

TESTIMONY OF ADMINISTRATIVE LAW JUDGE
GEORGE M. KASHI
BEFORE THE
SUBCOMMITTEE ON COURTS

Public Hearing held Monday, January 12, 1998

In 1975 the Kury Commission in the Senate began a restructuring of the Public Utility Commission. In that restructuring the Office of Administrative Law Judge was created. During the hearings before the Committee, testimony was presented regarding the need to move away from a hearing examiner system to an independent administrative law judge system. This testimony we have presented as an exhibit and would like the subcommittee to review it at their convenience.

The actual work done for the administrative law judge section was accomplished by two Senate staffers, Susan Shanaman Esq. and James Cauley Esq. The implementation of this section has produced what I would like to say is probably the finest quasi-judicial administrative process on the Hill. In his dissenting and concurring remarks, Senator Clarence Bell gave high praise to the report and, in fact, endorsed it.

The process as initiated by the Public Utility Commission and nurtured by the Chief Administrative Law Judges Bill Shane, and furthered by Bill Smith and Allison Turner have produced a system that all participants know guarantee them fair notice and opportunity to be heard. All parties appearing before the Commission are entitled to and ensured of quality, timeliness and fairness in the adjudication of on the record disputes.

The problem with the system, if any criticism can be leveled against it at the Commission, is one of perception. The perception exists among private practitioners who represent smaller clients before the Commission. The practitioner finds it difficult to convince

his client that he is getting a fair and independent judge to hear his case when the judge's salary is being paid by the Commission and he is an employee of the Commission. While we all know that, in fact, the judges who have been appointed, under civil service, by the Commission in fact do render independent decisions, it is difficult to get beyond this perception. The question of the independence can, sometimes be gleaned from those opinions that the Commission renders that disagree with the administrative law judges on a number of policy issues.

However, House Bill 1939 is not aimed at nor does it address, nor is it intended to address the Public Utility Commission or any problems, real or perceived that there might be there. I believe one of the reasons that you won't find a great deal of support from the utility bar is that they're satisfied with the system that exists there now.

However that doesn't deal with the situation as it exists on the Hill: Currently, I believe there are some 45 agencies which conduct some sort of quasi-judicial administrative process. The scope and parameter of these hearings and how they are conducted runs a very wide gamut. The Pennsylvania conference of Administrative Law Judges has endeavored to do a survey of the various agencies through their chief counsels regarding the type of system they have and how it functions. As we thought, it runs from soup to nuts.

There are those agencies that merely request volunteers from the Office of General Counsel to act as a hearing examiner on their hearings. There are those agencies where the Secretary of the Board appoints members of the Board to hear the case and then those same members will sit on the panel where the adjudication takes place. See, exhibit presented during Judge Ruth's testimony.

The bottom line is that the 1975 system that came out of the Kury Commission should have, at that time, been expanded to the entire Commonwealth. There is no reason for this Commonwealth not to have a unified administrative process system with independent judges which guarantee fair, prompt hearings and adjudications.

The system as embodied in House Bill 1939 does nothing to take away from the power of the various commissions or agencies. In fact, if you will note, one of the key recommendations is that the commissions and agencies can, even without exceptions being filed to the judges' decisions, call up a decision where they feel they need to take some further action.; particularly in policy areas. This is a great concern among agencies and agency heads. And well it should be. As I see it when the legislature passes a law and has the Public Utility Commission or any other agency endeavor to carry out that, they are endeavoring to establish and carry out the policy as set forth by the intent of this legislature. It is not a function of an administrative law judge to determine what that policy should be.

The function of the administrative law judge is to try the case, hear and find the facts, apply the law as set by the courts to those particular facts, and on the basis of that, render a decision, whether it be an initial or recommended decision, and let it go from there to the parties to see whether or not they're going to except to it with the final decision coming from the commission and/or agency.

The system as previously described on the Hill has a tendency to lead to more appellate work than is necessary where you have a nonprofessional judicial staff. While I don't intend to disparage any lawyer who sits as a hearing examiner in a case; however, there is a difference between a practicing attorney sitting as a hearing examiner and an administrative law

judge who has, in fact, been practicing as a judge for, as in my case, 18 years. I am proud of my appellate, or let's say lack of appellate review by the Commonwealth Court and Supreme Court. I genuinely believe that the unified system would provide less work for our appellate courts.

I am sure that it would be argued by a number of agency heads and agencies that somehow or other, removing the adjudicative process from under their direct control and/or power is a negative in their mind. However, there should never be, nor should it ever have been intended that the agencies which are carrying out policy have any power or influence in the adjudicative process. In order for it to be fair, independent, there should never be any hands on from the agencies or commissioners or board members or what have you. That system doesn't exist in any other adjudicative processes.

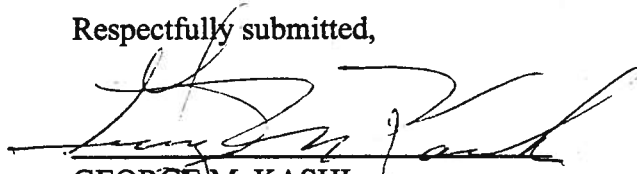
To unify this system moves Pennsylvania in line with the thinking of what is going on throughout the country. Should Pennsylvania move to a central unified panel, we become the 26th state in the nation, which kind of puts us as the state that takes the thing over the top and will set a fine example for the rest of the country.

Speaking of setting a fine example, there are those who would argue that in those situations where the system isn't broken, why not let it continue as it is" Go ahead and start this system up and once it's up and running, let the other larger agencies join into it." Well, that begs a number of questions and kind of puts the whole thing backwards as far as my thinking goes. I suspect it has some thing to do with the pride that I have in the Public Utility Commission's administrative law system; however, the idea of having a system that doesn't know where it's going, lead-off and start to reinvent the wheel from there, and then having those systems which

already are up and running, and have good merit to them, doesn't make a lot of sense. It would seem logical that you would take the show pieces and have the rest of the systems model those.

Finally, I'd like to address the concept that scares people about expertise. The idea of losing expertise is one that frightens a number of lawyers. They are not sure that they want a workmen's compensation judge hearing say, the case that is front of me now, the PP&L electric restructuring matter. And they, in fact, have good reason to be concerned if in fact it was going to end up with a system where everybody was going to be thrown into a pot; however, that's not the case here. With all Judges and hearing examiners being transferred into the system the expertise remains. It is hard to imagine a new CALJ not wanting to utilized the expertise to the best of its ability

Respectfully submitted,

A handwritten signature in black ink, appearing to read "George M. Kashi", written over a horizontal line.

GEORGE M. KASHI
ADMINISTRATIVE LAW JUDGE