

SENATOR WARNER: I apologize for using this procedure in order to clarify some issues on Senator Landis's presentation which I would like to ask him a couple of questions, if I could.

SENATOR LABEDZ: Senator Landis.

SENATOR WARNER: You indicated in your comments, if I understood them correctly, that if either party was in disagreement with the final decision, final administrative action by the public counsel, then that under the Administrative Procedures Act would go to trial and it would be on the record. Is that the record that is established by the two disagreeing parties that had the public counsel?

SENATOR LANDIS: My recollection is that from the Administrative Procedures Act, you have a right to go to district court, and if the court perceives that it is an administrative agency below that is making the decision, that the decision is based, in the first case, as to whether the decision was arbitrary and capricious, and in the second level, the analysis is whether or not the decision is justified on the basis of the record before the decisionmaker.

SENATOR WARNER: As I recall the statute that Senator Schmit indicated establishment of a public counsel, it seems to me that specifically prohibits his...it certainly limits his actions as to what can be called into court. Specifically, I believe, he cannot be or she cannot be subpoenaed and it seems to me their records can not be. Secondly, I believe also that the public counsel, and this is the constitutional issue, the body has been led to believe, I believe that that office can make a final decision. In fact the words say, it shall be considered the final administrative action, and I, again, believe there is a substantive constitutional issue that making a public counsel almost judicial in nature, or at least executive in nature, neither of which role they have, and the most they could do is make a recommendation that would still be nonbinding. Would any of those things I had said...I guess I would ask you to comment because your original presentation appeared to me to give the implication, at least, that all things I have said would not be correct or accurate.

SENATOR LANDIS: You raise an interesting issue and that is whether or not this is, in fact, a decision, thereby running