June 7, 2017

Email Exchange on Recommendation 2 of Recommendations
re Adjudication Materials on Agency Websites

SW = Steve Williams; FC = Former Clerk

SW:  The Administrative Conference is considering a recommendation on agencies' making materials about their adjudications available on their websites.  Here it is: (See attached file: Adjudication Materials.)

Recommendation 2 (P. 4) made me think of your efforts to analyze what the immigration authorities are up to.  Is it adequate?  Is there a justification for its being so relatively stingy?  (Am I right in calling it stingy?)  How does it compare with the status quo (at least in the immigration field)?  Any other thoughts, and of course also on other parts of the recommendation?

FC:  Thanks for sending this to me--it's of great interest. I agree with you that it's stingy. I've always thought it odd that in immigration court practice, the noncitizen's only route to viewing his or her file (A-file or Alien-file) is via FOIA request.  I'm not sure how the agency keeps track of briefs--most decisions are reached orally.  In any case, I think PACER-like system would be an enormous advance. I wonder why the recommendations here stop short of that, when clearly the authors have it in mind as a model.  One possible reason is that many of the filings in immigration court and Social Security disability adjudications--the two largest systems of adjudication--are confidential.  The federal court dockets in immigration cases are generally only accessible from computer terminals within courthouses, and I think that social security cases that reach the federal courts are routinely sealed. Still, a PACER-like system would be of great use to the parties themselves.

I have one other more modest (and admittedly self-interested) recommendation, which is that agencies release and update anonymized versions of their case-tracking databases. This would be a natural addition to recommendation (2). Releasing databases is far less burdensome than releasing relevant opinions and briefs, but it is also probably more useful to scholars than

practitioners. Still, it might be a straightforward and practicable way to increase transparency.

One last thought: the best model from the perspective of practitioners would likely be that of PACER itself. To the extent that that platform could directly be adapted to administrative adjudications, I imagine it would be welcomed. I could even imagine administrative judges themselves supporting such a reform.

SW:  So tell me a little more about your proposal in your second paragraph.  The "case-tracking databases" amount to what?  If they are sort of thin in terms of detail (and they sound thin), why is there any need to anonymize
them?

FC:  That's a good point: perhaps there's no need for them to be anonymized.  Generally I'm thinking of databases that include perhaps 50-100 pieces of information a case, including dates of hearings and filings, claims raised, names of attorneys and judges, outcomes, and appeals and their outcomes.  Some pieces of information would likely need to be redacted even if names were left in--social security numbers, birth dates, and addresses, for example. That is easily done; it essentially requires deleting the relevant columns in an excel spreadsheet.  Usually agencies keep such databases in order to facilitate scheduling; in fact, it might be helpful to have something similar in the federal courts.