REPORT BY THE

Comptroller General

OF THE UNITED STATES

10,244

Management Improvements In The Administrative Law Process: Much Remains To Be Done

This report summarizes and evaluates agency responses to GAO recommendations to improve management of the adjudication process in agencies employing Administrative Law Judges. The recommendations were to

--eliminate extensive review of Administrative Law Judge decisons;

--establish one central body to conduct necessary case reviews;

--establish objective Administrative Law Judge performance standards, both quantitative and qualitative; and

--make sure their agencies have effective Administrative Law Judge financial disclosure systems.

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FPCD-79-44
MAY 23, 1979

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-186871

SEN06600
SEN02500
HSE01500

To the Chairmen, Senate Committees on Governmental Affairs and the Judiciary and House Committee on Government Operations

In May 1978 we issued a report ("Administrative Law Process: Better Management Is Needed" FPCD-78-25, May 15, 1978) to the Congress on management of the administrative law process. We have evaluated department and agency responses to that report's recommendations and have concluded that little has changed to improve management of the process.

The report discussed two causes for delay in adjudicating administrative disputes--extensive agency review of Administrative Law Judge 1/ decisions and use of more complex judicial procedures than necessary to resolve some disputes. Ineffective Administrative Law Judge personnel management was also addressed. Because of the nonspecificity of the Administrative Procedure Act of 1946, these personnel are now not subject to structured performance evaluation. This inhibits performing most other major personnel management functions for the judges--workload planning, productivity improvement, and improved selection criteria, among others.

To alleviate delay in the adjudication process and to aid effective Administrative Law Judge personnel management, we recommended that the heads of agencies employing judges:

--Establish procedures precluding extensive review of Administrative Law Judge decisions in cases where

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1/A list of the 30 agencies currently employing Administrative Law Judges is contained in app. III.

the parties have not filed exceptions and where the case does not involve compelling public interest issues or new policy determinations.

--Establish one central body to conduct necessary case reviews to avoid, to the maximum extent, duplication and inefficiency.

--Establish objective Administrative Law Judge performance standards, both quantitative and qualitative, in cooperation with the chief judge and the judges themselves, to set forth what is expected of all judges.

--Make sure their agencies have effective Administrative Law Judge financial disclosure systems, including a requirement that chief judges be familiar with the judges' disclosure statements.

In addition, we recommended that the chief judge at each agency, commission, or board review the procedures by which cases are formally adjudicated to determine if simplified procedures can be used.

LITTLE HAS CHANGED

Twenty-five departments and agencies responded to our recommendations, as required by section 236 of the Legislative Reorganization Act. 1/ After reviewing the responses, we have concluded that our recommendations remain valid, are achievable, and are consistent with statutory constraints, although they may apply in differing degrees to individual departments and agencies. However, agencies have done little or nothing to improve management of the administrative law process. While the agencies agreed that alleviating regulatory delays and improving management were worthy objectives, many reported they did not need to make changes because they

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1/The agency comments are voluminous and are not reproduced in this report. Copies may be requested by contacting our Federal Personnel and Compensation Division. A chart which displays in overview form agency response to each recommendation is contained in app. II. Two agencies did not respond--the Civil Aeronautics Board and the Postal Rate Commission.

--did not review Administrative Law Judge decisions in excess of what was merited,

--did not have too many review layers, or

--were already doing enough to meet our report's intent.

In addition, some reported they could not make recommended changes because the types of cases they handled were so complex, so varied, or so few that either performance standards or simplified procedures were inapplicable. Others said they were precluded by statute from developing Administrative Law Judge performance standards, simplifying procedures, or limiting reviews. Our detailed evaluation of the responses is contained in appendix I.

Both our work and that of the Senate Governmental Affairs Committee found that agency review was a major cause of delay in final case disposition. Yet almost all the agencies reported they did not perform excessive reviews of Administrative Law Judge decisions. Few outlined what their reviews entailed. As discussed in appendix I, responses begged the questions of duplicative reviews, frivolous appeals by parties, extent of review (whether de novo 1/ or other), and whether the agency exercised restraint in calling cases on its own motion. It is hard to believe that the agencies which responded that they were doing enough could not delegate decisional and review authority more effectively.

Agencies are not precluded by the Administrative Procedure Act to develop objective performance standards for judges; they are precluded by it to evaluate individual judge performance. We recognized this constraint in our recommendation to the Congress that it specifically assign performance evaluation to an organization outside the agency. Performance standards are used for many purposes. One is measurement of and feedback about individuals, a function which is the daily responsibility of the firstline manager, the chief Administrative Law Judge. (See app. I, p. 5.)

Performance standards can be employed to assess workload, staffing requirements, work processes, or management

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1/De novo review is essentially a complete review of the case.

improvements. There is no pat answer to performance standard development. Complexity can vary from case to case, and both complexity and case volume can vary from agency to agency. However, as our report mentioned, the weighted caseload system used by the Administrative Office of the United States Courts and that being developed by the Administrative Conference of the United States can serve as models.

Our report also recognized that some of the formality of the administrative process was required by the Administrative Procedure Act. However, as discussed below, the Congress currently has before it proposals to amend the act, simplifying the adjudication process.

Federal Administrative Law Judges Conference reaction

The Federal Administrative Law Judges Conference, an organization which represents about 600 Administrative Law Judges, also commented on the report. The Conference, like some agencies, strongly opposed setting objective performance standards for judges. Such standards would entail qualitative considerations leading, it believed, to a system "whereby judges' decisions are influenced by agency rating schemes." However, the report pointed out, agencies already having "rating schemes" or performance standards had not found this to be the case. Also, as mentioned above, we recommended to the Congress that the judges' decisional independence be safeguarded by assigning performance evaluation to an organization outside the agencies.

PROPOSED BILLS WOULD CHANGE THE ADJUDICATION PROCESS

A number of bills recently have been introduced in the Congress to reform Federal regulation. In the Senate alone in April 1979 there were 14 bills; the House has numerous bills before it also. Provisions of the bills range from regulatory impact analysis to sunset regulations and use of the legislative veto, among many others. Two of the bills, Senate bill 262, the Reform of Federal Regulation Act, and Senate bill 755, the Regulation Reform Act, specifically address Administrative Law Judges, as well as reform of adjudication procedures to reduce delay, issues which our report discussed.

To alleviate delays in the regulatory process, the bills would amend the Administrative Procedure Act to allow agency alternatives to formal trial-type proceedings, while giving judges' decisions greater finality by limiting agency review. Agency authority to delegate review to employee boards would also be clarified.

The bills also propose changes to improve Administrative Law Judge personnel management. The Administrative Conference of the U.S. would be responsible for evaluating judges' performance and for taking action against inadequately performing judges. The Conference would also be responsible for review and reappointment of judges after set terms, in Senate bill 262, 10 years, and in Senate bill 755, 7 years. Hiring procedures for judges would also be altered by both bills, increasing the number of qualified candidates referred to agencies beyond the current three. Agency selective certification (special qualification criteria) would not be permitted. Senate bill 755 also transfers Administrative Law Judge recruiting and examining from the Office of Personnel Management to the Administrative Conference, and provides for judge performance pay bonuses.

Statutory changes with implications for judges

Since our report was published, three laws have been enacted which affect issues with which we dealt. The first, Public Law 95-256, April 6, 1978, eliminates the requirement in section 8335 of title 5, U.S. Code, for mandatory retirement at age 70 of Federal employees who have at least 15 years of service. The second is the Civil Service Reform Act of 1978 (Public Law 95-454, Oct. 13, 1978), which reforms many civil service laws. The third is the Ethics in Government Act (Public Law 95-251, Oct. 25, 1978), which requires public financial disclosure of covered Federal employees, including Administrative Law Judges at any General Schedule grade.

Elimination of mandatory retirement

With the elimination of mandatory retirement for most civil service employees, Administrative Law Judges may now serve, in effect, their lifetimes. This change is of concern as it relates to judge performance. Since Administrative Law Judges are now not subject to structured performance evaluation, and since no judge has been removed for ineffective performance of duties under the Administrative Procedure

Act, judges who might otherwise be determined to be incapacitated by age may continue to serve. Also agencies can no longer "wait out" a poorly performing judge until mandatory retirement.

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Officials in the Office of Administrative Law Judges at the Office of Personnel Management believe many judges will choose to remain in Government service rather than retire, not only because of the salary but also because of the position's prestige. Although the Office does not maintain statistics or evaluate trends in judge retirement, one official estimated that under 100 of the more than 1,000 currently employed judges had retired in the last 3 years. 1/ Our 1976 questionnaire survey found that 42 percent of the 754 permanent judges who had responded were age 55 or older and thus were potentially retirement eligible.

We believe, therefore, as we recommended in our report, that Administrative Law Judge performance evaluation and objective performance standards are even more critical to insuring the quality of administrative adjudication.

Civil service reform emphasizes accountability

The Civil Service Reform Act emphasizes Government managerial accountability, flexibility, and rewards for good performance, as a means of making the Federal Government more efficient and more responsive to the public. Administrative Law Judges, however, specifically are exempt from the act's performance appraisal provisions. This is consistent with a similar exemption under the Administrative Procedure Act.

Yet, as our report emphasized, judges are pivotal figures in the costly administrative adjudication process. They make decisions which can have the force of law and which can significantly affect the national economy and the claims for administrative justice of thousands of citizens and business firms.

Two bills introduced recently in the Congress, discussed earlier, would make judges accountable for their performance

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1/This 3 percent annual retirement rate is average for Federal Government employees.

as other Government executives are. In the interim, the question of performance evaluation remains open in an environment of increasing concern for demonstrated merit.

Change in financial disclosure requirements

We recommended that the heads of agencies employing Administrative Law Judges "see that an effective financial disclosure system is implemented, including a requirement that chief Administrative Law Judges be familiar with Administrative Law Judge disclosure statements to avoid possible conflict-of-interest situations." The objective was insurance that the individual who assigned cases to judges, whether the chief judge or another agency official (for example, in single-judge agencies), was sensitive to real or apparent conflicts of interest before assigning cases.

In response many agencies, while noting they had effective financial disclosure systems, emphasized that the basic responsibility for avoiding conflicts of interest rested with the individual judge and that the chief judge's review of financial disclosure statements was unnecessary. We agree with the former but believe our recommendation requiring chief judge review remains sound.

The passage of the Ethics in Government Act in October 1978 changed the requirements for and coverage of Federal Government financial disclosure. The new law requires all Administrative Law Judges to file financial disclosure statements. When our report was issued, some judges (for example, judges at the Coast Guard) did not file. Additionally, the act requires public disclosure of financial statements. Reports must be made available to the public within 15 days of being filed with the agency.

Attorneys acting for parties who have cases to be heard by Administrative Law Judges thus will have access to the financial disclosure statements. Prior review of financial disclosure statements by the official assigning cases appears a reasonable, inexpensive safeguard against potential hearing complications. Six agencies now provide for chief judge review as a result of our report.

OUR RECOMMENDATIONS ARE SOUND

In our judgment departments and agencies which adjudicate administrative disputes have not yet done all they can to manage that process efficiently. Our recommendations to improve the administrative law process are sound but have not been implemented in most agencies. Improvements should not and need not be contingent on passage of regulatory reform legislation. The fact that some agencies have made changes strengthens our views. Solutions may differ, but the basic issues of management efficiency and performance accountability should not be obscured.

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Copies of this report are being sent to the Chairmen, House and Senate Committees on Appropriations; the Chairman, Subcommittee on Civil Service, House Committee on Post Office and Civil Service; the Director, Office of Management and Budget; and the Director, Office of Personnel Management.

Comptroller General
of the United States

SUMMARY EVALUATION OF AGENCY COMMENTS ON GAO REPORT "ADMINISTRATIVE LAW PROCESS: BETTER MANAGEMENT IS NEEDED"

Federal executive departments and agencies collectively process a larger caseload than U.S. courts, affect the rights of more citizens, and employ more than twice as many Administrative Law Judges (ALJs) as there are active judges in Federal trial courts. The administrative adjudicatory process costs the Federal Government and other parties millions of dollars each year. There are also intangible costs, such as injuries and hardships, which can result from delays in the process.

More than 1,000 ALJs in 30 departments and agencies 1/ preside as quasi-judicial officers at formal administrative hearings to resolve disputes on matters ranging from licensing and ratemaking to health and safety regulation. To insure the judicial capability and objectivity of the ALJs, the Administrative Procedure Act of 1946 precludes agencies from evaluating ALJ performance and assigns responsibility for determining ALJ qualifications, compensation, and tenure to the Office of Personnel Management (OPM), formerly the Civil Service Commission.

In reviewing the adjudication process, we found that:

--Although the Administrative Procedure Act was passed to resolve conflicts promptly and fairly, timely decisions were not being made because the process was burdened with extensive reviews of ALJ decisions by their agencies and the use of more complex, judicial procedures than necessary to resolve some disputes.

--The lack of ALJ performance evaluation, including development of objective standards, precluded agencies from identifying unsatisfactory performers and taking personnel action; making most effective use of ALJs; planning adequately to meet workload; and giving OPM information on the adequacy of its certifying practices, among other major personnel management needs.

--OPM had virtually no basis upon which to evaluate agency requests for additional ALJs and had not required agencies which use selective certification

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1/See app. III.

(special ALJ qualification requirements) to justify continued use of a practice which raises doubts about ALJ impartiality.

We recommended to the heads of agencies which employ ALJs that they

--establish procedures which would preclude extensive review of ALJs' decisions,

--establish one central body to conduct necessary case reviews,

--establish objective performance standards for ALJs, both quantitative and qualitative, and

--implement an effective financial disclosure system.

We also recommended that the chief ALJ at each agency, commission, or board review the procedures by which cases are formally adjudicated to determine if simplified procedures can be used.

We recommended that OPM:

--Encourage and assist the Administrative Conference of the United States in its efforts to develop an ALJ caseload accounting system.

--Reexamine the need for selective certification at the agencies where it is currently in use and evaluate future requests for its use on a case-by-case basis.

Agency responses to each recommendation are separately evaluated below. However, since the responses are lengthy, only the most salient agency points are discussed, while the remainder are summarized. Appendix II contains a chart presenting an overview of agency responses to the five recommendations.

RECOMMENDATION: The heads of agencies employing ALJs should establish procedures which would preclude extensive review of ALJ decisions in cases where the parties have not filed exceptions and where the case does not involve compelling public interest issues or new policy determinations.

This recommendation and the next were intended to reduce the time agencies take to decide cases, since agency review of an ALJ decision can more than double the time required to

Many agencies responded that their ALJs' initial decisions were reviewed only by the agency itself, meaning staff attorneys working for the commissioners or the agency heads. These include the Federal Trade Commission, the International Trade Commission, and the Federal Maritime Commission. Such a practice may foster duplication since each commissioner's staff looks at cases individually and from a differing perspective. We found duplication of effort at the Occupational Safety and Health Review Commission, for example, even though that Commission had an Office of Central Review.

The Commission, however, has disbanded its Office of Central Review. It now requires commissioners' staff attorneys to review cases serially, rather than concurrently. It claims to have "decreased duplication of staff work substantially," since the case stops circulating when one of the three commissioners orders the case for review. The response did not mention, however, whether each of the three commissioners still applied differing review criteria as discussed in our report or resultant time savings. Each commissioner continues to retain a staff of 11 attorneys. We consider this new procedure a step in the wrong direction.

The majority of the remaining agencies reported they had one central body to conduct case reviews or a one-step review procedure. The Consumer Product Safety Commission noted it was considering guidelines for itself in decisions on appeal, in addition to time limits on parties, while the Environmental Protection Agency indicated it had proposed regulations which would centralize the review of a major portion of field cases under its Judicial Officer.

RECOMMENDATION: The heads of agencies employing ALJs should establish, in cooperation with the chief ALJ and the ALJs themselves, objective performance standards delineating what is expected of all ALJs in terms of quality and quantity of work.

To insure the ALJs' decisional independence, the Administrative Procedure Act precludes agency performance appraisals of them. The agency, however, remains responsible for managing its adjudicatory functions, usually acting through the chief ALJ as a member of its top management. This responsibility includes providing feedback on the disposition by ALJs of cases assigned to them and monitoring their performance. The act does not preclude agency establishment of ALJ performance standards.

Performance standards can be employed not only to objectively assess individual performance but also to assess workload, staffing requirements, work processes, or management improvements in a given organization.

Achieving a balance between judicial independence and managerial responsibility which protects the parties' due process and the public interest remains one of the most emotionally contested issues raised by our report. Several agencies responded strongly to this recommendation, voicing their fear that ALJ performance standards could lead to pre-Administrative Procedure Act abuses of due process. Agencies which already use ALJ performance standards, however, have not found that to be the case. In addition, we recommended that the Congress assign evaluation of ALJ performance to an organization outside the agencies.

Nothing novel has been added to the decades-old judicial independence dialog by the agency responses to our report. Agency activities range from the National Labor Relations Board, which sets a target of 12 dispositions a year for its ALJs, to the Nuclear Regulatory Commission, which stated objective ALJ performance criteria are contrary to the Code of Federal Regulations restriction against agency ALJ performance appraisal. Most agencies at least monitor ALJ performance through case-tracking systems, though few mentioned having developed objective performance standards or assessment of individual judges by the chief ALJ.

The Federal Energy Regulatory Commission response emphasized, as did others, that cases at economic regulatory agencies were more complex and varied than repetitious single-issue cases, and so quantity data could be misleading. These factors of complexity and variety are recognized in the weighted caseload accounting systems we mentioned in our report. Weighting takes into account case complexity and makes quantitative data comparable.

Although the Commission believed it had met this recommendation with its new case status system, a recent GAO report found that it had not: "These tools * * * are used only to monitor individual case progress." The Commission's chief ALJ does not use the information generated to evaluate ALJ productivity or performance. 1/

1/Letter report to the Chairman, Subcommittee on Energy and Power, House Committee on Interstate and Foreign Commerce (EMD-79-28, Feb. 13, 1979).

reach a final decision. We also were concerned that ALJ decisions should have greater finality, since one of the Administrative Procedure Act's goals was to assure "that those who hear the case * * * are an important factor in the decision process * * *." De novo review of decisions, for example, and high numbers of decisions reviewed substantially contribute to regulatory delay.

Although almost all the 25 agencies responding indicated their procedures already complied with our recommendation, it is hard to believe that none need to eliminate excessive agency review in both numbers of decisions reviewed and extent of review. Both our work and that of the Senate Governmental Affairs Committee found that agency review of ALJ decisions was a major cause of delay in the adjudication process. Yet only the Departments of Housing and Urban Development and Labor indicated the possibility of further limiting their reviews. 1/

For the most part, responses begged the questions of excessive review layers (see next discussion); frivolous appeals by parties; extent of review (whether de novo or other); and unrestrained sua sponte (agency initiated) review, such as that we reported occurring at the Occupational Safety and Health Review Commission, where one commissioner called up 92 percent of ALJ decisions on his own motion in 1 year.

The agencies generally pointed out that current practice precluded review except when exceptions were filed to the ALJ's initial decisions or compelling policy or public interest issues were involved. Most intended no change in their procedures, although some noted it was a rare case that did not meet those criteria.

The International Trade Commission, noting its ALJs' decisions were only recommended decisions, denied that its review caused substantial case delay. The Federal Trade Commission also contended that extensive agency review did not contribute to delay.

The Securities and Exchange Commission defended its "liberal review policy." Since it does not have high-volume cases, the Commission favored granting petitions for review, unless the appeal is obviously frivolous. It did so, the response noted, because of fairness to

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1/As discussed in their responses, the Coast Guard and the Interstate Commerce Commission have proposed legislation to eliminate statutorily required reviews in certain cases.

respondents and assurance that Commission decisions were in accordance with its policies and because it believed the determination of whether a petition had merit could take as long as a review on the merits.

Such a policy, however, in addition to delaying final case disposition, in many cases results in the agency's "retrying" a case after the ALJ's decision. As our report mentioned, current agency review practices raise doubts about achieving the Administrative Procedure Act's goal of ensuring that the "* * * views of agency personnel are not unduly emphasized or secretly submitted and that the official record alone is the basis of decision * * *."

The Coast Guard reported it had a unique problem. It alone of all the agencies has a statutorily required review after its final decision and before appeal to the courts, by the National Transportation Safety Board. Its decisions are thus not administratively final if a party chooses to appeal to the Board.

Some agencies indicated they had taken steps to limit review or were considering limitations. The Departments of Housing and Urban Development, Labor, and the Interior are studying future review limitations, or "shortcuts," such as memorandum affirmations, while the Nuclear Regulatory Commission indicated it would deny a petition for review if the petition did not meet its criteria. The National Transportation Safety Board noted that in 11 years it had never reviewed a case on its own motion.

RECOMMENDATION: The heads of agencies employing ALJs should establish one central body to conduct case reviews when necessary so as to avoid to the maximun extent, duplication and inefficiency.

This recommendation was directed to excessive layering of agency review. One example in the report concerned review of Federal labor-management relations cases at the Department of Labor, where the ALJ's decision passed through five review layers before reaching the Assistant Secretary for final disposition. Some agencies, however, misread the recommendation's intent as requiring an additional, though central, review body, thus adding another review layer. That was emphatically not the intent. To be effective a central review body should be authorized to review and dispose of cases or, as a minimum, should not have its work duplicated by attorneys working in other offices or on commissioners' staffs.

> "* * * come to employ general rulemaking procedures increasingly for the establishment of its regulatory policies, in an effort both to reduce our adjudication caseload and to simplify controlling issues in those individual cases which require adjudication."

The response also points out that the Commission has created a new Office of Policy and Analysis to identify broad policy issues which could lead to Commission rulings of general applicability.

Procedural simplification and reduced reliance on trial-type oral hearings will affect staffing levels in the Commission's Office of Hearings, according to its response. The proposed fiscal year 1980 budget projects elimination of six ALJ positions.

While most agencies indicated they and the ALJs continually inquired into expeditious methods of adjudication and some reported having made changes, the Federal Trade Commission; the Bureau of Alcohol, Tobacco and Firearms; and the International Trade Commission determined that simplified procedures were not readily applicable to the types of cases they handled.

RECOMMENDATIONS TO THE CHAIRMAN, CIVIL SERVICE COMMISSION (NOW THE OFFICE OF PERSONNEL MANAGEMENT)

We recommended that the Chairman:

- --Encourage and assist the Administrative Conference of the United States in its efforts to develop an ALJ caseload accounting system. In the interim, OPM should fully use the productivity data being accumulated by the Conference to determine the propriety of agency requests for additional ALJs.

- --Reexamine the need for selective certification at the agencies where it was currently in use and evaluate future requests for its use on a case-by-case basis.

OPM has not yet reviewed existing agency selective certification authorities as we recommended. Nor has it reexamined the need for selective certification at "certain agencies" (unnamed) who its response said had initially submitted questionable justifications.

APPENDIX I

The Office of Administrative Law Judges, which is responsible for OPM Administrative Law Judge functions, is in a state of flux. The former Director of the Office retired in October 1978, and a new Acting Director was just named in January 1979. In the interim, the Office has been in a "holding pattern" and has not taken affirmative action toward greater involvement in ALJ personnel management. The Office itself has been placed under the Associate Director, Executive Personnel and Management Development, OPM, which is a new organization engendered by the Civil Service Commission reorganization. Given the substantial tasks of both the reorganization and Civil Service Reform Act implementation, only now has OPM begun to turn its attention to problems associated with the ALJ program, including those of personnel management and selective certification.

APPENDIX II

HOW AGENCIES VIEW GAO'S RECOMMENDATIONS TO THEM ON IMPROVING MANAGEMENT OF THE ADMINISTRATIVE LAW PROCESS

THE RECOMMENDATIONS

Federal agencies, commissions, and boards employing Administrative Law Judges should

1) establish procedures which would preclude extensive review of Administrative Law Judges' decisions,

2) establish one central body to conduct case reviews when necessary,

3) establish objective performance standards delineating what is expected of all Administrative Law Judges in terms of quality and quantity of work, and

4) see that an effective financial disclosure system is implemented, and provide for chief Administrative Law Judge review of judges' statements

5) The chief Administrative Law Judge at each agency, commission, or board should review the procedures by which cases are formally adjudicated to determine if simplified procedures can be used

("Administrative Law Process: Better Management Is Needed," FPCD-78-25, May 15, 1978)

LEGEND

- Agree with recommendation and are considering implementing
- Agree with recommendation and have implemented, or plan to
- Agree with recommendation's intent, but are doing enough already
- Disagree in whole or in part with conclusion, or need for recommended change

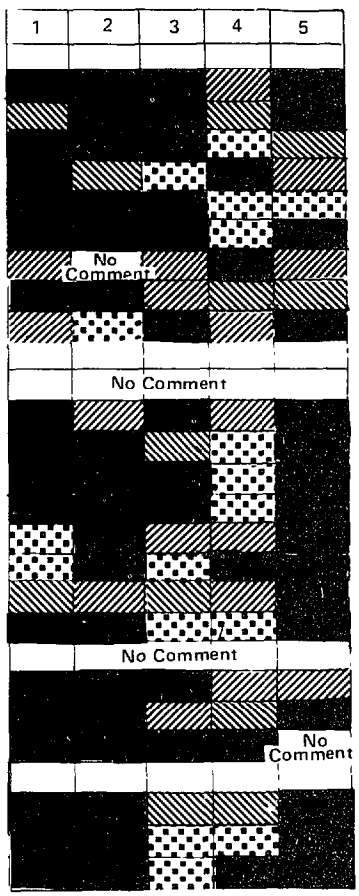
Note a Formerly the Federal Power Commission

Note b Formerly the Civil Service Commission

THE RESPONSES

AGENCY, COMMISSION, OR BOARD	NUMBER OF ALJs EMPLOYED AS OF JANUARY 1979
Bureau of Alcohol, Tobacco, and Firearms, Department of the Treasury	1
Coast Guard, Department of Transportation	16
Commodity Futures Trading Commission	4
Consumer Product Safety Commission	1
Department of Agriculture	5
Department of Health, Education, and Welfare	661
Department of Housing and Urban Development	1
Department of the Interior	8
Department of Labor	49
Drug Enforcement Administration, Department of Justice	1
Environmental Protection Agency	6
Federal Communications Commission	14
Federal Energy Regulatory Commission (note a)	23
Federal Maritime Commission	7
Federal Trade Commission	12
International Trade Commission	2
Interstate Commerce Commission	61
Maritime Administration	3
Merit Systems Protection Board (note b)	1
National Labor Relations Board	98
National Transportation Safety Board	6
Nuclear Regulatory Commission	1
Occupational Safety and Health Review Commission	47
Securities and Exchange Commission	8
U.S. Postal Service	2

RECOMMENDATION NOS



DEPARTMENTS AND AGENCIES EMPLOYING ADMINISTRATIVE LAW JUDGES AS OF JANUARY 1979

		Number of ALJs
Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury		1
Civil Aeronautics Board*		17
Coast Guard*		16
Commodity Futures Trading Commission		4
Consumer Product Safety Commission		1
Department of Agriculture		5
Department of Housing and Urban Development		1
Department of the Interior*		8
Department of Labor*		49
Drug Enforcement Administration, Department of Justice		1
Environmental Protection Agency		6
Federal Communications Commission*		14
Federal Energy Regulatory Commission*		23
Federal Labor Relations Authority		4
Federal Maritime Commission		7
Federal Mine Safety and Health Review Commission*		12
Federal Trade Commission*		12
Food and Drug Administration, Department of Health, Education, and Welfare		1
International Trade Commission		2
Interstate Commerce Commission*		61
Maritime Administration, Department of Commerce		3
Merit Systems Protection Board		1
National Labor Relations Board*		98
National Transportation Safety Board		6
Nuclear Regulatory Commission		1
Occupational Safety and Health Review Commission*		47
Postal Service		2
Securities and Exchange Commission*		8
Social Security Administration, Department of Health, Education, and Welfare*		660
Postal Rate Commission	(vacant)	1
Total		1,071

*Denotes agency having chief ALJ classified at one GS grade above ALJs supervised.

(962123)

REPORT BY THE

Comptroller General

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FPCD-7

MAY 23,

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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To the Chairmen, Senate Committees on Governmental Affairs and the Judiciary and House Committee on Government Operations

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the parties have not filed exceptions and where the case does not involve compelling public interest issues or new policy determinations.

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--Make sure their agencies have effective Administrative Law Judge financial disclosure systems, including a requirement that chief judges be familiar with the judges' disclosure statements.

In addition, we recommended that the chief judge at each agency, commission, or board review the procedures by which cases are formally adjudicated to determine if simplified procedures can be used.

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--did not review Administrative Law Judge decisions in excess of what was merited,

--did not have too many review layers, or

--were already doing enough to meet our report's intent.

In addition, some reported they could not make recommended changes because the types of cases they handled were so complex, so varied, or so few that either performance standards or simplified procedures were inapplicable. Others said they were precluded by statute from developing Administrative Law Judge performance standards, simplifying procedures, or limiting reviews. Our detailed evaluation of the responses is contained in appendix I.

Both our work and that of the Senate Governmental Affairs Committee found that agency review was a major cause of delay in final case disposition. Yet almost all the agencies reported they did not perform excessive reviews of Administrative Law Judge decisions. Few outlined what their reviews entailed. As discussed in appendix I, responses begged the questions of duplicative reviews, frivolous appeals by parties, extent of review (whether de novo 1/ or other), and whether the agency exercised restraint in calling cases on its own motion. It is hard to believe that the agencies which responded that they were doing enough could not delegate decisional and review authority more effectively.

Agencies are not precluded by the Administrative Procedure Act to develop objective performance standards for judges; they are precluded by it to evaluate individual judge performance. We recognized this constraint in our recommendation to the Congress that it specifically assign performance evaluation to an organization outside the agency. Performance standards are used for many purposes. One is measurement of and feedback about individuals, a function which is the daily responsibility of the firstline manager, the chief Administrative Law Judge. (See app. I, p. 5.)

Performance standards can be employed to assess workload, staffing requirements, work processes, or management

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1/De novo review is essentially a complete review of the case.

improvements. There is no pat answer to performance standard development. Complexity can vary from case to case, and both complexity and case volume can vary from agency to agency. However, as our report mentioned, the weighted caseload system used by the Administrative Office of the United States Courts and that being developed by the Administrative Conference of the United States can serve as models.

Our report also recognized that some of the formality of the administrative process was required by the Administrative Procedure Act. However, as discussed below, the Congress currently has before it proposals to amend the act, simplifying the adjudication process.

Federal Administrative Law Judges Conference reaction

The Federal Administrative Law Judges Conference, an organization which represents about 600 Administrative Law Judges, also commented on the report. The Conference, like some agencies, strongly opposed setting objective performance standards for judges. Such standards would entail qualitative considerations leading, it believed, to a system "whereby judges' decisions are influenced by agency rating schemes." However, the report pointed out, agencies already having "rating schemes" or performance standards had not found this to be the case. Also, as mentioned above, we recommended to the Congress that the judges' decisional independence be safeguarded by assigning performance evaluation to an organization outside the agencies.

PROPOSED BILLS WOULD CHANGE THE ADJUDICATION PROCESS

A number of bills recently have been introduced in the Congress to reform Federal regulation. In the Senate alone in April 1979 there were 14 bills; the House has numerous bills before it also. Provisions of the bills range from regulatory impact analysis to sunset regulations and use of the legislative veto, among many others. Two of the bills, Senate bill 262, the Reform of Federal Regulation Act, and Senate bill 755, the Regulation Reform Act, specifically address Administrative Law Judges, as well as reform of adjudication procedures to reduce delay, issues which our report discussed.

To alleviate delays in the regulatory process, the bills would amend the Administrative Procedure Act to allow agency alternatives to formal trial-type proceedings, while giving judges' decisions greater finality by limiting agency review. Agency authority to delegate review to employee boards would also be clarified.

The bills also propose changes to improve Administrative Law Judge personnel management. The Administrative Conference of the U.S. would be responsible for evaluating judges' performance and for taking action against inadequately performing judges. The Conference would also be responsible for review and reappointment of judges after set terms, in Senate bill 262, 10 years, and in Senate bill 755, 7 years. Hiring procedures for judges would also be altered by both bills, increasing the number of qualified candidates referred to agencies beyond the current three. Agency selective certification (special qualification criteria) would not be permitted. Senate bill 755 also transfers Administrative Law Judge recruiting and examining from the Office of Personnel Management to the Administrative Conference, and provides for judge performance pay bonuses.

Statutory changes with implications for judges

Since our report was published, three laws have been enacted which affect issues with which we dealt. The first, Public Law 95-256, April 6, 1978, eliminates the requirement in section 8335 of title 5, U.S. Code, for mandatory retirement at age 70 of Federal employees who have at least 15 years of service. The second is the Civil Service Reform Act of 1978 (Public Law 95-454, Oct. 13, 1978), which reforms many civil service laws. The third is the Ethics in Government Act (Public Law 95-251, Oct. 25, 1978), which requires public financial disclosure of covered Federal employees, including Administrative Law Judges at any General Schedule grade.

Elimination of mandatory retirement

With the elimination of mandatory retirement for most civil service employees, Administrative Law Judges may now serve, in effect, their lifetimes. This change is of concern as it relates to judge performance. Since Administrative Law Judges are now not subject to structured performance evaluation, and since no judge has been removed for ineffective performance of duties under the Administrative Procedure

Act, judges who might otherwise be determined to be incapacitated by age may continue to serve. Also agencies can no longer "wait out" a poorly performing judge until mandatory retirement.

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Officials in the Office of Administrative Law Judges at the Office of Personnel Management believe many judges will choose to remain in Government service rather than retire, not only because of the salary but also because of the position's prestige. Although the Office does not maintain statistics or evaluate trends in judge retirement, one official estimated that under 100 of the more than 1,000 currently employed judges had retired in the last 3 years. 1/ Our 1976 questionnaire survey found that 42 percent of the 754 permanent judges who had responded were age 55 or older and thus were potentially retirement eligible.

We believe, therefore, as we recommended in our report, that Administrative Law Judge performance evaluation and objective performance standards are even more critical to insuring the quality of administrative adjudication.

Civil service reform emphasizes accountability

The Civil Service Reform Act emphasizes Government managerial accountability, flexibility, and rewards for good performance, as a means of making the Federal Government more efficient and more responsive to the public. Administrative Law Judges, however, specifically are exempt from the act's performance appraisal provisions. This is consistent with a similar exemption under the Administrative Procedure Act.

Yet, as our report emphasized, judges are pivotal figures in the costly administrative adjudication process. They make decisions which can have the force of law and which can significantly affect the national economy and the claims for administrative justice of thousands of citizens and business firms.

Two bills introduced recently in the Congress, discussed earlier, would make judges accountable for their performance

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1/This 3 percent annual retirement rate is average for Federal Government employees.

as other Government executives are. In the interim, the question of performance evaluation remains open in an environment of increasing concern for demonstrated merit.

Change in financial disclosure requirements

We recommended that the heads of agencies employing Administrative Law Judges "see that an effective financial disclosure system is implemented, including a requirement that chief Administrative Law Judges be familiar with Administrative Law Judge disclosure statements to avoid possible conflict-of-interest situations." The objective was insurance that the individual who assigned cases to judges, whether the chief judge or another agency official (for example, in single-judge agencies), was sensitive to real or apparent conflicts of interest before assigning cases.

In response many agencies, while noting they had effective financial disclosure systems, emphasized that the basic responsibility for avoiding conflicts of interest rested with the individual judge and that the chief judge's review of financial disclosure statements was unnecessary. We agree with the former but believe our recommendation requiring chief judge review remains sound.

The passage of the Ethics in Government Act in October 1978 changed the requirements for and coverage of Federal Government financial disclosure. The new law requires all Administrative Law Judges to file financial disclosure statements. When our report was issued, some judges (for example, judges at the Coast Guard) did not file. Additionally, the act requires public disclosure of financial statements. Reports must be made available to the public within 15 days of being filed with the agency.

Attorneys acting for parties who have cases to be heard by Administrative Law Judges thus will have access to the financial disclosure statements. Prior review of financial disclosure statements by the official assigning cases appears a reasonable, inexpensive safeguard against potential hearing complications. Six agencies now provide for chief judge review as a result of our report.

OUR RECOMMENDATIONS ARE SOUND

In our judgment departments and agencies which adjudicate administrative disputes have not yet done all they can to manage that process efficiently. Our recommendations to improve the administrative law process are sound but have not been implemented in most agencies. Improvements should not and need not be contingent on passage of regulatory reform legislation. The fact that some agencies have made changes strengthens our views. Solutions may differ, but the basic issues of management efficiency and performance accountability should not be obscured.

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Copies of this report are being sent to the Chairmen, House and Senate Committees on Appropriations; the Chairman, Subcommittee on Civil Service, House Committee on Post Office and Civil Service; the Director, Office of Management and Budget; and the Director, Office of Personnel Management.

Comptroller General
of the United States

SUMMARY EVALUATION OF AGENCY COMMENTS ON GAO REPORT "ADMINISTRATIVE LAW PROCESS: BETTER MANAGEMENT IS NEEDED"

Federal executive departments and agencies collectively process a larger caseload than U.S. courts, affect the rights of more citizens, and employ more than twice as many Administrative Law Judges (ALJs) as there are active judges in Federal trial courts. The administrative adjudicatory process costs the Federal Government and other parties millions of dollars each year. There are also intangible costs, such as injuries and hardships, which can result from delays in the process.

More than 1,000 ALJs in 30 departments and agencies 1/ preside as quasi-judicial officers at formal administrative hearings to resolve disputes on matters ranging from licensing and ratemaking to health and safety regulation. To insure the judicial capability and objectivity of the ALJs, the Administrative Procedure Act of 1946 precludes agencies from evaluating ALJ performance and assigns responsibility for determining ALJ qualifications, compensation, and tenure to the Office of Personnel Management (OPM), formerly the Civil Service Commission.

In reviewing the adjudication process, we found that:

--Although the Administrative Procedure Act was passed to resolve conflicts promptly and fairly, timely decisions were not being made because the process was burdened with extensive reviews of ALJ decisions by their agencies and the use of more complex, judicial procedures than necessary to resolve some disputes.

--The lack of ALJ performance evaluation, including development of objective standards, precluded agencies from identifying unsatisfactory performers and taking personnel action; making most effective use of ALJs; planning adequately to meet workload; and giving OPM information on the adequacy of its certifying practices, among other major personnel management needs.

--OPM had virtually no basis upon which to evaluate agency requests for additional ALJs and had not required agencies which use selective certification

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1/See app. III.

(special ALJ qualification requirements) to justify continued use of a practice which raises doubts about ALJ impartiality.

We recommended to the heads of agencies which employ ALJs that they

--establish procedures which would preclude extensive review of ALJs' decisions,

--establish one central body to conduct necessary case reviews,

--establish objective performance standards for ALJs, both quantitative and qualitative, and

--implement an effective financial disclosure system.

We also recommended that the chief ALJ at each agency, commission, or board review the procedures by which cases are formally adjudicated to determine if simplified procedures can be used.

We recommended that OPM:

--Encourage and assist the Administrative Conference of the United States in its efforts to develop an ALJ caseload accounting system.

--Reexamine the need for selective certification at the agencies where it is currently in use and evaluate future requests for its use on a case-by-case basis.

Agency responses to each recommendation are separately evaluated below. However, since the responses are lengthy, only the most salient agency points are discussed, while the remainder are summarized. Appendix II contains a chart presenting an overview of agency responses to the five recommendations.

RECOMMENDATION: The heads of agencies employing ALJs should establish procedures which would preclude extensive review of ALJ decisions in cases where the parties have not filed exceptions and where the case does not involve compelling public interest issues or new policy determinations.

This recommendation and the next were intended to reduce the time agencies take to decide cases, since agency review of an ALJ decision can more than double the time required to

reach a final decision. We also were concerned that ALJ decisions should have greater finality, since one of the Administrative Procedure Act's goals was to assure "that those who hear the case * * * are an important factor in the decision process * * *." De novo review of decisions, for example, and high numbers of decisions reviewed substantially contribute to regulatory delay.

Although almost all the 25 agencies responding indicated their procedures already complied with our recommendation, it is hard to believe that none need to eliminate excessive agency review in both numbers of decisions reviewed and extent of review. Both our work and that of the Senate Governmental Affairs Committee found that agency review of ALJ decisions was a major cause of delay in the adjudication process. Yet only the Departments of Housing and Urban Development and Labor indicated the possibility of further limiting their reviews. 1/

For the most part, responses begged the questions of excessive review layers (see next discussion); frivolous appeals by parties; extent of review (whether de novo or other); and unrestrained sua sponte (agency initiated) review, such as that we reported occurring at the Occupational Safety and Health Review Commission, where one commissioner called up 92 percent of ALJ decisions on his own motion in 1 year.

The agencies generally pointed out that current practice precluded review except when exceptions were filed to the ALJ's initial decisions or compelling policy or public interest issues were involved. Most intended no change in their procedures, although some noted it was a rare case that did not meet those criteria.

The International Trade Commission, noting its ALJs' decisions were only recommended decisions, denied that its review caused substantial case delay. The Federal Trade Commission also contended that extensive agency review did not contribute to delay.

The Securities and Exchange Commission defended its "liberal review policy." Since it does not have high-volume cases, the Commission favored granting petitions for review, unless the appeal is obviously frivolous. It did so, the response noted, because of fairness to

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1/As discussed in their responses, the Coast Guard and the Interstate Commerce Commission have proposed legislation to eliminate statutorily required reviews in certain cases.

respondents and assurance that Commission decisions were in accordance with its policies and because it believed the determination of whether a petition had merit could take as long as a review on the merits.

Such a policy, however, in addition to delaying final case disposition, in many cases results in the agency's "retrying" a case after the ALJ's decision. As our report mentioned, current agency review practices raise doubts about achieving the Administrative Procedure Act's goal of ensuring that the "* * * views of agency personnel are not unduly emphasized or secretly submitted and that the official record alone is the basis of decision * * *."

The Coast Guard reported it had a unique problem. It alone of all the agencies has a statutorily required review after its final decision and before appeal to the courts, by the National Transportation Safety Board. Its decisions are thus not administratively final if a party chooses to appeal to the Board.

Some agencies indicated they had taken steps to limit review or were considering limitations. The Departments of Housing and Urban Development, Labor, and the Interior are studying future review limitations, or "shortcuts," such as memorandum affirmations, while the Nuclear Regulatory Commission indicated it would deny a petition for review if the petition did not meet its criteria. The National Transportation Safety Board noted that in 11 years it had never reviewed a case on its own motion.

RECOMMENDATION: The heads of agencies employing ALJs should establish one central body to conduct case reviews when necessary so as to avoid to the maximun extent, duplication and inefficiency.

This recommendation was directed to excessive layering of agency review. One example in the report concerned review of Federal labor-management relations cases at the Department of Labor, where the ALJ's decision passed through five review layers before reaching the Assistant Secretary for final disposition. Some agencies, however, misread the recommendation's intent as requiring an additional, though central, review body, thus adding another review layer. That was emphatically not the intent. To be effective a central review body should be authorized to review and dispose of cases or, as a minimum, should not have its work duplicated by attorneys working in other offices or on commissioners' staffs.

Many agencies responded that their ALJs' initial decisions were reviewed only by the agency itself, meaning staff attorneys working for the commissioners or the agency heads. These include the Federal Trade Commission, the International Trade Commission, and the Federal Maritime Commission. Such a practice may foster duplication since each commissioner's staff looks at cases individually and from a differing perspective. We found duplication of effort at the Occupational Safety and Health Review Commission, for example, even though that Commission had an Office of Central Review.

The Commission, however, has disbanded its Office of Central Review. It now requires commissioners' staff attorneys to review cases serially, rather than concurrently. It claims to have "decreased duplication of staff work substantially," since the case stops circulating when one of the three commissioners orders the case for review. The response did not mention, however, whether each of the three commissioners still applied differing review criteria as discussed in our report or resultant time savings. Each commissioner continues to retain a staff of 11 attorneys. We consider this new procedure a step in the wrong direction.

The majority of the remaining agencies reported they had one central body to conduct case reviews or a one-step review procedure. The Consumer Product Safety Commission noted it was considering guidelines for itself in decisions on appeal, in addition to time limits on parties, while the Environmental Protection Agency indicated it had proposed regulations which would centralize the review of a major portion of field cases under its Judicial Officer.

RECOMMENDATION: The heads of agencies employing ALJs should establish, in cooperation with the chief ALJ and the ALJs themselves, objective performance standards delineating what is expected of all ALJs in terms of quality and quantity of work.

To insure the ALJs' decisional independence, the Administrative Procedure Act precludes agency performance appraisals of them. The agency, however, remains responsible for managing its adjudicatory functions, usually acting through the chief ALJ as a member of its top management. This responsibility includes providing feedback on the disposition by ALJs of cases assigned to them and monitoring their performance. The act does not preclude agency establishment of ALJ performance standards.

Performance standards can be employed not only to objectively assess individual performance but also to assess workload, staffing requirements, work processes, or management improvements in a given organization.

Achieving a balance between judicial independence and managerial responsibility which protects the parties' due process and the public interest remains one of the most emotionally contested issues raised by our report. Several agencies responded strongly to this recommendation, voicing their fear that ALJ performance standards could lead to pre-Administrative Procedure Act abuses of due process. Agencies which already use ALJ performance standards, however, have not found that to be the case. In addition, we recommended that the Congress assign evaluation of ALJ performance to an organization outside the agencies.

Nothing novel has been added to the decades-old judicial independence dialog by the agency responses to our report. Agency activities range from the National Labor Relations Board, which sets a target of 12 dispositions a year for its ALJs, to the Nuclear Regulatory Commission, which stated objective ALJ performance criteria are contrary to the Code of Federal Regulations restriction against agency ALJ performance appraisal. Most agencies at least monitor ALJ performance through case-tracking systems, though few mentioned having developed objective performance standards or assessment of individual judges by the chief ALJ.

The Federal Energy Regulatory Commission response emphasized, as did others, that cases at economic regulatory agencies were more complex and varied than repetitious single-issue cases, and so quantity data could be misleading. These factors of complexity and variety are recognized in the weighted caseload accounting systems we mentioned in our report. Weighting takes into account case complexity and makes quantitative data comparable.

Although the Commission believed it had met this recommendation with its new case status system, a recent GAO report found that it had not: "These tools * * * are used only to monitor individual case progress." The Commission's chief ALJ does not use the information generated to evaluate ALJ productivity or performance. 1/

1/Letter report to the Chairman, Subcommittee on Energy and Power, House Committee on Interstate and Foreign Commerce (EMD-79-28, Feb. 13, 1979).

The Federal Trade Commission, the Department of Housing and Urban Development, and the National Transportation Safety Board indicated they would develop objective performance standards for their ALJs.

Performance evaluation and performance standards are perceived by some judges to be not only a direct threat to their decisional independence, but also a professional calumny, instead of an appropriate management concern. Throughout our report, however, we urged greater finality for ALJ decisions. As a practical matter, agencies will remain reluctant to limit review if they have no other means of assuring that ALJ decisions are reasonable and consistent with agency policy. Also to have objective performance criteria is in the ALJs' interest. An evaluator is thus deterred from applying subjective judgment to an ALJ who is not deciding cases as the agencies wish.

RECOMMENDATION: The heads of agencies employing ALJs should see that an effective financial disclosure system is implemented, including a requirement that chief ALJs be familiar with ALJ disclosure statements to avoid possible conflict-of-interest situations.

As previously mentioned, we made this recommendation primarily to assure that the official assigning cases to ALJs was sensitive to real or apparent conflicts of interest in so doing. The Ethics in Government Act of 1978 requires all ALJs to file financial disclosure statements, which are then made public. As of the dates of their responses, the Social Security Administration and the Coast Guard were not requiring ALJs to file. The newly organized Office of Government Ethics, however, is still issuing financial disclosure guidelines, so the situation should be clarified in due course. The Federal Trade Commission; the Bureau of Alcohol, Tobacco and Firearms (Department of the Treasury); the Department of Labor; the Interstate Commerce Commission; the National Labor Relations Board; and the Environmental Protection Agency have implemented our recommendation. The Department of the Interior and the National Transportation Safety Board are considering doing so.

RECOMMENDATION: The chief ALJ at each agency, commission, or board should review the procedures by which cases are formally adjudicated to determine if simplified procedures can be used.

A second major cause of adjudicatory delay was the use of more formal procedures than necessary to resolve some disputes. As we noted in the report, agencies believed the formality of a hearing with oral testimony and cross-examination was needed to guarantee due process. The agencies' responses emphasized that view again. Many indicated that both the Congress and the courts tended to favor formal Administrative Procedure Act-type hearings, in lieu of simpler procedures. A comment by the Department of Agriculture is typical:

> "At the root of many of the problems concerning the administrative process is the failure of legislation to clearly state whether a hearing (if required by statute), is to be a formal proceeding as required by the Administrative Procedure Act or an informal type of proceeding. * * * Agencies are reluctant to utilize informal procedures for fear of subsequent reversal and remand by a reviewing Court."

Several agencies expressed surprise that we had directed such a recommendation to the chief ALJ, when it is the agency's responsibility to promulgate rules and regulations. We did so because the chief ALJ is the member of agency management most immediately acquainted with the hearing process and the types of cases or problems encountered. He or she thus is uniquely qualified to know if simpler procedures are possible. Many agencies responding tap that resource regularly. In addition, chief ALJs may encourage the use by ALJs of procedural techniques which, if allowed by agency rules, can expedite hearings, such as prehearing conferences or decisions from the bench.

The Interstate Commerce Commission's response 1/ detailed procedural simplifications it had accomplished on its own initiative. Among other simplifying measures, the Commission had

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1/The Commission commented that our report was inaccurate where it discussed diversion of cases to ALJs for hearing which would be handled normally by staff attorneys under its "modified procedure." Our report is not inaccurate. Simple cases which normally would have been decided by attorneys on a written record were diverted to ALJs in the Office of Hearings to increase their workload. The Commission raised the same objection in its comments on the draft report, and we reverified our facts. Reverification confirmed the finding.

"* * * come to employ general rulemaking procedures increasingly for the establishment of its regulatory policies, in an effort both to reduce our adjudication caseload and to simplify controlling issues in those individual cases which require adjudication."

The response also points out that the Commission has created a new Office of Policy and Analysis to identify broad policy issues which could lead to Commission rulings of general applicability.

Procedural simplification and reduced reliance on trial-type oral hearings will affect staffing levels in the Commission's Office of Hearings, according to its response. The proposed fiscal year 1980 budget projects elimination of six ALJ positions.

While most agencies indicated they and the ALJs continually inquired into expeditious methods of adjudication and some reported having made changes, the Federal Trade Commission; the Bureau of Alcohol, Tobacco and Firearms; and the International Trade Commission determined that simplified procedures were not readily applicable to the types of cases they handled.

RECOMMENDATIONS TO THE CHAIRMAN, CIVIL SERVICE COMMISSION (NOW THE OFFICE OF PERSONNEL MANAGEMENT)

We recommended that the Chairman:

--Encourage and assist the Administrative Conference of the United States in its efforts to develop an ALJ caseload accounting system. In the interim, OPM should fully use the productivity data being accumulated by the Conference to determine the propriety of agency requests for additional ALJs.

--Reexamine the need for selective certification at the agencies where it was currently in use and evaluate future requests for its use on a case-by-case basis.

OPM has not yet reviewed existing agency selective certification authorities as we recommended. Nor has it reexamined the need for selective certification at "certain agencies" (unnamed) who its response said had initially submitted questionable justifications.

APPENDIX I

The Office of Administrative Law Judges, which is responsible for OPM Administrative Law Judge functions, is in a state of flux. The former Director of the Office retired in October 1978, and a new Acting Director was just named in January 1979. In the interim, the Office has been in a "holding pattern" and has not taken affirmative action toward greater involvement in ALJ personnel management. The Office itself has been placed under the Associate Director, Executive Personnel and Management Development, OPM, which is a new organization engendered by the Civil Service Commission reorganization. Given the substantial tasks of both the reorganization and Civil Service Reform Act implementation, only now has OPM begun to turn its attention to problems associated with the ALJ program, including those of personnel management and selective certification.

APPENDIX II

HOW AGENCIES VIEW GAO'S RECOMMENDATIONS TO THEM ON IMPROVING MANAGEMENT OF THE ADMINISTRATIVE LAW PROCESS

THE RECOMMENDATIONS

Federal agencies, commissions, and boards employing Administrative Law Judges should

1) establish procedures which would preclude extensive review of Administrative Law Judges' decisions,

2) establish one central body to conduct case reviews when necessary,

3) establish objective performance standards delineating what is expected of all Administrative Law Judges in terms of quality and quantity of work, and

4) see that an effective financial disclosure system is implemented, and provide for chief Administrative Law Judge review of judges' statements

5) The chief Administrative Law Judge at each agency, commission, or board should review the procedures by which cases are formally adjudicated to determine if simplified procedures can be used

("Administrative Law Process. Better Management Is Needed," FPCD 78-25, May 15, 1978)

LEGEND

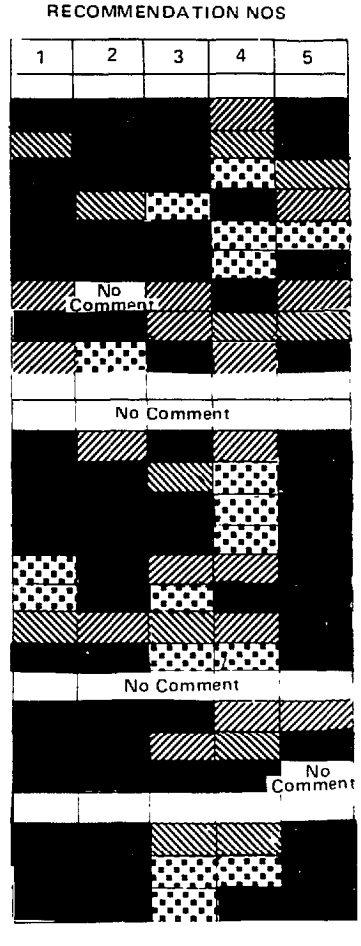
- Agree with recommendation and are considering implementing
- Agree with recommendation and have implemented, or plan to
- Agree with recommendation's intent, but are doing enough already
- Disagree in whole or in part with conclusion or need for recommended change

Note a Formerly the Federal Power Commission

Note b Formerly the Civil Service Commission

THE RESPONSES

AGENCY, COMMISSION, OR BOARD	NUMBER OF ALJs EMPLOYED AS OF JANUARY 1979
Bureau of Alcohol, Tobacco, and Firearms, Department of the Treasury	1
Coast Guard, Department of Transportation	16
Commodity Futures Trading Commission	4
Consumer Product Safety Commission	1
Department of Agriculture	5
Department of Health, Education, and Welfare	661
Department of Housing and Urban Development	1
Department of the Interior	8
Department of Labor	49
Drug Enforcement Administration, Department of Justice	1
Environmental Protection Agency	6
Federal Communications Commission	14
Federal Energy Regulatory Commission (note a)	23
Federal Maritime Commission	7
Federal Trade Commission	12
International Trade Commission	2
Interstate Commerce Commission	61
Maritime Administration	3
Merit Systems Protection Board (note b)	1
National Labor Relations Board	98
National Transportation Safety Board	6
Nuclear Regulatory Commission	1
Occupational Safety and Health Review Commission	47
Securities and Exchange Commission	8
U S Postal Service	2



APPENDIX III

DEPARTMENTS AND AGENCIES EMPLOYING ADMINISTRATIVE LAW JUDGES AS OF JANUARY 1979

	Number of ALJs
Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury	1
Civil Aeronautics Board*	17
Coast Guard*	16
Commodity Futures Trading Commission	4
Consumer Product Safety Commission	1
Department of Agriculture	5
Department of Housing and Urban Development	1
Department of the Interior*	8
Department of Labor*	49
Drug Enforcement Administration, Department of Justice	1
Environmental Protection Agency	6
Federal Communications Commission*	14
Federal Energy Regulatory Commission*	23
Federal Labor Relations Authority	4
Federal Maritime Commission	7
Federal Mine Safety and Health Review Commission*	12
Federal Trade Commission*	12
Food and Drug Administration, Department of Health, Education, and Welfare	1
International Trade Commission	2
Interstate Commerce Commission*	61
Maritime Administration, Department of Commerce	3
Merit Systems Protection Board	1
National Labor Relations Board*	98
National Transportation Safety Board	6
Nuclear Regulatory Commission	1
Occupational Safety and Health Review Commission*	47
Postal Service	2
Securities and Exchange Commission*	8
Social Security Administration, Department of Health, Education, and Welfare*	660
Postal Rate Commission (vacant)	1
Total	1,071

*Denotes agency having chief ALJ classified at one GS grade above ALJs supervised.

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