

Hon. John W. Hardwicke

*The Central Panel Movement: A Work In Progress*

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Abstract by Janet C. Goldberg

The “central panel movement” emerged amid concerns that a substantive agency’s employee could not be trusted to render an impartial decision in cases involving a dispute between the agency and a citizen. The American Bar Association has endorsed a model central panel, but needs to increase its efforts to disseminate this model. Although twenty-six states and several major cities have adopted some form of central panel for administrative judges, there is no consensus regarding the reach, scope, or jurisdictional responsibility of these panels.

This article’s author, who became the Chief Administrative Law Judge in Maryland’s first central panel agency, proposes several goals of the central panel movement. First, the movement strives to ensure “true and real independence of judgement” of the administrative judiciary. Second, the movement seeks to determine the proper structure for an adjudicative agency located outside of a substantive agency (*i.e.*, an independent structure under the aegis of the state’s governor). Third, the movement seeks “experts in due process” - persons with formal legal training, rather than laypersons - to serve on a central panel to oversee due process hearings.

After presenting the goals of the central panel movement, this article discusses ways in which the administrative judiciary is distinguishable from the constitutional, or Article III, judiciary. For instance, administrative judges do not wear robes, whereas Article III judges do. However, the wearing of a robe may be inappropriate for administrative judges because administrative proceedings are often informal. Additionally, ALJs’ decisions are likely to be overturned on appeal if they do not cite correct law/precedent in support of their decision, whereas constitutional judges may only infrequently give reasons underlying the bases of their decisions. Another distinction between the administrative and constitutional judiciaries is that Article III judges are largely insulated from legislative and executive inference, but ALJs are “creatures of statute” and not similarly insulated or protected.

The interdependence of the administrative judiciary and executive policy makers dictates that “policy be placed on the table . . . [at administrative] hearing[s] in order to achieve a symbiosis of the function of a judge with the function of policy execution.” Moreover, the substantive agency should determine appropriate limitations on sanctions that may be imposed by administrative judges, so the administrative adjudicator does not “intrude into the executive function of government.” Although ALJs must often rely on their intuition to determine the policy underlying agency actions, “ALJs must adhere strictly to the facts and the law and [their] . . . intuitive sense of right and wrong must be limited to policy intuition.”