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Administrative Law: Working Together for Professionalization - Administrative Law Judges, the Judiciary, and the Community

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ADMINISTRATIVE LAW: WORKING TOGETHER
FOR PROFESSIONALIZATION
ADMINISTRATIVE LAW JUDGES, THE JUDICIARY,
AND THE COMMUNITY

Justice Elizabeth B. Lacy¹

Thank you, President Schoenbaum. I really did appreciate getting the invitation to participate and share a few moments here with you in Williamsburg. Of course, I am always happy to welcome out-of-state people to the state of Virginia and to Colonial Williamsburg. And I certainly second John Moody's assertions to enjoy yourself mightily while in the Commonwealth. I must admit, though, that I have a slight bone to pick with John as conference coordinator. It appears that he has scheduled you in educational and other kinds of meetings all day long, thereby making it very difficult for you to pursue those wonderful exercises of shopping or otherwise contributing to our economy. So, I will have to tell John to next time give you a little more time to catch your breath and go see Colonial Williamsburg, or the Pottery, or other places.

We truly are pleased that you have chosen to have this first joint meeting here in the Commonwealth and in Colonial Williamsburg. It certainly is fitting that your historic moment be in this historic setting. I trust that the success and continued dedication that our patriots of a century ago had, as a result of their initial meeting here in Williamsburg, will be reflected as the two groups go on separately and together to pursue common goals. I certainly wish you all the best.

I do feel at home with this group for a number of reasons. You heard President Schoenbaum say that I graduated from the University of Texas Law School

¹This article was originally presented as the Keynote Address at the "Administrative Law: Working Together" Joint Educational Program sponsored by the National Association of Administrative Law Judges and the National Association of Hearing Officials on October 16, 1995 in Williamsburg Virginia. Elizabeth B. Lacy is an Associate Justice of the Supreme Court of Virginia.

and worked there for ten years, so as I see all the Texas contingent here I feel a little bit at home, and certainly all of the members of the Virginia delegation that are here make me feel very much at home. As the saying goes, some of my best friends are administrative law judges. And not the least of those is someone whom I know is familiar to you all, Judge Gina Hale, from the state of Washington. I had the pleasure of serving under her guidance as an officer of the Women Judges Fund for Justice. The quality of Gina's leadership and professional excellence is reflected, I am sure, in each of you. There is another reason I feel at home and again, President Schoenbaum alluded to it -- my former appointment as a member of the State Corporation Commission. Some of you know that in Virginia the State Corporation Commission is headed by three Judges/Commissioners, with an in-house panel of hearing examiners. In that situation, we actually chose the cases that would be assigned to the hearing examiners. Then following their report after hearing, we would render our decision, sometimes after oral arguments.

The cases we chose to assign to our hearing examiners were not the run-of-the-mill cases like getting certification for special charter party bus service or trucking companies who fail to pay their road use tax. We assigned our hearing examiners major utility regulation cases, the rate cases or other cases which involved issues regarding regulation of the utilities, the kinds of cases that had a real impact on people's daily lives -- and certainly on their pocketbooks. Now, we referred these cases to our hearing examiners not because we wanted to duck the issues. We knew that eventually we were going to have to resolve those issues. The hearing examiners were able to clarify the issues; the parties often were able to resolve or at least more specifically identify their areas of dispute. In fact, we had a more efficient use of our resources and the hearing examiner resources as a result of this process. So I am familiar with the benefit of the administrative law process and actually have been the direct recipient of it.

I realize that you come from a variety of organizations which have very

different structures, some with central panels, some attached to specific agencies, and perhaps some of you are even part-time hearing officers. But regardless of your specific structure, you all have pressures that come from that particular organizational structure and will present different issues as you go through your work. Nevertheless, all of you play a very important part in the role of our judicial system. You are essential to meeting our requirement of efficient and effective resolution of the disputes that are presented to our system.

Regardless of the structural differences we have, we also have many common goals. One of the most important is the one which you highlight this week: the continuing commitment to education to provide professional excellence. As I looked through your program, I found many familiar titles -- Due Process, Evidence, Working with Pro-Se Litigants, Americans with Disabilities Act, Child Abuse and Neglect, Writing Opinions. I began to think I was going to a conference set up for my own group of judges in Virginia.

Your program also shows some of our mutual concerns -- ethics, judicial demeanor, and case management. All of these topics are ones that permeate our lives, whether a hearing examiner or judge. Therefore, regardless of the sources of our authority or our structure, I think we have a real commonality of purpose, both between your two groups represented today and the rest of us "judges."

In some of the most visible ways we are no different. You have lots of cases, so do we. You deal with a variety of subject matters, so do we. You have rules of procedure, and while our rules of procedure may differ, so do we. You are required to produce your decision in a written opinion, so are we. Many of you have physical settings very similar to a court room, and some of you, I suspect, wear that ubiquitous black robe. Your decisions can be appealed to a higher authority, and so can our's. So even though you may not think of yourself directly as a member of the judicial branch of government, you do involve yourself with the most substantive functions of that branch. Most importantly, you are perceived by the public as a

member of the legal system, a member of the judicial branch of government.

In many instances, you are the first or perhaps the only contact the citizens in your respective jurisdictions have with the legal system. Those citizens do not draw a fine line between whether you are in the executive branch or hired by certain executive members, or in the judicial branch. Rather, they do perceive you as a judge -- your function is the same. You are one who decides "authoritatively after deliberations," Webster's definition of a judge. As we know, in the 20th century and certainly I am sure into the 21st century, perception is reality. Being perceived as one within the judicial system, or judicial branch of government, is a condition which will label you to all public members.

This morning, I would like to spend just a few moments exploring with you what the implications of that condition or label might be. One that strikes me, initially, is that you are vested with the responsibility of maintaining the perception of the independence and respect for the legal system. That perception of independence is an incredibly powerful and essential tool.

Some of you may have had the opportunity to travel to some of the Eastern European countries, particularly those that were formerly part of the Soviet Union. There are many programs now to help those countries establish a rule of law within them. I have had the opportunity to participate in a few of them. What strikes me in my travels to those areas is the lack of separation between what the people considered the judicial branch of government and the executive branch of government. The people in those countries have a tradition of thinking that those who resolve their disputes are not separate and apart from the executive branch. The court system, in effect, is simply a method of implementing executive policy. Unfortunately, their perceptions were born out by reality.

Some of you may have heard of "telephone justice", which means the judge would leave the bench after having heard the case, go to the telephone and call the local party office to find out how the case was to come out. The other mechanism

was what they called "noddors." In the countries formerly part of Russia, they have a jury system of sorts where two citizens or public assessors sat with the judge. They were generally called noddors because all they did was nod and agree with the decision of the judge, who had just gotten off the phone. Unfortunately in those countries, the perception of a lack of an independent judiciary was the reality.

Fortunately, that is neither the tradition nor the perception right now in our country. But, it is crucial that the judicial or legal branch of government continue to be perceived and respected as an independently functioning branch of government. As long as you are in that branch, and I can tell you that people think you are, you share in this responsibility. How can you do that? Certainly there are a number of "internal" activities. Conferences such as this are essential to providing opportunities to continue your professional and educational development. These conferences also allow intercourse regarding the appropriate standards of quality for your profession. Whether a formal certification or code of ethics, conferences facilitate the adoption of goals such as those recently studied and adopted by the National Association of Administrative Law Judges in its long-term plan. They allow you to exchange ideas for internal management improvement and allow you to examine the presentations of the system repeated when each individual comes before you.

There are also external ways of improving this perception of our function. I think this second responsibility is equally important. I think we all share the responsibility for the state of the system as perceived by the public. Unless the public considers the system to be well run and working consistently, we are bound to be in trouble. If we listen to the conversations about our system in today's media, newspapers, or on street corners, we cannot be encouraged. We hear from virtually every corner that our justice system is not working, particularly our criminal justice system. We hear that our civil justice system is breaking down. That time delays are too lengthy. Often those time delays are a result of our heavy criminal justice system

caseload. We hear that our juries have gone wild in awarding big verdicts, or that the jury system simply no longer works. We hear that the system is abused by a litigious public and by money-groping lawyers. If perception is reality, then these facts have a devastating impact.

I personally do not think that the world is quite as dark as this criticism may indicate, but on the other hand I do not believe that we can ignore these statements, this perception. Certainly there is some truth to them. Therefore, it is crucial that all of us work hard at the process, whether members of the Supreme Court or administrative law judges, or anywhere in between, we have the responsibility to look and act beyond our own individual daily routine.

In addition to taking personal steps which convey an image of an efficient, independent system of justice within our own hearing rooms, we have the responsibility to project that message to the communities in which we live. We cannot allow our justice system to be perceived as simply the gavel to gavel coverage of the O.J. Simpson trial, or what we see in Judge Wampler's court, *L.A. Law*, or *Matlock*.

There is another danger to the improper perception of our system. If the public perceives that the system is broken, attempts will be made to change that system. In a democracy, the will of the people can create change. But these suggestions for change must be positive and productive and can be so only if there is a real understanding of the system. For many years our legislatures, both state and federal, had a large percentage of attorneys and others who understood the system as members. That is not true any longer.

Likewise, the willingness of the public to rely on some mystical or mythic aura surrounding our court system as the explanation and justification of what goes on in that system no longer exists. The public expects and demands openness in government and looks for public servants who are responsive and responsible. Thus, it is no longer sufficient for judges or other members of the judicial system to

simply do the best job they can while ensconced behind their bench or beneath their robes.

In appropriate ways, we must take active roles in educating the public about our system. It might involve speeches, it might involve taking formal education courses, but in any way we can, we must educate the communities in which we live and improve the public understanding of our system.

All of us have qualifiers before our name. Whether those qualifiers be state, federal, trial, supreme, or administrative, the adjective doesn't really make a difference. Each one of us has an important role in the delivery of justice in the resolution of disputes in this country. I am confident that you will continue to strive for personal professional excellence and hold many, many conferences like the one we are at today. But just as importantly, I hope that you will join your many colleagues to improve the perception of the legal system, to provide the public with a better experience as they meet and interact with that system, and to provide them with a better understanding of how the system really does work, and how it should work. Together we can feel confident that the perception will be the reality that we want -- a fair, independent, and impartial dispute resolution system. I wish you the best of luck this week.

