Administrative Adjudication Total Quality Management: The Only Way to Reduce Costs and Delays Without Sacrificing Due Process

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I. INTRODUCTION: The Hidden Executive Branch Judiciary -- Tomorrow's Leaner Adjudication Organization

A. The past and present state of administrative law adjudication organizations

Administrative law adjudication mechanisms evolved as an alternative to judicial branch adjudications as a speedy and more efficient alternative to the judicial branch. More and more, administrative law adjudications have come to resemble judicial branch adjudications. However, the administrative law adjudication area still offers a more flexible alternative than the judicial branch. The concept of a central panel, or corps, of Administrative Law Judges differs from traditional notions of administrative law insofar as it offers an efficiency of scale and expertise. Traditionally, hearing officers and referees were housed in the agencies they served. This is still true for federal Administrative Law Judges. The agencies have typically been charged with investigating, prosecuting and adjudicating cases involving the citizens they regulate. The paramount reason for a central panel is to give ALJs independence from the agencies they serve.

The Heflin Bill, U.S. Senate Bill 486\(^1\) (S.486) was reintroduced in the U.S. Senate on March 3, 1993. It passed the Senate but the U.S. House of Representatives failed to take action. It concerns the creation of a federal central panel of administrative law judges and it was first introduced in 1983 as U.S. Senate Bill 1275.\(^2\) The movement to create a federal central panel has picked up considerable steam and the most important question involves where Attorney General Reno and President Clinton stand on the issue.

At the present time, there are 20 state central panels, including Colorado's, and New York City's central panel, which totals 21 state or

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\(^1\) S.486, 103d Congress, 1st Session (1993).
city central panels. With one exception, all of these central panels are located in the executive branch of government. In South Carolina, all of the judges including the Chief are elected by the legislature. Six, or more, central panels are organizationally independent agencies. Colorado's central panel operates as part of another state agency. All but one of the central panels have a chief ALJ or a director or both. All ALJs in two states are gubernatorial appointees. In all of the other states, the administrative law judges are selected by the director or chief judge. The chief judges are selected either by the governor, the chief justice of the Supreme Court, the Secretary of State and legislature, the Attorney General, or a cabinet officer who is the head of a principal department of state government.

A central panel that functions like a successful private business, employing a total quality approach, offers the most viable pathway to reducing costs and delays in an adjudication system. Of course, this must be done within appropriate ethical strictures and without sacrificing due process. Two of the central panels are funded by general appropriations, while four are funded strictly through agency user fees. In the user-fee states, the agencies that utilize the services of the ALJs provide the funding for the operation, generally, through the mechanism of the central panel billing hourly time in the same fashion that a law firm bills hourly time -- for services rendered. Four states fund their

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4 Tennessee (legislative branch).

5 As do the central panels in Iowa, Massachusetts, Missouri, California, Tennessee and Wisconsin.

6 Missouri.

7 All A.L.J.s in New Jersey and Missouri are gubernatorial appointees.

8 North Carolina.

9 Tennessee.

10 Kentucky.

11 Massachusetts and North Carolina.

12 California, Colorado, Minnesota and Washington.

13 Florida, Missouri, New Jersey and Tennessee.
systems through a combination of general appropriations and agency user fees, and there is presently no available information for the remaining seven states.\textsuperscript{14} In all the states that have central panels, ALJs are salaried employees.

Although the central panel states vary significantly in their jurisdiction, they share some common threads. All but Wisconsin have jurisdiction over occupational licensing board cases, and the majority hear employee discipline cases. However, there are only three, including Colorado, that preside over workers' compensation cases.\textsuperscript{15} In addition, only two states hear unemployment insurance compensation cases.\textsuperscript{16} Regulatory law and workers' compensation cases offer some sterling opportunities to the development of a total quality management approach to case adjudications.

In 12 of the states, including Colorado, ALJs issue final decisions only in selected cases, such as those concerning rate setting, mental health and minority business matters.\textsuperscript{17} In Colorado, final decisions are issued in workers' compensation cases, appealable to the Industrial Claims Appeal Panel in the Department of Labor and Employment, and in social services Medicaid provider appeals.

It has been argued that the cost-effectiveness and improved efficiency of a federal central panel is undocumented.\textsuperscript{18} Because such a panel, or corps, has never existed at the federal level, this point is, of course, correct. However, an examination of similar mechanisms at the state level, such as the one in Colorado, can shed light on how efficient and cost-effective a central panel is. Improved efficiency, and cost-effectiveness of central panels, has been documented in all of the states that have had such a panel.

Colorado's Central Panel came into existence in 1976, primarily, in response to conflicts of interest in the adjudication of workers' compensation cases. Shortly thereafter, the Colorado Division of Management Services conducted a study (in 1977), which revealed that cases were handled more efficiently by the then Division of Hearing

\textsuperscript{14} Iowa, Maryland, North Dakota, Texas and Wisconsin.
\textsuperscript{15} Minnesota and Wyoming.
\textsuperscript{16} Washington and South Dakota.
\textsuperscript{17} Missouri is the only state where the decisions of the A.L.J.s are final agency action in every case.
\textsuperscript{18} "A Unified Corps of Federal Administrative Law Judges is Not Needed." Norman Zankel, 6 \textit{Western New England L. Rev.} 723 (1984). The overall tenor of Judge Zankel's article is to defend the present situation where federal administrative law judges are housed in the agencies they serve and to observe that the federal central panel is as yet untested.
Officers (now Division of Administrative Hearings) than by previous de-
centralized referees and hearing officers. Specifically, the report stated:

"The hearing officers as a group are dedicated and
methodical in the hearing process. No instances of undue delay
were observed due to hearing officer quandary or
indecisiveness." \(^\text{19}\)

In 1980, in-house statistical research revealed that the central panel
was able to handle workers' compensation cases at approximately $1.50
per case less than the Division of Labor's referees had done prior to the
1976 consolidation. In fiscal year 1992/93, 17 ALJs (14.95 FTEs),
statewide, through Denver and four regional offices, handled 12,811
cases for a cost of approximately $2.1 million. \(^\text{20}\) This equals a total cost
of $163.92 per case ranging from a typical one hour workers'
compensation hearing to a three week-long medical board hearing.

B. "Agency Law" vs. Independent Central Panel: Evolution
and Philosophy

The historical, stereotypical image of administrative law is that of an
agency hearing officer, with a tape recorder under his or her arm,
heading down to a windowless basement cell, reminiscent of Samuel
Taylor Coleridge's "sunless sea," to conduct a hearing. Within the
image, the outcome of this hearing is a foregone conclusion. One critic
of administrative law maintains that although the ALJ:

"May enjoy and exhibit an attitude completely independent
from the agency or its staff, physical location and continuous
relationships with only the personnel of the employing agency.
may bias his analytical capacities, or they may contribute to an
inclination to narrow his perspectives to only those social
problems and regulatory objectives sought by this one
agency." \(^\text{21}\)

This commentator considers, "the unavoidable appearance of bias"
when an ALJ, attached to an agency, presides "in litigation by that
agency against a private party." \(^\text{22}\)

\(^{19}\) Workload and Functional Analysis of the Division of Hearing Officers. Robert
M. Roberts and J.R. Kennedy. Division of Management Services: State of Colorado,

\(^{20}\) Annual Report to the Governor and the General Assembly. Division of

\(^{21}\) "A New Declaration of Independence for Administrative Law Judges."

\(^{22}\) Id.
There have been two competing concepts in modern administrative law, one is the concept of adjudicators who are truly independent from the regulatory agencies they serve. The second is the concept of what the author calls "Agency Law." The proponents of the latter concept maintain that adjudications by the agency are a necessary part of statutorily mandated policy formulation. In contrast, the opponents of "Agency Law" hold that the best approach to policy formulation is the adoption of rules and regulations by the agencies.

These concepts are at issue in the movement to establish a federal central panel (corps) of ALJs. One proponent of the federal central panel states that the:

"Vast majority of hearings now consists of large numbers of fairly fungible cases which involve private rights rather than proceedings in which the agency has a major stake in a policy making issue.

Antiquated ideas that for decades have controlled administrative practice and procedure must give way to a more practical and economic system if the public and the congress are to continue to accept this means of dispute resolution."²³

On the one hand, administrative law was intended, historically, to provide alternative dispute resolution (an alternative to judicial branch courts). On the other hand, it was intended to be a policy-formulation mechanism. The policy-formulation approach, carried to its logical extreme, has the capacity to take a toll on individual citizens seeking recourse from administrative agencies of government. In this author's opinion, the individual could be ground under by the larger wheels and the greater interest of policy formulation.

C. The Efficiency and Cost-Effectiveness of Central Panels for Administrative Law Adjudications

Unlike de-centralized Administrative Law Judges, housed in the agencies they serve, independent central panels are geared to one mission only -- adjudication. In a nutshell, the only business of a central panel of Administrative Law Judges is to hear and decide cases -- not to occasionally serve as house counsel for an agency or in other legal capacities. Not only do central panels have a vested interest in being efficient and cost effective, they must because they are under a microscope focused on adjudications -- to the exclusion of other tasks. The mission of the Colorado Division of Administrative Hearings is:

to deliver high quality adjudication services for the State of Colorado in a timely, efficient and cost-effective manner, with respect for the dignity of individuals and their due process rights.

Other central panels have similar mission statements. The cash-funded central panels must bill client agencies only for services performed. They operate on a break-even basis with billing rates set by the legislative branch of government with this end in mind. Small agencies that are infrequent users of central panel services have access to timely, professional adjudication services at a low cost and based exclusively on use.

Most of the long-established central panels in the United States have substantial experience surveying the customer community, including lawyers. The Colorado Division of Administrative Hearings first implemented a survey of lawyers in 1982. Since that time, the survey has been done on an almost consistent bi-annual basis. It has demonstrated that Colorado's centralized ALJs have performed at a high professional level and earned the respect of practitioners on both sides of the aisle. The last lawyer survey, conducted in 1992 by the Office of State Planning and Budgeting of the Governor's Office (reported on December 30, 1992), shows that all the Colorado ALJs function at an overall approval rate of 88 percent. The ALJs handling workers' compensation cases function at an overall approval rate of 85 percent. Also, a recent in-house study of workers' compensation decisions on permanent disability awards reveals that neither side gets what it asks for in most cases. The awards indicate that the ALJs have taken a consistent middle-of-the-road approach. This survey has put to rest anecdotal information by lobbyists for business who contend that the ALJs are giving away too much money; and, by lobbyists for labor who claim the ALJs are too stingy.

In 1982, then-Governor Richard D. Lamm's Management and Efficiency Committee ("Committee") noted that in creating a central panel:

"The legislative intent ... was to avoid the appearance of conflict of interest within the Department of Labor and Employment and to create a separate state administrative law system to decide administrative cases. The Hearing Officers were to be independent of the agencies over whose claims they had jurisdiction." 24

The Committee went beyond its charge and urged the state to consider establishing an "administrative law court". But for the executive branch structure appearing on organizational charts, the Colorado Division of Administrative Hearings is indistinguishable from an "administrative law court," at the present time, since the Judges wear robes and each courtroom has a bench with a raised dais.

A study of the Colorado Workers' Compensation system, which was submitted to the General Assembly in January 1989, done at the request of the General Assembly and the Colorado Division of Labor, found that the ALJs, who handled workers' compensation cases, were successful in fashioning remedies despite a poorly worded Workers' Compensation Act.25

On February 9, 1993, the Colorado Division of Administrative Hearings underwent a Legislative Audit Committee (of the General Assembly) hearing on its workers' compensation programs, which account for approximately 55 to 60 percent of its business.26

The Legislative Audit Committee was highly complimentary of the Division's performance under Senate Bill 218 (the Workers' Compensation Reform Package which became effective on July 1, 1991). Senator Tillman Bishop of Grand Junction, President Pro Tem of the Senate, praised the Division, by exercising personal privilege on the floor of the Senate, for its outstanding performance in reducing the backlog of workers' compensation cases by 95 percent during the year following July 1, 1991; by providing hearings in one-third the time than before July 1, 1991 (within an average of 88.2 days compared to the previous 263.8 days); and, by rendering decisions in one-fifth the time than prior to July 1, 1991 (9.6 days compared to 49.1 days). Also, prior to July 1, 1991, the Legislative Audit Committee noted that 10.2 FTE ALJs were handling workers' compensation cases throughout the state; and, after July 1, 1992, 8.9 FTE ALJs were handling workers' compensation cases throughout the state. Additionally, the caseload went up from before July 1, 1991.

Colorado's successful performance is attributable primarily to its two-plus year involvement with the Total Quality Movement. Like most other states, Colorado is facing budget cuts and higher expectations on the part of the public — that government should do more with less. The traditional "bureaucratic" approach to budget cuts, i.e., "services to the

26 Report of the State Auditor: "Workers' Compensation Hearings, Division of Administrative Hearings, Department of Administration; December 1992.
public must be cut because of the budget cuts" will receive a chilly reception with members of the public and members of the legislature. The only salvation for central panels and other administrative law adjudication organizations -- the only road map to survival in leaner governmental times -- is for central panels or administrative law adjudication organizations to adopt a total customer-focus within legitimate areas of expectations (excluding outcomes in individual cases); and, to be able to measure and to improve performance and, to prove this fact to the general public and to the state legislature. The objective of this paper is to draw a detailed road map for a successful journey down the road of quality in order that an adjudication organization arrive at a place where it is recognized as a premier adjudication organization. This is only a half-way point because the journey is never over. Quality, like a living organism, is a continuous process because it is a new way of life. It involves continuous interactions, with continuous improvements, with the adjudication customers. Not only must this be done without sacrificing due process, it must be done in conformity with the highest judicial ethics. Interestingly, these standards, themselves, are becoming more and more customer oriented. 

II. Determining Adjudication Customer Requirements and Expectations

"Your dreams should always exceed your grasp. The day in which you cannot see ways to improve your own performance is the day you should resign." -- Attila the Hun

It has been observed that since the early 1980s, the dominant force in seller-customer relationships has shifted to the customer. Customers now have the upper-hand, telling sellers what they want, when they want it, how they want it and how much they will pay. Hammer and Champy point out the need to re-engineer businesses because a customer revolution has occurred, past assumptions are invalid and incremental improvements on presently invalid processes will not do the trick. The era of mass production is gone -- so is the era of "the only game in town" mentality for adjudication organizations. Hammer and Champy observe that American companies are now performing so badly precisely because they used

to perform so well. The same can be said of the courts and other adjudication organizations. The world has changed beyond the limits of these businesses' capacity to adjust or evolve.

The courts are experiencing the same phenomenon. The first issue of adjudication quality involves the customer of adjudication services. Neither the principle of noblesse oblige nor the mystical concept involving the sacred keepers of the scales (of justice) will suffice to bring adjudication systems into the 21st Century. The starting point involves the customer's requirements and expectations for a system of justice.

The customers of any adjudication system are litigants, governmental officials, witnesses, the media, the taxpayers, special interest citizens' groups, the general public and all of the internal customers including the judges, paralegals, docket personnel and clerks. In an adjudication system, TQM's most important principle of delighting the customer is not always possible. Alexander Aikman, in his booklet, notes that if delighting the budget cutter is one of a court's highest priorities, that court would risk displeasing other clients and jeopardizing its core purpose: providing justice. Nevertheless, according to Aikman, the value of the TQM process in a court system is that it assures that new perspectives are considered while allowing the customer to be redefined for different processes and aspects of a court's operations.

A. General Considerations: the Baldridge Exercise

Although court or adjudication systems are unlikely to officially apply for the Malcolm Baldridge award, the first useful exercise of an organization embarking on a quality program is to work through the details and criteria of the Malcolm Baldridge award on paper. It is not necessary to go through each and every criterion. However, in determining customer requirements and expectations, a walk-through of Criterion No. 7 is a useful exercise. During the author's first walk-through, approximately three years ago, there was a substantial question why this was being done. During subsequent walk-throughs, it became more and more apparent that this was the

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29 Id., p.10.
31 Id., p.27.
only way to truly begin embracing the customer and the customer's requirements and expectations.

The late Tip O'Neill observed that "leadership brings with it the people who love to put you on a pedestal so that they can throw brick bats and mud at you." Speaker O'Neill recounts the message that Pat Brown wrote to Ronald Reagan after Reagan defeated him for the governorship, quoting a passage from War and Peace where young Count Rostov, after weeks as the toast of elegant farewell parties rode off to encounter real bullets and said "'Why, they're shooting at me'" he says, "'Me, whom everybody loves.'" The message is simple. The customer can be very demanding but as long as value is delivered and you are ahead of the pack, the customer will follow you.

B. Requirements and Expectations:

Determining customer requirements and expectations involves three critical methods: (1) direct solicitation of customer requirements and expectations -- up front; (2) specific customer surveys concerning requirements and expectations -- make them simple and short!; and, (3) an objective assessment of customer praises and customer complaints followed by implementation of improvements based upon customer complaints; and, continuation of actions, based upon customer praises.

Formal data collection entails the use of judge evaluation surveys and client evaluation surveys. The information sought involves timeliness of hearings and timeliness of decisions; quality of adjudications -- regardless of whether or not the survey respondent won or lost the case; and, satisfaction with the way individuals were treated, in the process, by all central panel personnel (this is the most important by far).

Client surveys are designed to measure overall client satisfaction in legitimate areas of expectation, e.g., timeliness and quality of adjudications (regardless of whether or not the party won or lost) with some control questions to rule out the "sour grapes" or "walk-on-water" factors. At a more informal level, a detailed system of handling client complaints should be in place with the objective of assessing these complaints and using legitimate customer complaints to improve the procedures, processes and performance of the central panel or the adjudication unit. The underlying philosophy of complaint resolution, in an adjudicatory organization,

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should be that the organization takes all complaints very seriously -- since adjudication is involved. The organization takes the complaint so seriously that the Chief Judge personally resolves these complaints.

A summary of complaints and their resolution should be reported in the adjudication organization's annual report. The annual report should be widely publicized and circulated.

Complaints indicating a need for improvement in the delivery of services must be discussed by action teams formed within the adjudication organization. The product of the action team should result in recommended and implemented improvements in policy, procedures and processes involving the delivery of services.

Any adjudication organization should constantly strive to communicate realistic, but effective, time expectations to clients; while, at the same time, maintaining much tighter internal standards concerning timeliness so that clients (customers) will generally have their expectations concerning timeliness met ahead of time. This strategy is to further the "delight" factor as opposed to the mere "satisfaction" factor.

At an informal level, management personnel and team members alike maintain weekly, and often times daily, contact with client agency personnel, generally by telephone, concerning the quality of services being provided. Contacts with a representative sample from the public sector are less frequent but need not be that much less frequent than institutional client contacts. Contacts with the public should be done on a weekly basis and an adjudication organization should constantly strive to open channels of communication between members of the public and the adjudication organization in order to spot problems with the delivery of services. Problem areas should be corrected in a timely fashion and the fact that they have been corrected should be quickly communicated to the client in order to constantly maintain a high confidence level in the adjudication organization.

All data from formal surveys, the complaint-praise process and person-to-person contacts with clients should be compared in order to detect any trends in customer dissatisfaction; to further investigate these trends; and, to promptly correct areas of dissatisfaction, again in order to maintain a high level of customer satisfaction and, preferably, to achieve customer "delight."

Each market segment (of adjudication customers) has a set of different expectations and requirements. Customer satisfaction in
workers' compensation cases is gauged differently from customer satisfaction in social services cases; and, it is gauged entirely differently in regulatory law and other-type cases. Colorado's Division of Administrative Hearings has adopted a flexible approach to meet different customer expectations and requirements. The Division's approach is: "Tell us what you need in terms of turnaround time and we will meet it one way or another," for example. Because of the tighter internal standards, timelines have been met in all but the rarest of cases. Besides telephone contacts with agency personnel and key attorneys who are representative of the public sector, the Colorado Division of Administrative Hearings conducts "town meetings" with key agency personnel and representatives of the public in order to give these sectors a forum to air, and in many cases have resolved, their concerns about the delivery of adjudication services. It is not always a good idea to have a town meeting with both the agency sector and the public sector present, since such a meeting will begin with an aura of inhibition on the part of each sector. Ground rules should be established at the beginning of the town meeting, i.e., no questions about specific cases.

C. The Process for Determining Adjudication Product and Service Features and Relative Importance to the Adjudication Customer

Hammer and Champy maintain that re-engineering demands that employees deeply believe that they work for their customers, not their bosses. With this in mind, it is important for an adjudication organization to look at the product and service features and the relative importance of these features to customers. Within an adjudication organization, this is not without limit, since the adjudication organization does not manufacture electronic equipment but provides the public with the resolution of disputes. Justice Oliver Wendall Holmes, Jr. is reputed to have said: "Madam, this is not a court of justice. This is a court of law." Justice Holmes was not only on the right track but he realized that courts exist to resolve disputes not for mystical reasons involving justice. The customers of the courts, although desiring to win, expect speedy, effective, efficient and quality resolution of disputes. Judge Jerome Frank analyzes what adjudication systems are about in terms (1) of what courts actually do, (2) of what they are supposed to do, (3) of whether they do what they're supposed to do and (4) of whether they should do

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34 Reengineering the Corporation, supra, p.74.
what they're supposed to do. In the parlance of total quality and of reinventing government, organizations must not only ask themselves whether or not they are doing what they're supposed to do but whether they should do what they're supposed to do at all. This applies to processes not to whether or not adjudication organizations should be involved in the resolution of disputes or some other enterprise. Mr. Aikman observes that courts do not produce widgets, but they produce information in the form of docket sheets, file folders, computerized information systems, calendars, and judgments in an assembly-line process similar to that used by widget producers.

The critical features of adjudication services involve quality, justness and timely adjudications that are designed to be respected by the parties and by the appellate tribunals. Realistic expectations concerning timeliness of hearings and decisions are communicated to clients while, at the same time, tighter internal timeliness standards are maintained. Appellate decisions should be analyzed and communicated to clients, first, by the appellate tribunals themselves and, second, through contact with clients by the adjudication organization itself.

Support staff of adjudication organizations exist to further the goal of quality and timely adjudications. The product feature of the adjudication support services involves courtesy, promptness and helpful dealings with all clients. This is measured through surveys, contacts and analysis of communications from clients.

As an overriding concern, public clients and agency clients expect timely resolutions of disputes, regardless of outcome, that will generally stand up on appeal. Actual timeliness and quality should constantly be measured and analyzed in order to match these factors with client expectations; and, the matching should be communicated to clients with feedback sought, received, and analyzed. Based on feedback, incremental improvements to processes should be commenced immediately. Also, feedback should be analyzed in written form, reported and reproduced in reports in order to measure outcomes and program effectiveness on a much broader scale.

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36 Total Quality Management in the Courts, supra, p.23.
D. Evaluation and Improvement of Adjudication Processes

All data collected should be analyzed by adjudication quality teams (composed of judges and support staffers) and recommendations for the implementation of improvement steps should be made. The teams should then embark on implementing the specific improvement of processes to meet customer requirements and expectations. As is advised in all total quality literature, the teams should be given a narrow and doable task for the incremental improvement of a specific process which collected data has indicated to be necessary.

E. Adjudication Customer Relationship Management

Every adjudication organization should set up means of ensuring easy access for customers to seek assistance and to comment on adjudication processes. If an organization is large enough, it should have a specific customer service unit, however, there is a danger of over-institutionalization by having a specific unit. In Colorado, the Chief Judge, the Office Executive, all team leaders and all employees of the Division of Administrative Hearings must function as the customer service unit. The author is biased in favor of each employee being a major problem solver for the Division. Through direct telephone contacts with client agency program administrators and members of the public, communications should be easy, for all concerned, in terms of easy telephone accessibility, easy in-person accessibility and easy written communication accessibility. Customers should realize that even the Chief Judge/Chief Executive is always accessible to resolve customer concerns if the customers choose to start out at that level. Nothing should be bumped upward nor downward. It should be well known that customer complaints have the highest priority. In the complaint process, customers should be made aware of legitimate areas of expectations and illegitimate areas of expectations, as well as process functioning in the adjudication organization. The customer complaint process is one of the best public relations opportunities there is, opening the possibility of making a lifelong friend of the complainant. Customers should also be made aware that the resolution of all customer complaints by any individual in the adjudication organization is appealable.

All employees of an adjudication organization should be considered customer-contact persons. It is the philosophy of the Colorado Division of Administrative Hearings that each employee is an ambassador-of-good will for the Division. Those who excel in
favorable customer-contact are considered the better performers and wind up on the accelerated career paths since Colorado's Division considers the customer the reason for its being. Customers who make favorable comments about the performance of the Colorado Division, or of a Division employee, are encouraged to send letters concerning the favorable comments. Even if the customer does not send a letter, a management person will send a letter of commendation to the excelling employee and advise that employee that the commendation is being placed in her/his permanent personnel file.

Each employee of an adjudication organization should be clearly advised of the limits of her/his authority in dealing with customer complaints and where the precise line is where the customer should be referred directly to the Chief Judge. Otherwise, there should be maximum empowerment, on the part of all employees to resolve customer complaints at the lowest level possible.

Internal, anonymous employee surveys should be conducted to determine the employee's perception of their authority to make decisions and to solve customer complaints. In this way, management can make incremental improvements to the empowerment of employees to solve customer complaints.

Any successful organization should maintain a firm policy that no unpleasant communication should originate from the organization -- under pain of death -- a slight departure from the otherwise egalitarian functioning of the organization. This is especially true for governmental organizations whose bosses are the taxpayers. The Colorado Division of Administrative Hearings constantly makes the public aware that it is firmly committed to the principle of being helpful to all citizens. To these ends, all employees must be trained in appropriate telephone etiquette, conflict resolution and diffusing explosive situations in order to further support the ambassador-of-good will philosophy. Listening to customer feedback, and acting on it, establishes a progressive improvement of customer perceptions of an adjudication organization's efforts to be helpful to the public.

Rules of procedure and forms should constantly be simplified, based upon customer input, to make access to the adjudication system as easy as possible. Procedures should be simplified with the customer in mind. A computer system should constantly strive to provide state-of-the-art technology to deal with the resolution of customer concerns within a matter of minutes or, sometimes, even seconds. If a specific employee, empowered to handle a certain
complaint, is unavailable, a comprehensive backup system should be in place. The policy should always be to resolve customer concerns at the lowest level possible (and satisfactory to the customer), if appropriate, and in the simplest and most direct manner -- verbally and in person, or by telephone, whenever possible. The effective resolution of a customer complaint will do the adjudication organization no good without a brief follow-up illustrating how the concern was resolved and thanking the customer for bringing the matters to the organization's attention. Again, a meaningful record of this anecdotal information should be kept to recount in future annual reports and to methodically analyze.

Customer complaints should always be analyzed in terms of delivery of adjudication services and the overall impact on clients as well as the public's satisfaction with the adjudication organization. The analysis of the complaints should be acted upon by action teams; and, changes in policies, procedures and processes should be made to achieve higher customer satisfaction. For instance, clients should be made aware that it is entirely appropriate, and desired, for them to communicate urgent expected turnaround times on specific cases. Anything less than a "can do" attitude can be fatal to an adjudication organization's future budgetary well-being.

Factors evaluated to determine customer satisfaction are principally: (1) timeliness of hearings and decisions; (2) quality of adjudications; and (3) courtesy and helpfulness of support staff in dealing with customers. New customers of an adjudication organization should be followed very closely. Communication between the adjudication organization and the new customer should be far more intensive than it is with established customers in order that misconceptions be detected, corrected and communicated at the front end.

F. Adjudication Customer Services Standards

Well-defined service standards to meet customer requirements are established based upon customer input. If a customer complaint involves an overdue decision by an administrative law judge, the adjudication organization communicates to the customer that special attention to that decision -- issuance within five days, for example -- is given. On the front end, customers are told that some things can "fall in the cracks." Experience has shown that when something has, in fact, fallen in the cracks, the customer is more concerned with the timeliness of corrective actions than the timeliness of the original
item. Needless to say, corrective actions have the highest priority of anything.

Through daily interaction and team meetings, all adjudication organization employees should be made aware of customer standards and changes in customer standards. Random monitoring of customer contacts should be critiqued; however, this random monitoring should be done in a constructive atmosphere as opposed to a "police state" atmosphere. Adjudication organization employees must feel comfortable that there are no penalties for risk-taking and occasional failures. Favorable customer contacts should be rewarded by "stroking" on the spot and, more formally, by letters of commendation.

Service standards should be tracked, evaluated and improved through random monitoring of customer complaints, contact with key customer persons on a frequent basis and, ultimately, through formal client surveys. If discrepancies between established services standards and data gained from feedback develop, the discrepancies should be analyzed by the appropriate action team; and, behaviors should be modified to meet established service standards. If established standards have proven to be unrealistic, the standards should be modified and this should be communicated to the customers in terms of why the standards are being modified.

Customers must have realistic expectations at all times. Customers doing business in our fast paced world realize that the only constant is change. They will accept modifications in service standards. Some examples of modifying standards to meet new customer expectations are the implementation of staggered case settings; the implementation of telephone settings where in person settings were previously the rule; and, rule changes that provide for increasingly simplified discovery. In the latter, customers realized that simplified discovery was not simple enough. It had to be made even more simple.

G. Commitment to Customers

Keeping commitments to customers is the best way to promote trust and confidence in an adjudication organization's services and relationships. According to Stephen R. Covey, "keeping a commitment or a promise is a major deposit (in someone else's emotional bank account); breaking one is a major withdrawal." Covey observes that people "tend to build their hopes around promises" and if a promise is broken, it is unlikely that an individual
(or an organization) will be believed again.\footnote{The Seven Habits of Highly Effective People. Stephen R. Covey. Simon & Schuster: N.Y.; 1989.} Kouzes & Posner observe that: "Reputation is human collateral, the security we pledge against the performance of our obligations as leaders, friends, colleagues, and constituents. . . the credibility foundation is built brick by brick."\footnote{Credibility. James M. Kouzes and Barry Z. Posner. Jossey-Bass Publishers: San Francisco; 1993.}

An adjudication organization should make a commitment to its customers that it will provide a speedy, efficient and high-quality adjudication product. It can never make a commitment concerning outcome, since to do so would not only be ethically inappropriate and contrary to the fundamental principles underlying an independent adjudication organization but it would undercut the driving principles of total quality management.

Distinctions must be made between specific-type customers. An adjudication organization should be willing to communicate to certain specific customers that it is equipped to meet special needs, and special time frames in a speedy, dignified and professionally competent manner. To all clients, an adjudication organization should commit to providing uncomplicated and easily accessible setting procedures. The ultimate objective is to have losers in cases continue to have a high respect for the processes and decisions of the administrative law judges in the organization. Adjudication organizations should strive to extend guarantees of timeliness, quality, courtesy and helpfulness. A cash-funded central panel agency, such as Colorado, must rely on repeat business and customers who are not captives and do not necessarily have to use the Division's services but extend repeat business by choice. This is becoming increasingly true of the judicial branch because competition in the form of rent-a-judge organizations are cropping up, nationwide.

Over the past three years, the Colorado Division of Administrative Hearings has demonstrated an ability to handle complex cases speedily, efficiently and with a great deal of expertise. This fact has become well-known and the measurable result is that the Division continues to get more and more new customers with increasingly complex matters to be adjudicated. For example, the State Banking Commission, which has never previously used services of Colorado's Central Panel, is now referring some
complicated cases to the Division for hearing and decision. Three years ago, the Division began handling Insurance Division cases and now the volume of cases referred has tripled and continues to grow. At one point, in fiscal year 1991/92, the Insurance Division requested a supplemental appropriation for additional administrative law judge services.

H. Complaint Resolution (Complaints Against Judges and Support Staff)

As part of any adjudication organization's total quality program, a credible complaint resolution system is indispensable. Not only must complaints be handled in a credible fashion but formal and informal complaints and feedback given to different action teams must be aggregated and an overall evaluation must be done. Complaints should be handled at the lowest level possible, however, there must be a formal system to aggregate all complaints in central logs. All employees must be given clear parameters on the complaints they can resolve and the Chief Judge must be advised of each complaint handled and/or resolved. Written records of all complaints, through resolution, should be kept in an organized fashion. At the beginning, customers must be apprised, in an individual complaint situation, of the method in which the adjudication organization handles complaints, how the complaints will be investigated and the fact that the customer will be advised of the resolution of the complaint in a timely fashion. In the Colorado Division of Administrative Hearings, trends have indicated that complaints, approximately 90 percent of the time, are handled and resolved in less than a week. The Division spends most of its time on the remaining 10 percent. These complaints are resolved in less than 30 days -- pursuant to the policy of the Division. At least 80 percent of all complaints are resolved on the first contact with a Division employee. The other 20 percent of complaints require the personal attention of the Chief Judge, a supervisory judge or the support staff supervisor. One measurement of the complaint resolution process involves the number of complimentary letters from customers on the promptness and completeness of the resolution of their complaints.

Complaints must be analyzed on a routine basis and trends in complaints must be analyzed at team meetings to determine the underlying causes of the complaints and to seek ways to improve the delivery of services. Input on the resolution of complaints is
sought at the line employee level, where most complaints originate and should be handled.

The number of times that a customer has to communicate with an adjudication organization on a complaint is a key evaluator of the improvement of the complaint-related process. The permanent and overriding goal of any adjudication organization should be that the customer need not call more than once. This is not always met. However, the organization should strive for this objective. Support staffers must be empowered to diffuse explosive and angry situations, verbally, where, ideally, the customer leaves satisfied and no further action is necessary. One of the most important measures of the effectiveness of an adjudication organization's ability to resolve complaints quickly and effectively is the absence, or scarcity, of complaints that go beyond the level of the adjudication organization, e.g., to the Governor's Office or to a member of the General Assembly.

1. Determining Adjudication Customer Satisfaction

Market segments, or customer groups, for any adjudication organization involve communities of litigants in the legal subject-matter areas. The three important market segments for the Colorado Division of Administrative Hearings are, for example: (1) the Workers’ Compensation community; (2) the Social Services community; and (3) the Regulatory Law and all-others community. Customer satisfaction is determined, and the adjudication organization is able to stay on top of customer satisfaction, by: (1) periodic telephone contacts with key individuals in each market segment; (2) an analysis of complaints and praises in each market segment; (3) face-to-face meetings with key persons in the various market segments; (4) town meetings with representatives of the various market segments; and (5) formal surveys in each market segment. Objectivity is further assured by comparison of feedback from clients with all other data received.

In Colorado, one measurement of customer satisfaction with adjudications by the administrative law judges, for example, was that the Department of Social Services accepted 86 percent of all of the A.L.J.s’ initial decisions, without modifications, in fiscal year 1990/91. Regulatory agencies accepted 74 percent of the Division’s initial decisions, without modification, during the same fiscal year. (The lower percentage of acceptance by regulatory agencies is accounted for by the fact that these decisions are far more controversial and regulatory boards are far more likely to make slight modifications to
recommended sanctions for licensed professionals. The fact that
the boards modify recommended sanctions is not an indicator of
dissatisfaction with the administrative law judges but is a neutral
fact).

The Colorado Division of Administrative Hearings has an internal
quality review process for decisions whereby experienced
administrative law judges randomly review decisions, in all areas, for
clarity, form and content, legal sufficiency and timeliness. Decisions
are also reviewed for quality of communication, grasp of legal
principles and legal reasoning. This quality review process does not
interfere with the independent judgment, or outcome, in any specific
case in any way. At the next level, all administrative law judges
carefully review agency decisions which modify or reverse A.L.J.
decisions, and problem areas are discussed at A.L.J. team
meetings. The team analyzes whether the discrepancies in the
A.L.J.'s decision, as compared to the final agency decision, indicate
a need for improvement; or, whether or not there is a reasonably
debatable difference of opinion upon which experienced legal minds
could differ. If a need for improvement is indicated, the team
implements improved procedures to narrow the discrepancy between
agency decisions and administrative law judge initial decisions,
without compromising the integrity or independence of the
administrative law judge. At the highest level, Court of Appeals and
Supreme Court decisions are carefully analyzed and acted upon
when appropriate.

Customer satisfaction must be compared, and some times
benchmarked, to other adjudication organizations. This is analogous
to private sector companies making comparisons with competitors.
The first comparison is made with the judicial branch courts, by
evaluating surveys of judges in the judicial branch to surveys of
judges in the administrative law adjudication organization. A recent
comparison in Colorado revealed that customer satisfaction with the
Colorado Administrative Law Judges, and support staff, was
approximately 5 to 8 percentage points higher than customer
satisfaction with the judicial branch court system. A strong case can
be made for the fact that non-constitutional judges must be more
responsive in the area of customer satisfaction. However, in light of
outcroppings of alternatives to constitutional court systems, the
judicial branch must also be more responsive. Specifically, the most
recent judge evaluation survey, conducted by the Colorado Office of
State Budget and Planning (Fall, 1992) revealed that the Colorado
Division of Administrative Hearings functioned at an overall 88 percent approval rate. A recent evaluation of the judicial branch court system revealed that the judicial branch, including support personnel, functioned at an average 80 percent approval rate.

Comparisons, in a spirit of collegiality, should also be made with other administrative law adjudication systems. At present, Colorado and California seem to be taking the lead in developing total quality performance measurements, however, other central panels of administrative law judges are adopting these measurements.

The absence of a large amount of valid customer complaints, correlated with data gained from customer contacts plus client surveys, reveals that the Colorado Division's analysis of customer complaints and the resolution thereof is a valid method of improving customer satisfaction. Gains in new customers, based upon other satisfied customers, can reveal that customer satisfaction with an adjudication organization's services is steadily improving. Ultimately, all data from all sources should be correlated and analyzed in terms of indicators of trends in customer complaints and customer praises. Several action teams should constantly be functioning in order to implement improvement in processes, based upon customer concerns. Teams, however, should exist for only a short period of time -- as long as it is necessary to resolve a specific problem and improve a specific process. If a team is institutionalized it begins to resemble the dreaded "task force." In an administrative law adjudication organization, every team should have a combination of administrative law judges and support staffers as well as interlocking members from other teams in order that the big picture on customer concerns never be lost.

**J. Customer Satisfaction Results**

Formal client surveys should be compared from year to year. Deviations of three percentage points are not meaningful either way. However, deviations of more than five percentage points are significant. If there is a five percent drop, there is a serious problem. If there is a five percent increase, the adjudication organization has done something remarkable in the latest period. Major adverse indicators of performance, problems in processes or customer dissatisfaction deserve priority attention. Lawsuits against administrative law judges, in their official capacities, as well as the organization, should be carefully analyzed to see why the lawsuits are being filed. If most lawsuits were filed as a method of short circuiting the normal appellate process, there is no need for concern.
When this is the case, the lawsuits will be resolved in favor of the administrative law judge or the organization, through a speedy dismissal.

**K. Satisfaction Results and Recognition by Other Similarly Situated Organizations.**

A key indicator of how an administrative law adjudication organization compares to the court system is what types of cases are being taken away from the court system, by the legislature, and given to the administrative law adjudication system. In Florida, super-zoning matters were given to the Division of Administrative Hearings. On a global level, a key indicator is how other countries', studying American adjudication systems, perceive the administrative law adjudication system in relation to the judicial branch court system. In 1989, a delegation from the People's Republic of China visited the Colorado Division of Administrative Hearings and attended an afternoon-long seminar put on by the Division. The delegation from China expressed more interest in the Colorado Division of Administrative Hearings than in the state or federal judicial systems, indicating that the Division's operations were simpler, speedier and more helpful than the judicial branch systems. Included in this Chinese delegation was the equivalent of the Minister of Justice. In 1991, a representative of the Courts of Taiwan visited the Colorado Division of Administrative Hearings and indicated that his analysis of the Division's operations was more helpful than extracting useful ideas from the state or federal court systems.

The recognition an administrative law adjudication organization receives from other administrative law adjudication organizations, the courts, the legislature or any other organization is a helpful indicator of customer satisfaction. If the administrative law adjudication organization is asked to help other similarly situated organizations, this is an indicator that should be documented. Any formal awards bestowed on an administrative law adjudication organization, or the judges therein, should also be documented and communicated to the customers of that organization in order to further enhance customer confidence and, ultimately, customer satisfaction. The loss or gain of customers must be carefully documented and analyzed in terms of why. Extensive follow-up should be done on lost customers. Customer gain will speak for itself. In private sector terms, this is expressed as gain or loss of market share. This should be analyzed in relation to gains and
losses by administrative law adjudication systems. In many administrative law adjudication organizations, an agency has three options: (1) refer the case to independent administrative law judges in a central panel organization; (2) hear the case itself; or, (3) hire its own hearing officer or administrative law judge to hear the case. Trends in referrals, agencies hearing their own cases and agencies hiring their own hearing officers should be carefully analyzed and a thorough follow-up should be done with the intention of reclaiming market share.

III. An Empowered Administrative Law Adjudication Support Staff Reduces Costs And Delays

"Chieftains who expect their warriors and Huns to trust them should first trust their warriors and Huns." - Victory Secrets of Attila the Hun

Peter F. Drucker observes that those who actually do a job know more about it than anyone else. In the post-capitalist knowledge society we are now in, the work place is composed of associates not masters and servants. As we approach the 21st Century, businesses throughout the world are experiencing a flattening of organizations. Governmental agencies are lagging behind and adjudication agencies are lagging even further behind. The bastion of stratified organizations is the court system. It begins with the high priest in a black robe, who is assisted in conducting court by his or her retinue of acolytes consisting of a bailiff, a court reporter, a division clerk, sometimes a law clerk, and a secretary. Administrative law adjudication systems, even those where the judges wear black robes, lend themselves less to the thoroughly stratified organization represented by the judicial branch. The stratified organization is consistent with the traditional relationship of courts to the supplicants appearing before them, i.e., the courts told people what the law was with little regard for the processes surrounding the moment of pronouncement of the law. In the not too distant past, setting cases and finding out information from the court clerk's office was oftentimes a matter of grace. The courts were the only game in town and there was every reason for courts to perform in a manner convenient to themselves. Times have changed. The public is not interested in being treated rudely or receiving sloppy customer service from the courts. This is especially true for administrative law adjudication organizations, since they are more

35*Victory Secrets of Attila the Hun, supra, p.82.
politically accountable (not in terms of outcomes but in terms of customer service).

Stratified organizations, in any field of endeavor, lend themselves to unresponsive customer service. The reason is simple. Those at the top don't trust their employees; and, their employees are intent on doing what they're told and not taking risks. Employees of stratified organizations really have no ownership in the ultimate mission of the organization.

Robert Frey, the owner and president of the Cin-Made Corporation of Cincinnati, Ohio, took over a troubled small container manufacturing company with marginal profits, out of control labor costs, rigid job definitions and poor labor relations. The organization had been run by a benevolent dictator, who micro-managed all details of the business. The previous owner was a party to every minor decision the company made. As the company approached extinction by virtue of its inability to meet a changing business climate, Mr. Frey acquired ownership and was faced with either making drastic changes or going out of business. Frey contends that a manager has to force change and his role was to make his employees change at a faster pace than they would ever have chosen. Frey further contends that people who change the fastest and best are those who have no choice. The flipside of empowerment is increased responsibility. Frey says: "My employees will share profits, but they will also share my anxiety." Not only did Frey bring Cin-Made Corporation around to being a successful and profitable organization but the empowerment of his employees far exceeded his wildest dreams. Frey noted that "in seizing empowerment with both hands and making themselves almost totally responsible for the company's success" his employees achieved hugely ambitious goals and "that whereas once I (Frey) pushed them forward, now they are pushing me."

There is no question that a certain amount of formality must be attendant to the dispensation of justice. Administrative law judges in the Colorado Division of Administrative Hearings wear black robes and sit in courtrooms on raised daises. The reason is so that a strong message of impartiality and formality is projected to the uninitiated litigant. This happens in the courtroom when cases are actually heard. All other activities of the Colorado administrative law judges, and support staff, revolve around a maximum empowerment

of each individual. Specifically, complaints are, and should be, resolved at the lowest level possible. If one of the secretaries at the front counter can resolve a complaint by an irate customer, then, this is the way the matter should be handled and often is handled in Colorado. Complaints against judges themselves must be handled by another judge. Many complaints, however, are complaints about processes and should be handled by those most intimately involved with the process in question.

In order to position an adjudication organization for genuine management by team work, considerable efforts must be expended, at the front end, on revised and more progressive methods of human resource management and utilization. Management must directly and actively solicit ideas from employees, then, incorporate these ideas into the overall plan for each of these employees' professional development. Three principal methods are suggested: (1) requiring a ten-point list of individual employee goals (on one page); (2) conduct regular staff meetings for the exchange of ideas; and (3) enhance the "open door" policy between management and support staff, wherein employees can genuinely feel free to discuss anything at any time. Communication is the common thread through these three methods.

In the Colorado Division of Administrative Hearings, employees are encouraged to attend training sessions and seminars in areas of interest to them. Management puts its "money where its mouth is" by granting administrative leave and providing financial assistance, whenever possible, so that employees may realize their educational goals. This is based on the assumption that an employee realizing his or her educational goals will heap benefits upon the Division. The Colorado Division relies on employees to pinpoint job-relevant educational programs and bring them to the attention of the divisional fiscal authorities. The Division always benefits from advanced job or human skills. Additionally, the Colorado Division fully uses the talents of support staff by encouraging in-house training sessions by an employee in that employee's area of expertise, such as computer training and word processing software package training of judges by support staffers.

Cross-training sets the stage for genuine team work, since all employees will achieve a greater "big picture" perspective of the adjudication organization's operations. More importantly, cross-training adds to an employee's bundle of job skills, increases the
confidence level of the employee and makes the employee ready for genuine team work.

The conventional adjudication organization is ordinarily not a fertile place for genuine teamwork. Allowance of flex-time work schedules so that the needs of employees outside of the work place may be realized creates a better grounding for genuine teamwork. The most productive and involved employees are those who are "empowered" -- who have a sense of control over their lives. Flex-time alternatives help achieve this control. Leadership must constantly strive to build an atmosphere where employees are assured that their ideas and needs are taken very seriously; and, that the organization will accommodate these needs and adopt the employees' ideas to enhance their sense of involvement with and value to the work place.

Everyone being on the same wavelength (not mind control but knowledge based on enhanced communications) is an important prerequisite to the achievement of meaningful team work. In Colorado, all regional offices and the Denver offices function on the same computer system, the same information highway, whereby any regional office, or the Denver office, has access to the computer product of any other office. An employee in a regional office can find out a lot by accessing the same computer programs that employees in Denver access. Intra-organizational computer networking enhances communications between all employees, the administrative offices and all other work hubs as well as promoting the quality goals of cross-training in the simplest and most direct fashion possible. It is consistent with the Colorado Division's overall philosophy that everyone is, in fact, their brother's keeper and when the goals and objectives of the Division are met, every employee's professional life is enhanced.

For professionals, the optimum way to recognize work well done is by giving the best assignments to the individuals who have excelled. For administrative law judges, who take considerable professional pride in what they do, this is the best reward of all. Most importantly, this method is likely to be respected by peers. There are limitations on monetary rewards in every governmental agency. The philosophy should apply equally to all support staffers. Additionally, support staffers, who are paid less than the judges, should be rewarded by recognition ceremonies, certificates and the judicious use of administrative leave for outstanding activities. Support staff should be paid for overtime work with the idea that the
best performers are the ones who get first choice on the overtime work. Administrative leave is the option for those who are more interested in time than money.

Career development, for all employees, is one of the highest objectives that an adjudication organization should have. An atmosphere should be created where any judge, or any customer, will receive prompt assistance from any support staffer regardless of whether or not the specific function is considered that support staffer's job. Not only are public perceptions enhanced, the sense of self-worth of the employee is enhanced. This is achieved through cross-training. Adjudication organizations, unlike companies in the private sector, are generally capable of offering long-term employment. Long-term employment is only of value if the employees have long-term, satisfying employment. A high degree of excellent customer service coupled with low employee turnover is an ideal starting point for effective teamwork.

Detailed records of positive feedback should be kept on all employees; each employee should be given a copy of the complimentary letters along with a commendation from the Chief Judge. Even verbal compliments should be reduced to writing and given to the employee in order to enhance that employee's sense of self-worth and empowerment.

The Colorado Division of Administrative Hearings is organized, in a flattened sense, around the team concept: (1) the Workers' Compensation team; (2) the Regulatory Law team; and (3) the Social Services' team. Key members of each team are cross-trained to function on the other teams. The Division's long-term objective is to have every single administrative law judge thoroughly cross-trained where the cross-trained individual can make important contributions to another team, e.g., procedural improvements and delivery of service improvements. Cross-training enhances skills and especially enhances the value of the employee to the organization. Innovations from one team should be transferable to another team; and, whenever this happens, the level of quality of services to the customer community improves considerably.

A. Cooperative Management, Consensus Decision Making and Genuine Adjudication Organization Teams

Peter F. Drucker observes that a "well-calibrated team... is the strongest of all. Its total performance is greater than the sum of the individual performances of its members, for this team uses the strengths of each member while minimizing the weaknesses of
The late Isaac Asimov has opined that "being altruistic and cooperative has enormous advantages, ensuring that the species will survive even if the individual does not." More poignantly, Asimov notes that "One chimpanzee's mother lived into old age because her son cared for her. Unfortunately, when she died, he apparently died of grief." John Keegan, in a survey of over 10,000 years of human warfare, observes: "It is the spirit of cooperativeness, not confrontation that makes the world go round."

Katzenbach and Smith, in their article, "The Discipline of Teams," observe: "Credible team purposes have an element related to winning, being first, revolutionizing, or being on the cutting edge.

Katzenbach and Smith reveal that not all groups are teams and the way to tell the difference between a "working group" or "task force" and a genuine team involves a comparison of seven factors. It is remarkable how much confusion, even among the experts, there is between a genuine team and another group. A genuine team has shared leadership roles as opposed to a single leader; a genuine team has individual and mutual accountability as opposed to individual accountability; a genuine team has a team purpose that the team delivers as opposed to a group purpose being the same as the organizational mission; a team has collective work-products as opposed to individual work-products; a team encourages open-ended discussion and active problem-solving meetings as opposed to efficient meetings; a team measures performance by assessing collective work products as opposed to its influence on the larger organization; and, a team discusses, decides and does real work together as opposed to discussing, deciding, delegating. Effective teams develop strong commitments to a common approach.

Katzenbach and Smith suggest building a team through the following methods: establish urgency, demand performance standards and direction; select members for skill potential, not personality; pay particular attention to first meetings and actions; set clear rules of behavior at the front end; seize upon a few and immediate performance-oriented tasks and goals; challenge the group regularly with fresh facts and information; spend lots of time

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42 Post-Capitalist Society, supra.
46 Id. p. 113.
together; and, exploit the power of positive feedback, recognition and reward. Katzenbach and Smith have a credible vision of the future of American Business. They maintain: "We believe the teams will become the primary unit of performance in high-performance organizations." 47

Debra Harrington-Mackin, in The Team Building Tool Kit, maintains that teams fail because: (1) their structure is incompatible with a hierarchical organizational structure; they lack support and commitment from the top; they focus on task activities to the exclusion of team member relationships; their members lack self-discipline and are unwilling to take responsibility for their own behavior; the team has too many members and lacks a strong structure; team members are unwilling to recognize and accept the patterns and stages of team process; the team has experienced poor leadership outside the team; the organization itself has failed to use team efforts in a meaningful way; and, members have received insufficient training. 48

The most practical guide to the functioning of teams is The Team Handbook by Peter R. Scholtes. 49 Beginning with the re-education of top management, the Handbook walks through the proper use of teams; the basics of quality improvement through teams; setting the stage for a successful project; startup of the team including guidelines for productive meetings and effective discussion skills; building an improvement plan; learning to work together; and, team building activities. The sections of the Handbook are individually organized in a practical manner such as setting forth the purpose of the section -- in the beginning of each section. Several practical team exercises are contained in the Handbook.

The Colorado Division of Administrative Hearings maintains that the most effective teams are the short-term flexible teams that are self-activating. Alexander Aikman opines that teams, in the judicial branch, should be somewhat more formal, consisting of: (1) a "quality policy committee" of senior managers; (2) unit teams of managers with one or two staff members; and, (3) project teams of staff and first-level supervisors to address specific issues or problems. The Colorado Division of Administrative Hearings

47 Id.
believes that the third and last level, the project team, is the only valid team that should be started, since there will be an overlap, on each project team, between top management, middle management and first-line employees. Aikman notes that the judicial branch in Maine used quality improvement teams assigned to specific designated projects and support of these teams with the necessary training and resources over a period of time. Aikman has found that one of the most important first steps in team-building is to develop a code of conduct, covering such items as "No idea is a bad one, no personal attacks, deal with issues not personalities and ask questions to get more information, not to make a point." The author believes that these simple rules are the most effective. Many organizations have adopted elaborate codes of conduct. Aikman sets forth sample codes of team conduct in his Appendix D. The most effective team codes revolve around the K.I.S.S. principle (Keep it Simple, Stupid).

From an overall organizational standpoint, the building and fostering of teams is dependent upon an atmosphere of encouraging each employee to take more initiative to bring about changes to improve the quality of services to the customer community. These actions must be reinforced and rewarded. There has to be an atmosphere that even if an employee makes a mistake that employee can constructively learn from that mistake, correct the mistake without fear of retribution and continue to make overall improvements in processes.

There is the story of a manager who lost $10 million in an innovative venture. The Chairman of the Board requested his presence. The manager declared: "I know I'm here to be fired." The Chairman responded: "Are you kidding! After I've invested $10 million in your tuition." Each employee must feel responsible for the entire overall operation carried on by the adjudication organization; and, by each of its teams. It is critical that all employees feel secure that they will always receive support from the leadership of the organization. In Colorado, teams have the authority to make changes in rules, policies, methods of conducting hearings and methods of writing decisions. For example, the Social Services team has developed boiler-plate orders for routine matters, thus, saving time, allowing them to function more efficiently, and focusing greater attention on the more complex matters.

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50 Total Quality Management in the Courts, supra.
Support staff is constantly encouraged to take on greater responsibilities, greater cross-training and greater latitude concerning the entire functioning of the organization, thus, increasing their authority to deliver services to the customer community. In addition to self-satisfaction, and greater self-esteem the reward is promotion, special recognition and the best assignments. Special recognition for taking on increasing responsibility is accorded by the employee's peers.

Several indicators of the effectiveness of employee involvement are: (1) discussions at regular meetings designed to bring out the involvement of employees; (2) contacts with customer representatives with specific focus on bringing out the further involvement of each employee; and, (3) performance planning and appraisal to encourage and reinforce cross-training and involvement in all categories of activity by each employee. Customer community input ensures objectivity, since the customer community generally has no interest in self-serving communications to management concerning the breadth of the adjudication organization's employee involvement in the full range of customer services. The customer community is focused on the timely delivery of quality services and/or products. Specific examples of the actual adoption of employee suggestions and the implementation of them is one of the best indicators of employee involvement and employee empowerment to make beneficial changes to improve the quality of processes and services.

An atmosphere encouraging employees to take risks is indispensable to the effective functioning of teams. The silver lining of mistakes is that they are among the most valuable learning mechanisms in existence. In Colorado, every employee of the Division has submitted beneficial suggestions to improve the quality of services, that employee's team has brainstormed and implemented the suggestion; and, over 80 percent of the suggestions became a part of the Colorado Division's modus operandi.

The Colorado Division of Administrative Hearings conducts periodic team meetings with a focus on total quality management, at least once a month. Also, the Division spends an average of $100 to $200 per employee per year on total quality management training. This training is outside, private-sector training with the purpose of sending the message to each employee -- how valuable that person is. Each administrative law judge spends an average of three to five...
days a year in education and training designed to improve the quality of services delivered. Time and expenditures in TQM training have progressively increased in Colorado.

Each employee is required to evaluate each training program attended; the leadership of the Division obtains independent feedback from outside sources; and, an analysis of the effectiveness of the training program is done by a training-oriented team. Employees are encouraged to track beneficial changes to the organization in connection with the training. Afterwards, customers are asked about any perceived improvement in the delivery of services. Unsatisfactory training programs, which people occasionally attend, must be quickly eliminated; and, outstanding training programs must be quickly incorporated into an adjudication organization's plans for future training. The availability of this training should be communicated to all employees; and, the financial resources should be committed to send the employees to worthwhile training.

Employee input and feedback, developed through regular meetings, should result in fine tuning performance indices to bring them in line with employee objectives (the ten-point individual performance objectives articulated by the employee, such as speedier decisions by A.L.J.s, timelier transcripts by court reporters or friendlier counter service by docket clerks, to mention three points). The process should take on the characteristics of a spirally-interlocking series of improvements.

Group recognition programs, involving special certificates, administrative leave, availability of overtime work and choice assignments, are based upon a combination of team objectives met and the ten-point individual performance objectives met. 35 percent of all employees in the Division regularly receive recognition awards based upon their quality performance in specific areas.

The Colorado Division's Workers' Compensation team, in 1994, was cited by the Governor for its quality efforts in docketing. Specifically, the team redesigned how Workers' Compensation cases are docketed. Information gathered from the customer community indicated that changes were needed to ensure prompt setting and hearing of cases. In an effort to prevent parties from spending a whole morning waiting for their cases to be called, the Division added two additional time slots to each docket day and set fewer cases for each available time slot. If a case needed to be continued for additional hearing time, the case was automatically given priority...
status and set within 20 days from the date of the original hearing. Within the first few months of implementation, there was a decrease of cases needing to be continued from 25 percent to 18 percent. Only 10 percent of cases heard from April 1993 through February 1994 were continued for additional hearing time.

Another change involved docket time based upon the availability of a courtroom as opposed to the availability of a judge. Rather than assigning cases to judges prior to setting, cases were assigned to a courtroom with a judge being assigned to that courtroom just prior to hearing. This method gives greater flexibility of dates and ensures against judge-shopping. The regulatory agency team developed a policy of scheduling all cases within 90 days of the date the case is actually set for hearing. This was adopted despite objections from the attorneys on both sides but to the applause of the agency clients. Shortly after it was adopted, the attorneys praised the certainty of the 90 days.

Recently, Colorado has observed that more and more complimentary letters about specific support staffers and how these employees helped the customer cut through the red tape and solve their problems, are coming in. More and more telephone compliments from agency personnel and members of the public concerning excellent performance on the part of the Division employees are coming in as well. Organized records on complimentary input are maintained and summarized in the annual report and in any other self-serving manner possible. The ultimate objective of dealing with negative input is to correct mistakes and improve the quality of service to the public. Results of the judge evaluation survey are discussed with each judge, individually and confidentially, with a view to improving the quality of services to the public.

In order to have an effective atmosphere for meaningful team work, it is critically important for employees to feel good about their work environment in terms of health, safety and generally pleasant surroundings. Most effective teams look forward to coming to work in the morning. The work environment should resemble a home away from home for each employee. Considerable effort must be expended on providing all the comforts of home at the work site, e.g., a break area with a refrigerator, a microwave and the freedom from the usual distractions of typical governmental work sites. Corrective actions on safety problems must be taken immediately and monitored until the problem has been fully corrected. However,
this should not be necessary since an adjudication organization should always take a proactive, preventive approach to safety -- through constant analysis and monitoring of the safety situation.

Honesty on the subject of being absent from work must be fostered; and, the only way to foster it is to give employees permission to "sleep in late". There must be no retribution for telling the truth about being late. This does not mean that leave should not be taken, but no employee should be stressed about being a little late to work occasionally. There are far more important fish in this world to fry.

Because of the Colorado Division of Administrative Hearings' team approach to management and problem solving, the repetition of persistent problems no longer happens. Somehow, a team, as opposed to an individual, can establish "poka-yokes" (automatic devices or methods), as defined by the late Shigeo Shingo, to failsafe processes from mistakes.  

IV. Quality Leadership

"Management's . . . Job in the Knowledge Organization Is Not to Command; it Is to Direct." -- Peter F. Drucker

According to Kouzes and Posner, leadership is a reciprocal relationship between those who chose to lead and those who decide to follow.  

Kouzes and Posner maintain that leadership is a performing art -- an encounter. The leader is someone who defines the vision, encourages you to follow and is there when you need the leader. Leaders must have a destination in mind. The best analogy is between the leader of an organization and the wagon train master of the old west. The wagonmaster knew the destination and he got the pioneers there. As the title implies, Kouzes and Posner believe that the key attributes of admired leaders concern those who are honest, forward-looking, inspiring and competent -- in that order. Surveys they performed revealed that 87 percent of 1993 respondents valued honesty; 71 percent valued forward-looking leaders; 68 percent valued inspiring leaders; and, 58 percent value competent leaders.  

Stephen R. Covey believes that total quality is a total philosophy, a total paradigm of continuous improvement. . . If

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52 Post-Capitalist Society, supra.
53 Credibility, supra.
54 Id.
you don't have it personally, you won't get it organizationally.\textsuperscript{55} In today's fast paced world, Covey opines that as soon as a stream changes, the one successful response no longer works. Covey states "Nothing fails like success."\textsuperscript{56}

Kriegel and Patler suggest that the organization of the 21st Century will always mess with success, take risks and make revolutionary changes on the crest of its success rather than in response to a changing business climate.\textsuperscript{57} They refer to "break-it thinking" which is a process of continually challenging one's assumptions to invent revolutionary changes. "Being willing to put your own business out of business is crucial to preserving an innovative spirit."\textsuperscript{58} This does not mean the destruction of the business -- it is the re-invention of processes not just incremental improvements. In government, the Florida Speaker's Advisory Committee on the Future, observed "strangely enough, in the midst of change, the present course may often be the most risky one. It may serve to perpetrate irrelevancy."\textsuperscript{59} Adjudication organizations must take heed.

Hammer and Champy define a leader not as someone who makes other people do what he or she wants, but as someone who makes them want what he or she wants.\textsuperscript{60} To begin a total quality management culture, the leader must "walk-the-talk." The 12 principles of quality leadership have been articulated as follows: (1) believe in, foster and support team work; (2) be committed to the problem-solving process; use it and let data, not emotions, drive decisions; (3) seek employees input before you make key decisions; (4) believe that the best way to improve the quality of work or services is to ask and listen to employees who are doing the work; (5) strive to develop mutual respect and trust among employees; (6) have a customer orientation and focus toward employees and citizens; (7) manage on the behavior of 95 percent of the employees and not on the 5 percent who cause problems, deal with the 5 percent promptly and fairly; (8) improve systems and examine

\textsuperscript{56} Id., p. 319.
\textsuperscript{58} Id., p. 108.
\textsuperscript{60} Reengineering the Corporation, \textit{supra}, p. 105.
processes before blaming people; (9) avoid "top-down", power-oriented decision-making whenever possible; (10) encourage proactivity through risk-taking and be tolerant of honest mistakes; (11) be a facilitator and coach, develop an open atmosphere that encourages providing and accepting feedback; and, (12) with team work, develop with employees agreed-upon goals and a plan to achieve them.  

A. Wise Leadership in Ancient Times

The Parables of Leadership define a leader as one having the ability to hear what is left unspoken, humility, commitment, the value of looking at reality from many vantage points, the ability to create an organization that draws out the unique strengths of every member. "'To hear the unheard', remarked Pan Ku, this is a necessary discipline to be a good ruler. For only when a ruler has learned to listen closely to the people's hearts, hearing their feelings uncommunicated, pains unexpressed, and complaints not spoken of, can he hope to inspire confidence in his people, understand when something is wrong, and meet the true needs of his citizens." Mu-Sun, another Korean wise man, observed that "It is not fire but water that envelops all and is the well of life, so it is not mighty and authoritative rulers but rulers with humbleness and deep-reaching inner strength who capture the people's hearts and are springs of prosperity to their states."  

B. Quality Leadership

The leaders of an adjudication organization must impart their commitment to total quality management efforts, through their actions, on a daily basis. All activities of leadership must have a quality-management overlay and quality underpinnings. Leaders must have contacts with the customers in the same manner that line support staff does. Each process team must double as a quality improvement team and leaders of the adjudication organization must be visible, contributing members of specific teams. They must not be dictators but coaches and facilitators. If a leader cannot contribute to a team as a team member, then, that leader should not be attending team meetings. The work flow of a quality adjudication organization, beginning with the highest level -- the final decision of...
an administrative law judge in a specific case -- should be designed as an integrated process with all components functioning in synchronization. Leadership must give permission for each employee to take on maximum responsibility for that employee's phase, thus, allowing the employee at the next stage to focus on that employee's principal mission in the process. Leadership must be willing to make revolutionary modifications in the organizational structure and job descriptions of individuals, to the maximum permitted by law, as well as in work flow; and, these changes and refinements should be made based on customer input. Leadership's role is to start the ball rolling, to lead the wagon train to its destination and to be a useful team member along the way. The leader must be the ultimate support person -- the individual who assists in creating better conditions so that those who do battle on the front lines are doing battle under optimum conditions.

The leader must place an emphasis on total quality management in thought, word and deed. This must shine through, beginning with performance planning, and ending with performance appraisals. Leadership must constantly stress its commitment to employee development through continuing education and training and through internal celebrations of successes. All major business decisions of a quality adjudication organization have the ownership of all employees. This is a function of leading by example.

In any adjudication organization, the commitment of the Chief Judge, or Chief Justice, is indispensable to successful total quality management efforts. Alexander Aikman suggests that the Chief Judges must be willing to stand behind the implementation of quality processes for at least three years if not longer. True leaders, seek to improve a system, instead of seeking someone to blame, according to Peter R. Scholtes and Hero Hacquebord, quoted in Total Quality Management in the Courts. In addition to quality efforts in the organization itself, leaders must accept an external role and communicate the quality excellence of the organization to groups outside. The Chief Judge must strive for national prominence in order to enhance the credibility of quality efforts in the organization; and, the Chief Judge must encourage all other leaders in the adjudication organization to hold responsible positions in bar associations; to hold teaching posts whenever possible; and, to frequently accept speaking engagements

64 Total Quality Management in the Courts, supra.
65 Id, p. 30.
and to write scholarly articles. A quality overlay will be visible in speeches by a leader of an adjudication organization that is far along in its quality efforts. All professional organizations are of critical importance to the continuing credibility of an adjudication organization's quality efforts. A Central Panel system, trying to gain a larger market share, will do so once its quality efforts, and successes, are properly publicized. Quality successes can most properly be publicized through scholarly articles and speaking engagements. To this end, leadership has a very important public relations mission.

Management itself must be organized into team leaders and the team leaders must operate in concert, with shared duties, to evaluate work processes and products; and, to assess the delivery of quality services. The delivery of quality services must overlay, and underlay, all substantive team meetings. In the truly flattened organization, leadership takes on a most subtle role. Leaders play a subtle, catalytic role through the interactions of interlocking teams about to make a breakthrough to an improved process. A measure of success of leadership activities is the demand, by other organizations, for the services of that leader. In Colorado, other departments of state government have requested the services of the Division of Administrative Hearings' team leaders to facilitate the work of those departments' teams solving a specific problem.

Leadership must encourage all employees of the adjudication organization, and support them, in joining relevant professional organizations and assuming leadership positions in these organizations. Leadership must also encourage employees to accept public speaking engagements in their roles as ambassadors-of-good will. Also, leadership must encourage employees to accept positions of responsibility in community service organizations. For example, one of the secretaries in the Colorado Division of Administrative Hearings is president of the employee council. The Chief Judge has been the departmental coordinator for the United Way campaign for two years in a row.

Community responsibility enhances that most important leadership attribute, credibility. According to psychologist David Campbell, charisma is not an essential leadership ingredient. Campbell maintains that "effective leaders can be almost invisible... their people are so motivated and their systems so good that subordinates (a word that should be abolished from the vocabulary
Leadership is the wisdom to create an environment where employees can seize the level of power that is necessary for them to be effective. One business commentator observes: "You can't give someone power; for if it is given it can be taken away. Empowerment programs are a positive attempt to create a climate in which people will act powerfully. Exercising power, however, is a personal choice. You can lead people to the power trough but you cannot make them drink. A leader must teach employees how to make decisions, and how to influence situations." In the words of Attila of the Hun "Chieftains who do their jobs well have less to worry about, less to do, and more to be proud of than chieftains who don't."  

V. Total Quality Culture In An Administrative Law Adjudication Organization  

"People are the castle. People are the walls. People are the moat. . . ." – Takeda Shingen, a 16th-Century Military Leader.  

Creating a total quality culture in an adjudication organization is nothing short of overthrowing established hierarchical assumptions upon which adjudication organizations have been built for years. For a Chief Judge to truly "walk the talk" the Chief Judge must step out of the black robe and the private office and learn the work that is done in the trenches. A total quality culture starts with belief and commitment. "Shared values are the glue that hold this organization together."  

Kouzes and Posner observe that when "individual, group, and organizational values are in synch tremendous energy is generated. . . Shared values are the internal compasses that enable people to act independently and interdependently.  

Kouzes and Pozner apply these principles from the simplest organization to the United Nations. In today's climate, which is six years shy of the 21st Century, cutting edge organizations function on the basis of shared values." Having listened, leaders and constituents (formerly employees or servants) must then learn to speak with one voice. 

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67 "Power is Learned, Not Granted. the Boss." Billie Lee. The Denver Business Journal (June 25-July 1, 1993)  
68 Victory Secrets of the Attila the Hun, supra.  
69 Shelley E. Brown of Aspect Telecommunications, quoted in Credibility, supra, p. 119.  
70 Credibility, supra, p.122  
71 Id., p. 125
is insufficient to post mission statements or organizational credos on the walls and expect members of the adjudication organization to carry out these credos. Members of the organization must believe these credos at a deep-down level, sharing the values reflected in the credo and believing that fulfillment of the credo is synonymous with personal fulfillment. Kouzes and Pozner observe that leaders "who establish cooperative relationships inspire commitment and are considered competent. Their credibility is enhanced by building community through common purpose and by championing shared values."

The forward-looking organization of today is characterized by commonality of purpose in the heart of diversity of the people driving the organization. The genuine total quality culture is a customer-driven culture where members of the organization find fulfillment providing quality services to customers. The dialogue between customers and members of a quality organization stimulates more innovation; wastes less governmental resources; creates more committed customers; and, creates greater opportunities for equity among customers and members of the adjudication organization itself. General George S. Patton said: "Never tell people how to do things, tell them what you want them to achieve and they will surprise you with their ingenuity." Mission-driven organizations are organizations where the members, or constituents, totally identify with the mission because of their roles in defining the mission. Giving lip service to TQM is neither sufficient nor believable to the customers. It is especially not believable to the members of the organization that purports to be practicing TQM. Distrust and skepticism about government is ubiquitous. Journalist P.J. O'Rourke observes: "Little government and a little luck are necessary in life, but only a fool trusts either of them." To overcome this perception, members of a governmental organization have an extra burden of demonstrating that they are sincere about customer services. The starting point is not looking outward. It is looking inward in order to develop a quality culture within the governmental organization. This task is achievable in an adjudication organization, especially in an administrative law adjudication organization.

72 Id., p. 130
73 Reinventing Government, supra, pp. 166-194
74 Id., p. 108
It begins with the leader "walking the talk," then, with the leader easing others in the organization into a quality milieu. At the front end, certain realizations must be articulated and understood. First, realizing the goal of becoming a customer focused quality organization which continuously improves performance cannot be achieved overnight is indispensable.  

Alexander Aikman maintains that a judicial system seeking to develop a total quality culture must make a minimum three year commitment. The next commitment to creating a quality culture is to realize that substantial time and participation of everyone will be required. Fundamental philosophies regarding customers will have to be changed; and, the structure and method of doing work, supervising work, decision making, problem solving and reward systems will have to be changed. A movement from reactive, results-oriented, crisis management to proactive process-oriented, crisis prevention, statistical based decision making must be made. The quality culture involves high employee participation and no management-centered environment but an employee-centered environment --- the realization that the managers are only servants to those who really do the work. Substantial resources must be devoted to training and education in the concepts of quality, processes and improvement of these processes.

A long term commitment with a plan for incremental improvements in the delivery of services must be incorporated into the souls of the adjudication organization's employees. Persistence must be the paramount credo, since there will be periodic failures from time to time. Will Bollinger maintains that 90 percent of the problem in introducing a quality culture to an organization is due to poor management of the social, that is, culture change associated with quality philosophies. Managers cannot order people to adopt quality philosophies nor can they introduce quality concepts as the order of the day, the latest management fad to be followed. Not only must leadership "walk the talk" but it must create a positive environment where quality principles flourish, grow and flow to all employees. An environment where capable employees are allowed to do their best and are encouraged to challenge activities which add nothing to the adjudication organization must be created. The

76 Speech of William K. Bollinger, Commander, U.S.N. (ret.) [now Total Quality Manager of Toyota Motor Sales North-America Parts Logistic Division], delivered September 1992 to Colorado Department of Administration Managers.  
77 Total Quality Management in the Courts, supra, p. 29.
quality culture must be a culture of mutual commitment that members of the organization deeply believe in. If this is not so, it is better to forget about quality concepts and work on maintaining and improving the Frederick Taylor style hierarchical organization. There is nothing worse than an aborted quality organization because its employees have a particularly exquisite contempt for the hypocrisy involved.

Leadership must provide clear signals that quality is not only the way to achieve improvement in the quality of services for customers (internal and external) but it is the road to greater happiness and greater satisfaction deriving from the work place. Leadership must take a meat ax to strong central authority and provide clear signals that the old command-and-control structure is gone forever. Employees of the adjudication organization must realize that they have the flexibility and authority to solve an entire problem within their appropriate spheres. It must be clear that all assumptions must be constantly challenged and new ways of doing business are preferable. Will Bollinger observes that “improvements are the result of thousands upon thousands of small incremental improvements in every process at all levels.” The most progressive companies in America have customer service representatives who can solve all aspects of any particular customer’s problem. As a matter of fact, these organizations foster strong personal relationships between the customer service representative (the incarnation of the company to the customer) and the customer. The only way to foster and achieve this one-on-one relationship between an adjudication organization and the customer is to strengthen the horizontal aspects of the organization and forget about the vertical aspects. Specifically, wherever possible, cross-training should be done. Colorado’s Division of Administrative Hearings has carried cross-training to the point where a workers’ compensation judge in Denver can fill in for a docketing person and actually serve people over the counter in docketing cases for hearing. Occasionally, this happens.

The key word to creating a quality culture is “genuine.” All the mottoes, all the credos, all the mission statements in the world will do nothing toward creating a quality culture unless they are genuine and the internal constituency of the adjudication organization not only realizes that they are genuine but they deeply believe in what the organization should be accomplishing. Once the first threshold into the quality culture is crossed, the momentum must be sustained.

78 Speech of Will Bollinger, supra.
Will Bollinger characterizes this as a "culture wall.\textsuperscript{79} The leader just doesn't walk in one day and say that the road to happiness is a total quality program. The employees of the organization, in fact, don't really begin to believe that quality is the best way until one, two or three years after the organization has embarked on developing a quality culture. Bollinger observes that without the momentum of a quality culture, a leader's attempt to ascend the culture wall will eventually fail. In fact, many organizations, especially governmental organizations, have attempted to develop quality cultures and failed miserably. Bollinger suggests the development of a "yes bias" toward change and a continual emphasis on process improvement as opposed to problem solving. Symbolic decisions must be used to reaffirm the organization's commitment to a quality culture and unnecessary rules must be thrown out unless they can be broken with impunity as part of the flexibility to innovate. Communications must continually be opened up and risk takers must always be rewarded. Risk taking should be the norm, not the exception, in an organization with a true quality culture. Everyone should be involved in planning and carrying out quality efforts.

Bollinger suggests that capable employees are allowed to do their best work, at all times, where there is a quality culture. Continuous process improvement systems feed on themselves and invite and encourage even newer and newer improvements. Management is constantly providing positive feedback concerning system performance. Positive reinforcement must constantly be used and a never-ending dialogue between management and all of the constituents of an organization must occur. Management's job is to find out how it can help the others better do their jobs, e.g., removing roadblocks, solving problems to facilitate better work. A genuine quality culture is not the Marxist image of the proletariat managing itself and the withering away of hierarchy. It is achievement of the correct balance between over and under-management plus the appropriate perception of management's true role, \textit{i.e.}, to be a servant of those who serve the customers. Not only must employees be treated with the utmost respect, they must, essentially, be treated as equals -- as associates. In today's world, things are far too complex to have automatons doing what they are told by the supervisor; and, supervisors who are jacks-of-all-trades -- able to do the work of any one of the automatons.

\textsuperscript{79} Id.
The 90 to 95 percent of employees who genuinely want to do a
good job, to innovate and to take on more responsibility will readily
see, when the quality culture is coming into being, how their flexibility
and their work at process improvement pays off. These are the
individuals who will have no concern about following or obeying rules
but will be more concerned with taking risks, innovating, improving
processes and making meaningful contributions to the welfare of the
organization. They will realize that their greatest loyalty to the
organization lies in their loyalty to the customer. The major focus of
Dr. Deming's life was that processes caused problems -- not employees.
With rare exception this is true. In the final analysis, persistence is the only guarantee that a quality culture will take root
in an organization. Bollinger observes that TQM is not self-
sustaining. It must be revitalized constantly! President Calvin
Coolidge is reputed to have said "Nothing in the world can take the
place of persistence. Talent will not; nothing is more common than
unsuccessful men with talent. Genius will not; unrewarded genius is
almost a proverb. Education will not; the world is full of educated
derelicts. Persistence and determination alone are omnipotent. For many individuals, the most important third of their lifetime is
spent in an organization. In the case of an administrative law
adjudication organization, it may be slightly more than one-third. A
genuine quality culture is not just a way of doing the work. It is not
just a garden variety "paradigm." It is a new way of life, hammered
out by those who choose to live their work life in this fashion. A
paradigm shift is just a method to achieve this new and more
satisfying way of life.

VI. Measurement: The Proof Of The Pudding

In an adjudication organization, as opposed to a business that
produces goods, all of the total quality efforts in the world are for
naught unless the adjudication organization can demonstrate to the
powers-that-be that it is doing an effective job. Meaningful
measurements, which are understandable to the general public, are
the only method of proving that an adjudication organization is doing
a good job. If the adjudication organization does not come up with
meaningful performance measurements, it is virtually certain that a
combination of non-lawyer interest groups and non-lawyer legislative
analysts will make these determinations. Before determining what

80 Id.
81 Id.
to measure, the adjudication organization must first determine whether or not it is more important to measure doing the right thing; or, to simply measure how things are done right. Most adjudication organizations have traditionally measured output of processes, e.g., the number of cases handled and the turn around time on the cases handled.

Adjudication organizations should concentrate more on measuring program effectiveness, i.e., the level of customer satisfaction with the quality of adjudications; and, policy effectiveness, e.g., would the customers want a high volume of adjudications turned around in a timely fashion; or, would the customers like more alternative dispute resolution activities. Osborne and Gaebler lay out a chart on what to measure in a descending order of importance. At the bottom of the chart is "Program Outcome" where the cleanliness rating of streets as a result of the sweeping is measured. Near the top is "Policy Efficiency" where the cost of X-level of street cleanliness is measured. The two items at the very top are: (1) "Program Effectiveness" where the level of citizens' satisfaction with the cleanliness of the streets is measured; and, (2) "Policy Effectiveness" where the question is asked whether the citizens want to use their money in this way or would they rather spend it on repaving the streets. In order to determine what to measure and how to measure it, the leadership of adjudication organizations should spend more time in Stephen Covey's Quadrant II, which deals with "not urgent" but "very important" activities. This is the quadrant that deals with proactive activities involving vision, perspective, long term planning, creativity, balance, discipline, control and few crises. The first quadrant deals with urgent, important activities, i.e., putting out big fires. The third quadrant deals with urgent, unimportant activities, e.g., returning some phone calls, answering some letters or attending some meetings, the fourth quadrant deals with not urgent -- not important activities, e.g., reading the paper, busy work - - those who spend a lot of time in this quadrant will be fired. Peter F. Drucker says that effective people are not problem-minded; they are opportunity-minded. They feed opportunities and starve problems.

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82 Reinventing Government, supra, pp. 356-357.
83 The Seven Habits of Highly Effective People, supra, p. 151.
It is not necessary to be a master statistician in order to come up with appropriate and credible performance measurements for an adjudication organization. In Colorado, for years, the Joint Budget Committee (of the General Assembly) analysts for Colorado’s Central Panel of Administrative Law Judges, unilaterally, determined that fiscal performance was measured by the number of cases referred by the agencies (docketed); and, subsequently modified this measurement slightly to include the cost per case referred. This measurement is, and has always been, irrelevant to the amount of work done by the administrative law judges for the client agencies. As a matter of fact, this measurement has had a proven tendency to misstate the true workload, thus, having a detrimental impact on budgetary decisions for the Colorado Division of Administrative Hearings. Additionally, the measurement has not been truly helpful to the client agencies in planning their needs for administrative law adjudication services. In 1993, a new and thoughtful Joint Budget Committee analyst sought input from the Division of Administrative Hearings concerning more meaningful performance measurements for budgetary purposes.

The Colorado Division suggested, and the Joint Budget Committee accepted, the cost per decision issued as the most meaningful measurement of fiscal performance. When carefully analyzed, it is clear that cases referred may never even be seen by an A.L.J. much less be handled. Specifically, cases referred are frequently withdrawn before being assigned to an A.L.J.; the parties resolve the cases before the A.L.J. has been assigned or, sometimes, before the first procedural hearing is conducted. "Cases heard" as a factor is better but not the best reflection of all the work done by an A.L.J. "Decisions rendered," on the other hand, reflect(s) the ultimate product of cases heard, substantial motions handled and settlement conferences conducted in those cases. When a settlement occurs a decision is rendered. Decisions are the end product of an adjudication organization. They are the ultimate reflection of the work actually done by the A.L.J.s from which quality and quantity can be most objectively measured. Among other activities, cases heard are subsumed under decisions rendered.

In fiscal year 1992/93, the overall average cost per decision rendered in Colorado was $163. For FY 93/94, the average cost per decision rendered dropped to $161.79. This occurred at a time when the hourly billing rate went up from $67 an hour in FY 92/93 to $77 in FY 93/94. It is projected that the average cost per decision
rendered will rise to $162.50 in FY 94/95. Another valid measure would be cost per case of catalyzing a settlement. Colorado challenges any budgetary/management individual to show that these figures do not establish substantially increased efficiency of A.L.J.s. As a matter of fact, increased efficiency is established through a method where there is not the slightest hint of improper incursion on judicial independence.

Internal fiscal measurements are but one measurement to establish effectiveness of an adjudication organization. External measurements can be even more important. External measurements involve benchmarking to other organizations. In response to a concern by the Colorado Department of Labor and Employment that Division of Administrative Hearings’ Administrative Law Judges were spending too much time in non-hearing related activities and billing the Department of Labor and Employment for this time, the Colorado Division of Administrative Hearings benchmarked the time spent in non-hearing related activities, as opposed to hearing-related activities, to the judicial branch of government. An analysis of the June 1993 billings by the Division of Administrative Hearings to the Division of Workers’ Compensation (Department of Labor and Employment) revealed that all Administrative Law Judges (from the Division of Administrative Hearings, Department of Administration) handling Workers’ Compensation cases billed a total of 1,861 hours for June 1993. 75.1 hours were billed for non-case related activities which translates to 4 percent of billable activities. The judicial branch weighted caseload goals indicate that magistrates should be spending no more than 17.5 percent of their time on non-case related activities.84

A closer analysis revealed that the 75.1 hours billed by 9.0 FTE Administrative Law Judges handling Workers’ Compensation cases involved meeting with Division of Workers’ Compensation personnel on matters involving work processes and the interface between the Division of Administrative Hearings and the Division of Workers’ Compensation; and, attending Workers’ Compensation continuing legal education programs (a total of 17.5 hours for the 9.0 FTE A.L.J.s in the month of June 1993).

Further analysis revealed that January 1993 was the heaviest month for non-case related activities because of the annual Workers’

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84 Weighted Caseload Goals for Colorado’s Magistrates. The State Court Administrator’s Committee on Weighted Caseload Goals (July 20, 1992).
Compensation Conference (continuing legal education), which all of the A.L.J.s handling Workers' Compensation cases attended. During January, a grand total of 1,632.3 hours were billed for all activities; and, 107.2 hours were billed for non-case related activities. This amount equals 6 1/2 percent of all billings, still less than the judicial branch goal of no more than 17 1/2 percent.

Measurements must be detailed and broken down by subject-matter area. A comparison of costs per workers' compensation cases in Colorado, from year to year, revealed greater efficiency. Since complete closure of a workers' compensation case sometimes takes years, the only meaningful measure of costs per workers' compensation adjudicated case involves an average cost per hearing and an average cost per decision and weighing of both cost per decision and cost per hearing to see whether or not there has been an increase or an overall savings. In FY 91/92, the overall administrative law judge dollars available to the Department of Labor and Employment for adjudication of Workers' Compensation cases was $1,285,701.00. 5,615 hearings were held in this fiscal year. Based on the number of hearings, the average cost per hearing in FY 91/92 was $228.98. In FY 91/92, 9,654 decisions of all varieties were rendered. Based on this, the average cost per decision in FY 91/92 was $133.18.

Decisions encompass every decision disposing of a case or resolving a substantial issue in the case. In FY 92/93, the Division of Workers' Compensation (Department of Labor and Employment) had $1,258,088.00 available for Division of Administrative Hearings' A.L.J. services. 5,213 hearings were held in this fiscal year. Based on this, the average cost per hearing in FY 92/93 was $241.34 or $12.36 more per hearing than in FY 91/92. However, in FY 92/93, 11,265 decisions were rendered. Based on this, the average cost per decision rendered in FY 92/93 was $111.68, or $21.50 less than in FY 91/92. Considering the cost per hearing with the cost per decision in relation to each other, a net overall savings of $9.14 per case in FY 92/93 is yielded.

Another important measurement involves the length of time spent by A.L.J.s in hearings. Since workers' compensation is a volume business as well as an area that is constantly placed under the microscopic scrutiny of the General Assembly and the interest groups, it is important to have differential measurements. An

85 Amended Memorandum from Edwin L. Felter, Jr. to Bill Archambault, Controller, Department of Administration, dated August 6, 1993.
analysis of the total number of workers' compensation hearings in relation to the total time spent in hearing by A.L.J.s between FY 91/92 and FY 92/93, revealed that Workers' Compensation A.L.J.s spent more overall time in hearing in FY 92/93 than in FY 91/92. What does this mean? It means the A.L.J.s are spending more time in hearings to dispose of cases. If the statistics on number of cases heard had dropped, it would be another indicator that despite the fact that number of hearings dropped, the administrative law judges were still working hard and effectively by spending more time in hearing.

The time spent in hearing, by Workers' Compensation A.L.J.s, increased (in FY 92/93) from FY 91/92. With a total of 3,179 merit hearings where witnesses were sworn and testimony taken, a total of 3,977 hours were spent by 10 administrative law judges in these hearings. Each hearing where witnesses were sworn took an average of 1.25 hours. In FY 92/93, with a total of 2,598 hearings where witnesses were sworn and testimony taken, a total of 3,555 hours were spent in hearings by 9 A.L.J.s. The average time per hearing where witnesses were sworn and testified rose to 1.37 hours.

In FY 91/92, with 2,436 procedural hearings and a total of 771 hours spent in these hearings, the average time for procedural hearing was .32 of an hour. In FY 92/93, with 2,615 procedural hearings and a total of 682 hours spent in these hearings (by 9 A.L.J.s as opposed to 10 A.L.J.s in FY 91/92), the average time per procedural hearing dropped to .26 of an hour. The most reasonable conclusions to be drawn from this data are that procedural hearings are becoming more time efficient; and, the growing complexity of merits hearings plus the increasing bona fides of genuine workers' compensation controversies (as opposed to situations where the parties ask the judge to function as a super claims adjuster) is lengthening the average merits hearing.86

A. Measurements to Demonstrate That Privatization Is Not the Best Way

Osborne and Gaebler advocate a philosophy of privatization wherever possible. The only other acceptable alternative to privatization is for the governmental organization to successfully compete with the private sector for the hearts and pocket books of

the customers. The author urges resistance to privatization only if the governmental organization is worthier, and more effective, than the private sector alternative. Kriegel suggests playing to win instead of playing not to lose. He suggests that playing it safe is actually dangerous. Kriegel suggests that the Break-It Thinker (a term coined by Mr. Kriegel to describe an innovator) is always on the lookout to be creative and to get into the habit of breaking habits. The message is that successful resistance to privatization is best undertaken by cutting edge organizations.

Although the judicial branch has never imagined, in its wildest dreams, that there is a threat of privatization, it should direct its gaze to the rent-a-judge organizations that are cropping up throughout the United States. The administrative law adjudication organization, on the other hand, is constantly under scrutiny for cost-effectiveness. This means that privatization is a serious consideration in legislative circles.

From a philosophical standpoint, privatization of administrative law adjudication services is contrary to the need for an established, experienced and centralized group of decision makers who, among other things, have established credibility in the community. It is the existence of a well-defined group of judges which lends credibility and respectability to decisions issued. Privatization can negatively affect public confidence in an established administrative law adjudication organization.

There are a number of practical problems involved in a privatization scenario for administrative law judge services. Privatization would necessarily involve dispersing the work load of the organization to a greater number of A.L.J.s since it would be close to impossible to attract full time A.L.J.s from the private sector (working on a contract basis), at a cost acceptable to the General Assembly, to duplicate the administrative law adjudication organization's services. Besides the inherent difficulties of managing a larger number of people, the lack of physical proximity would detract from the uniformity and quality of the decisions rendered. In the Colorado Division of Administrative Hearings, significant interchange occurs, among A.L.J.s, and this ensures that decisions on behalf of a particular client agency meet certain minimum levels of uniformity and competence. To achieve this uniformity and

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87 Reinventing Government, supra.
88 If It Ain't Broke . . . Break It!, supra.
89 Id., p. 131.
In dealing with a larger number of dispersed private attorneys, many of whom would have private practices on the side, the possibility for conflicts of interest would increase exponentially. In order to generate any credibility at all, A.L.J.s must be scrupulous in avoiding not only actual conflicts of interest but perceived conflicts of interest. In the privatization scenario, it would be anticipated that the turnover of part-time private attorney A.L.J.s would vastly exceed that in an established organization. The Colorado Division of Administrative Hearings is able to maintain a relatively stable and experienced staff. The training and management requirements for a larger group of private contractors, where more turnover is the rule, would be substantially higher.

Severe administrative problems in contract administration; and, clerical work would be created in a privatization scenario. For example, an increase in the amount of typing would occur, even with the same number of cases, because of the greater varieties of styles and inconsistencies in approach between contract-attorney A.L.J.s. A greater volume of hearings and smaller periods of time (more crunches) would occur than with a smaller number of judges. Also, keeping track of the location of files and other administrative matters would be extremely complex with numerous contract-attorney A.L.J.s spread around a metropolitan area, or the state. In its privatization analysis, Colorado estimated that a minimum of three times as many persons performing administrative law adjudication functions as the present corps of administrative law judges in the Division of Administrative Hearings would be required. This is based on local experience. For example, the Denver Civil Service Commission, which utilizes part-time contract-attorney hearing officers, presently experiences these logistical problems with only three hearing officers. Ultimately, the Civil Service Commission was required to arrange for the contract hearing officers to type their own decisions and the Commission was billed this extra expense by the contract hearing officers.

Contracting out adjudication services would result in the loss of consistency in decisions and in an impediment to the development of expertise. Currently, the judges in the Colorado Division of Administrative Hearings develop expertise with certain types of cases; and, they interact with each other to share skills and experiences. This is done on a daily basis. The development of
such expertise, and the interaction, is highly unlikely to occur with three times as many private contractors spread out across a wide geographical area.

The *piece de resistance* of resisting privatization is a cost analysis. The analysis of the Colorado Division of Administrative Hearings in FY 93/94 revealed that the cost of privatizing adjudication services would exceed current costs (for FY 93/94) by $1,055,584.00 per year. This is a high cost for the privatized benefits outlined in this section. It is an especially high cost considering that the overall budget of the Colorado Division of Administrative Hearings for FY 93/94 is approximately $2.1 million.

The principal assumption in privatizing adjudication services is that the services of all administrative law judges, hearing and deciding cases, would be privatized but the contracts would have to be administered by a skeletal staff including some staffers with sufficient legal expertise to know whether the contractors are doing what they are supposed to be doing. Also, the docketing mechanism for volume cases would have to continue under the current centralized status in order to provide efficiency and continuity in getting cases set and heard by the private contractors. Paralegal services, if any, would be built into the billing rates of the private contractors, thus, they would be privatized. In FY 93/94, all of the state agencies utilizing the Colorado Division of Administrative Hearings required 31,317 hours of administrative law judge services. The Colorado Division provided these services at a grand total cost of $2,162,946.00 (this sum includes all paralegals, support staff, operating expenses, travel expenses, rents, equipment acquisitions - everything in the entire budget of the Division including fringe benefits, sick leave and annual leave for all employees).

In Colorado, any private attorney A.L.J. contractor, who meets the legal requirements of five years experience, and who would be competent to provide adjudication services for state agencies, would be required to absorb all overhead in his/her billing rate. This individual would also be required to absorb fringe benefits within the billing rate. In the Denver and Colorado market, it would be virtually impossible to find these services at under $80 per hour. As a matter of fact, an extremely conservative estimate of hourly billing rates for competent individuals, with five years experience, to perform these services in FY 93/94 would be in the range of $80 to $100 per hour or more, depending on the subject matter, *e.g.*, Medical Board cases. Consequently, on the assumption that the average billing
rate would be $90 per hour, it would cost $2,818,530.00 for the 31,317 hours that state agencies require in adjudication services. This is not the only expense of privatization. A skeletal administrative staff would be required to administer the contracts, the difficulty of which has already been discussed. One chief judge, or chief executive (program administrator), at a full FTE cost (including all fringe benefits) of approximately $80,000 per year would be required to supervise the entire statewide program. Also, a highly skilled administrative program specialist, at a full FTE cost of approximately $54,000 per year, would be required. Presently, there are four Sr. Word Processors in the metropolitan Denver area, at a cost of $132,000 per year, to type decisions. Only two word processors (to administer contracts and type decisions as needed) would be required, in the privatization scenario, at a total FTE cost of $66,000 per year. Two secretaries in Denver and Colorado Springs, at cost of $60,000 per year would continue to be required to administer the contracts outside of the metro Denver area (one secretary to serve as a receptionist and do administrative matters in Denver and one secretary to do the same and arrange for docketing of cases in the southern region of Colorado would be required in a privatization scenario).

The present three staff assistants, outside of the metropolitan Denver area and in metropolitan Denver, would still be required, at a total FTE cost of $93,000 per year, to ensure the continuity and efficiency of docketing cases. Additionally, two administrative clerks at a total FTE cost of $40,000 per year, statewide, would continue to be required to ensure the continuity and efficiency of docketing workers' compensation cases. The grand total for staffing to administer the contracts would be approximately $400,000 per year. Consequently, the grand total cost for administering a privatized administrative law adjudication system would be $3,218,530.00 for FY 93/94, which is $1,055,585.00 more than the present costs. For this $1 million premium, Colorado would realize a loss of expertise, a loss of interaction among judges and a loss of the efficiency of scale for delivering statewide adjudication services.90

90 Memorandum from Edwin L. Felter, Jr. to Penfield W. Tate III, Executive Director, Department of Administration, dated July 13, 1993.
B. Colorado Workers' Compensation Adjudication Workload Measurements

In FY 91/92, there was a total of ten FTE Administrative Law Judges doing Workers' Compensation cases. In FY 92/93, there was a total of nine FTE A.L.J.s doing Workers' Compensation cases. In the Denver metropolitan area, there were 5.5 A.L.J.s doing Workers' Compensation in FY 91/92 and 4.5 A.L.J.s in the rest of the state (Western Slope, Colorado Springs-Pueblo and Ft. Collins-Greeley-Boulder). In FY 92/93, there was one less judge in Denver for a total of 4.5 judges doing workers' compensation cases in Denver. It continued to be 4.5 regional judges for the rest of the state.

Meaningful measures for workload comparisons between fiscal years involve an analysis of total numbers of hearings (where witnesses were sworn, disfigurement hearings, procedural hearings and hearings where witnesses were not sworn but a settlement of the claim had been catalyzed by a judge). Other measures are hearings where witnesses are actually sworn and the case is decided by the judge; all decisions rendered (including procedural, approval of settlements catalyzed by a judge, disfigurement and all other substantial procedural decisions other than orders granting continuances and endorsement of additional witnesses, for instance). The most important measure involves decisions rendered on the merits as a result of a hearing where witnesses were sworn. All of these measures must be considered in relationship to each other in order to get a true picture of the workload of workers' compensation judges in the metropolitan Denver area and in the rest of the state.

Each judge is docketed eight to ten days per month and these dockets are filled with approximately ten cases per day (some of these cases go off because of settlements catalyzed by the judge, or a procedural hearing is held where the case is vacated from the docket or, in extremely rare cases, the case is continued for good cause). Because of the requirement of the 1991 Workers' Compensation Reform Package (Senate Bill 91-218) that all cases be set in an 80-100 day window, the judge must be available and it is difficult to backfill additional cases because a trailing docket already exists (more cases are set than could physically be heard in any given day). The docket needs of the workers' compensation community are 34 to 45 docket days per month for the Denver metro region; 20 to 25 docket days per month for the southern region.
XV Journal of the National Association of Administrative Law Judges 5

(Colorado Springs-Pueblo); ten docket days per month for the Western Slope (Grand Junction, Glenwood Springs and Durango); and, eight to ten docket days per month for the Northern Region (Ft. Collins, Greeley and Boulder). Each judge must be available for the entire docket day; and, experience has shown that workers' compensation hearings per docket day per judge generally go from 8:30 a.m. until 5:00 p.m. When the judge is not sitting on the docket day, the judge is serving as Judge-of-the-Day, handling procedural hearings and decisions or engaged in decision writing or work involving overall work processes to make the system function more smoothly.

Denver judges have considerable involvement in work processes which benefit the entire state (mail handling, docketing, telephone conferences, etc.) and some of the regional judges have considerable geographical travel demands in addition to being required to handle all matters in their regions without the flexibility factor of colleagues and support staff that the Denver judges have. For example, regional judges approve represented settlements, which, in Denver, are approved by the Division of Workers' Compensation. All judges from the Division of Administrative Hearings, in Colorado, approve pro sé settlements. The trade-offs to provide local customer service in out-state Colorado are minimal in cost and workload terms. The regional structure of the Colorado Division of Administrative Hearings for workers' compensation adjudication service delivery is a substantial improvement from the days (more than ten years ago) when everything was centralized in Denver; judges took lengthy road trips to provide services to the various regions of Colorado; and, many more people were required to come to Denver for hearing.

In FY 91/92, ten judges handled a grand total of 5,615 hearings which equates to 561 hearings per judge, or 48 hearings per judge per month. These ten judges handled 3,179 hearings where witnesses were actually sworn. This equates to 318 hearings where witnesses were sworn, or 26 1/2 hearings per judge per month. In FY 92/93, a grand total of 5,213 hearings were held by nine judges which equates to 579 hearings per judge (18 more than the previous fiscal year) or 48 hearings per judge per month (the same as the previous year). There was a total 2,598 hearings where witnesses were sworn and testimony taken, conducted by nine judges, which equates to 289 where witnesses were sworn per judge (29 less than the previous year) or 24 hearings where witnesses were sworn per
judge per month (2 1/2 less per month than the previous year), an excellent control indicator of the accuracy of the numbers.

The optimal workload measure involves decisions rendered by the judges, since hearings held are subsumed under this category and additional workload (cases where hearings were not held) is included in this category. In FY 91/92, a grand total of 9,654 decisions were rendered by ten judges, which equates to 965 decisions per judge per year; or, 80 decisions per judge per month. Decisions involving the merits only (compensability, temporary total, permanent disability), were 3,503 for this fiscal year, by ten judges, which equates to 350 merit decisions per judge; or, 29 merit decisions per judge per month.

For FY 92/93, a grand total of 11,265 decisions were rendered (1,611 more than in FY 91/92) by nine judges, which equates to 1,252 decisions per judge per year (287 more per judge than the previous fiscal year); or, 104 decisions per judge per month (24 more per judge per month than the previous fiscal year). A total of 3,049 merits decisions were rendered by nine judges in FY 92/93, which equates to 339 per judge (11 less merit decisions than the previous year); or, 28 merit decisions per judge per month (one less per month than the previous fiscal year).

When all workload measures are compared between FY 91/92 and FY 92/93, it is apparent that the overall workload per judge has not decreased but slightly increased. Overall litigation has, in fact, decreased in FY 92/93 but there is one less judge to handle the cases. This downsizing proves progressively greater efficiency.

An analysis of the out-state area (the regional offices outside of metropolitan Denver) reveals workload indicators similar to those in the Denver metropolitan area. From an overall standpoint, the following conclusions were derived from the Division's workload analysis. First, the entire workers' compensation adjudication caseload was being handled by nine judges, statewide, during FY 92/93 (one less judge than FY 91/92). In FY 93/94 and FY 94/95, there continues to be nine judges handling workers' compensation cases. Second, 435 grand total hearings per month were conducted by nine judges, resulting in an average of 48 workers' compensation hearings per judge per month. Third, the overall decision workload has gone up, which means, that Colorado Division of Administrative
Hearings' judges moved more cases out of the system in FY 92/93 than it did in FY 91/92.91

C. Judge Evaluation Surveys -- Measurement of Public Perceptions

Colorado has been doing judge evaluation surveys, approximately every other year, since 1982. First, the judge evaluation surveys were done in-house, specifically, by the Executive Director of the Department of Administration's office. One member of the General Assembly questioned the reliability of such an in-house survey and the Colorado Division of Administrative Hearings, along with others in the executive branch of government, determined that a judge evaluation survey would have more credibility if done outside of the Department of Administration. As is the case for most state agencies, the Colorado Division of Administrative Hearings could not afford to have Arthur Anderson and Company, or a similar private organization, conduct a survey. Even if the Division could afford this, the General Assembly might question the wisdom of such an expenditure. Ultimately, it was decided that the most neutral and detached agency to conduct this survey would be the Governor's Office of State Planning and Budgeting, since this office has always been in position of granting or denying budget requests from executive branch agencies before the requests are transmitted to the Joint Budget Committee of the General Assembly. No one would question the impartiality of the Office of State Planning and Budgeting, vis-à-vis any executive branch agency. All executive branch agencies, such as the Department of Administration, could be characterized as being in a subservient budgetary position to the Office of State Planning and Budgeting.

The Office of State Planning and Budgeting reported the results of its first judge evaluation survey on December 30, 1992.92 These results were slightly lower than the previous survey, conducted by the Department of Administration Executive Director's Office. It can reasonably be assumed that respondents to the survey felt less

inhibited, knowing that an impartial third party was conducting and administering the survey.

The December 30, 1992, OSP&B survey revealed that the Colorado Division of Administrative Hearings functioned at an overall 88 percent approval rate, a two percentage point drop from the previous survey. It found that the judges who handled workers' compensation cases functioned at a 85 percent approval rate, a three percentage point drop from the previous in-house survey. Individual performances of judges ranged from a 68 percent approval rate to a 99 percent approval rate. The 1992 survey was returned by 340 attorneys out of a mailing to 428 attorneys, randomly chosen, who had some contact with at least one of the judges being surveyed -- within the previous year. Approval rate encompasses both the "outstanding" and "satisfactory" ratings for 11 different categories. The categories are: (1) promptness in appearing for hearing; (2) promptness in deciding cases; (3) completeness and clarity of decisions -- legal reasoning; (4) knowledge of specific area of law applicable to the hearing; (5) courtesy to witnesses; (6) courtesy to counsel; (7) knowledge of general areas of the law, rules of evidence, procedure, etc.; (8) familiarity with the file and adequate preparation; (9) ability to preside, i.e., control the hearing process in a firm but fair manner; (10) attentiveness to the proceedings; and, (11) conscientiousness in finding facts and/or interpreting the law without regard to possible public criticism.

D. Other Surveys -- Other Measurements

Adjudication organizations are quick to summarily dismiss results of non-lawyer customer surveys as either being a reflection of "sour grapes;" or, in the case of agency clients, "an inappropriate regulatory objective." The same may be said of lawyer surveys. For this reason, appropriately designed surveys, with appropriate control questions, must be used. On matters not involving the outcome of a specific case, it is important for an adjudication organization to know how it is perceived by non-lawyer customers. To wait for the non-lawyer customer to find out the name of the Chief Judge and write a letter of complaint to the Chief Judge, after suffering mistreatment at the hands of the adjudication organization, will give a lop-sided view of customer perceptions. Non-lawyer customer surveys may be done in many forms.

The simplest non-lawyer customer survey can take the form of the 3 x 5 customer-satisfaction postcard used by many successful
private businesses. In designing this postcard, the designer is forced to observe the K.I.S.S. (Keep-It-Simple-Stupid) principle. Simple questions such as "Did you receive the information you needed from the Division of Administrative Hearings?" should be solicited on the postcard. "Were you treated courteously?" is another important question which should be asked. It does not take a lengthy litany of questions to effectively survey. What has worked in the private sector can also work for an administrative law adjudication organization.

Once the postcards are returned, there will be some "sour grapes" by those who have lost their cases. It would be an interesting surprise, though, to get a postcard back from a respondent who said that she lost her case but felt that she was treated fairly, courteously; and, the judge did a conscientious job on her case. What better evidence of TQM could there be?

Without the survey postcards at the counter, you will never know. It is important for an adjudication organization to know how it is perceived by those who would not ordinarily speak up or write a letter of complaint. The only way to do this is to solicit anonymous input. Without effective instruments to receive anonymous feedback, it would be difficult for the administrative law adjudication organization of the future to know whether it is continuing to do the right thing, e.g., more ADR and less formal hearings or vice-versa.

VII. Why Quality Efforts Often Fail

"Only those Huns who are mediocre are always at their best" — from Victory Secrets of Attila the Hun\textsuperscript{93}

The greatest firehose\textsuperscript{94} (what Mr. Kriegel designates as a killer of innovation) of them all is the Nocando philosophy. It is the killer of dreams. It's the fifth grade teacher who told you you'd never graduate from high school. Fortunately, no one ever told Bob Mathias he could not run the four-minute mile. A lack of faith, confidence and passion is why TQM efforts fail.

On the opposite end of the Nocando school is Pygmalion's Institute. Those who recall Greek mythology, remember that Pygmalion fell in love with a statue and wished so hard for it to be alive, it came to life. At Pygmalion's Institute, the average soar. They take on major responsibilities and they fulfill them with excellence. To all, the average appear to be geniuses with unlimited

\textsuperscript{93} Victory Secrets of Attila the Hun, supra, p. 70.

\textsuperscript{94} If It Ain't Broke . . . Break It!, supra.
time and energy. Without belief, all is lost before the journey has begun.

The primary reason why quality efforts fail is because organizations wind up not walking the talk. Fear of taking risks dooms quality efforts at the outset. Kriegel observes that all top performers have fire in their hearts. They are passionate about their performance. Kriegel observes that passion is, in fact, contagious.\textsuperscript{95} He observes that playing it safe is dangerous. An organization must play to win instead of playing not to lose.\textsuperscript{96} According to Kriegel, the biggest risk is not to risk. Kriegel, a trainer of top performers, tells us they get to the top by taking on the things they are most afraid of.\textsuperscript{97} Organizations, especially legal and adjudication organizations, are renowned for changing with the speed of the great glacier. Alexander Aikman advises adjudication organizations to find projects whose results even skeptics can respect. Build a core of believers, be patient, but be persistent in order to succeed.\textsuperscript{98}

The editor-in-chief of \textit{The American Lawyer}, Steven Brill, begins a dialogue on TQM by asserting that TQM may be "total bullshit" because no one seems to have a concrete example of TQM actually achieving something concrete.\textsuperscript{99} Brill contends, rhetorically, after listening to or reading stuff by TQM disciples, that he comes away feeling as if he has just eaten Chinese food -- lots of effort and mass but nothing left after five or ten minutes.\textsuperscript{100} In response to Brill, Theodore Banks, Assistant to the General Counsel of Kraft General Foods, a defender of TQM, observes that: (1) TQM reinforces the importance of training and retraining for secretaries, paralegals and lawyers; (2) TQM provides a process for identifying "Systems' or 'Processes' in a law firm or law department, evaluating how they function, analyzing the input from each participant in the process and improving the performance;" (3) legal TQM activities remind participants that the legal process should focus on serving the client, not the lawyer; (4) the stress on constant improvement helps stop complacency; and, (5) emphasis on open communication from all participants in a process not only is important to the efficient functioning of the system, but also is good for the self-worth of

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\textsuperscript{95} \textit{Id.}
\textsuperscript{96} \textit{Id.}
\textsuperscript{97} \textit{Id.}
\textsuperscript{98} \textit{Total Quality Management in the Courts, supra.}
\textsuperscript{99} \textit{Total Quality Management: a Supplement to the American Lawyer, December 1993.}
\textsuperscript{100} \textit{Id.}
participants at all levels (assuming the communications are real) since everyone can contribute to improving the process.  

Banks observes that "TQM is sometimes used to justify budget reductions, if, after careful analysis, a process is made more efficient by eliminating redundancies. However, TQM is also used as a justification for not cutting budgets (i.e., to prevent the elimination of people) when doing so will hurt quality and increase total cost."  

Richard Bland, Deputy General Counsel for StorageTek, observes that "Implementing TQM is a lot of extra work and we have trouble finding extra time to do it. But we are convinced that TQM is good for us, and that our difficulties with it have to do with us, not with TQM."  

Kriegel tells a story of having a mortal fear of heights and having been taken to the top of a skyscraper under construction by one of the Native Americans who work construction in Manhattan. The Native American told Kriegel not to look down. He told him to look across to another building. Kriegel's fear began disappearing. The Native American told Kriegel "Don't look where you don't want to go." Kriegel entitled a chapter of his book "Don't look where you don't want to go."  

Many senior partners of silk stocking law firms maintain "If clients like what we do, clients don't want us to change it just for the sake of the latest buzzword." This can be characterized as the "denial stage" that many lawyers go through when faced with total quality concepts. To make TQM more palatable for his lawyer clients, William Flannery, a legal consultant who provides quality training for law firms, changed the name from TQM to CFQ, "Client-Focused-Quality." Flannery charges $24,000 for a four-day session at which he teaches 12 lawyers to "design a specific service strategy and present the service strategy as a competitive edge." Joel Henning's firm charges between $25,000 and $75,000 to help a firm develop a full-fledged TQM program. In one converted firm, after a year and half of planning and training, lawyers and support staffers now rush for a phone before it rings three times.  

\[101\] Id.  
\[102\] Id., p. 10.  
\[103\] Id., p. 11.  
\[104\] If It Ain't Broke . . . Break It!, supra.  
\[106\] Id.  
\[107\] Id.
H. Weise, General Counsel of Motorola, Inc., wants to see law firms set priorities, take shortcuts when possible and reduce the pressure on young lawyers to bill lots of hours. Firms that demonstrate that kind of quality, he says, "Are going to be highly valued, and they're going to make a lot of money because they will get a lot of business."  

Once genuine quality efforts get underway, there is no turning back. This means that quality efforts fail because genuine quality efforts have never truly gotten underway. An organization may appear to have embarked on a quality program for up to two years yet it never truly embraced the concepts of total quality with passion. As Steven Brill observes, some things about quality are not concretely observable. The passion of those involved in quality efforts is one of those things. Signs of a working quality program, however, are observable. Although quality efforts are succeeding, they must be periodically reported, in objectively recognizable form, to the outside world. To do this, periodic measurements must be made and progress must be benchmarked against comparable organizations. Also, immediate, temporal goals must periodically be set and strategic goals and objectives for internal and external customers must continually be examined and reexamined. Even though constituents (employees) of an organization have received training in total quality, the organization must not fall asleep at the switch. Periodic refresher training must occur and everyone must be involved with it. The organization must realize that quality efforts are not inconsistent with re-engineering concepts. Hammer and Champy observe that: "A truly great company is never satisfied with its current performance. A truly great company willingly abandons practices that have long worked well in the hope and expectation of coming up with something better." Hammer and Champy realize that some processes should be continuously and incrementally improved when they are working. However, these processes should not be taken for granted and a revolutionary analysis of these processes should periodically occur in order to see whether or not re-engineering could catapult the organization to a higher plane. The core concept of re-engineering involves processes that, instead of being incrementally improved, can be totally re-engineered to bring the organization to another and higher plane of

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108 Id.
109 Reengineering the Corporation, supra, p. 34.
competitiveness. What does this have to do with an adjudication organization? Simple. The emerging rent-a-judge organizations are not going to out-compete the judicial branch of government, or an administrative adjudication organization, by demonstrating to the public that they can be even more bureaucratic than the governmental adjudication organization.

Without the vision of the organization being kept clearly in focus by all of the constituents, backsliding on TQM efforts will occur. The vision fires up the passion and, when the chips are down, the vision offers a ladder for the members of the organization to climb out of the pit. Specific goals for the handling of cases should continually be set and reset according to customer requirements. Technology to improve the handling of adjudication matters should constantly be employed, tailored and improved to meet specific customer needs. One mistake is making continuous and incremental improvements in building a bigger and better camel, when an improved jet engine is required. Despite the passion of the builders, quality efforts will fail because of the inappropriate goals. Quality efforts must be geared to the market place and they must be forward-looking. Forward-looking quality efforts are the competitive edge.

Donald T. Phillips, an authority on Abraham Lincoln, observes that Abraham Lincoln constantly preached a vision and reaffirmed it. In 1864, Lincoln told the 166th battle-weary Ohio regiment:

"It is not merely for today, but for all time to come that we should perpetuate for our children's children this great and free government, which we have enjoyed all our lives... I happen temporarily to occupy this big white house. I am a living witness that any one of your children may look to come here as my father's child has. It is in order that each of you may have through this free government which we have enjoyed, an open field and a fair chance for your industry, enterprise, and intelligence... this nation is worth fighting for..."\(^{110}\)

Phillips observes that Lincoln preached his vision throughout his four years of office.

According to Alvin Toffler, the new system for creating wealth is no longer based on muscle and large machines but on mind and high speed computers.\(^{111}\) This new system for creating wealth, applies to government and adjudication organizations. Adjudication systems


will no longer be based on divine right, the powdered-wig (except in the English Commonwealth) or the quill pen. They are based on the delivery of dispute resolution services with the assistance of computer systems, sometimes electronic imaging and real time reporting. Without looking to the future, and without constantly reaffirming a vision for the adjudication organization of tomorrow, quality efforts cannot succeed, in the final analysis. Team work and cooperativeness are the key to making quality work.

VIII. The Administrative Law Adjudication Organization Of The Twenty-First Century: Lean, Speedy And Effective

Suas almas habitam a casa de amanhã . . . porque a vida não vai para trás, nem se detêm com o otem." – Khalil Gibran

The twenty-first century will require adjudication organizations to follow the lead of the planet’s most successful and unusual businesses. If they do not, they will disappear like the unsuccessful fried chicken franchises of the late 1960s. Constitutions and laws will be changed to meet the demands of living on earth in the 21st Century. Businesses and governmental structures will be changed. Last but not least, adjudication organizations will be changed if they are to survive in a competitive mode.

Adjudication organizations should, and must, make analogies to successful and competitive businesses in order to deliver the adjudication product that the public will demand. It will be insufficient for adjudicators to sit back and say that the Constitution, or the laws, require us to be the only game in town. Administrative law adjudication organizations are more cognizant of the need to be competitive. Judicial branch adjudication organizations must follow this lead. Adjudication organizations hold their place, in the order of things, based upon a recognition that the power to resolve disputes must reside somewhere. Alvin Toffler signals a change not only in business operations for the 21st Century, but in all governmental institutions, based upon a major global "Powershift". The world is moving forward in fast-forward. Changes and advances in the next ten years will be significantly more than changes and advances that occurred in the last thirty or forty years. Since 1989, the world has observed major changes in governmental structures brought about by the fall of communism. Toffler observes: "The revolutionary new element -- a change brought about by the novel system of wealth

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112 O Profeta, Khalil Gibran - Editorial A.O. Braga (Portugal); 1990. Translation: "For their souls dwell in the house of tomorrow . . . for life goes not backward nor tarries with yesterday."
creation -- is a change in the level of socially necessary order.\textsuperscript{113}

With the new fact is that, as nations make the transition toward the advanced, super-symbolic economy (represented in part by electronic transfer of funds and the knowledge-based economy), they need more horizontal self-regulation and less top-down control. What this means for adjudication organizations is a dramatic shift in the attitudes of the governed to consent to let the court systems adjudicate their disputes. The judges of the 21st Century will no longer pontificate from on high. They will be successful business persons who excel at resolving disputes. The respect accorded to these judges will be based upon their talent and their competitive edge as opposed to their black robes and ornately decorated courtrooms.

In the business world, Semco/SA, a Brazilian company, headed by 36-year old Ricardo Semler, offers a preview of the 21st Century. Semco is Brazil's largest marine and food-processing machinery manufacturer. Ricardo Semler is also a board member of Brazil's foremost environmental defense organization -- an interesting duality in a country that has long held a reputation for being environmentally irresponsible. At Semco, there are no receptionists and no office walls. Workers set their own hours, and many set their own salaries. Employees evaluate their bosses, share 22 percent of company profits and vote on all major decisions. Ricardo Semler has abdicated his authority as the company's chief executive. "My role is that of a catalyst" says Semler.\textsuperscript{114} Ricardo Semler believes a company should trust its destiny to its employees. Semler mentions the parable of the three stonecutters: "The first said he was paid to cut stone. The second replied that he used special techniques to shape stones in an exceptional way, and proceeded to demonstrate his skills. The third stonecutter just smiled and said 'I build cathedrals.'\textsuperscript{115} Ricardo Semler wanted a company filled with cathedral-builders. Most adjudication organizations exist at level one where the judges are paid to adjudicate cases. The more exceptional adjudication organizations exist at level two where the judges use special techniques and knowledge to conduct hearings and shape decisions in an exceptional way. The judges of the 21st

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\textsuperscript{113} Powershift, supra, p. 463.


Century should build cathedrals of justice by resolving disputes in an outstanding manner and imparting a value-added dimension to the final resolution of the dispute.

In retooling his company into what could best be described as three concentric circles, Semler faced resistance not only from his own management (he eliminated nine layers of managers) but also from union workers used to the security blanket of an narrow job description. Re-engineering concepts dictate the elimination of narrow jobs and, wherever possible, the creation of customer service representatives who can fulfill all of the needs of the customer. While this may not be particularly appropriate for the adjudicator herself, this is, indeed, appropriate for support staffers in an adjudication organization. Despite all of these obstacles and the "wrenching volatility" of Brazil's economy, Semco's sales have grown 600 percent. (Brazilian inflation was roughly 1000 percent per year in 1993).

"In Brazil, where paternalism and the family business fiefdom still flourish, I am president of a manufacturing company that treats its 800 employees like responsible adults" says Ricardo Semler. More than 150 of Semco's management people set their own salaries and bonuses. "When people ask for too little, we give it to them. By and by, they figure it out and ask for more. When they ask for too much, we give that to them too. -- At least for the first year. Then, if we don't feel they're worth the money, we sit down with them and say, 'Look, you make x-amount of money, and we don't think you're making x-amount of contribution. So either we find some thing else for you to do, or we don't we have a job for you anymore.' With a half a dozen exceptions, our people have named salaries we can live with" says Semler. Semler allows people to make up their own titles. While this is not possible for judges, it certainly is worth looking at for support personnel. Says Semler: "So we tell coordinators to make up their own titles. They know what signals they need to send inside and outside the company. If they want 'Procurement Manager,' that's fine. If they want 'Grand Panjandrum of Imperial Supplies' that's fine too."

While Ricardo Semler's analysis may sound simplistic and only applicable to widget manufacturers, on closer scrutiny the practice of law and the adjudication of cases are not much different. The author

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116 Id.
117 Id.
118 Id.
has long advised lawyers to read good books on salesmanship in order to refine their techniques of selling their cause to the judge. Many bright young lawyers don’t realize that you do not close the sale by making the customer mad. Yet these bright young lawyers, in their enchantment with their own case, sometimes treat the judge, without justification, like a dope, thus, setting themselves apart as the *cognoscenti* and making the judge mad. They may wind up closing the sale on the Toyota Corolla and losing the sale on the Lexus. Semler observes: "What we have are people who either sell or make, and there is nothing in-between. Is there a marketing department? Not on your life. Marketing is everybody’s problem. Everybody knows the price of the product. Everybody knows the cost." While Ricardo Semler’s approach may sound radical, there are many lessons to be learned. Semler notes: "And because we are so strict with the financial controls, we can be extremely lax about everything else. Employees can paint the walls any color they like. They can come to work whenever they decide. They can wear whatever clothing makes them comfortable. (not possible in an adjudication organization). They can do whatever the hell they want." In an adjudication organization, Semler’s message must be modified.

The adjudication organization of the 21st Century will employ the latest technology to facilitate the speedy and effective resolution of disputes. In this area, judicial branch adjudication organizations are, most likely, ahead of administrative law adjudication organizations because of the magnitude of financial resources a judicial branch organization can bring to bear on technology. Electronic imaging will be integrated into the adjudication organization’s computer system; all case files will be stored in the computer system; and, contents of the case file will be retrievable on any employee’s terminal. Adjudicators and paralegals who do any travel, especially those who ride the circuit, will have notebook computers with telephone modems in order to enable decisions, and notes, to be instantaneously transmitted to a word processing system.

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119 *Id.*
120 *Id.*
121 Semler’s message cannot be taken literally for an adjudication organization. Nevertheless, the message should not be lost. The bottom line of an adjudication organization is to deliver the resolution of disputes, and provide all ancillary services before that ultimate resolution, in a manner that the customers will respect and in a manner with which the customers can be delighted.
location. In addition to a telephone modem, all computers will have faxing capability. Nothing short of a fully integrated computer system to expedite the handling of cases will suffice for the 21st Century.

Video-conferencing will exist for out-of-state and out-of-town witnesses to testify by video; and, in order that pre-hearing and settlement conferences with participants in different locations can be conducted by video. This maximizes the available time for the adjudicator and the paralegal. Real time court reporting, to minimize mistakes and for convenience, will be the order of the day. Government kiosks will be installed at public locations, with programs informing litigants of all they need to know concerning procedures for their case. A centralized corps of identifiable judges, at court locations, will still be necessary to maintain the credibility and the independence of the adjudication organization.

The maximum, and optimum, use of technology for administrative hearings will exponentially increase the efficiency of case processing and case management. The adjudication organization of the 21st Century will be far more convenient, and far less costly, for litigants. Correctly applied due process will not be sacrificed one iota. A fully integrated computer system will almost entirely eliminate the flow of paper and case files, thus, increasing efficiency and eliminating possibilities of lost documents, and reducing costs and delays. Hard copies of legal documents, required to be maintained, will be stored with greater security. The use of video-conferencing (for at least part of a hearing) will greatly reduce the flow of people in increasingly congested metropolitan areas. Electronic filings will be the order of the day.

In the arena of law practice in the United Kingdom, the Law Society of England and the British Standards Institution adapted 20 required components of B.S. 5750 (a series of international standards on quality management and assurance, adopted in the 1980s by the International Organization for Standardization in Geneva, Switzerland). Under B.S. 5750, firms that establish the proper quality control procedures are certified by the British Standards Institution." A document -- "A code of quality management for solicitors" -- sets out how it applies to legal services. The opening points of the Code of Quality Management for Solicitors provide: "(1) a solicitor's practice shall have, as policy,

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122 Total Quality Management: A Supplement to the American Lawyer, supra. p. 34.
a commitment to quality and shall clearly define the partner and staff responsibilities for implementing that policy; (2) the quality system shall be documented in a systematic way so that it can be easily followed and implemented." 123

The standard has been criticized because, unlike TQM, it does not address continuous improvement. This led to the publication of a second statement, B.S. 7850, in September 1992, which "Emphasizes the need for measurement of performance and analysis to confirm that planning for problem-solving has led to quality improvement." 124 In the United Kingdom, six law firms have now achieved B.S. 5750 certification and an estimated 100-200 firms are working toward it. 125 The 21st Century holds not only more certifications for specialties but certifications for quality. This is already arriving, like the Beatles thirty years ago, on our shores.

Richard H. Weise, General Counsel of Motorola, Inc., observes that firms that demonstrate total quality "Are going to be highly valued, and they're going to make a lot of money, because they will get a lot of business." 126 In the 21st Century, Weise's statement will prove to be an understatement. According to Alexander Aikman:

"Courts that have started down the path of changing their court's management culture share the enthusiasm of their private-sector counterparts about the value and merits of TQM. . . . TQM can materially improve and enhance courts' service and at the same time enhance their capacity to fulfill that mission." 127

In the author's opinion, Mr. Aikman makes his point through understatement. Courts that do not adopt a total quality approach will fade away from the adjudication scene. Just as the City and County of Denver had a Superior Court (with limited jurisdiction overlapping between the County Courts and the District Courts -- County Court being a court of limited jurisdiction and the District Court being a court of general jurisdiction) that passed out of existence upon the retirement of its last judge, judicial branch organizations that don't adopt total quality concepts will pass out of existence in favor of privatized adjudication organizations, a concept

123 Id., p. 34.
124 Id., p. 34.
125 Id., p. 35.
126 "Grudgingly, Lawyers Try 'Total Quality',' supra.
127 Total Quality Management in the Courts, supra, p. 51.
which is presently unimaginable just as privatized penal institutions were unimaginable 20 years ago.

The total quality of the 21st Century lies in the details surrounding the adjudication process, not necessarily in the ultimate outcome of the case. The bridge between adjudication of the 21st Century (consisting of detailed delivery of quality adjudication services) and the distant past is an unbroken bridge. Tom Peters finds the connection in Kakuzo Okakura's, *The Book of Tea*. Peters notes that the art of tea service (*Chado*) "is a lifetime occupation, calling for great discipline and total concentration. A million details must be mastered."¹²⁸ Peters notes the first requirement of a tea master, according to Okakura, "is the knowledge of how to sweep, clean and wash."¹²⁹ According to Peters, Okakura offers the example of an ancient tea master, Rikyu, teaching his son how to prepare the entrance way to the tea room. After the son had swept and washed the steps for the third time the son said "Not a twig, not a leaf have I left on the ground." The father addressed him: "Young fool... that is not the way a garden path should be swept." Saying this, the tea master stepped into the garden, shook a tree and scattered over the garden gold and crimson leaves, scraps of the brocade of autumn!¹³⁰ According to Okakura, what the tea master demanded "was not cleanliness alone, but the beautiful and the natural also."¹³¹ What does this have to do with the adjudication of administrative law cases? Truly great lawyers do more than a great technical job. Truly great judges do more than a great technical job. One can easily observe pieces of Benjamin Cardozo's soul in his decisions. The same can be said of Oliver Wendell Holmes, Jr. Judges, in both the judicial branch and the executive branch, should never lose sight of the fact, as eloquently stated by Judge Jerome Frank: "For, in a democracy, the courts belong not to the judges and the lawyers, but to the citizens."¹³²

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A number of people who have appeared in my life, and given me energy and motivation, have played a significant role in the creation of this manuscript. Bruce Posey, an executive with U.S. West and former cabinet officer in charge of the Colorado Department of Administration, is due considerable gratitude for his inspiration when the author first

¹²⁹ Id.
¹³⁰ Id.
¹³¹ Id.
¹³² Courts on Trial, supra.
embarked on T.Q.M. Al Levine, Captain, U.S.N. (ret.) and Rollie Rogers, the first Colorado State Public Defender, early mentors at the beginning of my career, contributed in a most important way. My friend, Dr. Lisa Whatley, who gave me advice on TQM, is entitled to recognition. Sally Brown of the Colorado Division of Administrative Hearings, who tirelessly word processed, formatted, and re-processed, is due special recognition. Judge Ed Schoenbaum of Illinois who gave generous and meticulous advice, is due special credit. All people within the Division of Administrative Hearings contributed by being the main subjects of this study. My mother and father, for the values they imparted to me, added to the ethical overlay of the manuscript. Last but not least, Yoko, my wife, whose patience and understanding about my late night and weekend work in preparing this work, is due my gratitude for her constant support.