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LONG-STANDING INSIDIOUS AND VINDICTIVE CULTURE OF THE CALJ OFFICE, WHICH HAS RESULTED IN THE CONTINUOUS VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT

Good morning ladies and gentlemen. Thank you for your invitation to speak before you about my experiences as an Administrative Law Judge (ALJ) with the U.S. Coast Guard (CG).

By this sharing, I hope to provide information for you to determine whether the CG ALJ Program may need some gutting and reconstruction to get back on an even keel to accomplish the goals of the Administrative Procedures Act (APA). Providing fair and impartial hearings by truly independent triers of fact is the ultimate goal.

My legal expertise was developed while serving as Trial Attorney at the Department of Justice for eight years in the Admiralty and Shipping Section of the Civil Division from 1974 to 1982. I tried maritime cases in federal district and appellate courts throughout the U.S. and our Territories. In 1982 I left to become an Administrative Law Judge (ALJ) with the CG, until 1996, when I lost my position in a CG Streamlining/RIF. My testimony will cover that period.

Among other things, the following issues need to be addresses:

Ensure that an ALJ is in fact independent and not subject to the whims or personal preferences of a CALJ. Affording ALJ's freedom to decide cases free from concerns that an unpopular decision they make will not result in isolation, losing prestige, status or promotion. This has happened in the past.

CALJ's should be busy hearing cases, not assigning them. Cases should be assigned administratively in a fair rotational way, like in the federal and state courts. The judges have nothing to do with assigning cases. The power to assign cases by the CALJ can be abused and manipulated to the detriment of one judge and to the benefit of another. This very power has been used in the past as a basis to eliminate a CG ALJ, not favored by the CALJ. This enormous power encourages judges to conform to behaviors that may well be inappropriate to the fair administration of justice. Assignment of cases in popular locations has been used by CALJ's as perks to those judges in his favor.

CALJ's must insure that ALJ's discharge their responsibilities free from fear----- in a way to send message to other judges that if they don't follow the CALJ directive, desires or mandates in ways that a CALJ finds appropriate, that the CALJ won't take measures that affect that judge personally and do serve the ends of justice.

CALJ's should not be assigning law clerks. Law clerks, if not assigned to each judge, should be applied for administratively as needed by each judge, not used to enhance one judges caseload over another's. This has been done in the past.

Demonstrate the importance of creating standards, generating rules and regulations that preserve independence and integrity of the ALJ's.

Example: The ability of a CALJ to designate the caseload for an ALJ gives to CALJ enormous power, which if abused, can lead to loss of independence of the ALJ. If the ALJ does something that is not what the CALJ wants, this could create a vacuum and loss of caseload.

CALJ are there to support the ALJ's. In the case of Cambronne, CALJ did not stay neutral. In this case he assumed misbehavior, without any reference to a transcript or even speaking to the ALJ involved. Should have written a letter back to the attorney thanking him for his comments and suggesting he follow the rules for filing a recusal, if he felt so strongly. He should not be sending a copy of the attorney's letter to a District Commander saying for "his eyes only" behind the ALJ's back and without even speaking to her about it.

The system I lived under while practicing in federal courts was very different. After I had been with the CG for awhile I realized that to preserve my position I had to bend to the desires and whims of the CALJ and appease the gripes and concerns of him, which I didn't even know they were and which were vaguely communicated to me.

Because a lawyer complained – he threatened to remove or recuse me, the CALJ appeared to be trying to appease him, assuming that lawyer may have had merit to his claim. He never called me, never read the transcript, doubtful if he even read the my decisions. I reached my decision on the merits of the case, whether or not the attorney, the CG or the CALJ agreed with me. If the higher level of appeal did not agree with me, it is their prerogative to reverse me and order the CG to issue the temporary license. The CG affirmed me and the NTSB reversed the CG and sent it back for the CG to issue the temporary license, not me. The CG sent it back to me to give support why I made my one and only ever decision to refuse a temporary license to a mariner, which I did. (Three DUI arrests and one involving a hit and run accident and operating a Great Lakes vessel under the influence was a big influence on me not to order the CG to issue a temporary license, while the mariner's conviction was on appeal. I truly thought he was a severe threat to safety.

There CALJ had no cases about my misbehavior. His letter was only a concealed personal animosity or poor judgment on his part or a continued effort to remove me because of his own personal dislikes or insecurities.. The CALJ used this letter as an excuse to assign another case in the 9<sup>th</sup> District to Judge Boggs, who had to come all the way from New Orleans, instead of me. You take a stand and you pay the price. Another excuse to shrink my caseload.

Need to avoid any possibility that any future ALJ would be put in a position where their decision would be subject to someone's personal agenda.

If a RIF situation ever arises in the future, the CALJ should have no input as to what ALJ is eliminated. OPM should be the decider on that. If left in the hands of the CALJ, this can and has been egregiously abused in the past, impacting seriously and unfairly on the life and well being of an ALJ, who was not on his most favored list.

The CALJ's Office is a Headquarter's Unit and the CG has very specific rules in a Reduction in Force (RIF) action as to what is the competitive area for a Headquarter's Unit. The competitive area is

comprised of the entire Unit as a whole as stated in the Commandant's Instruction (COMDTINST) 12351.2.A. That means that all of the CG ALJ's would be included in the competitive area, regardless of where they are assigned. In the particular case of which I speak, the CALJ decided he wanted to keep a judge that was on his most favored list and even recommended to the Commandant that he knew he was junior and would likely be RIF's, but he still wanted to keep him.

So the CALJ, without regard to standards, decided that he would change the competitive area for this Headquarters Unit and have it become the location where the judge lived that was not on his most favored list, thereby leaving no competition for the judge. He called it "the area of responsibility," which has nothing to do with a RIF. This clearly violated the rules of the RIF, yet he was able to keep the ALJ he wanted to keep. His actions were supported by the Commandant and the Secretary of Transportation at the time, even though they were questioned about this action. This was clearly an abuse of power and position. This practice is negatively referred to as a "designer RIF," where someone is set up to be eliminated.

I took my work very seriously as a trial attorney at DOJ. I learned as much as I could to develop in my field of law and maritime skills. The pumpmen, captains, mates, engineers, optical and lighting experts, deckhands, cooks, pilots, tankermen, lockmen on the locks and many more all had much to offer me in my training. I did the same with my position as an ALJ. I believed in continuing legal/judicial training too. I brought my expertise with me to the CG when I started as an ALJ. I continued with further training by attending the Tankerman School in Helen AR and rode the towboat downriver in high water both on the upper and lower Mississippi to learn what these captains and pilots are up against. I have greater respect for them on the river than I do the ocean going mariners because the rivers change every time there is low or high water. They have to keep "book" on the river all of the time. They are "on" their entire time at the sticks. There is no automatic pilot for them.

My testimony may provide you with an insight into the long-standing insidious and vindictive culture that exists in the CALJ Office. That being done, hopefully I may give some information that would assist in some way in the reconstruction my desire is to influence in some way the reconstruction of a program centered on the ideals and objectives of the Administrative Procedures Act (APA), justice and good will---not on the petty egos of small minds, threatened by those around them.

How do you effectuate this?

Remove the CALJ as member of the admirals club.

Having any judge's office co-located at CG Headquarters or shared with any other CG facility does not do it.

Holding hearings in CG facilities does not do it, even if this is an inconvenience for the IO's.

It is not done by anything other than a courteous arms length relationship with all of the parties.

Working with the IO's to "nail" a respondent definitely does not accomplish it, as one of the CG ALJ's conspired to do. He, however, was on the most favored list.

It is not done by the chief judge's office having any input into the cases on appeal.

Socializing with CG members, especially those involved in Marine Safety Programs is not going to do it.

Judges training the IO's to present cases against the respondents does not do it. This has caused justifiable anger in the marine community towards the judges and the CG. The CG has many experienced and well-trained IO's that are fully capable of training the IO's.

-eliminate any appearance of bias, impropriety or favoritism. The judges are already perceived very negatively by the marine industry. They see us as "in the back pocket of the CG", which I have learned in some cases to be true. There is a long hill to climb to repair the damage that has been done in the last over 30 years.

-treat all parties and your staff with respect Humiliating any of the parties or your own support staff does not do it.

Referring to your support staff as "my girl" does not do it.

It is not done by failure to have yearly continuing judicial/legal training. If a judge or staffer needs more help, provide for that special training. Don't ridicule them.

It is not done by failure to train support staff in their administrative responsibilities.

If one of your judges is in recovery, don't refer to him as a drunk behind his back. He could be a great asset to our program in dealing with cases involving drugs and alcohol.

The chief judge should be the leader of equals and be there to always assist the judges in accomplishing the objectives of the program.

Just as the leaders in the churches are supposed to be the servants of their people, so to should the chief judge be there to serve the public servants for our citizens. Many leaders forget the true role of the leader.

We need continuing training in judicial ethics and diversity

This needs to be done:  
Use bullet points

what might be done to effectuate the objectives and ideals of such a program. This environment has not only impacted negatively upon the people in the program, but also the people it was meant to protect, by insuring they receive fair and impartial hearings by independent triers of facts.

To accomplish this goal, it is the roll of the chief judge to provide mentally and physically healthy judges, who do not feel intimidation by the chief judge or staff.

I make this allegation, with one exception. During the tenure of Judge Boggs as Acting Chief Administrative Law Judge, I never any sense of him as part of that culture.

If you find this cancer exist, you act immediately to eliminate the sickness in that office.

Holding hearings outside of the premisie

He was taking advantage of his position—travel abuse, abuse of position, abuse of power and abuse of people. This I am sure did not happen overnight.

I was not the only judge the chief judge isolated or “went after.” When I first came with the CG, Judges Coughlin, Fravola and Boggs introduced me to Judge Galvin in New Orleans. He was on the wrong side of the chief judge. He as not allowed to get training, go to our conferences and I don't remember what else. I believe the chief judge was isolating him because he told me not to speak with him. I don't know how many other judges before him were treated this way. While I trained with Judge Coughlin and Judge Fravola they gave me some of the history of the program. They told me not to get on the chief judge's bad side or I would pay dearly. They suggested I always agree with him and then do what I needed to do.

When I questioned that it set in motion a long series of steps in retribution

ACCI If I could just be a little more sweetsy and use my feminine wiles, it would be much better for me. He didn't mean this in a sexual way so much as a little girl flirting with daddy

George Jordon also knew about the Judge's travel abuses and did nothing. He said he was afraid of losing his job. (I can relate)

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Systematically interfered with the index of the judges in order to see that all cases were settled in favor of the

Retribution for telling him not to use my office for justifying his Chicago vacations

Put recommendations on my cases on appeal that were not even raised on appeal by the attorney, and this is when I went to the admiral.

It (even) went as far as submitting disingenuous recommendations to the CG Legal Office (G-LCL) (to reverse) for the purposes of reversing my cases on appeal to the Commandant.

I was unaware of this situation, until an attorney from the Legal Office called me to inquire about what was going on with the CALJ Office and my cases. He told me that George Jordon was submitting recommendations to them, signed by the CALJ, to reverse my cases on appeal, (even on) including issues that were never raised on appeal by the seamen's attorneys. (cite the cases). The CG attorney stated that his office did not agree with the CALJ Office's recommendations; however, in deference to him (since he gave the impression by stating that he was a "Harvard Man"), they remanded or reversed my cases (See ALJ Denson statement p. 5). The CG did a disservice to itself and safety on our navigable waters these actions.

Such behavior by the CALJ Office was impacting not only safety of transportation on our navigable waters, but also the CG's right to a fair hearing. As an ALJ appointed pursuant to the Administrative Procedures Act, I was responsible not only to provide a fair hearing to our merchant mariners, but also to the CG.

As a result of this, I reported what I had (heard) learned to Admiral Bob Nelson, who was at the time the Second CG District Commander. When I met with him, he explained that he had (just) recently received a letter labeled "for your eyes only" from the CALJ. The letter stated that an unnamed attorney was upset with me because I would not authorize a temporary document for his client (Lyons), pending his appeal. ( He failed to mention include in the letter that the seaman had been charged with operating his vessel while under the influence, after leaving the scene of a hit and run accident, which resulted when he ran a red light and that the seaman had three prior arrests for DWI. ) He failed to mention that the seaman had been charged with operating his vessel while under the influence and had left the scene of a hit and run accident. This resulted after he had ran a red light and had three prior arrests for DWU.

Admiral Nelson retrieved the letter out of his trashcan to show me. He said he sensed there was something strange going on between our offices. Since he was planning to (to Headquarters for a meeting) attend a meeting at Headquarters, he offered to hand carry a statement from me to the Chief of Staff regarding this matter. (which he did) (See ALJ Denson statement 10/8/87). While in Washington, he (found out) learned that the CALJ was trying to eliminate me by recommending the closing of my office. He told me not to (worry about that happening) be concerned, because (the

Chief of Staff had taken care of the matter) the matter was being (taken care of) handled by the Chief of Staff.

After not speaking to me for over a year, the CALJ sent me an intimidating memo dated 8/25/87(.). He questioned (questioning) the propriety of my behavior at the hearing discussed above (and apparently), as well as the basis for my decision in the case (Lyons). It was written in response to a letter sent to me, with a copy to the CALJ, from the attorney involved in the case. The CALJ stated that while he took "no position on this matter," it still gave him "considerable pause" and I was admonished to "comport myself with appropriate decorum in future dealings with this and other counsel." I was also instructed to report to him any further cases with this attorney (See ALJ Denson statement 10/8/87).

Played with the system for his own ;purp;oses

Talk about:

a culture of "I'll show you" (for not kissing ass);

a culture of vindictiveness,

It was not until this came to my attention, that I met with Admiral Bob Nelson, 2<sup>nd</sup> CG District Commander at the time.

a culture of vindictiveness,

even going so far as to create false information about my office:

That I had refused to take cases (refer to the CALJ deposition 10/96)

That I did not provide them with accurate information about my cases cases (refer to the CALJ deposition 10/96)

## RECOMMENDATIONS:

Clean out the CALJ Office

Remove the CALJ Office entirely from the appeals process

Instructions on ex parte communications for judges, attorneys and Marine Safety Office IO's

The Code of Ethics for judges

Remove the CALJ from the Admirals Club

Talk about Parlan obstruction of justice in Hawaii; Bernie's offense etc

## TESTIMONY OUTLINE

1. Chatterton (10/1982) Jordon (1984)

I allowed my legal assistant Mrs. Linda Hubert to go on vacation, when there would be three days that neither of us would be in the office. The office was covered for us by the Comptroller's secretary, so cases could still be docketed and no phone calls would be unanswered. The Chief of Marine Safety and the Second District Commander had no problem with that.

The CALJ called to tell me he was going to visit me. It was sometime in June or July of 1986. I told him I would be out of the office on travel with a case. He then said he was going to visit with the District Commander. When my legal assistant called the Commander's secretary to put it on his calendar, she found that he was also going to be out of St. Louis. When I reported this to Judge Chatterton he said he was still going to come. When I returned from travel, my legal assistant reported that he came to the office, was there about 30 minutes, called a cab and left the office. Subsequently, I asked the CALJ not to use my office to justify his vacation visits to his daughter in Chicago, especially when neither I nor the District Commander would be in St. Louis. He continued his trips to Chicago the next two years, but not by way of St. Louis.

This is when I remember his behavior towards me changed.

What started to happen:

-Recommended reversals of my cases --- all appeals affirmed by Cmdt until after 7/86;  
After 7/86 shows record of remands and reversals recommend by CALJ/George Jordon that the CG affirmed, i.e., Smith Case & Watson Rabatsky. On one of the remands Capt. Fred Burgess, Chief of the appeals section, cited an ALJIPP as the basis to remand the case back to me—Wedgewood case rec reversal on issue not raised by attorney on appeal  
Also recommended reversal of cases on issues not challenged prior to 7/86. i.e. ?

-Intimidating letter Capt Steinback said the Cambrone letter belonged in the trash where all of his other letters went when he sent them to him when he was CG legal officer for the 9<sup>th</sup> District  
-ALJIPPs

-Wouldn't respond to my leave requests

-Tried to manipulate my caseload to eliminate me

-No communication for over a year 1986-1987, would hang up on me when I called—only letter received was one denying my training request and the intimidating letter

-Would not approve continuing judicial education for me, while sending the other judges and himself – Tom Fisher told me that he did have money and if he ran out he could ask for more and he would give it to him.

-OPM on a desk audit found that I was the only Coast Guard ALJ qualified for GS-16 promotion because of the complexity of my cases. OPM would have allowed it, but Judge Chatterton refused. (4/27/87 Bober, Pettibone from the OPM 5/17/88)

-The other ALJ's were asked to evaluate their own cases and George Jordon did mine (86-87)

-Judge Fitzpatrick asked him to give me cases, knowing that I had very few. The CALJ said he couldn't because of Gilbert II and reorganization? This did not make sense to him.

Both Judge Fitzpatrick and Judge Coughlin told me that it appeared to them that he was trying to eliminate me.

-tried to isolate me didn't even tell me that Judge Fravola had died, but he told all the other judges.

## 2. Judge Boggs (9/27/90-10/19/91)

I don't recall any problems during his time.

## 3. Ingolia (10/91) / Jordon

-Judge Ingolia and George Jordon arbitrarily tried to use "area of responsibility" as a competitive area to get rid of me, when in fact the ALJ program is a headquarters unit, which requires the competitive unit to be nationwide. All of the judges should have been considered together. The CALJ and George Jordon made up a single-person competitive unit to get rid of me—this is commonly called a "designer RIF." HR 3586 was passed in 1996 to eliminate this procedure because it was being used against veterans. (FedEmployeesNews Digest 8/5/96) These men did in fact manipulate the system.

-Would not assign me law clerks to do my cases, when I asked for them. (1/28/92 CALJ Memo re law clerks)

-CALJ handling of caseload 46 cfr 1.10 (c or e 1-5)