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HEARING

BEFORE THE

COMMITTEE ON CIVIL SERVICE

OF THE

COMMITTEE ON

POST OFFICE AND CIVIL SERVICE

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

H.R. 865

A BILL TO AMEND TITLE 5 OF THE UNITED STATES CODE TO CHANGE THE TITLE OF HEARING EXAMINERS TO ADMINISTRATIVE LAW JUDGE, TO PROVIDE THAT THE SALARY OF EACH SUCH OFFICIAL SHALL BE 90 PERCENT OF THE SALARY OF U.S. DISTRICT COURT JUDGES, AND FOR OTHER PURPOSES

JUNE 21, 1977

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(Lloyd A. Johnson, Subcommittee Staff Director, Room 406, Cannon Building—Ext. 59124)

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ADMINISTRATIVE LAW JUDGES

TUESDAY, JUNE 21, 1977

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON CIVIL SERVICE,
Washington, D.C.

The subcommittee met at 10 a.m. in room 311, Cannon House Office Building, Hon. William L. Clay (chairman of the subcommittee) presiding.

Mr. CLAY. This morning the Subcommittee on Civil Service will conduct public hearings on H.R. 865, a bill to change the title of hearing examiners to administrative law judges and to provide that their salary shall be 90 percent of the salaries of Federal district court judges.

There are about 830 hearing examiners employed in 28 agencies and departments within the executive branch. In accordance with the Administrative Procedure Act, administrative law judges function as part of their agency process and make determinations based upon their agencies' policies. The Civil Service Commission is responsible for the compensation of administrative law judges, independent of the agencies and departments.

Over and above the salary increase, enactment of this legislation would remove administrative law judges from the general schedule classification and pay system.

According to the Civil Service Commission, administrative law judges are classified at GS-15 and GS-16 with nine senior judges within the Social Security Administration of the Department of Health, Education, and Welfare in its coverage. Most of these employees are classified at GS-13 and GS-14.

The subcommittee has received considerable correspondence in support of this legislation from hearing examiners across the Nation. I believe that the importance of this legislation is such that it merits a public discussion of its provisions.

I am pleased to welcome as our first witness this morning, Hon. John Duncan of Tennessee who sponsored H.R. 865.

STATEMENT OF HON. JOHN JAMES DUNCAN, REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. DUNCAN. Thank you, Mr. Chairman.

First, I want to thank you for setting the hearings today on what I consider a very important issue and legislation that is long overdue.

H.R. 865 is a long overdue measure to achieve full recognition of the need to attract and retain the highest qualified persons to serve as members of the Federal administrative judiciary.

The proceedings over which these judges preside are broad in scope, infinitely varied and complex, and have tremendous social, economic, and political impact upon millions of Americans.

The need for adequate compensation to recruit and retain the highest qualified persons is as urgent in the case of these judges as it is for all Federal judges. Yet administrative law judges are the only Federal judges who are paid on the basis of a career pay ladder rather than an independent salary.

Moreover, these judges are separated by an inequitable disparity between GS-16 and GS-15. The bill before us today will eliminate the pay differential now imposed upon the judges; it will bring them under a uniform, equitable salary that will reduce inefficient and costly inter-agency transfers while increasing the ability of agencies to attract and retain the highest qualified candidates; and it will provide congressional recognition of the title which the Civil Service Commission has established for this position by regulation.

Our Nation is now on the threshold of the fourth decade of reliance on the Administrative Procedure Act—the “bill of rights” of administrative law. The Administrative Procedure Act was enacted in 1946 as the culmination of a process that reflected the increasing maturity and flexibility of the American system of government.

In the half century preceding the enactment of the APA, vast transformation took place in our governing process. As our industrial growth accelerated, and as our varying social programs evolved, there came adaptations in the governmental process.

Decisionmaking powers that traditionally had been the almost exclusive realm of courts and legislatures were given over, with increasing frequency and scope, to administrators—Government officials expert in their fields, but who could claim neither the independence of judicial office nor the mandate of elective office.

As new economic and social problems emerged, new laws were enacted and new agencies were given broad discretionary powers to interpret and enforce the laws in a new way under our constitution. As Justice Jackson observed 30 years ago:

The rise of administrative bodies probably has been the most significant legal trend of the last century and perhaps more values today are affected by their decisions than by those of all the courts * * *

By the mid-1930's, the new agencies which had evolved had come to be known as “a headless fourth branch of government,” a system moving away from effective control by the Congress, the President, and the courts.

The Administrative Procedure Act in 1946 put a halt to many abuses associated with that trend, while institutionalizing the many acknowledged benefits of the administrative process.

By articulating the many scattered rights and principles coming to be recognized in the American administrative process, the APA opened the door to the transformation of the administrative justice.

In the past three decades many new problems have arisen. But there has also been evolution, and a new maturity, in administrative law.

It is to one of these maturing developments that H.R. 865 is addressed. I believe that the time has come to recognize the maturity of one of the main concepts of the Administrative Procedure Act, and to ratify and insure the vitality of this advance in administrative law: I am referring to the unique institution of Federal administrative law judges.

The legislation before us today, Mr. Chairman, would recognize the unique status of administrative law judges within the Federal civil service system, by ratifying the judicial title the Civil Service Commission has accorded them by regulation, and by placing them in an appropriate judicial salary category. These actions recognize the essential identity of functions among judges in both the administrative and constitutional judicial systems of our country.

The unique status of administrative law judges within the Federal civil service system derives from the nature of their congressionally mandated qualification and appointment process, tenure, and judicial independence.

These distinguish administrative law judges from all other employees in the civil service system. The judges are qualified and selected for appointment on the basis of competitive merit examination.

Once appointed, they serve with specific statutory protections designed to insure their independence and judicial impartiality.

At present, there are 835 administrative law judges serving in 28 executive departments and regulatory agencies. They conduct hearings and issue the initial decisions in cases in which agency adjudication or rulemaking must be based upon the record after a trial type hearing.

The processes used in screening members of the bar for appointment as administrative law judges under the Administrative Procedure Act are stringent. The need for high standards in the selection process and insulation from political influence is clear from the fact that the administrative law judge position is the only unconditional career appointment in the executive departments and regulatory agencies.

Through a special Office of Administrative Law Judges in the Civil Service Commission, applicants undergo a thorough investigation of their character and professional qualifications, and extensive written and oral examinations to test their judicial capacity and fitness. In practice, only a small percentage of applicants are finally selected.

As judicial vacancies arise in the administrative law system, the names of qualified candidates are referred to the particular agency in order of their competitive scores.

The independence of the administrative law judge is further insured by the provision of the APA that a judge can be removed only for cause, as determined by the Civil Service Commission through an APA hearing.

In addition, the APA provides that a judge may withdraw from a case if he deems himself to be disqualified to consider a particular matter; ex parte communications with the judge are forbidden; agencies are required to assign cases to the judges on a rotational basis to the extent practicable; and agencies are not permitted to assign judges any matters inconsistent with their judicial functions. These safeguards for the merit selection and the independence of administrative

law judges are thus at the core of the APA's guarantees of due process for parties and interests appearing before Federal agencies.

In recognition of the unique judicial position of administrative law judges in the Federal agencies, their thorough screening for judicial qualifications by competitive examination, and the APA's special safeguards for their judicial independence and impartiality, the Civil Service Commission changed the title of APA hearing examiner to "administrative law judge" after thorough study of this question in public rulemaking proceedings in 1972. The bill before us today, Mr. Chairman, ratifies this administrative action by the Civil Service Commission and reinforces its implications that the public can properly rely on the judicial qualifications and independence of these officials.

Congress has already recognized the change in title. For example, section 4(a) of the Sunshine Act (5 U.S.C. and 557(d)(1)(A), (B), (C), and (D)), uses the title "administrative law judge" in place of the original title "hearing examiner."

The present bill completes congressional recognition of the Civil Service title classification by changing the old title to the new wherever "hearing examiner" appears in a statute referring to the APA judicial position.

The administrative law judges are presently classified and compensated under the general schedule of graduated pay grades, even though their position is obviously not suited to this career ladder concept.

These judges are the only career employees whose position is by law insulated from agency pay and job classifications, performance rating, and quality pay increase.

The reason for these exemptions is apparent. As judges they must not be subject to discretionary reward, or punishment, by the agencies which appear before them as parties.

Similarly, it is important that the salaries of these judges, like those of the other Federal judges be set by separate statute removed from concepts of agency promotions and performance ratings.

The administrative law judges are now classified at the GS-16 or GS-15 pay grade, depending upon the Civil Service Commission's "evaluation" of the level of the cases they handle.

This difference in compensation cannot be justified on any rational basis. Cases heard by social security judges, for example, involve many complex issues of medicine, disability, and labor economics, and involved an average actuarial value of over \$60,000—totaling \$18 million per judge per year—yet these judges are paid at GS-15, while judges hearing corporate cases are rated GS-16. All judges of course, must possess the same basic qualifications.

Mr. Chairman, it is time that Congress should recognize that the determination of human rights and individual claims is no less important and requires no less skill or care than the determination of the rights of powerful corporations.

On at least three occasions the Congress has required a pay grade of not less than GS-16 for administrative law judges in specified programs because of congressional rejection of a lower pay rating which the Civil Service Commission has found or would predictably find for such cases.

In these programs, the adjudication involved the safety, health, employment rights, and other benefits for workers under laws covering millions of industrial, coal mining, and farm employees, rather than determination of "corporate" issues which the Commission has traditionally rated as higher paying duties of administrative law judges.

These pay provisions for APA judges, which reflect congressional rejection of this type of pay disparity, appear in the Occupational Safety and Health Act of 1970; the 1972 Amendments to title IV of the Federal Coal Mine Health and Safety Act of 1969 (known as the Black Lung Benefits Act of 1972, Public Law 92-303); and the Farm Labor Contractor Registration Act Amendments of 1974 (H.R. 13342). The first two became law, and are law today. The third was passed by Congress but was vetoed by the President.

There is thus ample precedent for congressional rejection of inequitable pay evaluations for APA judges. I submit that in the adjudication of safety and health protection, employment rights, and other employee benefits which Congress finds to require an APA hearing, it must be clear that the individual Americans who depend on the justice of those hearings are entitled to no less than the same level of maturity and qualifications of the judge as that of judges who hear corporate cases.

Equal justice and fair treatment for all parties before the administrative agencies requires no less.

In addition, the inequitable pay differential is inefficient and costly to the taxpayer. Experience has shown that the costs and inefficiency involved in transferring GS-15 judges to fill GS-16 vacancies in other agencies and the consequent retraining of new judges more than offset the "savings" in the pay differential imposed among the judges. As concluded in a report of the Federal Administrative Law Judges Conference—FALJC—on this issue:

The separate pay classifications of the Administrative Law Judges creates needless competition and turnover among Judges who are drawn to higher paying judgeships in other agencies. Interagency transfers based solely, or primarily on pay considerations obviously work an adverse impact on the continuity of agency programs.

The FALJC has therefore recommended that the administrative law judges be removed from the general schedule of pay grades and placed under a separate uniform salary provision, set at 90 percent of the salary of U.S. district judges. The legislation before us today, Mr. Chairman, will accomplish these objectives, with which I am in complete accord.

This bill is essential to attract the highest qualified candidates for service as administrative law judges. The need for an adequate salary to recruit and retain the highest qualified judges is as urgent in the case of the Federal administrative judiciary as it is for all Federal judges.

Another major reason for my introduction of this measure is that I believe in the separation of powers, a doctrine upon which our form of government is grounded. Administrative law judges are now paid under the career ladder provisions of the general schedule, which governs the pay of hundreds of thousands of employees in the executive departments and regulatory agencies.

Because of these common pay provisions, agency administrators tend to view the administrative law judge as "just another Government employee." and to equate his adjudicatory function with wholly different work of other Government employees.

All this is alien to the doctrine of separation of powers and tends in practice to impair the independence of the adjudicatory function of the administrative law judge.

The dollar cost of this pay measure is modest compared to the benefits to be achieved. Rather than a 45-percent increase for GS-15 judges, and a 24-percent increase for GS-16 judges, as projected by the Civil Service Commission, the pay increase will be far less.

The real increase is the difference between a salary of \$49,050 (that is 90 percent of the salary of district judges) and the average pay of APA judges, which is approximately \$41,967.¹

The increase of \$49,050 is thus about \$7,083 or 16.9 percent, and after subtracting the general pay increase of 6.5 percent that is scheduled to be applied to GS employees October 1, 1977, the net increase to implement H.R. 865 is 10.4 percent.

Confusion as to cost has also been raised by the Commission's projection that H.R. 865 would apply the pay increase to 195 GS-14 temporary administrative law judges in HEW. This is neither the intent nor the effect of this bill, which is confined to the GS-15 and GS-16 administrative law judges (and their GS-17 chief judges who have been appointed under the Civil Service Commission's merit examination for judges pursuant to section 11 of the Administrative Procedure Act (5 U.S.C. 3105)). In order to make this intent especially clear, I wish to offer the following clarifying amendment to H.R. 865:

At the end of line 2, page 2, strike the quotation marks and add the following language, "This section applies only to the existing classes of GS-15, GS-16, and GS-17 administrative law judges (including chief administrative law judges) who have been classified as administrative law judges by merit examination of the Civil Service Commission pursuant to section 3105 of this title, and to such persons as the Commission may hereafter classify as administrative law judges by merit examination under section 3105 of this title."

For all of the above reasons, I have introduced this legislation which will give proper recognition and pay to Federal administrative law judges.

By establishing a continuing salary relationship between such judges and those of the U.S. District Courts, the bill formally recognizes the essential kinship between the administrative judiciary and other Federal judicial posts.

It also will achieve an equitable uniform salary for administrative law judges.

Finally, let me stress the fact that this move to give proper recognition to our administrative judiciary will promote greater acceptability

¹The combined average is arrived at as follows: There are 486 GS-15 judges, 340 GS-16 judges, and 9 GS-17 judges. This is a ratio of about 3 GS-15 judges to 2.2 GS-16 judges (including the GS-17's). Inquiries of representative agencies indicate that the average pay of GS-15 judges is about step 6, or \$39,419; the average pay of GS-16 judges is about step 5.4, or \$45,441. By combining the two salaries at the ratio of 3 to 2.2, the average salary of all judges is \$41,967.

of their decisions and thereby prevent further aggravation of the heavy dockets in the Federal courts.

Mr. Chairman and members of the subcommittee, thank you very much for this opportunity to present my views on this important matter.

Mr. Chairman, thank you very much for the opportunity to present my views.

Mr. CLAY. Thank you, Congressman.

You made a very compelling argument for adoption of the bill.

I have a few questions I would like to ask.

Some argue—the Civil Service Commission in particular—that administrative law judges are in some 26 agencies, and that their duties and responsibilities vary from agency to agency. In the Civil Service Commission report to us on the bill, they say that if we established a fixed salary outside of their domain, that would be weakening the principle of equal pay for equal work, because all the judges don't do the same kind of work.

How would you respond to that argument?

Mr. DUNCAN. I think, in sum and substance, they don't do the same particular kind of work.

We are more familiar, as Members of Congress, with the social security trial judges than perhaps any others.

We come in contact with them on frequent occasions. But I think the responsibilities are equal.

I think, for example, a civil service trial judge might be dealing with employment rights of an individual, but I think the responsibility is just as great, and to say that they have different duties—they do—but I think that person that they are dealing with in a hearing is just as important as a social security prospective recipient for one that is holding the social security hearing on black lung benefits.

I think we have people here from the Civil Service Commission, in fact all the agencies this morning, I think they will be glad to go into that, if you don't mind, Mr. Chairman.

Mr. CLAY. I note at the end of your statement you are proposing an amendment to strike the GS-13's and GS-14's?

Mr. DUNCAN. GS-15's and GS-16's. It clarifies it.

Mr. CLAY. In other words, the amendment will strike the Social Security Administration employees?

Mr. DUNCAN. Yes, Mr. Chairman.

Mr. CLAY. What is the reason for that?

Mr. DUNCAN. It is only those that are classified now as the hearing examiners. Maybe I could have someone answer that for me. It would strike only the temporary. It keeps the permanent and strikes the temporaries.

Mr. CLAY. Would it strike all the GS-13's and GS-14's in the Social Security Administration?

Mr. DUNCAN. Yes, sir.

Mr. CLAY. I have no further questions.

Mr. DUNCAN. Mr. Chairman, I do thank you for your patience. If I may leave, I have a committee.

Mr. CLAY. We certainly appreciate your testifying.

The next witness is Mr. Curtis Wagner, Federal Administrative Law Judges Conference.

STATEMENT OF CURTIS L. WAGNER, JR., CHAIRMAN OF THE COMMITTEE ON STATUS AND COMPENSATION, THE FEDERAL ADMINISTRATIVE LAW JUDGES CONFERENCE; ACCOMPANIED BY NAHUM LITT, PRESIDENT, AND WILLIAM FAUVER, CHAIRMAN, LEGISLATIVE COMMITTEE AND FORMER PRESIDENT

Mr. WAGNER. Mr. Chairman, I am Curtis L. Wagner, Jr. I am accompanied this morning by Judge Nahum Litt, President of the Federal Administrative Law Judges Conference, on my right, and by Judge William Fauver, who is chairman of our legislative committee and former president of the Federal Administrative Law Judges Conferences.

As I pointed out in my statement, I am, and for sometime have been an administrative law judge at the Federal Power Commission. Prior to that I spent 20 years appearing before the various Federal and State regulatory agencies pleading the case of the Federal Government, as a consumer.

I have been designated as the spokesman for the 500 members of the Federal Administrative Law Judges Conference in support of H.R. 865.

H.R. 865 does two things. It amends various statutory provisions by substituting the currently used title "administrative law judge" for the obsolete term "hearing examiner," and it fixes the salaries for administrative law judges at 90 percent of the salaries of U.S. district judges.

Federal Administrative Law Judges are now known by that title and have been since August 19, 1972, when the Civil Service Commission, following a duly authorized rulemaking proceeding, retitled the position "hearing examiner" as "administrative law judge."

This is set forth in 5 CFR Part 930.

This bill merely codifies the existing state of affairs and removes the possibility of confusion that results from the survival in some statutory provisions of a designation which is no longer used in practice.

Due to evolution in the responsibilities and duties, I believe, and our Conference believes, that administrative law judge is a far more accurate description of the functions performed than is the term "hearing examiner," which, to a lot of people is very confusing and they do not understand what it means.

The use of the title "judge" rather than "examiner" has had several salutary effects.

I know, personally, of several highly qualified judges who would not have taken the job under another title. I, myself, would not have done so, since there was absolutely no salary increase resulting. As a matter of fact, when I left my policy job as chief of regulatory law, I had to give up the "perks" that went along with that job—such as a parking place—to take the title "judge," and I felt that by going to the Federal Power Commission, or such other agencies as I might be assigned to from time to time, I would be providing a public service.

This change in positions is something that I would not have considered, had the title "judge" not been conferred.

No doubt there are many similar situations of which I am not personally informed. The use of the title "judge" has had a very positive effect in improving the quality of those conducting administrative hearings. It has also been said that conferring the title "judge," with its connotations of fairness and impartiality, formality, and standards of expected judicial conduct, tends to make the judge try to live up to the title in these respects.

This has been evident to me over and over again, in the literally hundreds of times I appeared before administrative law judges before assuming the title myself. There was an immediate difference in the conduct, poise, and dignity of the individual, once his title was changed.

Many judges have commented that there has been a noticeable improvement in the attitude of counsel and parties in hearings, since the title "judge" was conferred.

And I personally know that there has been a very wide acceptance of the title by the bar.

As Cardozo once said, "Men are ruled by a tyranny of labels."

The title "judge" adds great weight to suggestions made by the judge during the hearing that might result in the settlement of the case or getting the parties together, which will reduce the amount of time spent in a hearing room and, accordingly, reduce the cost to the taxpayer and to the litigants.

The statements contained in my written statement with regard to settlement, apply to the major contested cases, where the best attorneys in the country represent major corporations or large groups of independent persons. There are cases which may involve hundreds of millions or even tens of billions of dollars, the life or death of particular industries, and the jobs of thousands upon thousands of people.

At the same time, there are other cases where people appear without counsel to ask that some environmental problem or question be taken care of, or a job interest vitally important to them be protected. These are matters where someone comes before the judge with no adversary or counsel present and no one from the agency other than the judge, whose whole life's income may be involved or maybe determined at the time. The judge in these cases is the face of the agency. He is the point of contact with the public. The title, "judge," not only confirms the dignity of the proceeding, but it has the connotation of fairness and impartiality, and it is conducive to convincing the person involved that he or she has had a fair hearing.

The term "judge" gives a public perception of due process.

In many, many matters, as I point out in detail in my statement, the decision of the administrative law judge is final.

This is a final agency determination—and I set forth a schedule that I am not going to bore you with by reading this morning—which shows the number of times that administrative law judge opinions have been affirmed, which means they are the final, ultimate agency decision, and the times they have been reversed or modified.

Now, even where the judges' decisions are reversed by the agencies, at least in my experience at the Federal Power Commission, the courts, in the majority of these cases, have reversed the agency and agreed

with the judge. In my prepared statement, I set forth the examples of these cases.

With your indulgence, Mr. Chairman, I would like to read a couple of sentences from one of these cases.

It is the case of *Michigan Power Plant Co. v. Federal Power Commission*, and it is Case No. 74-1450 of the U.S. Court of Appeals for the District of Columbia Circuit, which was decided on September 29, 1975.

Judge Tamm, in that decision, said at page 1909 of the slip opinion, and I quote:

Our review of the hearing, the evidence, the administrative judge's repeated and incisive questioning of the witnesses and the initial decision itself leaves us with the clear impression that the AL judge's decision resulted from a most studious and comprehensive analysis of the relevant data and Commission pronouncement. Unfortunately, we cannot say the same for the Commission's decision to which we now turn.

The great interest in many administrative proceedings is shown by the hundreds of people and numerous lawyers who may be present in a major proceeding and the great numbers of persons who wish to be heard, when the issue is maybe whether a dam should flood a farm area, whether an industrial plant should be closed, or whether irrigation farmers should receive natural gas to run their pumps rather than some other industry.

If I might digress again, in one hearing that I held in Lubbock, Tex., concerning allocation of natural gas, I had 1,487 persons present in the hearing room who had a direct interest in the case. These were primarily irrigation farmers, who provide the food and fiber that not only meet our balance of payments, but feed most of our people.

These are important cases. They are of vital interest to the public. For these reasons, many impressive names have endorsed the use of title "administrative law judges."

At the hearings held by the Administrative Conference a few years back, some of the persons who endorsed this title were Tom C. Clark, former Attorney General of the United States and Associate Justice of the Supreme Court; Earl Kintner, former Chairman of the Federal Trade Commission and past president of the Federal Bar Association; Lee C. White, former Chairman of the Federal Power Commission; and Bernard Segal, past president of the American Bar Association.

To sum up, there is general acceptance of the title of administrative law judge as properly descriptive of the job's duties and responsibilities.

The Civil Service Commission's decision to establish that title has been proven by experience to have been a wise decision, and it has had very beneficial effects.

The title should be incorporated into the various statutory provisions to accord with present usage and practice.

I will now briefly turn to the pay provision of H.R. 865.

At the outset, I would like to point out that the proposal will be of very little benefit to me, personally, nor to most other judges in the major regulatory agencies. My present salary is at \$47,500 and the

proposed increase to \$49,050, after reducing it by taxes and retirement deductions, would be well under \$1,000.

After the expected 6½ percent increase in October of this year very few GS-16 judges will benefit monetarily to any greater extent than I will, should H.R. 865's salary provisions be enacted.

However, there would be a tremendous psychological benefit by placing administrative law judges under the judicial pay scale. All I have said before concerning the proposed name change applies equally with regard to the pay provisions of the bill.

We believe the administrative law judges should be compensated on a flat salary basis with salary not subject to step adjustments, as are Government attorneys.

The step adjustments are not fully applied to administrative law judges today. For instance, an administrative law judge cannot be denied a step increase because of poor work nor can he be granted an additional step increase on the ground of merit. This is to preserve the judge's independence from agency or departmental control. A lawyer, however, can be either denied a step increase, or he can be rewarded with a merit increase. And he is directly subject to agency or department control. He can be removed from his job for incompetence, a judge cannot. His actions can and usually are directed by his agency or department. A judge is neither nor can be. A judge has career tenure, and a lawyer has not. These differences were prescribed by the Congress in the Administrative Procedure Act to insure the independence of judges from agencies or department control and the fairness of hearings involving the agency or department attorneys.

We do not quarrel with the Civil Service Commission statement that some lawyers may have work of equal or greater complexity or importance than some judges. A brief writer may have as difficult or important work as a decider. The work, however, is of a different nature. The brief writer is writing a paper or a document to convince the judge to hold his way. The judge will decide the case.

That some attorneys' work is equally judicial in nature may also be true, but the difference lies in the independence of the judge as compared with a lawyer under the control or direct supervision of his agency or department. The Congress has recognized this in enacting the Administrative Procedure Act, which did not find independence necessary to jobs other than those of administrative law judges.

The Executive Committee of the Federal Administrative Judges Conference adopted a resolution specifically calling for all judges to be paid at the same level and at the same standard. The Executive Committee specifically rejected proposals that would seek independent Civil Service Commission action upgrading the position to grade 17 or 18, or simply abolishing existing in-grade structure. These were considered as not suitable for the determination of compensation for those performing actual judicial functions, basically independent of agency control under the Administrative Procedure Act. Consequently, while considering the merits of these ideas, which have been proffered as partial response to a clear and existing problem, the executive committee of our conference adopted an approach which would tie administrative law judges to the other existing Federal judiciary as the best answer to both the short and long term.

Mr. Chairman, I request that my full prepared statement be placed in the record of these hearings and this will conclude my statement.

I will be glad to answer any questions you might have, and, again, I want to express the sincere appreciation of the Federal Administrative Law Judges Conference for the opportunity to appear and express our views on H.R. 865 today.

Mr. CLAY. Thank you.

Without objection, the entire statement will be included in the record.

Mr. WAGNER. Thank you.

[The statement follows:]

PREPARED STATEMENT OF CURTIS L. WAGNER, JR.

My name is Curtis L. Wagner, Jr. I am, and have been since September 8, 1974, an Administrative Law Judge at the Federal Power Commission. Prior to my appointment as an Administrative Law Judge I spent some 20 years representing the Federal Government in energy, communications, and transportation cases before the Federal and State Courts and the various Federal and State administrative agencies and regulatory tribunals while serving as a trial attorney at the Department of Justice and as the Special Assistant to the Judge Advocate General for Communications, Transportation, and Utilities and Chief of the Regulatory Law Division, Department of the Army. For your information, I have attached a biographical sketch as Appendix A.

I have been designated as the spokesman for the 500 members of the Federal Administrative Law Judges Conference on H.R. 865 in support of the Bill.

H.R. 865 does two things: It amends various statutory provisions by substituting the currently used title "administrative law judge" for the obsolete term "hearing examiner," and fixes salaries for administrative law judges at 90 percent of the salaries of District Court judges.

Federal administrative law judges are now known by that title, and have been since August 19, 1972, when the Civil Service Commission following a duly authorized rulemaking proceeding retitled the position "hearing examiner" to "administrative law judge" (5 CFR Part 930). This Bill will codify the existing state of affairs, and will remove the possibility of confusion resulting from the survival in some statutory provisions of a designation no longer used in practice. Due to evolution in the responsibilities and duties, "administrative law judge" is more accurately descriptive of the function performed than is the term "hearing examiner."

The use of the title "judge" rather than "examiner" has had several salutary effects. I know personally of several highly qualified judges who would not have taken the job under another title. I myself would not have done so, since there was no salary increase resulting. No doubt there are many similar situations of which I am not personally informed. The use of the title "judge" has had a positive, if immeasurable, effect in improving the quality of those conducting administrative hearings. It has also been said that conferring the title "judge," with its connotations of fairness, impartiality, formality, and standards of expected judicial conduct tends to make the judge try to live up to the title in all these respects.

Many judges have commented that there has been a noticeable improvement in the attitude of counsel and parties in hearings since the title "judge" was conferred, and there has now been wide acceptance by the Bar in general of the title as properly descriptive of the position. As Cardozo said, "Men are ruled by a tyranny of labels." The title "judge" has been conducive to respect for the one conducting the hearing. This aids in maintaining decorum in the hearing. It adds weight to suggestions by the judge which may result in settlement of cases, thus reducing the administrative caseload and resolving matters without delay and with great reduction in expense to both the taxpayers and the parties. It also is of assistance in getting participants to accept a judge's suggestions for expediting proceedings which cannot be settled.

These statements as to settlement and expedition apply mainly to major contested cases, where the best attorneys in the country represent major corporations or large groups of interested persons, cases which may involve hun-

dreds of millions or even tens of billions of dollars, the life or death of particular industries, the loss or creation of thousands of jobs. There are other cases where people may appear without counsel to ask that some environmental or job interest vitally important to them should be protected. There are matters where someone comes before the judge with no adversary or counsel present, and no one from the agency other than the judge, with whole life's income of the person involved is to be determined. The judge, in these cases is the face of the agency, the point of contact with the public. The title of "judge" not only confirms the dignity of the proceeding, but it has the connotations of fairness and impartiality conducive to convincing the person involved that he or she has had a fair hearing.

Most often, in these matters, the decision of the administrative law judge is, in practice, final. In the adversary proceedings, in which appeals to the agency, the department and ultimately the courts, the administrative law judges' rulings on evidence, data collection, and the like will largely determine the shape and scope of the proceeding, and the record which others will have available. The great majority of judges' decisions are not revised, even where appeals are readily available and widely used. The following statistics furnished by various agencies and departments for 12-month periods ending in 1976 indicate how seldom departments or agencies reverse administrative law judges:

PERCENTAGE OF ADMINISTRATIVE LAW JUDGE'S DECISIONS LEFT UNCHANGED, REVERSED OR SIGNIFICANTLY MODIFIED

[These statistics were supplied by individual agencies and departments. Each reflects 1 full 12-mo period ending in 1976. Not all agencies used the same 12-mo period]

	Aff'd or unchanged by agency	Rvs'd by agency	Significantly modified
FPC.....	93	3	4
SEC.....	90	5	5
Agriculture.....	80	20	50
CFTC.....	50		50
FTC.....	80	10	10
FDA.....	100		
Interior.....	47	25	28
ICC.....	87	13	
US ITC.....	90	5	5
DEA.....	85	5	10
Labor.....			
Maritime Administration.....	40	20	40
OSHR.....	86	14	
Postal Service.....	95	2	3
SSA.....	80	10	10
Coast Guard.....	88	7	5
NTSB.....	80	5	15
Bureau of Alcohol, Tobacco and Firearms.....	100		
Civil Service.....	95	2	3
USCPSC.....	60	0	40

¹ Based only on 1 decision.

Note: Data not received for NLRB, CAB, EPA, FCC, NRC, and Federal Maritime Commission.

Even where judges are reversed by an agency, at least from the experience at the Federal Power Commission, the courts in the majority of cases reverse the agency and agree with the judge. Examples are:

1. *Vreeland v. Federal Power Commission*, 528 F. 2d 1343 (5th Cir. 1976)
2. *Michigan Wisconsin Pipe Line Company v. Federal Power Commission*, 520 F. 2d 84 (D.C. Cir. 1975)
3. *Memphis Light, Gas and Water Division v. Federal Power Commission*, 504 F. 2d 225 (D.C. Cir. 1974)
4. *Transcontinental Gas Pipe Line Corporation v. Federal Power Commission*, 488 F. 2d 1325 (D.C. Cir. 1973)
5. See also *Planning Research Corporation v. Federal Power Commission* (D.C. Cir. Slip Op., March 10, 1977), not involving an appeal from the Commission, but indicating approval of the judge's decision as opposed to the Commission's.

The great interest in many administrative proceedings is shown by the hundreds of lawyers who may be present in major proceedings, and the great number of persons who wish to be heard when the issues may be whether a dam should

flood a farm area, or whether an industrial plant should be closed, or a ruling made that affects millions of people in their consumption of accustomed goods. The public's perception of the proceedings has much to do with its confidence in government—or the lack of confidence.

For these reasons, impressive names have endorsed the use of the title "administrative law judge." Some are:

Tom C. Clark, former Attorney General of the U.S. and Associate Justice of the Supreme Court.

Earl Kintner, former Chairman FTC, past president, Federal Bar Association.

Lee C. White, former Chairman FPC.

Bernard Segal, past president ABA.

To sum up, there is general acceptance of the title of administrative law judge as properly descriptive of the job's duties and responsibilities. The Civil Service Commission's decision to establish that title has been proven by experience to have been wise, and has had beneficial effects. The title should be incorporated in the various statutory provisions to accord with present usage.

I will now turn to the pay provision of H.R. 865. At the outset I would like to point out that the proposal will be of very little benefit to me personally nor to most other judges in the major regulatory agencies; my present salary is \$47,500 and the proposed increase to \$49,050 would be reduced by taxes to a net of well under \$1,000. After the expected 6½ percent increase in October 1977, very few GS-16 judges will benefit monetarily to any greater extent should H.R. 865's salary provisions be enacted. However, there would be a tremendous psychological benefit by placing administrative law judges under the judicial pay schedule. All I have said before concerning the proposed name change applies equally here.

We believe administrative law judges should be compensated on a flat salary basis, with salary not subject to step adjustments as are government attorneys. The step adjustments are not fully applied to the judges now—a judge cannot be denied a step increase because of poor work, nor granted an additional step increase on the grounds of merit. This is to preserve the judge's independence from agency or department control. A lawyer, however, can be either denied a step increase or granted a merit increase. He is directly subject to agency or department control. He can be removed from his job for incompetence; a judge cannot. His actions can and usually are directed by his agency or department; a judge's neither are or can be. A judge has career tenure; a lawyer has not. These differences were prescribed by Congress in the Administrative Procedure Act to ensure the independence of judges from agency or department control and the fairness of hearings involving the agency or department attorney.

We do not quarrel with the Civil Service Commission statement that some lawyers may have work of equal or greater complexity or importance than some judges. A brief writer may have as difficult or important work as a decider. The work, however, is of different nature. That some attorney's work is equally judicial in nature may also be true, but the difference lies in the independence of the judge as compared with a lawyer under the control of his agency or department. Congress has recognized this in its enactment of the APA, which did not find independence necessary to jobs other than those of administrative law judges.

This difference has sometimes been overlooked or not understood. The Interior Department's attempted reprimand of Judge Kennedy, acquiesced in by the Civil Service Commission but ruled illegal by the Attorney General, is an example of an improper department attempt to control a judge despite the APA prohibitions. It appears that the Civil Service Commission makes no distinction between judges and lawyers. The line to be drawn has been drawn by Congress in the APA, and should be recognized here. Judges' salaries should not be subject to step increases, and should be fixed by comparison with other independent judicial officers, not other non-judicial legal officers or those who are not independent.

The Executive Committee of the Federal Administrative Law Judges' Conference adopted a resolution specifically calling for all judges to be paid at the same level and at the same standard. The Executive Committee specifically rejected proposals that would seek independent Civil Service action up-grading the positions or simply abolishing the existing in-grade structure. These were considered as not suitable for the determination of compensation for those performing an essential judicial function basically independent of agency control.

under the Administrative Procedure Act. Consequently, while recognizing the merits of those ideas which have been proffered as partial responses to a clear and existing problem, the Executive Committee of the Conference adopted an approach which would tie administrative law judges to the other existing Federal judiciary as the best answer to both the short and long term.

This concludes my prepared statement. Again, I want to express the appreciation of the Federal Administrative Law Judges' Conference for the opportunity to appear and express our views on H.R. 865.

BIOGRAPHICAL SKETCH OF JUDGE CURTIS L. WAGNER, JR.

PERSONAL DATA

Born on 8 November 1928, in Kingsport, Sullivan County, Tennessee. Married to Jeanne E. Wagner. Two sons, Curtis L., III, and Rex A.

Graduated from the University of Tennessee College of Law in December 1951, with LL.B. Degree, fifth in graduating class and winner of C. M. Preston Memorial Award for draftsmanship of wills and trusts. Admitted to the Bar of the State of Tennessee on 31 March 1952. Prior to entering law school completed two years at Tennessee Polytechnic Institute.

Member of Lincolnia United Methodist Church. Past Chairman of Administrative Board.

Past District Commissioner National Capital Area Council, Boy Scouts of America. Holds the Scouter's Training Award, the Scoutmaster's Key, the Commissioner's Key, the Commissioner's Arrowhead Honor, is a member of the Order of the Arrow, and was awarded the Silver Beaver on 24 May 1969.

Member of the Northern Virginia Power Squadron and of the United States Power Squadrons.

Member of Selby Bay Yacht Club. Is a member of the Board of Directors, Immediate Past Commodore.

Member of the Board of Governors of Newport Condominium.

Member of the American Bar Association, and the Judicial Administration Division. Chairman of the Committee on Status and Compensation and a member of the Internal Liaison and Coordinating Committee.

Member of the Federal Administrative Law Judges Conference. Chairman of Status and Compensation Committee and member of Legislative Committee.

PROFESSIONAL DATA

Since September 8, 1974 has been serving as an Administrative Law Judge at the Federal Power Commission conducting formal on-the-record hearings and issuing decisions on electric and natural gas cases.

From 16 May 1960 to September 17, 1974, was employed by the Office of The Judge Advocate General, Department of the Army, where served as Special assistant to The Judge Advocate General for Communications, Transportation, and Utilities and Chief of Regulatory Law Division. Duties consisted of the trial of communications, transportation, utilities, energy, and environmental cases before Federal and State regulatory tribunals, administrative agencies, and courts; serving in a consultant capacity to The Judge Advocate General and various agencies of the Department of Defense and the military departments on communications, transportation, public utility, energy, and environmental matters; effecting direct liaison with all government agencies both inside and outside the Department of Defense concerned with communications, transportation, energy, and public utilities, including advising and assisting the Department of Justice in the handling of cases; and supervising the attorneys and operations of the Regulatory Law Division. Served on the Civilian Lawyer Career Committee, as Chairman of the OTJAG Incentive Awards Committee and on the Army Staff Awards Board. Was a member of the Army Environmental Policy Council. Received a Citation for Outstanding Performance of Duty each year from November 1961 thru 1974. Received the Decoration for Meritorious Civilian Service on 12 September 1966 and the Army's highest civilian award, the Decoration for Exceptional Civilian Service on 23 May 1975. Was the Secretary of the Army's nominee for the Arthur S. Fleming Award in 1966, and the Secretary of the Army's nominee for the Tom C. Clark Award in 1968.

From 2 August 1954 to 15 May 1960, was employed as a trial attorney by the United States Department of Justice in Washington, D.C. During the period 16 January 1956 to 15 May 1960, was assigned to the Court of Claims Section, Civil Division, where duties included representing the United States Government in rail, motor, and air carrier cases before the United States Court of Claims and in Interstate Commerce Commission proceedings.

From 2 August 1954 until 15 January 1956, was assigned to the General Crimes and the Fraud Section of the Criminal Division, Department of Justice. Duties consisted of supervising the handling of cases by the United States Attorneys; rendering advice and counsel in grand jury proceedings, in the preparation of indictments, and in the trial of cases; holding conferences with various government agencies concerning criminal prosecutions; reviewing proposed legislation and making comments and recommendations concerning such legislation; and drafting legal memoranda. While in the Criminal Division was appointed Special Assistant to the United States Attorney for the District of Columbia in which capacity presented several cases to Federal Grand Juries and participated in the trial of a variety of criminal cases.

From October 1951 until 31 July 1954, was associated with the law firm of Kramer, Dye, McNabb and Greenwood in Knoxville, Tennessee. Duties with this firm included legal research, preparation for trial, interviewing witnesses, the trial of cases, briefing, drafting legal instruments, title work, etc. The duties performed while in this firm were not concentrated in any one field, but were very broad, covering practically every area of law.

While in law school was employed as assistant law librarian and performed considerable legal research.

Mr. CLAY. Just for the record, on page 8 you say the judge's salary should not be subject to step increases, rather it should be fixed by comparison with other independent judicial officers. But I don't see anywhere in your statement what that salary should be.

I assume that you are saying it should be 90 percent.

Mr. WAGNER. That was the suggested salary, Mr. Chairman, that it should be 90 percent of the pay of district judges which is roughly the current ratio of top of the scale to the current salary of district judges. GS-16's I would assume that in later years our salaries would be set by the quadrennial pay commission which is called the Commission on Congressional, Executive, and Judicial Salaries.

Mr. CLAY. That Commission is under heavy attack.

Mr. WAGNER. That is correct. That is the reason I omitted their name.

Mr. CLAY. I assume that you agree with the 90-percent recommendation.

Mr. WAGNER. That is correct, sir.

Mr. CLAY. On page 5 you stated that you would not go into the chart dealing with the percentage of administrative law judges decisions. Of course there are several obvious things in here that I would like to ask you about.

For instance, in Agriculture the affirmed or unchanged opinions or decisions were 80. Reversed 20, and then significantly modified, 60, and the same is true for the Maritime Administration.

What is USCPS?

Mr. WAGNER. U.S. Consumer Products Safety Commission.

Mr. CLAY. Why have there been such a great number of cases significantly modified?

Mr. WAGNER. With regard to those agencies I cannot personally give you an answer, Mr. Chairman.

My figures were obtained from a questionnaire sent to all agencies. I do not really know the reason for the higher percentage of reversals or modifications there than with others.

Mr. CLAY. So these aren't cases, this is a percentage.

Mr. WAGNER. That is correct.

Mr. CLAY. Under the provisions of H.R. 865 as introduced hearing officers within the Social Security Division of HEW now classified as 13's and 14's would be covered.

However, the sponsor of the bill, Mr. Duncan, proposes to exclude them from the bill's coverage. What is your position?

Mr. WAGNER. I and the conference wholeheartedly support Congressman Duncan's amendment; 13 and 14 are temporary positions. They are not people that have met the rigid standards established by the Civil Service Commission.

Mr. CLAY. Would you care to comment on the question I posed to Representative Duncan in terms of weakening the principle of equal pay for equal work?

Mr. WAGNER. I would be delighted, Mr. Chairman, to comment on it. The equal pay for equal work is a statement that is hard to apply to a judge or a judicial officer. A judge in a court, U.S. District Court hears very difficult cases and he hears some cases that are not so difficult.

One of the problems that we are faced with it whether the rich should have their case decided by better qualified, better experienced judges than the poor. It is somewhat a social question.

At the same time there is no doubt that the work of the administrative law judge in a major regulatory agency is significantly more difficult than the work of a law judge hearing a social security case.

On the other hand, as I meant to indicate earlier, if I didn't, the importance of the social security claimant's case to the social security claimant is just as great as the importance of General Motors Corp. claim for additional natural gas to dry its automobile bodies is to it. But there is no doubt that there is a great degree of difference in the difficulty of the work.

As Congressman Duncan pointed out, cases heard by social security judges quite often involved issues of medicine, and disability. They involve actuarial values of great sums of money.

From my own personal experience at the Department of Justice in the court of claims section, where I tried primarily utility and transportation cases I was, from time to time, assigned what we call a pay case, which was somebody's disability or somebody's retirement pay claim, and I found those cases to be just as difficult to prepare and to try as were the utility cases.

The social security cases may not take as much time or be as long, but this part is made up for by the fact that the social security judge, for example, may hear an average of 25 or 30 cases a month and decide 25 or 30 cases a month, while the major regulatory agency judge may hear no more than 8 or 9 cases a year on the average. I might even point out that my colleague, Judge Litt, who is with me at the counsel table today has just finished a major case, the *El Paso-Alaska Pipeline* case which took over a year, and he only heard 1 case in a year whereas the social security judge was hearing 25 to 30 claims a month.

So it is very hard to equate the difficulty in the job. Again, it comes back to the question of whether the big corporations should have a more experienced, better qualified, higher paid individual to hear and decide its problems than the social security claimant who, most of the time, is a poor person, who is not even represented by counsel. That is another difference.

It is much easier to decide a case where you have competent counsel, with well-prepared cases than it is to decide a case where no counsel are present, and the judge himself must question the witness and assume the status of being the judge, prosecutor, and jury, so to speak, rather than just the judge.

Mr. CLAY. If you contend that there are to be equal counsel on both sides then why would you be willing to exclude the hearing officers of the Social Security Administration?

Mr. WAGNER. Only the temporary hearing officers, Mr. Chairman, grade 13's and 14's. The reason being is the same reason I have just pointed out, the grade 15 and 16 administrative law judges have all gone through a qualification process that is extremely trying. As a matter of fact, the process is so difficult, so time consuming, and so involved that many people will just not make the effort to go through it. The application form itself, for instance, must cover 7 years of actual trial experience, and you must show some hours, 400 hours, I believe it is, the people from the Civil Service Commission who are going to follow me can give you the exact number—400 hours of actual administrative law trial practice to show that you know the procedures and the hearing requirements. You don't just say you have had that much practice, you have to prove it. You have to submit briefs, you have to submit the names of counsel, your application must contain at least 25 names of people who were involved in your hearings whether they are adversary to you or not.

If you get by the first step, the application approved by the Civil Service Commission, then you are entitled to enter into the writing demonstration. In the writing demonstration you go to the Civil Service Commission or one of its appeal officers, you are given a statement of facts and all of the law and the statutes and the regulations, and within a set time period you must write a decision based on the facts and statutes and cases that are given you. You are monitored during this writing demonstration at all times. I believe 6 hours is the time period, under the strict supervision of a monitor.

Then if you pass the writing demonstration, you show that you have an ability to write a decision, you are then scheduled for the oral interview. At the oral interview a representative of the Civil Service Commission, a chief administrative law judge and a representative of the American Bar Association question you and they determine your fitness and your ability to be an administrative law judge.

The administrative law judge's qualifications are so stringent that I submit, Mr. Chairman, most U.S. district court judges could not qualify.

Mr. CLAY. Thank you.

Mr. Lott?

Mr. LOTT. Thank you very much, Mr. Chairman.

First of all, we would like to thank you gentlemen for coming here and presenting your statement on behalf of H.R. 865. I find it very interesting and I apologize for missing part of your statement, therefore I may ask you some questions that would ask you to repeat something you covered in your formal statement, so please bear with me.

Is it a requirement that administrative law judges be members of the bar? I take it from what you are saying that is a requirement.

Mr. WAGNER. Yes, sir, An administrative law judge must not only be a member of the bar in good standing, but he must have actually practiced law for a minimum period of 7 years. Now, during that 7-year period his work must have been trial work. If he received experience before the 7-year period and then he became a paper pusher, as some attorneys refer to themselves, during the 7-year period he is not qualified to be an administrative law judge, although he may have been doing complex work.

Mr. LOTT. Were some grandfathered in 1972?

Mr. WAGNER. There were no nonlawyers in 1972. I believe in early years, when hearing examiners were given a different status and again our friends from the Civil Service Commission will appear later and can correct me if I am wrong, there were some nonlawyers, but these were people who were admitted to the bar. They were people who were admitted to the bar prior to the current standards.

But to my knowledge this is almost a nonexistent if not a total nonexistent situation today.

Mr. LOTT. In your statement, on the first page, you state there are really two things that are done in this bill. One is to change the title, of course, from hearing examiner to administrative law judge. Are there any real differences between hearing examiners and administrative law judges?

Your statement regarding the 13's and 14's as opposed to the 15's and 16's is there any other differences or is it just a matter of a title.

Mr. WAGNER. The possibility of confusion is the reason that we think the Administrative Procedure Act and those other acts which used the term hearing examiner should be amended to use the term administrative law judge.

The term administrative law judge was adopted by the Civil Service Commission in 1972 following hearings held under the rulemaking portions of their regulations and the Administrative Procedure Act to change the title "hearing examiner" to "administrative law judge" and the title "hearing examiner" and "administrative law judge" today are synonymous.

Now, the grade 13 and 14 people referred to, which Congressman Duncan is proposing to amend H.R. 865 to eliminate, are people who were not and are currently not qualified as hearing examiners/administrative law judges. These were people who were temporarily put on the social security hearing roster in order to clean up a backlog.

They are people who do not and cannot meet the rigid qualifications for hearing examiner.

Mr. LOTT. The administration, I understand, has no objections to formalizing the title to administrative law judge, but they are opposed to the changes in determining their pay. You may go through a rigor-

ous process for being selected administrative law judge, but these positions, are still administrative law judges. You are not Federal judges. I think to put the salary of an administrative law judges at 90 percent of the Federal judges is questionable and I make that statement knowing you disagree, and I am willing to listen to further persuasion, but I repeat, there are very few administrative law judges in a permanent career status and to give them almost the salary of a Federal judge is disturbing.

I am an attorney. I may want to consider some change in position here, because we work with administrative law judges. I have been in administrative law judges' offices as well as Federal judges' offices and I know the kind of trying experiences you go through and I know that sometimes decisions of administrative law judges make it just as very trying for Members of Congress.

But this is my question. I feel like it is certainly a position that should be highly respected. I don't think there should be a great difference in position or people that are considering the cases of corporations as opposed to the cases of the Social Security Act.

But the fact of the matter is, there is a difference, and there are a great deal in most instances, certainly the case that was just heard involving El Paso Pipeline and the other that was a very complex, very difficult case.

But you certainly can't equate that with a social security case that is being heard on a daily basis by administrative law office, I don't think.

Mr. FAUVER. If I may speak to that, Mr. Lott.

I think that Congressman Duncan's statement, as well as the statement of the HEW Judges Association which is before your subcommittee, does put the finger on the very pulse of this thing, and that's that the social security claimants have a vested taxpayer's right in an insurance program. If those cases were not handled by HEW, they would flood the Federal district courts and, as Congressman Duncan points out, those cases involve complex issues of medicine, disability, and economic factors.

They all start off with a negative decision against a taxpayer. He's been turned down by a lower-level administrator, and as Congressman Duncan points out, these cases actually involve actuarial values of over \$6,000 each and the HEW judges here decide 25 a month where they cover \$18 million a year.

We would suggest, Congressman Lott, that while the pipeline itself, as a case, is more complex, the trying to find truth and justice that may determine the economic life of a family when you're doing it 25 times a month and \$18 million a year can be an offset to make them equal in terms of the maturity of the judge and his basic qualifications.

Mr. WAGNER. Mr. Lott, might I also specifically answer the question that you asked. That was the salary being placed under the Judicial Salary Act, precedent for that, and the tenure of judges.

No. 1, a lot of people are not aware of this, but an administrative law judge does have a tenure different from most other Government employees other than Federal district judges. He receives an "absolute" appointment which means he can only be removed for cause which is very close to the appointment received by a Federal district judge; the difference is that a Federal district judge receives his pay for life,

whereas administrative law judges are under the civil service retirement system.

Mr. LOTT. That's one thing that really bothers me. Why should it be done that way?

Mr. WAGNER. The reason that it's done that way is to insure the independence of the administrative law judge. Otherwise, he is going to have to be seeking favor with his superiors to get promoted, he's going to have to be seeking favors in deciding cases in a way he thinks his superiors will like in order to keep his job. He is given this protection by the Administrative Procedure Act to insure his independence. He already has this. We are not asking for that today. Administrative law judges have always had this career tenure that other attorneys do not have. It takes a full hearing in order to dismiss an administrative law judge, and it has to be for cause.

Now, if I can point out with regard to the salaries, maybe it was not the best approach to say 90 percent of Federal district judges; maybe we should have said so many dollars, but this 90-percent figure was arrived at roughly keeping the same ratio of pay that you have now between administrative law judges and district court judges.

I would point out that U.S. magistrates are paid under this same salary act as U.S. district judges and U.S. court of appeals judges, and U.S. Supreme Court Justices.

The U.S. referees in bankruptcy are paid under the same salary act as U.S. district judges, court of appeals judges, and Supreme Court Justices.

We are just asking to have our pay set the same way that those people's pay are set. I don't think anybody equates the magistrate or the referee in bankruptcy as being the same as a judge of the U.S. district court or as a Justice of the Supreme Court even though they are providing essential and important programs.

The facts of life are that while we think and believe that everybody is entitled to just as intelligent a man to decide his case, there are levels, as I indicated earlier, of work that are more difficult than other levels of work.

Mr. LOTT. Let me make this one comment. I know the salary levels vary across the country. But if I'm not mistaken, this salary that's being posed here would be higher than any chancery of circuit court judge in Mississippi, higher than the supreme court justices in Mississippi, and, in fact, I believe higher than the Governor of the State of Mississippi, and to have an administrative law judge sitting there making these decisions while you have a man that might have 30 years of experience as a lawyer and on the bench as a Mississippi Supreme Court judge, and he's paid less than an administrative law judge in the Social Security Administration, I am most concerned about that.

Mr. WAGNER. There are various salaries among judges. We presented a statement before the Quadrennial Pay Commission this year, which the Chairman indicated is somewhat under attack. I don't have the figures with me today, but the pay of the supreme court and court of appeals judges in the State of Maryland is nearly double this figure. The pay of even the low court judges in the State of California, the police court judges, is greater than this salary.

Mr. LOTT. Are you telling me that supreme court justices in Maryland make \$90,000 to \$100,000? That's more than the U.S. Supreme Court Justices.

Mr. WAGNER. I may be mistaken there. But I know they make considerably more than the district judges. I don't have those figures with me.

Mr. LOTT. I think you see the point I am trying to make. Let me ask one final question. Under an area here of designated costs, there are no cost figures available, but is it correct that the beginning salary of increases for ALJ's if this change is made would range from 24 to 71 percent increase?

Mr. WAGNER. It's quite possible with regard to the people at the bottom of grade 15, they would receive sizable increases. As I pointed out earlier, in my statement today, to me personally it's next to nothing. To most of the grade 16 regulatory agency judges, it's next to nothing. Most are now making \$47,500 and those who aren't will be after they get the cost of living pay increase this year.

So it means they will get less than \$1,000. It's more a psychic benefit than an actual monetary benefit.

At the same time, looking to future years, when the Quadrennial Pay Commission makes a decision.

Mr. LOTT. May I make one comment?

You started your statement as to how it would be attractive to you. That's one of its big benefits. The problems that we faced in the past have been we have not attracted the caliber of attorney who would take a Federal job, who would accept the positions, who would apply for them. The outside practice of law and other pursuits have been more lucrative. There's been more prestige. And the facts of life are, I don't believe you would be interested under the existing arrangement, whereas hopefully you would be under an arrangement which would make it more attractive.

Mr. CLAY. In response to Congressman Lott's question about your appointment, you say that it was similar to that of the judiciary of the Federal judge in that you had to be terminated for cause. You made the statement that the reason for that was so you would not have to curry favor with superiors. Who are your superiors?

Mr. WAGNER. As things now stand, we feel that we have none. Due to having an absolute appointment, we feel we have no superiors, because we can neither be fired, rewarded, cussed at, or whatnot. We are employed by our individual Commission on certification by the Civil Service Commission. For instance, my check comes from the Federal Power Commission, if I can use myself as an example. At the Federal Power Commission, we are so removed from the other people in the Commission that it's frowned upon if you even have a cup of coffee with one of the Commissioners or one of the people on the staff. We have on our floor, the second floor, only the courtrooms and chambers of the administrative law judges, and we are really not allowed off of that floor, so to speak. We have no social or other contact with the members of the Commission or the people of the Commission. We have total independence from them for this reason, and we don't have to curry their favor because they can't fire us.

Mr. CLAY. Nobody regulates you or supervises you?

Mr. WAGNER. That's correct.

Mr. CLAY. Speaking of the pay increases, there is a real possibility that next week the pay increase voted for Members of Congress and for other related agencies will be repealed. There will be an effort made to do this and it has substantial support. In view of that fact, would you still contend that your pay ought to be tied to the Federal judges, that the Congress cannot take any pay increases back from them because of the Constitution?

In the event that the pay increases are rescinded next week, then your pay is tied to that of Federal judges and you would be making more money than Members of Congress or anybody sitting on the Civil Service Commission.

How would you respond to that?

Mr. WAGNER. We would say it would be even more attractive to be under the bill if that should occur. I might point out that the pay increase was really something the administrative law judges had been entitled to for a good many years under the Government pay system but because of the asterik on the pay scale stating they could not make more than a level 5, they were not allowed to receive the increase.

Most of my brother administrative law judges, including myself, have not had a pay increase for some 6 to 7 years prior to this last increase recommended by the Quadrennial Pay Commission.

However, if you look at the pay schedule, I'm supposed to be making \$48,000-something now. The pay increase didn't even bring me up to where I should be. At the same time, I would point out that since getting this salary increase this year, that I was entitled to under law for the last 6 years, my telephone bill in the State of Maryland last week went up \$12 a month; the Baltimore Gas & Electric Company who services me with electricity has a 15-percent increase going in, and we are not even going to get a cost of living increase this year. So, in fact, we are constantly sliding backward and Congressmen are, too. I personally believe that Congress deserves the raise it has gotten. The Congressman must maintain two homes, he must maintain a standard of living that is expected of him that would not be expected if he were not a Congressman, and I personally do not see any merit in some of the people—and I may be speaking out of turn, because you may be one of them—in some of the people yelling you're paying us too much, take it away. You deserve every penny you get and more, and so do the Government executives and judges. There is no reason that these people who decide the fate of all people in this country should be paid less than anybody else. There is no reason whatsoever. To the contrary, there is every reason that the taxpayers of this country should have the best-paid, the highest-caliber, best-educated, best-experienced people in the United States to represent them. It's our livelihood and our health and our future.

Mr. CLAY. We may call on you next week. I certainly want to thank you for your testimony.

Mr. WAGNER. Thank you, Mr. Chairman.

Mr. CLAY. The next witness is Mr. Gerson Kramer.

STATEMENT OF GERSON B. KRAMER, PRESIDENT, NATIONAL CONFERENCE OF BOARDS OF CONTRACT APPEALS MEMBERS

Mr. KRAMER. Thank you, Mr. Chairman.

My name is Gerson B. Kramer. I am the president of the National Conference of Boards of Contract Appeals Members. I am accompanied today by Mr. Daniel Arons, who is a member of our board of directors.

I am pleased to have the opportunity to testify today on H.R. 865. The organization I represent, the National Conference of Boards of Contract Appeals is composed of members of the major contract appeals boards in the executive branch of the Government.

At the present time there are 13 such boards in the executive establishment, all of whom are charged with the duty of conducting hearings and issuing final decisions on contract disputes arising under federal contracts. The 13 boards of contract appeals are as follows:

Armed Services Board of Contract Appeals (ASBCA).

Department of Agriculture Board of Contract Appeals (AgBCA).

Department of Commerce Appeals Board (DCAB).

Energy Research and Development Administration Board of Contract Appeals (ERDABCA).

Corp of Engineers Board of Contract Appeals (EngBCA).

General Services Administration Board of Contract Appeals (GSBCA).

Department of Housing and Urban Development Board of Contract Appeals (HUDBCA).

Department of Interior Board of Contract Appeals (IBCA).

Department of Labor Board of Contract Appeals (LBCA).

National Aeronautics and Space Administration Board of Contract Appeals (NASABCA).

Postal Service Board of Contract Appeals (PSBCA).

Department of Transportation Contract Appeals Board (DOTCAB).

Veterans Administration Contract Appeals Board (VACAB).

The functions and duties of the members of the various boards of contract appeals are quasi-judicial functions and have been so recognized by the Supreme Court of the United States in several decisions dealing with the operations of such boards.

The import and character of the work performed by board members likewise has also been recognized by the executive agencies, since most of the members of the boards have been designated administrative judges, pursuant to the powers granted to the executive agencies under 5 United States Code, section 5105(c).

H.R. 865 would amend various parts of title 5 of the United States Code so as to change the title of "Hearing Examiner" to "Administrative Law Judge." It would also change the salary provisions for the same group.

The bill concerns statutory provisions relating to those persons who conduct hearings subject to the provisions of the Administrative Procedure Act. As such it has no direct application to members of the contract appeals boards whose proceedings are not subject to that act.

We, however, do perform functions comparable to those performed by the administrative law judges. Our conference, therefore, generally is concerned with the recognition given to executive branch personnel who perform quasi-judicial functions and who conduct full-scale adversary proceedings.

It is our view that there has been insufficient recognition for those persons in the executive branch who are charged with the duty of conducting full-scale, due process hearings and issuing reasoned decisions on important public questions. This includes administrative law judges who conduct proceedings under the Administrative Procedure Act.

It is no secret there is a general lack of confidence in Government and in the quality of services which the Government provides to the public. Generally speaking, we believe that the quality of the hearings conducted and the quality of decisions rendered depends upon the kind of personnel attracted to performing such functions.

There is no substitute for attracting and holding the best kind of lawyers for work of such crucial significance. Special efforts in the form of statutory recognition as well as other provisions are warranted so as to recruit and retain the high caliber personnel necessary.

Certainly, the special recognition in the descriptive title "Administrative Law Judge" is necessary in order to attract the best in administrative proceedings. We are, therefore, pleased to support the amendments which propose to strike out the words, "Hearing Examiner" and insert the words, "Administrative Law Judge" in all of the various provisions of the Administrative Procedure Act.

The conference has no particular position on the specific provision which would tie the salary of administrative law judges to those of district judges.

This completes my formal statement. I should be happy to answer any questions.

Mr. CLAY. Thank you.

I note that you favor one part of the proposed bill and that is to change the description or title to administrative law judge which is noncontroversial, and I think even by regulation now most people are described as such.

You don't take a position on the other part in terms of time and tying salaries of administrative law judges to district judges. I would assume your organization has discussed this matter, is that correct?

Mr. KRAMER. Yes.

Mr. CLAY. What is the reason that you have not taken a position?

Mr. KRAMER. We have discussed it. I don't think that we had sufficient time to really fully meet and our conference has not yet had its annual meeting. It was our particular judgment—at least the leadership of the conference—that we ought to take no particular position on it since we have not as yet had an opportunity to fully poll all of our members on it, on the specific provision.

Mr. CLAY. How many members do you represent?

Mr. KRAMER. We have approximately I would say somewhere in the number of 70 or 75 members of our conference.

Mr. CLAY. In what?

Mr. KRAMER. I would estimate about 90 percent of all of the personnel on all of the 13 contract appeals boards.

Mr. CLAY. What is the nature of their work and what are their titles now?

Mr. KRAMER. The nature of the work is our members conduct full-scale adversary proceedings, hearing claims of Government contractors against the specific agencies. These are money claims for addi-

tional sums to be paid under various contracts. I suppose one that would come to mind most readily is the large shipbuilding claims that are currently being heard by the Armed Services Board of Contract Appeals.

All of our Board members hear money claims arising under contracts let by their various departments.

Mr. CLAY. Would all of your members be covered by this bill?

Mr. KRAMER. No; none of our members would, because at the present time none of the contract work, contract disputes hearings are covered under the Administrative Procedures Act. We are not covered under the act.

Mr. CLAY. Basically do you perform the same functions as the administrative law judges?

Mr. KRAMER. We think our functions are similar, yes. The same or similar in that we conduct hearings. Our hearings are full-scale due process hearings. They are not required by statute. Instead, they are required by custom and by decision of the Supreme Court. In other words, the Supreme Court in various decisions has held that the kind of work we do must consist of full-scale adversary proceedings, and we then issue reasoned decisions and those decisions are the final decisions for the agency.

Mr. CLAY. In other words, you, like many other attorneys within the Federal Government, perform judicial functions very similar and even, in some instances, of more complexity than the administrative law judges, and you are not covered by this bill.

Mr. KRAMER. We are not covered by the bill nor are we covered by the Administrative Procedures Act.

Now, there are and have been over the past years some proposals to bring us into the Administrative Procedure Act. There is currently a bill offered by Mr. Harris, H.R. 3745, which would bring us in.

There is also another bill offered by Mr. Fisher, H.R. 4713, that might bring us in.

Mr. CLAY. So this bill favors only a select group of attorneys and consequently is discriminatory. Would you agree with that?

Mr. KRAMER. I don't really think it does in this respect, it seems to me that the Administrative Procedure Act is a separate act that has set up a separate group to conduct proceedings in a certain way of it. We have been, I would say, growing in the same direction and I would assume eventually in an evolutionary way, we would eventually be brought under the Administrative Procedure Act. It seems to me in the long run we will probably come under it.

Mr. CLAY. Are you being paid now about the same as the Administrative Law Judges?

Mr. KRAMER. Yes, I am a GS-16. I am presently the Chairman of the Department of Transportation Contract Appeals Board. Most of our members are 15's or 16's.

Mr. CLAY. I am not attacking the APA. I am just questioning whether or not we should give special consideration to Administrative Law Judges as a group and not take into concern those in like positions in the government who are not covered under the APA. To me that seems to be discriminatory.

Mr. KRAMER. I would suppose our view is that what you might call the judiciary that has grown in the executive branch should receive recognition. It should receive recognition of the special character of the work that it does and it should also receive recognition I think in the form of status, title, and I think, pay as well. I suppose you have to start some place. We don't say that you have to start every place at once.

Mr. CLAY. Thank you for your testimony.

Mr. KRAMER. Thank you very much.

Mr. CLAY. The next witness will be Mr. Raymond Jacobson from the Civil Service Commission.

STATEMENT OF RAYMOND JACOBSON, EXECUTIVE DIRECTOR, CIVIL SERVICE COMMISSION, ACCOMPANIED BY CHARLES J. DULLEA, DIRECTOR, OFFICE OF ADMINISTRATIVE LAW JUDGES, CIVIL SERVICE COMMISSION

Mr. JACOBSON. Thank you very much, Mr. Chairman. I appreciate this invitation. I think I will just briefly summarize my statement rather than read it.

Basically, the Civil Service Commission is opposed to H.R. 865 for three reasons which we spell out somewhat in the statement.

In summary, we feel first that the link that would be established between employees in the executive branch and members of the Federal judiciary by this bill is inconsistent with good pay administration, as well as with the concepts underlying the Administrative Procedures Act.

We think that the level of independence sought by the Administrative Procedures Act has been quite effectively maintained within the current pay system and classification system. We think this would distort this relationship by tying the pay of the Administrative Law Judges to a pay system in the judicial branch.

In the second place, we feel that the salary rate for Federal judges which is set out in law is a recognition of their unique position constitutionally, tenure, diversity of cases they hear in civil, criminal, and administrative law, and their personal authority and responsibility for the decisions. And we think this is quite different from that of the administrative law judge who operates as an officer in the executive branch, an independent officer, but still an officer in the executive branch and whose decision actually is an institutional determination and subject to review by the agency.

Then, finally, we feel that the pay that this bill would establish would be given an undesirable imbalance in individual agencies between the administrative law judges and other classes of employees and, for example, to pay the 90 percent of the U.S. district court pay would give us a salary of \$49,050. This would represent a 24-percent increase for those judges now in GS-16 and there are over 300 of them and the increase in compensation for the judges at GS-15, there is about 500 there, is actually a 45-percent increase and in addition, of course, an even larger increase for the 200 employees now in GS-14.

We think that a flat rate of single pay rate for all administrative law judges is really not appropriate in view of the differentiation in the

work and the complexity of the work in different agencies which is now recognized by the classification of some of these jobs in GS-16 and others in 15 and lower.

We, of course, have no objection to the second provision of this bill, the title change, because this would in effect put in the statute the title the Commission adopted in 1972 after considerable amount of consultation.

So, with that, Mr. Chairman, I think that states the Commission's views on this legislation and in opposition to the central thrust of it and I would be glad to answer any questions.

[The prepared statement follows:]

PREPARED STATEMENT OF RAYMOND JACOBSON, EXECUTIVE DIRECTOR,
U.S. CIVIL SERVICE COMMISSION

Mr. Chairman and Members of the Subcommittee, I appreciate the Subcommittee's invitation to appear and to furnish the Commission's views on H.R. 865.

This bill basically proposes to remove the presiding officers appointed under the Administrative Procedure Act in various Departments and agencies from the General Schedule and to pay them a salary equal to 90 percent of the salary paid U.S. District Court judges. It also proposes to change the title of Hearing Examiner in the Administrative Procedure Act and other statutes to Administrative Law Judge.

The Commission is opposed to the basic purpose of this bill for three reasons: First, the bill would establish a link between employees of the executive branch and members of the Federal judiciary which is totally inconsistent with orderly pay administration as well as with the concepts underlying the Administrative Procedure Act. The status of the officers presiding over formal proceedings was carefully considered by the Congress when it enacted the Administrative Procedure Act. The legislative history discloses that Congress rejected proposals that examiners function as mere clerks or that they be entirely independent of the agencies. Rather, it chose a middle ground. Provision was made that the examiners be employees of various executive Departments and agencies; that they would, for their adjudicatory function, constitute a "special class" with absolute tenure under the civil service system. Independence in compensation was to be achieved by assigning classification responsibility to the Civil Service Commission, without regard to agency recommendations or ratings. The level of independence sought by the Administrative Procedure Act has been maintained for 30 years. H.R. 865 would, however, seriously distort this by replacing the machinery for determining the pay of these executive branch employees with a system tied to the pay system in the judicial branch of the government.

Second, the bill fails to take cognizance of significant differences in the responsibilities carried out by these adjudicating officers and U.S. District Court judges. The salary rate for Federal judges is set in recognition of their unique constitutional position, lifetime tenure, the diversity of cases heard in civil, criminal and administrative law, and their personal authority and responsibility for their decisions. The examiner, on the other hand, operates in an entirely different environment; he is an officer in the executive branch; his adjudicatory function is limited to his agency's area of regulatory activity; his decision is not a personal one but is an institutional determination, invariably subject to review by the agency.

Three, the bill would create a highly undesirable imbalance in individual agencies between its presiding officers and its other classes of employees; and would thwart the concept of equal pay for equal work as between Administrative Law Judges in different agencies. At this time 90 percent of the pay rate of U.S. District Court judges is \$49,050. There are now more than 1,000 Administrative Law Judges employed in 28 Departments and agencies. More than 325 presiding officers are classified at GS-16. They would receive an increase of approximately \$10,000 (or 24 percent). There are approximately 500 presiding officers whose positions are classified at GS-15, the compensation of which begins at \$33,789. H.R. 865 would provide these employees with a 45 percent increase. Approximately 200 of these employees are classified at the GS-14 grade level, the salary for which begins at \$28,275. If enacted, H.R. 865 would provide these employees with a 71

percent increase . . . remuneration beyond the rate paid to Executive Level V positions. In the light of the different levels of responsibility of presiding officers in various agencies, a flat rate of pay of \$49,050 for all would be unfair as between these Administrative Law Judges and other employees in the General Schedule doing work of equal or greater difficulty in the same agencies. Since the pay provisions in this bill are completely inconsistent with the concept of equal pay for equal work, the Commission must express its strong disapproval of the basic purpose of H.R. 865.

The Civil Service Commission has no objection to the second provision of H.R. 865, which would change the title of these presiding officers to Administrative Law Judge in the Administrative Procedure Act and other statutes where the designation of Hearing Examiner appears. Such changes would formalize in statute the administrative title change promulgated by the Commission in August 1972.

The Commission action followed a study concerning an appropriate position title for those who functioned under the Administrative Procedure Act. That study disclosed that the practicing bar, agency officials, professional associations, members of the judiciary and others were in favor of a change in title. Thereafter the Commission proposed a change in title by notice in the Federal Register, the responses to which were almost unanimously in favor of the adoption of the position title of Administrative Law Judge. Under the circumstances, the Commission changed the class title in August 1972.

In conclusion, the Commission again wishes to express its strong disapproval of the provisions of this bill dealing with salary. I would be happy to respond to any questions the Subcommittee may have.

Mr. CLAY. Thank you.

I am quite interested in the statement you make on page 1. You say that the legislative history discloses Congress rejected proposals that examiners function as mere clerks or that they be entirely independent of the agencies.

I am interested from this point of view since one of the early witnesses stated to the committee that they were indeed independent, that they had no superiors and they were not regulated.

I would like to hear your comments on that.

Mr. JACOBSON. I don't mean to challenge the independence of the administrative law judges. It is clear that the Administrative Procedures Act did create a special class of employees now known as ALJ's with absolute tenure under the civil service system, from the day they received their permanent appointment.

They also have a special relationship to their agencies which is unique in that they are not subject to day-to-day direction or supervision, and their decisions are independently arrived at—so in that sense they are quite independent.

The point of my comment in the testimony was that the Congress did not choose to make an effective fourth branch of Government or to attach them to the judiciary as had been suggested at the time as a kind of administrative court, but rather to attach them to the departments and agencies that have these regulatory functions the ALJ's are assisting the agencies in performing.

But the ALJ is still an employee of the agency and his determinations are, I believe, invariably subject to review by the head of the agency, usually a board of commission, but it could be the head of an executive department.

Mr. CLAY. The purpose for my asking the original question of the prior witness was to determine whether or not we would be bypassing this bill and basing their pay at 90 percent of the district judges' pay. We might, in effect, be paying them more than we would be paying heads of agencies if next week this Congress rescinds the pay increases that we granted back in March or April.

So what you are saying, in effect, is they do come under the supervision of agency heads.

Mr. JACOBSON. Yes, Mr. Clay.

They come under the supervision in a unique way. I am trying to express the fact that they are different than the average employee in an executive agency. They are more independent, but they are still employees of the agency and not in the same class of independence as, for example, the judge in the district court.

Mr. CLAY. Your second point, before closing, is the significant differences in the response of these various officers.

Can you elaborate on that?

Mr. JACOBSON. I think the main thing I would like to emphasize here is that the Federal district court judge depending on the kinds of cases that arise in his district and in most districts—I assume that almost any type of case may arise—will deal with the entire range of civil, administrative, and criminal law that represents the entire scope of the Federal law and will deal with issues of constitutionality in the same sense that might arise in any of these characteristics, any of these categories of civil, criminal, administrative law, and that they have a diversity of subject matter and, therefore, requirement of judgment in such a wide variety of law.

I think it clearly transcends the subject matter scope of the administrative law judge in any one agency who clearly is dealing with the specific area of law that will arise in that agency.

I recognize that still it might be quite broad, but I don't think it is in any sense equivalent to that of a district court judge.

Mr. CLAY. Won't there be some administrative law judges who handled cases as complex as those handled by district judges?

Mr. JACOBSON. I think individually a particular case may be just as complex as a particular case heard by a district court judge.

I think it is more than range and diversity that is typical of the district court that is not found in any one administrative law judge position.

Mr. CLAY. If we talk in terms of not weakening the theory of equal pay for equal work, how do you accommodate for those administrative law judges who do involve themselves in these complex cases?

Mr. JACOBSON. There is a distinction drawn among them by virtue of the grading of the jobs under the classification law, and as you know, we have a significant number of jobs in each of three grades, 14, 15, and 16, and we draw internal distinctions among them on the bases of the complexity of the cases and the complexity of the law with which they deal.

I think we have achieved a reasonable degree of ability to relate pay to complexity through that grading system.

I recognize that does not represent an attempt to relate the pay of the administrative law judge to the pay of the judiciary, but we feel that administrative law judges are members of the executive branch establishment and should be compared primarily to the other staff people in the executive branch, including the heads of their agency who are paid under the executive level schedules and the various other officials of their agencies with whom they do relate, even though they are not directly supervised in any immediate sense by, say, the general counsel of an agency.

We think the pay ought to be related under the same schedule rather than compare them to jobs in a completely different branch of Government.

Mr. CLAY. Isn't it true that until the recent pay increase, that the GS. 15's and 16's and 17's were all making the same amount of money?

Mr. JACOBSON. There certainly was a very narrow range, yes. I think there was a little bit of difference, but not much.

Mr. CLAY. Do you think that is why the administrative law judges want to change the system for being paid?

Mr. JACOBSON. I don't know. There are great many people involved in that salary compression problem beside the administrative law judges.

I think a lot of people felt it was an unfair compression, and I would not be surprised if the administrative law judges felt that way, too. But that adjustment has been made, and hopefully we are not going to go back to that situation, although I recognize it is possible.

Mr. CLAY. Are there any other groups in the executive branch who have fixed salaries similar to what is being recommended under this bill?

Mr. JACOBSON. I know of no other group that would have a salary fixed in this way within the executive branch even though there are several different pay systems.

Not everybody is under the general schedule. Each of those other systems have some form of grading in them, and they do relate back to the general schedule in their pay adjustments.

So I know of no other way—no other jobs which are related to a job, say, in the judicial branch or other statutory salary in this way.

Mr. CLAY. Are there other attorneys in the Federal Government who have similar or even more complex responsibility than the ALJ's and are not covered by this bill?

Mr. JACOBSON. There, of course, are a good many attorneys in Government who are not administrative law judges. In fact, the great bulk of the attorneys in Government are not in that category.

Certainly, some of those, particularly people who are serving in positions such as general counsel or assistant general counsel of many agencies, have very responsible and very complex legal duties, and I think we have a significant number of such jobs the Civil Service has classified as GS 16, 17, and 18, and I would say that these jobs are quite responsible, at least equal, and, in some cases, superior in their total responsibility for their work.

They certainly represent a class of attorneys who would not be under this bill as written, and I think would be unfairly compensated by comparison.

Mr. CLAY. Would you compare the work of the attorneys in the NLRB with the work of administrative law judges, or are they administrative law judges?

Mr. JACOBSON. There are attorneys at NLRB who are not administrative law judges. I don't know that I feel completely competent to specifically compare their duties because they would be attorneys at various levels.

The kinds of attorneys that I am thinking of as having particularly complex responsibilities are those usually in the general counsel's office at a range just below the general counsel or perhaps at the general

counsel's level who carry, it seems to me, very great responsibility in the legal profession in their agency, both in terms of providing legal advice to the heads of the agencies, and in terms of giving legal opinions and prosecuting cases and so on.

Mr. CLAY. Thank you. I have no further questions.

The hearing is adjourned.

Mr. JACOBSON. Thank you, Mr. Clay.

[Whereupon, at 12 noon, the hearing was adjourned.]

[The statement which follows was received for inclusion in the record.]

STATEMENT OF ROBERT B. MURDOCK, ADMINISTRATIVE LAW JUDGE, BUREAU OF HEARINGS AND APPEALS, SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. Chairman and members of the subcommittee, my name is Robert B. Murdock. I am an Administrative Law Judge with the Bureau of Hearings and Appeals of the Social Security Administration, Department of Health, Education, and Welfare. I represent the Association of Administrative Law Judges in the Department of Health, Education, and Welfare, who are appointed pursuant to Section 3105 of Title V of the United States Code.

I appreciate the opportunity to present this statement from a background of experience as an Administrative Law Judge for 15 years.

Let me say initially that, the Association of Administrative Law Judges is dedicated to perpetuation of a professional corps of Administrative Law Judges who preside over cases assigned by the Secretary of HEW. Because of the unique character of the Bureau and its mission, the Association of Administrative Law Judges is concerned primarily with adherence to the strict standards set down by the Administrative Procedure Act to ensure a fair and impartial hearing to all claimants. Although we Administrative Law Judges are naturally concerned about our own personal welfare, I sincerely believe that any selfish interest in this particular matter has been subordinated to the overall best interests of the claimant and individual citizen whom both of us seek to serve.

Federal Administrative Law Judges are, in effect, the United States District Court Judges for the administrative agencies. The goal of H.R. 865 is to bring uniform quality of justice to the people of the United States in the cases handled by administrative agencies.

The Administrative Law Judges are presently classified and compensated under the General Schedule of Civil Service pay grades, even though their position is obviously not suited to this career ladder concept. Particular attention is called to the fact that these judges are the only career employees exempt from agency pay and job classification, performance ratings and quality pay increases. For these reasons, it is clearly appropriate that the salary of these judges, like those of other federal judges, be set by separate statute rather than under a schedule of career ladder pay grades.

The Administrative Law Judges are now classified at the GS-15 or GS-16 level, depending upon the Civil Service Commission's "evaluation" of the level of the cases they handle. The difference in compensation is not justified on any rational basis, it merely creates an artificial distinction which is not realistic, efficient or equitable. All APA judges must possess the same basic qualifications. Indeed, the costs involved in transferring GS-15 judges to fill GS-16 vacancies in other agencies and the consequent loss of continuity of agency programs more than offset any saving in the pay differential among judges.

When an ALJ moves from one rate making agency to another rate making agency, or from HEW to a rate making agency, he is making a horizontal move from the standpoint of legal expertise. Each position has its own different types of work, but each does not require a different degree of legal ability.

It is clear that determinations in DHEW are as difficult and elusive as any adjudications in the federal system. The legal complexity and economic impact of these decisions are equal to or greater than that of ALJ's in any other agency. The fact that Bureau counsel does not appear in Social Security cases has been recognized by Congress as materially increasing the responsibility and work of the Administrative Law Judge. (Horsky Report, pg. 335.)

The comparability of the work is so well known that there is no purpose in laboring the point. The Director of the Civil Service Commission's Office of Administrative Law Judges has written that "the functions of the administrative law judge are substantially the same throughout the government even though the subject matter of the cases they hear varies greatly." ("Development of the Personnel Program for Administrative Law Judges," *Administrative Law Review*, Winter 1973, vol. 25 No. 1, at pg. 42.)

As stated by one District Judge, "to particularize that a certain human being with individualistic impairment and limitation may or may not have employment opportunity in a certain area . . . may require an elite group of soothsayers superbly trained to probe the many intangibles" (*Stoliaroff v. Ribicoff* (1961) 198 F. Supp. 587, 591, cited p. 6, Report). Prof. William D. Popkin, of the Indiana University Law School, recently stated in an address before the ABA: "The delicate role of investigating and judging medical evidence as it relates to economic disability calls for extreme sensitivity to the complex role that the judge must play, and requires considerable skills in cross-examination".

The multiplicity of statutes and regulations in varying fields, which the ALJ must consider, is staggering—Title II, Title XVIII, the Federal Coal Mine Health and Safety Act (Black Lung), Title XVI, the Civil Rights Act of 1964, and a host of state laws in the fields of domestic relations, contracts, corporate law, conflicts of law, etc., involving marriage, divorce, abandonment, annulment, adoption, business transfers, etc.

The economic impact of these decision is enormous. Millions of dollars are involved in the civil rights cases, which are vigorously contested by able counsel from the Office of Education and state educational systems, and which involve potential denial of federal benefits. Each disability determination is of monumental importance to the claimant and his family. The average actuarial value of an ALJ reversal of an Administration denial of disability, i.e., a grant of such benefits by the ALJ, is about \$54,000 over the lifetime of the recipient. (Memorandum from Lawrence Alpern, Deputy Chief Actuary, May 28, 1974, attachment to "Social Security Draft Report, Civil Service Committee for the Study of the Effective Utilization of Administrative Law Judges", by Hon. Melford O. Cleveland, Administrative Law Judge (herein "CSC Study—SSA Draft Report"). This is a potential of \$18 million per year per judge. The Federal Administrative Law Judges Conference has recommended that all ALJs—including those in SSA—should have a separate salary classification, without in-grade step differentials, and that this should be set at 90 percent of the pay level of the U.S. District Court judges, or a salary substantially equivalent to that level. In support of this recommendation, the FALJ resolution states:

"The administrative law judges have long felt that their inclusion within the established Civil Service regimen of salary structuring is unsatisfactory, that the compensation therein provided in both inadequate and inequitable as related to their judicial positions, and that correction of these defects would greatly enhance the recruitment of highly qualified candidates for these positions, especially from private bar and judiciary. In addition, the separate pay classifications of the administrative law judges create needless competition and turnover among judges who are drawn to higher-paying judgeships in other agencies. Inter-agency transfers based solely, or primarily, upon pay considerations obviously work an adverse impact on the continuity of agency programs."

Professor Popkin viewed the large turnover in the Department of Health, Education and Welfare corps with disapproval: "If ALJ's seek jobs in the regulatory agencies to improve their status," Professor Popkin writes, "they are likely to leave the Social Security Administration just when they are acquiring the necessary expertise."

What Professor Popkin feared has actually been taking place. In slightly less than three years, from January 1, 1971, through November 27, 1973, 47 ALJs in SSA were recruited by other agencies, 44 of them paying at the GS-16 rate. During the same time period, 111 ALJS in SSA were temporarily loaned to other agencies to handle 121 cases. The classification of some of this work was GS-16, some was GS-15, and some was unclassified (CSC Study, p. 68). In one of the CSC Study Committees, a suggestion was made that the Social Security Administration was a good place to recruit ALJs since "their track record could be studied". One ALJ from another agency stated that the reason for the refusal to reclassify SSA's ALJs, as follows: "We could not recruit from you if you were 16s like the rest of us" (CSC Study—SSA Draft Report, p. 20).

The Social Security Administration, with the concurrence of the Civil Service Commission appears content to use SSA as the training ground and as a pool of ALJs in the event of emergencies in other agencies. Further, in order to accomplish these purposes, SSA and CSC have suppressed the wage level of the ALJs in SSA. Aside from the gross inequity to the ALJs, we doubt that Congress intends social security taxes to be used for the recruitment, schooling, and on-the-job training necessary to accomplish such purposes unrelated to the Social Security Act.

The ALJ is the decisionmaker for the average American taxpayer who has a vested insurance right, a legal right, to funds in the Social Security system which is maintained by American workers who pay the highest taxes of the entire population. There are no deductions from Social Security taxation by those subjects to its provisions—it is paid based on gross earnings and there are no exemptions until the maximum is paid. There is no question that litigation by these wage earners holders of vested rights would require the full constitutional safeguards and protection of the Federal Courts. The ALJ relieves the regular Federal Court system from thousands of adjudicatory hearings and rulings in technical issues of medicine, vocational rehabilitation, labor economics, etc., under the complex Social Security insurance program.

A taxpayer is entitled to more than a fair hearing and an independent judge. He is entitled to the very best the government can supply. Since Social Security claimants are individual citizens, unorganized and sometimes uneducated, their right to have their case heard by a fully independent Administrative Law Judge, duly qualified under the Administrative Procedure Act, could be compromised or perhaps denied without the protest one would ordinarily expect from well organized and financed corporate interests faced with the same prospect. But these citizens deserve just as fair a hearing, with administrative law judges just as qualified as any corporation, and it is felt that Congress will see to it that they have no less. The administrative law judges in the Department of Health, Education and Welfare deal in human rights rather than corporate rights. In this time when we are concerned about human rights abroad, we should be even more concerned about human rights at home. The social and human rights of the taxpaying American citizen will be protected by the passage of H.R. 865 which will ensure that the system for administrative law judges is established on an equitable and efficient basis.

The legislation before us today, Mr. Chairman, would recognize the unique status of Administrative Law Judges within the Federal Civil Service Commission as accorded them by regulation, and by placing them in an appropriate judicial salary category. These actions recognize the essential identity of functions and requirement of due process rights among judges in both the administrative and constitutional judicial systems of our country.

As pointed out by the statement of the Federal Administrative Law Judges Conference filed with the committee: There is ample precedent for Congressional rejection of inequitable pay evaluations for APA Judges. I submit that, in the adjudication of safety and health protection, employment rights, and other employee benefits which Congress finds to require an APA hearing, it must be clear that the individual Americans who depend on the justice of those hearings are entitled to no less than the same level of maturity and qualifications of the judge as that of judges who hear corporate cases. Equal justice and fair treatment for all parties before the administrative agencies requires no less.

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D.C. 20415

June 3, 1977

Honorable Robert N.C. Nix
Chairman, Committee on Post
Office and Civil Service
U.S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is in further response to your request for the Commission's views on H.R. 865, "To amend title 5 of United States Code to change the title of hearing examiners to administrative law judge, to provide that the salary of each such official shall be 90 per centum of the salary of United States district court judges, and for other purposes."

The principal purpose of H.R. 865 is to prevent the Civil Service Commission from classifying Administrative Law Judge positions in the executive branch, and to grant salary increases to the incumbents of such positions. To this end, the bill would remove the presiding officers appointed under Section 3105, title 5, United States Code, from the General Schedule and provide them with a salary equal to 90 percent of the salary paid U.S. District Court judges. In addition, the bill would change the job title in various sections of the Administrative Procedure Act and other statutes from Hearing Examiner to Administrative Law Judge.

The Commission is strongly opposed to the basic purpose of H.R. 865 because it would impose unsuitable and inappropriate linkage to judicial branch pay for a select group of executive branch lawyers who serve as presiding officers in agency administrative hearings, not as aides to Federal judges on the courts. In addition, the effect of removing Administrative Law Judge positions from the executive branch pay system as proposed in H.R. 865 would be to produce unwarranted salary increases for incumbents of these positions. The bill thus would be highly discriminatory, granting unique pay status and rates to a select group of Administrative Law Judges compared to other executive branch lawyers who are not Administrative Law Judges but who perform functions of equal legal complexity, often equally judicial in nature, and of comparable or greater ultimate significance.

Presiding officers appointed pursuant to Section 3105 of title 5, United States Code, numbering approximately 830, are employed in 28 agencies

and departments. The Commission is responsible for their compensation independent of agency recommendation. The majority are classified at the GS-15 grade level; the balance, in the major regulatory agencies, are classified at GS-16, with nine Chiefs whose positions are classified at GS-17.

The salary of the GS-15 employee begins at \$33,789, the GS-16 employee at \$39,629. The current rate of pay of U.S. District Court judges is \$54,500. A rate of pay of 90 percent of this salary would be \$49,050. Accordingly, the bill would provide a substantial increase in remuneration for the presiding officers appointed under Section 3105 of title 5 of United States Code, i.e., an increase of approximately \$16,000 (or 45 percent) for Administrative Law Judges classified at GS-15; and an increase of approximately \$10,000 (or 24 percent) for those currently classified at the GS-16 level.

The effects of H.R. 865 would not be limited to the presiding officers classified at GS-15 and GS-16. The impact would be substantially broader in terms of the number of employees covered and the maximum permissible salary. In respect to coverage, H.R. 865 would also extend the pay increase to some 195 hearing officers in the Social Security Administration who were converted to temporary Administrative Law Judge status by enactment of P.L. 94-202. The latter provides that these employees are subject to all of the provisions of the Administrative Procedure Act which apply to Hearing Examiners appointed under Section 3105. Subsequent to the enactment of P.L. 94-202 on January 2, 1976, these temporary employees were reclassified from GS-13 to GS-14. Accordingly, H.R. 865 would provide these employees, whose salaries begin at \$28,725, with a 71 percent increase to \$49,050.

The General Schedule classification and pay system is designed to be a comprehensive pay system for white-collar employees throughout the executive branch. The classification of positions under this system ensures not only that employees doing work of equal responsibility and difficulty will receive equal pay regardless of their particular occupation or the particular agency for which they work, but also that differences in the difficulty and responsibility of various positions will be appropriately recognized by differences in rates of pay.

Twenty-eight agencies now employ Administrative Law Judges. The differences in the difficulty and responsibility of these positions vary widely from agency to agency, so that Administrative Law Judges are now classified from GS-14 to GS-17. By removing these employees from the General Schedule, H.R. 865 would destroy the existing appropriate pay relationships not only between different Administrative Law Judge positions, but also between those positions and other executive branch legal positions.

The Administrative Procedure Act is founded on the concept that certain types of adjudication are most appropriately carried out within the

administrative agencies of the executive branch rather than in the judicial branch. Administrative Law Judges therefore must function as an integral part of their agencies' institutional processes, and issue institutional decisions based on agency policies and regulations. We believe it would be detrimental to the functioning of these employees within the administrative processes of their agencies to remove them from the executive branch's pay system. Furthermore, we believe it would be particularly inappropriate to relate the pay for these executive branch employees to the salaries of Federal judges. The salary rates for Federal judges are set in recognition of their unique Constitutional position of lifetime tenure and tremendous personal responsibility. We do not think there is any meaningful comparison of the duties of the executive branch's Administrative Law Judges with the scope, diversity of cases, and personal authority of Federal judges, and we therefore believe it would be irrational to try to relate the salaries of these two groups as H.R. 865 would do.

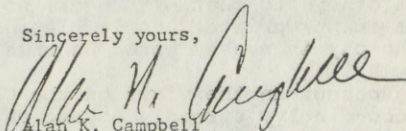
While there is no objection to the provisions of H.R. 865 which propose to formalize the Administrative Law Judge title, we must emphasize our strong disapproval of the bill's provisions dealing with salary. They are wholly disruptive of an orderly pay system.

The provisions in H.R. 865 dealing with pay are wholly inconsistent with the concept of equal pay for equal work. The bill would create an imbalance within individual agencies and departments between Administrative Law Judges and other classes of employees; and it would create serious inequities between Administrative Law Judges in different agencies and departments in which the level of difficulty and responsibility of adjudicatory programs differ significantly.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of H.R. 865 would not be in accord with the program of the President.

By direction of the Commission:

Sincerely yours,



Alan K. Campbell
Chairman

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

JUN 6 1977

Honorable Robert N. C. Nix
Chairman, Committee on Post Office
and Civil Service
House of Representatives
Suite 309 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

This is in reply to the Committee's request for the views of this Office on H.R. 865, "To amend title 5 of the United States Code to change the title of hearing examiners to administrative law judge, to provide that the salary of each such official shall be 90 per centum of the salary of United States district court judges, and for other purposes."

The principal purpose of H.R. 865 is to change the method of determining the pay of Administrative Law Judges by relating their pay to that of Federal district court judges, and to provide substantial pay increases to incumbents of such positions. In addition, the bill would reflect in statute the Administrative Law Judge job title promulgated administratively by the Civil Service Commission.

In its report, the Civil Service Commission states its reasons for strongly opposing the provisions of the bill linking the pay of a select group of executive branch attorneys to that of judges, noting that such linkage would be inappropriate, unsuitable and discriminatory, and that the pay increases would be unwarranted.

We concur in the views of the Civil Service Commission and, accordingly, strongly oppose enactment of this bill. Enactment of H.R. 865 would not be in accord with the program of the President

Sincerely,

(Signed) James M. Frey

James M. Frey
Assistant Director for
Legislative Reference

95TH CONGRESS
1ST SESSION

H. R. 865

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1977

Mr. DUNCAN of Tennessee introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To amend title 5 of the United States Code to change the title of hearing examiners to administrative law judge, to provide that the salary of each such official shall be 90 per centum of the salary of United States district court judges, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 5362 of title 5 of the United States Code is
4 amended to read as follows:

5 “§ 5362. Compensation of administrative law judges

6 “Administrative law judges appointed under section
7 3105 of this title shall be entitled to a salary at an annual rate
8 which is 90 per centum of the salary provided, at the time

1 such entitlement takes place, for a judge of a district court of
2 the United States.”.

3 SEC. 2. Section 3105 of title 5 of the United States Code
4 is amended—

5 (1) in the catchline, by striking out “**hearing ex-**
6 **aminers**” and inserting “**administrative law judges**” in
7 lieu thereof;

8 (2) in each of the first and second sentences, by
9 striking out “hearing examiners” each place it appears,
10 and inserting “administrative law judges” in lieu thereof;
11 and

12 (3) in the second sentence, by striking out “Hear-
13 ing examiners” and inserting “Administrative law
14 judges” in lieu thereof.

15 SEC. 3. (a) The table of sections for chapter 53 of title 5
16 of the United States Code is amended so that the item relat-
17 ing to section 5362 reads as follows:

“5362. Compensation of administrative law Judges.”.

18 (b) The table of sections for chapter 31 of title 5 of the
19 United States Code is amended in the item relating to section
20 3105 by striking out “hearing examiners” and inserting “ad-
21 ministrative law judges” in lieu thereof.

22 SEC. 4. (a) Section 556 (b) (3) of title 5 of the United
23 States Code is amended by striking out “hearing examiners”
24 and inserting “administrative law judges” in lieu thereof.

1 (b) Section 559 of title 5 of the United States Code is
 2 amended by striking out "hearing examiners" each place it
 3 appears and inserting "administrative law judges" in lieu
 4 thereof.

5 (c) (1) Section 1305 of title 5 of the United States
 6 Code is amended—

7 (A) in the catchline, by striking out "**Hearing ex-**
 8 **aminers**" and inserting "**Administrative law judges**"
 9 in lieu thereof; and

10 (B) by striking out "hearing examiners" and in-
 11 serting "administrative law judges" in lieu thereof.

12 (2) The table of sections for chapter 13 of title 5 of the
 13 United States Code is amended so that the item relating to
 14 section 1305 reads as follows:

"1305. Administrative law judges."

15 (d) (1) Section 3344 of title 5 of the United States
 16 Code is amended—

17 (A) in the catchline, by striking out "**Hearing ex-**
 18 **aminers**" and inserting "**administrative law judges**"
 19 in lieu thereof; and

20 (B) by striking out "hearing examiners" each place
 21 it appears, and inserting "administrative law judges" in
 22 lieu thereof.

23 (2) The table of sections for chapter 33 of title 5 of the
 24 United States Code is amended in the item relating to section

1 3344 by striking out "hearing examiners" and inserting "ad-
2 ministrative law judges" in lieu thereof.

3 (e) Section 4301 (2) (E) of title 5 of the United
4 State Code is amended by striking out "hearing examiner"
5 and inserting "administrative law judge".

6 (f) Section 7521 of title 5 of the United States Code
7 is amended by striking out "hearing examiner" and insert-
8 ing "administrative law judge" in lieu thereof.

9 (g) Section 1416 (a) (15 U.S.C. 1715) of the Inter-
10 state Land Sales Full Disclosure Act is amended by strik-
11 ing out "hearing examiners" each place it appears and
12 inserting "administrative law judges" in lieu thereof.

13 (h) Section 501 of title 28 of the United States Code
14 is amended by striking out "hearing examiners" and insert-
15 ing "administrative law judges" in lieu thereof.

16 (i) Section 5 (e) (30 U.S.C. 804 (e)) of the Federal
17 Coal Mine Health and Safety Act of 1969 is amended by
18 striking out "hearing examiners" each place it appears and
19 inserting "administrative law judges" in lieu thereof.

20 (j) Section 808 (c) (42 U.S.C. 3608) of the Act
21 entitled "An Act to prescribe penalties for certain acts of
22 violence or intimidation, and for other purposes", approved
23 April 11, 1968 (commonly called the Civil Rights Act of
24 1968), is amended by striking out "hearing examiners"

1 each place it appears and inserting "administrative law
2 judges" in lieu thereof.

3 (k) (1) Section 504 (42 U.S.C. 3754) of the Omnibus
4 Crime Control and Safe Streets Act is amended by striking
5 out "hearing examiner" and inserting "administrative law
6 judge" in lieu thereof.

7 (2) Section 504 (42 U.S.C. 3754) of the Omnibus
8 Crime Control and Safe Streets Act is amended by striking
9 out "hearing examiners" and inserting "administrative law
10 judges" in lieu thereof.

11 (l) The Department of Transportation Act (42 U.S.C.
12 1651 et seq.) is amended—

13 (1) in section 6(h) (42 U.S.C. 1655(h)), by
14 striking out "hearing examiners" and inserting "admin-
15 istrative law judges" in lieu thereof; and

16 (2) in section 9(a) (42 U.S.C. 1657(a)), by
17 striking out "hearing examiners" and inserting "admin-
18 istrative law judges" in lieu thereof.

1. "and when necessary and proper, administrative law
2. judges, in their discretion,
3. (a) Section 504 (42 U.S.C. 3757) of the Organic
4. Admin. Control and Sales Act is amended by striking
5. out "hearing committee" and inserting "administrative law
6. judges, in their discretion,"
7. (2) Section 504 (42 U.S.C. 3757) of the Organic
8. Admin. Control and Sales Act is amended by striking
9. out "hearing committee" and inserting "administrative law
10. judges, in their discretion,"
11. (b) The Department of Transportation Act (42 U.S.C.
12. 1057 (a) is amended—
13. (1) in section 6(b) (42 U.S.C. 1057(b)), by
14. striking out "hearing committee" and inserting "admini-
15. strative law judges, in their discretion," and
16. (2) in section 6(a) (42 U.S.C. 1057(a)), by
17. striking out "hearing committee" and inserting "admini-
18. strative law judges, in their discretion."