National Association of Unemployment Insurance Appeals Professionals

Navigator

Winter 2014

NAUIAP Gets a Taste of Rich History and Culture in 2014

South Carolina will host the 2014 NAUIAP conference in one of its cities best known for rich history and culture: Charleston. The conference will be held on June 22-26, 2014.

The city of Charleston has so much to offer with its well-preserved architecture, a celebrated restaurant community and mannerly people; the Charleston area has been named both Top U.S. City and Top Destination in the World by Condé Nast Traveler 2012 Readers' Choice Awards. This is the second consecutive year the historic coastal destination has received the No. 1 U.S. City ranking.

The conference hotel is the Historic Francis Marion Hotel, Charleston's landmark hotel since 1924. According to its website, the Historic Francis Marion Hotel has a completely restored and elegantly appointed marble lobby, crown moldings and intricate wrought iron.

In addition to the Historic Francis Hotel, Charleston offers historic inns, family-friendly resorts and everything in between. All perfectly situated to help visitors explore the wonderful sights and attractions on their must-see list. Pack accordingly and prepare for some pleasant dreams.

After your day filled with educational enlightenment; cobblestone, sand and water provide endless opportunities of what to see and do while in Charleston. Famous golf courses, top-rated tennis courts, pristine beaches, monumental battleships and beautifully preserved architecture barely scratch the surface of attractions in Charleston. There is so much to do, but best of all, the city's mild climate means the sights can be enjoyed all year.

Some would say Charleston tastes as good as it looks. Many come to Charleston with one thing on their mind: food. The best grits you'll ever have, prepared in ways you never imagined. Festive dockside oyster roasts, high-end restaurants, outdoor cafés, and

fresh-from-the-dock seafood. Every meal is prepared with perfection and served with a warm smile.

Whatever activities you choose to pursue during the conference, we guarantee there is something for everyone. You will definitely get a taste of what Southern hospitality and charm are all about. Prepare for an informative conference, lots of exciting entertainment and delicious food.

Expect announcements with more exciting news about the upcoming NAUIAP conference in Charleston. Also regularly check the website, **www.nauiap.org**, for updates and registration information. We look forward to seeing you in historic Charleston!

The 2014 conference in Charleston, SC is one you will not want to miss.

Ultreya-Onward

By Alice Mitchell, President, Georgia

Greetings of the new year to each of you!

Recently, I was sifting through some old files and found the following quote. I won't tell you just yet who said it, but will let you guess:

*"We must not in the course of public life expect immediate approbation and immediate grateful acknowledgement of our services. But let us persevere through abuse and even injury. The internal satisfaction of a good conscience is always present, and time will do us justice in the minds of the people, even those at present most prejudiced against us."**

For those of us serving in government, the last several years have been a challenge. At the beginning of the Great Recession, UI programs were highly regarded and viewed as the last economic savior of the country. In more recent times, the positive media and good will has waned. According to historical statistics, this is nothing new. Each end to a recession causes reflection and efforts to "fix" the damage.

Now, more than ever, NAUIAP must remain vigilant and dedicated to our mission of bringing appeals professionals together for training, networking and professional development. If we fail, any substantive dialogue about our programs will go on without us.

Remember, the UI program is a tripod: Benefits, Tax and Appeals! (Quote from the late Jack Bright, former USDOL/NAUIAP professional).

So how do we move forward in this environment with renewed enthusiasm and purpose? A good start is to attend the next annual training conference scheduled for June 22-26, 2014 in the beautiful city of Charleston, South Carolina. Tim Dangerfield and his team in South Carolina promise us that you will not be disappointed. From speakers to venue to workshops, everything is geared to your professional development. Don't miss out on this valuable opportunity to contribute to the dialogue and make a difference!

*(If you did not guess it, the author of the quote was Benjamin Franklin in 1772. His exhortation to public servants at that time still rings true today. Onward-Persevere!)

Do You Want Fries with That?

If you are a customer what am I?
Are you being served?
What I must sell ain't what you're wantin' to buy.

By Karl F. Jahnke
Director, Appellate Division OESC

At no time in my 37 year career in Unemployment Insurance have I seen greater attacks on the role of government and increasingly more cynical questions about the performance of our political institutions than at the present. This state of mind was driven home to me recently when I was lectured publicly by an elected official about the importance of public servants not forgetting that we work for the taxpayers.

The public and its elected representatives clearly have every right to demand efficient and quality performance from government agencies in the operation of all programs. Such performance standards are certainly nothing new to those of us who work in Unemployment Insurance Appeals. Both Lower and Higher Authority Appeals are expected to meet time lapse and case aging standards. Lower Authority Appeals faces quarterly review of the quality of hearings and written decisions as well. These standards are not new and the authority for their enforcement goes back to the foundation of the Unemployment Insurance system.

Lately, those making attacks on government not only criticize legitimate failures of efficiency and other measures of performance, but also question the dedication and commitment of those public servants charged with the responsibility to meet the standards of performance and also serve the citizens seeking the services of the various governmental programs. Those of us who work in public service know how many genuinely dedicated and committed people there are working with us. In most cases their contributions are unrecognized, inadequately rewarded, and in many cases these days cynically dismissed. I think it is important for all of us to speak up and do what we can to revitalize the concept that public service is a noble and worthy calling. That process must also begin anew with the executive leadership of our agencies who too often minimize what we do by paying reverential obedience to the management flavor of the month, questioning whether we have a strategic plan, are we lean enough, and the one that always provokes me the most, "are we customer friendly?".

Are we customer friendly? Friendly to which customer I always ask. (I also grimace when I use customer to refer to parties) There are usually two in the hearings I hold or review. Both have the same rights to due process. Each has an interest and wants to win. One must lose. Will the loser be satisfied with a quality hearing that assured due process to both? Doubt it. Will either notice the hearing officer did additional fact finding to bring out all the relevant facts? No. Will the loser recognize a well written, well -reasoned decision that rules against their interest? Not often. Will either be impressed that the hearing was held in a timely manner to assure payment when due or to limit administrative overpayment despite a heavy work load? Even less often.

The conundrum we face is that what we are selling is not what the parties who appear before us want. Too many people like to speak of the principles our nations stands on and cloak themselves in patriotic and romantic roles as defenders of individual freedom, but when it comes right down to it, few really want impartial, fair hearings. They want to win.

We are not selling replacement line for your yard trimmer. We are selling something far more important. While profits drive business, values and principles drive public service. We are conducting a public transaction of those values each time we conduct a hearing. Every party deserves fair and equal treatment. Even those who pay no taxes at all are entitled to the same due process. To attempt to influence the administrative hearing process in any State shows a sad disrespect for the very values and principles we often claim set us above much of the rest of the world.

What can we do? We must emphasize to the public, our elected officials, and our agency leadership, that this process is what makes the UI system fair and gives it a value far more important than happy customers. We all know where we sit in the food chain of legal adjudication. Terms like McJustice, We-Bee Hearings, and Hearings Are Us, do not embarrass me and they should not you either. That we are close to the working people and small business people of this country and are often the only experience most will have with a legal proceeding should make us all proud and challenge us to do the best job we can starting with the next case we hear. That said; it is not pretense to say that what we do is noble and important.

Next time you or your staff is challenged to remember who you work for, I hope you will remind the challenger that you always recall that you are a public servant, proud of it, and happy to meet your obligation to provide all parties before you with a fair and impartial hearing without regard to who paid the most taxes. Can your challenger say the same?

Trying Times for Training

By Tim McArdle, California

The ugly specters of the federal budget sequester, government shut downs and never ending budget cuts loom ominously over us. The decline in our workload, although welcome, means reduced earnings. This combination is resulting in a perfect storm of diminishing budget resources. Cuts must be made, and now! Where to cut first? All of us know the answer to that one.

TRAINING!

Historically, training has been the first to get the axe in times of necessary fiscal reductions. Surely, training should be in the mix in considering where reductions need to be made. But to cut training arbitrarily without consideration of potential adverse consequences may not be the wisest course of action.

Personnel costs take by far the largest share of the budget. It is illogical and costly to fail to maintain our investment in the hearing officers that are the face of the agency. Certainly the need for new hire training is universally recognized, but given the declining workload, few states are hiring at this time. That leaves discretionary training for currently employed hearing officers. This type of training, done properly, can add new perspectives to the hearing officers' work, can reenergize and revitalize them and enhance their professionalism, and can improve the quality of the service we offer to the claimants and employers who appear before us.

Training must be effective in order to justify the expenditure of time and money it requires. So the question is, what makes training effective. First and perhaps foremost, it must be relevant to the hearing officers' work. How many of us have attended state bar association sessions and gained nothing from them as they simply bore no relevance to the work we do. It must be interactive. Again, how many of us have sat comatose through a lecture with the presenter droning on and on. Role plays and group sessions are ways of engaging the hearing officers as active participants in the training and ensures that even the quietest participant will not be left behind. One-on-one critiques of decisions provide an opportunity to refine and improve our most visible product. Case studies and other exercises can relate the training material to the real world of the participants' work environment. The National Judicial College and Allan Toubman's Administrative Justice Institute are excellent models for these qualities.

This type of training is designed to develop and enhance a culture of professional development among the hearing officers and within the agency as a whole. Moreover, it assists the hearing officer in meeting the ethical obligation to maintain professional competence under the NAUIAP Code of Ethics and other codes of conduct.

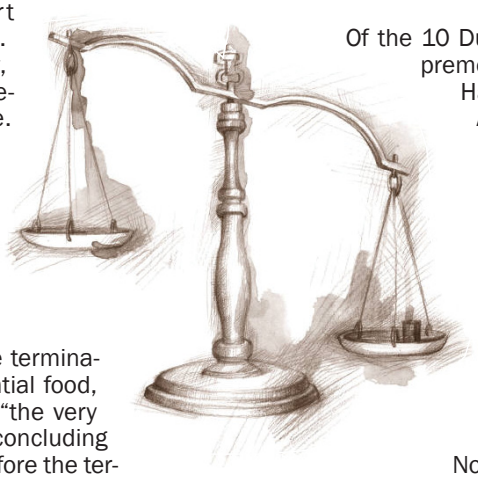
To be truly effective and to have a lasting impact, it must be recognized that training does not end when the final bell rings. There must be on-going follow through in the form of repeat exercises, web based seminars, or whatever other means might be available. This will help to ensure that the classroom segment of the training is reinforced and stays with the hearing officer long after that final bell.

Yes, training must bear its share of pain in these tight budgetary times, but the point here is that it should not be abandoned altogether. After all, the other side of this same coin is that during high workload periods, there is no time for training. Is there ever a good time for training? We, as managers, must make the time for this critically important activity. Again, it is an investment in our workforce. It is a way of telling our hearing officers that we value them, and that we know the work they do is important. Hearing officers are our most important assets. Training can pay dividends far beyond its immediate costs. Training provides lasting value to our agencies and should not be abandoned, even in times of austerity.

Due Process in Administrative Adjudications

By Daniel Mathis
Indiana UI Appeals Team Manager

The Fourteenth Amendment Due Process Clause establishes certain procedural protections for the determination of whether an individual is entitled to a statutory benefit or program. In Goldberg v. Kelly, the U.S. Supreme Court addressed the adequacy of New York's procedures for determining an individual's entitlement to receive Aid to Families with Dependent Children ("AFDC") – what the Goldberg Court referred to as "welfare." Goldberg v. Kelly, 397 U.S. 254 (1970). Specifically, the issue was whether New York's pre-deprivation procedures were adequate. The New York statute provided that an individual's AFDC benefits could be terminated based upon a case worker's written assertions to an adjudicator. After the termination of benefits, the individual could request a "fair hearing" with more complete procedures.



The Goldberg Court emphasized that the termination invoked "the means to obtain essential food, clothing, housing, and medical care" or "the very means by which to live." Id. at 264. In concluding that greater procedures were required before the termination of welfare benefits, the U.S. Supreme Court identified ten elements required by the Due Process Clause in administrative adjudications:

1. adequate and timely notice
2. opportunity to confront adverse witnesses
3. opportunity to hear the opponent's evidence
4. opportunity to cross-examine adverse witnesses
5. opportunity to present oral argument
6. opportunity to present evidence
7. right to an attorney
8. an impartial judge
9. a decision based upon the record
10. an explanation of the decision

Just a couple of years after the 1970 issuance of the Goldberg decision, the U.S.D.O.L. made its first efforts to measure performance across the states and to ensure that the lower authorities in each state were providing a fair hearing to litigants. In the mid-1990s, U.S.D.O.L. implemented the annual peer review that is still used for purposes of providing quality assurance.

Of the 10 Due Process elements identified by the U.S. Supreme Court in Goldberg, U.S.D.O.L.'s March 2011 Handbook for Measuring U.I. Lower Authority Appeals Quality highlighted 5 in particular: (1) confrontation ("to know all the evidence presented by opposing parties"); (2) cross-examination; (3) hearing within the scope of notice; (4) bias and prejudice; and (5) findings of fact "necessary to resolve the issues and support the conclusions of law in the decision." With respect to the third, hearing within the scope of notice, the U.S.D.O.L. acknowledges that "[t]here are instances when issues can be added to the hearing if all parties agree." This, of course, is the basis for our policy of considering an issue not contained on the Notice of Hearing only if each party waives its right to a notice period on the issue. This step is necessary, even for procedural issues such as whether the notice of appeal was filed timely. Thus, the parties' waiver must be sought for any issue not included on the hearing notice.

Every individual whose file comes through our office is experiencing financial challenges. What we do, day in and day out, ensures that those individuals get a fair shot to explain themselves and receive the government's fair and impartial assessment of the case – as guaranteed by the Fourteenth Amendment.

How California Developed a More Efficient, More Accurate System for Handling Benefit Audit Cases

By Abraham Camhy, ALJ California

In California, we recently developed an automated system to assist judges with calculation and drafting in benefit audit cases.

Under our new system, we made difficult calculations automatic. We reduced the time required to write each decision. We changed conclusory language to accurate "show your work" explanations of how benefit amounts are determined.

California has the largest unemployment insurance system in the country. In 2011, the California Unemployment Insurance Appeals Board handled approximately 450,000 cases on first level review. Benefit audit cases comprise approximately 20% of our total caseload. The system vastly improves our ability to handle each of those cases.

Though ultimately huge in scope and impact, the project began quite small. At first, my goal was to make my own work as an ALJ better and easier. To reduce errors and save time, I converted our paper benefit determination tables into an electronic spreadsheet. Then, I set the spreadsheet to do the other calculations that come up in benefit audit cases; calculating the overpayment and penalty amounts. I further increased functionality by expanding the spreadsheet to accept non-numeric data; factors such as whether the claimant had full-time, part time or no work in the week. Using built-in logic commands, I instructed Excel to look at those factors and show if the claimant was "unemployed" under the Code.

Informally, I shared the project with ALJs in my field office. Seeing their sticking points and questions, I made revisions. Gradually, I came up with something the judges found easy to use.

Associate Chief Angela Bullard saw even greater potential in the project. She and ALJ Randy Peterson had often discussed ways to improve benefit audit cases. They imagined the possibility of using technology to assist in calculations and drafting. Working in a team that also includes Kim Steinhert (Chief Legal Counsel) and Kevin Bell (programmer), we collaborated on turning the spreadsheet into a tool that generates actual decisions; subject to the judge's review and approval.

We first made a list of all possible scenarios. Then, we drafted the language required to write a proper legal decision for each one. Next, I divided the language in to its logical components and set the spreadsheet to select the appropriate components. After that, I programmed

the spreadsheet to re-assemble the components into a completed decision that fit the case. Our programmer created the macros to move the decision language from Excel to Word and to put it into a standard decision format.

Judge Bullard selected one ALJ from each field office to act as a "tester" of the new tool, to share it with that judge's field office, and provide additional feedback. Once confident in our system, Judge Bullard formally introduced it at our statewide training.

Some judges had concerns; would they lose control over the content of their decisions; what about exceptions for unusual cases? The decisions generated are fully editable. The use of the tool is not required. And, in some cases, its use may not be appropriate. That noted, our ALJs find that in most cases they can use our new system to make their work faster, easier, and more accurate.

Abraham Camhy is an administrative judge with the California Unemployment Insurance Appeals Board. He currently resides in San Diego, California. He has been a member of NAUIAP since 2007. He writes this article in his individual capacity and not as a representative of any government agency.

State Spotlight

Submitted by Christopher Tyler, Oklahoma

Louisiana

The Louisiana Office of Unemployment Insurance has both a Lower Authority and Higher Authority Appeals Department. After an appeal to the higher authority or Board of Review, the case is assigned to one of four ALJs who gives a recommendation to the Board.

The annual workload is 30,000+. There are 21 full time hearing officers and one part-time hearing officer. Appeal Hearings are conducted by phone. The Board of Review consists of 4 ALJs who prepare recommendations for the Board of Review. The Board of Review is composed of 5 members who are appointed.

The Director is Dana Freeman and Shaydra "Shay" Guillory is the UI Appeals Chief.

Texas

The Texas Workforce Commission has higher and lower authority. An appeal to the higher authority is assigned to one of thirty-five attorneys in the Commission Appeals Department who recommends to a three person panel appointed by the governor who make their decisions on an open docket.

The lower authority consists of the Director of Appeals, Dan Ahlfield, seven Assistant Supervisors and 123 hearing officers. The annual workload is 125,000 + and each ALJ hears about 27 cases a week. There are offices in Austin, El Paso, Dallas, and San Antonio.

Ohio

As in many other states, Ohio has its higher and lower authority in the same commission. The Unemployment Compensation Review Commission (UCRC) in Ohio is independent from the state UC agency and hears all appeals from the agency determinations. Once an unemployment case is appealed to the commission it is heard by a lower authority hearing officer. If the hearing officer decision is appealed, it goes to the higher authority. An appeal from the higher authority decision goes directly to the Ohio Court of Common Pleas.

The UCRC has 30 Hearing Officers, 18 Administrative staff positions, 3 Commissioners and an Executive Director. The Commission hears approximately 30,000 cases a year. Although Ohio holds in-person cases by request, 97% of all hearings are done by phone. In 2010, the UCRC went live with a new computer system which has considerably streamlined the administrative functions of the agency. It includes a state of the art automated scheduling system which has revolutionized scheduling cases at the commission. The Executive Director is Kathryn Todd and the Chief Hearing Officer is Blaine Brown.

A Good Read

Cynthia Thorton, California

Bring Up The Bodies by Hillary Mantel: This is a sequel to Mantel's best selling Wolf Hall, but it completely stands on its own and can be enjoyed even if you have not read Wolf Hall. The story concentrates on three weeks of Oliver Cromwell's life (Henry VIII's chief advisor.) During these three weeks, Ann Boleyn is arrested, tried and executed for treason, so there is no shortage of action. Cromwell tries to keep Henry happy (no easy task), tries to survive and tries to do justice all at the same time. This is a sympathetic portrayal of Cromwell without sacrificing any of his legendary ruthlessness. If you like reading about Henry VIII, this is the book for you!

Behind the Beautiful Forevers: Life, Death and Hope in a Mumbai Undercity by Katherine Boo: This is a novelized report of life in a Mumbai Undercity, following several fictional characters. The life it describes in theses cardboard shanty towns is shocking. I cared what happened to the characters in this book and was surprised at the normalcy of life in a situation that is not normal. It's one of those books that's fairly easy to read and you walk away thinking you now know something about a completely different life.

David and Golaith: Underdogs, Misfits and the Art of Battling Giants by Malcolm Gladwell: This is Gladwell's newest book. I know he's controversial for not taking a very deep dive into his subjects, but I love his work (maybe it's my short attention span!) His examples are uniformly interesting. The idea of this book is to examine why the underdog wins sometimes. His first chapter on the girls basketball team is really interesting. I'd love to hear what someone who actually knows a lot about basketball thinks of his analysis. Gladwell also examines why giants have huge weaknesses that we regularly underestimate.

The Chaperone by Laura Moriarty: This is set in the 1920's and 1930's in the Midwest and east coast and is a fictionalized account of the life of silent movie star Louise Brooks as told from the point of view of a woman in the Midwest town where Louise Brooks grew up. The Chaperone is a captivating novel about the woman who chaperoned an irreverent Louise Brooks to New York City in the 1920s. Only a few years before becoming a famous silent-film star, fifteen-year-old Louise Brooks leaves Wichita, Kansas, to study with the prestigious Denishawn School of Dancing in New York. Her parents require a neighbor to chaperone. The chaperone has her own reasons for making the trip. This is a good mystery.

Flash from the Past!!!!

Should UI Appeals Hearings be Conducted Only by Licensed Attorneys?

By Bonny Hendricksmeyer, IA

Yes. Although many of the hearings consist of straightforward fact situations and the issues are not in dispute, there are those hearings where the facts are convoluted and the issues are contested. Attorneys are present and the hearing is acrimonious. In such cases it is essential the record made for review by higher authority be clear and concise as well as on point. The decision must be well-written and able to withstand legal scrutiny.

An attorney is, by virtue of her legal education, better able to sort through the issues to determine relevancy of testimony and documentary evidence. Ruling on objections from the parties is also essential and the judge must be able to assess the legal arguments and offers of proof from the representatives and rule on the objection competently to avoid not only the appearance of favoritism but reversible error.

CROSSPOINT

Applying the facts to the law is an integral part of the administrative ruling process. Many facts are presented in hearings with opposing parties who often have a substantial degree of bad feelings toward one another and which they attempt to express, whether relevant or not to the issue being disputed. If the evidence is entered into the record in spite of rulings to the contrary, the judge must not only disregard them but indicate in the decision how they are not relevant to the issue.

In addition, attorneys tend to give more deference and credibility to the presiding officer and the proceedings if they know that person has legal expertise equal to their own. A judge who is also an attorney is in a better position to ignore or overcome attempts by counsel to overwhelm the judge by asserting their own legal expertise on the issues.

As judges and presiding officers, attorneys are subject to the consequences of inappropriate conduct, not only from the agency for which they are employed, but from the Bar Association. A higher standard of professional conduct is expected of attorneys in the performance of their job, whatever that may be. They are subject to more stringent discipline for the failure to observe and uphold those standards from the ethics committee of their state. The continuing education of the attorneys in the form of the necessary continuing legal education credits necessary to maintain their license, assures an ongoing renewal of the awareness of ethical issues and conduct.

In some states, Iowa among them, the presiding officer must often act in the role of a quasi-advocate. The administrative law judges in Iowa, have, in fact, been charged with the responsibility to not only conduct a fair and impartial hearing but to actively participate to the extent of making sure those parties without counsel present all evidence relevant to the issues. As such the administrative law judge may be in a position to have to explain certain legal issues, procedures, and consequences to the parties and an attorney is better able to do this. In addition, the judge must often intervene in the form of objections to questions by one party to the other on the various matters of relevance, out-

By Alice Mitchell, OK

No. The Social Security Act requires only that state laws provide "an opportunity for a fair hearing before an impartial tribunal for individuals whose claims for unemployment compensation are denied." This right has also been extended to employers. To my knowledge, there is neither a federal requirement that all UI hearing officers be attorneys nor a prohibition against their use. Consequently, a majority of states utilize either non-attorneys or a mix of attorneys and non-attorneys to hold UI hearings. Statistics released during last year 's NAUIAB conference indicate that nine (9) states use non-attorneys as hearing officers, twenty-five (25) states utilize a mix of attorney and non-attorney hearing officers and sixteen (16) states' hearing officers are attorneys.

In Oklahoma, the Director of Appeals is an attorney. The Chief Hearing Officer and permanent hearing officers are non-attorneys. There is no state law or agency rule requiring UI hearing officers to be attorneys. A majority of the hearing officers have fifteen to twenty plus years of program experience and are well-versed in UI and administrative law. Occasionally, temporary hearing officers are utilized and these individuals are attorneys.

Oklahoma's use of non-attorney hearing officers has worked very well and is reflected in the attainment of high quality and promptness scores each year. The reasons for this are several. First, in the area of training, all new permanent hearing officers are required to complete the National Judicial College's course on Fair Hearings. Each hearing officer has also completed NJC's course on UI law. Hearing officers are rotated on an annual basis to attend the NAUIAB conference. Continuing education, which is mandated for attorneys, is a priority and a reality for the hearing officers in Oklahoma.

There are also several other training tools and guides for hearing officers. Premier among them is the USDOL's "Handbook for Measuring UI Lower Authority Appeals Quality." In Oklahoma, we have also adopted the American BarAssociation's "Model Code for State Administrative Law Judges" which expands on several of the items in the federal handbook, notably impartiality and bias. Since 1998, Oklahoma's hearing officers' performance evaluations have been based on a composite of each hearing officer's scores calculated from the quality criteria.

Another guide is the agency Precedent Manual that serves as a resource tool for the hearing officers. UI law and decisions on point may be found in the manual. In addition, each hearing officer is assigned a personal computer with access to Westlaw.

Most often in UI hearings, it is the facts that are in dispute. A recent article entitled "Decisionmaking About General Damages: A Comparison of Jurors, Judges and Lawyers" 98 Michigan Law Review 751 (December, 1999) makes an important point. "Critics of juries seem to believe that judges and lawyers somehow acquire judgmental capabilities that juries lack, producing

side the scope of direct examination and being argumentative or repetitive of testimony previously given if the other party does not have counsel. All of these are legal issues which an attorney is better able to discern and address. In addition, the professional code of conduct to which attorneys are subject assures a more ethical handling of these situations.

Finally, a decision must be written which will withstand the scrutiny of higher reviewing boards. For such a decision it may be necessary to do legal research for supporting statutory and case law. By virtue of their legal education, attorneys are better able to accomplish the necessary legal research to present the argument and support the decision.

CROSSPOINT
Hendricksmeyer's view

This article appeared in the Summer 2000 newsletter so many of you may have read it..but in reviewing past newsletter content, it seemed particularly relevant today.

judgments which are somehow more accurate, or at least more consistent, than those provided by jurors." A study cited in the article reveals
that when the same set of facts were presented to arbitrators, senior lawyers and jurors, there were "no significant differences in the general damages awards given by the different types of decisionmakers." Another study cited in the article compared judges, plaintiff's lawyers, defense lawyers and jurors' assessments of personal injuries. It concluded that "the similarities among these diverse decisionmakers are far more striking than their differences...the judgments of all four groups were highly predictable, and the factors that had great influence — as well as those that had little or no influence — were very similar among all groups."

In a manner similar to allowing a lay jury to determine facts, well-trained non-attorney hearing officers are clearly qualified to determine facts in a UI hearing. Their correct application of the law to the facts may be measured in several ways: meeting quality standards and reversal rates at higher levels, including District and Supreme Court. There has been no appreciable difference in reversal rates between non-attorney and attorney hearing officers in Oklahoma.

There is an old saying that the "proof is in the pudding." I believe the success of non-attorney hearing officers is all the proof needed to dispel the notion that all UI hearing officers must be licensed attorneys.

CROSSPOINT
Mitchell's view

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