against the Governor on a campaign
10 complaint; but that's life.

11 REPRESENTATIVE PETRARCA: You can always
12 hope.

13 JUDGE HARDWICKE: Incidentally, for your
14 information, we listed around 25 states that you
15 saw in my presentation. You cannot
16 overgeneralize about -- about the broadness of
17 their responsibility.

18 California was the first state to adopt
19 a Central Hearing Agency. In 1946, that was the
20 very first one. But California has a fairly
21 limited Central Hearing Agency. They only hear
22 probably 20 percent or so of the total agency
23 cases.

24 So you'll generally find that California
25 is not listed in the front. But you'll say,

1 well, California's a big state; but it does not
2 have the large responsibility. New York City and
3 Chicago, the City of Chicago, both have central
4 hearing agencies.

5 And in Chicago was just created by
6 practically edict of Mayor Daley. And they hear
7 over 200,000 cases in Chicago. But that's
8 because they do parking cases, a tremendously
9 broad swath of cases.

10 But, as you can see, this is -- this is
11 the movement in the country toward fairness.
12 It's also the movement in the country toward the
13 size of the agencies in government.

14 And to take the hearing function away
15 from the agencies is very, very important to a
16 democracy in my judgment because with -- they're
17 having all of the governmental functions: An
18 agency is a small executive; it's a small
19 legislature; they pass rules and regs.

20 And if you let them be a small
21 judiciary, you've embodied in one agency the
22 three functions of government. That's the reason
23 that that movement is underway in this country,
24 to take the judge function out of the agency.
25 And that's the bill before you.

1 CHAIRPERSON CLARK: Representative
2 Armstrong.

3 REPRESENTATIVE ARMSTRONG: I just wanted
4 for the Members to realize that the bill itself,
5 1939, does not include workers comp judges at
6 this point. However, if it's the will of the
7 Committee to put them in, that's to their
8 pleasing; but it doesn't include them at this
9 point.

10 CHAIRPERSON CLARK: I also understand we
11 have a letter from the Director of Legislative
12 Affairs from Pennsylvania Public Utility
13 Commission who indicates the Commission's belief
14 that they are not covered by the provisions of
15 this bill. I believe we'll have that letter
16 entered of record. And -- but they still --

17 REPRESENTATIVE ARMSTRONG: What agency
18 is that again?

19 CHAIRPERSON CLARK: The Public Utility
20 Commission. So those are two things that we'll
21 need to discuss and resolve as time goes on.
22 Maybe at the next hearing we could ferret out the
23 PUC's position.

24 I want to thank both of you Judges for
25 your time and effort, and we'll certainly be in

1 touch with you as we go down this road. Thank
2 you very much.

3 JUDGE FELTER: Call me anytime.

4 (At which time, a brief break was taken.)

5 CHAIRPERSON CLARK: I think we'll bring
6 the Committee back to order, and we will receive
7 testimony from the last two individuals to
8 provide testimony for the Committee today.

9 One is the Honorable Gerald E. Ruth. He
10 is the President of the Pennsylvania Conference
11 of Administrative Law Judges, and the Honorable
12 George M. Kashi.

13 JUDGE KASHI: Kashi.

14 CHAIRPERSON CLARK: Kashi, long "i". He
15 is the Administrative Law Judge from the Public
16 Utility Commission. Gentlemen, so you may go in
17 whichever order you'd like.

18 JUDGE RUTH: Thank you. I guess I'll
19 go first. I have been asked by the General
20 Counsel of Pennsylvania Liquor Control Board to
21 make a disclaimer that my views expressed in this
22 presentation are the views of myself and the
23 Pennsylvania Conference of Administrative Law
24 Judges, who I'm President of.

25 They are not to be construed as the

1 views of the Governor, the Pennsylvania Liquor
2 Control Board,, or the Pennsylvania Liquor Control
3 Board's Office of Administrative Law Judge, nor
4 should any reference in this presentation to
5 those entities be perceived as an endorsement of
6 the bill. That may point up some distinctions
7 involved in the bill.

8 I'm here as President of the
9 Pennsylvania Conference of Administrative Law
10 Judges who support the concept of a unification
11 of the administrative adjudicatory process in
12 Pennsylvania and House Bill 1939.

13 We further support and recommend the
14 proposed corrections and changes to House Bill
15 1939 as proposed to Brian Preski, Chief Counsel,
16 on December 7th, 1997, by Judge Wayne Weismandel.

17 I've attached those recommended
18 amendments as Appendix A in my presentation. I
19 will just make some reference to them briefly,
20 but it is important to look at those and
21 understand the specific language.

22 Some of these recommendations are minor
23 typographical corrections while others are of
24 major significance of substantive nature such as:
25 The present bill contains a definition of agency

1 that's ambiguous, especially regarding the
2 inclusions of Public Utility Commission.

3 For the sake of clarity, it is suggested
4 consideration set forth each agency intended to
5 be included or using the language of the
6 amendment recommendations.

7 It is also recommended the minimum legal
8 experience of five years for an ALJ is
9 appropriate, but the minimum legal experience
10 requirement for chief ALJ we suggest should be
11 ten years.

12 It is recommended the salaries should be
13 set relative to salaries of judges of Court of
14 Common Pleas, and that's more detailed in the
15 recommendations.

16 Finally, it is recommended all the
17 administrative law judges be under civil service
18 protection except the chief administrative law
19 judge. Now, my background into this information,
20 gentlemen, I was appointed Chief Administrative
21 Law Judge of the Pennsylvania Liquor Board when
22 the Legislature had changed the concept of
23 approach of the Liquor Board.

24 And I may get into that a little bit
25 later. I think it is a little more identifiable

1 that I was almost -- we almost came into a
2 minicentral panel even though we didn't handle
3 other agencies. I think some of the reasons for
4 our establishment are the very reasons we talk
5 about here.

6 Around the fall of 1992, I became aware
7 of a conference of various states. We either
8 already had or were planning centralization of
9 hearing process for their respective state
10 agencies.

11 I went to the conference, was received
12 very courteously and was invited to listen and to
13 participate in discussions regarding the
14 improvement and benefits of centralized
15 adjudicatory system.

16 At that time, there were about 17
17 cents -- 17 states, excuse me, already
18 centralized or considering changing. For the
19 next few years, I studied the concept in federal
20 and state level and attended a number of the
21 other conferences. I became convinced this
22 concept was in the best interest of Pennsylvania.

23 And here I think is very important,
24 especially so when I discovered an ABA study in
25 1974 specifically commissioned for Pennsylvania

1 recommended a central hearing office for
2 Pennsylvania.

3 That legislation was introduced but
4 died. And yet another study in 1977 by a
5 Pennsylvania Deputy Attorney General Jeffrey G.
6 Cokin and Professor Mallamud from Rutgers
7 University recommended an independent central
8 office for hearing officers in Pennsylvania.

9 As a result of this information, I
10 wrote a law review article in 1996 entitled,
11 Unification of the Adjudicatory Process: An
12 Emerging Framework to Increase Judicialization in
13 Pennsylvania. A copy of that has been provided
14 to you, and this is what it looks like.

15 I submit that it should help you
16 understand the whole background of where the
17 federal government started, how the states got
18 involved, and more detailed information about the
19 benefits for Pennsylvania that I cannot
20 necessarily address here.

21 By 1996, the centralized system
22 mushroomed to 22 centralized states and New York
23 City. Since then, Alaska, Arizona, and Michigan
24 and the of City Chicago have converted to the
25 central system. I understand Illinois and Ohio

1 are presently seriously considering converting to
2 a centralized system.

3 To date, not one of those states has
4 moved to a central panel system -- not one of the
5 states that had moved to it has repealed their
6 implementing legislation.

7 I also enclosed as Appendix B the most
8 recent survey of the Central Panel States as
9 amended on November 3rd, 1997. This chart in
10 Appendix B may be very similar to Judge
11 Hardwicke's list which indicated the states that
12 attended the conference in Charleston.

13 I was there, went down on my own time
14 and participated in that conference. My findings
15 that I would like to report to the Committee is
16 that historically and consistently since the
17 beginning of the Central Panel System it has been
18 shown:

19 1, administrative law judges are more
20 efficiently allocated than assigned permanently
21 to one agency. Also, small agencies have
22 qualified administrative law judges ready to
23 serve without the need to hire full time or
24 part-time personnel; 2, administrative law judges
25 who are not permanently tied to one agency feel

1 more independence providing for well; reasoned
2 justifications for their decision; 3,
3 administrative law judges whose duties include
4 rotating through various disciplines and those
5 specifically trained in other approach the
6 subject matter with a fresh and thorough
7 perspective; No. 4, unified system provides for
8 impartiality of the administrative law judges as
9 fact finders including improved perception and
10 acceptance by the public. You've heard some of
11 the other judges refer to that; the unified
12 system provides for improvement in the quality of
13 hearings and decisions; the management and
14 training of all the administrative law judges are
15 in the hands of experienced officials training
16 staff in new developments in the law; 7, there
17 are reductions in overall costs; 8, the
18 administrative law judges are experienced,
19 politically insulated with career service thus
20 attracting quality professionals. That's one of
21 the reasons I've suggested that we continue with
22 the civil service aspect.

23 The Pennsylvania's present system: The
24 present Pennsylvania Administrative Adjudicatory
25 System covers approximately 43 or 44 agencies.

1 It is disjunctive, a nonuniform process which
2 includes the potential of co-mingling the
3 prosecutorial and adjudicatory functions
4 regardless of any variety or various fabricated
5 walls of division.

6 One of the handouts given to you is a
7 recent survey attempted to be conducted mostly by
8 phone by some -- myself and one of my judges and
9 some of the other PC judges.

10 And this is a chart made up of the
11 various agencies that were contacted and gives
12 you an outline of those responses as to how many
13 judges they have, how many hearings they conduct,
14 who presides, whether they're volunteers, and
15 basic information in that regard.

16 It gives you a real good synopsis of
17 what type of agencies are involved in this
18 consideration. And it isn't just my opinion when
19 I talk about the disjunctiveness of it. This was
20 considered back in the two studies I referred to
21 in '74 and '77.

22 The Pennsylvania Supreme Court in a case
23 known as Lyness versus the State Board of
24 Medicine, which the cite is here, mandated a
25 change in the structure of administrative

1 agencies in Pennsylvania. That was in 1992.

2 And other courts have held co-mingling
3 of the prosecutorial and adjudicatory functions
4 and appearance of bias or impropriety must be
5 avoided. However, since Lyness, there has really
6 been no change in the administrative system.

7 The solution is simple: To follow the
8 lead of our sister states and create a unified
9 administrative adjudicatory system. I refer you
10 to Appendix C is a copy of a letter of support by
11 Judge James Porterfield.

12 This is a letter to his state senator in
13 which I think he identifies the reasons he's for
14 it and that he's recommending it to the various
15 legislators.

16 I think it's rather interesting, someone
17 asked me most recently why would we propose this
18 in a Republican administration and not maybe in a
19 Democrat administration. I'm not quite sure what
20 that exactly meant.

21 But I'd like to suggest in my conclusion
22 that the concept of unified administrative
23 adjudicatory system follows through with Governor
24 Ridge's request in his 1998-99 program policy
25 guidelines to improve program management and

1 operations, reduce costs, and maximize direct
2 service.

3 And I refer to the Administrative
4 Circular 97-30 dated August 28th, 1997,
5 specifically Page 6. Furthermore, this concept
6 promotes the Governor's announced goal of, quote,
7 making government user friendly and customer
8 focused.

9 And I think when you've heard the
10 testimony here today you can understand how that
11 direction follows. And the Governor submits that
12 his request to this goal is in accordance with
13 the tenets of his prime obligation.

14 For those of you who are not as familiar
15 and neither was I until I started looking at
16 this -- a little further what that acronym means,
17 privatize, retain, innovate, modify, eliminate.

18 And that's, as I understand it, some of
19 the concepts that the Governor is suggesting all
20 of us in state government should look at when
21 we're involved in the process of state
22 government.

23 The Governor further recognizes the need
24 for agencies -- excuse me, I'm going back here.
25 Governor Ridge pointed out agencies should seek

1 to cooperate and collaborate in order to enhance
2 the services provided to the Commonwealth
3 customers because very rarely is one agency the
4 single point of government contact for that
5 individual.

6 The Governor further recognized the need
7 for the agencies of the Commonwealth as a whole
8 to be able to reorganize to react to changing
9 demands of citizens. The Governor has also
10 called for progress toward more efficiencies,
11 higher productivity and performance in state
12 operations, including long-term planning.

13 Members of this Subcommittee, I submit
14 to you that the unification of the administration
15 of the adjudicatory functions promotes a
16 mechanism for quality management for overall
17 statistics, comparisons with different cases,
18 times, costs, et cetera, within the agencies.

19 It also provides for more accountability
20 while maximizing flexibility of assignment when
21 there are low volume and high volume periods
22 within the agencies. All this can be centralized
23 through our modern computer technology that can
24 calculate, sort, schedule, and disseminate
25 information better and faster, thus releasing our

1 bonds as prisoners of the past and providing
2 efficient, quality, independent adjudications
3 without the appearance of bias.

4 I don't know how you wish to handle
5 any -- excuse me, may I make reference to some of
6 the questions that have been asked that I think I
7 want to be sure I do not overlook?

8 CHAIRPERSON CLARK: Sure.

9 JUDGE RUTH: One of the questions I
10 heard asked the other day was location and
11 geography. When I became Chief Administrative
12 Law Judge to the Liquor Control Board -- Chief
13 Administrative Law Judge -- I had to look at the
14 overall system.

15 What had happened there is there had
16 been this big argument against the Liquor Board
17 as too much politics and payola and things
18 getting involved in their enforcement decisions.

19 They had the hearing examiner system at
20 that time who only made recommended decisions to
21 the agency without any written report that I know
22 of that was not available to the public or to the
23 persons involved.

24 That was changed, and the enforcement
25 was turned over to the State Police and

1 administrative law judges were created to hear
2 those enforcement cases.

3 We hear -- handle approximately 3,000
4 cases a year. It covers the State of
5 Pennsylvania; and we have offices located in
6 Philadelphia, Harrisburg, and Pittsburgh.

7 We have satellite hearings in
8 Williamsport; we had some appearance in Allentown
9 for a while; we have hearings in Erie, Altoona.
10 And it appears -- and we sort of divided it up
11 mostly on the -- by sitting down with the Bureau
12 of Licensing and other people and try to make it
13 compatible with the number of cases from each
14 region.

15 With something like -- -- I think
16 there's something like 20,000 licensees in the
17 State of Pennsylvania. So that's who we service.
18 Just the Liquor Board. Now, there are -- there
19 are eight administrative law judges. The -- we
20 only hear the enforcement cases. There are
21 hearing examiners for the Pennsylvania Liquor
22 Control Board.

23 They started out to be about thirteen.
24 By attrition, they're down to about five or six.
25 And they hear the licensing cases for

1 applications for new licenses, transfers, and
2 things like that. They still remain with the
3 board.

4 One of the things we found in our
5 percentages and so forth, about two-third of the
6 cases that were brought prior to our existence
7 went to a hearing. There were little or no
8 prehearing arrangements for any type of
9 settlement or discussion.

10 There was no licensee knew what the
11 charges were other than that they were charged
12 with serving a minor on a certain night. They
13 didn't know whether it was a female, a male,
14 whether it was a bartender, whether it was a
15 waitress. They didn't have this information.

16 Because of other means of pretrial
17 handling, that information is now supplied to the
18 licensees and they have a more intelligent
19 decision up front what to do. It's no longer
20 trial by surprise.

21 As a result of this, we've turned it
22 around to be two-third of the cases are now
23 handled by waivers or some other means. And the
24 caseload for hearings is down to about one-third.
25 In addition to that, I think the Administrative

1 Law Judge Office has a commendable record. Only
2 approximately about 1 percent of the cases are
3 appealed.

4 And of those that are appealed, only
5 about 1 percent of those are reversed on appeal.
6 So I think this is a very good track record when
7 asking about how it affects the caseloads,
8 et cetera.

9 We found that both the Bureau of
10 Enforcement and the State Police and the
11 licensees feel that they've gotten a very fair
12 hearing.

13 They've had their chance. And although
14 they may not always be happy with the decision,
15 they get a written decision this time, findings
16 of facts and conclusions of law and reasoning as
17 to why the decision is made in a certain way.
18 We feel they're more satisfied with this type of
19 operation.

20 Also, I think some questions were made
21 about what if the public calls a representative
22 and says they're unhappy with their decision?
23 It's been our experience, I think -- maybe I
24 better just say from my experience -- that the
25 legislators seem to appreciate the independent

1 administrative law judge system because now they
2 can say it's in the hands of a judge.

3 You'll have to take your appeal steps.
4 I have no real control over it, and I can't call
5 somebody in agency X or Y and influence them in
6 some way on your behalf. It's an installation
7 and a proper installation.

8 My experience also has been that we
9 receive phone calls from representatives and from
10 the public in general occasionally on and maybe
11 even a board member. But generally speaking,
12 they were only to find out what the status of the
13 case was. There's nothing improper about that.

14 And I just feel that the ALJs should be
15 part of a exempt service like civil service.
16 Questions were asked about appointment. The
17 particular system that we have at the moment was
18 that we had to take a civil service test and out
19 of the top three, that's who the Governor could
20 appoint.

21 When there was a death of one of my ALJs
22 when I was Chief, I consulted with the counsel
23 for the Governor. He assisted in interviewing
24 one or two persons with myself and another judge
25 with the ALJs in the same office. Later, the

1 Governor's office left it up to us as independent
2 how to handle the appointment. Okay. Sorry.
3 Judge Kashi.

4 JUDGE KASHI: May it please the Chair
5 and Members of the Committee, my name is George
6 Kashi. I'm an Administrative Law Judge for the
7 Public Utility commission.

8 And while I was not asked to make any
9 disclaimers by the Chair or the Commission, in
10 fairness, I would make a statement that, in fact,
11 that which I am presenting is myself as an
12 administrative law judge and it should not be
13 construed in any way to represent any thought of
14 the Commission or even of the Office of
15 Administrative Law Judge.

16 I was Chief Counsel to the Public
17 Utility Commission going back in 1978 to 1980,
18 and have a long history with the Commission going
19 back to the implementation of legislation that
20 started the Commission and started the
21 administrative law judge system back in 1975.

22 And what I'm referring to is the 1975
23 Kury Commission in the Senate that began the
24 restructuring of the Public Utility Commission.
25 I have, in fact, provided Members of Committee

1 with copies of the Kury Commission.

2 And I would report and recommend it to
3 you; however, there are some quotes that I would
4 like to bring out of it. But before that, it was
5 asked of me -- I believe it was today -- as to,
6 Why now?

7 You know, I think Judge Ruth said, Why
8 now, in front of a republican thing. And the
9 question about why now is, well, my answer to
10 that is because it's 25 years too late.

11 In 1975 when the Legislature created the
12 Administrative Law Judge System in the
13 Commission, it is in my opinion that that
14 Administrative Law Judge System should have been
15 applied to the entire Commonwealth at that
16 particular time. The opportunity was there, and
17 we dropped the ball.

18 So 25 years later, we now have an
19 opportunity to recapture that and turn the entire
20 Commonwealth into a system that's as fine as what
21 I perceive we have at the Public Utility
22 Commission.

23 In the Kury Committee Report, some of
24 the things that came out and Judge Ruth has
25 recommended to you some of the survey results as

1 far as the hodgepodge, higgledy-piggledy system
2 that we have on the Hill among the various
3 agencies, some, in fact, that 25 years after the
4 Kury Commission are still employing hearing
5 examiners.

6 The testimony that came out during the
7 Kury Commission on the use of hearing examiners
8 is they do little more at hearings than serve as
9 traffic officers insofar as they are permitted
10 into the record and what is not. They write no
11 decisions, nor do they analyze the testimony for
12 the benefit of the Commission.

13 The Hearing Examiners System as it now
14 functions is nothing less than a deplorable sham
15 on the hearing process. There is absolutely no
16 justification for it, and it must be terminated
17 immediately.

18 Well, it was terminated immediately for
19 the Public Utility Commission. Unfortunately,
20 it's managed to have a long life, a generation's
21 worth of life left in it for the rest of the
22 citizens of the Commonwealth that have to go
23 before other commissions.

24 The federal judge who testified from the
25 Federal Power Commission, Judge Swelding

1 (phonetic), told the Committee that no system can
2 work when a presiding officer simply sits there
3 as a master of ceremonies. It is cosmetic and
4 not a hearing procedure.

5 The conduct of hearings that was
6 testified to through the former chairman of the
7 Federal Civil Service Commission talked about
8 administrative law judges conducting hearings in
9 accusatory proceedings and making records and
10 recommended decisions of the government that have
11 far-reaching impact on the individual rights and
12 propriety and daily lives of every American.

13 They hold key responsibilities in
14 agencies whose responsibilities permeate every
15 sphere in almost every activity of our national
16 life and have a profound effect upon the
17 direction and pace of our economic growth.

18 They play this critical role in a
19 maelstrom of competing private and public
20 interest and against the backdrop of an
21 economically and socially sensitive and often
22 politically explosive process that is regulation.

23 And as you all know, we are currently in
24 Pennsylvania with the Public Utility Commission
25 in the process of deregulation of a number of the

1 electric industries and getting ready to do the
2 gas industry.

3 That type of process is a process that
4 is highly explosive and, in fact, needs the use
5 of administrative law judges as was recommended
6 by the Kury Commission and, in fact, adopted
7 because in that restructuring that took place in
8 75, the Office of Administrative Law Judge was
9 created.

10 The actual work for that -- the section
11 on administrative law judges was accomplished by
12 two Senate staffers -- I'm quite sure everybody's
13 familiar with them -- Susan Shanaman, who was the
14 Chairman of the Public Utility Commission later
15 on, and James Cauley, who was also appointed as a
16 Commissioner.

17 It was those two who worked on it. My
18 opinion on this is that the implementation of
19 that section has produced what I would say is
20 probably the finest quasi-judicial administrative
21 process on the Hill. And I say that
22 unqualifiably.

23 Even in his concurring and dissenting
24 remarks, Senator Clarence Bell gave high praise
25 to the report and, in fact, endorsed it.

1 The process that was initiated at The
2 Public Utility Commission and nurtured by Chief
3 Administrative Law Judges Bill Shane and
4 furthered by Bill Smith and Allison Turner have
5 produced a system that all participants know
6 guaranteed them fair notice and opportunity to be
7 heard.

8 All parties appearing before the
9 Commission are entitled to and ensured of
10 quality, timeliness, and fairness in the
11 adjudication on the record disputes.

12 The problem with the system if any
13 criticism can be leveled at it at this time is
14 one of perception. The perception exists among
15 private practitioners who I've talked to who
16 state that when they bring in smaller clients,
17 the practitioner finds it difficult to convince
18 his client that he's got a fair and independent
19 judge hearing his case when the judge's salary is
20 being paid by the Commission, when the judge is
21 an employee of the Commission.

22 We who do the work, we all know that, in
23 fact, the judges have been appointed under civil
24 service. And the amendments that we have offered
25 again endorse the idea of having it done under

1 civil service or some type of an exempt for cause
2 removal service by the Commission. We do render
3 independent judgments.

4 And it's difficult, however, to get
5 beyond that perception. The question of
6 independence can often be gleaned from looking at
7 the opinions of the Commission where they
8 disagree with administrative judges on a number
9 of issues, including somehow the policy issues.

10 The most serious problem that we
11 believe is that for the administrative law
12 judges -- is in fact that they are considered to
13 be employees, not impartial and unbiased
14 judges.

15 And as long as the administrative law
16 judges are employees of the agencies that appear
17 before them, their independence is suspect; and
18 the ability of an agency to exert improper
19 influence over them is very threatening.

20 However, House Bill 1939 as introduced
21 by Representative Armstrong is not aimed at nor
22 does it address nor is it intended to address the
23 Public Utility Commission or any problems real or
24 perceived that might be there.

25 I believe one of the reasons that the

1 Committee may not hear from a number of
2 practitioners in the utility business is the fact
3 that they're satisfied with the system that
4 currently exists at the Commission'.

5 However, that system that we have in
6 place at the Commission, the system that is in
7 place at the PLCB, is not the system that exists
8 on the Hill. Of the 45 agencies that conduct
9 some sort of quasi-judicial administrative
10 process, the scope and parameter of the hearings
11 and how they're conducted runs a very wide gamut.

12 In the survey that was conducted by the
13 Pennsylvania Administrative Law Judge Conference,
14 what we end up with is higgledy-piggledy soup to
15 nuts. And there are those agencies actually -- I
16 mean, I actually couldn't believe this when I
17 heard it because I spoke to chief counsel for a
18 number of agencies.

19 And what I heard was that when they have
20 to have a hearing, okay, they ask for volunteers.
21 They asked for volunteers out of the offices of
22 general counsel to act as a -- to act as a
23 hearing examiner on the hearings. And we already
24 have heard 25 years ago what they thought of the
25 hearing examiner system then.

1 And now we're still having hearing
2 examiners on a volunteer basis. There are those
3 agencies where the board -- the secretary of the
4 board appoints members of the board to hear the
5 case and then those same members sit on a panel
6 where the adjudication takes place.

7 I couldn't believe that at this stage of
8 the game that Lyness Versus the State Board of
9 Medicine is not the rule among all of the
10 agencies that, in fact, even the mere
11 appearance -- the mere appearance of bias must be
12 avoided.

13 And there are still agencies who aren't
14 even attempting to make an artificial barrier or
15 the Chinese Wall. And I can only assume that
16 it's because these agencies have a small number
17 of hearings before them that it isn't dragged
18 into Commonwealth Court.

19 The bottom line is that the 1975 system
20 that came out of the Kury Commission should have
21 at that time been expanded to the entire
22 Commonwealth.

23 There is no reason for this Commonwealth
24 not to have a unified administrative process
25 system with independent judges which guarantee

1 fair, prompt hearings and adjudications.

2 I think it was Thomas Moore who said
3 that when you are chasing the devil and you've
4 got a whole bunch of barrels in front of you, the
5 idea is to go out there and start kicking out the
6 barrels so that you can get to the devil a lot
7 quicker. But God help you if the devil decides
8 to turn because then there's no barrel in between
9 you when he's after you.

10 I'm a process person. And I believe in
11 process. I firmly believe in due process as is
12 accorded to all members of the public. To put
13 people in a situation where they, in fact, may or
14 may not be getting due process, okay, is kicking
15 out the barrels for the sake of some sort of
16 expedient result.

17 And I don't think that it's something
18 that in this day and age we can afford or
19 something that we want to offer or something that
20 you want to offer to your constituents.

21 I believe that all of you are
22 fair-minded and want to offer to your
23 constituents the best possible system of hearing
24 these kinds of cases that's available to them.

25 And one of the things in making the

1 comparison of quasi-judicial agency proceedings,
2 if you take a look at it, do you realize the
3 effect on all your constituents on a daily basis?

4 The judges decisions that are being made
5 at the Public Utility Commission affect the
6 everyday lives of your constituents much more
7 than any Common Pleas judge does.

8 Last year, there were almost 1500 cases
9 decided by Public Utility Commission
10 Administrative Law Judges. There is a breakdown
11 that I have provided you with as far as how many
12 of those cases were actually even considered by
13 the Commission once, in fact, they had been
14 completed.

15 There is a very low -- the number of
16 cases that judges decide that actually absolutely
17 go final without any exceptions or review by the
18 Commission is somewhere between 86 and 90 percent.

19 The number of reversals of
20 administrative law judge cases is somewhere on
21 the order of, perhaps, 3 percent. Most of those
22 cases that we see reversed have to do with where
23 a judge kind of strays off course and gets
24 involved in a policy, which is something that I
25 believe should stay in the hands of whatever the

1 agency or Commission is. Okay.

2 The system that is embodied in House
3 Bill 1939 does nothing to take away from the
4 power of the various commission or agencies. And
5 I know there's a bunch of people that are lined
6 up ready to say, That's not true.

7 In fact, if you note one of the key
8 recommendations is that the commissions and
9 agencies in this bill can, even without
10 exceptions being filed to the judges' decisions,
11 they can call up a decision when they feel the
12 need to take further action.

13 We've recommended that the finding of
14 fact be inviolate so that we can't have creative
15 writing. But if the commissions or agency, in
16 fact, send it back for further findings or if
17 they wish, they can conduct their further hearing
18 themselves, particularly where there are policy
19 areas concerned.

20 And that's a very great concern among
21 the agencies and the agencies' heads as well. It
22 should be because as I see it, and I may be
23 wrong -- I often am -- when the Legislature
24 passes the law and has the Public Utility
25 Commission or any other agency endeavor to carry

1 it out, they're endeavoring to establish and
2 carry out the policy that has been set by the
3 intent of the Legislature.

4 That's their function. They're supposed
5 to engraft on the bones, okay, the flesh. That's
6 not a function of an administrative law judge, to
7 determine what the policy should be.

8 The function of the administrative law
9 judge is to try the case; hear and find the
10 facts; apply the law as set by the courts to
11 expose those facts; and on that basis render a
12 decision, whether it's a initial decision or
13 recommended decision, and let it go to the
14 parties from there to see whether they're going
15 to accept to it, whether there's a final decision
16 comes out from the Commission and/or agency.

17 The system as previously described on
18 the Hill has a tendency to lead to more appellate
19 work than is necessary where you have a
20 nonprofessional judicial staff.

21 Although I don't intend to disparage any
22 lawyer who sits as a hearing examiner in a case,
23 however, there is a difference between a
24 practicing attorney sitting as an hearing
25 examiner and an administrative law judge who has,

1 in fact, been practicing as a judge for, as in my
2 case, eighteen years.

3 I'm proud of my appellate record or,
4 say, my lack of appellate record in front of
5 Commonwealth Court and the Supreme Court. And I
6 genuinely believe that the unified system would
7 provide less work for our appellate courts.

8 I'm sure that it would be argued by a
9 number of agency heads and agencies that somehow
10 or other that removing the adjudicating process
11 from under their direct control and/or power is a
12 negative in their minds.

13 However, there never should be nor
14 should it ever have been intended that agencies
15 which are carrying out policy have any power or
16 influence in the adjudicative process.

17 In order for it to be fair, independent,
18 there should never be any hands-on from the
19 agencies or commissioners or board members or
20 what have you. That system doesn't exist in any
21 other adjudicative process.

22 To unify the system moves Pennsylvania
23 in line with the thinking of what is going on
24 throughout the country. Should Pennsylvania move
25 to a central unified panel, we become the 26th

1 state in the union, which kind of puts us as the
2 state that takes the thing over the top; and
3 we'll set a fine example for the rest of the
4 country.

5 Speaking of setting a fine example,
6 there are those who will argue that in those
7 systems where the system isn't broken, why not
8 let it go on as it is?

9 I've heard comments about, Well, go
10 ahead and start this system; and once it's up and
11 running, let other larger agencies who have this
12 fine system of their own going, let them join it.

13 That begs a number of questions and puts
14 the whole thing kind of backwards as my thinking
15 goes. I would suspect that it has something to
16 do with the pride that I have with the Public
17 Utility Commission's administrative law process.

18 However, the idea of having a system
19 that doesn't know where it's going lead off and
20 start to reinvent the wheel from there and then
21 having those systems that are already up and
22 running and providing a fine system, okay, and
23 have good merit to them, that doesn't make sense
24 to me.

25 I mean, why would we take those people

1 who are running around without a system and
2 asking for volunteers or bringing in independent
3 contractors with no system at all and they will
4 tell them, You go out and reinvent the wheel and
5 we'll bring you in and see if PUC and the LCB and
6 the Board of Hearing Examiners want to join this
7 with you as opposed to, you know, trying that
8 which already exists at places like the PUC, the
9 Liquor Control Board, and the Board of Hearing
10 Examiners and then grafting on to it those people
11 who, in fact, have no system yet. I mean, that
12 to me is logical and makes sense.

13 Finally, I'd like to address the concept
14 that scares a lot of people about expertise. And
15 I've heard this brought up a number of times
16 today. The idea of losing expertise, that is one
17 that frightens a lot of lawyers.

18 It frightens a lot of agency heads that
19 they're not sure they want a workmens
20 compensation judge hearing, say, the PP&L
21 Electric Restructuring case in front of me; and
22 they would have good reason to be frightened
23 about something like that.

24 However, I can't imagine any appointment
25 made by the Governor of the chief administrative

1 law judge who's not going to take advantage of
2 the expertise that he has in front of him at that
3 time.

4 We're talking about grandfathering in
5 all of those people that are presently in the
6 system and bringing their expertise there. The
7 idea that somehow or other that expertise is
8 going to be lost doesn't make any sense.

9 I mean, it makes for a nice straw man
10 to say, We're going to lose our expertise; but
11 that's not true. You're going -- divisional
12 system; and, okay, well, these are my PUC judges.
13 They -- da, da, da, da and like that and then
14 over the years where cross-training can take
15 place and people can make changes between
16 divisions.

17 Or, in fact, some of the cases that we
18 handle now, especially agent type of cases
19 involved in billing disputes -- I work with
20 compensation cases -- a judge can handle that
21 tomorrow.

22 It's an administrative process. Yes,
23 there's expertise that's necessary. No, it's not
24 going to be lost. I want to thank this Committee
25 for allowing us to make this presentation. If

1 there are any questions or any information that
2 we, in fact, can provide to you, we would be more
3 than happy to do it.

4 CHAIRPERSON CLARK: Thank you very much,
5 both of you, for your insight, your testimony.
6 Maybe if we could go back to a few of the
7 questions earlier in the day. I think we were
8 trying to delineate the departments that employ
9 administrative law judges.

10 And we had a list there before, but that
11 didn't correspond with the list that I had from
12 someplace else. And I thought so maybe we could
13 list the departments that have administrative law
14 judges as employees now.

15 JUDGE KASHI: To the best of my
16 knowledge, sir, the only agencies that have full,
17 active, independent administrative law judges are
18 the Public Utility Commission and the Liquor
19 Control Boards.

20 REPRESENTATIVE MANDERINO: That's my
21 understanding also.

22 JUDGE KASHI: There are workmens
23 compensation judges -- you passed an act last
24 year that took care of that. But they are not
25 independent judges; and, in fact, they are

1 not -- there are some that are not even required
2 to be attorneys.

3 You have in the Department of
4 State -- the Department of State has an Office of
5 Hearing Examiners who are attorneys but who are
6 not administrative law judges.

7 That system came into being in 1989 and
8 in 1994 with the -- I don't know if it was cause
9 or effect, but they just happened to happen at
10 the same time. 1994 was Lyness Versus the State
11 Board of Medicine.

12 At that time, the Legislature passed Act
13 48 which, in fact, assured that there would be an
14 Office of Hearing Examiner in the Department of
15 State.

16 CHAIRPERSON CLARK: All right. So I, if
17 I want to belong to the Pennsylvania Conference
18 of Administrative Law Judges, I'm going to be an
19 administrative law judge, and I'm going to either
20 be an employee of the PUC or the LCB?

21 JUDGE KASHI: That's correct, sir.

22 CHAIRPERSON CLARK: Okay. And how many
23 administrative law judges are there with each
24 agency?

25 JUDGE KASHI: There are 21

1 administrative law judges with the Pennsylvania
2 Public Utility Commission and --

3 JUDGE RUTH: Eight with the Liquor
4 Board.

5 CHAIRPERSON CLARK: Now, do you have any
6 estimate of how many more -- well, let's -- okay.
7 How many more administrative law judges would we
8 need to bring all these other 44, 45 some
9 agencies under an umbrella of one office?

10 JUDGE KASHI: If you go through the list
11 that we've provided as far as if we brought in
12 the Office of Hearing Examiners from the
13 Department of State, which amounts to --

14 CHAIRPERSON CLARK: Okay. Now, do
15 they -- are they required -- if there's a
16 complaint with the Department of State, are they
17 required to have a hearing for due process from
18 an administrative law judge?

19 JUDGE KASHI: Under the Bureau of
20 Professional and Occupational Affairs, yes, sir,
21 they are.

22 CHAIRPERSON CLARK: Okay. Where do
23 they go then to get an administrative law judge
24 to hear a case?

25 JUDGE KASHI: They have an office of

1 hearing examiners inside the bureau.

2 CHAIRPERSON CLARK: You just told me
3 that they're required to have a decision by an
4 administrative law judge.

5 JUDGE KASHI: They're required to have
6 a decision. I'm sorry, sir. If I said that, I
7 misspoke.

8 CHAIRPERSON CLARK: Okay. An
9 administrative law judge on Page 3 of your
10 testimony, you indicated that the function of
11 administrative law judge is to try the case, hear
12 and find the facts, apply the law, render an
13 initial or recommended decision and goes from
14 there, and then there is a final decision which
15 comes from the Commission or an agency.

16 JUDGE KASHI: Right.

17 CHAIRPERSON CLARK: Okay. So a decision
18 that an administrative law judge makes is not a
19 final decision?

20 JUDGE KASHI: No, sir. It
21 functions -- well, the --

22 CHAIRPERSON CLARK: Is it a final
23 decision or not?

24 JUDGE KASHI: In some cases it is, sir;
25 and in some cases is not. If the Commission --

1 CHAIRPERSON CLARK: A board does not
2 have to accept the recommendation, rubber stamp
3 it, or anything like that?

4 JUDGE KASHI: Right, on the call of two
5 commissioners. If there are no exceptions that
6 are filed, a decision can be called before the
7 Commission for review.

8 CHAIRPERSON CLARK: A decision by
9 administrative law judge?

10 JUDGE KASHI: Right. If not, it
11 becomes final within a certain amount of time.

12 JUDGE RUTH: Excuse me, sir. Are we
13 speaking of what the bill says or what
14 happens -- what happens now?

15 CHAIRPERSON CLARK: What happens now.

16 JUDGE RUTH: Excuse me for interrupting,
17 but ours is different. Our standard of review is
18 different. When we were created, we were given
19 more independence. The Liquor Control Board
20 shall uphold our decision unless it's contrary to
21 the law.

22 CHAIRPERSON CLARK: Okay. So the Liquor
23 Control Board --

24 JUDGE RUTH: Our opinions become more
25 final. They're not necessarily recommended type

1 decision.

2 CHAIRPERSON CLARK: And your orders are
3 self-executing if PUC -- two PUC commissioners
4 don't say, Hey we want to make a decision on it?

5 JUDGE KASHI: Right. If it's an initial
6 decision under Act 294, that's fine.

7 CHAIRPERSON CLARK: And the LCB's
8 positions -- the decisions of administrative law
9 judges are --

10 JUDGE RUTH: They're final unless
11 appealed and then the standard of review is only
12 if it's contrary to law.

13 CHAIRPERSON CLARK: Appealed to the
14 board?

15 JUDGE RUTH: The board.

16 CHAIRPERSON CLARK: Okay.

17 JUDGE KASHI: The bill doesn't address
18 scope of reviews, sir.

19 CHAIRPERSON CLARK: What I'm trying to
20 figure out is you seem to be affronted by the
21 fact that you're employees of an agency; but yet
22 in a fact, that is what you do.

23 You know, you try to summarize or you
24 try to put together or you try to do whatever;
25 but in the ultimate analysis, the board or the

1 agency or the commission has the final say on
2 that.

3 JUDGE KASHI: If they choose to, yes.

4 CHAIRPERSON CLARK: If they choose to.
5 Okay. So in essence -- in essence, you are
6 employees. You serve a function for that
7 commission or that agency?

8 JUDGE KASHI: Yes, sir.

9 CHAIRPERSON CLARK: Okay. Now, and your
10 concern is -- or one of your concerns is that
11 that agency might not agree with your decision or
12 your proposed decisions or your recommended
13 decisions and you feel under some kind of
14 pressure from within the agency or commission but
15 yet you're covered by civil service.

16 JUDGE KASHI: I don't know where you --

17 CHAIRPERSON CLARK: You say that you're
18 possibly uncomfortable or there's a perception --

19 JUDGE KASHI: A perception.

20 CHAIRPERSON CLARK: -- that you're an
21 employee.

22 JUDGE KASHI: Right. And that's from
23 outside.

24 JUDGE RUTH: That's outside.

25 JUDGE KASHI: That's outside. That's

1 not inside.

2 CHAIRPERSON CLARK: Then you have no
3 problem --

4 JUDGE KASHI: No, sir.

5 CHAIRPERSON CLARK: -- with rendering
6 any decisions --

7 JUDGE KASHI: No, sir.

8 CHAIRPERSON CLARK: -- or acting in
9 this capacity?

10 JUDGE KASHI: No, sir, I don't because
11 we know that inside the perception is incorrect.
12 But that doesn't take away from the perception
13 outside, that doesn't take away from the
14 appearance outside. And perception being 90
15 percent of reality, you know where that leaves
16 us.

17 CHAIRPERSON CLARK: Well, I guess maybe
18 the perception is that the decisions you're
19 making are final orders and they're not. Maybe
20 the perception of what people should be schooled
21 in is the fact that you are compiling whatever,
22 putting it into some kind of proposed order,
23 proposed decision making power then for an
24 ultimate agency commission board or whatever to
25 accept, adopt, send back for further hearing or

1 something like that.

2 JUDGE KASHI: I think almost everybody
3 that appears -- would appear before the
4 commission understands that they have a right to
5 take exceptions to an administrative law judge's
6 decision

7 CHAIRPERSON CLARK: Okay. Did -- and
8 you didn't give me a number of how many employees
9 you thought --

10 JUDGE KASHI: We would totally need?

11 CHAIRPERSON CLARK: -- we would need.
12 We have 29 now.

13 REPRESENTATIVE ARMSTRONG: Actually
14 there's three plus with the --

15 JUDGE KASHI: With the hearing examiner
16 is 31.

17 CHAIRPERSON CLARK: Well, no. The
18 Department of State, they aren't administrative
19 law --

20 JUDGE KASHI: Right.

21 CHAIRPERSON CLARK: -- judges. They
22 can't belong to his conference.

23 JUDGE KASHI: That's irrelevant to the
24 statute -- excuse me, the conference.

25 CHAIRPERSON CLARK: To --

1 JUDGE RUTH: I believe that the bylaws
2 of our conference admit other individuals that
3 have responsibilities similar but they would not
4 be -- they're -- they're as -- they're not full
5 conference members, if you understand what I
6 mean. They could become members -- they would be
7 nonvoting.

8 CHAIRPERSON CLARK: All right. The
9 three that we're talking about, they're with what
10 department?

11 JUDGE KASHI: The Department of State
12 Professional and Occupational Affairs under The
13 Office of Hearing Examiners that was created by
14 the Legislature.

15 CHAIRPERSON CLARK: All right. So they
16 are hearing examiners.

17 JUDGE KASHI: Right.

18 CHAIRPERSON CLARK: As opposed to being
19 ALJs.

20 JUDGE KASHI: That's correct, sir.

21 CHAIRPERSON CLARK: And that is -- is a
22 title without a distinction.

23 JUDGE KASHI: Probably in some
24 instances, yes.

25 CHAIRPERSON CLARK: And once again,

1 those hearing examiners will bring in both
2 parties that create a record, they'll bring
3 everything in, they'll propose or make a
4 recommendation to the board, and then the board
5 will pass final judgment on that.

6 JUDGE RUTH: Are their reports public?

7 JUDGE KASHI: I don't know.

8 JUDGE RUTH: I'm not sure that all their
9 reports are public and available to the
10 individuals.

11 CHAIRPERSON CLARK: Okay.
12 Representative Armstrong.

13 REPRESENTATIVE ARMSTRONG: Looking over
14 the survey that they've provided here for us, I
15 also see three in the Housing Finance Agency.
16 What would be their titles?

17 JUDGE KASHI: I'm sorry. I can't answer
18 that, sir. I don't know that.

19 REPRESENTATIVE ARMSTRONG: This would be
20 on a survey list of individuals who hear --

21 JUDGE KASHI: Right.

22 REPRESENTATIVE ARMSTRONG: -- cases.
23 Evidently, have three there also that would
24 possibly be blended into such a system should we
25 implement it.

1 CHAIRPERSON CLARK: Or the hearing
2 examiners with the Department of State, are they
3 civil service?

4 JUDGE KASHI: I don't believe so.

5 CHAIRPERSON CLARK: We're all going to
6 have to all be defined as one thing.

7 JUDGE KASHI: Right.

8 CHAIRPERSON CLARK: Then we're all going
9 to have to be supposedly protected, No. 2; and
10 then I guess we're all going to be paid the
11 salary of a Court of Common Pleas judge.

12 JUDGE KASHI: I don't know that that was
13 a recommendation.

14 JUDGE RUTH: Percentage based on --

15 REPRESENTATIVE ARMSTRONG: 85 percent.

16 JUDGE RUTH: Percentage of what the
17 common pleas court judge is using as a guide.

18 JUDGE KASHI: The Senate in '75
19 recommended that they be paid \$5,000 less than
20 the common pleas court judges. That's part of
21 the Kury Commission Report. In fact, it was
22 Senator Bell's recommendation.

23 CHAIRPERSON CLARK: Are there any other
24 questions?

25 REPRESENTATIVE ARMSTRONG: I guess I'd

1 like to follow-up with some of your comments,
2 Judge Kashi. When you stated that you'd come
3 down with a ruling and that ruling stays in place
4 unless two commissioners call it up for a
5 hearing --

6 JUDGE KASHI: Or the parties are taking
7 exceptions.

8 REPRESENTATIVE ARMSTRONG: -- for
9 review. Okay. How many of your decisions have
10 been called out?

11 JUDGE KASHI: You mean on an individual
12 basis?

13 REPRESENTATIVE ARMSTRONG: Yeah, or
14 agency wide if you know what you have--

15 JUDGE KASHI: I think on an agency
16 basis, we're talking about of the 1500 this past
17 year 86 percent of those cases, okay, went
18 through without any exceptions or Commission
19 review. There were exceptions filed in 10
20 percent of the cases.

21 Of the situation where the Commission
22 without exceptions being filed called up a case,
23 we're talking about 3 percent of the cases. Of
24 the 1500 cases, there were 35 cases only that
25 were called up by the Commission. And

1 that's -- that's on Table 4, which is a summary
2 of the Act 294 cases which I provided for you.

3 REPRESENTATIVE ARMSTRONG: Okay. And
4 then Judge Ruth, have there been any situations
5 where your judges have been ruled to be outside
6 of the law?

7 JUDGE RUTH: We've had a few. Not very
8 many. As I say, our appeal rate is about 1
9 percent of the cases decided. And of those which
10 is about -- if we have about 3,000 cases a year,
11 that's only, like, what, 30 cases appealed and
12 1 percent of those are roughly reversed. And
13 that might be, like, three a year.

14 REPRESENTATIVE ARMSTRONG: And those
15 cases went before the Liquor Control Board first?

16 JUDGE RUTH: First. And then from there
17 depending on what the Liquor Control Board did,
18 they went to a Common Pleas court depending on
19 who decided to progress with the appeal.

20 CHAIRPERSON CLARK: Representative
21 Manderino.

22 REPRESENTATIVE MANDERINO: Thank you.
23 Mr. Ruth, I think you were the one that referred
24 to the survey of presiding officers. And I just
25 don't want to make an assumption that it may not

1 be correct. Either you or Mr. Kashi or both
2 referred to approximately 44 or 45 agencies.

3 Is that agencies that we have within our
4 state government? Or are those agencies we have
5 within our state government which we have already
6 determined have some sort of administrative
7 adjudication type of process that statutorily may
8 have to do some time? Do you understand the
9 distinction I'm making?

10 JUDGE RUTH: They are just 44 to 45
11 agencies. We were attempting to determine how
12 many of those provided an adjudicatory type or
13 had an adjudicatory process of some type of
14 other.

15 REPRESENTATIVE MANDERINO: Okay. And
16 you were just in the process of serving that?

17 JUDGE RUTH: Right.

18 REPRESENTATIVE MANDERINO: For example,
19 when I look down and I see the Department of
20 Revenue or the Department of Public Welfare both
21 of which on this chart say no report, that just
22 means you have no report of what it is they are
23 or aren't doing?

24 JUDGE RUTH: That's right.

25 REPRESENTATIVE MANDERINO: I have to sit

1 here and say I know that for both of those
2 agencies they probably have a fairly substantial
3 internal administrative hearing appeal process
4 that either a taxpayer or a citizen may be
5 appealing.

6 They may be appealing a decision on how
7 much tax is owed, on whether benefits are
8 entitled, et cetera, et cetera.

9 JUDGE RUTH: Certainly.

10 REPRESENTATIVE MANDERINO: We just don't
11 know how many people they have performing that
12 and what they're calling them and how insulated
13 or independent they are or they aren't.

14 JUDGE RUTH: We tried to give a
15 guideline to the Committee of what agencies we
16 thought were involved. And if we couldn't get
17 the information, at least it was something from a
18 starting point, perhaps, that the Committee or
19 some staff persons could follow-up with.

20 REPRESENTATIVE MANDERINO: Gotcha.

21 JUDGE KASHI: We didn't get the
22 information back from all the agencies.

23 REPRESENTATIVE MANDERINO: Gotcha.

24 Okay. Thank you.

25 JUDGE RUTH: Of course, if we do, we'll

1 be glad to provide it.

2 CHAIRPERSON CLARK: Representative
3 Armstrong.

4 REPRESENTATIVE ARMSTRONG: Just one more
5 thing, Mr. Chairman. I want to thank you for the
6 hearing again. I also want to thank Brian Preski
7 for bringing in all the terrific testifiers and
8 especially our judges that are here today for
9 taking a position that may be contrary to their
10 own departments.

11 To me, what bottom line for me as to why
12 I'm involved with this is because I believe it's
13 fair. It's fair to the people. It's going to
14 create a better system whereby a process within a
15 department can be questioned on a much more
16 equitable basis.

17 And I want to thank you for taking the
18 leadership of stepping up and sharing their
19 experiences in their departments and letting us
20 explore what could be done. Thank you.

21 JUDGE RUTH: Chairman Clark, excuse me.

22 CHAIRPERSON CLARK: I was going to say,
23 and I guess maybe one more thing if I could clear
24 up here. I guess you can correct me if I'm
25 wrong when I define, you know, the administrative

1 law judge function. It said, Well, you know,
2 they're either action or nonaction still has to
3 come from the Commission or the agency. That
4 isn't going to change under the bill?

5 JUDGE KASHI: No. There's a provision
6 for final or recommended decision that in the
7 bill that would still -- the bill does not touch
8 the scope of review of the agency.

9 CHAIRPERSON CLARK: So -- so the board
10 or the Commission or whoever that the
11 administrative law judge is rendering a decision
12 for, they can still, you know, accept it as their
13 own, ask for it to be revised or, I guess, ignore
14 it?

15 JUDGE KASHI: Reverse it. Reverse it.
16 I'm not sure they can ignore it because they're
17 stuck with the findings unless they themselves do
18 something or remand it under the bill.

19 CHAIRPERSON CLARK: Right. But they're
20 still -- you're not going to have the authority
21 to issue final orders that are appealable
22 from -- regardless of --

23 JUDGE KASHI: Correct. You're not
24 setting up a new autonomous type of adjudicative
25 process, no, sir. You're not.

1 CHAIRPERSON CLARK: Right. Right.

2 JUDGE RUTH: One of the things I wanted
3 to add is if you look at the chart, I've totaled
4 35 presently persons performing some type of
5 hearing function.

6 CHAIRPERSON CLARK: Okay.

7 JUDGE RUTH: And according to Judge
8 Hardwicke and my experience with the other
9 states, normally what they did is they started
10 off with the same number of judges as the
11 agencies had. They didn't -- they didn't add any
12 to them in the beginning.

13 Usually they found from experience they
14 were able to reduce the number. I think, if you
15 heard Judge Hardwicke, they started out with 74
16 and ended up with 58 judges to do even more of
17 the work. They got some more agencies to come
18 in. As the time went on, they were able to find
19 out that they didn't need as many.

20 CHAIRPERSON CLARK: I guess maybe that
21 might be more comparable with population. I'm
22 trying to look at that --

23 JUDGE RUTH: Well, it also depends what
24 agencies you take under the umbrella.

25 CHAIRPERSON CLARK: Sure. Right.

1 Right. Yeah, because he said California
2 generally at 39; but yet they did very few people
3 underneath that.

4 JUDGE RUTH: Excuse me. I think if you
5 refer to my law review article at least as of
6 1996 -- I have an appendix there. And I -- each
7 state is listed as how many ALJs they have.
8 Table 4 on Page 342. I have every state and how
9 they're selected.

10 CHAIRPERSON CLARK: But the caveat to
11 that is depending on what they have brought in
12 under the umbrella?

13 JUDGE RUTH: Right. Sure.

14 CHAIRPERSON CLARK: And anymore
15 questions?

16 (No audible response.)

17 CHAIRPERSON CLARK: All right. I want
18 to thank both of you gentlemen very much for
19 bringing your testimony and insight forward. And
20 like I said -- indicated, the Committee will
21 probably have another hearing or two on this
22 issue. We want to thank you for bringing this up
23 and outlining it for us as well as you did.

24 I guess there's one more thing I want to
25 do before we conclude this meeting. And that is

1 that our chief counsel received a letter from the
2 Environmental Hearing Board dated January 7th,
3 1998.

4 And we'd like -- they would like us to
5 have that letter placed in record here. So we'll
6 do that, and we'll conclude this hearing and
7 thank everyone once again for being with us.

8 (At or about 4:09, the hearing was
9 adjourned.)

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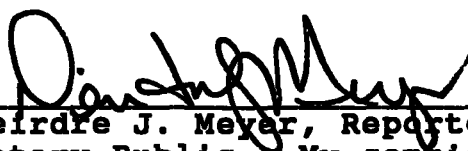
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