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NOVEMBER 1997 - CHARLESTON, SOUTH CAROLINA

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Legislation Pending to Cr

Pennsylvania

FINANCIAL DATA: FIRST THREE YEARS OF OPERATION

BUDGET COMPARISON (FY 1992)

FY 1991 Original Agency Hearing Function Budgets  
 ADD: Commissioners-Inmate Grievance Commission  
 DLR rent to Brokerage (office space)

Actual direct cost prior to OAH

Anticipated increased staff due to increased workload:

- 6 Hearing Officers
- 4 Secretaries

Estimated Budget if OAH did not exist

OAH FY 1993 Budget prior to cost containment

Increase over Agency estimated budget (\$7,770,675 - \$7,598,614)

Percentage increase

OAH Budget subsequent to cost containment

Decrease from Original 1991 Agency Budgets (\$6,863,003 - \$6,770,657)

Percentage decrease

Decrease from Est. Budget if OAH didn't exist (\$7,598,614 - \$6,770,657)

Percentage decrease

	\$6,863,003
	\$88,000
	\$204,000
	-----
	\$7,155,003
	\$355,280
	\$108,331
	-----
	\$7,598,614
	-----
	\$7,770,657
	-----
	\$172,043
	-----
	2.3%
	\$6,770,657
	-----
	(\$92,346)
	-----
	-1.3%
	(\$827,957)
	-----
	-10.9%

OVERVIEW:

	FULL- TIME	PART- TIME	CONT- RACTUAL	TOTAL
NUMBER OF HEARING OFFICERS PRIOR TO OAH	85		5	90
NUMBER OF ALJS AFTER CREATION OF OAH (1/1/90)	74	3		77
NUMBER OF ALJS AFTER COST CONTAINMENT (FY 93)	46	7		53
NUMBER OF ALJS CURRENTLY	54	4		58

FUNDING:

PRIOR TO OAH				direct cost only
OAH BUDGET - FY 91				
OAH BUDGET - FY 92				
ORIGINAL OAH BUDGET - FY 93				
REVISED OAH BUDGET - FY 93				budget reduction
OAH BUDGET - FY 94				
OAH BUDGET - FY 95				
OAH BUDGET - FY 96				
OAH BUDGET - FY 97				
OAH BUDGET - FY 98				
OAH BUDGET - FY 99				

PERCENTAGE INCREASE 1991 - 1995

5.5%

STATE BUDGET:

FY 1990	10.9 BILLION
FY 1993	13.4 BILLION
FY 1998	15.5 BILLION

PERCENTAGE INCREASE IN STATE BUDGET

42.2%



## **"WHITE PAPER" FOR CENTRAL HEARING AGENCY PRESENTATION**

The American Bar Association (ABA) has adopted a Proposed Model Statute for adoption by the approximately twenty-five states which do not have a Central Hearing Agency ("OAH"). This Proposed Model Statute is intended to be sufficiently flexible to permit any state to adjust centralized administrative adjudication to the governmental set-up within the state. This flexibility is assured by:

### **I. Scope of Model Act:**

- A. Permits exclusion of various agencies as political policy within the state may require.
- B. Permits the Governor to exempt additional agencies temporarily.
- C. Provides for a Chief Administrative Law Judge (CALJ) to be appointed for a term of years by the Governor with approval by the state Senate.
- D. Requires that the administrative adjudicatory function be separated from the agency for which the hearings are held and guarantees independence for the agency adjudicatory process.
- E. Requires that the OAH and the executive agency work together cooperatively in providing fair and impartial hearings.
- F. Permits the agency to delegate to the OAH final decision making authority or, alternatively, delegate the authority to make recommended decisions only as the agency may elect. (See Section 1-10)
- G. Provides for a state advisory council made up of agency designees, members of the bar, and representatives of the attorney general's office to assist the CALJ in administering the OAH.
- H. Assures the integrity of the Agency's policy making function and authority.

### **II. General Comments about the creation of an OAH:**

- A. Separates adjudication from the executive agency's policy making functions thus guaranteeing independence in the hearing process without threatening the agency's executive responsibilities.
- B. Provides a democratic balance within the operation of executive agencies.

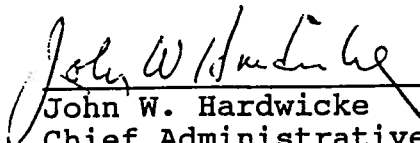
- C. Provides public assurance of a fair and impartial hearing.
- D. Relieves agencies of pressures from individual legislators with respect to constituents involved in the hearing process.
- E. Is a cost savings device in that hearing officers (administrative law judges) can be cross-trained to hear many kinds of cases.
- F. Provides for better trained hearing officers with higher professional standards and ethical responsibilities.
- G. Relieves the constitutional courts of the burden of retrying poorly decided administrative cases on appeal from the agencies.
- H. Furnishes the courts with better reasoned decisions and with better attention to legal principles.

**III. Experiences of Other States with an OAH.**

- A. California was the first state to adopt an OAH in 1946.
- B. The separation of judging from the executive agency has now been adopted in 25 states almost unanimously in the south and southwest although the most recent states are Alaska and Michigan. (See attached list)
- C. No state which has adopted a OAH has abandoned it.<sup>1</sup>

The Proposed Model Statute of the American Bar Association has the unanimous support of the bar and the bench alike.

Developed by:

  
 \_\_\_\_\_  
 John W. Hardwicke  
 Chief Administrative Law Judge  
 Office of Administrative Hearings  
 11101 Gilroy Road  
 Hunt Valley, Maryland 21031

11/21/97  
 \_\_\_\_\_  
 Date

<sup>1</sup> South Dakota nominally repealed its statute but re-adopted the principle of separation the following year.

**PRESENTATION OF JOHN W. HARDWICKE,  
CHIEF ADMINISTRATIVE LAW JUDGE,  
OFFICE OF ADMINISTRATIVE HEARINGS, STATE OF MARYLAND  
REGARDING H.R. 1802 ON JULY 26, 1995**

Maryland's Experience with its Administrative Law Judge Corps

Mr. Chairman:

I am John W. Hardwicke, Chief Administrative Law Judge of Maryland's Office of Administrative Hearings ("OAH"); I have been Chief Judge since the creation of the OAH, January 1, 1990.

My background prior to this responsibility was that of a corporate lawyer in Baltimore with a regulatory practice involving federal agencies such as the Federal Energy Regulatory Commission in Washington and Maryland's Public Service Commission in Baltimore.

Although I have been a Marylander for more than forty years, I am a North Carolinian by birth. More details of my background are provided in the attached Curriculum Vitae. (Exhibit #1)

EXECUTIVE SUMMARY

- I. Forces leading to change
- II. The traditional system
- III. The present: Maryland's corps system
- IV. The original statute and implementation
- V. Agency policy and expertise
- VI. Cross-training
- VII. Savings and efficiencies
- VIII. Conclusion

## I. Forces Leading to Change

An executive agency, whether federal or state, is a microcosm of government - - it performs executive, legislative and judicial functions. Recent critics of the growth of government consider that agency assumption of the tripartite responsibilities of government is a major source of abuse and excessive governmental influence.<sup>1</sup> One giant step toward correction of this abuse is separation of the judicial function from the agency by the creation of an independent administrative law judge corps.

In Maryland, because of a perception of partiality and unfairness, and because of inefficiencies and external influences over administrative hearing procedures, Governor William Donald Schaefer appointed a Task Force to study administrative judicial due process in 1988.

This Task Force concluded that the system was indeed fraught with problems, with the appearance of unfairness, lack of professionalism, lack of a sense of ethics and was unduly burdensome and expensive.

## II. The Traditional System

The traditional system employed approximately 91 hearing examiners, including those who worked part-time, at a cost exceeding \$7 million, although the precise cost was not segregated

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<sup>1</sup> See, for example, Gary Lawson, "The Rise and Rise of the Administrative State", 107 HARV. L. REV. 6 1231, 1249 (April 1994).

and is not known. Hearing examiners were employees within the various agencies - - some agencies employed as many as twenty-five examiners, some as few as one or two.

### III. The Present: Maryland's Corps System

As a result of the study and its recommendations, the legislature created an Administrative Law Judge Corps ("ALJC") embracing the hearing/adjudicatory function of all state agencies except, primarily, the Public Service Commission and the Workers' Compensation Commission. This ALJC employs a Chief Administrative Law Judge ("Chief Judge") and 63 administrative law judges ("ALJs") who hear more than 50,000 cases per annum, and who administer flexible due process in a large variety of situations involving over 200 state programs. These ALJs are cross-trained and most are capable of hearing any kind of case within the aegis of OAH's responsibility.

Maryland's corps system was originally zero-budget based, that is, its original budget was derived by the aggregation of the various agencies' hearing budgets. The first year budget (FY 91) was approximately \$7 million; the fiscal year 1996 budget is approximately \$8.5 million. The dollar growth is attributable to increases in caseload and responsibilities.

### IV. Original Statute and Implementation

The statute creating Maryland's ALJC was passed by the legislature in the spring of 1989. The Chief Judge interviewed the

hearing examiners among the agencies in November and December 1989. The statute was flexibly drawn giving the Chief Judge wide discretion in the employment and dismissal of ALJs.

The statute called for the creation of a Governor's nine person coordinating Commission chosen from executive agencies, the Attorney General's office, the state bar association, and the public at-large. This Commission operates loosely as a board of directors and sounding board for the public and the agencies.

V. Agency Policy and Expertise

Maryland's Office of Administrative Hearings does not attempt to make or influence executive agency policies. Its sole function is to provide due process within the executive setting. Its only policy function lies in the adoption of Rules of Procedure designed to expedite and make efficient the opportunity for hearings for citizens affected by agency actions.

Agency policy, properly enunciated, is part of the law applicable to the case and is presented by the agency within the framework of the hearing. Pro se presentations by citizen litigants are encouraged and assisted. Agency expertise is presented, on the record, at the hearing by agency witnesses. Citizen witnesses counter such expertise by their own testimony or by experts. The ALJ incorporates this expertise into the decision, as appropriate.

VI. Cross-training

Originally, most of the ALJs were hearing officers within the agencies. As these original ALJs have retired they have been replaced with well-trained, more experienced attorneys.

Cross-training consisted of ALJs "going to school" to classes provided by colleague ALJs from the respective agencies. These classes consisted of studies of statutes and agency regulatory law, agency policies and procedures, understanding of programs, and agency objectives. By the end of the first two years, all ALJs were required to be proficient in hearings for at least six agencies and for all of the programs for those agencies. By the third year of the ALJC, most ALJs could hold hearings for all agencies and all programs.

VII. Savings and Efficiencies

The savings are obvious and easy to identify. The organizational existence of a professional ALJC employing a corps of cross-trained, well qualified judges can be used more efficiently and precisely across an array of hearing schedules and programs. Such a corps can effectuate settlements, and eliminate unnecessary postponements. It can employ computer technology. It can program a large cadre of judges to a myriad of hearings in numerous locations and settings. In addition, and as a fall-out benefit, agencies are more efficient and fair minded in their dealings with citizens whose hearings are to be held outside of the

agency. Agency executives are more sensitive in the performance of their duties; agency presenters are better prepared for their due process hearing.

Attached to this presentation is an exhibit detailing costs associated with Maryland's ALJC. (Exhibit #2)

### VIII. Conclusion

In these times of diminished government, achievement of savings and efficiencies through the creation of an ALJC is plainly demonstrable. The Federal Government employs fewer than 300 ALJs other than the approximately 1,000 employed by the Social Security Administration. Modern sophisticated computer and information technology make possible the assimilation of vast quantities of data and the systemization of multiple judicial procedures and complex dockets. The very size of the federal administrative machinery is a challenge, not an obstacle.

More than sixty years ago Justice Brandeis' observed that it is "one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory."<sup>2</sup> The transformation from the traditional in-house hearing system to the corps system is now accelerating among the states - most recently in South Carolina, Georgia and Texas - making a total of approximately twenty-two corps states. (Exhibit #3)

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<sup>2</sup> Concurring in *New State Ice Co. v. Liebman*, 285 U.S. 262, 311 (1932).



The federal government may now safely follow the leadership of the states in the adoption of this proven re-origination of its administrative judiciary. <sup>3</sup> <sup>4</sup>

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<sup>3</sup> A word of caution: The statute should not be drawn so tightly with such specific detail as to micromanage the Corps. Permit flexibility, and above all else, choose a knowledgeable and practical Chief Judge who will administer the administrative judicial process with understanding and common sense.

<sup>4</sup> For an exhaustive, detailed account of Maryland's OAH see my article, "The Central Hearing Agency: Theory and Implementation in Maryland", 14 *Journal of the National Association of Administrative Law Judges* (Spring 1994).

**JOHN W. HARDWICKE****CURRICULUM VITAE**

April 10, 1927 Born in Winston Salem, North Carolina

1943 - 1945 Attended University of North Carolina

1945 - 1950 Taught in Public Schools of North Carolina

1950 A.B. Degree, University of North Carolina, Chapel Hill, North Carolina (entered June, 1943)

1953 LL.B. Degree, George Washington University, Washington, D.C.

1953 - 1955 Assistant Counsel, Controller of the Currency, Washington, D.C.

1955 - Present Instructor in Commercial Law, Evening School, Johns Hopkins University, Baltimore, Maryland

1955 - 1957 Associate, Piper and Marbury, Baltimore, Maryland

1957 - 1989 Engaged in the general practice of Law in Baltimore City, with emphasis on Corporate and Business Law.

1963 - 1967 Elected Member, Maryland House of Delegates

1963 Chaired House Judiciary sub-committee on the Uniform Commercial Code, adopted February 1963

1967 - 1968 Elected Member, Maryland State Constitutional Convention. Prepared and responsible for transitional provisions.

1969 One of the organizers of Florida Phosphate Council, Tampa, Florida, broad-based consortium of phosphate miners, state and federal environmental, tax and mining problems.

1972 - 1990 Organizer of and Counsel to the Maryland Industrial Group, a broad-based consortium of Maryland industry established to deal with natural gas, electricity, energy curtailments and related problems as well as taxation and environmental matters.

1972 - 1974 Elected Councilman at Large, Harford County, Maryland, Council (the local legislative body)

Curriculum Vitae of  
John W. Hardwicke  
Page 2

- 1978 - 1990      Elected President, Harford County, Maryland,  
Council
- 1987, 1992      Co-author, with Robert W. Emerson, Business Law,  
a textbook published nationally and inter-  
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- 1989 - Present    Appointed Maryland's first Chief Administrative  
Law Judge of the Office of Administrative  
Hearings, by Governor William Donald Schaefer.
- 1/92 - 12/92     Member, Maryland Commission to Revise the  
Administrative Procedure Act. The final  
bill passed both Houses unanimously April, 1993.
- 1994             President-elect, National Association of  
Administrative Law Judges

Member, Bar of the United States Supreme Court  
Member, Maryland Bar Association  
Member, American Bar Association

**COMPARATIVE COSTS -- MARYLAND'S OAH**

<b>BUDGET COMPARISON (FY 1992)</b>	
FY 1991 Original Agency Hearing Function Budgets	\$6,863,003
ADD: Commissioners-Inmate Grievances Commission	88,000
DLR Rent To Brokerage (Office Space)	<u>204,000</u>
Actual Direct Cost Prior To OAH	\$7,155,003
Anticipated Increased Staff Due To Increased Workload:	
6 Hearing Officers	355,280
4 Secretaries	<u>108,331</u>
Estimated Budget If OAH Did Not Exist	\$7,598,614
OAH FY 1993 Budget Prior To Cost Containment	<u>7,770,657</u>
Increase Over Agency Estimated Budget (\$7,770,675 - 7,598,614)	<u>172,043</u>
Percentage Increase	2.3%
OAH Budget Subsequent To Cost Containment	<u>6,770,657</u>
Decrease From Original 1991 Agency Budgets (\$6,863,003-6,770,657)	<u>(92,346)</u>
Percentage Decrease	1.3%
Decrease From Est. Budget If OAH Didn't Exist (\$7,598,614 - 6,770,657)	<u>(827,957)</u>
Percentage Decrease	-10.9%

**OVERVIEW**

	Full-Time	Part-Time	Contractual	Total
Number Of Hearing Officers Prior To OAH	85	5		90
Number of ALJS After Creation of OAH (1/1/90)	74	3		77
Number of ALJS After Cost Containment	46	7		53

**Funding:**

Prior to OAH	\$6,863,003
OAH Budget - FY 91	8,086,346
OAH Budget - FY 92	7,007,519
Original OAH Budget - FY 93	<u>7,770,657</u>
Revised OAH Budget - FY 93	<u>6,770,657</u>
Funding Reduction Pre-OAH to Revised FY 1993	<u>(\$92,346)</u>

Workload Increases Since 1/1/90:	No. of Cases	Judge Hours*
<i>New Caseload:</i>		
Inmate Grievance	864	2,160
Forced Medication Of Mental Health Patients	50	100
Office Of Children And Youth	5	120
Nursing Home Appeal Board	3	60
Department Of Education	54	1,284
<i>Increased Workload:</i>		
Department Of Personnel	561	7,854
Entitlements	436	1,308
<i>Reduced Caseloads:</i>		
Motor Vehicle Administration	(5,000)	(2,500)
Total Equivalent Judges Required		7

CENTRAL PANEL SYSTEM SURVEY

APPENDIX 1, TABLE 2

STATE	PLACE IN GOVERNMENT	LOCATION	NO. OF HEARING OFFICERS	AVG. ANNUAL CASELOAD	FUNDING SOURCES	ANNUAL BUDGET	RULES OF PROCEDURE	CODE OF ETHICS
California	Executive Branch	Regional Offices	39 full time	6,000	User Fees	\$ 9 million	APA	Canons of Ethics for Attorneys
Colorado	Executive Branch	Regional Offices	10 full time 7 part time	13,100	User Fees	\$ 1.3 million	Own	Judicial Code of Ethics
Florida	Executive Branch	Central Office	30 full time	5,000	User Fees	\$ 4.9 million	APA	Judicial Code of Ethics & Attorney's Code of Ethics
Maryland	Executive Branch	Central Office	Chief & Deputy Chief ALJs plus 56 full time	77,000	General Funds & Reimbursable Funds	\$ 6.7 million (FY93)	APA	Own
Massachusetts	Executive Branch	Central Office	7 full time	1,300	General Fund	\$ 473,000 (FY 92)	APA	Canons of Ethics for Attorneys
Minnesota	Executive Branch	Central Office	11 full time 25 part time 27 Workers' Comp.	10,500	User Fees & Workers' Comp. Appropriations	\$ 5 million	Own	Own
Missouri	Executive Branch	Central Office	2 full time	2,000	General Fund and User Fees	\$ 570,000	APA	Attorneys' Canons of Ethics
New Jersey	Executive Branch	Regional Offices	45 full time	11,000	General Fund and User Fees	\$ 5.7 million	APA and Own	Own and Judicial Code of Ethics
New York City	Executive	Central Office	Chief & Deputy plus 6 full time 1 vacancy	1,300	Budget Appropriation	\$1.5 Million	CAPA & Own	Code of Judicial Conduct & City Conflicts of Interest Law
North Carolina	Executive Branch	Central Office	Chief ALJ plus 8 full time ALJs	1,400	General Fund	\$ 2.13 million	APA	Attorneys' Code of Ethics
North Dakota	Executive Branch	Central Office	Director plus 2 full time ALJS 1 vacancy (F/T) 3 temporary (P/T)	575	General Fund and User Fees	\$ 611,000	APA & Own	Attorneys' Code of Ethics
Tennessee	Secretary of State	Central Office	Chief ALJ plus 8 full time	1,068	General Fund and User Fees	\$ 622,574	APA & Own	Canons of Judicial
Texas	Executive Branch	Central Office	Chief ALJ plus 5 full time 2 part-time		User Fees	\$660,000	Own/APTRA*	Code of Conduct for ALJs
Washington	Executive Branch	Regional Offices	59 full time 1 part time	42,000	User Fees	\$6 million	APA	Own
Wisconsin	Dept. of Administration	Central Office with satellite	14 full time	4,164	General Funds	\$ 1.60 million	APA & own	Canons of Ethics for attorneys; Code of Ethics for State Employees
oming	Independent Agency in Executive Branch	Regional Offices	12 full and part time	6,500	Reimbursed General and Highway Funds Workmen's Comp.	\$ 600,000	In Process	Not yet.

\*APTRA - Administrative Practice & Texas Register Act