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The Many Faces of High-Volume Administrative Adjudication

THE MANY FACES OF HIGH-VOLUME ADMINISTRATIVE ADJUDICATION: STRUCTURE, ORGANIZATION, AND MANAGEMENT

Daniel L. Skoler*

Administrative law and adjudication has had its fair share of legal analysis, scholarship and commentary in our nation, and certainly the role, evolution, and work product of the administrative law judge has been an important subset within this area of inquiry. It is fair to say, however, that distinctions based on workload character, features, and time demands have not always had their fair share of comparative and analytical study.1 More to the point of this article, "high case

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volume systems have rarely been compared as a group and held to light in terms of their peculiar characteristics. Also relevant to the inquiry are the difficult dilemmas of maintaining due process principles while providing a quick and economical day in court to endless lines of litigants aggrieved with some action or determination of a government agency, whether federal, state or local.\(^2\)

The paucity of scholarship focusing on high-volume administrative adjudication at various levels of government is all the more striking because of the great diversity and disparate demands which press on administrative tribunals in this country\(^3\) A look at the federal scene offers a good case in point. Among tribunals operating subject to the dictates of the federal Administrative Procedure Act (APA),\(^4\) the Social Security Administration's administrative law judge (ALJ) corps dramatically outdistances all others in case volume and number of judges with its more than 1,100 ALJs and 550,000 annual case receipts. That corps accounts for roughly 80 percent of all APA judges\(^5\) and, quite likely, an even greater proportion of APA case filings. Indeed the Social Security corps emerges as four times the aggregate size of all other APA tribunals combined (there are about 30 of them). Following some distance behind in size are the two labor dispute tribunals, the Department of Labor and National Labor Relations Board corps. These comprise 60

\(^2\)All high volume courts examined, with the exception of the California Workers Compensation Boards and the federal Board of Veterans Appeals, have experienced appreciable workload increases since the beginning of the decade. See, e.g., Cal. WCAB Statistical Table (1995) showing a leveling off in total case filings since 1992 (i.e., 230,500 in 1992 and 220,500 in 1994) and VBA Report of the Chairman: FY 1994 at p.2, indicating a decrease in appeals carried to completion and certified to the Board for review (i.e., from 44,000 in FY 1990 to 38,000 in FY 1993.

\(^3\)For a glimpse of this diversity and its disparities at the federal level, see Verkuil, Gifford, Koch, Pierce & Lubbers, supra n.1 at ch.111.


\(^5\)U.S. Office of Personnel Management, Total Number of Judges on Board by Grade and Agency (unpublished chart, Nov. 11, 1995) (showing 30 agencies with APA judges aggregating 1,377 ALJ's, 1,112 or 80.7% of which were members of the Social Security Corps.
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and 66 judges respectively (both operating at 80-judge levels in the recent past) and currently handle less than 9,000 case filings per year. After that, size drops dramatically. There are only a handful of tribunals with judicial work forces in excess of ten. These include the Coast Guard (ten ALJs) and the Federal Energy Regulatory Commission (20 ALJs). The remainder and great majority of APA adjudicative corps include one to nine judges (most in the lower reaches of that scale). To further accentuate the contrasts, the massive SSA corps conducts non-adversary hearings (i.e., no government representation) in contrast to virtually all other APA tribunals and carries positive legal obligations to assist claimants in evidentiary development and case presentation. This generates support staff ratios not found in other federal tribunals (currently one judge to 4.5 support staff).

To explore the larger federal "high-volume" ALJ corps after Social Security, one needs to look to non-APA ranks such as the Department of Justice’s Immigration Judge Corps (approaching 200 judges) and the adjudicators of the Merit System Protection Board (more than 75 judges). Emphasis on federal APA strictures or coverage as a key to comparative scholarship or issue analysis seems to have been an important factor in the past but may be somewhat misguided today since close examination reveals that virtually all high volume tribunals, via regulation or legislation, must adhere to most of the protections and adjudication rules and principles incorporated in the APA (and most of the state APAs). Whatever the case, it appears that if one wishes to examine questions of management of large caseloads and staff complements and of techniques for proper and constitutional disposition of long line-ups of appeals from agency decisions, one

6Id. (showing 21 of the 30 ALJ corps, or 70%, with 7 or less judges on board).
7There is currently no APA corps beyond Social Security with more than 10,000 case receipts annually, even for the two which exceed 50 ALJs (Department of Labor at 60 judges and National Labor Relations Board at 67 judges). Neither of these have average disposition rates of more than 12 cases per judge per month (which is considerably below "per judge" rates of the administrative tribunals examined in this review).
must cross lines: lines of APA versus non-APA operation, lines of federal versus state government responsibility, and lines distinguishing between large, complex case disputes and repetitive "short cause" litigation.

In the fall of 1995, the author conducted a comparative study of some of the nation's high volume adjudication operations. The occasion was the establishment of a task force to consider improvement of the organization and structure of hearing operations consistent with, and in furtherance of, a recently completed reengineering study of the process which accounts for 90 percent of SSA's annual half million case receipts.8 These are disability claims under titles 2 and 16 of the Social Security Act which, due to unprecedented case filings in the early 1990s, brought the agency by mid-decade to an annual filings rate in excess of 550,000 cases. The pending backlog is of equal size and, perhaps most important to the individual and disadvantaged claimants typically served, involves an unacceptable average decision span of almost one year for just the appeal portion of the disability process. This time period encompasses filing of an appeal to issuance of an ALJ decision or, in some cases, issuance of an appellate remand to the date of a new ALJ decision.10

Seven agencies were selected for the SSA "bench marking" effort with the choice based largely on operation size and case volume. The seven systems ultimately selected each exceed 50 judges and 50,000 annual case receipts. Those dual criteria produced, beyond the SSA giant, two other federal corps (both

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942 U.S.C. §§401 et seq. and §§1381 et seq.
10See Soc. Sec. Admn., 1994 Annual Report to the Congress, p.12 (July 1994) (then showing 1993 receipts of 509,000 ALJ hearing requests and processing time of 9 months); cf. SSA Office of Hearings and Appeals, OHA Caseload Analysis, Fy 1995 (unpublished charts, 10/19/95) showing 582,473 hearing receipts and 349 days average processing time at beginning of the current fiscal year (October 1, 1995).
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non-APA), four state corps, and one foreign system. To this group was added, of course, the Social Security Administration's Office of Hearings and Appeals (OHA), yielding an eight-system study handling a rather diverse selection of appeal causes but wedded by a common bond of high volume caseload as a predominant system feature, with a need for short hearing time (typically one hour or less for most high-volume categories), quick decisional response, high judge productivity (30 or more written decisions per month per judge) and docketing/scheduling practices capable of efficiently handling these endless lines of short causes. The following systems, then, constitute the grist for this study.

- Board of Veterans' Appeals, U.S. Department of Veterans' Affairs
- Immigration Judge Corps, U.S. Department of Justice
- Office of Administrative Hearings, New York Department of Social Services
- Maryland Office of Administrative Hearings
- California Worker's Compensation Appeals Boards
- Appeals Division, Illinois Department of Employment Security
- British Independent Tribunal Service
- Office of Hearings and Appeals, Social Security Administration

Short "snapshots" of each of the above systems, skewed somewhat to the benchmarking study's focus on organization, structure and management of appeal systems, are included as appendices to the article. Relevant characteristics will be identified and compared as key issues and features are explored in the text ahead (with occasional reference to high-volume operations other than the particular subjects of this review). It should be noted that although the underlying study was focused on hearing system management and structure, the study's protocols also covered operational features and tools such as "bench decisions," use of decision

\[11\] See Appendix A. All profiles have been examined by the respective agencies under review and suggested edits and adjustments have been incorporated.
"macros," and prehearing screening and settlement practices. These subjects are examined and compared where relevant.

Locus and Identity of Adjudication Operation in Agency Structure.

Of the eight programs under scrutiny, only two were structurally "independent" of the agencies whose disputes they adjudicated. The Maryland Office of Administrative Hearings is a distinct and separate entity in the state executive branch, reporting directly to the Governor and serving many other state agencies. This is typical of the several central panel adjudication corps now operating in the United States. The United Kingdom's Independent Tribunal Service is, in effect, a component of the British judiciary reporting to the Lord Chancellor (the official who directs that nation's judicial and court apparatus), but is nevertheless dependent on the Social Security Department for its budget and hears only social insurance cases. The Board of Veterans' Appeals, Justice Department Immigration Corps, New York Office of Administrative Hearings, and Illinois Employment Security Appeals Division are organizationally distinct from the program components whose cases they adjudicate, but nevertheless are still housed in the agencies whose disputes they service. The two largely independent

12 All high volume adjudication operations have been exploring and adopting innovations of this kind. For a national view within the state "fair hearing" adjudication context, see, Cal. Dept. of Social Services, Survey of Nationwide Fair Hearing Practices, Exec. Summ. & Table 2.4 (Div. of Admin. Adjudications, Dec. 1993).


14 Hardwicke, Id. at App. 1, Table 2 ("Place in Govt." column). The 1981 revision of the Model State Administrative Procedure Act incorporated the independent central panel system concept, §§ 4-301, 4-202(a).

15 See correspondence, K. Bassingthwaighte, President, Independent Tribunal Service (March 31, 1995) ("As judicial and administrative head of the Independent Tribunal Service, I do not officially 'report' to anyone. However, the Service is funded by the Department of Social Security and I have regular contact with the Secretary of State for Social Security who is the political head of the Department and a Cabinet Minister...").
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adjudication entities (Great Britain and Maryland) were about as current with their high-volume workloads as any units in the study, and were in much better shape than the SSA hearing operation that served as the focus of the review. These entities essentially matched case receipts with case disposition and evidenced no more than the normal backlogs necessary to keep adjudication operations moving along without increased waiting time.\(^7\) Thus it was hard to find that the "independence factor" carried any discernible costs in adjudication timeliness and efficiency.

Of the several units within a common agency umbrella but enjoying a clear organizational separation from the initial claims component whose decisions fed the appeals system, the variations in case currency and timeliness were substantial. Some were quite current (Illinois, California, New York) and some quite far behind (SSA and Veterans' Appeals).\(^8\) Support or documentation for any conclusion or

\(^7\) The ITS caseload, i.e., number of appeals received [all jurisdictions] is around 200,000. Recent figures show that clearances matched our intake figures last year. Letter from K. Basingthwaighte, President, British ITS (Mar. 31, 1995). For Maryland OAH, official statistics for Calendar 1995 show receipts of 43,400 new cases and dispositions of 44,100 cases, a 600 case decrease in appeals carried over from the prior year in a workload continuously growing by the addition of new adjudication responsibilities (e.g., child abuse and neglect hearings and hearings for seven state regulatory boards in 1994 and firearm sale violations, food stamp trafficking, state university personnel disputes, and gaming commission hearings in 1995). See 1994 and 1995 Annual Reports, pp. 8-9 and 9-10, respectively. MOAH's record involved a backlog-to-annual receipts ratio of about 17% (compare BVA and SSA ratios, infra n. 18).

\(^8\) The Board of Veterans' Appeals volume of pending cases rose from 22,000 in Fy 1992 to 59,000 in Fy 1995 a 168% increase in 3 years time and a backlog-to-receipts ratio of about 150%). BVA, Report of the Chairman, Fiscal Year 1994, p.39 (1995) and Fiscal Year 1995, p.31 (1996). Similarly, SSA pending cases rose from 218,000 in Fy 1992
preference as to greater structural or operational integration was simply not found, at least at the analytical levels and depth permitted by the review.

Regional and Geographic Organization of Adjudication Services.

The review offered some interesting insights on the need and options for geographic distribution and oversight of both hearing offices and oversight/supervisory entities. Social Security, quite understandably in view of its massive size and national scope, exhibits the largest network of hearing offices (more than 130) and intermediate management centers (ten regional offices). As for hearing sites, it is only natural to distribute these throughout the operative jurisdiction and most agencies seem to have developed a rational and serviceable network of locations to meet their needs and geographic makeup. For example, six regions were established for the United Kingdom beyond the London area, and two remote offices exist in Maryland at either end of a geographically small state with a focus on a large central hearing facility in the Baltimore area handling 40 percent of hearings. Similar arrangements exist in Illinois, New York and California. In all cases there was a fair amount of travel to less populous sites using a variety of hearing facilities: public buildings, rented commercial space, sister agency or local

to 547,000 in Fy 1995 (a 150% increase in 3 years time and a backlog-to-receipts ratio of 94%). SSA Office of Hearings and Appeals, Key Workload Indicators: Fiscal Year 1995, p.1 (Jan. 1996).

Wikeley, Social Security Appeals in Great Britain, 40 OHA Law Journal 1,9 (Fall 1944) (South East, South West, North East, North West, Midlands, Wales and Scotland).

The two "satellite" offices were established in Salisbury (for the Eastern shore) and Cumberland (for the Western Maryland area) to insure adequate hearing facilities and reduce travel costs. See 1994 Annual Report, pp. 9-10 (1995). As with the New York operation, all cases are still assigned centrally from headquarters.

California Workers Compensation maintains 28 district hearing offices clustered within three regions (Northern, Central and Southern); Illinois operates without regions, using 5 agency-maintained hearing offices and stationing judges in certain departmental local claim offices to provide for responsive and accessible claims service; and New York functions with some regional offices around the state and a major processing operation in New York City as an adjunct to Albany headquarters. See relevant profiles, Appendix A.
government offices operated for purposes other than adjudication. Three variations in the foregoing mix were quite interesting to the SSA bench marking effort:

- The Immigration Corps' maintenance of a regional oversight function for its hearing facilities without the expense and layering of regional offices. That involves the installing eight assistant chief judges in the Washington area headquarters office. These judges have regional oversight responsibilities, a duty to "ride circuit" with moderate frequency in order to maintain a management presence among its 32 hearing offices ("immigration courts"), and a duty to hear some cases in the assigned region and maintain a "close to the front line" attitude and perspective. In addition, there is the ability to meet frequently and quickly as a headquarters group to deal with systemic problems and adjudication policy/rules on a proactive, consistent, and uniform basis.22

- The New York system of unitary administration of the hearing operation within a fairly large geographic state from a single headquarters location. This is in the context of (i) a handful of regional offices serving as base stations for housing and supervision of the state's hearing officer judges (rather than providing any significant measure of administrative support) and (ii) a large New York City processing center treated almost as a "next door" headquarters adjunct through electronic linkage and use of Albany managers to direct the city unit (except for first line supervision of clerical teams)23

- Illinois' abandonment of a rigid "separate hearing office" priority in order to "outstation" judges directly and permanently in a number of local offices (currently about 15) where the communities are too small to support a cost-efficient local hearing office. Here the referee judges work side by side with initial level

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22See relevant profile, Appendix A. The Board of Veterans' Appeals also operates centrally and without its own regions but relies on the DVA's 50+ regional offices to accept appeals, negotiate settlements and conduct informal hearings, thereby resolving nearly half of the appeals arising yearly.

23See relevant profile, Attachment A.
processors while maintaining mandated independence of action and avoiding the ex parte communication strictures of the state administrative procedure act.\textsuperscript{24}

The Social Security Administration reacted rather coolly to suggestions during advocacy and Congressional action on the recent "independent corps" legislation that its ten regional management offices could be abandoned with substantial savings and no harm to the efficiency of the massive SSA adjudication operation.\textsuperscript{25} The Immigration Corps solution of national program management would seem to offer a viable alternative at a time of wholesale abandonment, under recent Presidential "reinventing government" principles, of the standard ten-region management structures prescribed for most federal departments. Similarly, the New York and Illinois experiences have given the field examples of delayering options providing good and pervasive service coverage and a lean central headquarters oversight function, that may serve as models for large high-volume adjudication systems.

**Reporting Channels and Authorities for High Volume Adjudication Systems.**

The Chief Judge of the Maryland Office of Administrative Hearings reports directly to the state Governor. The President Judge of the British Independent Tribunal Service reports, if to anyone, directly to the Lord Chancellor, that official's appointing authority. All other adjudication operations in this review report to a higher official in the agency whose disputes they are charged to adjudicate, more often than not someone below the agency head. Thus, the Chief Judge of the

\textsuperscript{24} See 5 Ill.Comp.Stat. 100/1 et seq. (Illinois APA) and, in particular, 100/10-5 (Administrative Hearings).

\textsuperscript{25}See floor remarks of Senator H. Brown, cosponsor of S.486., 103d Cong. prior to Senate approval of that bill in Nov. 1993 (Cong. Record, S. 15563, Nov. 19, 1993) suggesting elimination of SSA's Office of Hearings and Appeals 10 regional offices, based on Congressional Budget Office estimates of $11 million in annual savings from resulting staff and leasing cost cutbacks (letter, D. Reischauer to Chair, Senate Judiciary Committee, Sept. 23, 1993) and recommendation of OHA's ALJ Association.
Immigration Corps reports to the Director of the Office of Immigration Review. This office houses several other administrative adjudication functions, including the Board of Immigration Appeals and a small corps of APA-qualified administrative law judges who deal with illegal employment for aliens, immigration-related document fraud, and discrimination arising out of alien status. The Director of the Office of Immigration Review reports to the Attorney General's Office (i.e., to the Deputy Attorney General). The Director of the New York Office of Administrative Hearings (also a deputy general counsel) reports to the General Counsel of the State Department of Social Services who, in turn, reports to the New York Commissioner of Social Services. The Chief Judge of the SSA administrative law judge corps reports to the Associate Commissioner for Hearings and Appeals who, in turn, reports to the Deputy Commissioner for Program, Policy, Evaluation and Communications and thence to the Commissioner of Social Security.

Similar trails of accountability could be traced in the other systems of this review but perhaps worthy of note is the fact that, among the foregoing named systems, the "direct reporting to the chief" adjudication programs are among the most current in the high-volume sample. This hardly establishes, however, that such a delayered relationship is a sine qua non of adjudicative efficiency since

26 U.S.C. §§ 1324a, 1324b & 1324c.

There has been both discomfort and some criticism of the remote reporting hierarchy from adjudication system leadership to SSA's agency head (Commissioner of Social Security). It seems quite likely that the reorganization workgroup study now underway will ultimately provide for more direct accountability of OHA leaders (Chief Judge and Associate Commissioner for Hearing and Appeals) to the Commissioner's Office. As regards the danger of interference with decisional independence by non-ALJ managers (as opposed to Chief ALJ managers), one commentator has found no empirical evidence for such concerns and at least co-equal ability to deal effectively and efficiently with administrative responsibilities involved in adjudication system administration, see Weaver, supra, n.1 at 318-19 and 324-26.

These systems would be British ITS (currently matching receipts with dispositions) and Maryland OAH (operating at 95%+ levels in ratio of dispositions to annual receipts).
several more layered systems (e.g., Immigration, New York Administrative Hearings, and Illinois Employment Security) have a recent history of almost comparable currency. What may be the greater key to the timeliness issue, beyond the provision of reasonably adequate human and material resources to keep up with burgeoning caseloads, is the organizational culture, authority and capacity for quick, decisive, and proactive management decision making and flexibility regardless of nominal layers of accountability. A high-volume system may well tolerate a reporting relationship to lower executive levels so long as the configuration is capable of quick, decisive and intelligent oversight, empowerment for innovation and course correction action, and access to rapid answers and policy calls from higher authority when required -- something which is not always easy to come by for large operations, adjudicative or otherwise.

The Pressures and Presence of Time Limits.

It is clear that the bulk of high-volume adjudication systems in this nation operate under legal time constraints. Since state-federal entitlement program adjudication and unemployment compensation adjudication are subject to federal time limits as a condition of needed funding, this is a "rule of the game" that must be confronted in every large state with receipts of the order examined in this review. It is also a factor that weighs on the minds of managers of such programs as well as adjudicators. Thus, for Medicaid and AFDC appeals, adjudicators face 90-day limits for issuance of final decision from the date of request for hearing. In the case of Food Stamp fair hearings, there is a 60-day limit from hearing request to decision and notification.\textsuperscript{30} In the employment security field (unemployment insurance

\textsuperscript{29} Some states go beyond federal timeliness requirements and impose their own at particular stages of the appeals process. See 56 Ill. Admin. Code, ch. iv, § 2720.345 (claimants can assert right to sue in courts if Board of Review does not issue decision within 120 days of appeal from referee decision); see also n. 32, infra.

\textsuperscript{30} 42 CFR 431.244(f)(Medicaid); 45 CFR 205.10 (AFDC); 7 CFR 273.15(c) (Food Stamps, also includes a 45-day limit for local level hearings appealable for state level review).
benefits), tolerances are even closer. Applicable federal regulations impose promptness limits of 30 days for issuance of 60 percent of all appeals decisions and 45 days for 90 percent.\(^3\)

States themselves may impose decisional time limits. The Maryland central corps operation finds itself not only subject to federal time limits but also to a number of state-imposed limits (legislative and regulatory) and a comprehensive set of "time frames" for virtually every type of administrative adjudication conducted by its ALJs.\(^3\) The Maryland APA specifically requires issuance of central panel decisional products, whether final case dispositions, findings of fact, conclusions of law, or proposed orders (depending on the scope of the various delegations of decisional authority from state agencies using the central panel for adjudication work) within 90 days after completion of hearings.\(^3\) The delegating agency, if its approval is required (as with proposed findings of fact, conclusions of law and orders), must then take its final action within 60 days after receipt of the Office of Administrative Hearings adjudication product.\(^4\)

It is the federal high-volume systems that appear to be largely free of timeliness mandates. Moreover, federal courts have been rather strict when desperate agencies (or desperate trial courts) have sought to impose limits in the face of unacceptable delay records in administrative tribunal operations.\(^3\) This may be unfortunate. The tide and temper of the times seem to suggest that (i) timeliness is

\(^3\)See 20 CFR §650.1 (rationale of timeliness standard) & 650.4(b)(numerical test).


\(^3\)Md. Code Ann., § 10-220(c)(1994 Cum. Supp.)(limit may be extended by agency head).


very much a critical ingredient, certainly for the quality and responsiveness of justice and also for de facto achievement of at least the spirit of "due process of law" and (ii) given minimally reasonable resources and the firm resolve of mandates, courts and administrative tribunals can design and adjust their work to maintain and reconcile due process requirements with timely and prompt case processing.

Timeliness requirements can take many forms. The federal regulatory prescriptions are operated more as a spur to general averages and results than as rigid prescriptions for every case. The Congress, following great concern about lagging adjudicators in Article III courts, mandated a form of "public humiliation" in the Criminal Justice Reform Act of 1990 by requiring periodic publication of the names of judges with excessive numbers of old, unprocessed civil bench trials and civil motions (a technique never visited on the federal administrative judiciary). Lack of timeliness, under recent ethical standards for U.S. District Court judges can, in appropriate circumstances, constitute or contribute to a finding of Code of Judicial Conduct violations. Moreover, performance evaluation standards for non-APA adjudicators can (and do) incorporate timeliness as one rating factor capable of impacting on promotion opportunities, bonus awards, etc.

36 The general standard, from which specific "number of days" and "percentage of cases" limits are derived, is the mandate that cases be decided "with the greatest promptness that is administratively feasible". See 20 CFR §650.1-3 (1995 ed.). This standard is derived for unemployment compensation adjudication from the Supreme Court decision in Cal. Dept. of Human Resources v. Java, 204 U.S. 121 1972.


39 For a federal tribunal example, see the performance plan for administrative trademark judges of the Department of Commerce (Form CD-516F, 6-93) where the critical performance element of "preparation of timely and well reasoned decisions" commands 65% of the rating weight for these adjudicators. Also, under recent Congressional mandate, Board of Veterans' Appeals judges will be subjected to...
This represents something of a digression from the focus of the SSA benchmarking review but it does appear that time constraints, when prescribed by law, regulation, or other valid directive, can and have served as a prod to improved results and high levels of achievement within high-volume operations. That certainly seemed to be the case in Illinois, Maryland and New York for the tribunals operating under such time constraints and also in a rare instance of federal tribunal legislative time limits (Immigration Corps). In these systems, moreover, a focus on adjudication quality and accuracy, on training, and on streamlining to foster efficiency and speed without losing (and perhaps even enhancing) energies available for substantively solid performance seemed not to be missing or lost merely because of mandated dispositional deadlines.

By and large, deadlines appear to have been a positive factor in high-volume workloads where disposing of cases with excessive delay may be as harmful to ultimate justice as not disposing at all. The stakes of the "mandatory time limits" game will likely increase in the future as resources and budgets for all government activities come under new pressures.

Case Volume Pressures and Rates.

recertification at least once every three years under performance standards which include, per present plans, a timeliness element (P.L. 103-271, 103d Congress). Moreover, at least 23 states, in their "fair hearing" adjudication activities incorporate timeliness performance standards. See California Survey of Nationwide Fair Hearing Practices, supra n. 12 at Table 4.2.

Under the Refugee Act of 1980 (now Section 208 of the Immigration and Nationality Act), immigration judges are obliged to adjudicate asylum status determinations within 180 days following application for asylum by the immigrant if the initial INS asylum adjudicator cannot act favorably and files for immigration judge review within 75 days. This constitutes a very real time limit since if the judge does not comply, the alien will have a right to issuance of working papers. This time limited workload is quite substantial, i.e., about 10% of cases handled.

See California Survey of National Fair Hearing Practices, supra n. 12 at Tables 2.1 & 4.1 (Dec. 1993), indicating that (i) states under court pressure to meet federal time limits in "fair hearing" entitlement cases generally make operational changes to achieve the timeliness standards and (ii) "timely" states tend to hold longer hearings and write longer decisions than "untimely" states.
One can only stand in awe of the current SSA disposition rates (over 500,000 cases in 1995) and ALJ decisional output (45 dispositions per month per judge in 1995, excluding a modest number of screened non-hearing cases essentially "worked" without judge or hearing office staff input but requiring final judge sign-off). These rates achieved with no decrease in appellate court affirmation rates and, indeed, with significant reductions in reversals or remands emanating from federal reviewing courts. Yet, these case volumes are quite comparable to productivity in the other high-volume courts examined if one were to assume comparable numbers of adjudicators and comparable (or lesser) support staff ratios, as shown below for the eight systems reviewed:

<table>
<thead>
<tr>
<th>SSA Hearing and Appeals</th>
<th>Total Judges</th>
<th>Total Staff</th>
<th># Case Dispositions</th>
<th># Dispositions with High-Volume System SSA Size Corps.</th>
</tr>
</thead>
<tbody>
<tr>
<td>British Independent Tribunal Service</td>
<td>175</td>
<td>990</td>
<td>200,000</td>
<td>1.1 million</td>
</tr>
<tr>
<td>DOJ Immigration Corps</td>
<td>165</td>
<td>500</td>
<td>181,000</td>
<td>1.1 million</td>
</tr>
<tr>
<td>DVA Veterans' Appeals Boards</td>
<td>55</td>
<td>450</td>
<td>181,000</td>
<td>1.1 million</td>
</tr>
<tr>
<td>New York Dept. of Social Services</td>
<td>100</td>
<td>240</td>
<td>80,000</td>
<td>800,000</td>
</tr>
<tr>
<td>Maryland Central Panel</td>
<td>65</td>
<td>140</td>
<td>40,000</td>
<td>700,000+</td>
</tr>
<tr>
<td>Illinois DES Appeals Division</td>
<td>68</td>
<td>100</td>
<td>60,000</td>
<td>880,000+</td>
</tr>
<tr>
<td>California Workers Comp. Bds.</td>
<td>180</td>
<td>1,000</td>
<td>220,000</td>
<td>1.5 million</td>
</tr>
</tbody>
</table>

Notes: (a) First two columns are approximations based on the agencies' most recently completed fiscal years. "Total Judges" includes, for British ITS, the full time equivalents of its large part-time adjudicative force.

(b) Last two columns represent estimates conservatively rounded downward as to dispositions and disposition equivalents. For California Workers Comp., case receipts are entered in lieu of dispositions.

(c) Much of the large differences between Social Security and other systems relate to abandonment and settlement rates which are substantially higher in other systems than experienced in SSA Hearings and Appeals.

The author is convinced that SSA cases are accompanied by decisional requirements, case development burdens, pre-hearing default/resolution rates and bulky evidentiary records which factors make it difficult, if not impossible, for SSA to match some of the higher equivalency rates shown in the above chart. This is so even conceding a much larger support staff ratio to assist SSA judges than any of the other adjudication programs (most ratios are at 2-1 or less and none above 3-1, compared to SSA's 4.5-1 ratio). Nevertheless, the figures tend to demonstrate that "high volume" adjudication systems approach "high volume" initial claims processor output rather readily, somewhat belying the notion that "due process" adjudication need necessarily be more time consuming than initial level investigation and decision-making.

Streamlined Decisional Formats and Practices as Policy and Efficiency Enhancers.

Indeed, U.S. District Court affirmation rates for ALJ decisions showed dramatic increases as SSA's judges "hurried up" to produce record numbers of decisions both in the aggregate and "per Judge", i.e., from 61% in 1986 to 78% in 1991 and 86% in 1994. This was accompanied by a significant reduction in District Court remand rates of appealed ALJ decisions (from 61% in 1986 to 43% in 1991 and 39% in 1994). OHA, From the Associate Commissioner's Desk, no. 35, p.2 (newsletter, April/May 1995) and no. 32, p.2 (June/July 1994).
One initiative that emerges as critical for high volume systems struggling with growing caseloads is streamlining the written decision process. This can and has been done in a number of ways, but three major "shortcut" directions have emerged for quicker, stripped down, and yet responsible decision formulation.

- use of manually-prepared form decisions with standard text, boxes or lines for checkoff of findings and conclusions, and space for brief insertion of rationale or special findings and conclusions.  

- use of decision macros (i.e., stored software configurations that contain the basic elements and parts of a decision, often with standard "boilerplate" clauses and always with provision for inserting individualized case and party identification data as well as decision maker-tailored statements of rationale and findings as needed). These macros serve, in effect, as computer-generated decision forms.

- dictation of decisions from the "bench" at the conclusion of the hearing or as a "same day issuance" of the adjudicator's final determination.

Written forms and dictation of decisions are, in concept, ideal "bench decision" techniques for moving high-volume disputes to conclusion. The Maryland Office of Administrative Hearings has an excellent variety of forms for use in its high-volume adjudication and the DOJ Immigration Corps has elevated dictated decision practices to the most advanced use of that "art" in the nation. In each case, well over 90 percent of all decisions emanating from those systems are issued as form decisions or dictated bench decisions. Immigration judge decisions are not

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44Case law has made it clear that SSA's statutory duty under the Social Security Act [42 U.S.C. §423(d)(5)(B)] to develop a complete medical history and obtain all evidence necessary to make proper determinations in disability benefit proceedings applies to ALJs at the hearing level, thereby mandating evidentiary development duties for SSA judges not normally required of judicial officers. See Hill v. Sullivan, 924 F.2d 972, 974 (10th cir. 1991); Diablo v. Secretary, 627 F. 2d 278 (D.C. Cir. 1980); Cullison v. Califano, 613 F. 2d 55 (4th Cir. 1980); Gold v. Secretary, 463 F. 2d 38,43 (2d Cir. 1972); Dozier v. Heckler, 754 F.2d 274,276 (8th Cir. 1985).
even transcribed as a matter of course. The dictated product is added to the audiotape which is used to record the hearing and is transcribed only if there is an appeal. Justice Department regulations prescribe the issuance of a short written order to the parties in order to implement the dictated decision and certify its conclusions.\textsuperscript{45}

Form decisions require careful drafting, as most adjudicative agencies which seek optimal benefits and economy by using them soon learn. Cases in which one can characterize the universe of findings and rationales fairly simply are prime candidates for form decision treatment, especially where it is possible to articulate in the form virtually everything needed for a final trial decision short of a few simple fill-ins and check-offs. The British system uses what is essentially a written form decision, but reserves sections for insertion of key evidentiary findings, conclusions of law and the ultimate decision rather than a full panoply of checkoff alternatives.\textsuperscript{46}

The Impact of Court Review on High Volume Operations.

All administrative tribunals are subject to some form of court review and the expectation of appellate correction and guidance, sometimes in the form of significant precedential decisions interpreting statutes and regulations in ways not previously recognized or adhered to by the agency and its adjudicators, was present in all systems reviewed. It was only in two systems, however, that the volume and intensity of court review seemed to exert a substantial impact not only on legal and

\textsuperscript{45} 8 CFR §3.37 (where decisions are rendered orally a memorandum summarizing the oral decision shall be served on the parties). The required memorandum is essentially a form with space for checkoff of all possible outcomes in deportation/exclusion/rescission proceedings and an "other" item for special dispositions. For advice, procedural requisites, and legal implications of oral decision use in federal APA adjudication, see Mullins, Manual for Administrative Law Judges, pp. 100-101 (ACUS, 3d. ed., 1993) (oral decisions recommended for cases involving few parties, limited issues and short hearings).

\textsuperscript{46} See Form AT3 of the British Independent Tribunal Service which constitutes a "record of proceedings" before an ITS 3-member appeal tribunal and leaves room for entry of findings on questions of material fact, text of the tribunal decision, and reasons for the decision (space of no more than 1/3 to 1/2 page for such components).
procedural doctrine but on hearing operation management and productivity as well. These were the SSA and Board of Veterans’ Appeals adjudication operations. Additionally, ALJ decisions from at least half of the hearing systems were subject to appellate review functioning right within the agency (or very close to it) as a stepping stone and filter for cases ultimately destined for federal or state court appeal.47

In several of the tribunals, the incidence of court appeals is quite small. Thus, the New York “fair hearings” operation yields about 500 court appeals a year from its 160,000 annual case receipts. The British Independent Tribunals system with 200,000 social insurance hearing requests, winds up with about 2,500 going on for Insurance Commissioner review and then less than a hundred to the Court of Appeal. The Department of Justice’s Immigration Corps, now approaching 200,000 annual case receipts, will have only about 1,000 appeals moving beyond its internal appeals operation (Board of Immigration Appeals) to the federal courts. Perhaps 600-650 workers compensation decisions per year are appealed to the California courts following adjudication by a WC Judge and a second look by the system’s Workers Compensation Appeal Board.

The SSA program, in contrast, generates 10,000 to 12,000 court appeals a year, even after appellate review and narrowing by SSA’s Appeals Council (which handles claimant appeals of roughly 60,000 to 70,000 adverse ALJ decisions each year).48 Also, the Board of Veterans’ Appeals, with the advent of judicial review in 1991 by, first, the new Article I Court of Veterans’ Appeals (COVA) and, then, the

47This includes the Appeals Council for SSA administrative law judge decisions, the Insurance Commissioners for British social security adjudicators, the Board of Review for Illinois unemployment insurance judge referees, and the Appeals Board for California decisions of workers compensation judges. See relevant profiles, at Appendix A, infra.
48SSA, Key Workload Indicators, Fy 1944, “Appeals Council Review Workloads” chart at p. 11 (Dec. 1994)(showing appeal receipts of 62,674, 70,742, and 76,187, respectively in fy 1994 and 1995) and “New Court Case Workloads”, chart at p. 16 (showing 8,071, 10,991, and 10,504 court filings, respectively, in fy 1992, 1993 and 1994)
The Many Faces of High-Volume Administrative Adjudication

U.S. Court of Appeals for the Federal Circuit, has experienced a rather substantial number of appeals from its decisions (about 10 percent). Although not large in absolute size (totaling perhaps 1,300 cases), the COVA appeals produced such a heavy remand rate (close to 50 percent) as to seriously backlog BVA operations and extend average decision time to what is probably the slowest in government for a high-volume administrative tribunal. A similar impact has, for at least the past decade and probably longer, been experienced with SSA appeals where federal court reversals and remands to the appeals council have consistently run at a rate above or close to 50 percent. These kinds of high "case return" rates, not evident in other systems, have tended to slow down hearing operations, require more intensive and detailed decision issuances and, thereby, impose an administrative burden beyond normal judicial review dimensions.

Case Settlement and Fall-Off Experience in High-Volume Operations.

It is tempting to say that high-volume operation necessarily must find ways of disposing of a large percentage of caseload without investment of hearing time and expense. This, of course, is a truism that applies to civil trial courts in general. Looking at the federal example, it has long been the case that less than five percent of civil lawsuits filed in U.S. District Courts actually reach trial (the vast majority being settled or otherwise terminated even before commencement of pretrial activities).²⁰

²⁰BVA, Report of the Chairman: FY 1944 (showing over 750 days response time for decisions in FY 1994 and estimating a comparable rate in FY 1995 compared with 139 days in FY 1991 and 240 days in FY 1992). Examples of appellate court decisions contributing to this slowdown, as cited in the report, were Schafrath v. Derwinski, 1 Vet. App. 589 (1991)(Board must consider every potentially applicable regulation in its decision regardless of whether it was raised by the appellant or considered in the field); Boyer v. Derwinski, 1 Vet. App. 53 (1991)(in reconsideration of prior BVA decisions, Board must entirely readjudicate the case on a de novo basis); and McGinnis v. Brown, 4 Vet. App. 239 (1993)(requiring Board to be more technical and "legalistic" in decision writing).

Indeed, whether or not driven by necessity, a heavy proportion of case resolutions without recourse to formal hearing has been a way of life for most of the tribunals reviewed. Within the DOJ Immigration Corps, only about half of the cases come to full hearing (most being resolved at "master calendar" review, often by stipulated agreement or non-appearance of appealing parties). At the Board of Veterans' Appeals, much the same result is achieved through an active pre-Board field reconsideration/negotiation/informal hearing process. Even Board disposition by decision is, through extensive hearing waivers, arrived at by on-the-record analysis and amplification without hearing (about 90 percent of BVA decision issuances). In the British ITS tribunals, hearings are avoided about a third of the time and that, by and large, is the experience under the present U.S. Social Security adjudication program (as well as under SSA reengineering plans for new pre-hearing resolution techniques and procedures).\(^5\)

Defaults, abandonments and "no shows" keep the New York fair hearings operation at a 50 percent "termination by decision " level, and the California Workers Compensation program subsists on one of the lowest hearing rates found (about 25 percent of case filings), primarily through an extensive "compromise and release" agreement approach to resolution of worker/insurer differences in cases for which hearing applications have been filed. That leaves Social Security, British ITS and the Maryland Central Panel system on the high side of hearing incidence (about two-thirds of filings). Illinois occupies first place, with the highest rate of hearings conducted and completed (probably 90 percent or better once appeals are received from field offices).\(^5\)

\(^5\)See relevant profiles, Appendix A. SSA's Reengineering Plan assumes allowance of benefits in 25% of ALJ appeals prior to hearing (and 4% of denials before that as a result of reconsideration and claimant interviews when initial examination decision suggests denial of benefits), Plan for a New Disability Claim Process, supra n. 7 at pp. 65-67.

It is difficult to identify patterns or formulate generalizations out of the foregoing, since high-volume systems exhibit varying characteristics that account for hearing avoidance in greater or lesser degree and significantly influence the character of a system's hearing avoidance mechanisms and incentives. Formal structured settlement programs (such as those in the Immigration Corps, Maryland Central Panel, and some other programs) have proved helpful. However, these do not presently seem to carry dominant weight or responsibility in accounting for the large case fall-offs prior to actual hearing stages seen in some systems. Nevertheless, many high-volume systems are constantly in search of and experimenting with settlement programs in different ways. For example, half of the larger "fair hearing systems" make some use of "final settlement efforts based on contact with appellants by state or local staff" or "structured efforts to settle cases of state/local error which the appellant is likely to win".

Quality Assurance Functions

A classic and traditional hallmark of decision quality has been (and remains) appellate review. However, for high-volume operations and with the limited feedback that appellate scrutiny provides on some facets of administrative adjudication quality and competency, that measure may not be enough to meet a system's demands for reasonable uniformity of interpretation, articulation of decision rationales, continuing "course correction" and diligent attention to pressing workloads.

Within the adjudication systems under review and apart from court appeals, "outside" quality assurance (i.e., conducted by agency units other than the

53See, e.g., Maryland OAH settlement conference program (initially applied to personnel cases and now extended to other kinds of hearings) with settlement rates exceeding 50%. 1994 Annual Report, supra n. 20 at pp. 8-9; cf. U.S Merit Systems Protection Board, Annual Report for Fiscal Year 1994 at pp. 12-13 for pilot settlement programs (one using special settlement judges and the other involving evaluation of settlement methods in the adjudicatory process).

54 See California Nationwide Survey, supra n. 40 at Table 2.4, p.9.
adjudication component itself) is a rarity. Yet, a variety of methods of quality tracking and oversight exist. For example:

- Two systems require a senior adjudicator review of all (or virtually all) decisions before they are issued. This is not a formal sign off, but a second examination under which the senior individual (a supervisory judge in the NYOAH and a senior specialist judge in MOAH), upon detecting errors or significant omissions, will consult with the trial judge and seek to induce reconsideration and adjustment. Outright "vetoes" under this in-line quality review step are virtually non-existent since considerable tolerance and deference is accorded the hearing judges, the educational value of the procedure is achieved regardless of outcome, and hearing judges are generally amenable to expert guidance. \(^55\) (It should be noted that these systems do not incorporate an appellate tribunal like OHA, the Immigration Corps or California's WCAB).

- The existence of an agency appellate tribunal with some precedential influence (Board of Immigration Appeals, Illinois Board of Review, California WC Appeals Board) is considered in the relevant systems to be a significant "quality assurance" force and typically involves something beyond the communication of a decision or case remand to the relevant hearing judge (e.g. selective publication of decisions and incorporation of appellate precedent in training programs for agency-wide utilization). \(^55\)

- Review and evaluation of judge performance is another method of

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\(^55\) For a good picture of the positive and varied kinds of assistance that can be provided by well-directed internal quality unit probing and support, see the section on "Quality Assurance", 1995 Annual Report, Office of Administrative Hearings, p.10 (MOAH, Jan. 1996).

\(^56\) Decisions of the Board of Immigration Appeals have been published in hard bound volumes as "Administrative Decisions under the Immigration and Nationality Laws" going back to 1940 and distributed widely both within and outside the Dept. of Justice. They are designated as precedent decisions by majority vote of the Board and there are now over 3,000 of these extant.
"quality control" capable of encompassing substance, efficiency and timeliness of work. Among federal tribunals, the Board of Veterans' Appeals, in 1994 legislation, was directed to implement a performance evaluation system for judges to serve as the basis for a mandated recertification for duty at least once every three years. On the state side, in the Maryland central panel system, a plan for evaluating adjudicative performance of ALJs was put into effect in 1995. This includes review of randomly selected hearing tapes, a scored evaluation of randomly selected written decisions, and an executive staff written assessment of each ALJ's overall performance in which "timeliness statistics have been made an important factor in evaluation of judicial performance."  

If one accepts that timeliness is at least a proper partial measure of the quality of a judge's work, then half the agencies reviewed had the additional prod of a legislative mandate to be "productive". This refers to the federally imposed durational limits of the adjudicative process for hearing and decision issuance for AFDC, Food Stamp, and Medicaid cases (i.e., within 90 days of filing an appeal) and for Unemployment Compensation appeals (within 75 days of filing the appeal), all on pain of loss of federal allocations and all applied as an overall percentage norm rather than a rigid case requirement. Even the federal Immigration Corps finds itself tied to statutory decisional limits (effectively 105-180 days from filing to disposition) in the handling of certain asylum applications.  

SSA has recently introduced a quality assurance system for ALJ adjudication featuring "peer review" by a revolving corps of volunteer ALJs who examine decisions that have become administratively final (i.e., will not be altered even though evaluation suggests errors in outcome). This has been ongoing for

57 Cf. n. 38, supra.
59 See discussion under "Pressures and Presence of Time Limits", supra.
60 See n. 39, supra.
almost three years and is based upon carefully developed and statistically measurable review protocols. The system was developed and is administered by SSA's Office of Program and Integrity Reviews. It has involved close to 100 ALJs within the SSA Office of Hearings and Appeals, and has led to interesting findings on common errors, needs for training, lack of policy clarity that tends to produce inconsistent results, weak spots in evidentiary evaluation, etc.61

It is difficult to see how high-volume operations can or should ignore experimentation with appropriate quality assurance techniques in the effort to provide agency litigants with accurate and knowledgeable decision work. This is particularly true in systems in which few decisions will be scrutinized by higher appellate tribunals or where large numbers of certain kinds of decisions will rarely come before appellate or other oversight bodies. It is important, of course, that the techniques and formats used are structured to enlighten, enhance and improve performance rather than chill the independence of judicial inquiry and judgment so important in any adjudicative forum.

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It should be clear to the reader that this review only scratches the surface of issues, concepts, and solutions associated with the challenge of high-volume adjudication in this nation. Transferability of operational techniques, organizational arrangements, management controls, and procedural innovations to bolster quality and responsiveness call for closer examination and access to more detail than has been attempted in or permitted by this exploration. Nevertheless, in studying such topics as the place of adjudication operations within given agency structures, the geographic organization of services, reporting channels and authorities for

61See SSA Office of Program Integrity and Reviews, Findings of the Disability Hearings Quality Review Process Peer Review: An Assessment of ALJ Decision making and Responsibilities, including the Procedural Conduct of the Hearing, the Questioning of Witnesses, and Other Legal Obligations (Mar. 1995).
adjudication units, time and caseload pressures confronting administrative tribunals, kinds of streamlining initiatives, court review impacts, case settlement and default experience, and quality assurance programs, it is hoped that the observations offered will serve as both a motivator and stimulus to further dialogue and inquiry.

Before concluding, some disclaimers may be in order to avoid unintended impressions. The focus on large case numbers, "short causes" and quick adjudicative services was in no sense meant to suggest that low levels of importance, case complexity, or adjudicative judgment were inherent in high-volume workloads. Social security disability benefits cases, for example, are in no sense "small claim" or "small potatoes" matters. They involve precious rights of entitlement to subsistence or income replacement for individuals with little access and few alternatives to other sources of support for basic living needs. Indeed, benefit values at issue in such cases have been estimated at $90,000 for disabled worker awards (all elements, including derivative claimant shares). 62 Similarly, it would be hard to place a price on the value of the right to legal residence in the United States for an individual subject to a deportation or exclusion action before an Immigration Court. Comparable cases could be made for the importance and high value of adjudicative outcomes in virtually every other system examined in these pages.

Conversely, preoccupation with "high volume" as a dimension of administrative adjudication worthy of an intense inward look was not calculated to dismiss or denigrate or slight the critical importance of complex "low volume" adjudication (if that kind of a descriptor can be used) to our nation's economy, safety and well being. A few years back, the author had occasion to reference some observations about the vital role of ALJs in this arena, noting that "their impact upon the regulated industry and economy in general, the number of parties involved, and their general size and complexity, are comparable to some of the biggest and most

62 See memo, SSA Chief Actuary on "Average Value of Disability Awards" (Feb. 7, 1994).
complex cases tried in the federal courts.\textsuperscript{63} This was clearly meant to encompass, indeed extol, the great regulatory tribunals of modest size that placed an indelible stamp of service, excellence and "complexity conquered" on America's administrative adjudication process. It would be naive not to recognize that a small tribunal handling a small number of critical cases could offer as much "justice" and social impact as those examined in this article. All are precious and important to the nation's "day in court" ideals and all merit scholarly time and attention. This article's brief for a bit of "isolation" and "dissection" on high-volume operations will, it is hoped, be understood and challenge more of the same by adjudication agencies and commentators at all levels of government.

\textbf{APPENDIX A}

\textbf{IMMIGRATION JUDGE CORPS, DEPARTMENT OF JUSTICE}

The Immigration Judge Hearing Operation. The Immigration Judge Corps is now disposing (they call these "completions") of some 181,000 cases a year with 165 sitting judges (as of October 1995) operating out of 34 "Immigration Courts" (the regulatory title of their hearing offices). That is an average of about 1,100 cases per judge per year. This would suggest an annual Immigration Corps productivity rate of over 1 million case dispositions per year if they had receipts of that order and as many judges as OHA's 1,050 ALJ average in Fy 1995. The Immigration Corps and its caseload is growing at almost as rapid a rate as that of OHA. In Fy 1996, they expect to have well over 200,000 receipts and about 200 judges. This places them second in size and status only to SSA in terms of case volume adjudication among the nation's administrative adjudication systems. The staff to judge ratio is about 2 to 1. Total staff inclusive of judges is approximately 500.

The Immigration Judge Corps (excluding three ALJ's handling employment discrimination and illegal employment cases) adjudicates primarily three types of cases: (i) deportation of aliens in the country, (ii) exclusion of aliens apprehended or detained at the borders at time of entry, and (iii) bond hearings for aliens under cloud of deportation. These amount to well over 90% of the cases received and heard, with deportation hearings constituting the bulk of the workload (about 75%). The latter average 2-3 hours per full

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“merits” hearings (much shorter for bond hearings). There are also weekly “master calendar” hearings where judges do scheduling and pretrial on about 25 new cases plus 10 to 15 “resets” (from prior “master calendars”) per session. About 50% of the cases filed go to a full hearing. The rest are resolved at the “master calendar” stage (often by stipulated agreement of the parties or by statutorily authorized “in absentia” hearings when the alien fails to appear).

Some 16,000 cases are appealed annually to the Board of Immigration Appeals (BIA). Decisions of the Board of Immigration Appeals, if so designated, are deemed precedential nationwide and binding on INS in adjudication of the immigration laws. (A U.S. circuit court decision which overturns a BIA decision is accepted by DOJ as precedent only within that circuit). The Immigration Judges, the BIA, and the ALJs referenced above are all part of the Executive Office for Immigration Review (EOIR). EOIR is a component of the Department of Justice separate from the Immigration and Naturalization Service (INS) which makes the initial deportation and exclusion determinations that are subject to Immigration Judge appeal. Perhaps a 1,000 of the cases appealed to both the Immigration Corps and BIA go on to the federal courts as further appeals, i.e., deportation cases directly to a Circuit Court and exclusion cases to the District Courts. All proceedings are adversary in nature, involve 100% representation of the government (i.e., the INS which is the charging party in adjudication proceedings) and about 40% representation of the aliens subject to adjudication proceedings.

Immigration judges “write” over 95% of their decisions (actually they dictate these into the hearing tape record and they are literally called “oral decisions”). This is done the day of the hearing, typically after the hearing closes following a few minutes of deliberation to order the judge’s thoughts and notes. Decisions are generally not transcribed until needed for an appeal. There is only about one “law clerk” per 7 judges. These staff attorneys not to serve more than one or two years, being hired at the Department of Justice “honors program" level for new attorneys, i.e., grade GS-11 and rising to GS-12 during their short tenure. They are assigned the writing of some of the more complex decisions and also any special legal research or analysis required by the judges.

Immigration judges handle civil enforcement disputes (which have a quasi-criminal flavor because of the detention and removal issues involved) rather than benefit claims. These are initiated by the Government (DOJ’s Immigration and Naturalization Service, “INS”) rather than claimants and thus a rather strict separation is maintained from INS by the judge corps. This does not, however, seem to create the policy and interpretative differences said to be involved in administration of the SSA disability process at DDS and ALJ levels.

Management and Organizational Structure. The Chief Judge is the national manager of the adjudication operation. He reports to the Director of the Executive Office of Immigration Review (EOIR) who in turn reports to the Deputy Attorney General. Virtually all administrative services are provided by EOIR.

There is no regional office structure. Instead, there are 8 assistant chief judges all housed in the Washington area who are assigned geographic oversight responsibility and who can come together on almost a daily basis, if necessary, to work out problems and positions of uniformity, production, delay and accountability in administration of the program. Also, there are no chief judges in the 34 immigration courts (hearing offices)—only rotating “liaison” judges who handle certain communication and information distribution tasks but do not function as managers. In short, all judges in the field are line judges. Managerial responsibilities are in the hands of the assistant chief judges in the Washington area who ride circuit and, in addition to management tasks, continue to hear some cases to keep in touch

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with the field.

Each field office ("court") has a court administrator who basically manages the hearing office. This position is graded at GS-13 level but will soon be replaced by a banding system that will expand the range from GS-9 entry up to GS-14 (and, for the few largest courts, perhaps Grade GS-15). These administrators very frequently have master's degrees (if originally hired primarily on the basis of academic credentials) or have had extensive prior court management experience.

The Chief Judge is in charge of local procedural rules for adjudication of immigration cases. Each "court" may have its own local rules but they must be signed off by the Chief Judge. National rules of procedure are maintained through regulations prepared by the EOIR and issued by the Attorney General. The Chief Judge also has his own series of operational policies (somewhat like SSA's HALLEX but less integrated).

**BOARD OF VETERANS' APPEALS, DEPARTMENT OF VETERANS AFFAIRS**

The Board of Veterans' Appeals Operation. The Department of Veterans Affairs (DVA) acts on about 3.3 million benefit claims a year in non-education matters (most of which involve or relate to disability). This activity generated some 65,000 appeals last year from disappointed veteran and derivative claimants (widows, dependent children, guardians, etc.) which, in the DVA system, are initiated by "notices of disagreement" followed by a responding DVA "statement of the case." The "notices of disagreement" can be (and often are) resolved by hearing officers in the field attached to the 58 DVA regional offices that originally consider claims and also by other field officials authorized to resolve claims. Through this "reconsideration" and field hearing/readjudication process (including new evidence, additional claimant argumentation, withdrawals and abandonments), resolutions are reached which substantially reduce the appeals receipts of the Board of Veterans' Appeals (OHA's counterpart at DVA), e.g., down to about 38,000 cases for de novo review in Fy 1995 (inclusive of appeals of previously remanded cases).

The Board (BVA) now has about 55 adjudicators (with five more in process of recruitment) who operate as solo judges. The Board used to sit in panels of three or more but that was changed by recent legislation (1994). The total personnel complement of the BVA operation is about 450 workers, inclusive of 55 judges, 200 attorneys (who operate as decision writers and legal assistants to the members), 10 miscellaneous attorney support personnel and about 190 administrative support personnel.

Board decisions deal with disputes about agency findings of service-connected injury or disease (is it service related?) and the extent of compensable disability (determinations of 100%, 90%, 80%, etc., disability by "rating boards"). Pension claims based on disability also involve issues of employability. It should be further noted that only a minority of appellants actually seek hearings before BVA (about 10%) and when held, hearings typically run about 45 minutes (although there can be great variations). Hearings are simply not a predominant part of BVA adjudication operations or a major contributor to the system's case complexity. Most cases are disposed of only by file amplification, analysis, and issuance of written decisions. With or without hearings, these can involve extended work and study (with full statements of facts, applicable law, reasoning, conclusions, and the decision itself). While there is a right to hearing in every case, appellants do not choose to request a hearing in most cases. Claimant representation is high (about 90%), mostly supplied by
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veterans’ service organizations and a small portion coming from privately retained counsel (about 3%).

Case dispositions were about 28,000 in Fy 1995, somewhat below the 38,000 intake. Waiting time from docketing of an appeal to decision issuance is now running over two years (760 days in Fy 1995). In decisional outcome, BVA allowance/denial rates are quite close to OHA’s experience if one counts remands (BVA has broad remand authority and uses it liberally to return cases to the field, about 25% of which are disposed of favorable or partially favorable after further “working”). Thus, the BVA allowance/remand rate of 67% in Fy 1995 was very close to OHA’s allowance rate of 67% (and was accompanied by comparable case dismissal and denial rates as well). The big contrast was in the use of remands when BVA found fault with field determinations that were appealed (i.e., 2/3 remand, 1/3 allowance).

There is a right of appeal from BVA decisions to the recently established (1992) Court of Veterans’ Appeals (COVA). In contrast to the approximately 28,000 BVA appeal decisions made in Fy 1995, around 1300 (almost 5%) were appealed to COVA which, like our Appeals Council, has a low direct reversal rate. Perhaps 1% of appeals to COVA are reversed with nearly half of the remainder being affirmed and the other half remanded. COVA has an “error of law” and “clearly erroneous” standard of review (the latter meaning that the court will only reverse on the facts when the agency findings and application of law were clearly wrong). COVA’s remand rate has usually reflected a tough stance on procedural and documentation error which is expected to abate as (i) the Board becomes familiar with the court's requirements and learns to document and justify its decisions per COVA standards and (ii) COVA standards themselves stabilize and exhibit less change and flux than initially experienced. There is a further right of appeal from COVA to the Court of Appeals for the Federal Circuit (limited to questions of Law) and then on to the discretionary jurisdiction of the U.S. Supreme Court.

Management and Organizational Structure. The chief executive officer of the BVA adjudication operation is the presidentially-appointed Chairman of the Board of Veterans’ Appeals. There is a Vice Chairman who serves as the Board’s chief operating officer. The Chairman reports directly to the Office of the DVA Secretary and the Board’s budget is a separate component within the Department’s General Operating Expenses appropriation. BVA has a Director of Management and Administration who is subject to the Chairman’s oversight (much in the manner of a court administrator’s relationship to a chief judge).

There are no BVA regional offices or regional chief judges in this operation but there are 5 Deputy Vice Chairmen (deputy chief judges), four of whom are accountable for the work and production of decision teams of Board members assigned geographically to groups of DVA regional offices and also reflecting some substantive specialization responsibilities where special expertise is desirable and deemed efficient. (In these situations, the team scope goes beyond assigned geographic regions to other cases involving their specialty areas). The 5th Deputy Vice Chairman is responsible for training, liaison, rulemaking and COVA appeal matters. Hearings are frequently held in Washington but recently Board members have gone into the field to conduct most hearings.

The Board budget was $28.6 million in Fy 1995 and will likely exceed $30 million in Fy 1996. The budget is prepared internally and defended before the Assistant Secretary for Finance. BVA is subject to the normal budgetary controls and follows general personnel and recruitment practices and rules of the department. Judicial selections, i.e., Board Member appointments, are made by the Secretary with the approval of the President. Candidates are
interviewed, screened and recommended to the Secretary by the BVA Chair. The Board makes no policy but does produce its own rules of practice and views the judging mission as requiring interpretations of law and regulations on issues not directly answered in existing policy.

Recently, in response to (and apparently as a quid pro quo for) pay increases to Board members up to APA judge levels, there was legislatively imposed a peer review system under which the quality and sufficiency of BVA judge performance is to be reviewed by panels of 3 Board members no less frequently than every three years. (This has just been implemented on an annual basis by the Chairman).

BVA, as part of its Department's emergence as a new cabinet agency, recently was placed under the jurisdiction of a specialized Article 1 (executive branch) reviewing court (COVA). This is not dissimilar to at least some versions of the "disability court" proposal that some officials have been suggesting for serious consideration in SSA's quest for greater doctrinal consistency in the disability process. The initial results were an unanticipated slowdown of BVA operations (due to very high remand rates) rather than the interpretive and policy uniformity that SSA would hope for through such a mechanism, although the latter is certainly being pursued by the Court of Veterans' Appeals and should ultimately make just that kind of a contribution to the BVA system.

OFFICE OF ADMINISTRATIVE HEARINGS, NEW YORK DEPARTMENT OF SOCIAL SERVICES

The New York Hearings Operation. The New York Office of Administrative Hearings (NYOAH) has a predominant workload of federal/state entitlement program "fair hearings" (Medicaid, AFDC and Food Stamps are the high volume items). Most of its cases (about 80%) originate in the New York City area and the remainder are generated upstate. In 1995, it received roughly 160,000 requests for hearings and NYOAH estimates a load of 190,000 receipts in 1996. A very large proportion of its requests (46%) result in defaults, typically abandonments and "no-shows." Thus SSA's adjudicative dispositions run between 80,000-90,000 decisions a year, again predominantly involving the federal entitlement claims previously mentioned.

NYOAH's current backlog (it calls these "unscheduled hearings" since hearings docketed in its central scheduling system are invariably held within a week or two of assignment) is about 25,000 hearings. That is roughly a 3-4 month "waiting time" equivalent. It should be noted that OAH schedules about 200,000 hearings a year (inclusive of defaults and continuances) and its hearings average 20-30 minutes in duration. Decisions are produced through an extensive and automated drafting and mailing process, all operate from headquarters in Albany for the whole state.

The New York program operates with about 100 attorney adjudicators (they are just beginning to be called "ALJs"), inclusive of supervisors who generally review and sign off on decisions before issuance. The total complement of the office is roughly 240 positions (counting part time workers who, together equate to about 2 dozen FTE slots). Worker overtime seems, as with SSA's Office of Hearings and Appeals, to have been persistent and common in recent years.

Representation rates are low (about 5% for claimants or beneficiaries and 90% by agency representatives, the latter emanating from county government which is responsible in this state for providing benefits of the kinds mentioned). In addition to federal/state
entitlements, the office has a modest caseload of adult home licensing, provider fraud, home relief for non-AFDC claimants (fairly large in volume), energy assistance, and foster and child care-related claims, benefit terminations, disqualifications, etc.

Appeals beyond NYOAH are relatively few. There is an internal reconsideration process where a supervisory attorney will review a case disposition on written request (occurrence rate is a little over 1%) and provision for a state court appeal (occurrence rate is about 1/2%) which yields about 500 court appeals a year and which the department tends to settle out. The test in these court appeals involves a legal error and substantial evidence standard. On reversals from NYOAH adjudication, the upstate rate is about 50%. In NYC, claimants win benefits almost 90% of the time in cases going to hearing. This is principally because the city cannot readily handle appeals or provide documentary evidence substantiating its position (an unfortunate situation but one balanced by the very high rate of claimant defaults in hearing requests).

Management and Organizational Structure. The chief executive of the New York operation has deputy general counsel status within the State Department of Social Services. NYOAH is organizationally located in the Office of General Counsel but has completely separate quarters and operates pretty much as a self contained and independent unit. Its chief executive reports to the General Counsel who in return reports to the Commissioner of Social Services (a cabinet member and thus the state level equivalent of federal department and independent agency heads). It has a limited regional setup (Buffalo, Rochester, Syracuse, Long Island and New York City sites) but these are simply offices for its adjudicators rather than hearing offices since OAH holds hearings in county facilities or, downstate, at a few New York City hearing sites.

Virtually all administrative support is run out of the Albany headquarters (including case intake) and thus very few support personnel in New York City are located with adjudicators except for some 50 staff who do some forms of administrative disposition, a great deal of local case intake, and are generally viewed as a branch of the Albany headquarters rather than field office workers. The NYOAH has no discrete budget (being part of the General Counsel budget) but its allocation was about $8.5 million for the past year. Budgets are formulated by the General Counsel budget officer with NYOAH input and then approved by the commissioner of Social Services (and ultimately the legislature).

New York has by far the largest state/federal entitlement program caseload in the nation. It is also a large state geographically and yet has achieved an impressive and efficient degree of centralization in (i) docket control and assignment and (ii) automated decision formulation and transmission that bears study by other adjudication systems engaged in "reinvention" studies or seeking to streamline regional hierarchies.
MARYLAND OFFICE OF ADMINISTRATIVE HEARINGS

The Maryland Central Panel Operation. The Maryland Office of Administrative Hearings (MOAH) is a state level counterpart of the independent ALJ Corps contemplated by proposed federal legislation such as H.R. 1802 and S. 486 (the Reorganization of the Federal Administrative Judiciary Act). It was established by statute in 1989, came into existence on January 1, 1990 and now has five full years of operating experience hearing cases on behalf of more than twenty state agencies for over 200 different programs.

MOAH is, somewhat surprisingly in view of Maryland’s modest population, one of the largest of the two dozen state central panel corps now in existence (there are more than 20). It has 64 judges (including the chief ALJ and a few part time judges) handling an expected 60,000 case receipts in fiscal 1996 (which began for the state last July—there were 50,000 receipts in 1995 and over 44,000 cases concluded. This case volume exceeds that of much more populous “central panel” states such as Florida, California, and Michigan, probably because MOAH has adjudicative jurisdiction of Motor Vehicle Administration appeals which accounts for perhaps 60% of its case receipts (mostly license revocations and restrictions). The next two largest case categories are “health and mental hygiene” and “human resources” appeals, which are dominated in volume by AFDC, Medicaid and Food Stamp cases (the major federal/state entitlement programs). Together, these will likely yield over 20,000 requests for hearings in Fy 1996.

The Maryland program has a heavy fall-off in abandonments and “no shows” (almost 50% for entitlement cases). Another 15% are settled by the parties and this is reflected in withdrawal and remand rates. The remaining 35% become contested hearings. Hearings vary in length with the kind of dispute involved, i.e., rough averages of 1/2 hour for motor vehicle and federal entitlement cases, 1&1/2 hours for mental health commitment, and a half day for personnel disputes. Further appeals exist to the state circuit court (30 day filing deadline). MOAH, even with steady annual growth in new state programs which it is authorized to adjudicate, is just about current in disposing of incoming receipts each year and has little backlog buildup.

Within MOAH, there are specialist judges who sign off on cases before issuance by the hearing judge (a kind of pre-effectuation quality review) and provide training and guidance to fellow ALJ’s in their specialty areas. This practice of review of virtually every decision by a “subject matter expert” has been criticized by some APA authorities. It is a form of in-line quality review and the agency supports that effort with an aggressive and continuing training and decisional aids program. Bench decisions on printed forms are commonplace for MOAH’s high volume case categories and skeletons of various decision types are maintained in computers and libraries for ALJ guidance. Among its ALJ’s, there is no subject matter specialization. Judges are generalists assigned to all kinds of cases except for the first 1 to 1&1/2 years of service when they focus on high volume cases.

The Maryland State Administrative Procedure Act imposes a specific 90-day deadline on issuance of decisions after hearing. In this regard, the agency is proud of its record of easing backlogs when given jurisdiction of a class of disputes, e.g., reducing prisoner grievance backlogs from 1500 cases to 100 cases in a short period and cutting down the appeals process in personnel cases from 2-3 years to less than 6 months. Indeed, MOAH is very much a central corps handling virtually all the state’s administrative adjudication business via delegated powers of proposed or final decision making authority. (One major exception is that MOAH does not handle the state’s workers compensation adjudication). Neither
MOAH nor, apparently, the Maryland public perceives significant conflict in dealing with hard federal and state decisional deadlines (as indicated, it has both, the former coming from federal “fair hearing” rules in the Medicaid, AFDC and Food Stamps programs) while maintaining high adjudication standards tailored to the types of cases and case volumes within its mission responsibilities.

Management and Organizational Structure. The Chief Judge is the top executive official of MOAH. He is appointed by the Governor, confirmed by the Senate, and reports directly to the Governor. MOAH itself has the status of an independent agency within the executive branch of state government. Most of the operation is centrally run with only two small satellite offices (Salisbury and Cumberland). Judges travel and conduct hearings all over the state.

Budgets are formulated by the agency, presented to the Department of Budget and Fiscal Planning, and ultimately reviewed by the Governor for submission to the legislature. Judges are state employees who follow all rules and regulations on such matters as travel, compensatory time, overtime, etc., as well as personnel recruitment policies and procedures general applicable to merit and non-merit system employees in other departments of state government (ALJ’s being in the latter category). All of MOAH’s work is subject to due process and procedural requirements of the state APA and also to previously mentioned time limits. There is a 3% court appeal rate (700-1000 cases year out of the 30,000 cases heard).

MOAH has its own separate facilities and courtrooms in a Baltimore area building (and about 40% of its hearings are held there) but will often conduct hearings in other agency facilities. Administrative services are furnished by MOAH itself out of its separate budget (equipment, maintenance) or by the State General Services Administration (office space).

DIVISION OF WORKERS COMPENSATION, CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS

Note: Workers Compensation (WC) was the first form of social insurance to develop in the United States. Indeed, most states were covered two decades before passage of the Social Security Act 60 years ago. Today, every state has a WC program, there are two federal programs, and over 90% of the nation’s employed work force is covered by some WC system. Costs of these programs are borne almost exclusively by employers through insurance or self insurance plans and total outlays are now running above $40 billion per year. The California system is one of the largest, and despite some variations among the states, exemplifies most of the basic features of large WC adjudication programs.

The California Workers Compensation Appeals Operation. The California Workers Compensation Appeals Board (WCAB) oversees nearly 180 referee judges in 28 district offices issuing a breathtaking 760,000 “decisions” per year. The WCAB is defined to include all persons in the adjudication program, including commissioners, deputy commissioners, presiding referees and referee judges. The Appeals Board itself consists of seven “commissioners”, one of whom is the chairperson. The total personnel complement for the Boards and their administrative division in the State Department of Industrial Relations is almost 1,100 employees (more than a third of whom are involved in activities other than adjudication).

In the California system, a single application or case can yield several “decisions” which involve such issues as orders for award of attorneys fees, approval of commutation of awards, stipulations and findings of fact, compensation awards, and compromise and release agreement approvals. This order of “decision” output is difficult to compare meaningfully
with that of other systems in the review. A more useful comparative estimate might be the program's case filings volume of about 220,000 per year (FY 1994), about 55,000 of which involve hearings ("trials") at which both sides to the controversy or disagreement are represented most of the time (over 90%). Among the cases not going to hearing, the most common disposition is a "compromise and release" agreement submitted for Board approval and representing a resolution fashioned without adjudication between the major parties, i.e., typically the injured or ill worker and either a self-insured employer or an insurance company representing the employer.

Issues that come before the WCAB revolve around the existence of temporary or permanent disabilities through injury or occupational disease and compensation for such disabilities. Cases that cannot be settled between workers and their employers or other insurers (or settlements when the parties seek Board validation) are opened by either side submitting an "application" to the Board. A concerted effort to encourage settlement, including mandatory settlement conferences, was put in high gear by 1989 legislation and has paid off. This is facilitated by a special corps of nearly 55 "information and assistance" officers who offer their services, primarily in cases of unrepresented worker claimants.

Decisions or orders of individual judges are appealed by requesting "reconsideration" from the Appeal Board (this appellate layer before state court appeal exists in some form in most states) consisting of 7 politically appointed members (plus 3 nonpolitical deputies who can perform Board reconsideration roles as needed) and a total staff complement of nearly 40 (including decision writer law clerks). The Appeal Board decides roughly 5,000 appeals a year sitting in panels of 3 commissioners. About 600-650 Appeal Board decisions are appealed yearly to the California courts through writs of review (Court of Appeals and then the state's Supreme Court).

Management and Organization Structure. The Workers compensation operation is located as a Division within the California Department of Industrial Relations. It is the largest component of that Department which also oversees such activities as labor law administration and workplace safety. The Division of Workers Compensation is headed by a non-judicial Administrative Director who reports to the Department Director and, in turn, is the reporting authority for the law-trained Assistant Chief of the Division who manages the adjudication function (somewhat in the manner of a "chief judge"). The Division is largely responsible for administrative support of the Boards (personnel, budget, supplies, communications, automation, etc.) and in turn calls upon and is accountable to general departmental management and support entities for a number of administrative functions and approvals. However, leadership is rather distinctly split into judicial and administrative functions, with the former, i.e., the Assistant Chief's domain focusing on adjudication policy and procedures, ethics (under a rather strict standard), and the legal professionals engaged in adjudication.

The WC Division has a modest regional structure (North, Central and Southern Regions) in which are located 28 district offices which house, together, the referee judges and other functions and services of the division (essentially a fairly comprehensive co-location scheme for adjudicators and other field functions). The referees travel frequently to service remote areas and have 8 fixed travel locations for these purposes. This kind of outreach, however, involves less than 15% of the cases adjudicated. There is specific provision and procedures for rehabilitation disputes before they go to referee judges (as opposed to compensation issues) which arise out of the actions and determinations of the rehabilitation units of the Division. About 4% of these are appealed.

The adjudication budget is formulated by the Administrative Director of the WC
Division and is well integrated with other Division cost centers, e.g., rehabilitation units, information and assistance units, unit enforcement, etc. Budgetary controls mirror those applicable to all state agencies and, as with other agencies, oversight and sign-off authorization of the State Departments of Finance and Administration must be obtained. This is coordinated through specialized budget, personnel and procurement staff in the Division. Thus the parent agency supplies equipment, office space, repair, maintenance, and automation services etc. although the Division usually handles needs once contracts are in place.

Policy determination is in the hands of the Administrative Director and the Appeals Board (the latter vested with ultimate authority to determine rules of practice and procedures for the WC courts). In their policy efforts, the Appeals Board will hold hearings on proposed regulations and meet with the various WC constituencies for input (e.g., attorneys, insurers, medical providers, rehabilitation organizations, interpreters, and self-insured employers).

For internal guidance of employees, the WC Division and Appeals Board promulgate a Policy and Procedure Manual. Policy uniformity is a continuing problem and achieved through oversight of WC judge decisions and the appellate process. Conflicting interpretations within the Division, for example, frequently arise with respect to rehabilitation disputes (which are handled on a kind of claims examiner basis and where different procedures are sometimes followed). There is acceptance of the concept of quality assurance review of referee judge decisions but not much systematic activity of this kind has yet been launched. A digest of decisions and occasional targeted dissemination of appellate decisions is also viewed as a tool for achieving adjudicative consistency.

As indicated, WC judges are located in district offices with other personnel. However, the only claims officers involved in the California system are those administering applications under the Uninsured Employer Fund. Other initial claim review and disposition is in the hands of the WC insurers or self-insured employers. While the adjudicators normally leave the task of presenting evidence to the parties, they must not close the record until they have all the evidence necessary to make a decision. In some cases, judges can ask for independent medical examinations. Although judges are under strict rules of adjudicative propriety (e.g., ex parte contacts are prohibited), they are not subject to the provisions of the state administrative procedure act. However, they are subject to the same Code of Judicial Conduct as other state judges.

The lack of an initial claims review function in the system somewhat limits comparison and potential application of system features to high volume adjudication programs in which most appeals come from the determinations of an initial decision maker level of agency employees (or, as in the case of SSA, from state agency contract workers). In most WC systems, appeals emanate from interaction and disagreements between workers and insurers. In essence the whole California WC operation is an adjudicative one, either deciding appeals or validating settlements coming up from non-agency third parties. Also, the very high settlement rates reflect an ability to agree and compromise on amount and character of awards which does not exist as an option in many other high volume programs.

The California structured settlement system results in a higher level of pre-adjudication dispositions (about 75% of cases submitted as applications for a WC judge hearing) compared to "on the record" disposition rates, including dismissals and defaults, under most other programs. Nevertheless, the existence of a sizable corps of facilitators for pre-appeal resolution (about 25% the size of the referee judge complement) seems to offer economies and speed for a high volume system.
APPEALS DIVISION, ILLINOIS
DEPARTMENT OF EMPLOYMENT SECURITY

Note: The four major areas of "high volume administrative adjudication" at state levels involve claims and appeals concerning (i) workmen's compensation, (ii) federal state entitlement benefits (Medicaid, AFDC, Food Stamps), (iii) motor vehicle and driver's license suspensions and restrictions, and (iv) unemployment compensation benefits and tax disputes. Some of these may be handled by the same corps of administrative law judges or hearing officers in a given state. However, it is more likely that separate corps of adjudicators will handle most of these high volume appeal proceedings. This preview deals with hearings on employee unemployment benefit claims and related employer tax and chargeability issues. It involves one of the largest state operations in that field.

The Illinois Employment Security Appeals Operation. The Appeals Division of the Illinois Department of Employment Security handles roughly 60,000 cases a year, the bulk of which involve unemployment insurance benefit issues (benefit hearings), either employee initiated to establish eligibility or employer initiated to contest a charge for benefits allowed to a worker. A smaller workload (perhaps 3,000-5,000 of the 60,000 receipts) deal with tax cases (administrative hearings) involving employer liability for unemployment insurance taxes, calculation of amounts thereof, etc.). There is, in essence no backlog of such cases. By and large, receipts keep pace with dispositions each year and the appeals operation meets and better its federal mandates for disposing of 60% of cases in 30 days and 90% in 45 days.

This work is carried out with 68 judges (called referees or supervising referees) and a total staff complement of about 100 workers. Cases are received from a network of some 56 local offices distributed around the state (with most in the Chicago metropolitan area). Very few cases are settled or disposed of on the record once a local office transmits a hearing request to the Appeals Division. Local offices themselves, on receipt of an appeal, may reconsider or decide to allow the claimant's contentions but after a case goes to the Division, it is invariably scheduled for hearing and, except for a small percentage of no-shows and abandonments, is heard and decided.

"Benefit cases" are scheduled every half hour and generally fall within those allotted time segments. "Administrative hearings" are somewhat more complicated and require a few hours on the average. The judge referees write decisions for the great majority of cases on the same day they are heard (i.e., morning hearings and afternoon decision writing). As with SSA, there is heavy reliance on macros for decision writing. These are handled by the judges and there are no separate employee decision writers to discharge or aid the referee judges in that function.

Employers are often represented, perhaps in 50% of the employer appeals. Rates are somewhat less for appealing employees. Various tax services supply representatives, and this source is at least as frequent as the retention of practicing attorneys to represent parties. As with SSA, the DES referee judges have an affirmative legal obligation to help develop the claimant's case and case record.

About 20% of cases processed by local offices are appealed and about 90% of these go to actual hearing. (As indicated, the local offices will settle or change their minds for a modest number of appeals). Further appeal is possible to a "Board of Review" whose members are appointed by the Governor and then a further appeal exists to a state circuit court. Court cases are handled by Attorney General staff and, like the Social Security Appeals Council, the Board of Review tends to remand more cases than it will reverse outright.
Management and Organizational Structure. The Illinois appeal operation is managed by a non-lawyer Division Manager (there is no chief judge) who reports to a deputy director of the Employment Security Department (there are five deputies and the Division is under the deputy for operations). The Employment Security Department is an independent state agency with cabinet status whose director is appointed by and accountable to the Governor.

The Appeals division is an operational component of the Department and maintains its own space at the main headquarters of the Department. The Division operates five hearing locations for benefit cases (each managed by a supervisory referee). Four of these are in the Chicago area and one is downstate. All administrative cases are handled out of headquarters. In addition, the Division outstations 1 to 2 referees in 15 local claim offices where it would be inconvenient to send benefit claimants to one of the more distant hearing offices.

The practice of outstationing judges in local claims offices (a typical location would be a larger community like Rockford northwest of Chicago) represents the purest form of co-location of initial claim and hearing functions that currently exist in high volume systems. The judge referees are more or less permanently assigned to the local Employment Security facilities and have offices mixed in with the other workers and functional units, all served by common entrance and reception areas. A tendency for extra-record dialogue between referees and initial claim evaluators has been noted in these setups, mostly to clarify and fill out records with respect to clerical and procedural questions.

The Appeals Division is subject to the normal budgetary and employment rules and controls applicable to other state workers and agencies. Indeed, even the referees are organized into a bargaining unit and dealt with as such. The Division also receives equipment, space, automation and maintenance services from other departmental components charged with these functions.

The Appeals Division plays an important role in policy formulation. It will make requests for rules, interpretations and regulations, propose rule changes and even draft them, and comments on proposed policy changes emanating from other sources. However, ultimate authority for new regulatory and rule issuances remains with the agency head and is coordinated and effectuated by agency counsel. Uniformity and consistency, as with any volume operation, is a continuing problem. The extensive use of macros is believed to promote this goal and Board of Review and Court decisions in cases appealed beyond the hearing level are accorded precedential value upon incorporation in a “digest” of benefit precedent selectively compiled and issued by Department Legal Counsel. The digest is transmitted to all levels and mandated to be followed throughout the Department. While the Appeals Division used to issue its own interpretations, it has discontinued the practice although occasional “guidance” memos are distributed to adjudicative staff and other workers.

Quality assurance is largely defined by the federal government which provides a “scoring” mechanism to evaluate hearing and decision quality. This looks, in addition to major errors of substance, for such items as: “Was rebuttal offered?” “Were exhibits viewed by the claimant?” “Were hearing witnesses sworn in?” If a high enough grade is achieved, the federal government will forego its own quality assurance audits and rely on agency scrutiny for a period of time.

BRITISH INDEPENDENT TRIBUNAL SERVICE

The British Social Security Adjudication Operation. The Independent Tribunal
Service (ITS) exclusively services the various programs of the United Kingdom's Department of Social Security (DSS). While SSA-type disability benefits (based upon inability to work) are an important component in the total workload of administrative appeals in the United Kingdom (the British call them "invalidity" benefits and, more recently, "incapacity" benefits, reserving the term "disability" for another group of benefits), its tribunals adjudicate many more kinds of social insurance claims than SSA's predominant focus on title II and title XVI disability denials. ITS incapacity benefit cases represent about 17% of total filings and are expected to increase to 30% in 1996.

Receipts of hearing requests in all benefit and program categories have run about 200,000 per year and, in 1994, the ITS matched receipts with dispositions (the British call them "clearances") for the first time in 3 years. They did this with the equivalent of about 175 judges (all lawyers who are called "chairmen" because they adjudicate in 3-person tribunals including two lay members whose composition may change with the type of benefits under review). This figure is actually a 175-judge equivalent made up of 60 full time chairmen and about 680 part-time chairmen drawn from practicing attorneys who serve, on average, 2-3 days a month and are paid a "per session" fee. Part time adjudicators are thus used on a mass basis to meet social insurance workload needs and, indeed, currently handle about 60% of the ITS workload.

Appeals against DSS benefit determinations occur in about 1% of its cases (yielding the 200,000 annual filings). This compares with OHA's 18% against an annual claim intake of roughly 3 million disability claims. These appeals are successful about 45% of the time and of the ITS denials, about 2500 (2%) go on to the next level of appeal, the Social Security Commissioners (also appointed by the Lord Chancellor). Cases can be appealed to this level only on points of law. After the Commissioners, only a handful go on to the Courts of Appeal (comparable to our federal district and circuit courts), i.e., less than 100 per year.

At hearings the Department of Social Security is generally represented by a "presenting officer" who explains the Department's position, evidence and rationale for a denied or reduced benefit. This person is supposed to be more of an "amicus curiae", i.e., friend of the court, and not partisan. There seems to be no formal screening or pre-hearing conferencing program within DSS or ITS but the agency can "supersede" a case that is appealed (that is, award the benefit claimed in total, thus avoiding the need for a hearing). This occurs in about 37% of the appeals filed (a result close to what SSA expects from its new "adjudication officer" position and well beyond DDS reconsideration outcomes in recent years).

Currently ITS appeals are being disposed of in 28-30 weeks on the average. Tribunals (the 3-person panels) generally dispose of 7-8 cases a day. Virtually no judge (i.e., chairman) leaves a hearing office without writing or dictating the decisions for that day's hearings and ITS requires that decisions be announced on a same day basis even if writing must be put off due to work pressures.

All ITS judges (tribunal "chairmen") prepare their decisions, i.e., write or dictate virtually all of them the day of the hearing and without decision writer assistance. Decisions of ITS judges are literally completed forms which have four items that are filled in, i.e., 1) evidence received, 2) findings on questions of fact, 3) the decision itself (i.e., short statement of result), and 4) reasons for decision (i.e. application of facts to statutory provisions and case law, and why certain evidence has been accepted or rejected). They are generally quite short and this is true even for affirmations of benefit denials and reductions.
Management and Organizational Structure. The head of the ITS is a solicitor (a Circuit Judge assigned to the chief judgeship of ITS) who reports to the Lord Chancellor (the head of the British judicial system) but is administratively responsible to the Department of Social Security and dependent on DSS for his budget and resources, negotiating that with DSS. The President (this title is used rather than “chief judge”) is the top official of ITS but delegates day-to-day management to a “chief executive,” retaining administrative responsibility and strategic decisions for his personal decision. The adjudication operation functions through six regional offices which process all social security and medical appeals from beginning to end after filing with the benefits agency, arrange hearings and issue decisions. There are also 75 permanent hearing sites maintained on a rental basis and about 80 “casual” sites retained as needed (typically in public buildings).

The separate and independent status of the ITS and its dual accountability to DSS and the judicial branch does not seem to have presented problems of impaired production or efficiency (at least on the surface). ITS’ 175-judge equivalent, in disposing of 200,000 filings annually, is working at a yearly rate in excess of one million dispositions if it had a thousand judges. This seems all the more impressive in view of the use of 3-member panels but includes types of cases with far less complexity and evidentiary demands than SSA.

OFFICE OF HEARINGS AND APPEALS, SOCIAL SECURITY ADMINISTRATION

The Social Security Adjudication Operation. The Social Security Administration (SSA), through its Office of Hearings and Appeals (OHA), operates the nation’s largest administrative adjudication system. With current annual filings (Fy 1995) in excess of 570,000 requests for ALJ hearings, dispositions beyond 520,000 cases, a corps of more than 1,050 ALJ’s and a total staff complement in excess of 7,400 workers (inclusive also of a 650-person intermediate appeals operation with 23 Administrative Appeals Judges who adjudicate appeals from adverse ALJ decisions before they can progress to the federal courts), this system dwarfs the case receipts and staff-size of all other Administrative Procedure Act tribunals combined.

Ninety-five percent of SSA’s hearings caseload consists of appeals from unfavorable disability benefit determinations in applications filed under Title II (insured workers) and Title XVI (means-tested and largely impoverished claimants) of the Social Security Act, including derivative claimants such as spouses, widows, widowers, children, etc. The actuarial value of the average disability annuity for an insured worker applicant has been calculated in the range of $90,000 (not counting the value of dependent entitlements) and the figure for SSI (Title XVI claimants) would be somewhat less. In addition to disability cases, OHA also adjudicates a modest number of appeals in old age and survivor benefit cases (about 5,500 in Fy 1994), an equally modest number of Part A and B Medicare claims for hospital, doctor, nursing care, etc. expenses (about 15,000 in Fy 1994) and a rapidly diminishing, indeed, now handful, of Black Lung benefit claims.
There is representation of claimants in most hearing cases, estimated at roughly 70%, about 80% of which involve attorney services. About 2/3 of case filings actually progress to an ALJ hearing and decision, the remainder being disposed of by dismissal (10-11%) or allowance of benefits without hearing on the basis of hearing record documentation and new evidence submissions (about 22-24%). Most case outcomes are favorable to appealing claimants and their dependents, a condition that has existed for many years and currently runs at about 68% of all ALJ dispositions. Nevertheless, unfavorable cases may be appealed to the agency's appellate level tribunal (the 23-judge Appeals Council) and, thereafter, to the federal courts (U.S. District Courts) on grounds of error of law, abuse of discretion or lack of "substantial evidence" to support the ALJ's decision. These subsequent appeal rights now yield roughly 70,000 filings per year for the Appeals Council and 10,000 filings with U.S. district Courts (the latter with a history of substantial fluctuation ranging from 19,000 appeals in Fy 1985 to 5,500 in Fy 1990 and 10,000 in Fy 1995). Court cases are defended by U.S. Attorneys or, occasionally, regional counsel of the Social Security Administration.

The adjudication structure gets its appealed cases from SSA field offices (primarily within SSA's 1300 district office network) after applicants receive word of rejection for benefits from the state agencies (disability determination services -DDSs) who, by law, process and initially decide the disability benefit applications responsible for the overwhelming bulk of the adjudication system's work.

Management and Organizational Structure. The top executive of the SSA adjudication operation is the Associate Commissioner for Hearings and Appeals. The Associate Commissioner reports to a Deputy Commissioner of SSA. Under the Associate Commissioner is (i) the field adjudication operation, headed by OHA's Chief Administrative Law Judge with 10 Regional Chief ALJ lieutenants operating out of the rapidly disintegrating (except at SSA) standard 10-federal region configuration and (ii) the Appeals Council operation, centralized at OHA headquarters in the Washington area and managed by a selected administrative appeals judge (AAJ) with the Council's other appellate judges located in 20 branches housing the large body of analyst/decision writers needed to enable the AAJs to deal intelligently with the 3,000+ appeals which each of them must review, decide, and dispose of each year (many requiring 2 or 3 judge panel action). The Associate Commissioner is, by job designation, also the chief judge of the Appeals Council but can operate in that capacity, if at all, in only a very small number of cases.

The adjudicative operation has its own budget and budget staff, enjoys personnel and labor relations services supplied the SSA Human Resources Office and is generally subject to agency wide personnel, budget, procurement, and automation policies and rules (except that it has a substantial staff operating and maintaining its case information and tracking system—"HOTS"—ultimately to be merged into a fully integrated SSA operational and management information system).

Judge recruitment is dictated by existing rules and recruitment procedures for all judges operating under the Administrative Procedure Act (currently a system in other federal hands, i.e., the Office of Personnel Management) although SSA is by far the major recruiter of new judges. Pursuant to general agency policies, lower and mid-level management officials are selected by OHA or its oversight Deputy Commissioner, higher level appointments (GS 15) by the Commissioner, and all ALJ/AAJ appointments, transfers and supervisory posts require Commissioner selection, although interviewing and recommendations are in OHA hands. Field facilities, supplies and personnel support in OHA's 10 regional offices and 132
field hearing offices (the latter typically housing 5-10 ALJs and a support staff 4-5 times the number of ALJ’s in a given office) comes from a combination of headquarters management staff and SSA Regional Commissioner offices, depending on the nature of the support function.

The Office’s role in policy formulation and legal interpretation is basically an “input” function (but a significant one) with all major decision making in the hands of SSA headquarters oversight staff (Commissioner, General Counsel, the Supervising Deputy Commissioner). Local rules for hearing offices have not yet been implemented but the Chief Judge’s operating procedures manual (HALLEX) provides significant guidance for both internal and external hearing office functions.

It should be noted that the agency’s disability process is in state of major overhaul, including adjudicative components, and even administrative placement, structure and operation of the adjudication system is currently the subject of “reform” study and realignment to support the reengineering process now underway. As yet, implementation is in initial and pilot stages. Major implementation of both operational redesign and organizational restructuring remains to be accomplished.

APPENDIX B

INTERVIEW SUBJECTS AND MAJOR INFORMATION CONTACTS IN BENCHMARKING STUDY

DOJ IMMIGRATION CORPS
Anthony C. Moscato, Director, Exec. Office of Immigration Review
Michael J. Creppy, Chief Immigration Judge
M. Christopher Grant, Asst. Chief Immigration Judge

BOARD OF VETERANS’ APPEALS
Charles L. Cragin, Chair, Board of Veterans' Appeals
Ronald R. Aumont, Director of Management and Administration

BRITISH INDEPENDENT TRIBUNAL SERVICE
Judge Keith Bassingthwaite, President, ITS

MARYLAND OFFICE OF APPEALS AND HEARINGS
John W. Hardwicke, Chief Administrative Law Judge
Judith S. Singleton, Director of Operations
Ben Rudo, Director of Administration

NEW YORK OFFICE OF ADMINISTRATIVE HEARINGS
Russell J. Hanks, Director and Deputy General Counsel
Mark G. Lacivita, Director of Administration
Sharon Silversmith, Director of Systems and Resources

ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY
Victor Napolitano, Acting Manager, Appeals Division
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Peggy Jones, Chief Deputy Administrative Director
Rich Younkin, Deputy Comm’r, Workers Comp. Appeals Board