

Second Supplement to Memorandum 90-89

Subject: Study N-103 - Administrative Adjudication (ALJ Central Panel--odds and ends)

California Law

California was the first, and for many years the only, jurisdiction to create a central panel of administrative law judges. However, the California central panel has always been limited in scope. The creation of the central panel, and its limited scope, are the result of the 1944 study and recommendations of the Judicial Council. The Council, while it saw advantages to the central panel, also saw limitations:

It was suggested to the Council that all hearing officers should be drawn from the panel maintained by the Department of Administrative Procedure without exception. The theory behind such a requirement is, of course, that a complete separation of the functions of prosecuting and hearing would thus be achieved. Any such requirement would have produced such a drastic alteration in the existing structure of some agencies, however, that it was thought unwise. A few of the agencies included within the Council's proposals have such a volume of business that four or five hearing deputies are now used. These deputies are full-time employees though other duties are assigned to them when they are not engaged in hearings. It is the Council's conclusion that these agencies should be permitted to hire full-time employees qualified as hearing officers where the State Personnel Board and other proper State officials are satisfied that the need exists. The Council's statute does not prohibit the use of such hearing officers by the various agencies or by the Department itself for purposes other than the hearing of cases. In view of the disqualification provisions of the proposed act, however, it is apparent that such other duties can not be connected in any way with the investigation or prosecution of cases by the agency.

Federal Law

Attached to this memorandum is a note from Paul Wyler indicating that the Senate Judiciary Committee, sharply divided along party lines, has approved Senator Heflin's bill for creation of a centralized corps of federal administrative law judges. The Bush administration objects

to the bill. Debate over the bill is familiar: Proponents argue that the bill will solve the perception of bias in the current federal system, whereas opponents argue that no solution is needed because there is no problem and the bill might cripple regulatory programs that have been working well.

The staff notes that Senator Heflin has sponsored similar legislation in the past. As Professor Asimow states in his background study for the Commission, the central panel concept has been "repeatedly proposed (but never adopted) at the federal level".

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

JUL 16 1990

RECEIVED

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July 12, 1990

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RE: STUDY OF ADMINISTRATIVE LAW
REFORM ADMINISTRATIVE ADJUDICATION

Dear Persons:

Enclosed herewith for the information of the Commission, if it has not already learned about it, is an article from the Los Angeles Daily Journal dated June 28, 1990, regarding action taken by a Senate committee with respect to the proposals for a centralized corps of administrative law judges.

Sincerely,



PAUL WYLER,
Administrative Law Judge

PW:kc
Enclosure

unanimously approved President Bush's nomination of Baird, a Los Angeles Superior Court judge, to head the third largest U.S. attorney's office in the nation behind Manhattan and Miami.

Given that endorsement, Senate confirmation is virtually assured.

The apparent ease with which Baird cleared this crucial committee hurdle belied her difficulty in reaching this point.

The post of U.S. attorney for the Central District of California has been vacant since last June when Robert C. Bonner, since named to head the U.S. Drug Enforcement Administration, departed to become a federal district judge.

Baird waited until November after that for Wilson to submit her name to the White House and until last month for the president to nominate her to the post.

... was a matter of the Justice Department doing its due diligence as thoroughly as it felt it had to. Unfortunately, that took longer than we would have liked."

As for Wilson's delay in asking Bush to appoint her, Goldman said, "It's an Orson Welles process. We make no recommendation before its time."

"We had lots of good candidates," he added. "We wanted to check the field."

The delay fueled a rumor that political operatives in the Republican administration were balking at Baird's nomination because she is a Democrat. But Goldman said that party affiliation had nothing to do with it. "It was never discussed except in jest," he said. "The president's and the senator's views on this are the same: they want the best."

Baird, 54, finished college after having three children, earning her law degree

Committee Also Votes for Centralized Judges' Corps

By Charley Roberts
Daily Journal Staff Reporter

WASHINGTON — A sharply divided Senate Judiciary Committee approved Wednesday creation of a centralized corps of federal administrative law judges.

By a 9-5 vote the committee overrode the objections of the Bush administration and sent the bill to the full Senate for action. The vote was largely along party lines; only Republican Sen. Arlen Specter of Pennsylvania voted with the panel's eight Democrats to pass the measure.

Sen. Howell Heflin, D-Ala., said his bill is the solution to a perception of bias in the current system, in which administrative law judges work for the same agencies against which they may have to rule.

Heflin, a former elected chief justice of Alabama, is chairman of the Judiciary Subcommittee on Courts, which earlier endorsed the measure.

But Republicans on the panel, led by Sen. Charles Grassley of Iowa, the ranking minority member on the Courts subcommittee, argued that no solution is needed because there is no problem.

The bill, S594, would remove all ALJs scattered among 29 agencies and departments and gather them into an independent unit within the executive branch.

The corps would be governed by a chief judge and would be divided into seven specialized divisions. The chief judge and the division chiefs would be appointed by the president and confirmed by the Senate.

These chiefs would form a council that would be the policymaking body of the corps. The council would appoint judges, assign them to divisions, write the rules of procedure and direct day-to-day operations of the corps.

The bill contains explicit protections for administrative law judges. They

would continue to be appointed from a list of qualified candidates maintained by the Office of Personnel Management, be entitled to a written explanation of any permanent reassignment, and be subject to removal or disciplinary action only for misconduct, neglect of duty or disability.

During hearings last summer, representatives of the Justice Department opposed the measure, while those of the American Bar Association supported it.

Deputy Assistant Attorney General Steven R. Valentine testified that creation of the corps "would sacrifice the strengths that have been characteristic of administrative proceedings and might serve to cripple regulatory programs that have been working well."

But John Vittono, chairman of the ABA's National Conference of Administrative Law Judges, argued that "creation of the corps would assure the public, the companies and the counsel that appear before administrative law judges that hearings before such judges are fair."

"Often the impartiality of a judge who is also an agency employee is questioned by those who must appear before the judge," said Vittono, an ALJ at the Department of Labor. "At the very least, the appearance of a possible lack of impartiality exists."

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