

First Supplement to Memorandum 93-31

**Subject: N-202— Judicial Review of Agency Action – Scope of Review
(Comments of Department of Justice)**

Attached to this supplementary memorandum is a letter from John Huntington and Ron Russo of the Attorney General's office. Their personal opinions, based on long experience in the field of administrative law, are that judicial review of agency factfinding should be under a substantial evidence standard. They suggest that the great advantage of the administrative process over the judicial process is that the administrative process brings uniformity and consistency of decision. The present system of independent judgment review "allows a Superior Court Judge to be arbitrary in determining the credibility of witnesses and the weighing of evidence."

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

DANIEL E. LUNGREN
Attorney General

State of California
DEPARTMENT OF JUSTICE



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May 6, 1993

Law Revision Commission
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MAY 11 1993

Nathaniel Sterling, Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

File: _____
Key: _____

Re: SCOPE OF JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

Dear Mr. Sterling:

We have reviewed Professor Asimov's study on scope of Judicial Review and wish to bring our personal opinions to the attention of the Commission. Ron Russo has over 20 years experience in the field of Administrative Law and John Huntington over 30 years. We wish to support the recommendation of Professor Asimov that review be under the standard of substantial evidence. There is no logical reason to have a different review for constitutionally created agencies with substantial evidence review versus those created by the legislature which have review by weight of the evidence.

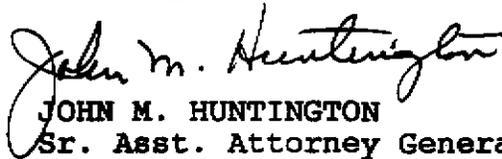
California has a unique rule allowing a Superior Court Judge to determine credibility of witnesses and other evidence based on a transcript and to ignore and overturn the expertise offered by the agency and the viewing of the witnesses by the Administrative Law Judge. The present system allows a Superior Court Judge to be arbitrary in determining the credibility of witnesses and the weighing of evidence. The great advantage of the administrative process over the judicial is to bring uniformity and consistency of decision to administrative adjudications.

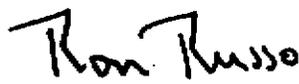
Nathaniel Sterling, Executive Secretary
May 6, 1993
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We are also in agreement with the comments of Supervising Deputy Attorney General Joel Primes in his letter of April 20, 1993.

Very truly yours,

DANIEL E. LUNGREN
Attorney General


JOHN M. HUNTINGTON
Sr. Asst. Attorney General


RON RUSSO
Supervising Deputy Attorney General

RR:cvt