

Memorandum 90-130

Subject: Study N-100 - Administrative Adjudication Generally (Obtaining Additional Input at Commission Meetings)

Background

At the September 1990 meeting the Commission expressed concern that a broader range of viewpoints should be available to the Commission at discussions and decisions on various issues in administrative procedure. At present the Commission receives substantial agency and administrative law judge input, but no practitioner viewpoint. The Commission asked the staff to look into the possibility of encouraging some knowledgeable and interested experts to serve as unpaid Commission consultants; the Commission would reimburse them for their travel costs in attending meetings at the Commission's request.

The Commission has employed this approach successfully in the past. On the eminent domain study, for example, agencies were well-represented but not property owners; the Commission engaged several private eminent domain attorneys as consultants to give it a balanced perspective at meetings. On the Probate Code project, many interest groups were well-represented, but there was no academic perspective; the Commission engaged a number of law school professors as consultants to attend meetings.

Practitioners

The staff has collected names of a number of administrative law practitioners. The two mentioned most frequently to the staff as being very active and knowledgeable with a wide range of experience in the field are the Sacramento law firms of Livingston & Mattesich and Turner & Sullivan. The staff has contacted the principals in both of these firms. Both are quite interested in the Commission's study (in fact, both are already on the Commission's mailing list for the study) and both would be pleased to serve as Commission consultants.

Of the principals involved, the staff is personally familiar with only one--Jim Mattesich--who has appeared before the Commission and represented a client in the legislative process opposed to a Commission recommendation. The staff was mightily impressed by his able advocacy. Gene Livingston and Jim Mattesich were the first Director and Chief Counsel of the Office of Administrative Law, and before that were Director and Deputy Director of the Employment Development Department. They have a broad range of administrative law experience. Their personal resumes and firm resume are attached as Exhibit 1. One or the other of the two would attend meetings, depending on scheduling.

Dick Turner and Bob Sullivan of Turner & Sullivan would serve as consultants for the Commission on the same type of arrangement. They both have been practicing administrative law for about 25 years, first with the Attorney General's office and then on the private side. They have contributed chapters to the new CEB California Administrative Mandamus and the new Matthew Bender publication Public Agency Practice. Their firm resume is attached as Exhibit 2.

Law Professors

We already have academic input at the meetings from our primary consultant, Professor Asimow of UCLA Law School. The staff believes he provides the Commission excellent advice--he has a wide knowledge of the subject matter and has made recommendations that are practical.

Commissioner Marshall has suggested that Professor Preble Stolz of UC Berkeley Law School might also be available to give the Commission input at meetings from another academic perspective. We have contacted Professor Stolz, who would be interested in serving as a consultant to attend Commission meetings. He has taught administrative law and has worked with a number of different administrative agencies. A copy of the entry under his name in the AALS Directory of Law Teachers is attached as Exhibit 3.

Others

The staff has also collected names of practitioners in other parts of the state, including San Francisco and Los Angeles, but we have not pursued them in the belief that the two Sacramento firms will provide us a sufficiently broad range of expertise and will be convenient as the Commission begins to weight its administrative law sessions towards Sacramento.

Professor Asimow has also given us an additional academic reference if we want more academic input. The staff thinks that, between Professors Asimow and Stolz, we will have plenty.

The only other suggestion we have at this time is the possibility of obtaining public interest input. Professor Asimow has given us the names of a few people actively involved in administrative law from a public interest perspective, such as Common Cause in San Francisco and the Center for Public Interest Law in San Diego. We have not pursued these leads, but will do so if the Commission is interested.

Staff Recommendation

The staff recommends that the Commission engage as consultants the law firm of Livingston & Mattesich for the services of Gene Livingston and James M. Mattesich, the law firm of Turner & Sullivan for the services of Richard K. Turner and Robert J. Sullivan, and Professor Preble Stolz. The consultants would, when requested by the Commission and when convenient for them to do so, attend meetings of the Law Revision Commission, meet with the Commission's staff, and attend legislative hearings on Law Revision Commission recommendations to provide expert advice concerning administrative law and procedure. The consultants would be reimbursed for travel, food, and lodging expenses necessary for attendance at the meetings and legislative hearings, on the same basis as reimbursement of travel expenses of state employees, plus \$100 per diem to cover any uncovered expenses and for the inconvenience. The total amount payable for travel expenses for each consultant would not exceed \$2,500. The contract would cover a three-year period.

The staff notes that payments on the contracts must come out of funds for the current fiscal year. While the Commission has adequate funds this fiscal year, that may not be the case next fiscal year.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

LIVINGSTON & MATTESICH

GENE LIVINGSTON
ATTORNEY AT LAW

RESUME
OF
GENE LIVINGSTON

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Employment

Present:

November 1, 1982 to present - Principal
LIVINGSTON & MATTESICH

The firm of Livingston & Mattesich emphasizes a governmental and civil litigation practice.

The governmental practice includes:

Lobbying for clients in the California Legislature.

Advocating for businesses, organizations, and individuals before regulatory agencies on proposed and existing regulations.

Representing clients who have licensing and permitting problems with administrative agencies.

Assisting clients who seek to contract with governmental agencies or to file claims against the State of California.

The civil litigation practice includes business litigation as well as:

Representing businesses, organizations, and individuals in lawsuits challenging governmental regulations and administrative decisions affecting licenses, permits, contracts, and claims.

LIVINGSTON © MATTESICH

Defending businesses and individuals sued by government agencies that are enforcing statutes, regulations, and administrative decisions.

Prior:

June 1980 to October 1982 - Director
Office of Administrative Law

The Office of Administrative Law was created by the California Legislature to review all state agency regulations with the purpose of reducing their number and improving their quality. I was appointed by the Governor and confirmed by the Senate to be the first director of the office.

My job was to organize a new state office with broad powers over the regulatory functions of 124 state departments, boards, and commissions. This included hiring staff, developing a budget and getting it approved by the Governor and the Legislature, setting office policies, publicizing the role of the office, and working closely with Legislators and staff on legislation that we proposed and monitored to further the goals of regulatory reform.

In addition, we received every new regulation adopted by the 124 regulatory agencies and began the review of the 30,000 pages of existing regulations. That work brought us into close contact with staff and the major programs of all of the state agencies.

That work paid off. We cut new regulations by 50%. Over 11,000 pages of existing regulations were evaluated with 24% targeted for elimination, and another 33% changed to conform to the law. The office has been hailed by the Legislature and the business community as a unique success.

August 1979 to June 1980 - Director
Employment Development Department

July 1975 to August 1979 - Chief Deputy Director
Employment Development Department

LIVINGSTON © MATTESICH

I held two management positions with the Employment Development Department. First, I was the Chief Deputy

Director, and then I was the Director. I was responsible for administering the Department's 16,000 employees and a budget of \$25 billion. We operated several major programs including the payment of unemployment and disability insurance benefits and the collection of the unemployment and disability insurance taxes and the state income tax. I established departmental policy and program direction, selected and supervised upper-level staff, prepared and presented the Department's budget to the Governor and the Legislature, and developed and secured the passage of legislation to address the State's employment and economic needs. Also, I was active nationally seeking to improve the federal programs we administered. I worked with federal agencies, Congress, national associations and political leaders from other states.

June 1974 to July 1975 - Associate Professor of Law
West Virginia University

I taught a first-year section of Torts and a practical skills course to third-year students. The third-year course involved lecture, demonstration, and practice by the students who conducted interviews, discovery, negotiations, and a trial in simulated cases.

December 1968 to June 1974 - Attorney
Modesto, California

I represented numerous individual clients in a wide range of legal matters. A substantial part of my practice consisted of helping people having problems with state, local and federal governmental agencies. In addition, I worked as a consulting attorney throughout the State providing assistance in the various aspects of preparing and trying major lawsuits.

LIVINGSTON ☉ MATTESICH

August 1965 to December 1968 - Trial Attorney
U.S. Department of Justice

I was selected from law school to join the Department of Justice on the Honors Program. I worked there as a trial attorney and was involved in over 50 cases. Beginning with my second year, I was chosen to supervise the legal unit where I worked.

Bar Membership

I'm admitted to practice law in all courts of California, the District of Columbia, and before the U.S. Supreme Court. In addition, I have been active in the State Bar Association where I chair the Administrative Law Committee and in the Sacramento County Association where I'm officer and charter member of the Administrative Law Section.

Education

I have a B.A. and a Juris Doctor degree. I was selected for Order of the Coif in law school and was chosen Phi Beta Kappa as an undergraduate.

RESUME

OF

JAMES M. MATTESICH

JAMES M. MATTESICH
ATTORNEY AT LAW

LIVINGSTON & MATTESICH
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Employment

Present:

November 1, 1982 to present - Founding Partner
LIVINGSTON & MATTESICH

The firm of Livingston & Mattesich emphasizes a governmental and civil litigation practice.

The governmental practice includes:

Representing clients who have government contracting, licensing and permitting problems with administrative agencies.

Advocating for businesses, organizations, and individuals before regulatory agencies on proposed and existing regulations.

Lobbying for clients in the California Legislature.

Assisting clients who seek to contract with governmental agencies or to file claims against the State of California.

The civil litigation practice includes business litigation as well as:

Representing businesses, organizations, and individuals in lawsuits challenging State and Federal governmental regulations, and administrative decisions which adversely affect client businesses, licenses, permits, contracts, and claims.

Defending businesses and individuals sued by government agencies that are enforcing statutes, regulations, and administrative decisions.

Previous State Government Positions:

On July 1, 1980, I was appointed by Governor Brown and confirmed by the Senate as Deputy Director and General Counsel of the newly-created State Office of Administrative Law. As OAL's first Deputy Director/General Counsel, I hired and supervised a staff of 16 attorneys who evaluated the legality of the 13,000 pages of regulations which are proposed annually by the 124 state departments, agencies, boards and commissions.

I also provided legal advice and counsel to the Director on all policy and legal issues involving the Office of Administrative Law. I successfully represented the Office before the courts in the first lawsuits filed against it to test the constitutionality of the statutes which created the office. I also represented OAL before the Legislature and in meetings with the directors of other state agencies, as well as with private industry executives and legal counsel, the news media and others concerned with regulatory issues in California.

From September, 1976 to July, 1980 I was Deputy Director and Legal Counsel to the Director of the California Employment Development Department (EDD). As Deputy Director, in addition to administrative responsibilities involving the day-to-day operation of California's Unemployment Insurance, Disability Insurance and Employment Service programs, I provided legal advice and counsel to the Director on all Department litigation, legislation, and policy matters. I was responsible for drafting pleadings in major litigation, drafting state and federal legislative proposals and Department regulations. I also represented the Director and the Department before the United States Congress and the California Legislature, as well as at administrative hearings, and in negotiations with the United States Department of Labor.

Bar Membership:

I have been admitted to practice law in all of the courts of California since 1972. During the past eighteen years I have litigated at all levels of the state and federal court systems, including the United States Supreme Court. I am a member of the California State Bar Association and Sacramento County Bar Association. I am also a member of the American Bar Association and serve as vice chairman of the Administrative Law Section's Committee on Government Organization and Separation of Powers.

Legal Education:

I attended Hastings College of the Law, San Francisco, California, from September, 1969 through May, 1972.

Pre-Law Education:

San Jose State College, San Jose, California
January, 1969 to June, 1969
Master of Business Administration Candidate

San Jose State College, San Jose, California
September, 1966 to January, 1969
B.S. Degree, January, 1969 - Business Administration

Honors:

Trial practice law professor for the United States Legal Services Corporation -
1978

National Institute of Trial Advocacy Scholarship - 1976

Candidate for San Jose State Outstanding Business Administration Graduate
Award - 1969

resume:jmm

LIVINGSTON & MATTESICH

LAW CORPORATION

The law firm of Livingston & Mattesich is an active civil litigation firm which also serves those clients who need help dealing with California state government. The firm's services include:

- Representing insurance carriers and their insureds in all areas of general defense litigation. This includes insurance fraud detection and defense, automobile losses, premises liability, products liability, property damage, uninsured motorist, and virtually every type of tort claim. The firm's litigation attorneys are successful and well respected trial lawyers who have extensive jury and arbitration practice experience.
- Representing private clients before the state and federal courts in a variety of cases. The firm pursues lawsuits for its clients relating to regulatory, administrative, or legislative matters. It also represents clients in business litigation, suits that involve contract disputes, organizational conflicts, and other business problems.
- Representing clients in the California Legislature. The firm has four registered lobbyists who represent associations as well as national and international businesses. The firm's lobbyists know the legislative process and what is required to successfully pursue legislative goals.
- Representing clients in rule-making proceedings before the many state administrative agencies. Two of the firm's principals established the Office of Administrative Law and drafted much and interpreted all of the provisions of the California Administrative Procedure Act, the law that governs state agencies when they propose to adopt regulations. The firm's knowledge of the Administrative Procedure Act routinely benefits its clients.

- Representing clients in adjudicatory proceedings before state administrative agencies. The firm uses its knowledge of government, litigation experience, and hard work to advocate for clients in hearings that involve the issuance or revocation of licenses or permits or other rights threatened by administrative action.

Principals of the firm are Gene Livingston, James Mattesich, and Melissa M. Meith.

Gene Livingston was first admitted to practice law in 1965, worked as a trial attorney (1965-74), taught law (1974-75), and served as the top administrator with two state agencies (1975-82). He administered the Employment Development Department, an agency with 15,000 employees and a multi-billion dollar budget. He was the first Director of the California Office of Administrative Law, where he was responsible for judging regulations adopted by 124 state agencies, and for reviewing 30,000 pages of existing regulations.

James M. Mattesich was first admitted to practice law in 1972, worked as a trial attorney (1972-76), served as counsel to the Director, Employment Development Department (1976-80), and as General Counsel and Deputy Director, California Office of Administrative Law (1980-82).

Melissa M. Meith joined Livingston & Mattesich in October 1984 and became a partner in October 1987. Meith was first admitted to practice law in 1980, working as an attorney with the California Department of Consumer Affairs (1980-1981). She represented the California Department of Health Services in administrative hearings (1981-1984), and drafted Medi-Cal legislative reforms and regulations (1983-1984).

Jonathan H. Colman has been a member of the California bar since 1980. Formerly a partner with the Los Angeles law firm of Gilbert, Kelly, Crowley and Jennett, he maintained a trial and litigation practice handling literally thousands of cases for a wide variety of insurance carriers and private clients. He joined Livingston & Mattesich in 1990 as litigation counsel.

Parke D. Terry has been a Legislative Advocate with Livingston and Mattesich since February 1986. Terry worked as a research assistant with the Assembly Office of Research (1969-1970). He served as senior consultant with the Assembly Committee on Government Organization (1970-1976). He was principal consultant with the Assembly Committee on Government Organization (1977-1985).

Rebecca M. Cenicerros joined the firm as an associate in 1988. She graduated from the University of California School of Law, Berkeley, in 1982. Prior to joining Livingston & Mattesich, she spent two years clerking for the Chief Judge of the United States District Court in Sacramento, and three years as a trial attorney, emphasizing wrongful termination litigation.

G. Diane Colborn also joined the firm as an associate in September 1988. She graduated from the University of California, School of Law, Davis, California in 1988. Prior to entering law school she worked as an environmental and planning consultant, taught, worked as a legislative intern, and served as an Assembly Fellow with the California State Legislature in 1984-85.

The firm and its principals, Gene Livingston, James Mattesich, and Melissa Meith have been rated a v, the highest rating, by Martindale-Hubbell.

TURNER & SULLIVAN

This law firm was established July 1, 1973, by Richard K. Turner and Robert J. Sullivan. Since the firm's inception, it has emphasized practice in the fields of government, administrative, and legislative law. It has represented clients before both federal and state courts and before federal, state, and local agencies having licensing, taxing, and regulatory functions. The firm is also retained by clients to act as an advocate before the California Legislature.

In addition to the governmental law practice, the firm maintains a general practice, handling civil litigation, real estate, personnel, business, agriculture, health care, and estate planning matters. The firm currently employs eight attorneys.

The firm's principals believe that a comprehensive approach to problems with government best addresses its clients' needs. This can include administrative regulatory action, contested administrative hearings, litigation, legislation, or simply knowing where to go and with whom to speak. The firm's lawyers maintain liaisons with state agencies from the Governor's office to the Department of Health Services, the Attorney General's office to the Department of Consumer Affairs. They also work with key officials in city and county governments.

REGULATORY ACTION

For business and trade association clients, Turner & Sullivan works with governmental agencies on proposed regulations. Its lawyers draft proposed regulations, review those of others, and appear at regulatory hearings. Such regulatory advocacy permits the clients' views to be considered while the policy is formulated, not afterward when it is too late.

LEGISLATION

As registered legislative advocates, lawyers at Turner & Sullivan have represented several professional associations and corporate clients in the California Legislature. What may be impossible to achieve in negotiations or in court may be possible in the halls of the Legislature. The firm is particularly experienced in engineering, real estate development, and waste disposal issues. Its lobbyists have played central roles over the years in reform of the Subdivision Map Act and, in cooperation with California's cities and counties, providing municipal antitrust protection for the refuse industry.

ADMINISTRATIVE HEARINGS

These hearings are usually actions by licensing agencies to discipline licensed professionals: accountants, physicians, psychologists, dentists, contractors, engineers, and a host of others. Charges of misconduct can be devastating, whether or not they are proved. The suspension

or revocation of one's license to practice is often professional death. Administrative hearings are like no other litigation; they demand a unique approach with which Turner & Sullivan has had considerable experience.

HEALTH CARE

As the field of health care law has expanded into a specialty, a major focus of Turner & Sullivan has been hospital privileges cases, as well as matters involving Medicare, Medi-Cal, Physicians Services Review Organizations, Knox-Keene Act prepaid insurance matters, and a host of new medical-legal problems.

COMMUNITY CARE

The firm's work emphasizes rate setting, licensing and general business matters for facilities licensed by the Department of Social Services, the Department of Health Services, and the Department of Developmental Services.

ENGINEERING AND ENERGY LAW

Complex government regulation has spawned a large sub-area of government law which requires technical experts. One of the principals directs Turner & Sullivan's work with clients in resource management and recovery, water and drainage law, hazardous waste, real estate development, and the Subdivision Map Act.

PUBLIC AGENCY PRACTICE

Because of its government law emphasis, Turner & Sullivan has represented several public agencies. Its public clients range from the California Highway Patrol at the state level, to public utility districts at the local level. Its services include public employee disability and pension laws and public sector labor-management relations, municipal antitrust law, and drainage and environmental law.

THE FIRM'S GENERAL PRACTICE

The firm's representation of businesses in government law matters led to the expansion of its services to the areas of business law, real estate and estate planning. Under the direction of the firm's business principal, a former businessman himself, the goal is on prevention of problems and resolution at the earliest stage possible.

CURRICULUM VITAE

Richard K. Turner

Richard K. Turner is a graduate of Stanford University and the University of California Law School (Boalt Hall). Admitted to practice in California in 1964, he served for six years as a Deputy Attorney General of the State of California and for four years was Assistant Legal Affairs Secretary to then-Governor Reagan.

Mr. Turner specializes in health care administrative law and in assisting business and trade association clients with a variety of government-related matters.

Robert J. Sullivan

Robert J. Sullivan, a Stanford graduate with a law degree from the University of California, Los Angeles, was admitted to practice in 1967. While serving as a Deputy Attorney General for the State of California, he represented a wide variety of state agencies including the California Highway Patrol and the Department of Consumer Affairs.

Mr. Sullivan left state service in 1971 to become counsel to the California State Employees Association, where he represented the organization in several important cases before the California appellate courts.

Mr. Sullivan specializes in representing physicians before the Board of Medical Quality Assurance and in counseling health care professional associations.

James P. Corn

James P. Corn holds an engineering degree from Stanford University and is a graduate of Hastings College of the Law. He has practiced law since 1970, first as a Sacramento County Deputy Public Defender, and later as legislative advocate for the State Judicial Council.

Mr. Corn joined Turner & Sullivan in 1977. His practice emphasizes legislative advocacy and government law.

David L. Kelly

David L. Kelly was admitted to practice in 1965 after graduating from Stanford University and Stanford Law School. In 1967, after serving as a Deputy in the State Attorney General's office, he established a private practice in Napa, concentrating in business and real estate law. He became general counsel to a development group in 1977, focusing on energy and real estate law. He later served as executive vice president and general counsel for an investment management firm.

Mr. Kelly joined Turner & Sullivan in 1981. His practice emphasizes business and real estate law, and estate planning matters.

Peggy A. Christiansen

Peggy A. Christiansen is an honors graduate of California State University, Sacramento, and holds a law degree from the University of California, Davis. She was admitted to practice in 1981, after serving internships with the offices of the Sacramento County Counsel and District Attorney.

Ms. Christiansen joined the firm in 1982. She emphasizes administrative law matters with concentration in the field of community care, and also handles a variety of personnel matters for both employers and employees.

J. Anne Rawlins

J. Anne Rawlins is a native of London, England. She is a graduate of University of California, Berkeley and John F. Kennedy University.

Prior to her admittance to the bar in 1980, Ms. Rawlins was actively involved in the construction industry. Ms. Rawlins joined Turner & Sullivan in 1987 and her practice emphasizes administrative law and civil litigation.

Grant Herndon

Grant Herndon was admitted to practice in 1986, after graduating from the Georgetown University Law Center in Washington, D.C. He received undergraduate degrees in economics and business administration from California State College, Bakersfield, where he graduated Magna Cum Laude.

Mr. Herndon joined Turner & Sullivan in 1988. He practices business and administrative law.

Lori Ann Joseph

Lori Ann Joseph comes to Sacramento by way of Long Island and western New York. She is a 1982 graduate of Michigan State University, the Honors College. In 1988, she received her law degree from the University of California, Davis School of Law, Martin Luther King Hall, and was admitted to practice in California in 1988.

Before entering the legal profession, Ms. Joseph was involved in theatre administration and education in Buffalo, New York. She joined Turner & Sullivan in 1989.

STOLZ, PREBLE,* (M) Prof. Cal., Berkeley. b. 1931. J.D., 1956, Univ. of Chicago. Ed.-in-Ch., U. Chi. L. Rev. *Admitted:* CA, 1957. Law Clerk, Hon. Walter L. Pope. Ct. of App., 9th Cir., 1956-57; Law Clerk, Hon. Harold H. Burton, 1957-58; Dep. Att'y Gen., CA, 1958-61; Prof., Cal., Berkeley, since 1961; Sch. in Residence, AFB, Chgo., spring 1967; Vis. Prof., Yale, 1970-71; Ass't to Gov'r (CA) for Progs. and Policies, St. of CA, 1975-76. *Subjects:* Administrative Law; Admiralty; Criminal Law; *Evidence; Local Government; Practice and Procedure.* Judging Judges: The Investigation of Rose Bird and The California Supreme Court, 1982. *Member:* Coif. Consult., U.S. Civil Rts. Comm., 1962-63; Consult., U.S. Maritime Admin., 1965; Rptr., U.S. Admiralty Rules Com., 1968-72. On lv., spring 1989.