
FEDERAL ADMINISTRATIVE LAW JUDGES: A FOCUS ON OUR INVISIBLE JUDICIARY

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The administrative law judge (ALJ)¹ is the central figure in formal administrative adjudication. There were 1,146 ALJs² employed by twenty-nine federal agencies as of June 1980.³ One indication of the importance of ALJs as lawmakers and law appliers is suggested by the fact that they outnumber by two to one the corps of United States district court judges who preside over the nation's entire federal civil and criminal trial docket.⁴

Administrative law judges are employed by executive departments and independent agencies⁵ to conduct hearings and make decisions in

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¹The newsletter of the Federal Administrative Law Judges Conference expressed displeasure with the proliferation of the acronym “ALJ” (August 1979 newsletter). It is used in this article solely for the sake of brevity.

²Information obtained from Office of Administrative Law Judges, OPM, June 1980. See also *Hearings on H.R. 6768 Before the House Comm. on Post Office and Civil Service*, 96th Cong., 2nd Sess. 6 (1980), (testimony of Margery Waxman, general counsel, U.S. Office of Personnel Management) stating that out of 1127 judges, 43 were women and 54 were “minorities.”

³See the table in the appendix.

⁴As of June 1980 there were 516 authorized federal district court judgeships, 484 filled and 32 vacancies. One hundred seventeen new positions were created by the Omnibus Judgeship Act of 1978. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, 1980 ANN. REP. p. 2.

⁵The term “agency” as used in this article includes executive departments, agencies within such departments, (e.g., Social Security Administration) and independent agencies.

proceedings in which administrative determinations must be based on the records of trial-type hearings. An ALJ's decision may be, and often is, the final decision of the agency without further proceedings if there is no appeal to, or review on the motion of, the agency.⁶ A mere listing of some of the types of matters acted upon by ALJs shows how important they are to our daily lives and to the national economy: licensure and route certification of transportation by air, rail, motor vehicle or ship; licensure of radio and television broadcasting; establishment of rates for gas, electrical, communication, and transportation services; compliance with federal standards relating to interstate trade, labor-management relations, advertising, communications, consumer products, food and drugs, banking, corporate mergers, and antitrust; regulation of health and safety in mining, transportation, and industry; regulation of trading in securities, commodities, and futures; adjudication of claims relating to social security benefits, workers' compensation, international trade, and mining; and many other matters.⁷

When compared with the role of judges of the federal courts, the role of ALJs in our governmental system is less visible, and, as one would guess, less well understood. The federal judge is, after all, the personification of the judicial branch of the government: a robed authority figure who can demand and receive respect and obeisance even from presidents. Federal judges are guaranteed life tenure by the Constitution; there is little reason to question their independence. The significance of their decisions, which are regularly published and widely accessible, is clearly comprehensible within the context of the familiar three-tier structure of the federal court system (i.e., district courts, courts of appeals, and the Supreme Court). ALJs, on the other hand, in spite of being called judges and functioning as such, are subject to doubts about their independence due in part to their employment status as agency personnel. Furthermore, few agencies systematically publish decisions of their ALJs, and the significance of an ALJ's "decision" as a determinant of his agency's decision or final action varies markedly from agency to agency.

The position of administrative law judge (formerly called "hearing examiner"⁸) did not even exist until the Administrative Procedure Act

⁶5 U.S.C. § 557(b) (1976).

⁷For a comprehensive listing of categories of cases presided over by ALJs, *see* [1980] ADMINISTRATIVE CONFERENCE OF THE U.S., FEDERAL ADMINISTRATIVE LAW JUDGE HEARINGS—STATISTICAL REPORT FOR 1976–1978.

⁸The APA originally used the term "examiner." This was changed to "hearing examiner" in the 1966 codification of the Act. After a long campaign by the examiners, the title was changed to administrative law judge by the Civil Service Commission on August 19, 1972. The APA was subsequently so amended in 1978. Pub. L. No. 95–251.

(APA) was enacted in 1946. Prior to the APA,⁹ there were no reliable safeguards to ensure the objectivity and judicial capability of presiding officers in formal administrative proceedings. Ordinarily these officers were subordinate employees chosen by the agencies, and the power of the agencies to control and influence such personnel made questionable the contention of any agency that its proceedings assured fundamental fairness. Furthermore, the role of the presiding officer in an agency's decisional process was often unclear; many agencies would ignore the officer's decisions without giving reasons, and enter their own de novo decisions. The APA was designed to correct these conditions. Reshaping the role of the "hearing examiner" was a crucial precondition to both of these basic reforms.

The APA spelled out the powers and duties of these so-called examiners as presiding officers.¹⁰ By giving the Civil Service Commission the authority to determine their qualifications and compensation, the APA attempted to insure their competence, impartiality and independence. The basic structure of the 1946 Act remains unchanged today.

As to the independence issue, the Act lodges in the Office of Personnel Management (OPM, the successor of the Civil Service Commission) exclusive authority for the initial examination and certification for selection of ALJs. In addition, ALJs receive compensation as prescribed only by OPM, independently of agency recommendations or ratings,¹¹ and they can be removed by the agency which employs them only when good cause is established before the Merit Systems Protection Board after opportunity for hearing.¹² The APA also requires that the ALJs' functions be conducted in an impartial manner¹³ and provides that if a disqualification petition is filed against an ALJ in any case, the agency must determine that issue on the record, and as part of the decision in that case.¹⁴ The Act also prescribes that an ALJ may not be responsible to, or subject to supervision by, anyone performing investigative or prosecutorial functions for an agency.¹⁵ This "separation of functions" requirement is designed to prevent the investigative

⁹The following discussion is derived from Macy, *The APA and the Hearing Examiner: Products of a Viable Political Society*, 27 FED. BAR. J. 351, 355 (1967).

¹⁰5 U.S.C., § 556(c) (1980). For a comprehensive look at the duties of an ALJ, see RUHLEN, *MANUAL FOR ADMINISTRATIVE LAW JUDGES* (1974), and Zwerdling, *Reflections on the Role of an Administrative Law Judge*, 25 AD. L. REV. 9 (1973).

¹¹5 U.S.C. § 5362 (1976).

¹²5 U.S.C. § 7521 (1976), 5 C.F.R. § 1201.131 (1980), 44 Fed. Reg. 3946, 3953 (1979).

¹³5 U.S.C. § 556(b) (1976).

¹⁴*Id.*

¹⁵5 U.S.C. § 554(d) (1976).

or prosecutorial arm of an agency from controlling a hearing or influencing the ALJ. Finally, to insure that the ALJs are well insulated from improper agency pressure and controls, the APA contains two other provisions designed to make the ALJ at least semi-independent of the employing agency: ALJs are to be assigned to their cases in rotation so far as is practicable; and they may not perform their duties inconsistently with their roles as ALJs.¹⁶

I. SELECTION AND APPOINTMENT OF ALJs

Since the passage of the Administrative Procedure Act, the U.S. Civil Service Commission (now OPM) has been exclusively responsible for the initial examination, certification for selection, and compensation of ALJs. Exercising these responsibilities has not been an easy task. The story of the controversy that surrounded the commission's early attempts to administer the examination and selection of qualified ALJs and the maintenance of an eligibility roster is an interesting one, but it is too lengthy to be retold here.¹⁷ What is of more immediate interest is how the current and future members of the corps of ALJs have attained or will attain their positions.

There are several important interrelated facets of the selection and appointment process. The Office of Personnel Management through its Office of Administrative Law Judges administers the recruitment, evaluation, and selection of those eligible to be appointed as ALJs. OPM has determined the minimum level of qualifying experience which an individual must have to be eligible. In addition OPM conducts interviews, administers a test of writing ability, evaluates the qualifying experience of all applicants who meet the minimum experience requirements, and scores each of them on a scale of 100 points. Those who score 80 points or above become "eligibles" and are ranked (highest scores at the top) on registers maintained by OPM from which the agencies make their appointments. The office maintains two registers; one at the GS-16 grade level, the other at GS-15. This is done because OPM has created ALJ positions at both of these levels. ALJ positions in a majority of those agencies which employ ALJs (including most of the major agencies engaged in economic regulation) are at the GS-16 level.¹⁸ The positions in the remaining four agencies (including

¹⁶5 U.S.C. § 3105 (1976).

¹⁷The definitive account, with rich Civil Service Commission documentation, is found in Macy, *supra* note 9, at 363-78. Mr. Macy was then the chairman of the commission.

¹⁸One constraint upon the number of GS-16 ALJ positions authorized by OPM is that there is a statutory ceiling on the number of "supergrade" positions (*i.e.*, GS-16, GS-17 and GS-18 positions) in the federal government. *See* 5 U.S.C.A. § 5108(a) (Supp. I 1979),

the Social Security Administration which employs over half of all ALJs) are at the GS-15 level.¹⁹

Before considering the entire selection and appointment process in more detail, it is necessary to note the importance of two complicating factors. The first such factor results from the applicability of the Veterans Preference Act²⁰ to the process. The Act (applicable to all competitive civil service jobs in the federal government) provides that veterans of the armed services shall receive preference points in addition to their scored ratings. This, as will be shown, tends markedly to enhance the ranking of veterans on both the GS-15 and GS-16 ALJ registers in relation to nonveterans. The second complicating factor is the office's policy of permitting agencies to appoint eligibles who are not at the top of the register if the eligibles possess requisite specialized experience. Most of the agencies employing GS-16 ALJs utilize this procedure, known as "selective certification," and its impact upon the appointment of GS-16 ALJs is therefore crucial.

A. Evaluation by the Office of ALJs

The Office of Personnel Management has set forth the minimum qualifying experience which must be possessed by an applicant as well as the general rating factors considered by the Office of ALJs in the determination of the applicant's eligibility and score.²¹

In order to qualify as an ALJ, the applicant must be an attorney and have seven or more years of "qualifying experience," at least two of which must be within the seven-year period immediately preceding the date of the application. Qualifying experience means primarily (1) judicial experience; (2) the preparation, trial, hearing or review of formal administrative law cases at the federal, state, or local level; or (3) the preparation and trial or appeal of cases in courts of unlimited or original jurisdiction.²²

authorizing the director of OPM, at his discretion, to establish 10,777 supergrade positions. A provision in this section reserving 240 positions at the GS-16 level and 9 positions at the GS-17 level for ALJs was deleted by Pub. L. No. 95-454.

¹⁹The other three agencies that employ ALJs classified (by OPM) at GS-15 are the Bureau of Alcohol, Tobacco and Firearms, the Department of HUD, and the U.S. Coast Guard. In addition, the Environmental Protection Agency and the Departments of Interior and Labor employ both GS-15s and GS-16s. Chief ALJs at agencies with more than 10 ALJs are classified at GS-17.

²⁰Veterans Preference Act of 1944, *as amended*, 5 U.S.C. §§ 2108, 3309, 3317, 3318 (1976).

²¹U.S. OFFICE OF PERSONNEL MANAGEMENT, ANNOUNCEMENT No. 318 (reissued 1979). This 21-page pamphlet announces the examination for ALJ positions and is available from OPM's Office of ALJs.

²²The element of general trial experience liberalized the prior standard and was adopted in response to a recommendation by the Administrative Conference, Administrative Conference of the U.S. Recommendation 69-9, 1 C.F.R. § 305.69-9 (1980).

The ALJ applicant must consent to having inquiries (referred to by OPM as "vouchers") sent to about 20 individuals having personal knowledge of the applicant's experience, professional abilities, and qualifications (e.g., supervisors, judges, law partners, co-counsel and opposing counsel). The applicant also must demonstrate writing ability by preparing, under OPM supervision, a sample opinion which is examined for clarity, conciseness and legal soundness. Finally, the applicant must participate in an oral interview before a special panel composed of an official of OPM, a practicing attorney, and an official of an administrative agency.²³

To become an eligible, and be placed on either the GS-15 or GS-16 register, an applicant must score at least 80 points on a scale of 100 in the final grading of the application. Applications are first screened to determine whether the applicant has the requisite minimal qualifying experience. Only those who do are graded. The applicant's qualifying experience may then be scored up to 60 points based upon the level of difficulty, complexity, responsibility and importance of at least one year of his experience. This score is computed by the Office of ALJs from an internal manual which it has assembled over the years containing numerical scores for all anticipated types of experiences. The computation is also affected by the civil service rating sought by the applicant; his experience will probably be assigned fewer points if he applies for eligibility at GS-16 than if he seeks eligibility at GS-15.

In addition to a score for qualifying experience, the applicant is assigned up to 40 points based upon the evaluation of professional qualifications contained in the applicant's vouchers. The staff of the Office of ALJs scores the evaluations on a specially designed "factor rating sheet," giving most weight to evaluations in vouchers submitted by individuals who are in the best position to evaluate the applicant objectively. Applicants who have scored at least 80 points on the basis of their combined scores for qualifying experience and the vouchers are rated as tentatively eligible and are asked to prepare a sample opinion and to appear before the special interviewing panel. After the panel completes the interview and reviews the writing sample, it may recommend an adjustment of the tentative eligibility rating score, although in practice adjustments are minor (nearly always less than five points). The director of the Office of ALJs may, in his discretion, accept, reject, or modify the recommendation. The former director

²³The attorney is usually, but not always, nominated by the Administrative Law Section of the ABA. The agency official is generally a chief ALJ but sometimes a board member, commissioner, or general counsel. Interview with Charles Dullea, former director of the Office of ALJs (February 1976).

estimated that about 72 percent of all applicants are rated ineligible. Approximately 32 percent of all applicants fail to pass the threshold because they lack one or more of the minimum experience requirements, about 36 percent fail to establish tentative eligibility by scoring below 79 points after the first two ratings are totaled, and 4 percent have their score lowered below 80 after evaluation by a special panel.²⁴

Individuals determined eligible for listing on either of the two ALJ registers are ranked in order of their scores with the highest scores at the top of the list, and appointments are made by the individual agencies from these registers. However, the agencies' appointment power is restricted by a statutory requirement known as the "rule of three" which is applicable to all competitive civil service jobs in the federal government. Under this requirement, when an agency requests a list of eligibles, OPM must certify enough names from the top of the register to permit the agency to consider at least three names per appointment to each vacancy. The agency is then obliged to make its selection from those three who have the highest scores and are actually available for appointment.²⁵ As will be shown, the Veterans Preference Act tends to make the "rule of three" even more restrictive on agency choice. However, the operation of OPM's selective certification policy, in effect, removes the restrictiveness with respect to most appointments from the GS-16 register.

B. Veterans Preference

As explained above, those eligible for appointment as ALJs are ranked on the two registers maintained by OPM in order of their scores. However, the impact of the Veterans Preference Act on register rankings is crucial. The Act provides that an eligible applicant (applicant with an earned score of 80 or more) who meets certain requirements as a wartime veteran of the armed services is entitled to 5 (10 in the case of a disabled veteran) additional points above his scored rating.²⁶ Since there is only a 20-point spread on scores among all ALJ eligibles (from 80 to 100), the addition of 5 to 10 veterans preference points to any score can change by many places an eligible's ranking on the register. Statistics compiled in February 1974 by the Office of ALJs

²⁴*Id.* It is interesting to note that the rating process received its first court challenge in March 1973. The complainant alleged that the Commission's failure to find him qualified was arbitrary, capricious, and discriminatory. The district court entered judgment for the Commission, and the 7th Circuit, in an unpublished order, affirmed. *Bromberg v. U.S. Civil Serv. Comm'n*, No. 75-1485 (7th Cir., submitted December 19, 1975).

²⁵ 5 U.S.C. §§ 3317, 3318 (1976).

²⁶ 5 U.S.C. §§ 2108, 3309 (1976).

show that of the top 60 eligibles on the GS-15 register, 9 were 10-point veterans, 42 were 5-point veterans, and only 9 had no veteran status. (Of the remaining 98 eligibles on the register, 45 were 5-point veterans and 53 were nonveterans.) The pattern was similar in the GS-16 register (although the importance of the rankings on this register is lessened considerably by selective certification) where 58 of the 177 eligibles were nonveterans, and only 15 of those were in the top 100.²⁷ The Veterans Preference Act also affects the operation of the "rule of three" due to its restrictions upon an agency's passing over an eligible who has veterans preference to select a nonpreference eligible.²⁸ This means that the agency will have little choice as to whom it will appoint among the eligibles certified by OPM in instances in which the first ranked eligible of those certified to the agency has veterans preference and the remainder do not; the agency must normally select the veteran. Actual selection statistics confirm this. OPM has testified that from 1970 to 1979, of the 793 ALJs appointed, 593 (74.8 percent) were veterans.²⁹

The impact of veterans preference on the register ranking combined with the "rule of three" has led to criticism of the ALJ selection system as keeping many outstanding candidates, especially women, at the bottom of the register and as discouraging others from even applying.³⁰ The Administrative Conference has recommended that both the extra points and the selection preference requirement for veterans be repealed with respect to the certification and selection of ALJs, and that agencies be permitted to appoint an ALJ from among the highest ten ranked eligibles who are on the register at the time of selection.³¹

²⁷The statistics are found in the report of a subcommittee of the LaMacchia Committee (discussed in the text at note 50). REPORT OF SUBCOMMITTEE ON RECRUITMENT, QUALIFICATION, CERTIFICATION, AND APPOINTMENT, (1974) 47-48 [hereinafter cited as SUBCOMMITTEE REPORT]. It has recently been reported that 49 of the top 50 people on the GS-16 register are veterans. *Legal Times of Washington*, June 2, 1980, at 32.

²⁸5 U.S.C. § 3318(b) (1976).

²⁹Waxman testimony, *supra* note 2 at 9.

³⁰SUBCOMMITTEE REPORT, *supra* note 27, at 49-50, 65. The full committee did not accept the subcommittee's recommendation that the Veterans Preference Act be amended to eliminate its application to the selection of ALJs. *See also* the discussion in Park, REPORT OF THE COMMITTEE ON PERSONNEL IN SUPPORT OF RECOMMENDATION NO. 17, 1 ACUS REP. 381, 404-08 (1969).

³¹ACUS Recommendation 69-9(A)(4) ("Recruitment and Selection of Hearing Examiners . . ."), 1 CFR § 305.69-9(A)(4) (1980). In August 1976, the American Bar Association's House of Delegates adopted a resolution recommending that ALJs be exempted from the provisions of the Veterans Preference Act.

C. Selective Certification

As intimated above, many agencies have sought to avoid the restrictions upon their appointment of ALJs through the procedure of "selective certification." Using this process, an agency, upon a showing of necessity and with the prior approval of OPM, is permitted to appoint specially certified eligibles without regard to their ranking in relation to other eligibles on the register who lack the special certification. For example, the Federal Communications Commission (FCC) has arranged with OPM for special certification of eligibles who can show:

[t]wo years of experience in the preparation, presentation, or hearing of formal cases, or in making decisions on the basis of the record of such hearings, originating before governmental regulatory bodies at the Federal, state, or local level, *in the field of communications law*.³²

Suppose that four individuals on the GS-16 register were certified as having these special qualifications and their rankings on the register were 15, 31, 68, and 95, respectively. When the FCC wished to appoint an ALJ, OPM would send it a list containing the names of the top three selectively certified eligibles (numbers 15, 31, and 68). The FCC could then choose from among those three, although the Veterans Preference Act's prohibition against passing over a veteran to select a non-veteran would still apply. Without selective certification, if the FCC were limited to picking new appointees from the top of the register, those ranked 15, 31, and 68 could not be considered, and the agency might not be able to consider for appointment an eligible candidate who possessed special qualifications for the particular position.

The result of this selective certification procedure is to establish, in effect, separate registers for those eligibles who have specialized experience. Announcement No. 318 lists the following agencies as utilizing selective certification for appointees from the GS-16 register:³³ Department of Agriculture, Civil Aeronautics Board, Federal Communications Commission, Federal Energy Regulatory Commission, Department of Labor, Interstate Commerce Commission, National Labor Relations Board, and Securities and Exchange Commission. Only three agencies utilize selective certification for appointment from the GS-15 register: Bureau of Alcohol, Tobacco and Firearms, Social Security Administration (positions in Puerto Rico

³²U.S. Office of Personnel Management, Announcement No. 318 (emphasis added). (See note 21, *supra*, at 19). The special qualifications for all agencies utilizing selective certification are set forth in the announcement.

³³*Id.* at 19-21.

only) and U.S. Coast Guard. The possible benefits of selective certification to the agencies which have arranged for it are obvious, and those agencies have in fact utilized it extensively. A study made for the Civil Service Commission in 1974 reported that "approximately 82 percent of the ALJs in the agencies using selective certification attained their positions through its use."³⁴ In fiscal years 1975 to 1979, 83 of the 98 appointments from the GS-16 register were selectively certified.³⁵

The practice of selective certification has been the subject of criticism on the grounds that it severely limits opportunities for generalist applicants and that it leads to "inbreeding" among an agency's ALJs through biasing the selection process in favor of the agency's own staff attorneys who are most likely to meet the specialized experience criteria.³⁶ A study done for the Administrative Conference in 1969 reported that in the preceding five-year period, 52 of 66 ALJs appointed by the agencies utilizing selective certification had been previously employed on the staffs of those agencies.³⁷ There is no reason to think that the effect is less prevalent today.

Whether inbreeding actually poses a problem, beyond appearances, is however, debatable. One agency which relies heavily upon selective certification, the National Labor Relations Board, steadfastly continues to defend the board's need to utilize the practice and maintains that the practicing labor-management bar also supports its retention.³⁸ In regulatory agencies, on the other hand, where a pro-enforcement attitude may more strongly pervade, the judges' agency background may be a matter of greater concern to the practicing bar.³⁹

Selective certification does not apply solely to government attorneys, of course: attorneys in private practice have the same opportunity to be specially certified as do agency staff attorneys. However, it appears that private attorneys who have specialized expertise in law practice within areas of ALJ selective certification have little interest in forsaking their practice to become ALJs. The percentage of private attorneys on the GS-16 register has fluctuated in recent years,⁴⁰ but very few

³⁴LaMacchia Committee Report, REPORT OF THE COMMITTEE ON THE STUDY OF THE UTILIZATION OF ADMINISTRATIVE LAW JUDGES, 12 (1974). See note 27, *supra*.

³⁵Information obtained from OPM, Office of ALJs, March 1980.

³⁶SUBCOMMITTEE REPORT, *supra* note 27, at 37. See generally Miller, *The Vice of Selective Certification in the Appointment of Hearing Examiners*, 20 AD. L. REV. 477 (1968).

³⁷Park, *supra* note 30, at 396.

³⁸Hearings on S.262 and Related Bills Before the Senate Comm. on Governmental Affairs, 96th Cong., 1st Sess. 286 (Part 1 1980) (testimony of John H. Fanning).

³⁹See Statement of John T. Miller on behalf of the Federal Energy Bar Association, *Hearings*, *supra* note 2, page 111.

⁴⁰See note 22, *supra*, and accompanying text. On July 1, 1967, only 20 percent of the attorneys on the register were in private practice. See Miller, *supra* note 36, at 478-79 n.1.

private attorneys listed on the register are specially certified. In March 1980 there were 220 eligibles on the GS-16 register; twenty-three were private attorneys and only two were specially certified.⁴¹

It seems clear that selective certification represents a response by OPM to agencies' complaints about the restrictions upon their power to appoint ALJs with particularized expertise. The policy does strike a sort of balance with the restrictiveness of the applicable provisions of the Veterans Preference Act and the "rule of three," but whether it strikes an optimum balance, whether it enhances the quality or productivity of the ALJs, and whether it unduly discriminates against "generalist" eligibles remain much debated questions. The agencies utilizing selective certification generally favor its continuation, generalist eligibles oppose it, and others have urged its modification.

I share the Administrative Conference's belief that the objective of selective certification could be achieved without closing the door to highly qualified generalists by changing the process of ALJ certification and selection. Under its recommendation, eligibles would be awarded extra rating points for specialized experience of the kind now recognized for selective certification; a pool of the ten, rather than three, highest ranking eligibles on the register would be certified for agency selection; and, by amendment of the Veterans Preference Act, the agency would be free to select any eligible in the certified pool even if there were a higher-rated veteran in the pool.⁴²

D. Recruitment

The range of choice for agencies in selecting ALJs depends in part upon the overall composition of the registers of eligibles. This in turn depends in part upon recruitment of applicants. As mentioned, many fewer private attorneys tend to apply than do federal agency lawyers. One can only assume that the limited salary potential for ALJs is a major factor in this. ALJs' salaries like those of other top governmental officers are limited by a statutory ceiling. As of October 1980 a GS-15's salary ranged from \$44,547 to the ceiling of \$50,112 and a GS-16 was at the ceiling.⁴³ Apparently this salary level is not high enough to attract many specialized practitioners from the private bar. Indeed as far back as 1974, the then director of the Office of ALJs expressed the opinion

By January 1, 1974, that figure had risen to 34 percent. SUBCOMMITTEE REPORT, *supra* note 27, at 42. In February 1976 the figure was 32 percent (42 of 180), but in March 1980, the percentage was only 10.5.

⁴¹Information obtained from OPM, Office of ALJs, March 1980. One of the two was specially certified because of prior government service.

⁴²ACUS Recommendation 69-9(A)(2); 1 CFR 305.69-9(A)(2) and (A)(4).

⁴³See E.O. 12248, 45 Fed. Reg. 69, 201 (1980).

that ALJ service was also gradually losing its appeal to specially qualified agency staff attorneys in relation to the more lucrative lure of private practice.⁴⁴ The Office of ALJs has the responsibility for recruitment as well as for examination and selection, and it can therefore tailor its recruitment effort according to the agencies' needs and the interests of practicing attorneys. For the most part, the office has effected its recruitment through dissemination of Announcement No. 318, correspondence with bar associations and law schools, press releases, and speeches by the director.⁴⁵ However, this recruitment effort has largely been limited to general recruitment, *i.e.*, solicitation of applicants for positions on the general registers. (Most of the efforts in recent years have been directed to attracting applicants for GS-15 positions to meet the burgeoning needs of the Social Security Administration.)⁴⁶

Under the leadership of its new director, Marvin Morse, the office is attempting to step up its recruitment efforts by revising Announcement No. 318 and planning workshops to stimulate the interest of qualified women and minority applicants.⁴⁷

II. THE FUTURE OF THE ALJ's ROLE

Thirty-five years after the passage of the Administrative Procedure Act the administrative law judge is a strong and flourishing institution. Both the number of judges and the number of agencies using them have been growing yearly. Their status and functions have been enhanced by a long series of decisions of federal courts reviewing administrative agency decision making.⁴⁸ And they themselves have organized an effective professional association—the Federal Adminis-

⁴⁴SUBCOMMITTEE REPORT, *supra* note 27, at 28.

⁴⁵*Id.* at 3-4.

⁴⁶*Id.* at 5.

⁴⁷Interview with Judge Morse, director, Office of ALJs (September 1980). Judge Morse, appointed in April 1980, is the first ALJ to serve in that post. Under his broadened job description, he has the mandate "to provide policy guidance and leadership for the nationwide Administrative Law Judge program."

⁴⁸*See* Macy, *supra* note 9, at 380-82. For a comprehensive discussion *see* ROSENBLUM, THE ADMINISTRATIVE LAW JUDGE IN THE ADMINISTRATIVE PROCESS: INTERRELATIONS OF CASE LAW WITH STATUTORY AND PRAGMATIC FACTORS IN DETERMINING ALJ ROLES, SUBCOMM. ON SOCIAL SECURITY OF THE HOUSE COMM. ON WAYS AND MEANS, 94th Cong., 1st Sess. (1975); SUBCOMM. ON SOCIAL SECURITY OF THE HOUSE COMM. ON WAYS AND MEANS, 94th Cong., 1st Sess., RECENT STUDIES RELEVANT TO THE DISABILITY HEARINGS AND APPEALS CRISIS 171-245 (Comm. Print 1975). The Supreme Court recognized the ALJs functional comparability to judges in *Butz v. Economou*, 438 U.S. 478, 513 (1978). (ALJs have absolute immunity from liability for damages for actions taken in their quasi-judicial capacity.)

trative Law Judges Conference (FALJC).⁴⁹ Nevertheless, in recent years questions about the recruitment, selection, utilization, independence, and competence of the ALJ have been asked with increasing, rather than decreasing, frequency.

A. Action by the Civil Service Commission (OPM)

The Civil Service Commission has undertaken several efforts to address these questions. The first of a two-stage study was commenced in June 1973 by a study group composed of six chief ALJs and five ALJs under the direction of Philip LaMacchia, then the deputy general counsel of the Civil Service Commission. The "LaMacchia Committee" was given a broad mandate to make findings pertaining to the overall effectiveness of the ALJ program. The committee submitted its report to the commission on July 30, 1974.

The committee recommended against a change in the application of veterans preference to the ALJ selection program, but urged changes in the operation of the "rule of three"⁵⁰ and of selective certification. The committee also urged an enhanced recruitment effort and called for greater congressional explicitness as to the need for ALJ hearings in particular programs.⁵¹

The recommendations of the LaMacchia Committee were reviewed by a "second level" committee known as the "Advisory Committee on Administrative Law Judges," which was established in August 1976⁵² and held nine meetings before issuing its final report on February 14, 1978.⁵³

This more broadly representative advisory committee formally adopted four recommendations for approval of the commission (although the committee discussed many other issues). It recommended that ALJs be removed from the coverage of the Veterans Preference Act, that the practice of selective certification be abandoned

⁴⁹The FALJC is the only independent association of ALJs. The ABA's Section of Judicial Administration has organized a conference of ALJs, and the numerous ALJs in the Department of HHS have also formed their own association of ALJs.

⁵⁰See text at note 25. The committee urged a change to a rule of 10 or 15, Committee Report, Finding I(8) 15, 62.

⁵¹Indeed, to encourage this, the committee urged that the APA be amended "to provide that no further statute or Executive Order which provides for a hearing shall be deemed to require the use of ALJs absent explicit language therein that the proceedings in question are to be subject to Sections 556 and 557 of the APA in all respects and conducted by ALJs appointed under Section 3105." (Finding VIII(1), 56, 67-8). This idea deserves further consideration.

⁵²See 41 Fed. Reg. 36,682 (1976).

⁵³ADVISORY COMMITTEE ON ADMINISTRATIVE LAW JUDGES, FINAL REPORT (1978).

if veterans preference coverage is removed, that the commission permit certain additional types of occupations to count as qualifying experience for ALJ positions,⁵⁴ and that the commission modify its requirement pertaining to the recentness of qualifying experience.⁵⁵

The commission, in 1978, published a proposal to implement the recommendations pertaining to the experience requirements for eligibility, but has taken no further action on the matter.⁵⁶ The commission did, however, undertake a systematic content validity study of its ALJ examination process.⁵⁷ When completed, this study may result in change in the selection process.

B. Recent Legislative Proposals

Spurred by increasing concern about regulatory costs, administrative delay and bureaucratic red tape, the president and members of Congress have proposed several major "regulatory reform" bills in the 95th and 96th Congresses. A significant component of many of these bills has been a revamping of the ALJ system. The Senate Governmental Affairs Committee in the 95th Congress (1977-78) laid the foundation for the bills with its six-volume study on federal regulation. A portion of volume IV, *Delay in the Regulatory Process*, was devoted to a description of and a suggestion for reform of the ALJ selection process (pages 105-12). The committee's study led to the introduction in the 95th Congress of an omnibus regulatory reform bill which, in modified form, became S. 262 in the 96th Congress. Among the bill's many provisions is a complete revision of the ALJ selection process.

Under S. 262, (Title II, part B), as reported,⁵⁸ the Administrative Conference would assume the function heretofore performed by OPM of setting qualifying standards for ALJs and maintaining the register of eligibles. In addition, agencies would be permitted to select from the top *ten* eligibles without reference to veterans preference. The bill also provides that all ALJs appointed after the effective date of the act shall be appointed for a term of ten years. Furthermore, a new procedure

⁵⁴Specifically, the committee recommended deleting from Announcement 318's list of excluded occupations (1) adjudicator; (2) arbitrator; (3) mediator; (4) teacher or professor; (5) hearing officer in informal or conference proceedings; and (6) legal consultant.

⁵⁵Specifically, the committee recommended that the two most recent years of qualifying experience be acquired in the preceding ten years rather than the preceding seven years. See text at note 22.

⁵⁶See 43 Fed. Reg. 24,565 (1978). Legislative proposals to amend the veterans preference provisions have, however, been supported by the commission. (See *infra*.)

⁵⁷See SHARON, VALIDATION OF THE ADMINISTRATIVE LAW JUDGE EXAMINATION (June 1980), REPORT TO THE OFFICE OF PERSONNEL MANAGEMENT.

⁵⁸Comm. Print, April 1, 1980.

for evaluating, reappointing and removing ALJs is established by the bill and also assigned to the Administrative Conference. The procedure calls for the appointment of review boards by the chairman⁵⁹ of the Administrative Conference to aid the chairman in making determinations as to reappointment. Removals of ALJs would be made easier by the bill as well.

In the House of Representatives, a separate bill (H.R. 6768) to reform ALJ selection and evaluation procedures was reported by the Committee on Post Office and Civil Service.⁶⁰ H.R. 6768 maintains the recruitment and selection function in OPM, with a consultative role given to the Administrative Conference. It also expands the pool of eligibles to ten, but maintains veterans preference and permits selective certification. The bill also creates a high-level, full-time performance review board to evaluate the performance of each ALJ at least once every six years and to handle complaints against or by ALJs.

As might be predicted, many of these proposals have been strenuously opposed by witnesses representing ALJ associations,⁶¹ and there is some doubt as to whether any or all of these provisions will be enacted by the 96th Congress. Nevertheless, these developments indicate a fairly widespread perception of a need for change in the ALJ selection process and for increased ALJ productivity.

C. Proposals for a Unified Corps of ALJs

In the last twenty-five years a number of proposals have been advanced for a unified administrative trial court, or at least a centralized corps of judges to be used, but not employed or housed by the agencies.⁶² Recently the movement has intensified. The LaMacchia Committee, in 1973, urged the continued study of the ALJ corps concept and suggested that expertise could be retained by creating "divisions dealing with subjects such as transportation, ratemaking, licensing, labor matters, and consumer protection."⁶³ In 1976 former

⁵⁹Title IV of S. 262 also reorganizes the Administrative Conference and designates its head as "Administrator."

⁶⁰H.R. 6768, as originally introduced, was the portion of the administration's regulatory reform bill (H.R. 3263) that related to ALJs. After hearings, the committee reported a substitute version of the bill. Comm. Report No. 96-1186, July 23, 1980.

⁶¹See, e.g., Statement of William Fauver on behalf of the Federal Administrative Law Judges Conference, *Hearings*, *supra* note 2, at 68, and the FALJC Newsletter of April 1980, which details the Association's "battle" on behalf of its members.

⁶²See, e.g., Hector, *Problems of the CAB and the Independent Regulatory Commissions*, 69 YALE L.J. 931 (1960); Minow, *Suggestions for Improvement of the Administrative Process: Letter to President Kennedy from Newton N. Minow, Chairman, Fed. Communications Comm'n*, 15 AD. L. REV. 146 (1963); HOOVER COMM'N ON THE EXECUTIVE BRANCH OF GOVERNMENT, LEGAL SERVICES AND PROCEDURES 87-88 (1955).

⁶³Comm. Report, *supra* note 34, at 44-47.

ABA President Bernard Segal called for the creation of an independent ALJ corps in a speech to the ABA.⁶⁴ Since then, the concept has garnered much support from ALJs themselves⁶⁵ while the employing agencies tend to oppose the idea.⁶⁶ In addition, with the creation of the Occupational Safety and Health Review Commission and Federal Mine Safety and Health Review Commission as adjudicative commissions, staffed with ALJs and independent of the Department of Labor, Congress has shown itself to be increasingly sensitive to the value of having judges who are free from any influence of the enforcement agency.⁶⁷

Such proposals raise structural questions that go to the heart of our administrative process. Proponents of the corps idea bear the burden of attending to the details of its proposed implementation. It must be remembered that five agencies employ nearly 1,000 of the ALJs while the remaining 24 employing agencies average only about seven judges.⁶⁸ The very size and balkanization of the burgeoning administrative judiciary and the variety of matters it now handles would hinder any attempt to rapidly transform it into a coherent corps. On the other hand, the prospect of increased unification remains attractive because of its potential administrative efficiency, enhancement of the perception (at least) of judicial independence, and the facilitation of uniformity in administrative procedures and in productivity norms. I hope therefore that the unified corps concept can receive intensive scrutiny in the next several years, and that Congress can authorize a limited experiment by which amenable agencies can draw upon a separately appointed and administered corps of ALJs.

D. Productivity Concerns

The Administrative Conference's first report on the Uniform Case-load Accounting System referred to the "irrepressible question of

⁶⁴Segal, *The Administrative Law Judge: Thirty Years of Progress and the Road Ahead*, 62 A.B.A.J. 1424 (1976).

⁶⁵A GAO survey of ALJs, August 1977 showed that over 80 percent of the 754 judges responding favored the independent corps concept to a moderate, great or very great extent. ADMINISTRATIVE LAW PROCESS: BETTER MANAGEMENT IS NEEDED, 64 (May 15, 1978) REPORT BY THE COMPTROLLER GENERAL TO CONGRESS. See also *A Unified Corps of Administrative Law Judges—How Will It Work*, Conference of Administrative Law Judges, (ABA Symposium, January 28, 1977).

⁶⁶See LaMacchia Comm. Report, *supra* note 34, at 45 indicating that only two agencies expressed approval of the concept. This may be changing, however. Chairman Pertschuk of the FTC has said that the "idea of assigning administrative responsibility for ALJs to a single entity . . . merits further consideration." *Hearings on Administrative Law Judge System Before the Subcomm. for Consumers of the Senate Comm. on Commerce, Science, and Transportation*, 96th Cong., 2d Sess. 28 (1980).

⁶⁷See Sullivan, *Independent Adjudication and Occupational Safety and Health Policy: A Test for Administrative Court Theory*, 31 AD. L. REV. 177 (1979).

⁶⁸See appendix.

whether one can evaluate ALJs' performance."⁶⁹ The question is, if anything, even more timely now, since an assumption of the above-mentioned pending reform bills is that objective evaluation of ALJ performance can and should be undertaken.

One of the earliest forays into this area was made by the LaMacchia Committee, which surveyed private practitioners and government attorneys about the overall quality of ALJs' initial decisions and the performance of ALJs as to the time taken to write those decisions. The results were quite inconclusive, with a majority of government attorneys and a minority of private practitioners finding the quality of initial decisions to be good or superior and a slight majority of both groups finding the time performance to be good or superior.⁷⁰ More sophisticated surveys or evaluative questionnaires, as employed by numerous state bar associations with respect to state judges,⁷¹ could be used. However, systematic evaluation of the work product of ALJs as a corps, by agency, or by individual judge is problematic due to the potential conflict with ALJ independence. Agency ratings of ALJs cannot be taken into account by the Office of Personnel Management in compensation,⁷² and the "good cause" test for discipline and removal of an ALJ has rarely been invoked. (Only ten ALJs in the history of the corps have been formally charged and only three removed.)⁷³

The potential tension between ALJ independence and management initiatives was dramatically illustrated by the controversy, acrimony, and litigation occasioned by the aggressive efforts of Robert Trachtenberg, former director of the Social Security Administration's Bureau of Hearings and Appeals, to institute a number of management initiatives with respect to ALJ performance.⁷⁴ Among the practices most stren-

⁶⁹ADMINISTRATIVE CONFERENCE OF THE U.S., FEDERAL ADMINISTRATIVE LAW JUDGE HEARINGS—STATISTICAL REPORT FOR 1975 14 (1977).

⁷⁰Reports were received from 54 private practitioners and 134 government attorneys. LaMacchia Comm. Report, *supra* note 34, at 34–37.

⁷¹See, e.g., INSTITUTE FOR JUDICIAL ADMINISTRATION, HOW BAR ASSOCIATIONS EVALUATE SITTING JUDGES (1976).

⁷²5 U.S.C. § 5372 (1976). See also 5 U.S.C. § 4301 (1980) which exempts ALJs from the performance ratings prescribed for other civil servants.

⁷³Fauver statement, *supra*, note 61 at 77–78. The three removals occurred in 1962, 1972, and most recently in March 1980. Six of the judges have been charged since January 1978, mostly by the Social Security Administration. One judge has been charged twice.

⁷⁴For the full airing of this controversy, see SUBCOMM. ON SOCIAL SECURITY OF THE HOUSE COMM. ON WAYS AND MEANS, SOCIAL SECURITY ADMINISTRATIVE LAW JUDGES: SURVEY AND ISSUE PAPER (Comm. print 1979). The remarkable bitterness that arose during this period is illustrated therein by statements in an affidavit filed by Director Trachtenberg (Appendix B): "Upon my appointment as Director in January, 1975, I discovered the most lethargic, indifferent, unresponsive, and unaccountable organization that I have ever seen in 15 years as a Federal employee"; and by a letter of commentary on that affidavit by an agency official (Mr. James A. Minton, program operations officer, Region II) who

uously opposed by members of the SSA ALJ corps were a peer review program, a monthly production goal/quota and a quality assurance program designed to identify ALJs whose decisions deviated significantly from the agency-wide rate of reversals of initial benefit denials.⁷⁵

Whether or not the agency's productivity rate was enhanced by these initiatives (and the evidence seems to indicate that it was), the agency's morale was obviously harmed and the SSA, in a recent settlement of one of the lawsuits engendered by the actions, has agreed to drop mention of production figures in its training and transfer policies.⁷⁶

Even if the Social Security Administration's management initiatives have been slowed by the above events, other voices have urged increased emphasis on management. A 1977 survey of chief ALJs on case management procedures by the Civil Service Commission Advisory Committee showed widely inconsistent practices in this regard.⁷⁷ In 1978, the General Accounting Office (GAO) concluded that a system was needed for applying personnel management techniques to administrative law judges, through the development by agencies of objective quantitative and qualitative performance standards with periodic performance evaluation by a central organization.⁷⁸ In 1979, in a follow-up report, the GAO reported that little had changed;⁷⁹ and the American Bar Association's Commission on Law and the Economy also urged improved management of agency adjudications.⁸⁰

A number of agencies have taken the first step to performance evaluation by developing in-house data collection systems,⁸¹ and there is some experience on the state level to be monitored.⁸² The data-

opened his letter (Appendix C) by stating that Mr. Trachtenberg "grossly exaggerates and flagrantly distorts the truth in his self-serving sworn statement of September 5, 1978. He appears intoxicated by his own press releases: thereby deluding himself in believing that he is the Messiah whose mission was to redeem BHA of all its base and scandalous deeds."

⁷⁵The Second Circuit has recently upheld the standing of an SSA ALJ to challenge these practices, *Nash v. Califano*, 613 F.2d 10 (2d Cir. 1980) (remanded to district court).

⁷⁶*Bono v. Social Security Administration*, C.A. No. 77-0819-CV-W (W.D. Mo., settled June 19, 1979), as cited by *Nash v. Califano*, 613 F.2d at 16-17 n.13.

⁷⁷Copies of the responses are on file at the Administrative Conference.

⁷⁸COMPTROLLER GENERAL OF THE U.S., *ADMINISTRATIVE LAW PROCESS: BETTER MANAGEMENT IS NEEDED* (FPCD 78-25 1978).

⁷⁹COMPTROLLER GENERAL OF THE U.S., *MANAGEMENT IMPROVEMENTS IN THE ADMINISTRATIVE LAW PROCESS: MUCH REMAINS TO BE DONE* (FPCD 79-44 1979).

⁸⁰ABA COMMISSION ON LAW AND THE ECONOMY, *FEDERAL REGULATION: ROADS TO REFORM 101-04* (Final Report 1979).

⁸¹Agencies which have developed the most systematic in-house data collection systems for their adjudicative activity are CAB, FERC, ICC, NLRB, and SSA.

⁸²New Jersey has an ongoing program of evaluation of its 41 ALJs. See Rosenblum, *Evaluation of Administrative Law Judges: Aspects of Purpose, Policy and Feasibility* (May 1980) (Draft report for the Administrative Conference of the U.S.).

gathering efforts of the Administrative Conference from 1975–1978⁸³ give some indication of both the potential and the difficulties inherent in quantitative measurement of ALJ productivity.⁸⁴ Nevertheless, if such efforts are given increased emphasis by the high-volume adjudicative agencies, with oversight by the Administrative Conference, I would reaffirm the conference's premise that "given enough data and with careful determination, over a period of several years, of what similarities and differences exist among the various types of formal administrative cases processed, some method of evaluation of ALJ performance may be feasible and useful."⁸⁵

III. THE ALJ PROGRAM—MENU FOR CHANGE

The following proposals are not original with me. But, in summary form, they represent my views as to needed legislative and administrative changes in the ALJ program.

A. *Selection and Appointment*

1. Elimination of veterans preference. The preference is unnecessary for veterans who are successful enough in their careers to apply for this position. It clearly retards recruitment and is an infringement on merit selection.
2. Modification of selective certification. The present system of having, in effect, separate registers for specially qualified applicants should be replaced by a system which permits agencies to select from the top 10 eligibles on the main register. Rating officials should, however, be permitted to give additional credit to applicants with specific relevant experience. Any change in selective certification should, however, await the elimination of veterans preference.
3. A program allowing agencies to hire a limited number of "administrative law examiners" at GS-13 and GS-14 for a trial period should be instituted so as to provide a feeder group of potential ALJs. Such examiners could be authorized to handle non-APA cases, assist ALJs in APA cases, or even preside in APA cases where the parties agree.

⁸³ADMINISTRATIVE CONFERENCE OF THE U.S., FEDERAL ADMINISTRATIVE LAW JUDGE HEARINGS—STATISTICAL REPORT FOR 1975 (1977); STATISTICAL REPORT FOR 1976–1978 (1980).

⁸⁴See SENATE COMM. ON GOVERNMENTAL AFFAIRS, 95th Cong., 1st Sess., DELAY IN THE REGULATORY PROCESS (Committee Print 1977): "The Conference's present efforts to collect uniform statistics from regulatory agencies is a step in the right direction, but needs refinement, enforcement capability, permanence, and adequate funding."

⁸⁵STATISTICAL REPORT FOR 1975, *supra* note 83, at 15.

4. The Office of Administrative Law Judges in the Office of Personnel Management should be expanded and its director given additional status and authority. At present the office is too small and ill-funded to adequately oversee such a large and balkanized program. The office needs to be upgraded within OPM to a status equivalent to that of the Office of General Counsel, reporting directly to the director of OPM. Currently the OALJ director must report to the associate director for executive personnel and management development, one of 14 associate directors in OPM (See OPM organizational chart, 44 Fed. Reg. 1503 (1979). If this is not done, the office or its function should be transferred elsewhere.
5. The Office of Administrative Law Judges should continue its effort to reevaluate its ratings process. Among other changes, it should increase the importance given the interview panel. The office should also enhance its recruitment efforts by improving its informational announcements, and by broadening the categories of persons eligible for inclusion, e.g., arbitrators and law professors.
6. A more equitable and effective procedure of determining the salaries of ALJs needs to be adopted. One legislative solution would be to make ALJ salaries a fixed percentage of the salaries of Federal district judges.

B. *Performance Review*

1. The Chief ALJs, at agencies with more than one ALJ, should be given the responsibility and authority to develop performance standards for the agency's judges and monitor and report on the quantitative and qualitative performance of the judges.
2. An independent, high-level, performance review board should be established to conduct periodic performance appraisals of ALJs, and handle complaints respecting the performance or conduct of ALJs as well as complaints of undue interference in ALJ duties by agency officials. The board should be able to take varying degrees of disciplinary action against ALJs subject to appeal to the Merit Systems Protection Board, except that outright removal should be subject to a de novo hearing by the board. ALJs appointments should not be for a fixed term.
3. Agencies should be required by statute to compile adequate statistics on formal adjudications pursuant to the direction of the Administrative Conference of the United States.

C. *Unified Corps of ALJs*

1. A joint executive-legislative-judicial commission should be established to study the feasibility and need for one or more independent corps of ALJs or administrative courts. Experiments in this vein should be authorized during the pendency of the study.
2. The Administrative Conference should be given adequate resources to study the feasibility and need for uniform rules of practice for agency rules of practice and for a revised manual for ALJs.

APPENDIX

NUMBER OF ADMINISTRATIVE LAW
JUDGES SERVING, BY AGENCY

AGENCY OR DEPARTMENT	NUMBER OF ALJS	
	Jan. 1979 ^a	June 1980 ^b
Agriculture, Department of	5	5
Alcohol, Tobacco and Firearms, Bureau of (Dept. of the Treasury)	1	1
Civil Aeronautics Board	17	11
Commodity Futures Trading Commission	4	4
Consumer Product Safety Commission	1	0 ^c
Drug Enforcement Administration (Dept. of Justice)	1	1
Environmental Protection Agency	6	7
Federal Communications Commission	14	13
Federal Energy Regulatory Commission	23	22
Federal Labor Relations Authority	4	10 ^d
Federal Maritime Commission	7	7
Federal Mine Safety and Health Review Commission	12	18
Federal Trade Commission	12	12
Food and Drug Administration (Dept. of H.E.W.)	1	1
Housing and Urban Development, Department of	1	1
Interior, Department of the	8	13 ^e
Interstate Commerce Commission	61	55
Labor, Department of	49	66
Maritime Administration (Dept. of Commerce)	3	3
Merit Systems Protection Board	1	1 ^f
National Labor Relations Board	98	115
National Transportation Safety Board	6	6
Nuclear Regulatory Commission	1	1
Occupational Safety and Health Review Commission	47	48

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Postal Rate Commission.....	0	0*
Securities and Exchange Commission	8	7
Social Security Administration (Dept. of H.E.W.)	660	698
U.S. Coast Guard (Dept. of Transportation)	16	16
U.S. International Trade Commission.....	2	2
U.S. Postal Service	2	2
	<hr/>	<hr/>
TOTAL	1070	1146

* Data derived from "Management Improvements in the Administrative Law Process: Much Remains to be Done," Report by the Comptroller General of the U.S., FPCD-79-44, May 23, 1979 (Appendix III).

^b Information obtained from Office of Administrative Law Judges, OPM, June 1980.

^c Position is temporarily vacant due to a retirement.

^d The FLRA was created in 1979 by the Civil Service Reform Act.

^e Does not include 11 GS-14 Indian Probate Judges.

^f The MSPB was created in 1979 by the Civil Service Reform Act. This position was formerly located in the Civil Service Commission.

* The position allotted to the Postal Rate Commission has been vacant since 1977.

