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A REFLECTION ON THE FUTURE OF ADMINISTRATIVE  
ADJUDICATION AS SEEN FROM AN EXAMINATION OF THE  
STATUS OF SOCIAL SECURITY DISABILITY ADJUDICATIONS

By DeLois Toins Leapheart

Introduction

All too often people assume that the vindication of one's right to due process of law<sup>1</sup> can only be accomplished in federal or state courts while ignoring the fact that the constitutional requirement of due process of law is held with equally high esteem in administrative proceedings. Receiving due process of law in the federal courts, however, is not getting any easier.<sup>2</sup> With the load on federal courts becoming increasingly heavier, the quest for alternative avenues of settling disputes is being intensified. Among some of the alternatives suggested are: increased use of modern technology, expanded use of trained court administrators and more exceptionally qualified judges.<sup>3</sup> This essay will suggest that in the future administrative adjudication will play a greater role in the assurance of due process because the reality of the over-burdened federal dockets mandates the expanded use of the exceptionally qualified judges located in administrative proceedings. As the legislature begins to lighten the workload of the federal judiciary by requiring more deference to the decisions of Administrative Law Judges (ALJs), the role of administrative adjudication will continue to grow.

Implementation of the larger role for administrative adjudications has been delayed by the archaic view of various authorities who have from time

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1. U.S. Constitution, Amendment V and XIV, Sec. 1. Note that this essay will discuss due process as a general concept of fundamental fairness. For a discussion of the elements of due process see Friendly, Some Kind of a Hearing, 123 U. Pa. L. Rev. 1267 (1975).

2. Chief Justice Warren Burger noted in his State of the Judiciary Report that:

"In 1970, there was 317 cases for each district judge. In 1980 we estimate that figure will be approximately 400 cases. Filings in the Court of Appeals have doubled in the past few years. We can see that measured by the case filings per judgeship the impact of 152 new federal judges in the omnibus bill last year will soon be wiped out.

The quality of the performances of the courts is bound to suffer with this overload." Burger, 105 N.J.L.J. 136, col. 5(1980).

3. Burger, 105 N.J.L.J. 136 (1980).

to time asserted that the fundamental structure of the administrative system is unconstitutional. One authority promoting such rhetoric was the President's Committee on Administrative Management. In 1937 the committee stated that agencies "constitute a headless 'fourth branch' of government, a haphazard deposit of irresponsible agencies and uncoordinated powers. They do violence to the basic theory of the American Constitution that there be three major branches of the government and only three."<sup>4</sup>

The circle of critics has become smaller and less concerned with the abolition of administrative agencies. A more current assessment of public feeling toward administrative agencies has been artfully summarized by Edwin Wallace Tucker:

Nowhere mentioned in the Constitution, the administrative agency has imbued the national government with a faculty to act in once unknown ways and to exert power over enterprise and individual behavior by dimensions theretofore unfamiliar to our legal system. A product of legislative and executive action, sanctioned by a once hesitant but finally receptive and now for the most part an accommodating judiciary, administrative agencies today perform a plethora of tasks which at this juncture in time law makers have entrusted to them because they assume that government, by working through the administrative process, can secure the requisite competence to cope with the legion of complexities which mark modern day life.<sup>5</sup>

Although Tucker was primarily referring to administrative agencies generally, his assessment is equally applicable to administrative adjudications in particular. Having acquiesced to the constitutionality of administrative adjudications, current critics merely attack the quality, cost, accuracy and length of time required to get a hearing.

It seems beyond controversy that all administrative adjudications should utilize procedures that conform to accepted notions of fundamental fairness by producing prompt and accurate results. Furthermore, all administrative adjudications should appear fair to those subjected to the process and should complete their task with the smallest possible monetary outlay.

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4. Edwin Wallace Tucker, Administrative Law Regulations of Enterprise and Individual Liberties at 28 (1975).

5. Rep. Pres. Comm. Ad. Mgt. 39 (1937).

Although it is beyond controversy that we would like to have each of these noble attributes as an accurate characterization of all administrative adjudications, we know that such is not possible. One of the reasons it is not possible is that we live in an imperfect world where increased attention to any one of the aforementioned goals necessarily detracts from the accomplishment of the other goals. For example, the more procedural due process afforded to the individual who is applying for social security disability benefits the less prompt and more backlogged administrative dockets become. In order to effectively deal with each of the competing considerations one must utilize an analytical framework that permits some balancing of the competing interests. Merely setting arbitrary time limits within which a hearing must be held or wholly relying on statistical data to assess ALJ productivity addresses only one of the competing interests, ignoring the countervailing factors. Employing a balancing analysis to assess the future of administrative adjudication, this essay will use as a model the Social Security Administration<sup>6</sup> where over half of the ALJs in this country are adjudicating social security disability claims. The fact that the majority of ALJs are under the Social Security Administration will better facilitate attempts to generalize about administrative adjudications overall. Before any in-depth treatment of disability adjudications is undertaken, a short explanation of the process that a disability claim goes through is required.

The Social Security Disability Claim—  
From Initiation to Judicial Review

The first step in seeking disability benefits is filling out an application and a medical release form at the local Social Security District Office with the assistance of district office personnel. After a determination that the claimant has met the quarter requirement,<sup>7</sup> the district office forwards the claim to the State Disability Determination Unit. The medical records are obtained and a two-person team, which has no face to face contact with the applicant, is assigned to the claim. From an examination of the medical records the physician makes his determination and submits his findings to an adjudicator who uses the physician's report as evidence of the extent and nature of the impairment.<sup>8</sup> The adjudicator then determines whether any of the impairments equals or meets the listings.<sup>9</sup> If not, then

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6. Administrative Law Process: Better Management Is Needed, Report Of The Comptroller General To Congress 64 (May 1978), hereinafter cited Administrative Law Process.

7. 20 C.F.R. Sec. 404.115 (1981).

8. 20 C.F.R. Sec. 404.1526 (1981).

9. 20 C.F.R. Sec. 404.1502(a) and Sec. 404.1505 (1981).

the adjudicator's findings on the claimant's age, education, and work experience, along with the physician's assessment are plugged into the appropriate table which yields a disability finding.<sup>10</sup> If the claimant is not satisfied he appeals.

The first step in the appeals process is called reconsideration.<sup>11</sup> This appeal takes place in the State Disability Determination Unit — the same office that made the initial determination. Claimants may (but are not required to) submit additional medical evidence to demonstrate their disability. A new two-person team is assigned and the initial determination process is repeated.

The next step in the hierarchy is the Administrative Adjudication.<sup>12</sup> Although the hearings are informal and non-adversarial, the ALJ has the affirmative duty to conscientiously probe into all the facts surrounding the claim for disability benefits. The final level of administrative review is the Appeals Council, a body possessing multi-faceted powers of review. This super-bureau is authorized to exercise traditional discretionary review over ALJ decisions,<sup>13</sup> self-initiated revisory power,<sup>14</sup> and de novo review.<sup>15</sup>

The last level of appeal for a dissatisfied claimant is the Federal Court system. Upon receipt of the Appeals Council's decision, claimant has sixty days to file a complaint in Federal District Court. The Social Security Act requires that the courts apply the substantial evidence rule.<sup>16</sup>

This brief overview of the various levels of appeals available to dissatisfied claimants reveals that disability claimants are afforded a great deal of procedural due process before being denied disability benefits. Admittedly, the conclusions that this adjudicatory process is a self-correcting mechanism for the accurate finding of facts and the authoritative application of law to fact because the hearing contains adequate procedural safeguards, and because there are appellate checks on the initial decision,

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10. 43 Fed. Reg. 55,368 (1978).

11. 20 C.F.R. Sec. 404.907 (1981).

12. 20 C.F.R. Sec. 404.929 (1981).

13. 20 C.F.R. Sec. 404.967 (1981).

14. 20 C.F.R. Sec. 404.979 (1981).

15. 20 C.F.R. Sec. 404.970(b) (1981).

16. 42 U.S.C. Sec. 405(g) (1974).

is not a unanimous one.<sup>17</sup> The elaborate appeals process, however, is only one of the ways in which a claimant's right to a fair hearing is being upheld. An examination of the selection process that ALJs go through reveals that each claimant's case goes before a very qualified presiding officer. Recognition of the expertise available to assist the ALJs also reveals that each claimant's right to a fundamentally fair hearing is being cautiously guarded. One final indicator of the impartiality of disability claimants' hearings are the rates of success that claimants have at the ALJ level. A closer look at each of these three areas discloses that the claimant's right to due process of law is being scrupulously guarded.

#### Qualification and Appointment of the Administrative Law Judge

There is a two-tier selection process that ALJs must complete. The first tier requires that the prospective ALJ be an attorney and have seven or more years of qualifying experience. Qualifying experience includes such things as judicial experience, the preparation, trial, hearing or review of formal administrative law cases and the preparation and trial or appeal of cases in courts of unlimited or original jurisdiction. Prospective ALJs are first screened to determine whether they possess the minimum qualifying experience. Their qualifying experience is assigned a point value, with a maximum of sixty points.

The second tier of the qualification process requires that prospective ALJs consent to having inquiries sent to approximately twenty individuals having personal knowledge of their experience, professional abilities and qualifications. The product of these twenty inquiries is assigned a point value with a maximum of forty points. At this stage prospective ALJs who have accumulated eighty points or more are rated as tentatively eligible and are asked to prepare a sample opinion which is examined for clarity, conciseness, and legal soundness. In addition to the sample opinion, the candidate goes before a special interviewing panel who evaluates his sample opinion. Those persons determined eligible for listing on either the GS-15 or GS-16 register are ranked in order of their scores with the highest scores at the top of the list. Agencies with a vacancy request a list of eligibles and make their selection from the top three.<sup>18</sup>

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17. Mashaw, *The Management Side of Due Process, Some Theoretical and Litigation Notes on the Assurance, Fairness, and Timeliness in the Adjudication of Social Welfare Claims*, 59 *Cornell L. Rev.* 772 (1979), hereinafter cited as Mashaw, *The Management Side of Due Process*.

18. 5 U.S.C. Sec. 3318(a) (1977). But see 5 U.S.C. Secs. 2108, 3309 (1977). The impact of the rule of three is lessened by the provision for selective certification: See generally *Administrative Law Process*, supra, note 6.

This summary of the selection process, which each ALJ completes, refutes some of the misconceptions related to the quality of the hearing process. It is difficult to think of any method of selection of the presiding officer that could be more rigorous. In fact, it is estimated that approximately seventy-two percent of all applicants for ALJ positions are rated ineligible.<sup>19</sup> Therefore, the disability claims that are appealed to ALJs come before and are decided by extremely qualified individuals who have been well scrutinized. That is not to say that every ALJ is beyond reproach because no selection process is capable of preventing an occasional aberration from slipping in.<sup>20</sup> However, the current selection process produces a large number of highly qualified ALJs.

In addition to their abundant legal expertise, ALJs deciding disability claims have access to a number of specialists who can supplement their knowledge in other areas. For example, ALJs can utilize the expertise of rehabilitation advisors, medical advisors and vocational experts.<sup>21</sup> These experts are not only practitioners but also teachers and have access to the most current developments in their fields. Additionally, ALJs have the authority to ask claimants to submit to consultative examinations at the expense of the administration.<sup>22</sup>

Another item indicative of the fact that disability claimant's right to due process of law is being scrupulously guarded is illuminated by a closer examination of the government reversal rate. As was previously mentioned, claimants dissatisfied with the decision they receive from the State Disability Determination Unit can appeal to an ALJ. ALJs reverse the decision by the State Disability Determination Unit at a rate of approximately sixty percent.<sup>23</sup> Sixty percent is not a figure large enough to attribute

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19. Lubbers, *Federal Administrative Law Judges: A Focus on Our Invisible Judiciary*, 33 *Adm. L. Rev.* 109 (1981).

20. Interview with the Honorable Ronald J. Vitello, Administrative Law Judge, Office of Hearings and Appeals, Indianapolis, Indiana, (August 6, 1981).

21. *Id.*

22. *Id.*; 20 C.F.R. Sec. 404.1517 (1981).

23. Interview with the Honorable Ronald J. Vitello, *supra*, note 20. Note, also that it will be argued later that the compilation of statistics on the reversal rate and productivity of ALJs adversely affects their productivity. That theory does not, however, conflict with the presentation of statistics about the performance productivity and reversal rate of the hierarchy below them.

ALJs with a bias for the claimant; it is, however, large enough to preclude any bias against the claimant. The conscientious adherence to the concept of fundamental fairness is indicated by the reversal rate of the Social Security Administration — currently the ALJ's employer.

The flexibility provided by the informal atmosphere in administrative adjudications is especially designed to meet the needs of disability claimants. Complementing the informal atmosphere is the uniquely defined role of the ALJ. Not only is the ALJ an independent, neutral party, but he also has a mandate<sup>24</sup> to take on an investigatory role when claimants are not represented by counsel. The rigorous ALJ selection process in conjunction with the ALJ's access to numerous medical, rehabilitative and vocational experts, the ALJ reversal rate of State Disability Determination Unit, the flexibility provided by the informal atmosphere of administrative adjudications and the uniquely defined role of the ALJs, all work together to create a forum particularly well-suited to the dispensing of due process of law to disability claimants. This multi-faceted complexity of procedural safeguards flies in the face of the argument that the clientele of social welfare programs severely limit the value of procedural safeguards. The comprehensiveness and versatility of the administrative adjudicatory system provides the ALJ with a peculiar ability to adapt to the special needs of disability claimants.

Efforts to improve the administrative adjudicatory processes are constantly being put forth. Some of these efforts, however, have a detrimental impact. The excessive compilation of statistics concerning the ALJ productivity and reversal rates, along with the pressure applied to ALJs to produce more adjudications represents two of the solicitous but disadvantageous undertakings of the Social Security Administration. A survey of the quality assurance program and a description of the types of pressure put on ALJs discloses that the system would sincerely benefit from the elimination of these aspects of the system.

#### Quality Assurance in Disability Adjudications

The quality assurance program consists of three types of review. The first type of review, conducted by the Bureau of Hearings and Appeals appraisal staff, is an analysis of a sample of cases on the basis of data supplied by Appeals Council analysts.<sup>25</sup> Appraisal staff also evaluate ALJ

24. 20 C.F.R. Sec. 404,944 (1981). Richardson v. Perales, 402 U.S. 389 (1971).

25. J. Mashaw, C. Goetz, F. Goodman, W. Schwartz, P. Verkuil, M. Carrow, Social Security Hearings and Appeals. (1978), hereinafter referred to as J. Mashaw and C. Goetz .

performance through a series of special studies of such phenomena as remand at various levels, the use of vocational experts and medical advisors, and the correlation of error with ALJ output or reversal rate.<sup>26</sup> The second type of quality review is completed by the Regional Chiefs' peer review program.<sup>27</sup> This review focuses on the decisions of new ALJs, all affirmations, and a twenty percent sample of reversals by low-producing ALJs, cases involving allegations of unfair hearing and reversal decisions and remands.<sup>28</sup> The last type of review consists of an Appeals Council peer review system in which each Appeals Council member evaluates the cases appealed from the geographical area for which he is responsible.<sup>29</sup>

The above described quality assurance program was instituted as an additional safeguard to assure accurate and timely adjudication of social welfare claims.<sup>30</sup> The advocates of the quality assurance program admit that "there is no hard evidence that the system has thus far enhanced due process for disability claimants by increasing the accuracy of the hearing process."<sup>31</sup> There is, however, evidence of the damage that has been done by the institution of this quality assurance program. A recent survey of ALJs<sup>32</sup> described the measurement of productivity as being based on the length of the trial and transcript, whereas others said it was determined on the number of decisions yearly (with no reference to complexity of cases), quarterly and monthly. In any event, weight is placed heavily on numbers. The procedural protections gained by the uniquely designed administrative adjudicatory system are severely infringed upon when the ALJ's productivity is evaluated and forced to conform to hard cold numbers. Furthermore, the quality assurance program decreases ALJ productivity. Most organizational psychologists hold the view that productivity is influenced by worker motivation<sup>33</sup> and the stifling of ALJ motivation is demonstrated by the fact that

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26. Id.

27. Id.

28. Id.

29. Id.

30. Id; Mashaw, *The Management Side of Due Process*, supra, note 12.

31. Chassman and Rolson, *Social Security Disability Hearings: A Case Study In Quality Assurance and Due Process*, 65 Cornell L. Rev. 801, 817 (1980).

32. *Administrative Law Process*, supra, note 6.

33. Id.

ALJs have complained bitterly about the statistical information compiled concerning ALJ production and reversal rates.<sup>34</sup> Some ALJs characterize BHA's actions as attempts to undermine ALJ independence.<sup>35</sup> It seems paradoxical to create a versatile forum to adjudicate the complex and subjective issues involved in disability claims, meticulously select a highly qualified ALJ to determine these issues and then apply pressure to ALJs to conform to arbitrary numerical standards without regard to influential non-quantifiable factors.<sup>36</sup>

An example of a pragmatic consideration that is not accounted for in statistical equations can be illustrated by comparing the social security disability backlog of ALJs in Indianapolis, Indiana, to that of ALJs in Detroit, Michigan. The backlog of ALJs in Indianapolis is negligible in comparison to that of ALJs in Detroit. Detroit's extremely long backlog is partially the result of the disastrous economic conditions of the automobile industry which created more claimants seeking disability benefits as a means of survival. Social Security ALJs in Detroit have their problems compounded by the severe understaffing that they are experiencing due to the lengthy government hiring freeze. The statistics concerning ALJ productivity do not reflect the above-mentioned differences between Social Security ALJs in Detroit and those in Indianapolis, Indiana.<sup>37</sup>

Another restriction on ALJs that works better in theory than in practice is the time limits within which a case must be heard following the filing of a request for a hearing. In White v. Mathews,<sup>38</sup> and Caswell v. Califano,<sup>39</sup> the court imposed numerical time limits within which ALJs must hear the claim. In theory, the time limit should operate to force ALJs to adjudicate claims expeditiously. In practice, hasty determinations are not necessarily fundamentally fair and accurate determinations. Similarly, the intimation that ALJs who do not respond to agency pressure to produce may find lack of cooperation in requests for reassignment or for new or upgraded staff positions,<sup>40</sup> violates the spirit of the independent structure created by the Administrative Procedure Act.<sup>41</sup>

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34. Id.

35. Id.

36. Interview with the Honorable Ronald J. Vitello, *supra*, note 20.

37. Id.

38. 559 F.2d 852 (2nd Cir. 1977) cert. den., 435 U.S. 908 (1978).

39. 583 F.2d 9 (1st Cir. 1978).

40. J. Mashaw and C. Goetz.

41. Ramsbeck v. Federal Trial Examiners, 345 U.S. 128 (1953).

The quality assurance program and the general pressure on ALJs to conform to time constraints, as defined by some circuit courts and the agency, were originally intended to help insure that each disability claimant received a prompt determination and due process of law before being denied disability benefits. Instead, however, these measures have created judicial hostility. Additionally, statistics claiming to measure the productivity of ALJs often do not take into account certain "real world" considerations such as the city's economy and the federal government's hiring freeze. Finally, rigidly defined numerical quotas and time constraints within which the claim must be heard, work only in theory and not in practice. The detrimental effects emanating from the judicially-imposed time constraints, the agency-imposed numerical quotas and the quality assurance program combined with the conspicuous absence of evidence that these methods are improving ALJ productivity indicates that these measures should be abolished. Although some might argue that it is too early to judge these operations and guidelines, the continuous and consistently negative evidence should refute that contention.

#### Improving the System through Judicial Education and Training

One possible way to address the concern for a claimant's right to a fair but expeditious hearing is to provide more training for ALJs. Although each ALJ goes through an initial six month training program before taking office,<sup>42</sup> there is no structured follow-up program. Some ALJs have suggested that more training would help them carry out their function more expeditiously.<sup>43</sup> Training similar to that gained from attending conferences and seminars sponsored by professional organizations, such as Federal Administrative Law Judge Conference, American Bar Association, and the Federal Bar Association needs to be offered on a regular basis.<sup>44</sup> The agencies, however, are not always willing to spend the money for ALJs to attend the conferences currently offered by professional organizations. It would be beneficial to rechannel some of the monies now being spent on the quality assurance program, which has a negative effect on judicial productivity, and direct them to subsidize some type of required semiannual conference or seminar for ALJs. These training sessions should not only concentrate on new developments in the law but also provide time for ALJs to get together to discuss various problem solving techniques. It would also be helpful to include time for training in areas outside the law. For example, ALJs in the Bureau of Hearings and Appeals have often requested additional medical training.<sup>45</sup> Finally, some additional training in trial and hearing procedures, techniques, evidence as it should be applied in administrative litigation, writing style, decision

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42. J. Mashaw and C. Goetz.

43. Administrative Law Process, *supra*, note 6.

44. *Id.*; interview with the Honorable Ronald J. Vitello, *supra*, note 20.

45. Administrative Law Process, *supra*, note 6.

writing and executive and managerial techniques has been suggested.<sup>46</sup> Offering an opportunity for ALJs to catch up on the latest developments in the law, discuss possible interpretations of the law and exchange problem solving techniques is a less offensive and more effective means of increasing judicial productivity than pointing fingers by highlighting reversal rates and setting quotas.

Another problem with compiling reversal rates as an indicator of accuracy is that this compilation does not take into consideration the quirks of judicial review. Although the subject of judicial review, if aptly treated, could easily require an entire essay, a discussion of the future of administrative adjudication would not be complete without at least touching upon judicial review. Before a discussion of judicial review, a discussion of agency review is in order.

#### Improving the Process of Judicial and Higher Agency Review

As previously mentioned, the Appeals Council has the authority to render a decision de novo.<sup>47</sup> This seems to be another provision that works well in theory but not in practice. Assuming the theory is to give disability claimants an opportunity to present new and material evidence, the application of the theory has been overzealous. In practice, claimants who can scrape up a scintilla of new, but not necessarily material evidence, are given the opportunity for an additional level of review.<sup>48</sup> This practice is not what the legislature intended.

State and federal courts of appeal rarely exercise de novo review of trial courts findings of fact because it is well-established that the discretion of the trial court is broad. The trial judge's findings of fact are given such a wide latitude because he has the opportunity to view the original trial (especially the demeanor of the witnesses) and does not base his determinations on the basis of merely the written record. Applying this principle to Social Security Disability adjudication it seems unwise to allow de novo review of the ALJ's determinations by the Appeals Council. Since there is nothing to indicate that the Appeals Council is more qualified than the ALJ, the de novo determination is repetitious and a waste of time and resources. It seems reasonable to assume that since ALJs also have the opportunity to view, firsthand, the original adjudication, they too should be given a wide latitude of discretion. Furthermore, since logic seems to dictate that the ALJ would be more qualified to determine if the evidence was, in fact, new and material<sup>49</sup> this

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46. Id.

47. Note 15, supra.

48. J. Mashaw and C. Goetz.

49. Id.

provision should be abolished.<sup>50</sup>

Any treatment of judicial review of administrative adjudications should start with an acknowledgment that there is a great deal of complexity involved in exercising judicial review. ALJs do not claim to be flawless and recognize the need for judicial review.<sup>51</sup> On the other hand, federal judges do not claim to be all-knowing and recognize the need for a certain amount of deference to ALJ's determinations.<sup>52</sup> It appears on the surface that these two relatively simple assertions could be readily harmonized; however, any serious student of administrative law knows to the contrary.

According to the Administrative Procedure Act and most statutes generally, the standard of review is the substantial evidence standard.<sup>53</sup> The quarrel begins when one tries to define and apply the substantial evidence standard; the case law is voluminous<sup>54</sup> and the commentators disagree.<sup>55</sup> This chaotic state of affairs may indicate that the legislature needs to go back to the Administrative Procedure Act and set out a more polished, intelligible, and guiding prescription of review. The existence of this great confusion appears to mandate a more concretely defined standard. That is not to say that the legislature should enlarge the reviewing hand of the federal courts. Indeed, that over-burdened segment

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50. Although not treated here, a great deal of investigation should be given to the suggestion by some authors to abolish the appeals council. See Schwartz, Commentary. Adjudication Process Under U.S. Social Security Disability Law: Observations and Recommendations 32 Adm. L. Rev. 555 (1980).

51. Interview with the Honorable Ronald J. Vitello, *supra*, note 20.

52. See International Harvester Company v. Rickelhaus, 478 F.2d 615, 652 (1973).

53. Administrative Procedure Act Sec. 706.

54. NLRB v. Universal Camera Corp 179 F.2d 749 (2nd Cir. 1950); Universal Camera Corp v. NLRB, 340 U.S. 474 (1951); NLRB v. Universal Camera Corp. 190 F.2d 429 (2nd Cir. 1951); NLRB v. Pittsburg Steamship Co., 340 U.S. 498 (1951); NLRB v. Stow Mfg. Co., 217 F.2d 900 (2nd Cir. 1954); NLRB v. Walton Mfg. Co., 369 U.S. 404 (1962); Flack v. Cohen, 413 F.2d 278 (4th Cir. 1969); Brown v. Finch, 429 F.2d 80 (5th Cir. 1970); Johnson v. Gardner, 401 F.2d 518 (8th Cir. 1968); Williams v. Finch, 440 F.2d 613 (5th Cir. 1971); International Brotherhood of Electrical Workers v. NLRB, 448 F.2d 1127 (D.C. Cir. 1971).

55. See R. Dixon, Social Security Disability and Mass Justice at 99 (1973); but see Schwartz, Commentary. Adjudication Process Under U.S. Social Security Disability Law: Observations and Recommendations, 32 Adm. L. Rev. 555, 565 (1980).

of the judiciary deserves some relief.<sup>56</sup> This time, the legislatures should devote special attention to emphasizing the rationale underlying the creation of administrative adjudications. What is needed is a verbalization of the importance attached to the fact that ALJs and the forums in which they function are exceptionally well-suited for the type of adjudication they render. For example, ALJs making social security disability determinations are especially trained in making disability determinations. Additionally, they have access to medical advisors and vocational experts who can provide them with useful insight into the facts of each case. The National Labor Relations Board ALJs have special expertise in labor-management relations; the Interstate Commerce ALJs have special expertise in matters involving interstate commerce; the Civil Aeronautics Board ALJs have superior knowledge in matters concerning civil aeronautics, and the list goes on. The legislature should pay attention to the issues raised by Judge Bazelon in International Harvester Company v. Ruckelhaus<sup>57</sup> when he wrote:

Socrates said that wisdom is the recognition of how much one does not know. I may be wise if that is wisdom, because I recognize that I do not know enough about dynamometer, extrapolations, deterioration, factor adjustments, and the like to decide if the governments' approach to these matters was statistically valid. Therein lies my disagreement with the majority.<sup>58</sup>

Conclusion:  
The Corps Concept of Adjudication

The most serious and meritorious of all the recommendations thus far put forth is my concluding recommendation — the ALJ corps. The proposal to create an independent corps of ALJs — separate from the agencies — seems capable of correcting many of the shortcomings of the present structure that are discussed in this essay. Agency pressure to produce, which compromises ALJ independence, would be eliminated by the corps proposal. Implementation of the corps would not only enhance the independence of the ALJ in fact, but also in appearance.<sup>59</sup> Cynical skepticism concerning the ALJs' impartiality will dissipate when he is not housed, serviced and paid by the agency to which he is assigned.<sup>60</sup> Since the circuit courts have not set time limits on district court adjudications, it is possible that circuit courts would cease to feel the need to impose numerical constraints

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56. See note 2, supra.

57. 478 F.2d 615, 652 (1973) (Bazelon C.J. concurring).

58. Id.

59. Gladstone, *Commentary The Adjudicative Process in Administrative Law*, 37 Adm. L. Rev. 237 (1979).

60. id.

within which ALJs must hear cases pending. Also, since the corps would not be under the agency there would be no need to fanatically compile statistics which stifle ALJ motivation and decrease ALJ productivity.

In addition to correcting some of the problems inherent in our current structure, the corps will retain the advantages of being an administrative forum. The corps would still employ meticulously selected and highly qualified ALJs to adjudicate claims in a versatile forum designed to accommodate the complex and subjective issues presented. ALJs are currently lobbying for the creation of the corps<sup>61</sup> and a serious investigation of how it can be implemented (not if it can be implemented). The suggestions that this essay puts forth for short term changes in the social security disability adjudications are only temporary solutions. The ALJ corps is the long term corrective measure needed to help facilitate less extensive judicial review of ALJ decisions, and more prompt and accurate adjudication in accordance with notions of "fundamental fairness."

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Comment: Readers are commended to an interesting related article by F.S. Bloch, Representation and Advocacy at Non-Advocacy Hearings: The Need for Non-Adversary Representatives at Social Security Disability Hearings, 59 Wash. U.L.Q. 319 (1981).

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61. Interview with the Honorable Ronald J. Vitello, *supra*, note 15.