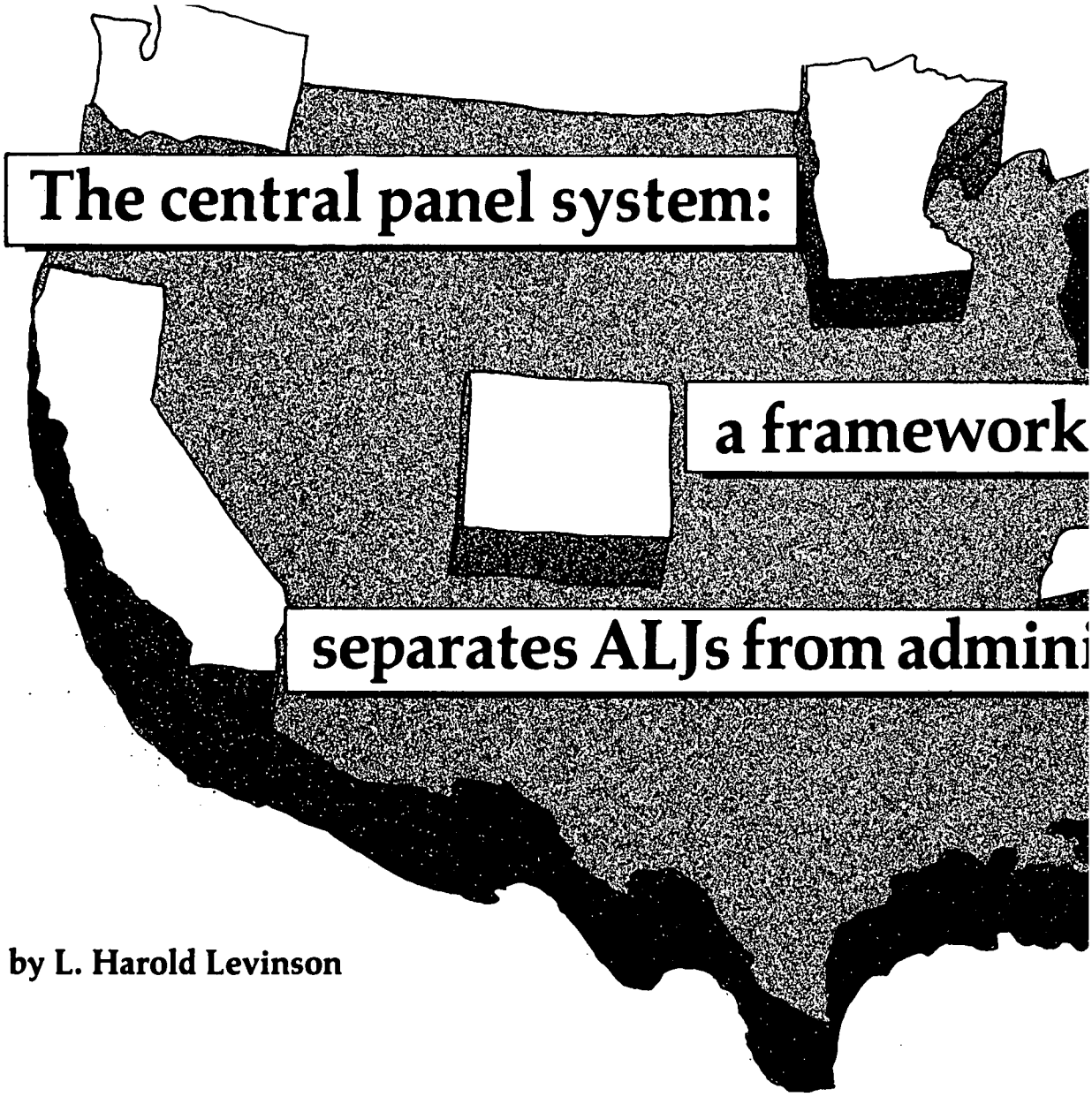

The central panel system: a framework separates ALJs from admini

by L. Harold Levinson

A central panel system of administrative law judges (ALJs)[1] is one in which a central office of administrative hearings employs a staff of ALJs and assigns them, on the request of administrative agencies, to preside over agency proceedings. Central panel systems exist in California, Colorado, Florida, Massachusetts, Minnesota, New Jersey and Tennessee,[2] and one will go into effect in Washington in 1982.[3] A central panel is also incorporated in the 1981 revision of the Model State Administrative Procedure Act adopted by the National Conference of Commissioners on Uniform State Laws.[4] The central panel concept is relatively new; all but one of the systems are less than ten years old.[5]

One of the basic purposes of central panel systems is to give ALJs a certain amount of independence from the agencies over whose proceedings they preside. From an organizational standpoint, this is accomplished by separating the office of administrative hearings from the agencies and excluding the agencies from any control over the appointment of ALJs or their

Some of the research for this article was performed by the author as a consultant for the Administrative Conference of the United States, and will be included in a report to the Conference. This article has not been reviewed or approved by the Conference.

1. For the sake of convenience and uniformity, the term "administrative law judge," abbreviated to "ALJ," is used in this paper to refer to presiding officers in all states, although some of the states use different terminology, such as "hearing officer," "hearing examiner," "referee," etc. Similarly, the person who exercises administrative control over a central panel of ALJs is referred to uniformly as "director," although some states may instead use terms such as "chief judge."

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rative agencies

By creating central panels of ALJs separate from administrative agencies, eight states have found a way to emphasize the independence of these judges.

assignment to specific proceedings. This organizational separation does not result in ALJs' independence in fact, unless accompanied by other indicators of independence. For example, organizational separation can accomplish little if the agency head is free to ignore the ALJ's initial or proposed order. The independence of ALJs depends, therefore, not only on organizational separation, but also on various other statutory provisions and judicial precedents, as well as on perceptions and practice.

This article surveys the major elements that recur in various forms in the states that have adopted central panel systems and in the 1981 Model Act, such as ALJs' jurisdiction, powers, qualifications, appointment to office and assignment to specific proceedings. Comparisons are made, on the basis of a more limited examination, with those states that have not adopted a central panel system. The analysis derives primarily from statutes and case law, but some gaps are filled in through my personal observations made during visits to se-

2. *See* Cal. Gov. Code §§11370, 11502; Col. Rev. Stat. §24-30-1001; Fla. Stat. Ann. §120.65; Mass. Gen. L. Ann. ch. 7, §4H; Minn. Stat. Ann. §15.052; N.J. Stat. Ann. §52:14F; and Tenn. Code Ann. §§4-5-120; respectively.

3. Wash. 1981 Laws, ch. 67.

4. National Conference of Commissioners on Uniform State Laws, Model State Administrative Procedure Act (1981 Revision). The 1981 revision supersedes the 1961 Revised Model Act.

5. Statutes establishing the central panel systems were enacted as follows (implementation dates may be later): California 1945, Colorado 1976, Florida 1974, Massachusetts 1973, Minnesota 1975, New Jersey 1978, Tennessee 1974, Washington 1981.

lected states.[6] The limited experience accumulated during the brief existence of central panel systems does not extensively support any conclusions regarding the strengths and weaknesses of central panel systems. It is possible, however, to explore criteria for evaluating the relative merits of central panel and other types of presiding officer systems.

The spread of the central panel concept during the 1970s and early 1980s, including the adoption of the concept in the 1981 Model Act, indicates that it deserves serious consideration in all states. The experience in states that have adopted the concept should be carefully examined and predictions made as to how the central panel system would work in other states. The test should not be whether the state now has a working ALJ system—obviously all states do—but rather whether the central panel system would be an improvement.

Central panel organization

Each central panel state has its own individual features, but all central panel systems share one basic characteristic—in administrative proceedings that are subject to the system, the presiding officer is an ALJ who is organizationally attached to a central office of administrative hearings, not to the agency for which the hearing is conducted. Generally this ALJ renders a proposed or an initial order, but other arrangements are also found—the ALJ may preside together with the agency, in which case the ALJ may control the conduct of the proceedings without rendering any proposed or initial order; or the ALJ may prepare a "report" rather than a proposed or initial order; or the ALJ may exercise final agency decision-making power, pursuant to delegation and subject only to judicial review. Where an ALJ exercises this power, the system functions as an administrative court, discussed below.

In each state with a central panel, the legislation enumerates the types of proceedings that must use a central panel ALJ. In situations not covered by these mandatory provisions, agencies may use central panel or agency-employed ALJs. The range of situations where central panel ALJs must preside varies considerably, from the broadly inclusive statutes of Colorado, Florida, Minnesota, New Jersey and Washington, to the more limited statutes of California, Massachusetts and Tennessee. While ALJs from the central panel preside over some proceedings in the last three states, agency-employed ALJs preside over many others.

The central panel concept was not mentioned in the 1946 or 1961 versions of the Model State Administrative Procedure Act, but its absence is not surprising since only one state then had this type of system. By the time the Model Act was revised in 1981, however, the central panel had been adopted by a number of states, and the drafters then addressed the topic.

The 1981 revision of the Model Act establishes a central panel system of ALJs and offers two versions of the statute, so that a state legislature may enact one version or the other regarding their use. Under one version, the agency may determine whether the presiding officer for any proceeding will be the agency head, one or more members of the agency head, or one or more ALJs assigned by the director of the central panel. This version of the statute is comparable to the central panel states with the most inclusive provisions for the mandatory use of ALJs from the central panel.

The other version of the 1981 Model Act gives the agency all of the above choices plus one more—the agency may, unless prohibited by law, designate "one or more other persons" as presiding officer. The phrase "unless prohibited by law" is crucial to the meaning of this second version. It preserves any pre-existing statutes, rules or case precedents that impose limitations on the agency's discretion to select

6. One characteristic of states with central panel systems or administrative law courts is the existence of systematic legislation on the presiding officer function. To some extent, systematic legislation also exists in those states where agency-employed ALJs receive special civil service protection, such as Iowa and New York. By contrast, in other states the legislative pattern tends to be haphazard.

The enactment of systematic legislation obviously facilitates study and analysis. Consequently, the states with central panel systems or administrative courts are the easiest to study and describe, and these states have attracted most of the scholarly attention that has been devoted to state ALJ systems. The study of presiding officers in other states remains difficult and, as yet, far from complete.

I conducted a number of field studies, primarily in 1978. Some of the observations resulting from those studies may be outdated by subsequent developments in some states, but may still be useful as models. Field studies are relied upon mainly for the text accompanying footnotes 12 and 13, infra.

the presiding officer, whether or not these limitations relate to the mandatory use of ALJs from a pre-existing central panel. Accordingly, if this version of the 1981 Model Act is adopted by a state that has a pre-existing central panel system, the use of that system remains mandatory to the same extent as before adoption of the Model Act.

In states that do not have a central panel of ALJs, various other patterns are found. One model is the administrative court. The Maine Administrative Court,[7] for example, has jurisdiction in licensee discipline cases or where an agency refuses to issue or renew a license. The licensing agency appears as a party before the Administrative Court. The court conducts the hearing and renders a decision, subject only to review by a higher court. The Missouri Administrative Hearing Commission[8] functions similarly except that if the Commission finds cause for discipline against a licensee, its order is final on whether there is cause for discipline but is merely a recommendation to the licensing agency on the disciplinary measures to be imposed.

Under another model, apparently the most pervasive, each ALJ is organizationally attached to one agency for which that ALJ functions as presiding officer. In some of the jurisdictions with this system, including Iowa,[9] New York[10] and the federal government,[11] the agency-attached ALJs have significant civil service protection, which gives them some amount of independence from their agencies.

Still another model vests the ALJ function in persons who are not government employees. In Oregon[12] and Virginia,[13] for example, some hearings are conducted for the agencies by lawyers in private practice, serving temporarily from case to case as special ALJs or referees. Mention should also be made of a provision in the federal Medicare statute whereby certain "fair hearings" may be conducted by persons assigned by the private insurance carrier, whose decisions are not subject to review by any agency. A federal district judge has held this statute unconstitutional on the ground that the hearing officers' impartiality is compromised by their prior close connections with the insurance carrier and because their incomes as hearing officers entirely depend on the carrier's decisions regarding whether, and how often, to call upon their services.[14]

Power to appoint

In order to maintain independence after establishing the organizational separation between the central panel and the agencies whose proceedings are conducted by central panel ALJs, the power to appoint the central panel director and ALJs must be vested in hands that are clearly separate from the agencies. Typically, the governor appoints the director. (In Tennessee, however, the director is appointed by the secretary of state.) Senate confirmation of the appointment is required in all central panel states except Massachusetts and Tennessee.

In turn the director has sole power to appoint ALJs in most of the central panel states. The exceptions are New Jersey, where each ALJ is appointed by the governor with Senate confirmation, and Tennessee, where the director appoints ALJs in cooperation with the attorney general. The Colorado, Minnesota and Washington statutes include "grandfather" provisions for the automatic appointment to the central panel of any person serving as an agency-employed ALJ at the time of creation of the central panel; Colorado and Minnesota add that a person must possess the qualifications needed for an appointment to the central panel to be eligible for inclusion.

The 1981 Model Act, like the majority of central panel states, provides for the director of the central panel to be appointed by the governor. Senate confirmation is an optional version, since in some states the Senate does not have the general role of confirming gubernatorial appointees. The director appoints ALJs.

The chief judge and other judges of the Maine Administrative Court are appointed by the governor, with legislative confirmation. The Missouri Administrative Hearing Com-

7. Me. Rev. Stat. Ann., title 4 §§1151 to 1158; title 5 §10051.

8. Mo. Ann. Stat. (Vernons) §§161.252 to .342, 536.050.

9. Iowa Code §17A.11.

10. N.Y. State Administrative Procedure Act §303.

11. 5 U.S.C. §§3105, 7521, 5362. *See generally* Lubbers, *Federal Administrative Law Judges: A Focus on Our Invisible Judiciary*, 33 Ad. L. Rev. 109 (1981).

12. Based on field studies conducted by the author in July 1978.

13. *Id.*

14. McClure v. Harris, 503 F. Supp. 409 (N. D. Calif. 1980), stay granted 101 S. Ct. 2298 (Rehnquist, J., as Circuit Justice, 1981).

A close relationship between ALJ and agency may compromise the organizational separation inherent in the central panel concept.

missioners—none of whom occupies a director-like position—are appointed by the governor with Senate confirmation.

In other states, the prevalent system appears to allow each agency to appoint its own ALJs. An exception is Virginia, where a roster of private practicing attorneys available to serve as special ALJs is maintained by the clerk of the supreme court.

Qualifications of ALJs

Among the central panel states, qualifications required of candidates for employment as ALJs vary. One of the major issues is whether an ALJ must belong to the bar and, if so, whether candidates for ALJ positions must have been members of the bar for a specified number of years. A requirement of bar membership, especially for a specified duration, will presumably be accompanied by higher salary levels, as well as an enhanced feeling of professionalism, independence and career mobility.

In most of the states with central panel systems, ALJs must be members of the state bar, and some states impose additional qualifications. California and Florida require at least five years' membership, while Massachusetts requires membership plus trial experience. While generally requiring bar membership, New Jersey permits "any person" to preside over hearings if, in the opinion of the governor or the director of the central panel, the person is qualified for the particular type of hearing. Florida authorizes a qualified layperson to preside, but only if assisted at the hearing by an ALJ.

Bar membership is not required in Minnesota or Washington. In each of these states the ALJ must have a demonstrated knowledge of administrative procedure. In addition, Minnesota specifies that an ALJ who presides over a contested case hearing must be "learned in the law," a qualification that does not appear precisely equivalent to membership in the bar.

The 1981 Model State APA contains optional versions requiring a person to be admitted to practice law "in this State" or "in a jurisdiction in the United States" to be eligible for appointment as an ALJ. Judges of the Maine Administrative Court and the Missouri Administrative Hearing Commission must be members of the bar. Research is incomplete regarding the qualifications for ALJs in states that do not have a central panel or an administrative court.

Assignment to proceedings

The director assigns central panel ALJs to specific proceedings in all central panel states. The major variation is whether or not the director assigns ALJs on the basis of their expertise. Assignment based on expertise tends to keep an ALJ presiding over the same type of proceeding, often for the same agency, and this may result in a closer relationship between the ALJ and agency personnel than would be the case if assignment were made on a rotating basis without regard to expertise. A close relationship between ALJ and agency may compromise the organizational separation inherent in the central panel concept.

Four central panel states—California, Colorado, Massachusetts and Tennessee—give the director complete discretion to select the ALJ for each proceeding, subject only to general provisions on disqualification. Practice in at least some of these states results in an individual ALJ being assigned to many different types of proceedings. The other four central panel states require the director to take into account the expertise of the individual ALJ regarding the subject-matter of the particular proceeding.

Florida requires the director to make the as-

signment with due regard to the expertise required for the matter, although this requirement has not prevented the Florida director from assigning individual ALJs to widely varying types of proceedings. Minnesota requires the director to attempt to use personnel having expertise. New Jersey requires assignments in accordance with the special expertise of the ALJ and permits the director, upon certification of special need, to appoint and assign a non-employee of the central panel for a specific case. Washington requires assignments to be made, whenever practical, on the basis of expertise, with each ALJ assigned primarily to hearings of a particular agency on a long-term basis..

The 1981 Model Act empowers the director to assign ALJs and to adopt rules regarding agencies' requests and the director's assignment of ALJs, but it adds that an agency may neither select nor reject any individual ALJ for any proceeding, except in accordance with other provisions of the Act (on matters such as disqualification.)

The Maine Administrative Court may, with the approval of the chief justice of the supreme court, adopt rules for the scheduling of cases, a function that may include the assignment of administrative court judges to particular cases. The Missouri Administrative Hearing Commission may determine the method of assignment of commissioners to cases by rule or by agreement between the commissioners.

In other states, the prevalent system appears to allow each agency to exercise complete discretion in assigning ALJs to particular cases, subject always to general provisions on disqualification and the like. In practice, assignments are often made on the basis of the expertise of an individual ALJ. As indicated above, this practice is similar to the statutory requirements in four of the eight central panel states. Consequently, the difference between central panel ALJs and agency-employed ALJs is not necessarily the difference between generalists and specialists.

15. *See, eg.*, Fenske v. Public Emp. Retirement Sys., 163 Cal. Rptr. 182 (Cal. App. 1980); Jackson County Ed. Assn. v. Grass Lake Community Schools Bd. of Educ., 291 N.W.2d 53 (Mich. App. 1979).

16. Anheuser-Busch Inc. v. Department of Business Reg., 393 So.2d 1177 (Fla. App. 1981); McDonald v. Department of Banking and Finance, 346 So.2d 569 (Fla. App. 1977).

Jurisdiction and powers

The most frequent use of ALJs is in adjudicative hearings. In these proceedings, the presence or absence of a central panel system does not appear to make much difference to the jurisdiction and powers of the ALJ. As indicated previously, variation is found among the central panel states as to whether the ALJ is empowered to render an initial order, a proposed order, a report, or a final order in the exercise of the agency's delegated authority. Similar variations are found among the states with agency-employed ALJs. Of course the Maine Administrative Court and the Missouri Administrative Hearing Commission are distinctive, since they render final orders (subject, in Missouri, to the licensing agencies' power to determine the sanction). The 1981 Model Act empowers ALJs to render initial orders, subject to review by the agency unless another statute or an agency rule precludes or limits agency review.

Agencies and ALJs—whether in central panel or other states—are generally not authorized to determine the constitutionality of statutes, although agencies and ALJs have sometimes indulged in interpretation that takes constitutional factors into account.[15] The general powers of the ALJ, as presiding officer in adjudicative proceedings, appear to be similar in both central panel and other states regarding such matters as ruling on the admissibility of evidence, determining petitions for intervention, and maintaining the decorum of the proceedings.

A distinctive type of responsibility belongs to central panel ALJs in Florida when they preside over adjudicative proceedings in which the agency wishes to develop new policy without first promulgating rules. Case law requires the ALJ to receive evidence and argument on the proposed new policy from the agency's counsel, subject to rebuttal by other parties; the ALJ must then render findings of fact, conclusions of law and a recommended order on the so-called "incipient" policy.[16] This ALJ role, while not inherent in the central panel concept, would be difficult to imagine in a system of agency-employed ALJs.

In matters other than adjudicative hearings, some of the central panel states confer unusual powers upon the ALJs. The Minnesota central panel ALJs preside over rulemaking proceed-

ALJ independence in fact may depend on how ALJs perceive themselves.

ings and render reports similar to those rendered in adjudicative proceedings.[17] The Florida central panel ALJs—as well as the Missouri Administrative Hearing Commissioners—can render declaratory orders on the invalidity of agency rules. While these non-adjudicatory powers are not inherent in the central panel concept, they again would be difficult to imagine in a system of agency-employed ALJs.

The 1981 Model Act confers traditional powers upon ALJs, regarding the conduct of adjudicative proceedings only. In addition, the Act follows the pattern of other central panel statutes and permits agencies to arrange with the central panel for the use of central panel ALJs in any agency proceeding.

Agency review of decisions

In all the central panel states, the ALJ's order—whether initial or proposed—is subject to review by the agency, except where another statute or an agency rule delegates the agency's final decisional power to the ALJ. In California the agency may adopt the ALJ's proposed decision in its entirety, or reduce the proposed penalty and adopt the balance of the proposed decision; in any other situation the agency must give the parties an opportunity for oral or written argument before it decides the case. In the other central panel states the parties may seek agency review within a designated number of days after rendition of the ALJ's order.

The ALJ's findings of fact are presumptively correct when reviewed by the agency in Colorado and Florida. The agency may not set aside the ALJ's findings in Colorado unless they are contrary to the weight of the evidence, nor in Florida unless the findings are not based on competent, substantial evidence or the proceedings did not comply with essential requirements of law. Practice in Massachusetts appears to recognize a strong presumption in favor of the ALJ's findings on review.[18]

The 1981 Model Act requires the ALJ—whether or not attached to a central panel—to render an initial order, subject to agency review unless such review is precluded or limited by another statute or by a rule of the agency. The Model Act does not expressly confer presumptive correctness upon the ALJ's order when reviewed by the agency. However, the ALJ's order becomes part of the record of the final agency action, and accordingly carries some weight when a court examines the record during the review of the final agency action.[19]

Decisions of the Maine Administrative Court are reviewable only by a higher court; the same is true of the Missouri Administrative Hearing Commission, except to the extent that a licensing agency may decide upon the sanction after the Commission has decided that there is cause for discipline. States with agency-employed ALJ systems vary as to whether or not the ALJ's decision is presumed correct when reviewed by the agency.[20]

Beyond specific proceedings

Beyond the central panel's influence on specific proceedings, the ALJs in a central panel may have significant interaction with one another, thereby developing a special sense of professionalism with opportunities to compare experiences on a wide variety of administrative law matters. This type of interaction is not a guaranteed component of a central panel system. It depends to some extent on the geographical distribution of ALJs and their assignments, the physical quarters of the central panel, the extent to which regular meetings of panel members are organized and the general tone prevailing in the central panel. This type of interaction is, of course, possible to some

17. For a critical commentary on the statutory system, *see* Auerbach, *Administrative Rulemaking in Minnesota*, 63 MINN. L. REV. 151 (1979).

18. *See* McQuade, *The Central Panel Approach to Administrative Adjudication: The Massachusetts Division of Hearing Officers*, 10 THE ADVOCATE 14 (Fall 1978).

extent in states where ALJs are employed by the agencies. ALJs may be able to maintain social and professional contacts with counterparts from other agencies, thereby achieving a similar type of interaction.

Where professional interaction occurs, it may well lead not only to an enhanced level of professionalism on the part of the ALJs themselves but also to the development of insights on general aspects of administrative law and procedure arising from the collective overview of the ALJs. These insights may lead to law reform proposals or more modestly to the refinement of procedures that are within the discretion of individual ALJs or of the central panel or agency.

In a central panel system, the director has a particularly advantageous position for acquiring an overview from personal observation and through vicarious participation in the observations of the ALJs. Directors in the central panel states appear to have made effective use of their overviews by adopting and modifying procedural rules for the ALJs and by submitting law reform proposals to appropriate public officials. No exactly equivalent role has been found in states without a central panel. The closest equivalent role is played in some states by a legislative committee with special responsibility for the oversight of administrative agencies, and in other states by the attorney general.

Independence

Many elements of administrative procedure statutes have some bearing on the independence of the presiding officer. A useful checklist of statutory provisions on numerous aspects of ALJ independence is found in the 1981 Model Act, which confers some measure of independence upon ALJs by incorporatng traditional provisions for the disqualification of biased ALJs, by prohibiting certain types of ex parte communications, by generally requiring decisions of ALJs and agencies to be supported by the record and by conferring general powers upon ALJs for the conduct of proceedings. The Model Act also adopts Iowa's strict separation of functions between agency-employed ALJs and other agency employees. Each or all of the above elements tends to support the ALJ's independence, and each can be found in various states, whether or not the central panel system is used.

In states that have not legislated on all of these elements, case law may establish an environment tending to protect the independence of ALJs. For example, state courts can disqualify biased presiding officers on the basis of common law precedent, even without a statute on point.

An important question is whether the organizational separation of the office of administrative hearings confers, upon the ALJs in states with central panel systems, a significantly greater amount of independence than can be conferred, without a central panel, by statutes and judicial precedents on other aspects of ALJ independence. The answer may depend, to a considerable extent, on the ALJs' perceptions of themselves.

In central panel systems ALJs' perceptions reflect the tone set by the director and other key personalities, especially during the formative period of the central panel. In systems of agency-employed ALJs, the tone is set by the agency head or personnel manager, or perhaps by the civil service commission. If a central panel system encourages ALJs to perceive themselves as being more independent than would otherwise be the case, the central panel contributes to the ALJs' independence in fact. Further information is required in order to ascertain whether the perception of independence is any greater in central panel ALJs than in agency-employed ALJs.[21] One type of information, which in time may become available, is whether central panel systems are more or less successful than agency-employed ALJ systems in recruiting and retaining highly qualified and motivated ALJs. The relevance of this information is based on the assumption that highly qualified and motivated ALJs are more likely to be recruited and retained if they perceive themselves to be independent.

19. The leading federal case is Universal Camera Corp. v. N.L.R.B., 340 U.S. 474 (1951). The concept is well established in state as well as federal administrative law; *see, e.g.*, cases cited in footnote 20, infra.

20. *See, e.g.*, Kimball v. Hawkins, 364 So.2d 463 (Fla. 1978); Real Estate Comm'n v. Horne, 233 S.E.2d 16 (Ga. App. 1977); Burton v. Illinois Civil Serv. Comm'n, 373 N.E.2d 765 (Ill. App. 1978); St. Vincent's Hospital v. Finley, 380 A.2d 1152 (N.J. Super. 1977); Voight v. Washington Island Ferry Line, Inc., 255 N.W.2d 545 (Wis. 1977).

21. *See, e.g.*, Rich, *Adapting the central panel system* 65 JUDICATURE 246 (November, 1981).

The independent judicial model is vulnerable to political backlash for the very reason that the ALJs are politically unaccountable.

Two relationship models

ALJ independence should be examined through two conflicting models of the relationship between the agency and the ALJ who presides over its proceedings. One model maximizes the political accountability of ALJs by placing them under the control of the politically accountable agencies for which they preside, to the extent allowed by prevailing notions of due process. The opposite model maximizes the power and independence of ALJs by adopting the independent judicial model as much as possible.[22]

The ultimate development in the independent judicial direction is the Maine Administrative Court, which is, within its limited range of jurisdiction, a judicial tribunal. The independent judicial model depends for its public acceptance on the legitimacy of the decision-making process rather than the political accountability of the ALJ. The independent judicial model is vulnerable to political backlash for the very reason that the ALJs are politically unaccountable.

Although the central panel systems vary considerably, and although some elements found in some central panel systems are found also in other types of systems, the structure of central panels approaches the independent judicial model rather than the agency-accountable model. The overall impact of the central panel system of course depends upon the extent to which use of central panel ALJs is mandatory.

By offering the two versions discussed above, the 1981 Model Act invites states to establish central panel systems and make their use either mandatory or permissive, and allows states that already have central panel systems to keep them, with or without expanding the circumstances in which their use is mandatory. The underlying notion is that different states are likely to have different perceptions of their own needs for mandatory use of central panel ALJs.

Further, by offering the version that provides for entirely voluntary use of a central panel, the Model Act invites a market-type test of the concept; if the agencies make little or no use of the central panel, the legislature is unlikely to keep it for long. Under the entirely voluntary approach, the initial funding and staffing of the central panel necessarily will be based on guess work regarding agencies' use. The market test will reflect the preferences of the agencies, although the intended beneficiaries of the central panel system arguably are persons who appear before agencies and whose interests are often adverse. Although offering various options, the Model Act does not furnish any guidance by which legislators in a particular state may determine which option to adopt.

Conclusion

This discussion suggests, in sum, that the existence of a central panel system of ALJs does not necessarily determine whether an ALJ will preside over a wide range of varied proceedings or a narrowly specialized area; or whether the ALJ will be empowered to render an initial order, a proposed order or a final order; or whether the agency must regard the ALJ's order as presumptively correct; or the extent to which the ALJ feels and in fact is independent of the policy wishes of the agency. The varied responses to these questions—found in the legislation and the practice of states without as well as with central panel systems—indicate that states have arrived at various solutions in

22. For background discussion of the judicial model, *see* Davis, *Judicialization of Administrative Law: The Trial Type Hearing and the Changing Status of the Hearing Officer*, 1977 DUKE L.J. 389.

their attempts to provide for fair, expeditious and inexpensive administrative proceedings within the framework of two conflicting models of the relationship between the agency and the ALJ who presides over the agency's proceedings—the agency-accountable model and the independent judicial model.

Perceptions as to whether the central panel would improve administrative adjudication are likely to fall into two major categories. One will focus on the technical and financial aspects of the presiding officer function, stressing such issues as the time taken for the average proceeding, the reversal rate, the caseload per presiding officer, the educational and professional background of the officer and the cost of furnishing one for the average proceeding.

In states that have had central panel systems for some time, comparative studies of these topics before and after adoption of the central panel may provide a useful indication of its effect. These studies provide some basis for projecting the likely technical and financial results if a state that does not currently have a central panel system adopts one. While the existing central panel systems offer encouraging experience in the technical and financial areas,[23] research concerning states that do not have central panels is not sufficiently extensive to permit any conclusion on whether adoption of central panel systems would always significantly improve the technical and financial aspects of the presiding officer function.

The other category of perceptions regarding the presiding officer function will focus on attitudinal matters, primarily the independence of the presiding officer. While adoption of a central panel system does not guarantee the independence of the ALJ from the agency, the central panel is likely to be accompanied by greater independence. Perhaps more importantly, the central panel system is generally perceived as a significant step toward ALJ independence.

A state considering the adoption of a central panel system must therefore make a choice between the agency-accountable and the independent judicial model. A mix between these two models can be achieved by adjusting the extent to which the use of central panel ALJs is mandatory and by adjusting such matters as the extent to which an ALJ's proposed or initial order is presumptively valid when reviewed by the agency, or the ease with which the agency can have an ALJ disqualified from presiding over a particular proceeding. The selection of the appropriate degree of ALJ independence may be influenced by a state's experience with the presiding officer function, since this experience furnishes the perception of the situation to be remedied by legislation.

Research is incomplete regarding the experience of the states with ALJ systems other than the central panel. On the basis of available information and observations, I strongly endorse the central panel system as one that provides the framework within which a state can establish the desired mix between the agency-accountable and the independent judicial model of presiding officers.

The decision whether or not to adopt a central panel system can be reached appropriately only in context of a broader series of choices regarding various aspects of the ALJ function. Some of these choices arise only if the central panel is created; examples include the extent to which the use of ALJs from the central panel is mandatory and the choice of mechanisms for the appointment, assignment and evaluation of central panel ALJs. Other choices arise whether or not the central panel is created; examples include choices on disqualification for bias, or on the presumptive validity of an ALJ's initial or proposed order when reviewed by the agency head.

A coherent approach to all of these issues is the best means of producing the mix between the agency-accountable and the independent judicial model of ALJs that reflects the prevailing policy in the state. This mix is subject to developmental change on the basis of perceptions, relationships and practice. If the mix turns out to deviate too far from the original intent, or if changing policy preferences call for a mix different from that originally intended, statutory or judicial adjustment will be required. □

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23. *See, e.g.*, Harves, *How the central panel system works in Minnesota* 65 JUDICATURE 257 (November, 1981).