I. INTRODUCTION

Justice and due process are primordial rights of humans.¹

Almost twelve years ago, Louisiana joined a growing trend and created a centralized, executive branch, administrative hearings tribunal. The "central panel" movement has been strong, and more than half the states have adopted some form of quasi-judicial tribunal, including most southern states,² in addition to California,³ Oregon, Washington, Arizona, Colorado, Wyoming, North Dakota, South Dakota, Minnesota, Michigan, Wisconsin, Maine, Missouri, Iowa, Kansas, Massachusetts, New Jersey, and most recently, Alaska.⁴ Washington, D.C. has a central panel—placing the U.S. Supreme Court within its geographic jurisdiction. Some large cities, including Chicago and to some extent, New York, as well as our French-speaking neighbors in Québec, Canada, have structured their myriad of administrative hearings into a central office.

¹ John Hardwicke, former Chief Administrative Law Judge, Maryland Office of Administrative Hearings, stated this in remarks before the Central Panel Directors Conference, Greensboro, NC, November 1, 2007, entitled "Administrative Law: Beginnings."

² These states are: Texas, Alabama, Georgia, Florida, South Carolina, North Carolina, Tennessee, and Maryland. South Carolina declared its central panel an "Administrative Law Court," and "an agency and a court of record within the executive branch of the government of this State," 2004 S.C. Acts No. 202, § 3.

³ California established the nation’s first central panel in 1946.

⁴ The states of Ohio, Indiana, and Kentucky have been studying the concept for possible implementation. There is some centralization of hearings in Pennsylvania and Hawaii, but those states have not yet fully realized as central panels. See Frank Sullivan Jr., Some Questions to Consider Before Indiana Creates a Centralized Office of Administrative Hearings, 38 IND. L. REV. 389 (2005).
What is a central panel? It is "a cadre of professional adjudicators who are administratively independent of the agencies whose cases they hear, and thus, they are removed from agency influence."

Why are they created? The justification for an independent central panel is basic fairness; it is not fair to combine into one person or political entity all of these powers: to investigate (like police), to decide whether to bring charges (like grand juries), to prosecute (like district attorneys), and to decide guilt or innocence (like judges or juries). Americans feel strongly about these basic tenets of justice: "This is the American way." When a government agency threatens to take away or deny a license, or demand money penalties, people want the opportunity to appear before an impartial adjudicator who is not controlled by the same agency as the investigator and prosecutor. They want an independent review of the facts and the law. When a central panel's purpose is explained to average citizens, almost without fail they support it. People want and deserve to feel that they are getting a "fair shake" in a dispute with a state agency. It is critical to citizens to know they had their day in court and that they were treated fairly.

II. HISTORY OF THE DAL ACT

The Division of Administrative Law (DAL) began on October 1, 1996 as the state's centralized administrative hearings tribunal. Act 739 was signed into law by Governor Buddy Roemer in 1995. It had been passed before, and vetoed by Governor Roemer in

The history of Louisiana’s administrative hearings tribunal is a story familiar to other states that have established central panels. The concept is commonly met with skepticism, vigorous agency resistance, predictions of doom, and eventually—after it has been implemented and the benefits experienced—mostly welcome acceptance.  


Frequently, a central panel is the result of some motivating event within the state that creates sufficient momentum to overcome strong opposition from within agencies. In Louisiana, this momentum was created after a few cases in which administrative respondents’ due process rights were violated. Students of “admin law” study the 1989 *Allen v. La. Board of Dentistry* case. The due process rights of physicians were violated when the board’s findings of fact and conclusions of law were drafted ex parte by the board’s prosecutor. An Attorney General opinion in 1990 warned against an agency’s assistant secretary sitting as a voting member of an administrative board and then appointing the hearing officer who would decide the administrative appeal from decision of the same board. “The procedure followed by the Assistant Secretary in these cases is analogous to a district judge having the power to appoint the three judge appellate panel hearing the appeal from his trial judgment.”

Two Department of Environmental Quality cases were apparently on the minds of legislators, according to discussions with the original author of the bill and prior legislators who were members of the committees who heard the bills. In *In the Matter of Rollins Environmental Services, Inc.*, the DEQ secretary was recused from deciding a waste facility permit case because she had investigated the incident at issue, issued the compliance order to shut down the plant, and made repeated public statements...
(including interviews reported by the Wall Street Journal) regarding her resolve to close the respondent’s entire facility permanently.¹⁴

During the year the first central panel bill passed the legislature (later vetoed), another DEQ secretary was recused from deciding an adjudication because of prejudicial public statements. The first circuit noted:

When acting as adjudicators, administrative officers should conduct themselves as judges do. . . . [T]hey must realize the importance of the positions of public trust they hold and endeavor, however difficult, to avoid any appearance of partiality or prejudgment of matters either pending or to be pending before them. The appearance of impartiality and fairness is just as important as being impartial and fair and is essential to maintaining the integrity of the administrative process.¹⁵

Shortly before DAL came into existence, another state agency violated administrative due process. In Georgia Gulf Corporation v. Board of Ethics for Public Employees, the state supreme court declared it impermissible for the Board of Ethics to commingle prosecutorial and adjudicative roles by allowing the commission’s prosecutor and counsel to prepare its decision. The court explained that a party denied the right to a neutral decision maker is denied due process.¹⁶ The court stated:

A fair trial in a fair tribunal is a basic requirement of due process. . . . This applies to administrative agencies which adjudicate as well as to courts. . . . Not only is a biased decision maker constitutionally unacceptable but our

¹⁴. 481 So. 2d 113 (La. 1985). When she appointed a hearing officer to handle the adjudicatory hearing, she even directed him not to consider nor recommend any sanctions, reserving that decision for herself.


¹⁶. 694 So. 2d 173 (La. 1997).
system of law has always endeavored to prevent even the probability of unfairness.\textsuperscript{17}

It was against this backdrop, and the acceleration of the central panel movement in other states, that the DAL Act emerged. The minutes of the legislative committee hearings concerning the enabling legislation and subsequent amendments show the legislators' desire to establish a centralized agency where ALJs could render decisions without fear of offending their appointing authority. Over the intervening twelve years, there were numerous failed attempts to weaken the DAL Act. Testimony from those hearings highlighted the concerns that led to the Act's passage, and its ability to withstand subsequent annual attacks.\textsuperscript{18}

The DAL Act, Louisiana Revised Statutes section 49:991, \textit{et seq}, provide that the division shall handle all adjudications of any state agency of the executive branch of state government. There are specified exemptions, notably Departments of Labor and Agriculture cases, boards and commissions, the Public Service Commission, and some Department of Natural Resources matters.\textsuperscript{19} There is a broad and often misinterpreted exemption for agencies that are "required, pursuant to a federal mandate and as a condition of federal funding, to conduct or render a final order in an adjudication proceeding . . . ."\textsuperscript{20} The Act is supplemented with rules that govern hearing procedures.\textsuperscript{21}
III. THE ROLE OF THE DAL DIRECTOR

The administrator of Louisiana's central panel is statutorily titled the "director." Although this term is common, many states name this position the "chief administrative law judge," and the incumbent may hear and decide cases in addition to his or her administrative duties. The DAL director does not function as an ALJ and does not decide the outcome of cases, which is wholly the duty of the ALJs.

The DAL director is appointed by the governor and confirmed by the state senate for a fixed, six-year term, and may be reappointed and confirmed for subsequent six year terms without limitation. The director's term is intentionally neither "at will" nor concurrent with an appointing governor's four-year elected term of office. The legislature wanted to ensure the director's professionalism and independence from any attempts to use political influence to sway particular case decisions.

The director must be a licensed and resident Louisiana attorney engaged in the practice of law for at least five years prior to appointment. The director is a full-time, unclassified employee, and "shall not accept or engage in additional employment of any kind." This shields the director from conflicts of interest, as the DAL's customers are all the agencies, citizens, and businesses in the state.

Responsibility rests with the director for the overall integrity and competence of the central panel. It is a job as broad as that of any state agency chief, with a grant of authority to "[a]dminister and cause the work of the division to be performed in such a manner and pursuant to such a program as may be

23. The title "chief administrative law judge" is used in Florida, Georgia, Maryland, North Carolina, South Carolina, Texas, Oregon, Washington, Minnesota, New Jersey, Alaska, and Washington, D.C. Massachusetts uses "Chief Administrative Magistrate."
24. § 49:995(A), (B)(1). Currently moving through the 2008 Regular Session is HB 901 which would change the director's term to a fixed four year term, "subject to the approval of the House of Representatives and confirmation by the Senate."
25. § 49:995(A).
26. § 49:995(C). The Director is the only unclassified employee in the entire Department of Civil Service; the ALJs and support staff are classified civil servants.
This includes responsibility for all hiring, purchasing, compliance with various state reporting deadlines, responding to audits, overseeing the employee evaluation program, providing information to other agencies, testifying before legislative committees, responding to media inquiries, developing good working relationships with customer agencies, meeting with appointed and elected officials, participating in bar associations, responding to law suits against the agency, managing subordinate supervisors, preparing and defending agency budgets, promoting the DAL, complying with a vast amount of laws and regulations, and every type of problem solving. In short, the director is a public administrator with a quasi-judicial bent.

The director protects the ALJs' decisional independence by shielding them from interference and pressure from respondents, agency personnel, witnesses, or elected officials. The director reviews and evaluates any complaints received to assure the competence and fairness of the adjudicatory process, but is not involved in affecting the outcome of any case. He or she should passionately guard the decisional independence of the ALJs, while assuring that the public service provided meets high standards of competence, timeliness, fairness, and ethics. A good director performs a fine balancing act. One commentator has noted:

It is the [director] who must skillfully and properly deal with external forces. Indeed, individual ALJs whose "true and real independence of judgment" is protected by the existence of a central panel may not be aware of attacks upon their decisions. In other words, the [director] should be the lightning rod for forces intent on challenging the independence and integrity of decision-makers [ALJs].

27. § 49:996(1).
IV. Operational Structure

A. Early Challenges

The first DAL director was appointed only forty-two days before the October 1, 1996, statutory start of the agency.\textsuperscript{29} The entire agency had to be "made from scratch." The ingredients for this new Louisiana gumbo were the statute itself and the entirely dissimilar hearings processes, policies, cultures, rules, and personnel among the agencies. There was no physical office for the agency, there was no budget yet appropriated,\textsuperscript{30} and there were uncertainties regarding what agencies and employees currently performing adjudicatory functions were to be transferred into the new DAL.\textsuperscript{31} Although the DAL Act provided in section 3 that state agencies were supposed to provide information about their employees who performed these functions, this information was not complete.

Louisiana's experience with agency resistance to the new central panel was not unlike that of other states.\textsuperscript{32} Some agencies were helpful and cooperative and transferred personnel, budgets, computer equipment, and the case files without artifice. Others did not. Some played "hide and go seek," shifting ALJs and support staff into other sections of their agencies and giving them new job titles so that on the transfer date they were no longer officially listed as hearings personnel. This reduced the number of positions the agencies lost through transfer to DAL and the dollars budgeted for salaries and benefits they had to transfer. Another game was to transfer fewer, or no, positions to DAL, or to transfer lower level vacant positions (with smaller salaries) instead of the positions matching the experienced employees who had been performing

\textsuperscript{29} The author took office August 19, 1996.

\textsuperscript{30} It was not until the end of the 1997 legislative session, and three days before the end of that fiscal year, that DAL received supplemental appropriations to repay start up operating costs. 1997 La Acts No. 471.

\textsuperscript{31} § 49:994(C) (transferring to DAL on October 1, 1996 all persons employed in affected agencies who handle adjudications).

\textsuperscript{32} See \textit{supra} note 10 for articles recounting other central panel chiefs' experiences. The Director learned that two weeks after DAL began, the Central Panel Directors were having their annual meeting. The advice and guidance the other states' chiefs offered about how to set up a central panel was a saving grace. I profusely thank them for their help and enjoy their continued support.
adjudicatory functions. Some agencies first agreed to transfer cases, but upon realizing that they would no longer control the hearings and decisions, they refused to send them and suddenly discovered vague and unproven exemptions from the Act.

At first, there was no office space for the DAL. The Department of Civil Service was generous in its support of the new entity, providing the director temporary office space, supplies, and guidance. Later in the year, a few rooms were made available in an office building (now demolished and replaced), which had been closed for asbestos containment and repairs. We made it work because that was all we had.

Agencies were expected to transfer desks, computers, and operating expenses that had been used by their former adjudicatory staff to DAL. Some did. One removed the ALJ’s computer equipment overnight. Another transferred broken and severely inadequate computers (including antique 150MHz processors) from which all operating software had been stripped. An agency even packed up and removed small supplies belonging to the DAL: staplers, scotch tape, legal pads, and ink pens. The DAL staff was no longer surprised by anything.

The newly independent ALJs gradually adjusted to seeing themselves as separate from, and no longer part of, the management structure of their prior agencies. Most began thinking of themselves as independent adjudicators. Fresh air flowed. This new “breathing room” revealed some of the less than impartial hearings procedures that had been acceptable routine.

Pre-DAL, the ALJs’ supervisors frequently were the agency’s prosecuting attorneys who appeared before those ALJs at the hearings. Some ALJs reported to their agency’s general counsel. The conflict of interest inherent in this arrangement is obvious. Many ALJs helped prepare the agency’s case files to be introduced as evidence at the hearings. They were required to review the file

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33. It was only habitable after extensive cleaning and repainting. Used office furniture and equipment was purchased from a state property surplus warehouse.

34. The author discusses this topic to demonstrate the deep structural justifications for the DAL as an independent central panel, but is specifically not accusing any current agency personnel of misdeeds. These problems existing over a decade ago were solved by the implementation and acceptance of the DAL as described in this article.
before the hearing and determine whether it comprised a prima facie case supporting the agency’s action. If agency documents were incomplete or missing, the ALJ was expected to request and obtain them. ALJs reported walking to other sections of their departments to search out and retrieve the necessary documentation.\textsuperscript{35} “They were active, if invisible to the public, prosecutors of the agency’s case.”\textsuperscript{36}

Commonly, agencies referred to the in-house ALJs as “their” judges. Some ALJs perceived a loss of personal status they had enjoyed as the judge for the department head. They continued to sign their decisions as “Judge for the \textit{commissioner/secretary of agency}” and balked at changing their decisions’ headings to reflect the new tribunal, Division of Administrative Law. At least one transferred ALJ did not see it as improper for agency attorneys, immediately following the public presentation of the state’s evidence in a case before “their” judge, to proceed to further discussions behind closed doors in the judge’s office.\textsuperscript{37} A legislator openly recounted in legislative committee meetings his experiences with an agency in-house judge falling asleep during hearings he had attended, seemingly without consequence.\textsuperscript{38}

A lack of impartiality was apparent, as was a lack of procedural efficiency. There was little consistency among the agencies transferred as to process and case procedure, case docketing, content of decisions, qualifications of hearing officers, accountability, and statistical record keeping. All of these processes have been made uniform and consistent for all agencies within the central panel.

\begin{footnotes}
\begin{enumerate}
\item Upon discovery, the Director ordered that activity to stop immediately.
\item Some ALJs’ offices were conveniently adjacent to the agency attorneys’ offices. Ex parte communications, already prohibited in the APA, are proscribed in the DAL Act. LA. REV. STAT. ANN. § 49:998(F) (2008).
\item Rep. Peppi Bruneau repeated this story before the House and Governmental Affairs Committee on May 6, 1999 during consideration of HB 2206. That bill provides that no agency or agency official is entitled to judicial review of ALJ decisions. It became Louisiana Acts Number 1332. The DAL Act specifies that an evaluation of ALJ performance include the judge’s “attentiveness.” § 49:997(B)(2).
\end{enumerate}
\end{footnotes}
Lack of these types of quality assurance wastes state funds and resources. One agency used a contract ALJ who rarely issued written decisions or kept records of continued cases; it later found that it could not collect millions of dollars of outstanding fines. When the DAL began hearing the agency's cases, they were electronically docketed, case records were kept, and written continuances, orders, and decisions were issued. Implementation of these processes dramatically increased citizens' payments of adjudicated fines.

The personnel transferred to DAL remained in their same office locations at the agencies for which they continued to conduct hearings. Structural independence on paper was good, but not sufficient to eliminate interference by customer agencies. Some agencies strongly indicated that DAL ALJs were no longer welcome and wanted them moved out. One agency involuntarily moved a judge in a state office building to a small one room office with no hearing room and no litigant or witness waiting area. Physical separation of the ALJs from their customer agencies was necessary to insulate them from the continuing opportunity for ex parte communications and influences. The prosecuting and judging functions should be separate not only in fact, but also in appearance.

39. A Financial and Compliance Audit by the Legislative Auditor on May 31, 2000 found that the Department of Wildlife and Fisheries had $2.6 million in uncollected fines. The Department responded by letter attached to the report, that "these civil fines are considered by legal counsel to be uncollectible since due process was not afforded to the violators." The agency noted that there had been no provisions for due process adjudicatory hearings until the DAL began handling their hearings in late 1996.

40. DAL's Budget Request for fiscal year 1997-98 is a public document. Pages 21-22 of the Continuation Budget Package described the hostility from host agencies and other detriments experienced from having the ALJs housed in the agencies for which they conducted hearings: compromise of their independence and impartiality; ex parte communications; procedural inefficiencies from several different case intake systems, docketing and filing; duplication of overhead expenses; uneven staffing; and barriers to consolidating workloads.
B. Efficiencies Realized from Consolidation of Offices and Personnel

Pre-DAL, the Department of Public Safety hearings had been handled by hearing officers domiciled in seven separate offices maintained in Baton Rouge, Lafayette, Shreveport, Metairie, Lake Charles, Monroe, and West Monroe. After DAL, the caseload numbers in each location were closely analyzed. The new central panel was politically free to close low volume locations. The result was a more efficient and cost effective use of personnel and sharing of caseloads statewide.\(^{41}\) Today, DAL houses full time ALJs in only three locations: Baton Rouge, Shreveport and Lafayette. DAL serves customers in other cities at its hearing rooms in Lake Charles and Monroe, and at borrowed hearing locations in Metairie,\(^{42}\) Mandeville, Gray, and Alexandria.

The director made a special appeal at a meeting of the House of Representatives’ Appropriations Committee for funds to rent a central office and consolidate the five different locations in Baton Rouge.\(^{43}\) On March 1, 1999, this finally occurred, and the personnel and agencies were moved into two floors downtown, a few blocks from the state Capitol, with hearing rooms. This was a monumental improvement in efficiency and impartiality.\(^{44}\)

Support staff had been abundant at some agencies; scant at others. It was more efficient and cost effective to centralize and

\(^{41}\) There was insufficient workload in the Monroe area for one full time office, much less two. Today, DAL leases one small room in Monroe. An ALJ from the Shreveport office travels there to conduct hearings, usually once weekly. This equaled a reduction from ten workdays to one in that city, and allowed a beneficial consolidation of workload so that the Shreveport office could absorb increased work in its growing metro area. The Lake Charles office was reduced from a five day a week full-time hearings office to a small room visited one day about every other week by the ALJ domiciled in Lafayette.

\(^{42}\) The Metairie office had been moved to downtown New Orleans and expanded with the workload, until the devastating hurricanes of 2005 reduced the caseload and budget cuts closed that office. It is slated to reopen.

\(^{43}\) Funds were included in 1997 La. Acts No. 18.

\(^{44}\) Not all the ALJs wanted to be separate from their parent agencies—perhaps an indication of their too-cozy relationship. One returned to an ALJ position at their original agency which had not been transferred to DAL, and another voluntarily retired the day before the move. Others resented the loss of special perks they had enjoyed at their prior agency, such as personally assigned, take-home state vehicles, and other state equipment.
consolidate the use of all support staff, but some judges naturally regretted the loss of "their" secretaries, paralegals, or law clerks.

C. Housed in the Department of Civil Service

State agencies are not freely floating entities, and structurally tend to be "attached" to some department of state government. DAL was legislatively placed within the Department of State Civil Service (DSCS). It is a fairly independent and well chosen location. The director of State Civil Service is not a gubernatorially appointed cabinet official; rather, he or she is a classified state employee selected by the State Civil Service Board. The DAL director is the only unclassified employee in the entire department, and does not report to, and is not supervised by, the DSCS director. The DAL does not handle employee civil service appeals by state employees, as the civil service board's powers are established in the state constitution. Thus, no conflict of interest exists.

The DSCS provides accounting, payroll, budgeting, human resource, purchasing, and other support functions to the DAL and other boards under its umbrella. This has been a cost-effective sharing of state administrative resources. DSCS has no influence whatsoever over DAL's ALJs or adjudicatory functions.

D. Budget and Billing

DAL's budget is annually approved by the legislature as part of the general appropriation bill.\textsuperscript{45} Currently, most customer agencies pay DAL a flat rate, through interagency transfer (IAT) of funds from their accounts through the state treasury. The ALJs and case assistants keep records of the time they spend on cases and work for each agency. The total hours, usually for the preceding calendar year, are divided by the hours for a particular agency, which gives a percentage of the workload for that agency. Generally, that part of the DAL's total budget (which is IAT) is multiplied by this percentage to determine the IAT amount owed by each customer agency for the following fiscal year. If major

\textsuperscript{45} DAL is agency number 17-564.
changes to the caseload are expected due to new laws or increased enforcement, adjustments are made. The Office of Planning and Budget within the Division of Administration handles this function. A few agencies pay an hourly rate, usually if they are "off-budget" agencies or occasional customers. Some agencies enter into contracts for DAL's ALJ services for new or special cases. The DAL Act was amended to authorize the tribunal to provide ALJs on a contractual basis to any governmental entity not covered by the act. This has allowed DAL to assist agencies with hearings that are not required to be handled by DAL.

E. Planning and Performance

DAL's mission statement is "[t]o provide a neutral forum for handling administrative hearings for certain state agencies, with respect for the dignity of individuals and their due process rights." DAL has an annual operational plan and a five-year strategic plan. It has goals, objectives, and performance indicators based upon its budget, and performance values it is expected to attain. Key performance indicators are reported quarterly and supporting indicators are reported semi-annually. It is a public, transparent reporting of the agency's input and output of work and its efficiency in performing that work. Another positive distinction between DAL and agencies that conduct their own hearings is that DAL's reports of performance are far more extensive and detailed. No other state agency, board, or commission that conducts its own hearings collects or reports as

48. These are filed with the Office of Planning and Budget (OPB), and can be viewed on the DAL's website. See DEP'T OF CIVIL SERV. DIV. OF ADMIN. LAW, STRATEGIC PLAN, FY 2008–2009 THROUGH FY 2012–2013, http://www.adminlaw.state.la.us/docs/2005-2009%20STRATEGIC%20PLAN.pdf.
much performance data. Promptness in handling hearings and issuing decisions are particular features of this reporting.

DAL Performance Indicators
(Jan ‘07 through Dec ’07)

Cases docketed 10,323
Hearings conducted 9,348
Decisions & orders 11,906
Settlements 809
Pre-hearing conferences 725
Fees assessed $1,327,149
Mediations conducted 4

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Performance Indicators Showing Speed and Efficiency of Operation
(Jan. ‘07 through Dec. ‘07)

Average length of time from the date docketed to case closed (i.e., speed of handling cases from beginning to end): 55 days

Average length of time from record closed to decision signed: 6.5 days

Average length of hearings: 25 minutes

Hearings held in less than 30 minutes: 57%

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51. In order to more accurately represent DAL’s typical performance, these statistics exclude those unusually high volume, quick turnaround, Department of Labor hurricane disaster unemployment compensation recovery cases that DAL handled only during FY 07-08.
Benchmarking:
Nationwide Comparison with Performance of Other State Administrative Hearings Panels

- DAL cost per hearing is less than 27% of the Southern Regional Average among centralized administrative hearings panels.
- Average DAL ALJ caseload is 536 cases.
- ALJs handle their caseload with no ALJ secretarial staff.
- DAL support staff (primarily the clerk's office) equals less than 29% of the Southern Regional Average.
- DAL's budget is only 27.2% of the National Average, while DAL has a larger amount of work relative to that budget: 36.8% of the average number of cases filed and 52.5% of the average number of decisions and orders issued.\(^52\)

The DAL's operation is efficient and cost-effective in delivering adjudication services. In 2003, DAL's performance was recognized and its civil servants received an Exceptional Performance award from the Joint Legislative Committee on the Budget.

F. Clerk of Administrative Hearings

The clerk's office receives, dockets, and processes cases similar to a judicial clerk in a state or federal court. New cases are filed only by agencies, not directly by respondents. The clerk's office prepares and mails notices of hearings, subpoenas, orders, and decisions, and posts hearing dockets on the DAL website. New cases are entered into an electronic case docketing and tracking software system. Case documents are scanned, and the hearings are electronically recorded into the system.

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\(^52\) See Division of Administrative Law, http://www.adminlaw.state.la.us/director.htm (last visited May 12, 2008). This data is reported in the annual Operational Plan part of "Budget Request-Division of Administrative Law-Fiscal Year 2008/2009," a public document.
technology is extensively employed to increase efficiency, reduce case handling time, and preserve files. 53

Hearings are assigned by case schedulers supervised by the clerk’s office. Case scheduling involves considering the geographic venue of where the hearing should be held pursuant to statutes or rules and the location of the nearest DAL office and available ALJ. Though ALJs are cross-trained on most areas of law, consideration is given to the availability of an ALJ having the requisite expertise. The number and complexity of cases assigned and the number of days that will need to be left open in the schedule for decision writing is gauged. Many hearings require travel to field sites, and travel duty rotates among the judges. A particular ALJ may be unavailable due to personal leave, so workloads among the judges should be balanced as much as possible. The case schedulers consider all these factors in assigning the cases.

G. Quality Assurance

Quality assurance is integral to an effective central panel operation. This takes the form of the formal operational and strategic planning already mentioned, and managing to meet performance indicators. The DAL Act provides that customers who have appeared before the judges shall be surveyed for their comments. 54 Employees’ performance is formally evaluated at least annually. The DAL is audited for performance measures, property control, and fiscal procedures. The legislative committees—House and Governmental Affairs and Senate Governmental Affairs—exercise oversight and scrutiny of DAL’s rules and procedures.

53. An entire article could be written about the operations of the clerk’s office, and improvements implemented by the DAL in terms of information technology, but that will not be attempted here.

54. LA. REV. STAT. ANN. § 49:997(C) (2008). The author is not aware of any similar laws requiring such surveys by agencies that employ their own judges.
"[A]dministrative law judges are an integral part of the judicial enterprise. . . . One cannot work in government but for a short time without being enormously impressed with the critical contribution to the people’s business performed by administrative law judges."

Agencies are concerned with implementation of agency policy, but an independent central panel’s primary concern is observing due process as fairly as possible. This requires competent and well-trained judges. The DAL Act states the essential qualifications for ALJs, their authority, conduct, evaluations of performance, and protects their decisional independence.

A. ALJ Qualifications

The ALJ must be a Louisiana resident and licensed attorney who has been engaged in the practice of law for at least five years prior to employment. Like other DAL employees, ALJs are classified as civil servants who are strictly prohibited from any participation in political activity. Though ALJs are hired by the DAL director, applications must begin through the formal Department of Civil Service process. The work of judging is a

55. Sullivan, supra note 4.
56. When the DAL began, a few non-attorney ALJs were transferred from the Office of Motor Vehicles in the Department of Public Safety (DPS). They were “grandfathered in” by Louisiana Revised Statutes section 49:994(C). As a result of retirements over the years, at present only one non-attorney ALJ remains who continues to handle only DPS cases.
57. § 49:994(A). Most ALJs hired have ten to twenty or more years of experience practicing law. Louisiana Acts Number 23 of the 2008 First Extraordinary Session of the Louisiana Legislature requires additional qualifications for DAL ALJs who hear Louisiana Board of Ethics adjudications: not less than two years of experience as an ALJ or not less than ten years experience in the practice of law. § 42:1141(C)(4)(a) (effective August 15, 2008).
58. § 49:992(C).
59. Application for an ALJ position begins like other civil service positions: It is announced and posted on the Department of Civil Service’s website for a limited time period, and applicants must complete and submit the standard SF-10 form to human resource personnel. Employees of the Department of Civil Service initially review the applications for compliance with their rules, and then a list of applicants is forwarded to DAL supervisors for screening. Writing samples are reviewed, interviews are conducted, and a test of decision writing
full-time profession. Judges are statutory employees of the division and may not be hired as outside contractors. When they become permanent state employees, they enjoy the protections afforded by the civil service system and can only be terminated for cause. This insulates them from any political pressure on their decision-making.

B. ALJ Authority

The ALJ's authority includes: (1) regulating the adjudicatory proceedings assigned to him; (2) issuing such decisions and orders as are necessary to promote a fair, orderly and prompt adjudication; and (3) exercising those powers vested in the presiding officer by the Administrative Procedure Act.

The Administrative Procedure Act sets forth the judges' powers to administer oaths, to set the time and place for continued hearings, issue subpoenas and discovery orders, to fix the time for filing of briefs and other documents, and to direct the parties to appear and consider simplification of the issues. The technical aspects of ALJs' duties comprise a longer list and are similar to those of agencies' in-house hearing officers. What separates central panel ALJs from those agency personnel is the duty owed to their customers: the respondent, the agency, counsel, and witnesses. Professor Ron Beal suitably described this responsibility:

and computer usage skills is given. The candidate's background, references, standing with the bar, and any bar disciplinary actions or ethics complaints may be checked.

60. Occasionally, flex time or part-time hours are granted.
61. § 49:994(B).
62. See LA. CONST. art. X, § 1.
64. See LA. REV. STAT. ANN. § 49:994(D) (2008) (granting the ALJs power to conduct telephone or video hearings and to continue hearings for witnesses called to military service).
65. See § 49:956.
Their duty is to be charged with the solemn trust to act fairly and impartially in fulfilling their vested duties. Each act performed must be done with genuine even-handedness, compelled by a firm desire to provide to everyone their due. The overriding goal should be to shun any action or conduct that would tend to undermine the faith and confidence of the parties and the public.\textsuperscript{66}

The DAL ALJs have a unique level of decisional independence among central panels nationwide. They issue the final decision or order in cases, and the agency has no authority to override that decision or order. A losing respondent may appeal to the judicial (usually district) courts. But neither the agency, nor any agency official nor any other person acting on the agency's or an official's behalf, is entitled to judicial review of the ALJ's decision.\textsuperscript{67} This provision has been controversial, to say the least. Yet, the legality of this legislative policy decision was upheld by the state supreme court in the notable case, \textit{Wooley vs. State Farm Insurance Co.},\textsuperscript{68} which found that DAL ALJs exercise quasi-judicial powers.

\section*{C. ALJ Conduct and Ethics Codes}

The ALJs' conduct is governed by the Louisiana Code of Governmental Ethics\textsuperscript{69} and the Louisiana State Bar Code of Professional Conduct.\textsuperscript{70} Additionally, DAL developed and instituted its own "Code of Judicial Conduct for Administrative Law Judges" to establish and provide guidance to ALJs in maintaining high standards of judicial and personal conduct.\textsuperscript{71} Training in ethics and professionalism is provided to the ALJs and


\textsuperscript{67}. See §§ 49:992(B)(2)-(3); 49:958.

\textsuperscript{68}. 893 So. 2d 746 (La. 2005).

\textsuperscript{69}. §§ 42:1101-70 (detailing the Louisiana Code of Governmental Ethics).


\textsuperscript{71}. Last revised in 2004, it is based upon all of the following: the Model Code of Judicial Conduct as adopted by the American Bar Association on August 7, 1990; the February 1989 Model Code of Judicial Conduct for Federal ALJs; the Model Code of Judicial Conduct for State ALJs adopted by the National Association of ALJs; and the Model Code of Judicial Conduct for State Central Panel ALJs.
staff each year. The seriousness of ethical conduct by the ALJs is emphasized by its inclusion as a distinct factor in each ALJ and case assistant's required annual Performance Planning and Review document.

D. Requisite ALJ Skills

The job of adjudicator as practiced at the DAL requires a nuts-and-bolts type of professional. An ALJ must handle a diverse caseload, travel statewide to conduct hearings, work without a bailiff, secretary, or law clerk, be proficient in the use of a computer to perform his own research and writing, and type his own decisions. In addition to judicial qualities, it requires a high degree of organizational skills, self-discipline to meet decision writing and case handling deadlines to keep the docket moving, and the ability to work with a team of ALJs, administrative hearings clerk's staff, and other office professionals.

The judge must be able to handle both complex cases argued by highly experienced attorneys from large law firms and agencies, as well as simple fact cases with unrepresented parties who do not understand the hearings process. They should be comfortable administering justice fairly for all in any scenario. Honing these skills necessitates regular training.

E. ALJ Training

A high degree of professionalism must be maintained by an ALJ. The DAL Act requires the development and maintenance of a program for the continual training and education of the ALJs in regard to their responsibilities and administrative procedures.72 They gain proficiency in substantive and procedural law, due process hearing procedures, evidence, docket management, agency processes, handling unrepresented parties, judicial demeanor and maintaining impartiality, computer skills, and much more. ALJs learn techniques to guide parties wishing to settle cases, and some are trained mediators.

DAL's training program includes sending ALJs to week long classes at the National Judicial College in Reno, Nevada, on conducting fair hearings. DAL's judges attend specialized seminars sponsored by the National Association of Administrative Law Judges (NAALJ) and its Louisiana chapter (LAALJ). Several times each year the DAL hosts its own continuing education seminars. Judicial district and appellate court judges, and ALJs and chief ALJs from other states continue to be instrumental in offering their time and expertise in assisting with training. Speakers include law school professors, private attorneys, disciplinary counsel from the state bar, personnel from the Louisiana Board of Ethics, experts in legal writing, and state agency personnel. Agency participation is most valuable. When a new area of law is transferred to DAL, particularized training is given, often by agency personnel with expertise in that field.

Central panel judges are generalists who handle many types of cases. Cross-training provides maximum flexibility for case scheduling and efficient distribution of caseload among the judges. This differentiates DAL from agencies' own hearing officers who tend to be narrow specialists in the particular cases of that agency. Agencies, boards, and commissions do not have state laws requiring them to conduct training in due process hearings for their adjudicators. The lack of training concerning how to conduct a due process hearing might contribute to the impression that some agencies or boards' hearings processes are not fair.

It is not sufficient that an ALJ to be a technical expert in agency law and policy. The officer of justice should be able to impartially balance his or her knowledge of the law with sensitivity to the impact of the application of the law and agency policy on the citizen. The DAL Act recognizes the need for DAL ALJs to be experts in administrative due process procedures and attentive to fairness and objectivity. This combination of expertise and fairness is one of the advantages of the central panel.73

73. During the floor debate on House Bill 41 Rep. Norton stated that using DAL ALJs is "an excellent idea" since "the Judge would be better able [than the agency] to make a call; know what they are doing." House of Representatives Floor Debate on H.B. 41, 2008 1st Extra. Sess. (now La. Acts No. 23), Feb. 15, 2008.
F. Judicial Performance Evaluations

Unlike Article III judges, DAL ALJs are statutorily required to undergo at least annual evaluations of their performance.\textsuperscript{74} Job reviews are required of all classified civil servants, but the DAL Act compels the director to develop and implement a program of judicial evaluation.\textsuperscript{75} This mandate further distinguishes DAL ALJs from agencies’ own hearing officers: No law requires agencies, boards, or commissions to be evaluated on how they conduct administrative hearings. This is a positive distinction.

The statute specifies three areas of judicial performance to be evaluated: competence, productivity, and demeanor. It covers judges’ consideration of adherence to schedules; courtesy and attentiveness to the litigants, witnesses, and counsel; knowledge of the law; analytical, writing, and settlement skills; quantity and quality of caseload disposition and impartiality. The evaluation should not include a review of any case results. Judges are evaluated on their decision-making skills, but not on the outcome of any case.

The evaluations are performed by ALJ supervisors whose duties include oversight of judicial quality assurance. They train new judges, make sure that caseloads are fairly distributed, that judges are available for hearings when there are absences, and that hearings are being conducted timely. These managers observe hearings, meet with agency personnel about improving case handling processes between the agency and the tribunal, and troubleshoot day-to-day operational concerns.

VI. ADMINISTRATIVE HEARINGS AND DECISIONS

A. Hearings

The DAL handles about six to ten thousand hearings per year. Almost all are handled within one day, and decisions are usually issued within one week. Though they can vary in complexity, most hearings involve only a few factual or legal issues. This is typical for the majority of administrative law cases. A few cases

\textsuperscript{74} § 49:997(F) (providing that performance reviews are confidential documents).

\textsuperscript{75} § 49:997.
are complex, multi-day affairs. The judges are trained to handle a
diversity of cases.

Parties do not have to be represented by an attorney; some are
but many are not. An administrative hearing, though comparable
to a small trial, is typically less formal. Hearsay evidence is
admissible, and hearing procedures are more user-friendly to the
average citizen. The hearings are public, and anyone may attend
unless a specific statute makes it confidential (which is rare). Most
documents introduced are subject to the Public Records Act.\footnote{\textsection 44:1-427.}
Adjudications are handled in the manner required by the
Administrative Procedure Act\footnote{\textsection 49:992(A)(2). \textit{See generally} \textsection\textsection 49:950–99.25.} and DAL's promulgated rules.\footnote{\textsection\textsection 49:950-99.25.}
Having rules to which all parties must adhere contributes to the
fairness of the process.

Hearings are conveniently located around the state. Convenience and accessibility to the public and the agencies are
balanced with using an impartial location when reasonably
possible. Procedures are similar to judicial cases, including
witness and document subpoenas, conduct of discovery,
confrontation and cross examination of witnesses, the introduction
of evidence, and motion practice. The purpose and procedures for
prehearing conferences are specified in the DAL Act and are used
to simplify and expedite cases. Ex parte communications with the
ALJs are strictly prohibited.\footnote{\textsection 49:998.} ALJs may be recused if they have a
conflict of interest in a case that interferes with their ability to
accord a fair and impartial hearing.\footnote{\textsection 49:999.}

\textit{B. Decisions}\textit{ }

Decision-making and decision writing are skills particular to
judges. Decisions must be in writing, and include findings of fact
and conclusions of law.\footnote{\textsection 49:958 (requiring that decisions be delivered to the parties).} They should be clearly written and
easily understood by the average person. Administrative law
decisions should not read like U.S. Supreme Court decisions or
heavily footnoted law review articles. Yet this is not fill-in-the-
blank decision-making. DAL devotes training and supervisory resources to improving judicial writing. Since judging is its primary function, DAL is motivated to help its ALJs continually improve these skills as part of its quality assurance measures. Well-written and clear decisions also improve public trust and confidence in the adjudicatory process.

C. Finality; Appeals

As previously discussed, only the respondent to the adjudication, the party against whom agency action was taken or proposed, may appeal the decision to a judicial court. The agency is statutorily denied the right to appeal. The legislature justified this policy decision based upon the reported practice of agencies using their personnel and budgetary resources to appeal every case they lost, no matter how small. Responding to an appeal is very expensive. A respondent might be left with the choice of either paying more in attorney fees and missing additional work time for the appeal or paying the proposed fine, even when he had won his case before the ALJ. The legislature felt that this was unfair and made a policy decision to make the DAL ALJ decisions final and unappealable by agencies and their representatives.

As mentioned, the Wooley v. State Farm case directly attacked this provision as unconstitutional. Our state supreme court unanimously disagreed. Simply put, the legislature has the legal prerogative to provide such finality to DAL decisions. The supreme court’s decision is well-written and well-reasoned, and its perusal is recommended.

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82. "[T]he power of government is so overwhelming that if government is allowed to take any case they want to the Supreme Court, no one will be able to afford to even begin to participate.” Minutes of the Senate and Governmental Affairs Committee meeting June 9, 1999 on HB 2206 (La. Acts No. 1332) (remarks in support of the bill by its author, Rep. Charles Lancaster).


84. Although the author was initially asked to submit an article justifying the Wooley decision from the DAL’s perspective and responding to its critics, in the author’s view the decision is self-explanatory and needs no defense. A similar suit was unsuccessful in federal court by the next Commissioner of Insurance who sought to have the decisional finality provisions declared unconstitutional, this time under the U.S. Constitution. Donelon vs. La. Div. of Admin. Law, ex rel. Wise, No. 07-30482, 2008 WL 821000 (5th Cir. 2008) reh’g denied (Apr. 24, 2008) (affirming the district court’s decision to dismiss
A. Avoiding the Unavoidable: An Agency's Power to Exert Control Over its "Own" Hearing Process

State agencies have great power. They make laws through rulemaking. They interpret their own rules and laws. They create (often unwritten) policies regarding implementation, administration, and enforcement of the laws. They create the forms that must be filed to obtain or renew licenses, make financial disclosures, and otherwise obey their laws and rules. They control the flow of information provided in response to inquiries on how to comply with their rules, forms, and procedures. They control the process by which compliance occurs. They inspect, audit, review, and investigate businesses and individuals for compliance. They control the number, frequency, and intensity of inspections, audits, and investigations. They can hire or fire, and control the pay and merit raises of the public servants who are expected to perform these functions. They take and investigate complaints against those whom they regulate. They have the power to grant licenses to operate or engage in a profession, or to place restrictions on those licenses, or to deny them, suspend them, revoke them, or refuse to renew them. Agencies may bring charges, usually completely at their discretion, against persons for alleged violations of the rules and laws. The agency decides whether or not to seek civil monetary or other penalties allowed by statute, and often the amount and type of penalties. They decide whether or not to try to settle, mediate or otherwise resolve the dispute with a respondent short of proceeding to an administrative hearing. All of this power stays with the agency, even when a central panel is used for the hearing.

Usually before the agency can take away a property right such as a license, or enforce civil penalties, constitutional procedural due process requires that a person be given an opportunity for a
This right to a predetermination evidentiary hearing is supposed to enhance the rights of citizens, but if the adjudicator is not fair and impartial, the citizen’s rights may be compromised. An agency can meet due process by using in-house adjudicators, which are used often. Agencies may try to create fairness by erecting variously named “walls” within the agency to shield their employee-adjudicator from their employee-investigators and employee-prosecutors.

Some opponents of central panels argue that in-house, or outside contract ALJs, or board members, can provide equally fair hearings, or that all that is needed are firewalls within the agency to create sufficient separations between the prosecutors and adjudicators. If the strict separations that firewalls are intended to create were rigorously enforced, fairness is theoretically possible. But theories can be undermined by agencies’ natural overriding desire to enforce their own policies.

B. Flames Lapping Under the “Firewalls”

When agencies do not use an independent central panel, they usually have the power to exercise some level of control over the administrative hearing and can use that power to their strategic advantage. First, they can decide how fast the case will be noticed and set for hearing. When the agency’s decision is challenged by a request for a hearing, it may be less motivated to move the case toward a speedy resolution when that resolution could be contrary to their wishes. Unless there is a statute that provides for a deadline to set a case for a hearing, agencies can receive a citizen’s request for their due process hearing and delay setting the hearing date.

86. See Butler v. Dep’t of Pub. Safety & Corrs., 609 So. 2d 790 (La. 1992) (holding that the fact that the ALJ was employed by and subject to supervision by the same agency which suspended respondent’s license did not violate due process).
Procedural delays can hamper a citizen's ability to continue in business. If he has been denied a license renewal, for example, in some cases the person may have to stop taking or serving customers or risk illegally engaging in a business without a license, which may expose him to more severe sanctions. He can lose money, his business, and his reputation while the months drag on, regardless of the merits of any defense to the agency's action. Pending charges may constitute a blemish on the respondent's record, which affects other licenses or endeavors. This is not meant to presume that any agency would intentionally interfere in such a way. But the old adage "justice delayed is justice denied" is true, and delayed justice can have devastating consequences in administrative law. For example, if an agency can deny, suspend, or fail to renew a license pending the fair hearing, a person can be put out of business and suffer great financial hardship, even if the license or other right is eventually reinstated after a delayed hearing.

Another factor that may be controlled is where the hearing will be held. Unless a statute provides otherwise, a person may have to incur additional expense and lost work time to travel (possibly across the state) to the agency's office to appear at his in-person hearing.

When a hearing is noticed and conducted in a timely fashion, it is important that the decision be rendered promptly. A delayed decision can result in losses as well. If the initial license denial or revocation were intended to stop the respondent from conducting a certain business, for example, then an agency could gain that end without an evidentiary hearing or decision, by controlling the hearings process at various points, whether or not the agency also has employment control over the judge. 88

88. See, for example, the protracted procedural history of Doc's Clinic v. State ex rel. Department of Health & Hospitals, 07-0480, 2007 WL 3246228 (La. App. 1st Cir. 2007), writ denied 974 So. 2d 665 (La. 2008). On October 26, 2000, the Department of Health and Hospitals (DHH) issued a violation letter to Doc's Clinic. Id. at 3. A thirteen day administrative appeal hearing was conducted beginning in December 2001 and ending in January 2002 and submitted for decision after briefing on February 25, 2002. Id. at 4. More than one year later, March 23, 2003, the ALJ submitted a 155 page proposed decision to the DHH secretary wherein he reversed the department's decision. Id. The secretary adopted the findings of fact but rejected most conclusions of law; Doc's appealed to the district court, where the judge concluded that the DHH
These points are made to explain why an independent tribunal, particularly a central panel, is better suited to protect due process.

C. Walls Don’t Cover Up the Appearance Problem

Chief Judge Tom Ewing of Oregon’s central panel made this statement on the public’s perception of partiality when the prosecuting agency employs the ALJ hearing their case:

The problem with appearance is obvious. However carefully an agency erects a “Chinese Wall” between its regulatory staff and administrative law judges (ALJs), citizens do not know that. If they do know it, they do not believe it. What citizens know is this: they are fighting the agency, and they want a fair hearing. When they enter the hearing room and learn that the judge presiding over the case is an employee of their adversary, no explanation will persuade them, especially if they lose, that the outcome was not predetermined.\textsuperscript{89}

D. Benefits

Louisiana’s centralized administrative hearings tribunal has helped to improve government. This Article has outlined many of the benefits.\textsuperscript{90} Separation of the investigatory, charging, and prosecutorial functions from the hearings functions has made adjudications fairer to citizens and businesses, both in appearance and reality. Cost and performance efficiencies have improved. DAL has streamlined the hearings process, realizing economies of scale in combining hearings duties from various agencies into one.

\textsuperscript{89} Hardwicke & Ewing, supra note 36, at 232. The authors also elegantly respond to the “loss of agency expertise” argument by opponents of central panels. Id. at 238.

\textsuperscript{90} A good listing of central panels’ benefits is made by Allen Hoberg, Administrative Hearings: State Central Panels in the 1990s, 46 ADMIN. L. REV. 75, 76–77 (1994).
Flexibility has allowed DAL to improve case scheduling and to aid agencies with special and short-term caseloads. For example, during 2007–08, DAL streamlined processes for the Louisiana Department of Labor and speedily resolved several thousand special cases for the LDOL: an overload of 2005 Hurricanes Katrina and Rita disaster unemployment compensation recovery matters. This kind of adaptability saves the state money that might be wasted if it had to start up a new program just to handle such cases.

The central panel is an ideal tribunal for political “hot button” cases. Unlike some agencies and boards, the ALJs are more insulated from political pressure. Some agencies are pleased to learn that there exists an impartial administrative tribunal that can professionally handle sensitive or controversial cases and provide them political “cover” from a disputatious result.91

Another benefit has been better quality cases. The prosecuting agency cannot rely upon an independent ALJ to remedy a deficient case file. They cannot adopt a laissez-faire attitude about sending every hearing request to the ALJs. This motivates agencies to pursue only those cases where the evidence supporting the agency’s action is likely to survive an independent review. If not, the agency can consider whether they should be pursuing the case. Government operates more efficiently, and more effectively serves its citizens, when it avoids insupportable prosecutions.

VIII. CONCLUSION

The story of Louisiana’s central panel is similar to others. The resistance to its implementation was fierce and sometimes excessive. Yet now, almost twelve years later, the agency has survived—even flourished. DAL enjoys excellent performance reviews and has recently been legislatively entrusted with expanded jurisdiction.92 Some agencies are pleased with the

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91. There have been many instances where agencies, boards, and commissions that could claim an exemption under the DAL Act have asked DAL to handle certain cases, which were especially delicate or contentious, or when there existed too many conflicts of interest among their board members.

92. The success of the DAL would not have been possible without the hard work, skill, professionalism, and dedication to providing good public service of
results and express relief at having another agency handle their adjudications.

Other agencies continue to resist, especially their loss of control over the hearing process and the final decision. “This resistance, however, is proof of the need for a central panel. For the first time . . . citizens have an opportunity to adjudicate their disputes with agencies before judges who are truly independent and impartial. This is not simply good government. It is best government.”93

The story of DAL is best concluded with the simple and direct words of one citizen who insisted on speaking about his hearing with the director, who anticipated a complaint. In an assertive manner this gentleman said: “I lost my case, but I got a fair hearing before a fair judge, and I can’t ask for anything more than that.”

Words to remember for any judge.

the judges and operational support staff. With respect and gratitude, I dedicate this article to them.

93. Ewing, Oregon's Panel, supra note 10, at 89. The author thanks Judge Ewing for permission to freely use his excellent articles about the formation of the Oregon panel, which were most instructive. Also thanks to Chief Judge Julian Mann of North Carolina’s central panel, for his outstanding advice and guidance.