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## How to Conduct a Fair and Effective Hearing: Highlights of the 1981 Annual Meeting and Seminar

Paul Wyler

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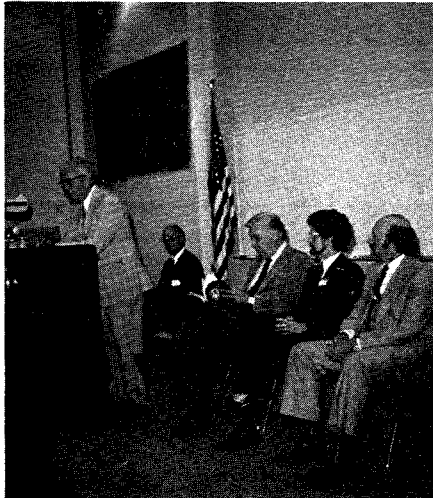
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## HOW TO CONDUCT A FAIR AND EFFECTIVE HEARING

Highlights of the 1981  
Annual Meeting and Seminar

The joint program sponsored by the National Association of Administrative Law Judges and the National Judicial College in conjunction with the 1981 Annual Meeting of NAALJ was, by all accounts, a high water mark in judicial education. More than seventy members attended the four day symposium in Reno, Nevada, and participated in the business and social activities of our Association. Here follows a brief summary of the principal events.



Dean Hughs, Judge Thompson, Dean Watts  
Judge Agatstein, Professor Troeh

## Lectures and Seminars

### Opening Session (October 25 - A.M.)

Hon. Ernst J. Watts, Dean, National Judicial College: History and Purposes of the College; Hon. Bruce R. Thompson, U.S. District Court, Nevada: Highlights of Nevada Legal History; Judge David J. Agatstein, President, NAALJ: On the Profession of Administrative Law; Richard E. Hughs, Dean of the College of Business, Univ. of Nevada: Managing Cases and People.

### Monday Afternoon

Paul R. Troeh, Jr., Professor, University of Alaska, Evidence in Administrative Law Proceedings: Sources of law; function of evidence; competency, relevancy and materiality; role of the ALJ; hearsay exceptions as rules of weight; cross-examination and the hearsay rule; burden of proof and presumptions; official notice; expert opinion; division of the hearing and deciding functions (see Alaska Transportation Commission v. Gandia, infra); polygraph examinations.

### Tuesday Morning

Lawrence O. McCracken, Executive Director, Nevada Employment Security Department: Unemployment Adjudication in Nevada; Acel R. Martelle, Director, Nevada Department of Human Resources: Welfare and Other Adjudications; Hon. Aaron N. Feder, Chief ALJ (Retired), New York U.I.A.B.: On the Appearance of Due Process; Jordan Rossen, Esq., Associate General Counsel, United Automobile Workers: The Lawyer and the ALJ.

### Tuesday Afternoon

Hon. Gerald Maher, ALJ for, and former Chairman of, California Unemployment Insurance Appeals Board, PRO/PER PRO/SE Problems in Handling Parties, Witnesses and Documents: Role of the ALJ; nature of the hearing; pre-hearing review; opening statement; the record-responsibility for development, order of proof, burden of proof, cross-examination, off-record statements, summations, arguments and contention, exhibits; communicating with parties; how the hearing prepares the way for acceptance of the decision.

### Wednesday Morning

Hon. Marilyn H. Grace, Vice-Chairperson, California Unemployment Insurance Appeals Board, Appellate Review at the Administrative Level - Errors and Omissions of Administrative Law Judges: Factors apparent on the face of the record, or raised on appeal, which necessitate reversal or

remand. Lionel L. Riave, Esq., Chief Counsel and Secretary of the California U.I.A.B., Appellate Review at the Administrative and Judicial Level: Due process and fair hearings; evidence; telephone hearings; problems with interpreters; credibility; disqualification and immunity of the Administrative Law Judge.

#### Wednesday Afternoon

Hon. Joe E. Nusbaum, Chairman, Nevada Industrial Commission: Worker's Compensation, Unemployment Compensation and Related Programs in Nevada; Edmond A. McGoldrick, Nevada Labor Commissioner: Unemployment in Nevada; Hon. Herbert Nobriga, Director of Administrative Hearings, California, The Corps Concept in California: Jurisdiction and problems of the California OAH; Hon. Kenneth Cameron, ALJ, California OAH: The California Administrative Procedure Act.

#### Wednesday Evening

Hon. Mary Lou Berry, Senior Administrative Law Judge (Retired). California U.I.A.B.: Telephone Hearings.

#### Thursday Morning

Hon. Ernst J. Watts, Dean, NJC: Introduction to Decision Making (see p. 31); Hon. Marvin H. Morse, Director, Office of Administrative Law Judges, U.S. Office of Personnel Management: The Challenges Facing Federal Administrative Law Judges; Dwight D. Apple, Esq., Manager of Administrative Rules and Hearings, Oregon Motor Vehicle Division: Decision Making in the Administrative Law Process: How do we accomplish the formulation of findings of fact and conclusions of law? Problems, strategy, constraints, the world of opportunity, change, the optional process, legal constraints v. legal expansion.

#### Thursday Afternoon

Hon. Gerald Maher, ALJ and former Chairman, California U.I.A.B., Reviewing, Reasoning, Deciding, Writing: Decision writing; form and content, writing habits, style, syntax.

#### Thursday Evening

Hon. Edward D. Cowart, Associate Dean, National Judicial College and former Chief Judge, Circuit Court, Dade County, Florida, Banquet Speaker: On Judicial Education.

## PROCEEDINGS OF THE NAALJ

Based on the minutes prepared  
by Honorable Stanley J. Cygan,  
Secretary of the Association



Front Row: (l. to r.) Hon. M. Brent Oldham,  
President-Elect; Hon. Mary Lou Berry;  
Hon. Edmund Gerber. Second Row: Hon.  
Stanley J. Cygan; Hon. Allan Mendelsohn;  
Hon. Richard G. Martinez

M. Brent Oldham, Chairman of the District of Columbia Board of Appeals and Review, was elected to succeed Judge Wyler as President of this Association. Brent will assume the Presidency at the Fall 1982 Annual Meeting. The other officers, elected to serve for the current year, are listed on the inside rear cover of this Journal.

By unanimous vote of the general membership, Washington, D.C. was selected as the site of the 1982 Annual Meeting. The President conveyed to the membership the sincerest regrets of the Iowa Chapter for its inability to sponsor the meeting in Des Moines, as originally planned. It was generally agreed that the many special attractions and unique resources of the nation's capital make it an ideal meeting location. President-Elect Oldham was designated to serve as Chairman of the 1982 Convention Committee.

Dues for the 1981-1982 fiscal year were fixed at \$15 for members belonging to an affiliated state chapter, and \$20 for individual members. All members present agreed that a dues increase was necessary to offset inflation and maintain Association activities at a high level. Observing that members of affiliated chapters pay dues to their local organization as well as the National Association, that affiliated chapters collect and remit dues to the National Association, and perform other administrative functions for the NAALJ, the membership unanimously approved the special

chapter rate. The affiliated chapters, at the time of the meeting, were the New York State Administrative Law Judges Association, the California Administrative Law Judges Association, and the Illinois Association of Administrative Law Judges. The President expressed the hope that more affiliated chapters will be formed as a result of this action.

A request by the Washington Administrative Law Judges Association to affiliate with NAALJ was considered by the Board of Governors and general membership. The Bylaws of the Washington Association provide:

"Payment of dues to any national organization or membership shall remain at the option of individual members."

This provision was thought to conflict with Article II Section 3 of the NAALJ Constitution which requires all members of an affiliated state chapter to pay dues to the National Association. After considerable debate, the general membership

RESOLVED:

The National Association of Administrative Law Judges accepts the affiliation of the Washington Administrative Law Judges Association, provided there is compliance with Article II Section 3 of the Constitution and Bylaws of the National Association of Administrative Law Judges.

Delegates from the Washington Administrative Law Judges Association expressed satisfaction with the foregoing resolution, and anticipated approval by the membership of the Washington organization.

Association Secretary Stanley J. Cygan reported that the Internal Revenue Service granted final approval of Section 501(c)6 Tax Exempt Status for NAALJ, and Section 501(c)3 Tax Exempt Status for the National Administrative Law Foundation. Judge Cygan advised the Association that the National Administrative Law Foundation was ready to engage in the charitable activities for which it was established. The Board of Governors voted to fund the NALF with an initial grant of \$100. Judge Cygan was commended for his achievement in establishing the Foundation.

The Board of Governors unanimously voted to award a plaque to Past-President Robert B. Steinhilber for his dedication and service to the Association. Personal circumstances prevented Bob from attending the convention.

Upon the recommendation of the Board of Governors, Judge Marvin H. Morse was elected to honorary membership in the Association. Judge Morse is Director of the Office of Administrative Law Judges of the United States

Office of Personnel Management, and a long-time delegate of the ABA Conference of Administrative Law Judges to the NAALJ. 1980 was the third consecutive year in which Judge Morse addressed our Annual Meeting.

The Board of Governors recognized the creation of the National Association of Unemployment Insurance Appellate Boards, and welcomed cooperation with that organization. Honorable Marilyn H. Grace, Vice Chairperson of the California Unemployment Insurance Appeal Board, and a speaker at the convention, is currently President of NAUIAB.

Upon the recommendation of Judge Nathan J. Siegel, Chairman of the Special Committee on the Corps Concept of administrative adjudication, and after extended debate, the Association

RESOLVED:

The National Association of Administrative Law Judges endorses the concept of corps statutes, whereby each state would establish an independent organization of administrative law judges who would be available to state agencies from a central panel. The NAALJ encourages each state chapter to seek adoption of a corps statute to meet the needs of its state.

Judge Lawrence R. La Polla, Chairman of the 1980 Convention Committee, reported that the Association realized a profit of over \$1,700 from the Annual Meeting and Seminar conducted that year. Judge La Polla was commended for his achievement.

The final meeting of the Board of Governors was conducted by President Paul Wyler, who outlined his goals for the coming year. He expressed his desire that the Association conduct regional meetings, and announced his intention to call a mid-year meeting of the Board. He then appointed chairpersons of the following constitutional committees:

1. Hearing Officer Qualifications - Judge Morgan E. Thompson
2. Relations with Federal Agencies - Judge M. Brent Oldham
3. Procedural Standards - Judge Stanley J. Cygan
4. Education and Public Administration - Judge David J. Agatstein
5. Legislation and Administrative Structure - Judge Nathan J. Siegel

With the unanimous consent of the Board, the New York office was retained as the National headquarters of the Association. The 1982 student essay contest, announced in this Journal, was approved. Upon further motion of the President, the Board of Governors further

RESOLVED:

The Board of Governors of the National Association of Administrative Law Judges supports the Legal Services Corporation and opposes the elimination

of said corporation or any financial cuts and urges members of the National Association of Administrative Law Judges to contact their congressmen concerning their opposition.

After further discussion of the affairs of the Association, the meeting was concluded.

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NAALJ  
TREASURER'S REPORT\*  
YEAR ENDING SEPTEMBER 30, 1981  
BALANCE SHEET

ASSETS

Chemical Bank Checking Account	<u>\$1,844.32</u>	
Total Assets		<u><u>\$1,844.32</u></u>

LIABILITIES

Current Liabilities	<u>\$ 0.00</u>	
Total Liabilities		<u><u>\$ 0.00</u></u>

CAPITAL

NAAHO Capital, October 1, 1980	\$ 186.27	
Net increase	<u>1,658.05</u>	
Present Capital		<u><u>\$1,844.32</u></u>

PROFIT AND LOSS STATEMENT FOR TWELVE MONTH  
PERIOD ENDING SEPTEMBER 30, 1981

INCOME:

Dues	\$4,050.00	
Repayment of Loan by		
1980 Convention Committee	2,740.00	
1980 Convention Income	1,770.46	
Essay Contest Enrollment	75.00	
Misc.	<u>65.87</u>	
	\$8,701.33	
Total Income		<u><u>\$8,701.33</u></u>

DISBURSEMENTS:

Postage & Mailing	\$1,198.33	
Printing	4,276.68	
Typing & Clerical	755.31	
Photography	186.94	
NAALJ Banner	253.47	
Stationery & Supplies	196.82	
Corporate Secretary	150.00	
Miscellaneous	<u>25.73</u>	
	\$7,043.28	
Net Increase		<u><u>\$1,658.05</u></u>

\* Report prepared by Marshall Rosenberg and Stanley J. Cygan