



## Judicial Profile

by Marsi Buckmelter

# Hon. Christopher McNeil Administrative Law Judge, Department of Justice, Drug Enforcement Administration

**O**liver Wendell Holmes, Jr. once said that, “[t]he life of the law has not been logic; it has been experience.” Most judges, it seems, would agree that experience matters when one accepts the responsibilities associated with adjudication. Judge Christopher McNeil, an administrative law judge (ALJ) with the Drug Enforcement Administration (DEA) is a case in point. For 27 years, Judge McNeil has had the opportunity to apply an unusual range of experience in determining the outcome of cases. Unlike many of his state and federal adjudicative peers, however, the one feature linking all of these cases is that he’s done so while squarely entrenched in the executive branch of government and in the employment of the very agencies whose interests are on the table.

Working as an adjudicator for governmental agencies carries with it a degree of risk not present when serving as a judge in the judicial branch. The independent judicial branch jurist knows there are constitutional protections to ensure that impartial and independent analyses form the basis for any decision rendered by the jurist. Those protections take the form of clear walls separating the judicial branch from the executive branch. Judge McNeil, however, has learned that those walls are not so well defined when the adjudicator is part of the executive branch. While his decisions need be impartial, they draw their authority from the agencies he serves. As a result, it’s not accurate to describe those decisions as being independent, at least not in the sense we’re used to seeing from judicial branch judges. The risk present in executive branch adjudications is that the agency will overreach and compel an outcome based not on the facts and law present, but on policies it is promoting. Judge McNeil understands this risk and has made a career of understanding how procedural safeguards work to guarantee that every party appearing before him gets a fair hearing before an impartial adjudicator.



As a first-year practicing attorney in Junction City, Kan., Judge McNeil served as deputy public defender for the Eighth Judicial District. During his two-year tenure starting in 1981, he became acquainted with the Fourth Amendment, both in theory and in practice. Appearing as sole counsel in more than 700 felony cases, he tried more than 200 bench and jury trials focusing primarily on aggravated battery, sexual assault, and drug sale felony prosecutions. Asked how this helped him develop his pro-

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*Marsi Buckmelter is a Legal Editor with the National Institute for Trial Advocacy. She lives in Seattle.*



fessional outlook, Judge McNeil explains that these cases rose and fell on how rigorously the judge enforced constitutional protections—most notably, the Fourth Amendment limitation on the government’s ability to conduct warrantless searches under exigent or putatively exigent circumstances.

In 1988, the judge and his family moved to Columbus, Ohio. His wife of 30 years, Prof. L. Camille Hébert, had recently accepted an appointment to teach employment law at the Moritz College of Law at The Ohio State University. While Prof. Hébert began her steady rise through the academic ranks at Moritz and the couple had their third child, Judge McNeil began what would become an eight-year term of service as a prosecutor with the Business and Government Regulation Section of the Office of the Ohio Attorney General. In that role, he appeared on a daily basis in front of judicial branch adjudicators while providing legal counsel to a broad spectrum of governmental agency clients.

While at the Ohio Attorney General’s Office, Judge McNeil became responsible for training his peers as they prosecuted cases for the Ohio Department of Public Safety. In this capacity, he began to appreciate the subtle (and some not so subtle) differences that exist between litigation in civil and criminal courts and administrative litigation. Trying cases without the benefit (or the burden) of formal discovery, he also found, was liberating and exciting. Teaching first-year litigators the skills needed to navigate in agency hearings was one of the highlights of his term of service in Columbus.

As an Ohio assistant attorney general, he was involved in a broad spectrum of cases including license revocation hearings, public safety enforcement actions, and hearings to determine the sufficiency of notices associated with government regulatory actions. One case of national importance required him to write the lead brief in proceedings before the U.S. Supreme Court—on the question of whether funds held by judges and other public-sector employees participating in deferred compensation plans were beyond the reach of creditors in bankruptcy. He also learned to sharpen his skills as a translator of legalese, providing guidance—in understandable terms—with respect to the ethical and fiduciary responsibilities owed to state investment and retirement boards.

Throughout the eight years he served as an agency litigator, Judge McNeil studied the way agency hearings are adjudicated. He learned something many typically don’t learn in law school: that our adjudicators are not specially trained jurists, but that they, instead, attain their place in the legal system by self-direction and hard work.

When an opportunity to teach legal reasoning became available in the summer of 1994, Judge McNeil left the Ohio Attorney General’s Office and began teaching at Capital University Law School in Columbus. He then also hung out a shingle offering to serve as an impartial hearing examiner under Ohio’s Administrative Procedure Act. By 1996, he was hearing cases for the state’s Department of Job and Family Services as well as its Dental Board.

By 1998, he was also hearing cases from the state’s Department of Public Safety, Department of Education, Department of Alcohol and Drug Addiction Services, and the Ohio Board of Nursing.

During the next 10 years, Judge McNeil presided over more than 3,000 contested agency hearings from a multitude of state agencies. In so doing, he was careful to balance both the responding party’s interest in having a fair opportunity to be heard before an impartial tribunal against the government’s interest in prompt adjudication of claims pending before the state agency. He worked hard to ensure that each responding party had a fair day in court, notwithstanding that the “court” was the agency itself.

From 2001 to 2003, Judge McNeil served as a liaison between the American Bar Association and the National Highway Traffic Safety Administration (NHTSA). As an NHTSA executive branch judicial fellow, Judge McNeil helped NHTSA employees understand the role that executive branch adjudicators play in enforcing highway safety laws. During this time, NHTSA worked in collaboration with the National Judicial College in Reno, Nev., to develop training programs for ALJs and hearing examiners whose dockets included drunk driving and other highway safety-related offenses. As an NHTSA fellow, Judge McNeil developed courses for the judicial college and traveled throughout the country discussing the role that executive branch adjudication plays in keeping our highways safe.

Given his substantial experience in writing about the law, the National Judicial College invited Judge McNeil to serve as editor and contributing author to its clinical evidentiary text, *The National Judicial College Deskbook on Evidence for Administrative Law Judges*, published in 2005. This, in turn, was followed in 2011 by the publication of Judge McNeil’s agency litigation primer, *Administrative Agency Litigation*.

Working in collaboration with the University of Nevada–Reno (UNR), the National Judicial College developed master’s and doctoral programs in judicial studies, accredited through UNR. Judge McNeil enrolled in the doctoral program and, by 2008, was the first executive branch adjudicator in the nation to earn a doctorate in judicial studies. Eight of the papers he presented as part of his post-graduate work were published in peer-reviewed law journals and serve as a lasting legacy of his scholarship

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in the area of due process and fairness in agency hearings.

While earning his doctorate, Judge McNeil considered applying to become a federal ALJ. The registry was closed for many years, as incumbent ALJs protested the practice of the Office of Personnel Management in using veteran status when evaluating applicants for ALJ service. When those issues were resolved and the ALJ registry reopened, Judge McNeil was one of the initial 1,200 or so applicants. By 2009, the applications were evaluated and positions offered to about 250 candidates, including Judge McNeil. His first assignment as a federal ALJ was in the Office of Disability Adjudication and Review for the Social Security Administration in Cincinnati, Ohio. Three years later, he accepted an appointment to serve as one of three ALJs appointed to the Department of Justice and its agency, the DEA. He continues in this role today.

As an ALJ for the DEA, Judge McNeil travels throughout the country to consider arguments raised on behalf of parties involved in the proposed revocation of DEA certificates of registration. These hearings frequently include testimony regarding allegations that doctors and pharmacies have breached their responsibilities when dispensing controlled substances—most notably, oxycodone. As a result, Judge McNeil has the opportunity to use the skills

he's acquired while litigating agency claims at the state level, and the chance to put into practice the theories he studied while pursuing his doctorate degree.

"One of the things that strikes me about our judicial system," Judge McNeil states, "is the lack of a formal judicial training and selection process. At the state and federal level, we have no clear course of study that's made available to aspiring judges. The National Judicial College gets credit for its curriculum and for its efforts to get funding for judicial training, but it seems we've not paid much attention to ensuring that all lawyers who aspire to be judges get the training they need before making the leap to service as adjudicators." Judge McNeil recently reflected on the path he pursued on his way to serving as a federal ALJ. "Experience is, as Justice Holmes noted, everything to an adjudicator. I've probably learned more from listening to good litigators ply their trade than I learned from any course I've taken. I've been fortunate in that regard. When I take the bench and am presented with focused and well-thought-out arguments, there's nothing better for me as a professional. Certainly my work at the DEA has expanded my understanding of the law, and for that I'm extremely grateful." ☉