#N-101 ns77
01/05/90

Third Supplement to Memorandum 90-6

Subject: Study N-101 - Administrative Adjudication (Structural Issues--comments on consultant's study)

Attached to this supplementary memorandum are copies of additional letters we have received from Paul Wyler of Los Angeles (Exhibit 28) and Robert L. Patterson of the Board of Prison Terms (Exhibit 29) commenting on our consultant's study of structural issues in administrative adjudication. Any further letters received in advance of the January meeting will be distributed at the meeting.

The letters address the following points:

General Remarks. Mr. Wyler requests additional time for himself and other persons to submit comments. He doesn't believe the matter should be hurried at this time "because there is a vast storehouse of information regarding the matter, some of which has not been covered by Professor Asimow ... A number of other studies have been conducted and the Law Revision Commission should consider these studies and any other evidence available before it arrives at a conclusion regarding the recommendations of Professor Asimow contained in this study." He offers to assist the Commission in obtaining this evidence and information, but says that some reasonable time should be allotted to do so.

Mr. Patterson describes the types of hearings his agency holds, and the types of hearing officers required by statute. He notes that there are constitutional constraints that apply to hearings by his agency. He observes that because of the volume of hearings and the time and cost limitations, the extent of procedural due process required is critical for his agency. Presumably the agency would be concerned about any statutory requirements that would add time or expense to the administrative hearing process if not constitutionally required.

Administrative Procedure Act Applicable to All Formal Hearings. Mr. Wyler agrees in basic principle with the recommendation of Professor Asimow that there be a single modern administrative procedure act applicable to all statutorily required hearings.

Separation of Adjudicative from Other Administrative Functions. Mr. Wyler disagrees with Professor Asimow's conclusion that there should be no presumption in favor of separating the adjudicatory from other agency functions. Mr. Wyler believes adjudication must be separated from prosecution and investigation, or the public will believe the adjudicator is merely a tool of the prosecutor. His suggestion is that the administrative law judge make a decision that is a final, not a recommended decision. An aggrieved party would then have the option of appealing either to a court or to a higher policy-making body of the agency established for the purpose of receiving appeals from administrative law judge decisions. He does not believe there is a danger that administrative law judges might subvert agency policy, since the judge, as a trained lawyer or jurist, follows precedent. "Precedents have been set by the agency and the administrative law judge will necessarily abide by those precedents."

Independence of Administrative Law Judges. Mr. Wyler disagrees with Professor Asimow's conclusion that hearing officers who are agency employees should remain agency employees and should not be made part of a central panel of administrative law judges. Mr. Wyler suggests that the public should be polled concerning the necessity for independence of administrative law judges; further evidence can be supplied regarding the appearance of, or lack of appearance of, independence. Mr. Wyler also points out that 9 or 10 states have adopted a central panel, and testimony should be obtained from these states as to their experience. He believes there may be budgetary savings in these states without loss of expertise by central panel administrative law judges. He points out that this is also being investigated on the federal level, and useful information can be obtained from the federal debate.

Definition of Adjudication. Mr. Wyler agrees in basic principle with the recommendation of Professor Asimow that a statutorily prescribed procedure, perhaps very informal, should apply to every

agency action, no matter how small, if the action is of particular applicability and determines the legal rights or other legal interests of a specific person.

Prescribing an Appropriate Level of Formality. Mr. Wyler agrees in basic principle with the recommendation of Professor Asimow that the California administrative procedure act should provide for an array of procedural models having varying degrees of formality.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

PLEASE REPLY TO:
PAUL WYLER
1300 W. Olympic Blvd., 5th Fl.
Los Angeles, CA 90015
(213) 744-2250

December 23, 1989

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

RE: COMMENTS ON ADMINISTRATIVE ADJUDICATION
REPORT OF PROFESSOR ASIMOW, STRUCTURAL ISSUES

Dear Persons:

This commentary is being made by myself, as an individual. It in no way reflects the views of either the Los Angeles County Bar Association or its Committee on Administrative Law or the Public Law Section of the California State Bar, or any other agency.

Because of the shortness of time and other constraints, I have been unable to prepare at this time an exhaustive and reasoned commentary with respect to Professor Asimow's study. For this reason I request that additional time be allotted to myself and other persons to submit comments on this very important subject that has been presented by Professor Asimow. I request that the Law Revision Commission allot time for persons interested in this subject to present written and oral testimony and comments regarding the subjects addressed by his study. This will involve some time and I don't believe the matter should be hurried at this time because there is a vast storehouse of information regarding the matter, some of which has not been covered by Professor Asimow.

I agree in basic principle with the recommendations of Professor Asimow, contained in his Points 1, 4 and 5. I disagree with all or most of the recommendations contained by Professor Asimow in Points 2 and 3.

With respect to Point 2, I believe as a matter of policy or principle the adjudicative function in administrative agencies should be separated, either organizationally, structurally, or by law from the prosecutorial or investigative function. The reason for this is obvious. The public believes that the adjudicator is merely a captive of the prosecutor and is working hand in glove with him. The adjudicative function must be seen as independent. Testimony can be adduced from litigators and administrative law judges in the agencies involved as to the harmful effects or potential effects of combining the prosecutorial and adjudicative functions. One of the ways of curing, but not the only way, this problem is by permitting administrative law judges, wherever possible, to make a final decision and

not a recommended decision. The party or agency who disagrees with the administrative law judge's decision can then either appeal it to a court or to a higher policy-making body of the agency, if desired. The danger that administrative law judges will subvert agency policy is not great if the administrative law judge, as a trained lawyer or jurist, follows precedent. Precedents have been set by the agency and the administrative law judge will necessarily abide by those precedents. If he does not, as it may on occasion occur, the remedy for this is appeal to a court or to a higher body of the agency which can be established for the purpose of receiving appeals from administrative law judges' decisions.

With respect to Point 3, Professor Asimow has addressed himself to the administrative law judges themselves but has not heard from the litigating public as to what they believe is appropriate with respect to the independence of the administrative law judge. Do they believe that the administrative law judge is a captive of his agency and as such is unable to arrive at independent decisions? I believe further evidence can be supplied regarding the appearance of, or lack of appearance of independence in this respect.

Furthermore, in nine or ten states there have been adopted a central panel system involving a number of agencies. Testimony, orally and in writing, should be obtained by this Commission from these states as to the experience of those states with respect to the central panel corps or corps of judges. In some states substantial tax savings have been obtained by the adoption of the central panel system. This may be an important consideration in California. Evidence from those states can be obtained as to what budgetary savings can be adopted. In most states the "expertise" of administrative law judges have been retained in a fashion so that their expertise is not lost. The mechanics of this can, and should be determined by this Commission as to how the states retain the expertise aspect of administrative law judges' talents. A bill has been introduced in Congress, S-594 and HR-1179, providing for a federal administrative law judge corps or central panel system in the federal administrative judiciary. This bill retains the concept of expertise and oral and written testimony should be obtained from proponents and opponents of the federal concept.

Professor Asimow's study should be just a beginning of the Law Revision Commission's study. A number of other studies have been conducted and the Law Revision Commission should consider these studies and any other evidence available before it arrives at a conclusion regarding the recommendations of Professor Asimow contained in this study.

I am willing to assist the Commission in obtaining this evidence and information but some reasonable time should be allotted to do so.

Sincerely,

PAUL WYLER,
Administrative Law Judge

PW:kc

II

101ST CONGRESS
1ST SESSION

S. 594

To establish a specialized corps of judges necessary for certain federal proceedings required to be conducted, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 15 (legislative day, JANUARY 3), 1989

Mr. HEFLIN (for himself, Mr. SHELBY, Mr. SPECTER, Mr. DECONCINI, Mr. SARBANES, Mr. SANFORD, Mr. PRYOR, Mr. HEINZ, and Mr. METZENBAUM) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To establish a specialized corps of judges necessary for certain federal proceedings required to be conducted, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Administrative Law Judge Corps Act".

ESTABLISHMENT OF ADMINISTRATIVE LAW JUDGE CORPS

SEC. 2. (a) Chapter 5 of title 5, United States Code, is amended by adding at the end thereof a new subchapter IV to read as follows:

do you want a copy of this bill?

101ST CONGRESS
1ST SESSION

H. R. 1179

To establish a corps of administrative law judges to preside at certain Federal proceedings, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 1989

Mr. MURPHY (for himself, Mr. KANJORSKI, Mr. GONZALEZ, Mr. CLAY, Mr. MURTHA, Mr. YATRON, Mr. KLECZKA, Mr. MANTON, Mr. TOWNS, Mr. TRAFICANT, Mr. RITTER, Mr. BEVILL, Mr. FLIPPO, Mr. BOEHLERT, Mr. MARTINEZ, Mr. HARRIS, Mr. HENRY, Mr. RAHALL, Mr. STALLINGS, Mr. BUSTAMANTE, Mr. BRYANT, Mr. STENHOLM, Mr. MCCURDY, Mr. GARCIA, Mr. OWENS of New York, Mr. BONIOR, Mr. CLINGER, Mr. FAUNTROY, Mr. WALGREN, Mr. FUSTER, Mr. WATKINS, and Mr. GALLO) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To establish a corps of administrative law judges to preside at certain Federal proceedings, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Administrative Law Judge Corps Act".

The Central Panel System for Administrative Law Judges:

A Survey of Seven States

Malcolm C. Rich
Wayne E. Brucar

American Judicature Society
Chicago
University Publications of America, Inc.
Frederick, Maryland

Critical Legal Issues:
WORKING PAPER SERIES

A PROPOSAL FOR THE ESTABLISHMENT OF AN ADMINISTRATIVE COURT SYSTEM

by

Rodolphe J.A. de Seife

WASHINGTON LEGAL FOUNDATION

COMMITTEE ON ADMINISTRATIVE LAW

CORNELIUS D. MURRAY
Chair
100 State Street
Albany, NY 12207

New York State Bar Association

MEMO

TO: Administrative Law Committee

FROM: Cornelius D. Murray, Esq.

RE: Executive Order - Administrative Hearings

DATE: December 12, 1989

Enclosed is a copy of a press release dated December 7, 1989 which we received today from the NYS Executive Chamber, Mario M. Guomo, Governor.

STATE OF NEW YORK
EXECUTIVE CHAMBER
MARIO M. CUOMO, GOVERNOR

Press Office
518-474-8418
212-587-2126

FOR RELEASE:
IMMEDIATE, THURSDAY
December 7, 1989

Governor Mario M. Cuomo today announced that he has issued an Executive Order reforming the State's administrative hearing system to ensure that it operates in an impartial, efficient and timely manner.

"Administrative hearings of State agencies, like judicial proceedings, must be fair in fact and must appear to be fair to the litigants and to the public," said Governor Cuomo, who promised reform of the administrative hearing system in his 1989 State of the State Message. "This Order will ensure fairness and promote public confidence in the hearing system without sacrificing efficiency and flexibility."

Under the Order, State agencies are required to adhere to strict standards of conduct, including a limitation on hearing officers' contacts that do not include all the parties to a dispute. The Governor's Order prohibits hearings officers from having such "ex parte" contacts with anyone, including all agency employees, except on ministerial matters and questions of law.

This prohibition addresses the perception that hearing officers are informally lobbied by the agency personnel responsible for prosecuting a case. It is stronger than the restriction contained in State Administrative Procedure Law, which permits intra-agency discussions.

In addition, the Order prohibits officials, in establishing hearing officers' salaries, promotions or working conditions, from considering whether the officers' rulings favored an agency. Officials are also prohibited from establishing quotas for hearing officers relating to whether their rulings favor an agency, or ordering hearing officers to make findings of fact, reach conclusions of law, or make or recommend any specific disposition of a charge, except by remand, reversal, or other decision on the record of the proceeding.

The Executive Order also requires agencies to implement Administrative Adjudication Plans. The plans must separate hearing officers from those agency employees with a stake in the outcome of a dispute. This may be accomplished in several ways, including placing hearing officers in their own administrative unit reporting directly to the commissioner, using hearing officers paid on a per diem basis, or borrowing hearing officers from other agencies.

The plans must also include:

- procedural regulations requiring clear and detailed notices of hearings and statements of charges, permission for answers and responsive pleadings, provisions for discovery to the extent permitted by the agency and a procedure for any party to request refusal of a hearing officer;

- a description of continuing education and training programs for hearing officers;

- a description of efforts to consult and share resources with other agencies; and

- for agencies that adjudicate 50 or more proceedings per year, a management system to ensure timely disposition of adjudicatory proceedings.

Agencies must make their plans available to the public for comment by January 30, 1990 and must conduct at least one public hearing by March 30, 1990. The agencies must then review the comments and testimony and issue a final administrative adjudication plan no later than April 30, 1990. The plans must be implemented not later than July 1, 1990.

Under the Governor's Order, the Office of Business Permits and Regulatory Assistance will work with agencies to implement its provisions. In addition, agencies must report by the end of the year on steps taken to implement the Order.

"This Order, combined with the Equal Access to Justice Act that I recently signed, appropriately addresses the concern that people involved in administrative hearings receive the due process of law to which they are entitled," the Governor said.

The Equal Access to Justice Act authorizes courts to award attorneys' fees to certain plaintiffs or petitioners who prevail in litigation reviewing State agency action or inaction. Under the act, reasonable attorneys' fees may be awarded only when the State's position in the case is not substantially justified.

#

State of New York

Executive Chamber

No. 131

EXECUTIVE ORDER

WHEREAS, administrative adjudication was developed to provide expert, efficient, timely and fair resolution of claims, rights and disputes before state agencies;

WHEREAS, administrative adjudication often addresses complex scientific, technical, financial, medical, legal and related issues under the jurisdiction of state agencies with specialized knowledge;

WHEREAS, administrative adjudication should be a more flexible alternative to, rather than a duplication of, the civil and criminal court system;

WHEREAS, administrative adjudication must meet due process standards and should resolve disputes in a manner that is fair and appears fair to the public;

WHEREAS, the fairness of administrative adjudication and the appearance of fairness are particularly important when a state agency is a party to the administrative proceeding; and

WHEREAS, to assure expert, efficient, timely and fair adjudications, hearing officers who preside at administrative hearings should be knowledgeable, competent, impartial, objective and free from inappropriate influence;

NOW, THEREFORE, I, MARIO M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, do hereby order as follows:

I. Definitions

A. The term "agency" shall mean any department, board, bureau, commission, division, office, council, committee or officer of the state authorized by law to make final decisions in adjudicatory proceedings but shall not include the governor, agencies created by interstate compact or international agreement, the Division of Military and Naval Affairs to the extent it exercises its responsibility for military and naval affairs, the Division of State Police, the identification and intelligence unit of the Division of Criminal Justice Services, the Division for Youth, the State Insurance Fund, the Workers' Compensation Board, the State Division of Parole, the Department of Correctional Services, the State Ethics Commission, the State Education Department and the Division of Tax Appeals.

B. The term "hearing officer" shall mean a person designated and empowered by an agency to conduct adjudicatory proceedings as defined in this Order, including but not limited to hearing officers, hearing examiners and administrative law judges; provided, however, that such term shall not apply to the head of an agency or to members of a state board or commission.

C. The term "adjudicatory proceedings" shall mean any activity before an agency in which a determination of legal rights, duties or privileges of named parties thereto is required by law to be made only on a record and after an opportunity for a formal adversarial hearing; provided, however, that such term shall not apply to (1) a rule making proceeding, (2) an employee disciplinary action or other personnel action pursuant to article five of the civil service law or (3) representation proceedings conducted by the State Labor Relations Board and the Public Employment Relations Board.

II. General Principles

A. Every agency that conducts adjudicatory proceedings shall insure that such proceedings are impartial, efficient, timely, expert and fair.

B. 1. Unless otherwise authorized by law and except as provided in paragraph two of this subdivision, a hearing officer shall not communicate, directly or indirectly, in connection with any issue that relates in any way to the merits of an adjudicatory proceeding pending before the hearing officer with any person except upon notice and opportunity for all parties to participate.

2. A hearing officer may consult on questions of law with supervisors, agency attorneys or other hearing officers, provided that such supervisors, hearing officers or attorneys have not been engaged in investigative or prosecuting functions in connection with the adjudicatory proceeding under consideration or a factually related adjudicatory proceeding. Hearing officers may also consult with supervisors, other hearing officers, support staff or court reporters on ministerial matters such as scheduling or the location of a hearing. The head of each agency shall strictly enforce the prohibition set forth in this paragraph B.

3. Subdivision one of this paragraph shall not apply (a) in determining applications for initial licenses for public utilities or carriers or (b) to proceedings involving the validity or application of rates, facilities, or practices to public utilities or carriers.

C. No agency shall consider whether a hearing officer's rulings, decisions or other actions favor or disfavor the agency or the State in establishing the hearing officer's salary, promotion, benefits, working conditions, case assignments or opportunities for employment or promotion. The work of hearing officers shall only be evaluated on the following general areas of performance: competence, objectivity, fairness, productivity, diligence and temperament.

D. No agency shall establish quotas or similar expectations for any hearing officer that relate in any way to whether the hearing officer's rulings, decisions or other actions favor or disfavor the agency or the State.

E. In any pending adjudicatory proceeding, the agency may not order or otherwise direct a hearing officer to make any finding of fact, to reach any conclusion of law, or to make or recommend any specific disposition of a charge, allegation, question or issue, except by remand, reversal, or other decision on the record of the proceeding; provided, however, that such provision shall not preclude a supervisor from giving legal advice or guidance to a hearing officer where the supervisor determines that such advice or guidance is appropriate to assure the quality standards of the agency or to assure consistent or legally sound decisions.

F. If the head of an agency, or a designee, issues a decision that includes findings of fact or conclusions of law that conflict with the findings, conclusions or recommended decision of the hearing officer, the head of the agency, or the designee, shall set forth in writing the reasons why the head of the agency reached a conflicting decision.

III. Administrative Adjudication Plans

A. Every agency responsible for administrative adjudication shall develop an administrative adjudication plan. No later than February 1, 1990, each agency shall make its proposed plan available to the public for comment and shall publish a notice of the availability of such plan in the State Register at the first available date. No later than March 30, 1990, each agency shall conduct at least one public hearing to solicit comments on the plan. Each agency shall give full consideration to the comments received from the public and shall issue a final administrative adjudication plan no later than April 30, 1990. Notice of the availability of such final plan shall be published in the State Register and shall address the comments received from the public. All such plans shall be fully implemented no later than July 1, 1990 except to the extent

appropriations necessary to implement the plan are not available. An agency may amend such plan as necessary following notice of a proposed amendment and an opportunity for public comment.

B. The administrative adjudication plan shall, at a minimum, include the following:

1. An attestation by the head of the agency that the plan adheres to the principles of administrative adjudication set forth in section two of this Order.

2. a. An organization of administrative adjudication that ensures that hearing officers do not report with regard to functions that relate to the merits of adjudicatory proceedings to any agency official other than the head of the agency, a supervisor of hearing officers or the general counsel. Wherever practical, hearing officers shall be assigned to an administrative unit made up exclusively of hearing officers, supervisors and support staff. The unit may be part of the agency counsel's office but may not be part of any agency bureau, office or division with programmatic functions unless such functions are not the subject of adjudicatory proceedings within the agency nor may it include attorneys responsible for prosecutions or other adversarial presentation of agency position. Unless otherwise proscribed by law, hearing officers may be assigned duties in addition to serving as a hearing officer provided that (1) such duties do not conflict with the hearing officer's responsibilities as a hearing officer and (2) such duties do not involve functions related to prosecutions or adversarial presentations of agency positions. Hearing officers may be assigned to conduct investigatory hearings provided that the standards of independence and objectivity specified in this Order are adhered to.

b. An agency may establish an organization of administrative adjudication for less complex cases that does not satisfy the requirements of paragraph a of this subdivision provided that any such organization and its justification is set forth in the agency's administrative adjudication plan.

c. In order to comply with the requirement that a hearing officer not report with regard to functions that relate to the merits of adjudicatory proceedings to any agency official other than the head of the agency, a supervisor of hearing officers or the general counsel as set forth in paragraph a of this subdivision, an agency may request the services of a hearing officer from a different agency. No later than January 15, 1990, the Division of the Budget, in consultation with the Office of Business Permits and Regulatory Assistance ("OBPRA"), shall develop a plan under which agencies may share the services of hearing officers where necessary. The Office of Business Permits and Regulatory Assistance shall develop and maintain a register of hearing officers that may be available to conduct adjudicatory proceedings in agencies other than the agency that employs them.

3. Provisions for the hiring of hearing officers that allow, to the extent practical and consistent with the Civil Service Law, opportunities for non-agency personnel to compete for open hearing officer positions.

4. Location of hearing officers that separates, to the extent practical, hearing officers, supervisors and support staff from other agency staff.

5. Duly promulgated procedural regulations governing adjudicatory hearings that include, without limitation, requirements for clear and detailed notices of hearing and statements of charges; permission for answers and responsive pleadings, where appropriate; provisions for discovery to the extent permitted by the agency; and a procedure for any party to request recusal of a hearing officer.

6. A description of continuing education and training programs for hearing officers. Training programs shall include an explanation of the need for objectivity and fairness and the avoidance of a pro-agency bias. The Governor's Office of Employee Relations shall develop training programs to assist agencies in providing continuing education and training to hearing officers.

7. A description of efforts to consult and share resources with other agencies.

8. The use of outside hearing officers, to be paid on a per diem or contract basis, where such outside officers are necessary to implement the provisions of this Order.

9. For agencies that adjudicate 50 or more adjudicatory proceedings per year, a management system intended to effect timely disposition of adjudicatory proceedings.

10. A description of the agency's existing system of administrative adjudication and a discussion of the changes in such system that the proposed plan would effect.

11. The summary of the agency's rules governing procedures on adjudicatory proceedings and appeals required pursuant to subdivision three of section 301 of the State Administrative Procedure Act.

IV. Oversight

A. OBPRA shall monitor the completion and filing of proposed and final administrative adjudication plans. To assist OBPRA in this effort, every agency shall send their proposed and final administrative adjudication plan to OBPRA.

B. OBPRA shall review any complaints from an individual or organization that an agency's system of administrative adjudication is not consistent with this Order. However, OBPRA shall have no jurisdiction to review a complaint until a complainant has exhausted all of the complainant's administrative and judicial remedies with regard to the administrative proceeding at issue. In reviewing any such complaint, OBPRA shall not review the merits of an individual case determination nor shall it review issues that have been ruled upon by a court. OBPRA's review shall be limited to whether the system of adjudication utilized by the agency is consistent with the provisions of this Order.

C. In the event that OBPRA's review identifies areas of an agency's system of administrative adjudication that appear to be inconsistent with the provisions of this Order, OBPRA shall notify the agency and the complainant. Such notification shall be advisory in nature and not binding on an agency.

V. Reporting

No later than December 1, 1990, and every two years thereafter, every agency shall make public a report that sets forth the steps taken by the agency to comply with this Order. Such report shall also include statistics on Article 78 proceedings brought against the agency, including the outcome of such proceedings and the reasons for any reversal or modification of an agency determination.

VI. Public Authorities and other agencies

Public authorities and corporations and agencies not covered by this Order are encouraged to administer their systems of administrative adjudication in a manner consistent with the principles of this Order.

G I V E N under my hand and the Privy Seal of the State in the City of Albany this fourth day of December in the year one thousand nine hundred eighty-nine.

(L.S.)

BY THE GOVERNOR /s/ Mario M. Cuomo

/s/ Gerald C. Crotty
Secretary to the Governor

State of California-Youth and Adult Correctional Agency George Deukmejian, Governor

Board of Prison Terms
545 Downtown Plaza
Suite 200
Sacramento, CA 95814

(916) 322-6729

January 2, 1990

Professor Michael Asimow
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Dear Professor Asimow:

Re: Administrative Adjudication: Structural Issues

I read with interest your thesis, named above. I represent an agency which holds, basically, two separate types of hearings. The first is life parole consideration hearings. These hearings determine whether a convicted felon committed to the California Department of Corrections for the term of life should be paroled and, if so, the term he should serve for his crimes. We hold approximately 900 of these hearings each year. The hearing panels consist of three people, two of whom must be one of the nine Commissioners of the Board of Prison Terms appointed by the governor.

The second type of hearing involves parole revocation hearings for convicted felons who are out on parole. In our hearings, parolees are accused of a violation of parole (usually some violation of the criminal law) and may be returned to prison for up to 12 months for such conduct. We hold approximately 60,000 of these hearings each year; however, we settle 75% of these adjudications without going to a hearing by making what we call a "screening offer." Hearing panels consist of two deputy commissioners (hearing officers) employed by the Board of Prison Terms. We currently employ 50 persons in this capacity.

The basic framework for our parole revocation hearings was set forth in **Morrissey v Brewer** 408 U.S. 471 (1972). Because of time restraints imposed by court decisions, we generally hold our revocation hearings within 45 days of the date the parolee is arrested (assuming that the violation of parole conditions is a criminal offense).

Because we hold so many hearings, the cost of those hearings and the time within which those hearings must be held is critical for us. Thus, the extent of the procedural due process required is critical. Not critical for us is the separation between the hearing function and the prosecution function since we are an agency almost solely performing adjudicatory functions.

If I can be of assistance, or if you have further questions regarding the function of the Board of Prison Terms, please contact me.

Sincerely,

Robert L. Patterson

ROBERT L. PATTERSON
Executive Officer