



# Navigator

Winter 2013

Charting a Course in UI Appeals

## Lights, Camera, ACTION! NAUIAP Goes Hollywood in 2013

By Angela Bullard (CA)

**May 12-16, 2013** the California Unemployment Insurance Appeals Board will host the NAUIAP Educational Conference in Hollywood, CA.

And while we may just have the hippest conference location ever, the brightest spotlight is on the outstanding agenda. Per Elise Rose, CA Appellate Operations Chief and NAUIAP Agenda Committee Chair, **"The Agenda we are developing will include high level experts who have reputations as engaging speakers on a number of interesting subjects specifically requested by members of NAUIAP as relevant to the work that they do."** The line-up of topics and speakers is truly stellar; here's a little sneak preview of coming attractions:

### Judicial Security

John F. Muffler is Administrator of the National Center for Judicial Security, US Department of Justice, US Marshals Service. Muffler has a particular interest in helping the country's administrative law judges, who often work on their own under less than ideal security conditions. Muffler is assembling an impressive team to provide an interactive program designed to address our specific security concerns.

### Find Your Next

Andrea Kates is the creator of the Business Genome project, author of Find Your Next, and a TED Talks 2012 featured speaker. Kates specializes in helping organizations adapt to rapidly-changing environments using cross-industry insight and innovation. At our conference she will apply the same successful techniques she employed for clients such as Royal Dutch Shell (Asia-Pacific), Audi, Allstate, Continental Airlines, GM/OnStar, Hewlett-Packard, JP Morgan Chase, KPMG, the Susan G. Komen Foundation, the Houston Texans (NFL), Humana and P.F. Chang's to the government environment in which we operate.

### Analytical Interviewing

The Los Angeles County Sheriff's Department is providing an expert instructor from their training academy on Analytical Interviewing. A partnership of academic researchers and police/intelligence agencies developed this successful scientific approach, now practiced world-wide by law enforcement, government and business entities in multiple contexts. Attendees will leave this session armed with a set of practical questioning skills they can utilize in hearings to help ascertain truth.

After your days of educational enlightenment, you might enjoy evenings exploring all the attractions our hot Hollywood destination has to offer. Your home for the conference, the Loews Hollywood Hotel, is the cornerstone of the spectacular Hollywood & Highland Center. Loews offers posh accommodations with breathtaking views of the Hollywood Hills and LA.

You might recognize Hollywood and Highland best as the home of the Academy Awards; film stars receive Oscars annually at the Dolby (formerly Kodak) Theatre; guided tours are offered daily. In the evening at the Dolby you can attend IRIS, A Journey through the World of Cinema, performed exclusively at this venue by Cirque du Soleil.



The Hollywood and Highland Center offers the best views and photo opportunities of the iconic Hollywood sign. In honor of your visit, the sign just had a little work done on her backside and received a facelift. After two tons of primer and Sherwin-Williams color no. 7757 "high-reflective white" the sign is now more dazzling than ever.

Directly outside your hotel room the adjacent Hollywood and Highland Center is an architectural feast for the eyes, with gorgeous fountains, creative displays promoting current films, dozens of shops, fantastic restaurants, nightclubs, a movie theater, Lucky Strike Lanes and Starline Tours. On a regular basis famous artists perform live in the courtyard.

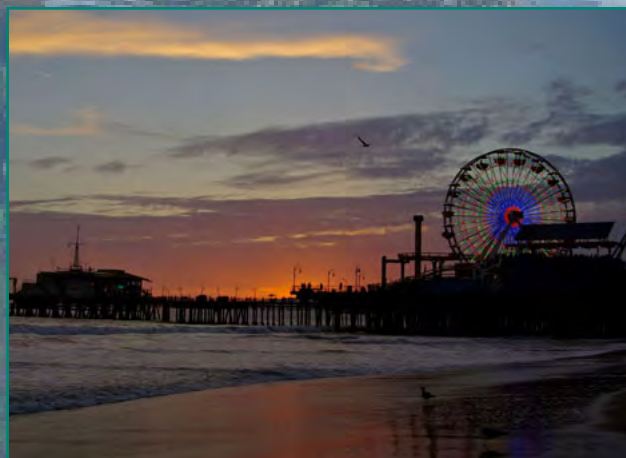
Step outside the Center and onto the Hollywood Walk of Fame, five acres of bronze stars, established in 1958 as a tribute to

those whose remarkable contributions to the performing arts made this town's name synonymous with entertainment worldwide. Along your route you can take in three famous theaters: Grauman's Chinese, the Egyptian and the El Capitan. Maybe you'd like to participate in filming an episode of Jimmy Kimmel Live!

Want more? We've got it! Easily accessible public transportation from the Hollywood and Highland Center can take you to downtown LA, Beverly Hills and Rodeo Drive, Universal Studios Hollywood, the Hollywood Bowl, Santa Monica, Malibu, Venice Beach and beyond. A short ride down the freeway, Orange County is the home of Disneyland and Disney's California Adventure; keep heading south and you'll hit San Diego with countless attractions. Want an international experience? Just a few miles more and you'll be in Mexico!

Whatever other activities you choose to pursue during the conference, we guarantee star sightings...even if only in wax. The 2013 outing will be at Madame Tussauds Hollywood, only a couple of blocks down the Walk of Fame from our hotel. Prepare for an A-List party at this incredible facility featuring famous figures so realistic you'll swear you can see them breathing! No stuffy ropes or rules at this wax museum; it's designed to let you interact on the sets with the characters. Once you finish your tour, join us on the rooftop for an alfresco gourmet dinner while you soak in the sights and sounds of a Hollywood night.

Expect email announcements with more exciting news about the upcoming NAUIAP conference in Hollywood. Also regularly check the website, [www.nauiap.org](http://www.nauiap.org), for updates and registration information. ***Here's looking at you in 2013!***



# President's Column



By Craig Gustafson

Welcome to the winter issue of the Navigator! 2013 promises to be an exciting year for NAUIAP and its members. Our membership numbers are at record levels and we anticipate an all-time high for attendance at our annual training conference in Los Angeles in May. Elise Rose, Angela Bullard, and many other staff members in California, as well as members of the NAUIAP Agenda Committee are working hard to put together a training conference agenda that will appeal to hearing officers, managers of hearing officers, and those

who work in higher authority appeals offices.

In early October, the Board of Governors met in Alexandria, Virginia and spent a day with officials from USDOL in Washington, D.C. We had productive discussions with Roberta Gassman, Deputy Assistant Secretary for ETA(Employment and Training Administration), Jim Garner, Deputy Administrator of OUI(Office of Unemployment Insurance), Suzanne Simonetta, Chief, Division of Legislation for OUI, Betty Castillo, Chief, Division of UI Operations, and Stephanie Garcia, State and Federal Program Team Lead in OUI. The board also met with Brian Langley, UI Staff Director for NASWA, to discuss ways that NAUIAP and NASWA can work better together on areas of common concern. Brian went to bat for us and was able to secure a seat on NASWA's UI committee for the president of NAUIAP. We look forward to collaborating with NASWA on various projects and goals aimed at improving the UI program. At our fall meeting, we also welcomed a new member to the board, Beverly Walker, Chief Presiding ALJ from Arizona.

In the board's discussions with USDOL and NASWA, one common theme kept coming up: timeliness in UI appeals. Gay Gilbert, National Unemployment Insurance Director for USDOL, identified appeals timeliness as the primary area of ongoing concern for UI program performance in her recent address at the NASWA UI Directors Conference in Reno, Nevada. According to USDOL reports issued for October 2012 for lower authority appeals, 32 of 52 jurisdictions are timely on the 30-day measure and 38 of 52 jurisdictions are timely on the 45-day measure. For higher authority appeals, 31 of 46 jurisdictions are timely on the 45-day measure and 31 of 46 jurisdictions are timely on the 75-day measure. 41 jurisdictions are meeting the lower authority case aging measure and 33 jurisdictions are meeting the higher authority case aging measure.

While most states are now meeting the minimum requirements for timeliness, we still have lots of work to do in this area. For those of you in states that are struggling to meet timeliness, don't hesitate to reach out to your colleagues from NAUIAP for best practices. Most states have struggled to keep up on caseloads at one time or another and have taken various approaches to eliminating backlogs and improving timeliness. The saying "justice delayed is justice denied" is particularly appropriate in UI appeals. Delays in holding hearings and issuing decisions results in larger overpayments to claimants, long wait times for claimants who should be collecting needed benefits and are not, complaints to elected officials and agency heads, higher collection costs, stale cases, and a lack of faith in government. Significant delays thus carry a high cost to society and to the health of the unemployment insurance system. We need to do better. That means we need to reevaluate how we operate, leverage new technologies, and innovate. Knowing the caliber of the individuals who belong to this organization and care deeply about the success of the programs we work in, I am confident that we can tackle any problem we face if we are given adequate resources to do it. Robert Kennedy once said, "[f]ew will have the greatness to bend history itself; but each of us can work to change a small portion of events, and in the total; of all those acts will be written the history of this generation."

Thanks for reading and I look forward to seeing you in Los Angeles in May. Keep in touch.

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# State Spotlight

The State Spotlight highlights information from state appellate agencies, boards and commissions, including contact information, organization and best practices will be added to the “State Spotlight” on the website for future research purposes. Let the editorial staff know what other state information would be helpful to you!!!

## MONTANA

The Montana Department of Labor & Industry’s Hearings Bureau conducts hearings in collective bargaining, discrimination, occupational and professional licensing, unemployment, wage and hour and a few obscure areas of workers compensation cases.

- Montana has a total population of just under one million
- Annual caseload is @ 1200
- Employs two full-time UI hearing officers. One is an attorney and one is not.

In Montana, a party files their appeal with the UI Division which transfers the file to the Bureau. There is a 10-day notice requirement that must be met. The Bureau hearing officers typically hold 4 hearings per day, 97% of which are held by telephone. In person hearings are held in the state capital, Helena, where the Bureau is based.

A party dissatisfied with the outcome in their case must file an appeal to the Montana Board of Labor Appeals (BOLA) within 10 days of the issuance of the decision. BOLA is a three-member body appointed by the governor. It holds monthly meetings of one or two days. The current chair is Norm Grosfield an attorney in private practice in Helena. The outgoing Commissioner is Keith Kelly. Pam Bucy has been announced as his successor.

The Bureau recently created a video of a telephone hearing modeled after Wyoming’s that helps parties better understand the hearing process and how to better prepare for a hearing. It has been very well received.

## OKLAHOMA

Lower Authority benefit appeals are heard in Oklahoma by the Appellate Division of the Oklahoma Employment Security Commission. The hearing officers of the Appellate Division sit as both the Appeal Tribunal hearing UI benefit appeals and the Assessment Board hearing UI tax issues. The Chief Hearing Officers train, supervise and schedule the hearing officers. Administrative functions for lower authority appeals are performed by 13 administrative support staff.

- Annual caseload @ 17,000
- Employs 13 full time Hearing Officers
- Employs two Chief Hearing Officers

Decisions of the Appeal Tribunal are appealable to the Board of Review which is administratively independent of the Appellate

Division. Assessment board decisions are appealable to the District Courts. Agency leadership includes Richard McPherson, OESC Executive Director, and Karl Jahnke, Director of Appeals.

## ARKANSAS

The State of Arkansas has both a higher and lower authority. The Arkansas Appeal Tribunal is the lower authority and the Arkansas Board of Review is the higher authority. Both entities are a part of the Arkansas Department of Workforce Services. The Tribunal reports to the Chairman of the Board of Review, who is appointed by and reports to the Governor. Tribunal decisions are appealable to the Board of Review. Tribunal staff consists of:

- 12 permanent and three (3) Intermittent Hearing Officers
- One Chief Hearing Officer
- Five (5) permanent and five (5) intermittent support staff
- Annual caseload of @ 20,000

The Board of Review also has two (2) part time Board members that serve at the will of the Chairman on specified cases. The decisions of the Board are appealable to the Arkansas Court of Appeals. Board of Review staff consists of:

- Five (5) permanent and two (2) intermittent staff Attorneys
- Five (5) permanent and two (2) intermittent support staff

Arkansas recently received a Supplemental Budget Request Grant to develop a new docketing system. The system is currently in the testing stage and will be fully implemented during 2013.

Agency leadership includes Keesa Smith, Chairman of the Board of Review, and Brad Collins, Chief Hearing Officer of the Appeal Tribunal.

# U.S. Department of Labor Update

Suzanne Simonetta  
Chief, Division of Legislation, Office of Unemployment Insurance

After having had the opportunity to present at your training conference in Nashville and meeting with the NAUIAP Board in Washington D.C., I am pleased to be able to connect to all NAUIAP members on behalf of my colleagues in the Employment and Training Administration's Office of Unemployment Insurance and Regional Offices who work to support state UI appeals operations. Appeals professionals play such a crucial role in the UI program by ensuring state agencies properly apply state law when determining eligibility for benefits and by helping to improve the integrity of the program, which includes reducing improper benefit payments. Increased collaboration and strengthening of our partnership is essential as we work together during these challenging times to ensure our program continues to achieve its core mission. I would like to take a moment to briefly mention a couple of our recent initiatives.

Recognizing the wealth of UI knowledge nationwide and the importance of fostering greater communication, U.S. DOL has supported development of the Unemployment Insurance Community of Practice (UI CoP). The UI CoP (<https://ui.workforce3one.org/>) is a private community of nearly 1,000 members available exclusively to state and Federal UI practitioners. It is intended to expand opportunities for states to communicate and collaborate with each other, and to assist the UI community in creating, building, and sharing knowledge. **This tool can help you with new or unfamiliar challenges by accessing the expertise and experience of your peers. It's also a great forum for networking to stay abreast of new ideas and opportunities. You can:**

**Find Information:** Under the "Resources" tab find important or recently posted information.

**Share Information:** Create, build, and share knowledge within the UI community by posting relevant content.

**Dialog with Your Peers:** Discover a new arena for solving problems and gain access to a wide range of perspectives by starting a discussion thread or joining a community discussion.

**Discover What's Happening in States:** Click on "State Profiles" to link to each state's own webpage where UI activities are showcased, important comparative UI information is shared and key contact information is provided.



**DOL and the NAUIAP Board of Governors**

**Investigate Topic Areas:** Content on the UI CoP is organized by twenty-one distinct Topic Areas to keep you informed of what is happening in specific areas of UI program activity.

**Find Upcoming Events:** Click on the "Calendar" under the "Resources" tab to find upcoming scheduled events.

**Stay in the Loop!** Once you register for the UI CoP, you will receive a Weekly Digest via email with links to new information and activities posted to the UI CoP.

I encourage you all to become active users and contributors of the UI CoP.

Among the concerns that were raised in Nashville is the difficulty of making timely appeals decisions during periods of sustained high workload. The data support this, with many states not meeting Federal performance standards concerning the timeliness of lower authority appeals decisions or the average age of pending cases. Anecdotally, we have learned that states that had been able to automate their appeals processing and utilize current technologies were positioned to better handle the marked rise in appeals workload during the last few years. To increase our understanding and to provide practical knowledge to all states, we are partnering with the Information Technology Support Center operated by the National Association of State Workforce Agencies to conduct an assessment of lower authority appeals information technology (IT). Based on this assessment, we intend to develop a set of technical assistance tools, including immediate and long term actions, for states to use as they work to improve their lower authority appeals operations. We expect that improving work processes and strategically updating IT investments will help states improve the timeliness of their lower authority appeals decisions and the average age of pending cases. As this project gets under way, some of you may be contacted to provide information about your state's appeals operations. We appreciate your contributions to helping all states modernize and improve their appeals processes.

As you well know, these are exciting times for the UI program and, in many ways, our jobs are more important than ever to unemployed workers and their families. I look forward to continuing to work with you as we face the challenges ahead.

# Minnesota's Unemployment Law Judge Training Program

By Craig Gustafson and Christine Steffen

Like many states, Minnesota has hired a number of new attorneys in the last few years to keep up with historically high caseloads, attrition, and retirements. 31 of the 45 attorneys in the UI appeals office in Minnesota have been hired since the fall of 2007. As a result of this high turnover, we have developed a training program that prepares new unemployment law judges (ULJs) for significant caseloads and the new online systems that are being used to conduct hearings and issue decisions.

While much of the training is similar to that used in other states, Minnesota is unique in that each new ULJ goes through adjudicator training and issues initial determinations for several months as a department adjudicator, prior to conducting hearings and issuing decisions as a ULJ. This adjudication component has given our new ULJs a more holistic view of the UI program and has developed their skills in navigating our online UI system. In Minnesota, the ULJ is required to fully develop the record. In most cases, new ULJs are able to quickly gather the information that is needed to make a sound legal decision without requiring additional staff assistance or having to reschedule the hearing. They also have a deeper understanding of the processes that claimants and employers go through prior to reaching the appeal level. Added benefits to this program include having a number of ULJs who can shift to adjudication when work volume requires, new ULJs have more time after they are hired to thoroughly learn the UI law without the pressures inherent in conducting hearings, new ULJs become familiar with staff outside of the appeals office, and the new ULJs gain an appreciation for the difficulties and limitations that adjudicators face.

## **The training program currently lasts about 12 weeks.**

**Week 1: Basic Introduction** The new ULJs attend two classes: an introduction to UI and UI Basics. UI Basics includes training on benefit applications, weekly requests, base periods, benefit amounts, deductible income, overpayments, and an introduction to appeals.

**Week 2: Introduction to Customer Service** The new ULJs attend sessions about our UI customer service center and the employer's role in the UI system. They sit with customer service representatives and listen to phone inquiries from claimants. They also begin listening to appeal hearings.

**Week 3: Adjudication Training** The new ULJs complete the same training sessions that new adjudicators would complete. They then begin issuing determinations as a group under the guidance of experienced adjudicators. In the beginning, issues are limited to discharges.

**Weeks 4 and 5: Working as adjudicators while continuing ULJ training** The new ULJs continue to adjudicate issues for a large share of each day. New types of cases are incorporated, including quits, temporary staffing issues, and availability/actively seeking issues. They continue to observe appeal hearings. The new ULJs are also assigned different topics to present to the other new ULJs relating to key parts of unemployment insurance law in a "roundtable" format. The roundtable presentations are done in pairs and are completed over the course of the remainder of the training program. The ULJ supervisors, the chief unemployment law judge, and the training coordinator attend the presentations to ensure that the content is accurate and to add helpful practice tips and advice.

## **Roundtable topics include:**

- Employment misconduct
- Absenteeism and tardiness
- Aggravated employment misconduct
- Chemical dependency
- Quit and exceptions to ineligibility
- Quit vs. discharge
- Staffing service issues
- Available and actively seeking
- Offers of suitable employment
- Deductible income
- Base period
- Earnings/fraud and employer fraud penalties
- Taxpaying vs. reimbursing employers
- EUC and EB
- Business ownership issues
- School employee issues
- Independent contractors, misclassification of workers
- Complex monetary issues

**Weeks 6, 7 and 8: Additional Adjudication and Drafting Appeal Decisions** The new ULJs continue to adjudicate issues concurrent with trainings, roundtable presentations, and listening to hearings. They also begin drafting decisions for review and issuance by an experienced ULJ.

**Week 9: Training on Conducting Hearings and Drafting Decisions** Each new ULJ is paired with an experienced ULJ to make a roundtable presentation relating to conducting hearings and drafting decisions. The new ULJ develops the presentation with the guidance of the experienced ULJ.

## **Training sessions on hearings and decisions include:**

- Preparing for the hearing
- Initiating the hearing and related issues
- Taking testimony
- Developing the record
- Due process
- Official notice and public records
- Writing decisions
- Requests for reconsideration (the process in MN that replaced the higher authority)

**Weeks 10 and 11: Mock Hearings** The new ULJs take turns playing the roles of the claimant, the employer, and the judge in various mock hearing scenarios. Adjudication, roundtables, and the drafting of decisions are ongoing.

**Week 12- ULJs Begin Conducting Hearings and Issuing Decisions:** During the first week, the new ULJs are limited to one or two hearings per day on prescreened cases. During the second and third weeks of holding hearings, the new ULJs are limited to three hearings per day. By the fourth week, the new ULJs are conducting four hearings per day and after that are on a full-time ULJ schedule. The new ULJs continue to be monitored closely for progress after the completion of the training program. If you have any questions or would like more detailed information about Minnesota's ULJ training program, please contact Craig Gustafson, Minnesota's Chief Unemployment Law Judge at [Craig.Gustafson@state.mn.us](mailto:Craig.Gustafson@state.mn.us) or Christine Steffen, Unemployment Law Judge and training coordinator at [Christine.Steffen@state.mn.us](mailto:Christine.Steffen@state.mn.us).

# NJC Tuition Certificates to be Awarded

Katheryn Yetter, National Judicial College

The National Association of Unemployment Insurance Appeals Professionals is pleased to partner with the National Judicial College in offering two certificates toward tuition for any of the NJC's tuition-based courses. The certificates will be awarded to participants during NAUIAP's annual conference May 12-16, 2013 in Hollywood, California. Deadline for application is April 30.

Each certificate will entitle the holder to half-off the regular cost of tuition for NJC's on-site and web-based courses. The National Judicial College offers a portfolio of courses designed specifically for administrative law judges, including Administrative Law: Fair Hearing, Administrative Law: Advanced, and Evidence Challenges for Administrative Law Judges.

The National Judicial College has been a national leader in judicial education and is celebrating 50 years of education, innovation, and advancing justice. For a complete course listing and course descriptions, please visit their website at [www.judges.org](http://www.judges.org)

Further information about the selection process and application will be posted soon on the NAUIAP web site. Applications will be taken online only at <http://nauiap.org>.



**STILL looking  
for a 2014  
NAUIAP  
conference  
venue!!!!**

**If you are interested in being a NAUIAP conference host in 2014, please contact Alice Mitchell, President -Elect for more information.**

**NOT in 2014?? Start now to plan your bid submission for 2015!! It is a great opportunity to get training for your staff and agency while bringing in tourist dollars for your state.**

# Book Review

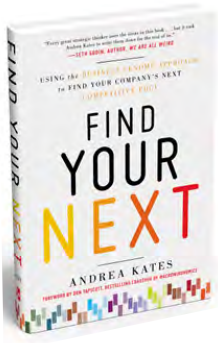
**Find Your Next: Using the Business Genome Approach to Find Your Company's Next Competitive Edge by Andrea Kates.** This is a book about grafting principles from other lines of business onto your business. The example the promotional materials use is, "What can an oil company (Pennzoil) learn from a great place to hang out (Starbucks) to create a new customer experience (Jiffy Lube)?" This approach is particularly fun to apply to governmental entities. Even though it was a business book, I found it very inspiring - the book opens up possibilities into new ways to think about old problems - both personal and business. The author spoke at TED (Technology Entertainment and Design) and will be speaking at our meeting in Hollywood in May 2013.

**Wild: From Lost to Found on the Pacific Crest Trail by Cheryl Strayed.** I deliberately reviewed this book immediately after The Chronology of Water because the stories of the two authors are so similar. I was reluctant to read this book because I was thinking, "How many descriptions of pinecones can there be?!" I was not swayed by my friends telling me what a wonderful story of self discovery it was. When my book club selected this book, I grumpily read it. Not a single pine cone mentioned! The book actually has quite a bit of suspense as to how the author is going to make it - the story jumps back and forth between her time on the trail, growing up and Portland. I wish I'd read it sooner.

**The Paris Wife: A Novel by Paula Mclain.** OK, can we all agree that it's unnecessary to include the descriptor "A Novel" in the title? This tells the story of Hemingway's first wife. It's sufficiently entertaining that you don't notice all the history that slipped into the novel.

**The Information Diet: A Case for Conscious Consumption by Clay Johnson.** The thesis of this book is that junk information is much like a junk diet and we become stupider by not watching what we consume in terms of information. I will admit that while I talk a good game about what I read and watch on television, I have a natural affinity for the magazines on the rack at the supermarket and when I see a teaser on TV about who's divorcing whom in Hollywood, my ears perk up. This book was very helpful in quantifying what to look for and what to avoid to ensure that my information is a little higher quality.

**Dreaming in Chinese: Mandarin Lessons in Life, Love, and Language by Deborah Fallows.** Deborah Fallows has a Ph.D. and speaks six languages. She is married to the journalist Jim Fallows. When he was assigned to work in China, she thought, "Great! This will give me a chance to learn Chinese." This is the story of what happened. It is highly entertaining. It also taught me a lot about the Chinese languages and culture.



# An Opportunity Not to Miss!!!

The NAUIAP Training conference in May will feature as a keynote speaker...Andrea Kates. Andrea Kates is the founder of the Business Genome® project and author of the bestselling business innovation book, Find Your Next: Using the Business Genome Approach to Find Your Company's Next Competitive Edge (McGraw-Hill).

Andrea is a member of the TED (Technology, Entertainment, Design) community and featured 2012 TED speaker (short talk).

"Every great strategic thinker uses the ideas in this book...but it took Andrea Kates to write them down for the rest of us." –Seth Godin-Author, We Are All Weird

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