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# Improving Public Trust & Confidence in Administrative Adjudication: What an Administrative Law Judge Can Do

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# IMPROVING PUBLIC TRUST & CONFIDENCE IN ADMINISTRATIVE ADJUDICATION: WHAT AN ADMINISTRATIVE LAW JUDGE CAN DO

**Hon. Edward J. Schoenbaum***

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## INTRODUCTION

This paper is the Fellowship paper delivered on October 16, 2000, at the Annual Meeting of the National Association of Administrative Law Judges (NAALJ) in Albany, New York. A companion piece focusing on "What Administrative Law Practitioners, Judges and Academicians Can Do" to improve administrative adjudication, which will improve public trust and confidence, has also been published.[1]

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1. Edward J. Schoenbaum, *Improving Public Trust & Confidence in Ad-*

This paper focuses on: (1) the public's trust and confidence in the judiciary: why it is important and a summary of recent programs; (2) the difference between the Article III judiciary and the administrative hearing process; (3) selected programs and approaches used to improve public trust and confidence; and (4) a call to action to encourage administrative law judges, offices of administrative hearings, and state and national organizations to become involved in this national effort.

At the conclusion of this paper is a bibliography and a list of web sites of courts and administrative agencies to assist the reader in finding materials and ideas for implementation. Administrative Law Judges (ALJs) need to continue sharing our experiences so that we can assist the public to better understand what we do and why we do it, so that together we will achieve increased public trust and confidence in administrative adjudication and the government in general.

## I. The Public's Trust and Confidence in the Judiciary: Why it is Important and a Summary of Recent Programs

Chief Justice William H. Rehnquist, keynote speaker at the National Conference on Public Trust and Confidence in the Justice System, held in Washington, D.C. on May 14 and 15, 1999, quoted John Jay, the first Chief Justice of the United States: "Next to doing right, the great object in the administration of justice should be to give public satisfaction."[2]

Associate Justice Sandra Day O'Connor spoke on the last day of the conference and also drew attention to the importance of our concern for the public when she said:

> Sometimes, in the pressure of doing what judges have to do and running a tight ship in the courtroom and deciding tough issues, we

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*ministrative Adjudication: What Administrative Law Practitioners, Judges, and Academicians Can Do*, 53 Admin. L. Rev. 575 (Spring 2001).

2. William H. Rehnquist, *On Doing the Right Thing and Giving Public Satisfaction*, 36 Ct. Rev. 8, 9 (Fall 1999), *available at* http://aja.ncsc.dni.us/courtrv/review.html.

> might forget that, in the last analysis, it is, after all, the public we serve and that we do care how the courts are perceived generally.[3]

It is ironic that recent events have called into question the confidence and trust the public has in the Supreme Court and in the two above-mentioned justices who recently emphasized how important public trust and confidence in our courts and the justice system are. As Allan D. Sobel, Executive Vice-President and Director of the American Judicature Society (AJS), wrote:

> No matter what perspective you have on [the 2000 Presidential] election, the importance of an impartial and independent judiciary in which the public reposes trust and confidence cannot be ignored or overstated. Therefore, it is our job – as academics, practitioners, judges, and activist citizens – to educate the public about how judges are selected and bring attention to the comparative benefits of merit selection.[4]

While he focused on only one of the AJS historical goals, that of "merit selection," he concluded his message by writing: "The judiciary is our watchdog, standing ready to give life and meaning to the constitutional guarantees written on paper. The public's trust and confidence in the ability and willingness of its courts to discharge their duties impartially makes us a great, patient, and law abiding nation."[5]

In the case of *Bush v. Gore*,[6] Justice John Paul Stevens wrote in his dissenting opinion:

> The endorsement of that position by the majority of this Court can only lend credence to the most cynical appraisal of the work of judges throughout the land. It is confidence

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3. Sandra Day O'Connor, *Public Trust as a Dimension of Equal Justice: Some Suggestions to Increase Public Trust*, 36 CT. REV. 10, 10 (Fall 1999), *available at* http://aja.ncsc.dni.us/courtrv/cr36-3/review.html

4. Alan D. Sobel, *Enhancing Public Trust and Confidence*, 84 JUDICATURE 113 (2000).

5. *Id.*

6. 531 U.S. 98 (2000).

> in the men and women who administer the judicial system that is the true backbone of the rule of law. Time will one day heal the wound to that confidence that will be inflicted by today's decision. One thing, however, is certain. Although we may never know with complete certainty the identity of the winner of this year's Presidential election, the identity of the loser is perfectly clear. It is the Nation's confidence in the judge as an impartial guardian of the rule of law. [7]

Mario Cuomo, former governor of New York, pointed out at a luncheon at the National Conference on Public Trust and Confidence in the Justice System that it is our "obligation to educate the public about the rule of law."[8] He also stressed the need to emphasize the importance of judicial independence, when he said:

> We must explain to the public in language they all understand that the judicial system is different from the political branches of government and that difference makes all the difference to our strength and glory as a democracy . . . We must tell them that while the politicians reveal what is popular, our judges protect the constitutional rights of all our people, even the despised . . . There never would have been an American dream if the majority had its way every time it spoke.[9]

An American Bar Association (ABA) survey conducted in August 1998 discovered that the public wants to learn about courts and they want to learn about the courts from judges.[10] That survey led to the report "Perceptions of the U.S. Justice System" that was the foundation of the Febru-

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7. *Id.* at 128-29 (Stevens, J., dissenting).

8. Mario Cuomo, *We Must Lead the Charge*, 36 CT. REV. 14, 18 (Fall 2000), *available at* http://aja.ncsc.dni.us/courtrv/review.html.

9. *Id.*

10. AM. BAR ASS'N, PERCEPTIONS OF THE U.S. JUSTICE SYSTEM (1999) [hereinafter PERCEPTIONS OF THE U.S. JUSTICE SYSTEM], *reprinted in American Bar Association Symposium II: Public Understanding and Perceptions of the American Justice System*, 62 ALB. L. REV. 1307, 1311 (1999), *available at* http://www.abanet.org/media/perception/perceptions.pdf.

ary 25 - 27, 1999 Annual Conference.

The ABA commissioned this national survey to: (1) assess the public's current understanding of, and confidence in, the justice system; (2) identify the public's sources of information about the justice system; and (3) understand what factors drive public attitudes. [11]

The one-thousand randomly selected respondents age eighteen and older were asked to: (1) self rate their perceived knowledge; (2) answer a series of factual questions about the justice system; (3) define their confidence in a variety of institutions and professions; (4) rate fifty attitude statements; (5) identify current and preferred information sources; (6) discuss past experience with the justice system; and (7) provide suggestions for improving the administration of justice.[12]

In February 1999, Phillip Anderson, ABA President, called together national leaders to review this survey and to develop a plan for how the legal profession and the courts could address these perceptions. This was the second in a series of three national conferences conducted during his term as president. The first focused on Judicial Independence and the third focused on developing a National Plan of Action.[13] The third conference was co-sponsored by the ABA National Center for State Courts, the Conference of Chief Justices, the League of Women Voters, and other national organizations.

More than eighty percent of those polled believe that, in spite of its problems, the American justice system is the best in the world.[14] People strongly believe in the justice system, though they identified areas that need improvement.[15] People have confidence in the justice system, but the amount of confidence varies for different components of

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11. *Id.* at 6.

12. *Id.*

13. NAT'L CTR. FOR STATE COURTS, NATIONAL ACTION PLAN: A GUIDE FOR STATE AND NATIONAL ORGANIZATIONS (1999) [hereinafter NATIONAL ACTION PLAN], *available at* http://www.ncsc.dni.us/ptc/NAP/NAP.pdf.

14. PERCEPTIONS OF THE U.S. JUSTICE SYSTEM, *supra* note 10, at 6.

15. *Id.*

the system.[16] Confidence can be influenced over time and by level of knowledge, positive court experience, and personal demographic traits.[17] The public's knowledge of the justice system is uneven; they recognize some obscure tenets but still lack complete understanding about some of the more basic tenets of law. [18]

## II. The Difference Between the Article III Judiciary and the Administrative Hearing Process

The key for the support of the judiciary is the jury system. Seventy-eight percent of the people polled in the ABA survey said that trials with a jury are the fairest way to determine guilt or innocence, and sixty-nine percent believed juries are the most important part of our system.[19] Obviously, the jury system does not apply to administrative adjudication. Furthermore, one of the biggest problems in the minds of the public about the judicial branch is the election of judges. Eighty-one percent agreed with the statement "judges' decisions are influenced by political considerations."[20] Seventy-eight percent agreed "elected judges are influenced by having to raise campaign funds."[21]

Fortunately, election and re-election are not a problem for those of us in the administrative judiciary face. However, we face a similar and serious problem of bias. Many people believe that ALJs who are not in a central hearing agency are biased in their adjudicative responsibilities because the ALJs are hired, promoted, supervised, and paid by the very agency for whom they are reviewing rulings of the agency. The perceived conflict arises because an ALJ must decide whether the challenged decisions are correct. The public thinks this is unfair even though the judges are,

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16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.* at 6-7.
20. Nat'l Ctr. for State Courts, How the Public Views the State Courts: A 1999 Survey 41 (1999) [hereinafter How the Public Views the State Courts], *available at* http://www.ncsc.dni.us/ptc/results/results.pdf.
21. *Id.* at 42.

in fact, unbiased, fair, and impartial. The offices, staff support, equipment, and everything else available to the ALJ is provided by one of the parties in the hearing. Too often the public becomes used to being treated badly by the bureaucracy and doubts that it can get fair treatment by anyone in government.

The public deserves fair treatment by the judicial branch and by those of us who adjudicate in the executive branch. Both must follow the law as passed by the legislative branch, the regulations properly adopted by the executive branch agencies, and the evidence that comes before us.[22]

The February 1999 issue of the *ABA Journal* and the *National Bar Association Magazine* featured a poll of lawyers expressing their views on racial bias in the justice system.[23] While only sixteen percent of white lawyers said that they had witnessed racial bias in the justice system in the last three years, sixty-seven percent of black lawyers said they had. [24] In general, white lawyers perceive the system to be fair and equitable, while black lawyers do not see it that way at all.[25] The survey of the public also found perceived bias in the justice system to be one of the biggest concerns.[26]

In early 1999, a survey was conducted by the National Center for State Courts and funded by The Hearst Corporation in preparation for the May National Conference on Public Trust & Confidence in the Justice System.[27] Over eighteen hundred Americans were asked about the courts in their communities.[28] This survey entitled, "How the Pub-

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22. Christopher B. McNeil wrote an interesting article on the similarities and differences between the judicial branch and executive branch judges. *See* Christopher B. McNeil, *Similarities and Differences Between Judges in the Judicial Branch and the Executive Branch: The Further Evolution of Executive Adjudication Under the Administrative Central Panel*, 18 J.NAALJ 1 (Fall 1998).

23. Terry Carter, *Divided Justice: White and Black Lawyers May Practice the Same Law, But They Have Decidedly Different Views of How the System Works*, 85 A.B.A. J. 42 (1999).

24. *Id.* at 43.

25. *Id.*

26. *Id.*

27. HOW THE PUBLIC VIEWS THE STATE COURTS, *supra* note 20.

28. *Id.* at 9; *see also* NATIONAL ACTION PLAN, *supra* note 13, at 8.

lic Views the State Courts," had similar findings to the earlier ABA survey, but also learned that sixty-eight percent of African-Americans felt that they were treated worse by courts than other groups.[29] Additionally, almost forty-five percent of the respondents in other groups agreed with the perception that African-Americans were not treated as well as others.[30] Even with that finding, sixty-eight percent of African-Americans agreed "judges are generally honest and fair in deciding cases."[31] A majority of respondents also felt that non-English speaking people receive worse treatment from courts than do other groups.[32]

Forty-four percent agreed that "courts are 'out-of-touch' with what is happening in their communities."[33] A majority of both African-American and Hispanic respondents felt that courts were out of touch.[34]

The obvious question then is, if people believe the justice system is tainted with bias, how long can citizens expect the courts to remedy bias elsewhere in our society? Right now the high degree of confidence in the courts exists side-by-side with the perception of bias in the courts. As the minority populations increase in America, will the perception of bias increase?

We all must be concerned that the current perception of bias will eventually erode confidence in our system of justice, and the American Bar Association is doing something about this in several programs that were initiated before it even received the survey results. The recruitment of minorities for law schools and minority clerkship programs are two programs the Judicial Division of the ABA has been focusing on.[35] Those programs will continue. The results of the survey on state courts confirms that the ABA is on the

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29. HOW THE PUBLIC VIEWS THE STATE COURTS, *supra* note 20, at 38.
30. *Id.*
31. *Id.* at 30.
32. *Id.* at 38.
33. *Id.* at 40.
34. *Id.* at 40-41.
35. News Release, American Bar Association, ABA Launches Two Programs to Boost Number of Minorities Serving in Judicial Clerkships (Feb. 14, 2000), *at* http://www.abanet.org/media/feb00/dallasrelease.html.

right track and plans to intensify efforts to eradicate gender and racial bias in the courts and the practice of law.

The survey revealed that twenty-three percent of the respondents have a "great deal" of trust in the courts in their communities and an additional fifty-two percent have "some trust" in the courts in their communities.[36] These results placed courts in the middle range of trust in American institutions. This lukewarm endorsement was reflected in survey responses on a number of issues. Only ten percent of the respondents felt that the courts in their communities handled cases in an "excellent" manner.[37]

Only thirty-two percent of the respondents agreed that "it is affordable to bring a case to court."[38] Respondents overwhelmingly identified legal fees as the culprit.[39] A majority of those surveyed also said that "complexity" and the "slow pace" of litigation contributed "a lot" to the high cost of going to court.[40]

Only sixty percent agreed that "court rulings are understood by the people involved in the cases."[41] This level of lack of understanding even among parties to a case appears high. Seventy-four percent agreed that "court personnel are helpful and courteous."[42] Sixty-one percent agreed that "judges do not give adequate time to each individual case."[43] And, eighty percent agreed with the statement "cases are not resolved in a timely manner."[44] Fifty-six percent agreed that "juries are not representative of the community."[1] Sixty-six percent agreed that "when a person sues a corporation, the courts generally favor the corporation over the person."[46] Eighty percent agreed that the

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36. HOW THE PUBLIC VIEWS THE STATE COURTS, *supra* note 20, at 12.
37. *Id.* at 14.
38. *Id.* at 22.
39. *Id.*
40. *Id.* at 23.
41. *Id.* at 34.
42. *Id.* at 26.
43. *Id.* at 31.
44. *Id.* at 28.
45. *Id.* at 29.
46. *Id.* at 36.

wealthy are treated better than other groups.[47] On the favorable side: eighty-five percent agreed that "courts protect defendants' constitutional rights."[48] Seventy-nine percent agreed that "judges are generally honest and fair in deciding cases." [49]

Despite high marks for judges, the survey shows that the public's knowledge of the justice system varies greatly. There is much the public does not know about our government. Most of what Americans know about the justice system was learned in government or civics classes in school, or from personal experiences in court or on jury duty. The survey indicates that almost sixty-one percent want to know more.[50] We should respond to this request, because the survey found that the more people know about the system, the more confidence they have that it works.[51]

The desire of such a large majority to learn more is good because it indicates that the public will be receptive to appropriate educational efforts. Seventy-five percent of those who want to know more about the justice system say they want to learn directly from judges.[52] A majority of those polled have very high confidence in judges. Fifty-four percent rank judges as extremely well qualified for their jobs.[53] Programs like Court TV and news programs that feature courtroom discussions provide unfiltered access to judges. "Judge Judy" is popular but her courtroom demeanor is not what any of us would want to use to earn public trust and confidence.

While the surveys did not ask about administrative adjudication, I believe that those of us in administrative adjudication can learn and apply the same principles to improving public trust and confidence. I am confident that people who become involved in administrative adjudication want to know more about the process and want to learn it from

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47. *Id.* at 37.
48. *Id.* at 32.
49. *Id.* at 30.
50. PERCEPTIONS OF THE U.S. JUSTICE SYSTEM, *supra* note 10, at 100.
51. *Id.* at 7.
52. *Id.* at 11.
53. *Id.*

us, the judges. We should capitalize on this and act now. This does not mean that judges should assume the role of teachers or professors to educate the public, but it suggests that the courts and administrative agencies should allow the public into the courtrooms and hearing rooms of America so that the public can learn first hand from seeing and hearing what goes on there.

We can and should learn by listening to the public. Tom Tyler, Professor of Psychology at New York University pointed out:

> When we look at what people really care about, that is, what drives their confidence . . . we find that the key factors are issues of process, what people experience in the manner in which their cases are resolved . . . the degree to which they believe the legal authorities are trustworthy . . . when they feel they can participate . . . receiving polite and dignified treatment . . . neutral and unbiased treatment from authorities . . .[54]

This is how we should treat those who come before us because citizens who come before us will have more trust and confidence in administrative adjudication if they feel they are receiving fair and equal treatment when we treat them in a polite and dignified way showing them that we truly are neutral and unbiased.

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54. Tom Tyler, *Public Opinion: How It Has Been Formed and How We May Reshape It, A Panel Discussion*, 36 CT. REV. 46, 48 (Fall 1999), *available at* http://aja.ncsc.dni.us/courtrv/review.html.

The National Conference on Public Trust and Confidence in the Justice System determined that the "Top-Priority National Agenda Issues that Contributed To Low/Declining Public Trust and Confidence In The Justice System" were the following:

| | VOTE |
|---|---|
| Unequal treatment in the justice system | 6.4 |
| High cost of access to the justice system | 6.2 |
| Lack of public understanding | 5.8 |
| Unfair and inconsistent judicial process | 4.5 |
| Partisan versus merit selection of judges | 4.5 |
| Poor customer relations with public | 4.0 |
| Judicial isolation: lack of contact with and perspective about public | 3.9 |
| Lack of independence and sound interbranch relations | 3.9 |
| Role, compensation, and behavior of bar in justice system | 3.7 |
| Inefficient processing of cases | 3.6 |
| Inadequate response to change | 3.5 |
| Poor use and treatment of jurors | 3.5 |
| Bias in personnel practices within justice system | 3.4 |
| Inability to participate effectively in justice system | 2.9 |
| Lack of accountability for public resources | 2.2 [55] |

We have to be concerned about these same issues and do all we can to ensure that the public does not see these issues as problems in administrative adjudication. We should focus on improving each of the areas where applicable. Our committees and agencies should work on the above agenda to give the public what it deserves.

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55. NATIONAL ACTION PLAN, *supra* note 13, at 16.

The attendees selected the "Most Effective Strategies for Improving Public Trust and Confidence" as follows:

| | VOTE |
|---|---|
| Improve education and training | 5.9 |
| Make the courts more inclusive and outreaching | 5.6 |
| Improve external communication | 5.6 |
| Swift, fair justice . . . resolve cases with reasonable promptness/cost | 5.4 |
| Share programs and activities among the states that havebeen used to improve public trust and confidence | 5.4 |
| Implement recommendations of gender, race and ethnic bias task forces and replicate the successes in other jurisdictions | 5.4 |
| Make the courts more demographically representative of the community they serve | 4.3 |
| Improve management & use of information technology | 4.1 |
| Enforce court procedures & powers of superintendence | 4.0 |
| Evaluate judicial performance . . . gather data from litigants on courtroom experience | 3.8 |
| Simplify courts to make them more accessible to persons without attorney | 3.7 |
| Improve practice of law to provide universal, affordable, &competent legal services by lawyers | 3.7 [56] |

Here again, we as individual administrative law judges and groups of administrative law judges should adopt these same strategies, where applicable, and in this case, all of them are applicable. If we make progress using these strategies, the public will have a higher regard for administrative adjudication.

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56. *Id.* at 21.

The attendees determined that the "Most Important National Roles to Improve Public Trust and Confidence" were as follows:

| | VOTE |
|---|---|
| Develop and/or disseminate models or best practices | 6.1 |
| Examine the role of lawyers and their impact on public trust | 5.5 |
| Engage in public education at the national level | 5.5 |
| Improve public access through information technology | 5.2 |
| Foster and maintain network to sustain public trust 4.9 | |
| Provide national education programs for persons within the system | 4.7 |
| Develop standards and procedural reforms | 4.7 |
| Promote ongoing national dialogue on public trust | 4.6 |
| Provide specialized expertise | 3.8 |
| Act as liaison or take proactive stance with the federal government | 2.9 [57] |

The National Center for State Courts and the American Bar Association and the other national organizations are moving forward in performing the important roles related to the highest, third, fourth, fifth, and sixth roles; they already implemented the seventh and are working on the eighth, ninth, and tenth roles. To my knowledge, a thorough study of item two has not yet been tackled.

The attendees also determined that for us to be successful we would need to focus on dissemination:

- Have national organizations coordinate their dissemination of models
- Create central web site and clearinghouse for Public Trust and Confidence, Internet access
- Post policies and standards, not just programs

57. *Id.* at 25.

- Organize postings in categories to make them more useful and accessible
- Disseminate successes to public through media
- Distribute existing ABA materials more widely
- Disseminate the existing curricula for elementary and secondary schools more widely
- Sort out the local-state-regional- national roles in clearinghouse [58]

## III. Selected Programs and Approaches Used to Improve Public Trust and Confidence

A number of appellate courts have taken their dockets on the road and conducted oral arguments around the state in colleges or other public buildings to encourage the public to attend and see the court in action.[59] These open courts are made even more beneficial by the preparation of summaries of the facts, the issues, and the law so that the public better understands what is going on as the highest court in their state grapples with important public issues.

Could there be a better learning experience than for the citizens of our country to see and hear arguments before the Supreme Court of the United States? This December, a historic argument took place in the United States Supreme Court. It was historic because, the Court allowed release of an audio recording of the arguments just hours after the argument was heard that day. People listened intently to hear the arguments made that day. Earlier that week, the public was tuned into the live television coverage of arguments made in the Florida Supreme Court. The weekend before Judge N. Sanders Sauls held court on Saturday and Sunday and the entire court proceedings were televised and the public watched intently.

If the United States Supreme Court would allow a continuation of the release of the audio, and perhaps even experiment with allowing cameras in their courtroom, it

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58. *Id.*

59. Richard Fruin, Judicial Outreach on a Shoestring: A Working Manual, n.69 (ABA Judicial Division, 541 N. Fairbanks, Chicago, Ill.) (1999) (referring to Kansas Court of Appeals).

would capture the majesty and grandeur of the pinnacle of the American justice system. One television camera in the Supreme Court would educate more people more effectively in one morning than traditional methods could reach in years of watching "Judge Judy," Judge Mills Lane, or any of the other popular television series. The people of this country, including school children, would benefit greatly from seeing and hearing the Supreme Court of the United States and the serious issues facing the court. Forty-five State Supreme Courts allow cameras in appellate courts and forty-three in trial courts.[60]

Stephen J. Parker, Dean and Professor of Law at Monash University, Victoria, Australia, told the conferees that "unless judicial leaders take the initiative and explain the work of the courts and try to clear up some of the most obvious misconceptions about the judicial system, then I think the public will live with these paradoxical views."[61] We, as leaders in administrative adjudication, must also take the initiative and explain some of the most obvious misconceptions about administrative adjudication.

Lyle Denniston, National Correspondent for The Baltimore Sun, emphasized to the conferees, "[t]here just simply has to be an end to the reticence on the part of the judiciary and the judicial system to being a participant in the discourse about the law in your community."[62] California, in its new standard 39, adopted standards that define what judges should do to help educate the public, thereby encouraging judicial participation in the community outreach as an official function.[63]

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60. *See* KNOWLEDGE MGMT. OFF., NAT'L CTR. FOR STATE COURTS, SUMMARY OF TV CAMERAS IN THE STATE COURTS (2001), *at* http://www.ncsc.dni.us/is/clrhouse/tvcams99.htm.

61. Stephen J. Parker, *Public Opinion of the Courts: How It Has Been Formed and How We May Reshape It, A Panel Discussion* 36 CT. REV. 46, 52 (Fall 1999), *available* http://aja.ncsc.dni.us/courtrv/review.html.

62. *Id.* at 56.

63. JUDICIAL COUNCIL OF CALIFORNIA, DIALOGUE: COURTS REACHING OUT TO THEIR COMMUNITIES – A HANDBOOK FOR CREATING AND ENHANCING COURT AND COMMUNITY COLLABORATION (1999) [hereinafter DIALOGUE: COURTS REACHING OUT TO THEIR COMMUNITIES], *available at* http://www.courtinfo.ca.gov/programs/community/handbook.htm.

In the 1999 survey titled "How the Public Views the State Courts?," respondents were asked questions about confidence similar to those asked in the 1978 Yankelovich study for the National Center for State Courts.[64] Comparing the results of the later study with the earlier study allows us to assess changes in confidence over the past twenty years. Accordingly, confidence in some key components of the justice system showed significant increases since 1978, as exemplified by increasing levels of confidence in the United States Supreme Court and lower federal courts, as well as state and local courts.[65]

Specifically, respondents have the most confidence in the United States Supreme Court with fifty percent showing strong confidence in this institution and only fifteen percent having slight or no confidence in it.[66] However, confidence in the lower courts and in judges in the justice system overall is weaker, as demonstrated by the fact that only a third of the respondents felt extremely or very confident in these institutions.[67] Only eighteen percent of the respondents have strong confidence in the United States Congress and only fourteen percent of respondents have confidence in lawyers.[68] With strong confidence of only eight percent of the respondents and slight or no confidence from sixty percent of the respondents, the media fared the worst.[69] I cannot help but think that the media read these surveys and have been trying their hardest to tear down public confidence in the courts.

A main conclusion of the 1978 Yankelovich study, which became the basis for many programs, was summarized as follows: "[t]hose having knowledge and experience with the court voice the greatest dissatisfaction and criticism."[70] Fortunately, the current study, along with other research,

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64. YANKELOVICH, ET AL., HIGHLIGHTS OF A NATIONAL SURVEY OF THE GENERAL PUBLIC, JUDGES, COMMUNITY LEADERS, IN NATIONAL CENTER FOR STATE COURTS: A BLUEPRINT FOR THE FUTURE (1978).

65. HOW THE PUBLIC VIEWS THE STATE COURTS, *supra* note 20, at 13-14.

66. PERCEPTIONS OF THE U.S. JUSTICE SYSTEM, *supra* note 10, at 8.

67. *Id.*

68. *Id.*

69. *Id.*

70. YANKELOVICH, *supra* note 64.

refutes that conclusion. The new study, as summarized in "Perceptions of the U.S. Justice System," reveals that:

> the more knowledge people have about the justice system the greater their confidence in the justice system overall as well as in a whole host of its components. In all of the cases identified, people with knowledge have significantly more confidence in the justice system than do those with lower levels of knowledge. ("Levels of knowledge" refers to factual information about the courts and the justice system.) Further, people with positive court experiences were also more likely to have greater confidence in the justice system than those who had negative court experiences. There are significant differences in confidence for all parts of the system, except that few people, regardless of experience, have confidence in lawyers and the legal profession.[71]

A recent article titled "Familiarity Breeds Respect: How Wisconsin Citizens View Their Courts," found that support for the justice system generally goes up in response to specific positive experiences and generally declines in response to specific negative experiences.[72] Similarly, a 1992 study in Virginia had similar results, "showing that respondents who had more *recent* court experiences had more positive perceptions of the courts and of the justice system's performance than did those respondents who had no court experience."[73]

The 1998 study[74] found that, "if people have good court experiences, their feelings did not change; basically, they still felt good about the courts. In fact, 82% of the people did not change their perceptions of the justice system."[75] However, a person's perceptions when their most recent court experience was negative, either stayed the same or

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71. PERCEPTIONS OF THE U.S. JUSTICE SYSTEM, *supra* note 10, at 7-8.

72. Herbert M. Kritzer & John Voelker, *Familiarity Breeds Respect: How Wisconsin Citizens View Their Court*, 82 JUDICATURE 58, 63 (1998).

73. PERCEPTIONS OF THE U.S. JUSTICE SYSTEM, *supra* note 10, at 9.

74. HOW THE PUBLIC VIEWS THE STATE COURTS, *supra* note 20.

75. PERCEPTIONS OF THE U.S. JUSTICE SYSTEM, *supra* note 10, at 9.

changed negatively.[76] Improving people's perceptions of the justice system through court experience alone may prove a difficult task. Those with positive experiences are probably not going to improve their perceptions, while those with negative experiences will most likely become even more negative.

The 1998 study also looked at whether people's confidence was affected by the amount of time that elapsed from their court experience. They found no effect: the levels of confidence were the same regardless of whether a person's experience was less than a year ago, or at least one year ago.[77]

Thus, this new research concludes that knowledge and experience do influence a person's confidence in the justice system. The research also indicates that, contrary to the 1978 Yankelovich study, those having more knowledge and positive court experiences are more satisfied and less critical of the system.[78] Herbert Kritzer, Professor and Chair of Political Science; Professor of Law at the University of Wisconsin at Madison, and John Voelker, Assistant to the Chief Justice of the Wisconsin Supreme Court, found after re-analyzing the Yankelovich data, that "[i]t is not clear that the linkage described twenty years ago actually existed."[79] Moreover, re-analysis of the data does not show statistical evidence to support the Yankelovich conclusion.

We now know that Americans not only want to learn more about our courts, they want to learn it from judges. This does not necessarily indicate that judges should assume the role of teachers or professors to educate the public. It does suggest that the public, in massive numbers, should be permitted inside the courtrooms of America to enable them to learn what goes on there and to be encouraged to dialogue with judges.

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76. *Id.*
77. *Id.*
78. *Id.*
79. Kritzer & Voelker, *supra* note 72, at 65.

Mary Hernandez, Vice President of San Francisco School Board of Education, challenged the participants at the National Conference on Public Trust & Confidence when she said, "[Y]ou are here today, not . . . to tell other people how to change. . . . I hope you are here to say, 'How can I do my part as the court system?"[80]

The most successful programs will not only inform the public about what they should know, but will also include a two-way dialogue where we learn what they think about what we do and we answer their questions. Frances Zemans[81] reminded all of us: "you have to be constantly aware that you need to be in the business of thinking about how to organize your institutions for the benefit of the users and that providers, meaning you, should not be the primary ones to be thinking about."[82]

Both the judges in the judicial branch and those in the executive branch must constantly attempt to meet the needs and demands for prompt affordable justice.

There is a fascination with courtroom drama. Look at all the successful television programs about the law and courts. Some of us grew up watching Perry Mason, others watching L.A. Law, and now we are watching Judging Amy and Ed, the "Bowling Alley Lawyer." However, we must provide the authentic voice of judicial drama and not rely on "Judge Judy" to teach people about judges and how they act.

To add to the public knowledge of court proceedings, we should take ordinary court proceedings and make them available. It does not cost much more than initiative, commitment, and a little of our time to bring people into the courtrooms of our country. Not only are Judges the leaders in the courthouse, but they have judicial resources

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80. Mary T. Hernandez, Address at the National Conference on Public Trust and Confidence in the Justice System (May 14, 1999) (transcript available at http://www.ncsc.dni.us/ptc/trans/trans.htm).

81. Justice System Consultant; retired Executive Vice President of the American Judicature Society.

82. Frances Zemans, Address at the National Conference on Public Trust and Confidence in the Justice System (May 14, 1999) (transcript available at http://www.ncsc.dni.us/ptc/trans/trans.htm).

and can organize the resources to present programs.

Certain attitudes can influence people's confidence in the justice system. Some confidence drivers already demonstrate quite positive public attitudes. These attitudes should be maintained and strengthened. Additionally, one of the most crucial aspects of public trust and confidence is found in the judge herself or himself.[83]

"In addition to tracking confidence by knowledge and court experiences, the study looked for the demographic characteristics of people with the most confidence in the justice system".[84] It found that they are more likely to be men, with higher incomes, more education, and with positive litigant and juror experience.[85]

The most recent study identified variations in confidence by type of respondent.[86] The study found that individuals with more knowledge have more confidence in the system, that individuals who have had positive court experiences also tend to have more confidence in the system, and that males, and people with higher incomes and higher levels of education are more confident than other demographic groups.[87]

The Trial Court Performance Standards developed by the National Center for State Courts in 1990 identified four other major areas of court responsibility: "access to justice"; "timeliness"; "equality and fairness"; and court "independence and accountability."[88] The survey revealed public dissatisfaction in each of these areas.[89] It is in these are areas where we as administrative law judges can focus on working to improve public confidence in the courts and in administrative adjudication.

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83. Joseph P. Nadeau, *What It Means to Be a Judge*, 39 JUDGES J. 34 (2000). This is one of the best short summaries of "What It Means to Be a Judge," written by former Chief Judge Joseph P. Nadeau, New Hampshire Superior Court who was elevated to the New Hampshire Supreme Court in 2000.

84. PERCEPTIONS OF THE U.S. JUSTICE SYSTEM, *supra* note 10, at 10.

85. *Id.*

86. *Id.*

87. *Id.*

88. HOW THE PUBLIC VIEWS THE STATE COURTS, *supra* note 20, at 23.

89. *Id.* at 23-43.

An article in *Judicature* by John Greacen, State Court Administrator, New Mexico, entitled "How Fair, Fast, and Cheap Should Courts Be?" describes the difference in the expectations of the public with those of judges and lawyers.[90] The public believes that although courts are meeting the Trial Court Performance Standards, they are not prompt enough for the public's needs.[91] In response to these concerns, we need to focus on providing prompt and affordable justice not only in the courts, but in administrative adjudications as well.[92]

Three of the best sources of information for judges and courts to reach out to the community are (1) the 1999 book written by Judge Richard Fruin, Judge, Los Angeles Superior Court; Chair of the Judicial Division 1997-98, "*Judicial Outreach on a Shoestring: A Working Manual;*"[93] (2) the Judicial Council of California web site, which contains the February 9, 1999 unanimously approved recommendations of the Special Task Force on Court/Community Outreach;[94] and (3) the task force's major work product, *Dialogue*, a comprehensive "how to" resource to aid courts in court and community collaboration activities.[95]

Judge Fruin, developed this manual by reviewing a variety of judicial outreach programs from around the country. He includes seventeen different types of programs and not only describes the programs but also includes: letters, news releases, outlines and other materials that they use so that anyone can adapt these materials for their own use.[96] He describes town hall meetings, teaching secondary teachers in the state capitol, a visual tour of the

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90. John M. Greacen, *How Fair, Fast, and Cheap Should Courts Be?*, 82 JUDICATURE 287 (1999).

91. *Id.* at 291.

92. *Id.*

93. FRUIN, *supra* note 59.

94. SPECIAL TASK FORCE ON COURT/COMMUNITY OUTREACH, THE JUDICIAL COUNCIL OF CALIFORNIA, THE REPORT OF THE SPECIAL TASK FORCE (1999), *available at* http://www.courtinfo.ca.gov/programs/community/outreach/report.htm.

95. DIALOGUE: COURTS REACHING OUT TO THEIR COMMUNITIES, *supra* note 63.

96. FRUIN, *supra* note 59.

courthouse over the Internet, a Texas judge's radio program, targeted community audiences such as pastors, one-to-one programs with at-risk teens, an appellate judge preparing high school students to act as counsel on recent United States Supreme Court cases, teen courts, scripts developed from landmark trials are acted out for audiences and TV documentaries, fourth and fifth grade mock trials in court, a judge who referees a provocative discussion on public access TV, a team teaching civics classes in inner city schools, state legislators invited to "ride along" with a busy judge in his morning docket, traffic court in high schools to show legal consequences of DUI including news clips of highway fatalities, appellate court arguments in colleges, high schools and other public forums, a judicial speaker's bureau, and a law and government magnet school program.[97]

*Dialogue: Courts Reaching Out to Their Communities – A Handbook for Creating and Enhancing Court and Community Collaboration* is available through the Judicial Council's web site, in full, and can be downloaded.[98] The report includes ideas, resources, and tools for communicating with the community effectively, building productive relationships with partners and volunteers, addressing community problems through justice initiatives, identifying ethical considerations regarding involvement of the judiciary, and addressing local needs with creativity and innovation in a changing environment.[99]

I encourage anyone who is interested to buy the book from the Judicial Division of the ABA or to surf the web and see the variety of programs in which California judges are involved. Each administrative law judge should be in contact with the administrative office of their state court system or their Supreme Court and their state bar association to see what has been developed on the judicial branch and to get involved with sharing the application of these programs to administrative adjudication.

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97. *Id.*

98. DIALOGUE: COURTS REACHING OUT TO THEIR COMMUNITIES, *supra* note 63.

99. *Id.*

In addition, the Judicial Division unveiled its new web site, Judges' Network,[100] on February 17, 2001, during the American Bar Association mid-year meeting in San Diego, California. In addition to the kick-off of the new web site, three separate outreach programs were conducted at the Hispanic Center, the Senior Center, and the school where students participated in student court. An additional site aimed at informing the public about the courts will be on-line on Law Day. I want to encourage all of you who become involved in educating the public about administrative adjudication to send your links to the Judges' Network in order to keep current the programs focusing on administrative adjudication.

In order to have the public's trust and confidence, we first need to deserve it. In order to deserve this trust and confidence, we need to earn it. We must live up to Canon 2(A): "An administrative law judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the administrative judiciary."[101] I would like to emphasize the phrase "at all times" because our whole life is important. We cannot allow anything that will give the appearance of impropriety. Of course, the key is the integrity and impartiality of the administrative proceeding.

The public expects judges to be ethical, fair, impartial, know the law, be prepared for the hearing, listen carefully to all the evidence, and show that we are paying careful attention to what is being said. We meet these expectations by writing our decisions or orders in a way that shows the parties that we are fair and impartial, that we have listened carefully; and we write in words that help them understand why we decided the way we did. We have to demonstrate the soundness of our analyses of the law as applied to the

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100. American Bar Association, Judicial Division, The Judges' Network, *at* http://www.abanet.org/jd/judgesnetwork.html (last visited Aug. 8, 2001).

101. MODEL CODE OF JUDICIAL CONDUCT FOR STATE ADMINISTRATIVE LAW JUDGES, Cannon 2(A) (1994), *available at* http://www.naalj.com; *see also* NAT'L ASS'N OF ADMIN. LAW JUDGES, *The Model Code of Judicial Conduct for State Administrative Law Judges*, 14 J.NAALJ 279 (Spring 1994).

evidence in the case before us.

In order for us to deliver justice promptly, we must appear on time for our hearings. We need to get down to business after helping the parties feel at ease in, what to many of them is, their first exposure to the administration of justice. Most of the people who appear in front of us at our hearings are nervous and uncertain about what is going to happen. We need to explain, in lay language, what they should expect.

Many of the states' Offices of Administrative Hearings have developed excellent web sites.[102] There is a special section in the bibliography that lists the home pages for many of these offices.[103] Colorado has an excellent web site to introduce to the public what to expect in coming to a hearing.[104] They have a step-by-step approach explaining

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102. *See, e.g.*, Arizona Office of Administrative Hearings, *at* http://www.azoah.com (last visited Aug. 8, 2001); California Office of Administrative Hearings, *at* http://www.oah.dgs.ca.gov (last visited Aug. 8, 2001); Colorado Division of Administrative Hearings, *at* http://www.state.co.us/gov_dir/gss/DOAH/index.htm (last visited Aug. 8, 2001); Florida Division of Administrative Hearings, *at* http://www.doah.state.fl.us/internet (last visited Aug. 8, 2001); Georgia Office of Administrative Hearings, *at* http://ganet.org/osah (last visited Aug. 8, 2001); Louisiana Division of Administrative Law, *at* http://www.adminlaw.state.la.us (last visited Aug. 8, 2001); Maryland Office of Administrative Hearings, *at* http://www.oah.state.md.us (last modified Oct. 10, 1999); Michigan Bureau of Hearings, *at* http://www.cis.state.mi.us/bhear/divisions.htm (last modified May 12, 2000); Minnesota Office of Administrative Hearings, *at* http://www.oah.state.mn.us (last modified July 5, 2001); Missouri Administrative Hearing Commission, *at* http://www.oa.state.mo.us/ahc (last visited Aug. 8, 2001); North Carolina Office of Administrative Hearings, *at* http://www.oah.state.nc.us (last modified Aug. 8, 2001); North Dakota Office of Administrative Hearings, *at* http://www.state.nd.us/oah (last modified Aug. 8, 2001); New Jersey Office of Administrative Law, *at* http://www.state.nj.us/oal/hearings.html (last visited Aug. 8, 2001); New York Office of Administrative Hearings, *at* http://www.ci.nyc.ny.us/html/oath (last modified Aug. 3, 2001); South Carolina Administrative Law Judge Division, *at* http://www.law.sc.edu/alj/alj.htm (last modified May 4, 2001); South Dakota Office of Hearing Examiners, *at* http://www.state.sd.us/boa/ohe.htm (last visited Aug. 8, 2001); Texas Office of Administrative Hearings, *at* http://www.soah.state.tx.us (last modified June 18, 2001); Tennessee Administrative Procedures Division, *at* http://www.state.tn.us/sos/procede.htm (last visited Aug. 8, 2001); and Washington Office of Administrative Hearings, *at* http://www.oah.wa.gov (last modified July 25, 2001).

103. *See infra* Bibliography.

104. *See* Colorado Division of Administrative Hearings, *at* http://www.

two of their main types of hearings.[105] Many of the other states have a section of frequently asked questions (FAQs),[106] that are tremendous tools to assist the public in having a better understanding of administrative adjudication.

The remainder of this paper will attempt to share with the reader programs, projects, and approaches to improve public trust and understanding. I hope to inspire administrative law judges to become involved in these efforts too and to equip administrative law judges with the tools that will make it easier for them to be involved without having to reinvent the wheel.

Allen Hoberg, Chief Administrative Law Judge, North Dakota Office of Administrative Hearings, responded to my congratulatory comment on the very thorough Frequently Asked Questions section of the North Dakota Office of Administrative Hearings web site,[107] by explaining, "I started by looking at the others and I took the best ones and modified them for North Dakota law and procedures."[108] I highly recommend that each of us look for the best that already exists, use those best practices, and then modify them to our own situations. It is easier to apply them in our own offices.

The Maryland State Bar Association prepared a videotape "You Can Fight City Hall" about the Maryland Office of Administrative Hearings.[109] The Illinois State Bar Association also developed a videotape that was shown on local

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state.co.us/gov_dir/gss/DOAH/index.htm (last visited Aug. 8, 2001).

105. *See id.*

106. *See, e.g.*, Georgia Office of Administrative Hearings, *at* http://ganet.org/osah/faqs.html (last visited Aug. 8, 2001); North Dakota Office of Administrative Hearings, *at* http://www.state.nd.us/oah/FAQs.htm (last modified Aug. 8, 2001).

107. *See* North Dakota Office of Administrative Hearings, *at* http://www.state.nd.us/oah/FAQs.htm (last modified Aug. 8, 2001).

108. Interview with Allen Hoberg, Chief Administrative Law Judge, North Dakota (Oct. 16, 2000).

109. Videotape: You Can Fight City Hall - A guide to Administrative Hearings (Maryland Bar Foundation, Inc. 1997) (on file with Carolyn Ferguson at the Maryland Office of Administrative Hearings, and on file with John W. Hardwicke, Chief A.L.J. Maryland Office of Administrative Hearings, Administrative Law Building, P.O. Box 926, Hunt Valley, Md. 21030).

access television that discusses unemployment insurance benefit appeals hearings.[110] These types of videos can be made available to community access television stations and be shown in the lobby while people are waiting for their hearings. Matt Mooney, former president of the Kentucky Association of Administrative Adjudicators prepared a video, script, and discussion packet to use with bar associations throughout the Commonwealth of Kentucky.[111] These materials were intended as continuing legal education for attorneys preparing for administrative hearings, but could be adapted to a wider audience of people to explain the process in an administrative hearing.

In addition to web pages that inform the public, many offices have developed excellent brochures or sheets that are sent out with the hearing notices that explain to the parties what to do in preparation for their hearing. The Maryland Office of Administrative Hearings has the most comprehensive set ofmaterials that I have seen,[112] probably because they have such an extensive jurisdiction. Their Chief Administrative Law Judge, John H. Hardwicke, has been con-

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110. Videotape: Unemployment Insurance Benefit Appeals Hearing Process (Illinois State Bar Association 1998) (on file with Edward J. Schoenbaum, Chief ALJ, 1108 South Grand Ave. West, Springfield, Ill. 62704-3553) (explaining the Unemployment Insurance Benefit Appeals Hearing Process).

111. Videotape: Common Problems in Administrative Hearings: A Hearing Most Foul, (Matthew L. Mooney 1999) (on file with the Kentucky Association of Administrative Adjudicators). *See also* MATTHEW L. MOONEY, A HEARING MOST FOUL: PRESENTER'S MANUAL (1999) (unpublished manual, on file with the Kentucky Association of Administrative Adjudicators).

112. Materials available through the Maryland Office of Administrative Hearings, Administrative Law Building, P.O. Box 926, Hunt Valley, Md. 21030. *See also generally* CITY OF CHICAGO, YOUR GUIDE TO THE DEPARTMENT OF ADMINISTRATIVE HEARINGS (2000) (available through the City of Chicago, 400 West Superior St. Chicago, Ill. 60610); KENTUCKY OFF. OF ADMIN. HEARINGS, GUIDE TO AGENCY FORMAL ADMINISTRATIVE HEARINGS, ENVIRONMENTAL PROTECTION CABINET (1999) (available through the Office of Administrative Hearings, Frankfort, Ky.); NORTH CAROLINA OFF. OF ADMIN. HEARINGS, A PLACE TO BE HEARD (2000) (available through the North Carolina Office of Administrative Hearings); TEXAS DEP'T OF BANKING, SAV. & LOAN DEP'T AND OFF. OF CONSUMER CREDIT COMM'R, THE ADMINISTRATIVE HEARING PROCESS AND RULES OF PROCEDURE IN THE FINANCE COMMISSION AGENCIES (1999) (available through the Texas Department of Banking, Savings & Loan Department, and the Office of Consumer Credit Commissioner, 2601 N. Lamar Blvd. Austin, Tex. 78705).

cerned about building public trust and confidence since that office was created in 1990.[113] I recommend that videotapes be shown in the waiting rooms for the people waiting for their hearing, to put them at ease by explaining some of the procedures, terms, and what to present during their hearing.

We have to exhibit a thorough understanding of the applicable statutes, the applicable regulations, and case law to competently conduct hearings for the agency. We need to take the time to explain how we perform our role so that those who are in the hearing know what to expect. Have we described how we, the administrative judiciary, fit in our system of government or how we are like members of the judicial branch of government, and how we are unlike the judiciary? Have we fully considered how we have an impact on the public's ability to rely on our abilities, our character, and the soundness of our analyses? Once we do this we are more likely to be worthy of their trust.

We must demonstrate, during the hearing and through our written decision that we are up to the task of providing fair, impartial, prompt and affordable justice. Have we prepared for the hearing by familiarizing ourselves with the applicable statutes, regulations, and case law to competently hear evidence for this agency? Have we taken the time to explain how we perform our role so that others, especially our colleagues in the bar and on the bench, understand how the executive branch of government uses adjudications to implement and execute legislative mandates?

In order to earn public trust and confidence we need to participate with bar associations, academicians, and others to ensure procedures have been implemented to guard against overreaching by the agencies. Have we taken steps to make sure neither party has the opportunity to approach us during the adjudicative process, without the other party or parties having an opportunity to respond? What can we do to protect our impartiality? What have we done to guarantee a meaningful opportunity for all sides to

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113. *See* John W. Hardwicke, *The Central Hearing Agency - Theory and Implementation in Maryland*, 14 J.NAALJ 5 (Spring 1994).

be heard to ensure fairness? What do we do that inspires the public to believe we will act in the right way, or in an effective way? What do we do to earn the confidence that is so necessary for people to operate in this system of administrative justice?

In order for us to deserve public trust and confidence we need adequate training. We need to understand the tools of adjudication so that those who appear before us have the advantages of a professional administrative adjudicator. As Gina Hale, Senior Administrative Law Judge with the Washington Office of Administrative Hearings explained in her 1995 Fellowship paper we need to be professional in all we do.[114] We need to know how to effectively develop a complete record by giving the attorneys the opportunity to present their cases. We also need to develop a complete record by assisting the non-represented in hearings to present their evidence and their arguments for administrative justice. Many of us have years of experience as litigators or as agency staff, but a judge has additional responsibilities and functions.

We need to learn to think like judges. We must set aside our predispositions, our personal biases, and our agency viewpoint to be able to listen fairly and impartially to all the evidence and then to apply the law to the findings of fact.

We also need to understand the mission of the agency. We need to make sure the agency places the relevant statutes, rules, and appropriate official records on the record so that the parties understand the case against them and the burden of proof the parties need to meet.

It is important that administrative law judges are accountable.[115] Edwin L. Felter, Administrative Law Judge, Colorado; Chair of the National Conference of Administrative Law Judges, wrote an article that can be used as a useful educational tool to help us be professional in our

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114. Gina L. Hale, *Professionalism: A Call to Excellence*, 15 J.NAALJ 1 (Spring 1995).

115. John L. Kane, Jr., *Public Perceptions of Justice: Judicial Independence and Accountability*, 17 J.NAALJ 203 (Fall 1997).

work.[116] Our primary accountability is to the rule of law and a commitment to not be intimidated by any improper influence by the agency on the decision making of the administrative law judge. A crucial part of public trust and confidence will be answered by whether the public can rely on the adjudicator's ability to carry out the law as written. While there must be certain controls over the rogue Administrative Law Judge who may violate standards on attendance, travel reimbursement, etc., those controls should be open to public view. An agency should not be able to discipline an adjudicator for following the law.

We need to find out how the people with whom we have contact perceive us. A number of states have developed effective feedback mechanisms to allow public participation in providing an evaluation or customer satisfaction feedback in voicing its concerns about the way the administrative law judge handled the hearing. For example, North Carolina has a very good survey to find out what the public thinks of the work of the administrative law judge.[117]

Minnesota has done a much more thorough job by randomly sampling the parties and attorneys who appear before the administrative law judges in their Office of Administrative Hearings. Ken Nickolai, Chief Administrative Law Judge for the State of Minnesota, developed a detailed questionnaire to assist each administrative law judge in discovering what other people who appear before the judge see as the judge's strengths and weaknesses.[118] Each judge receives a confidential report of their own results.[119] Each judge has a mentor who sits down with them to analyze the report and to develop a plan of action for building on their strengths and overcoming those areas where that judge

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116. Edwin L. Felter, *Maintaining the Balance Between Judicial Independence and Accountability in Administrative Law*, 17 J.NAALJ 89 (Spring 1997).

117. *See infra* Appendix A.

118. Kenneth Nickolai, *Strengthening the Skills of Administrative Law Judges*, 20 J.NAALJ 263 (Spring 2000).

119. *Id.* at 264.

may be weak through a professional development plan of education.[120] When looking at evaluation remember the emphasis should be on development and should not be judgmental. Administrative Law Judge Ann Marshall Young discusses the dangers in judgmental evaluation in her 1996 Fellowship Article.[121]

Frequently, the people in the agencies for whom we conduct hearings do not understand administrative adjudication. We need to make sure they understand that while we may work for the agency, we are not there to say "Yes" to everything the agency wants to do. They need to learn the law, what due process is, when evidence they would like to rely on is "hearsay" that is not reliable, and whatever else they need to do to have the administrative law judge rule favorably.

Meg Scott Phipps, Secretary of Agriculture for North Carolina and Former Administrative Law Judge, stated at the Annual Meeting of the National Association of Administrative Law Judges:

> We must consider the needs of the public with whom we have contact: Are there misunderstandings about the role of the executive adjudicator that we can help eliminate? Can we listen carefully to and explain the process to those going through an adjudication so that everyone leaves confident that they've fully participated in the review, and that their positions have been fairly considered by an impartial adjudicator in a way that will produce a just result? Are witnesses, victims, family members of victims and others who are brought into these proceedings leaving the proceedings assured of having been fairly

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120. *Id.* *See also* MINNESOTA OFF. OF ADMIN. HEARINGS, JUDICIAL DEV. PROGRAM, OFFICE-WIDE SUMMARY (1999), *reprinted in* 20 J.NAALJ 271 (Fall 2000); MINNESOTA OFF. OF ADMIN. HEARINGS, A MANAGEMENT ANALYSIS DIVISION REPORT (1999) (available through Administration Building, Suite 203, 50 Sherburne Ave, St. Paul, Minn. 51555); Randall R. Rader, *Evaluate Your Own Performance on the Bench: Here's How*, 30 JUDGES J. 33 (1991).

121. Ann Marshall Young, *Evaluation of Administrative Law Judges: Premises, Means, and Ends*, 17 J.NAALJ 1 (Spring 1997).

> treated? What about surveys that measure how we're perceived by those affected by our adjudications?[122]

We need to create programs to explain our role to others. The materials we prepare to explain administrative adjudication to the public, can also be used for the agencies, and even members of the bar. Surprisingly, many members of the bar don't fully understand the role of the executive adjudicator. We can, and should, explain that role, so our colleagues in the bar, and in the judicial branch, can better understand how the executive branch of government uses adjudications to implement and execute legislative mandates.

We need to study what works and doesn't work, when trying to create public trust and confidence in the administrative judiciary, and then share these ideas with other administrative law judges, bar associations, associations of administrative law judges, the Judicial Division, and individual groups of citizens.

Consider the role of the media; if lawyers don't understand us, chances are neither do members of the press. If the press does not understand what we do, and how we do it, they are much more likely to misinform the public. A number of bar associations have developed courses to explain the law and the courts to journalists. For example, the Canadian Bar Association has prepared an excellent Guide for the Media, and the ABA has an Internet site providing a special section for the media.[123] A number of other national and state bar associations have also developed materials,[124] or organized committees of lawyers, who are

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122. Meg Scott Phipps, Address at the Annual Meeting of the National Association of Administrative Law Judges (Sept. 13, 1999).

123. CANADIAN BAR ASS'N, A BAR LEADER'S GUIDE TO MEDIA RELATIONS (1999). *See also* Am. Bar Ass'n, Division for Media Relations and Communications, *at* http://www.abanet.org/media/home.html.

124. *See* ASS'N OF TRIAL LAWYERS OF AM. & THE NAT'L INST. FOR CITIZEN EDUC. IN THE LAW, WHEN JUSTICE IS UP TO YOU (1991) (commemorating the 200th anniversary of the Bill of Rights, including a manual, a video, and instructional materials to accompany the video); Cliff Barnes, *Talking Points Bring Home Key Messages to Public*, THE Q. NEWSL. OF THE NAT'L ASS'N OF B. EXECUTIVES (2000).

willing to be contacted when an important decision comes down from the Court. The media can then contact an attorney or law professor to help with background information, in order for that media person to understand and explain the decision or conduct an interview for that night's news or the morning newspaper.

Bar associations can also play a very important role in responding to unjust criticism of judges. The ABA House of Delegates approved a recommendation on this subject at the meeting in 1998.[125] This project was updated by the Lawyers Conference of the Judicial Division and follow up implementation was encouraged by the ABA Standing Committee on Judicial Independence. This protocol is being reviewed by the Adjudications Committee of the Administrative Law & Regulatory Practice Section for possible modification for responding to unjust criticism of administrative adjudicators.

We can assist our agencies in explaining how the adjudicative process works, and we can share this knowledge with the media. We can volunteer to prepare or up-date a brochure, that includes a list of frequently asked questions that the agency, attorneys, parties, the media, and the general public have about our area of administrative law. Other useful items would be a number list; an outline or narrative to be sent out with the notice that will assist the parties to understand how to prepare for the hearing, what they need to do if something has come up that will keep them from attending the hearing at the time it is scheduled, and what, or who, they need to bring to the hearing.

Errol Powell, Administrative Law Judge with the Florida Division of Administrative Hearings, member of the Executive Committee of the National Conference of Administrative Law Judges, and Co-chair of the Courts and Community Committee, conducted two presentations with me before groups of administrative law judges in the past year. He implemented an educational program in elementary and

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125. AM. BAR ASS'N, SPECIAL COMM. ON JUDICIAL INDEPENDENCE AND LAWYERS CONFERENCE OF THE JUDICIAL DIV., RESPONSE TO CRITICISM OF JUDGES (1998) (copies of this booklet are available through the director of the ABA Judicial Division, Luke Bierman, at (312) 988-5703).

middle schools over the last few years where he discussed the law, due process, and administrative adjudication. He tells us that we must be prepared to discuss things that the children are interested in. He focuses primarily on middle school children, and recommends that when you pick the school you want to talk to, you should go to the school and talk to the principal, the coordinator of social studies, or an individual teacher and offer to make a presentation to the class about law and the justice system.

Judge Powell's son told his friends that his father was a judge, but not in a courthouse. Judge Powell learned that he was more in tune with middle school students, and could easily find topics that the children were interested in. When developing a presentation remember the children's attention span may only be twenty minutes on one subject, so include student participation to increase this time period. Prepare the presentation, but remember that the whole script may change because the children may ask questions on entirely different topics; especially if there is a big news story that broke the night before or that morning. Judge Powell is working through the Florida Bar to expand the existing program to include administrative adjudication.[126]

There are many materials available in most states, or through the ABA's Division for Public Education at its web site.[127] Every year the ABA prepares materials in preparation for Law Day, which is on the first of May.[128] The Law Day Planning Guide can help you put together a great Law

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126. Errol Powell, Address at the Annual Meeting of the American Bar Association's National Conference of Administrative Law Judges (July, 2000).

127. American Bar Association, Division for Public Education, Informing the Public About Law and its Role in Society, *at* http://www.abanet.org/publiced/home.html (last visited Aug. 8, 2001) (materials also available through the ABA Division for Public Education, 750 North Lake Shore Dr., Chicago, Ill. 60611).

128. *See generally* American Bar Association, Division for Public Education, Law Day Planning Guide, *at* http://www.abanet.org/publiced/lawday/guidemain.html (last visited Aug. 8, 2001) (copies of any annual guide can be obtained from the ABA Division for Public Education, 750 North Lake Shore Dr., Chicago, Ill. 60611).

Day celebration.[129] Each year, the Guide provides program ideas, speeches, discussion guides, talking points, student activities, contests, lessons, tips on reaching community groups and the media, and how to enter your program into award competitions.[130]

The ABA Division for Public Education has a section on its Internet site on Courts and Legal Procedure, which I highly recommend.[131] This site also has links to specific subject areas, such as a section on "How Courts Work," including: The Role and Structure of Courts, The Role of Judges, The Role of Juries, Grand Juries, Trial Juries, and Judicial Independence.[132] Other links will lead to Courts and Legal Procedure, Steps in a Trial, The Human Side of Being a Judge, and Materials on Mediation.[133] All of these sections can assist in preparing materials. In addition, the ABA Division for Public Education provides a Supreme Court Preview, which includes Cases at a Glance, an advance look at the issues raised in every case slated for oral argument.[134] The web site is continuously updated with links to take people to the full text of the Court's decisions as soon as they are handed down.[135] The current term's cases are linked so that people can prepare for what is about to be argued in the Supreme Court:[136]

> The American Bar Association develops, promotes, and supports law-related education (LRE) programs that prepare elementary, middle, and secondary students for effective and responsible citizenship, committed to liberty,

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129. *Id.*

130. *Id.*

131. American Bar Association, Division for Public Education, Informing the Public About Law and its Role in Society, *at* http://www.abanet.org/publiced/home.html (last visited Aug. 8, 2001).

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id. See also* American Bar Association, Division for Public Education, Informing the Public About Law and its Role in Society, Highlights for Citizens, Supreme Court Cases at a Glance, *at* http://www.abanet.org/publiced/preview/previewcaseglancehome.html (last visited Feb. 28, 2000) (displaying previous Supreme Court term's cases at a glance).

> justice, equal protection, and the rule of law the term law-related education means education to equip non-lawyers with knowledge and skills pertaining to the law, the legal process, and the legal system, and the fundamental principles and values on which these are based, according to the Law-Related Education Action of 1978.[137]

We, the administrative judiciary working with sections and committees of bar associations, must play catch up to develop similar materials describing the administrative adjudication system. We need to focus on due process in the administrative law context, and develop mock hearings on important areas of interest to large numbers of the public. The Government Bar Association in Illinois, developed two programs for Law Day in 1992 and 1994.[138] These programs were held at the local public library. Each program featured four high volume administrative hearing types. Each program started with an administrative law judge presenting a five to ten minute overview of the types of hearings they conducted, and then encouraged questions from the audience. The programs featured driver's license revocations hearings, human rights hearings, public aid hearings, and unemployment insurance benefit hearings.

The National Conference of Administrative Law Judges developed a pilot program for the 2000 ABA mid-year meeting in Dallas, Texas, focusing on social security disability hearings, and a new type of hearing in Texas on nursing homes.[139] This was an effort to involve more administrative law judges in developing materials to improve public trust and confidence in administrative adjudication.

We must actively, and constantly, control ourselves, and conduct our adjudications as professionals. The public,

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137. American Bar Association, Division for Public Education, Informing the Public About Law and its Role in Society, Highlights for Students, Student Central, *at* http://www.abanet.org/publiced/youth/sia/home.html (last visited Feb. 28, 2000).

138. Materials on file with author.

139. Materials on file with the American Bar Association, Judicial Division, National Conference of Administrative Law Judges, 541 North Fairbanks Court, Chicago, Ill. 60606.

including the litigants, their attorneys, the witnesses who appear before us, the agencies that rely on us, the trial or appellate courts that review our work, the media, our friends, and our families, all need to know we are committed to providing fair and impartial services as independent adjudicators in the executive branch of government.

We must take time to explain how we perform our role, so that others, especially our colleagues in the bar and on the bench, understand how the executive branch uses adjudication to implement and execute legislative mandates. We should look at:

- Customer service development
- Media relationships
- Citizen advisory committees
- Speakers bureaus, brochures, and videos

Everything we do should inspire trust and confidence. Every administrative law judge must always keep focused on why this work is important. Hopefully, each administrative law judge will develop a personal "Mission Statement," something like:

> I AM DELIVERING FAIR AND IMPARTIAL JUSTICE IN A PROMPT AND AFFORDABLE MANNER THAT LEADS TO PUBLIC TRUST AND CONFIDENCE IN ADMINISTRATIVE ADJUDICATION

We need to develop, and distribute, information and resource materials for the purpose of enhancing public understanding, confidence and trust in administrative adjudication. Each of us should constantly be aware of how the system in which we are working could be improved. By being a professional administrative law judge, we have an obligation to search out the best practices on how others have developed a more effective system of managing administrative adjudication through the use of educational programs, more effective use of technology, and by helping develop a better understanding of the law by the public, who come into contact with us.

We, as administrative law judges, need to involve other stakeholders, such as agency attorneys, attorneys who ap-

pear before us, bar association committees, citizens' groups, like the League of Women Voters, Chamber of Commerce, and labor unions, in studying the administrative adjudication process to identify strengths and weaknesses, and to see how we can improve administrative adjudication. We need to involve stakeholders in studying the administrative adjudication process, to recommend improvements, and develop pilot programs to increase prompt and affordable administrative adjudication, so that the public will experience fair and impartial justice.

We need to promote understanding between the administrative judiciary and citizens, by formulating recommendations for maintaining and increasing community confidence in the judiciary, and by coordinating efforts with the American Bar Association, state and local bar associations, and other legal and national organizations of administrative law judges.

## IV. A Call to Action to Encourage Individual Administrative Law Judges, Offices of Administrative Hearings, National, and State Organizations To Become Involved In This Program To Improve Public Trust And Confidence

Judith A. Dowd, Administrative Law Judge, Federal Energy Regulatory Commission, Past President of the Federal Administrative Law Judge Conference, recently addressed how we should work efficiently while treating everyone fairly.[140] The agency she represents, the Federal Energy Regulatory Commission, has a system of triage that was developed by a committee on how cases should be treated.[141] Some cases are routed to settlement for alternative dispute resolution processing, or to one of the other tracks for appropriate processing.[142] The commission

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140. Judy Dowd, Address at the Federal Administrative Law Judge Conference (2000). *See generally* Federal Administrative Law Judge Conference, *at* http://www.faljc.org (last modified Aug. 7, 2001).

141. 18 C.F.R. § 385.601 (2000).

142. *Id.* § 385.604; *see also* Federal Energy Regulatory Commission, Office of Administrative Law Judges, Alternative Dispute Resolution, Settlement Judges, *at* http://www.ferc.gov/legal/oalj/functions/settlement.

adopted time standards for each track, which may be modified for good cause.[143] Judge Dowd believes these time standards are working well, as they are in the judicial branch.[144] During her address, she also emphasized that studies have shown that women and minorities have more trouble establishing credibility, so it is important to have a more diverse group of administrative law judges to improve the perception of the judiciary by the public.[145]

Jean S. Cooper, Administrative Judge with the United States Housing and Urban Development Board of Contract Appeals, and Chair of the National Conference of Administrative Law Judges 1999-2000, shared some of the important ways federal administrative adjudication can look better to the public.[146] The administrative judiciary should not be housed in the same headquarters as the agency for whom they conduct hearings. If you have a different address you are viewed as a different entity. The more we look and act like a judge, the more confidence the public will have in us. When we travel, we should use appropriate courthouses rather than using agency space. She also shared a warning that we should not expect the agency to protect us from criticism (the agency is more likely to attack you). "The agency was not there to support me, fortunately the public contract law section came in to defend the administrative law judges."[147] We should work with bar

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htm (last modified July 23, 2001).

143. 18 C.F.R. § 385.601 (2000).

144. *See generally, supra* note 138; Edwin L. Felter, Jr., *Administrative Adjudication Total Quality Management: The Only Way to Reduce Costs and Delays Without Sacrificing Due Process*, 15 J.NAALJ 5 (Spring 1995); Julian Mann, III, *Striving for Efficiency in Administrative 157Litigation: North Carolina's Office of Administrative Hearings*, 15 J.NAALJ 157 (Spring 1995); Edward J. Schoenbaum, *Managing Your Docket Effectively and Efficiently*, 19 J.NAALJ 37 (Spring 1999); JUSTICE MGMT. INST., NAT'L WORKING GROUP ON PROMPT AND AFFORDABLE JUSTICE, A NATIONAL AGENDA FOR PROMPT AND AFFORDABLE JUSTICE IN THE 21ST CENTURY (1998); DAVID STEELMAN, ET AL., THE NAT'L CTR. FOR STATE COURTS, CASEFLOW MANAGEMENT: THE HEART OF COURT MANAGEMENT IN THE NEW MILLENNIUM (2000).

145. *See generally, supra* note 140.

146. Jean S. Cooper, Address at the Annual Meeting of the American Bar Association's National Conference of Administrative Law Judges (July, 2000).

147. *Id.*

associations, and other professional organizations, so that they will speak to the public on our behalf. We all need to focus on who the public is - included in this group are litigants who are unhappy with government action.

The Judicial Division of the ABA established a steering committee, with a member of each conference on the steering committee to use all of the resources of the ABA: Judicial Independence, Coalition for Justice, Strategic Communications, Community and Public Education, Bar Services, Minorities in the Judiciary, and the Judicial Division.[148] The proposed plan of action includes a kick-off presentation in San Diego during the midyear meeting, recruiting five pilot states in the first year, recruiting and training judges in the pilot states, developing the message, and identifying the audiences so that judges can communicate.[149] We will identify where we need to focus, develop or share the curriculum that will be placed in the network, so that judges can access the material, download a presentation, and put it to good use in their communities.[150]

We are involved in message development and audience identification - what messages judges need to communicate.[151] We will also be working with the ABA Division of Bar Services, to work with teams in each state to maximize the effectiveness of bench and bar working together for public outreach and understanding.

Two illustrations of academicians and practicing attorneys involvement in improving administrative adjudication and helping the public better understand administrative adjudication, were presented at the 2000 Annual Meeting of the ABA - Judicial Division's National Conference of Administrative Law Judges in New York City in July, 2000.

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148. NATIONAL ACTION PLAN, *supra* note 13, at 39.

149. *Id.* at 37-49.

150. *Id.* at 44.

151. *Id.* at 7-35.We would appreciate any suggestions from readers of this article so that we can identify where we need to focus in developing curricula to place on the Judges Network so that all judges can download a variety of presentations and modify it for his or her specific audience. Please contact the author at edschoen@juno.com.

Professor Michael Asimow, Professor of Law, University of California, Los Angeles, focused on California's approach to reform through the law revision commission that began in 1989.[152] Professor Asimow served as the reporter to this commission for ten years. California, in 1945, was the first state to adopt an Administrative Procedure Act (APA).[153] He reminded us that there are far more cases handled by the administrative judiciary than by the judicial branch.[154] For millions of people the public face, of justice is administrative adjudication.

The new California APA was a great success with adjudication, and proved to be state of the art. California adopted the best ideas to improve trust and confidence. One of the best features was a "bill of rights," including separation of functions and prohibitions on ex parte communications, as well as a system for peremptory challenges, which are routine in judicial, but not in administrative, hearings.[155] It also encourages use of telephone hearings and video-conferencing, which in some cases is not suitable, but in many cases can save time and money, and the public appreciates not having to sit around and wait for hours.[156] It also authorizes mediation, and non-binding and binding Arbitration, which reduces formality and minimizes the adversarial nature of the process.[157] Cross-examination is not that important in all cases.[158] Professor Asimow also described a trend toward allowing expert testimony to be presented exclusively in writing, based on questions presented to the expert, and an increasing focus on publishing administrative decisions, to better promote the public's access to and understanding of the law.[159]

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152. Michael Asimow, Address at the Annual Meeting of the American Bar Association's National Conference of Administrative Law Judges (July, 2000).

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. Asimow, *supra* note 152.

159. *Id.*

Usually, in administrative adjudication there are few precedent decisions of the agency. Each decision goes into the file and is lost, it is tucked away and people in the agency are aware of it, but the general public does not know about it. Professor Asimow recommends that agencies publish some of the important decisions and cite them so that the public can learn what the agency has decided and can rely on this in planning their own actions.[160]

Professor Asimow is a prime example of a law professor who has worked closely with state administrative law judges and legislators, in order to improve the effective administration of administrative justice. He has worked tirelessly, not only with the commission to improve administrative law, but also in providing continuing judicial education for administrative law judges. In addition, he has contributed by writing reports and recommendations to the ABA House of Delegates on improving salaries for state administrative law judges, standards for administrative law judge education, and in editing that portion of the Administrative Law & Regulatory Practice Section News, sharing developments in state administrative law.

David E. Cardwell, Past Chair, State & Local Government Law Section of the ABA, Member of the Administrative Law & Regulatory Practice Section Council, spoke at that same program in New York City about how administrative law practitioners can improve public trust and confidence in administrative adjudication.[161] He discussed how he uses situations that raise questions in the mind of the public. He said, "We need to do a better job of explaining how we made decisions. As a government attorney I always went to great lengths to explain how we reached decision so if public or media question it they will understand."[162] He sees a dilemma in a government attorney advising staff on a particular matter, being the counsel to the governing board in what they should do, or arguing the case before the ALJ,

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160. *Id.*

161. David E. Cardwell, Address at the Annual Meeting of the American Bar Association's National Conference of Administrative Law Judges (July, 2000).

162. *Id.*

and then advising the board on its final order.[163] He recommends getting a separate attorney to advise the board, but boards do not seem to care about the appearance of impropriety.[164]

Attorney Cardwell also shared a technique that he found useful to demystify the legal system when teaching business law classes in local colleges. He tries to help students understand how the system and the process works, by taking a significant legal event from the newspaper where they perceive a miscarriage of justice. After discussing how the students thought the process worked, Attorney Cardwell explains the actual process. By sharing more of the facts, the students learn that, even if it was a decision they did not like, the process was fair, and the decision was not a miscarriage of justice. The students usually do not understand that what they watch on TV is different from administrative matters. The media generally does not understand either, and they do not attempt to explain it to the public. Each attorney involved in the administrative adjudication process needs to take the time to explain what happened, and explain as clearly as possible, what you are doing and why you are doing it.[165]

We, as administrative law judges, need to reach out to academicians and attorneys who will assist us in improving the administrative adjudication system in our own states. They have the time, the experience, and the abilities to work with executive agencies, the legislature, and the courts to ensure justice.

Each administrative adjudicator needs to receive recognition for doing something important. If we feel good about our work, we are more likely to share that enthusiasm for the important work we are doing, and the public will see that in us. The public will have greater trust and confidence by seeing professionals enjoying the challenges of their work.

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163. *Id.*
164. *Id.*
165. *Id.*

A survey of state administrative law judges in 1997,[166] found that the most serious problems facing the administrative judiciary were: budget problems, low salaries, interference with judicial independence, training, and trust and respect from: agencies, the bar, and the public.[167]

This same survey listed the biggest new challenges to administrative adjudication as increased workload, decreased resources, exponential rate of change, privatization of some governmental services, expectations of the public, different type of public, and technology, including the Internet.[168]

Those administrative law judges who completed the survey felt the most successful achievements in their offices over the prior three years were: increased productivity/effective use of resources, establishment/expansion of Central Hearing Agency and its relationship to high quality, effective use of technology, staffing improvements, improving Rules of Procedure, salary improvements, improvements to facilities, implementation of mediation, cross training, better quality decisions, quality of administrative law judges, achieving the title of administrative law judge, new or revisions to their State Administrative Procedure Act, maintaining Judicial Independence, and a new Code of Conduct for ALJs.[169]

At that same time, they reported that they were working on the following projects: computerizing case management, expanding technology: video, telephone hearings, world wide web (www) research, and web sites, improving low salaries, improving training, expanding Central Hearing Agency Jurisdiction, attempting to adopt Central Hearing Agency, developing public trust and confidence, working with Bar Associations to improve administrative adjudication, improving case management, expanding mediation in

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166. Edward J. Schoenbaum, *Survey of State Administrative Law Judges* (1997) (unpublished survey conducted for the American Bar Association's National Conference of Administrative Law Judges) (on file with author).

167. *Id.*

168. *Id.*

169. *Id.*

administrative law, improving procedural Rules, improving the budget, developing Judicial Performance Criteria, professionalizing support staff, and improving facilities[170]

An important ingredient to helping administrative law judges, government attorneys, the private bar, and the academicians in professionalizing and improving administrative adjudication is the assistance of the major national organizations. The survey results showed that state administrative law judges felt that the ABA Judicial Division's National Conference of Administrative Law Judges and the National Association of Administrative Law Judges can assist them by providing: more training, publications and information on trends and activities in other states, an effective message to the judicial, legislative, executive agencies and the public, emphasis on the value and importance of the Administrative Judiciary, assistance on improving salaries, assistance on establishing a central hearing agency in states, assistance in developing model forms, etc., encourage the highest standards for ALJs, support budgetary improvements and realistic caseloads, continue doing what you are doing, stress necessity for judicial independence of ALJs, study efficiency and effectiveness of practices and procedures, act as sounding board on ethical issues, develop jurisprudence for administrative adjudication, work within the ABA to improve education and skills of attorneys appearing in administrative adjudication, and share "Best Practices."[171]

## CONCLUSION

The results of the survey of state administrative law judges were converted into the long-range plans and objectives of the National Conference of Administrative Law Judges and the National Association of Administrative Law Judges so that administrative adjudication could be improved and the public would benefit.

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170. *Id.*
171. *Id.*

We must strive to be the most professional administrative law judges, government attorneys, private practitioners, and academicians. All of us, working together can, and must, strive to improve the effectiveness and efficiency of administrative adjudication, so that the public will be better served. We must also live up to the highest standards of judicial and professional conduct so that the public will be served. Finally, we must explain what we do, and do it in a way so that the public will understand our role, function, procedures and the law so that the public can grow to have trust and confidence in administrative adjudication.

In closing I would like to quote Cliff Vanell, Chief ALJ of the Arizona Office of Administrative Hearings:

> We must constantly identify and eliminate unnecessary procedures and paperwork . . .never allow our policies and procedures to demean human dignity or stifle creativity . . .Training and retraining must be provided to ensure our personal and professional growth so that we can better serve the public . . .listen constantly, share ideas and information, and recognize achievement . . .be evaluated on our contributions, sense of teamwork and love of change . . .always remember that each case is the most important case to the parties. . . Everyone is entitled to respect and courtesy. . .We are here to serve.[172]

172. Cliff J. Vanell, *OAH Values*, ARIZ. OFF. OF ADMIN. HEARINGS Q. NEWSL., November 1998, vol. 9, *at* http://www.azoah.com/Vol9.htm (last visited Aug. 8, 2001) (listing management philosophy of the Arizona Office).

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If you have additional resource materials on this subject, please contact the author so that we can update these materials through the website. The author's e-mail address is edschoen@juno.com. The author's telephone number is (217) 524-7836. The author's mailing address is 1108 South Grand Avenue West, Springfield, Illinois 62704-3553.

# APPENDIX A

## N. C. Office of Administrative Hearings

***Service Survey***

## HOW DID WE DO?

The Office of Administrative Hearings (OAH) solicits your assistance in evaluating the quality of service that you received during the hearing's process. Your comments are important and will help OAH provide the best possible service to you and other litigants. Your completed survey will be held in strictest confidence, and no one deciding your case will see this form.

Please mark the appropriate answers and make any comments that you feel are necessary. You may return the survey in the envelope provided by mailing it to OAH; by placing it in the survey box outside the OAH hearing room (Wake County only); or giving it to the Hearing Assistant/Court Reporter. Thank you for taking the time to respond.

## Please Respond to the Following Questions

| | Yes | No | Uncertain |
|---|---|---|---|
| Did the public agency provide adequate and clear notice of the right to file a contested case? | | | |
| Was the petitioner (citizen) represented by an attorney? | | | |
| Was the respondent (agency) represented by an attorney? | | | |
| Was your case selected for settlement conference or mediation? | | | |
| Was the time between the dates of filing the petition and the hearing acceptable? | | | |
| Was your case concluded within a reasonable time? | | | |
| Were you provided adequate information concerning the purchase of audio tapes and transcripts of the hearings? | | | |
| Was parking adequate? | | | |
| Do you suffer from any impairment? | | | |
| If yes, was the facility adequate to meet the needs of your impairment? | | | |
| | | | |

## HOW WOULD YOU RATE THE FOLLOWING?

| | Excellent | Above Average | Average | Below Average | Unacceptable |
|---|---|---|---|---|---|
| How helpful, courteous, and knowledgeable were the employees who assisted you? | | | | | |
| How prompt and available were the employees in responding to your request for information? | | | | | |
| How accurate was the information you received? | | | | | |
| How understandable and helpful were the OAH brochures, forms and instructions? | | | | | |
| How well did you understand the hearing's procedures? | | | | | |
| How fair, competent and impartial was the presiding administrative law judge? | | | | | |
| How convenient was the hearing site/location to you? | | | | | |
| How comfortable was the hearing facility? | | | | | |
| | | | | | |

What was the type of your contested case?_____(Environmental, Personnel, Human Resources, Alcohol Beverage, etc.)

Survey was completed by: Date _____

☐ Citizen ☐ Agency Representative ☐ Private Attorney ☐ Agency Attorney

How can we improve? Please make any comments or suggestions. Feel free to identify individuals by name for commendation or improvement. (Attach sheet(s), if additional space is needed.)

_____

_____

_____

_____

_____

*Thank you for completing our survey. Your input will be most helpful to us in improving our service to the public.*