

# Thoughts on Our Upcoming Annual Conference...Scottsdale Style

by Marilyn White, Arizona

Believe it or not, the Scottsdale Conference is almost here! It seems as though this has been in the planning stages for years (and it has) but we are only a few months away now.

As many of you know, this is a big departure for NAUIAB - hosting our own conference without state support. To that end, we need YOUR support. Please encourage those who control the purse strings to fund your attendance and if that is not successful, consider funding your own attendance. As President Donna Watts-Lamont said in the last newsletter, "Our organization is only as strong as our commitment to it." Make that commitment, take that step and attend the 2008 conference regardless of whether your state will pay for it. You will not be disappointed.

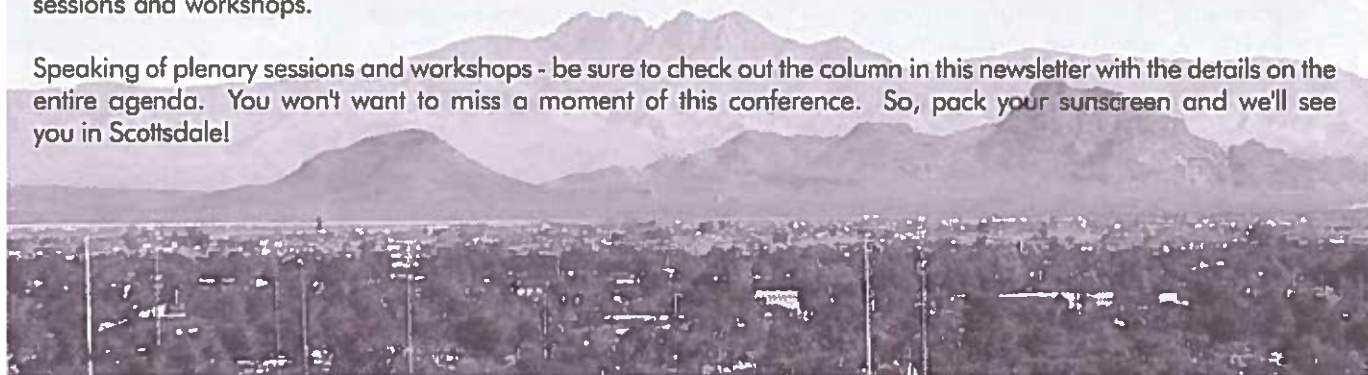
The Agenda Committee has all four days packed with relevant, timely, useful, important and interesting topics. No-where else can you receive this kind of job-specific training, 20+ hours of CLE, national net-working, exposure to USDOL and other states' best practices and the fellowship of our members. We will have a little fun, too, I promise!

Scottsdale offers just about everything anyone could want (except those cold-weather activities). We have amazing shopping from Neiman-Marcus and other fabulous department stores, set in beautiful malls, to one-of-a-kind boutiques. There are desert botanical gardens, museums and galleries in abundance. Hungry? We have you covered, no matter what interests you. Night life? Golf? Tennis? Horseback riding? Hot-Air ballooning? Jeep tours of the desert? Diamondback Baseball? Mercury Basketball? Frank Lloyd Wright's home? Casinos? Cowboys? Hiking or Biking? Ancient Native Peoples archeological sites? Saguaro Cacti forests? Clear, warm, starlit nights? Sedona's Magical Red Rocks? The Grand Canyon? Old Mexico? It is all here in Arizona and all accessible to you. And, the Scottsdale Plaza Resort's Concierges are ready to assist you in planning any extra activities beyond the conference.

The resort is giving us the same great, low room rate for both the weekend before the conference and the weekend after. This is your best opportunity to bring your family or friends, stay in a 5-star resort, vacation in one of America's hot spots, and spend less than \$100 a night on a fantastic room. And, if you happen to have friends who might like to take advantage of this, they are welcome to register as part of our group, without being a member of NAUIAB and without attending any of the meetings or events.

Now...the fun parts of our conference. As I previously mentioned, our hospitality suite is actually a patio, with a pool, lounges, tables, chairs and did I mention the beautiful, warm starlit nights? Sunday evening will feature a Wild-West BBQ dinner, poolside, with a no-host bar. After dinner we will open our hospitality suite and give our attendees a chance to meet, mingle and relax. Monday evening will feature the Tropical Shirt (or other garment) Contest...there will be Men's and Women's Divisions, with the first contest at about 6:30 and the second at about 9:30. We will have a prize for each winner. The hospitality suite will also feature Island drinks and music. Tuesday evening will be our Mexican Fiesta Dinner and party, with great food, special margaritas and south-of-the-border music. Wednesday evening we will rock-n-roll the clock back to the 50s - American Bandstand style, with fun music and drink specials. And, Thursday, we will relax and wind down with Martinis and Moonlight. Monday, Wednesday and Thursday evening, the hospitality area will be open from 5:00 to 7:00 and again from 9:00 to 11:00. We will close from 7:00 to 9:00 to allow everyone the chance to get dinner, then return and relax as we prepare for another great day of plenary sessions and workshops.

Speaking of plenary sessions and workshops - be sure to check out the column in this newsletter with the details on the entire agenda. You won't want to miss a moment of this conference. So, pack your sunscreen and we'll see you in Scottsdale!



# President's Column

Donna Watts-Lamont, Maryland



This year is flying by - we're in Spring already! Didn't we just finish the conference in Baltimore? In less than three months (June 8th - 12th) we'll meet again in Scottsdale, Arizona for NAUIAB's 28th annual conference.

Your Board of Governors and Committee Members have been working hard planning another exciting and informative conference. The agenda will cover a number of timely topics: USDOL Updates, Using and Working with Translators, What Information Should Be Available On the Web for Pro Se Litigants, Myths of Drug Testing, to mention a few. We will also have the honor of having The Honorable Judge Maurice Portley of the Arizona Court of Appeals who will address the "Judicial Perspective on Unemployment Compensation". Utah and Florida representatives will conduct a workshop highlighting available appeals technologies. As always, there will be difficult choices as to which sessions to attend.

Last year in Baltimore we tried something new-NO BINDERS-NO PAPER. Instead material was distributed on "thumb drives". From the feedback we received, we found that the majority of attendees liked the change. This year we will again use thumb drives to distribute materials to conference attendees. If you attended the conference last year, please bring the thumb drive we gave or please bring one of your own. While you're completing your registration for the conference they'll be loaded up with the materials for the conference. As an improvement over last year we plan to have a printout listing the materials on the thumb drives available at registration.

As many of you know NAUIAB lost our dear friend Jack Bright last year. The Board of Governors felt we could not let his passing go without some recognition of Jack's many years of loyal membership and unwavering support for our organization. To that end we will take some time during the conference to acknowledge Jack and his contributions to NAUIAB. Throughout the conference a Memory Book will be available for anyone wishing to share a funny story about Jack, to recollect a fond memory, or to just say "thank you". After the conference, the Memory Book will be sent to Jack's widow Velva.

My term as President of NAUIAB will come to a close at the June conference. It has been my pleasure and honor to serve as NAUIAB's President this year. Since first coming onto the Board of Governors in 2000, I have thoroughly enjoyed working with my fellow Board and Committee members. Their dedication to this organization, their hard work to improve and strengthen NAUIAB, and their level of professionalism is amazing. I have developed many friendships that I know will continue long after my working days are over. I look forward to a long and continuing relationship with NAUIAB, its members - past, present and future.

Finally, I must return to the charge I gave to our membership at last year's conference. NAUIAB is only as strong and vital as we make it. There is no other organization providing the educational and collegial opportunities that NAUIAB has provided to those of us working in the UI Appeals field for the past twenty-eight years. Plan on attending this year's conference in Scottsdale and encourage a co-worker to attend with you. NAUIAB can only continue with support from its membership.

See you in Scottsdale, hon.

# Price to Pay for Telephone Hearings

## POINT

by Ray Maccarone, Rhode Island

It is undisputed that the object of both of these articles is to promote a better product (our hearings) and to enable us to produce our ultimate goal - a better decision. As my respected colleague stated, telephone hearings have been around for a very long time. I am heartened by his admittance that telephone hearings were established as a viable alternative to the old-fashioned "split hearing". The issue of whether telephone hearings or in-person hearings are the preferred method of adjudication is a "hot button" topic.

Members may recall about a year ago there was a Navigator article concerning telecommuting issues. A necessary premise for a successful telecommuting program is the efficient administration of telephonic hearings. While I concede that inherent within the nature of telephone hearings there is a loss of visual observation as an aid for judging credibility, I believe that the benefits of telephone hearings far outweigh these concerns.

Telephone hearings first and foremost promote safety. Our hearings can often be contentious, strained and argumentative especially when the separation issue is disputed. In these instances, the parties usually are ready to do battle to protect their "side of the isle". Telephone hearings deflect much of that aggression by keeping it outside of the hearing room. This enables the parties to easily communicate the case's facts without duress.

Administrative expenses related to telephone hearings (such as pre-hearing document copying costs and mailings to the parties) pale in comparison to the overall cost of live hearings. In-person hearing costs include hearing room rent and related overhead (especially in urban centers where these costs are at a premium) not to mention travel time, transportation costs and parking expenses for all participants, employers, claimants, attorney's and witnesses. These are a few of the many cost factors to consider when estimating the overall expense incurred when in-person hearings are utilized.

To our ultimate goal - a better hearing and decision - witness testimony is a necessary component for a complete case. Many witnesses are reluctant to appear in person. However, in a telephone hearing the witnesses have the ability to provide testimony without fear of intimidation. The phone venue allows for better control of the proceedings by eliminating the occurrence of physical violence which is often a concern with in-person proceedings.

As gasoline prices approach \$4.00 per gallon, transportation costs become increasingly important, especially to the unemployed worker who is faced with increasing travel and parking expenses. An advantage on the employer's side is that witnesses can testify without physically leaving work to attend a hearing thereby significantly reducing workers' "down time".

This author's opinion is that in-person hearings promote postponement requests and non-appearances. Telephone hearings occur as scheduled more often, on time and with fewer interruptions.

While expenses should not be the determining factor, it can be argued that telephone hearings over a wide spectrum of checkpoints produces as good a product as (if not better than) in-person hearings with a reduction in costs and time spent for the participants and the State.

In conclusion, I do agree that telephone hearings occasionally seem to relegate the proceedings to that of an interview. Admittedly, while that cannot be avoided, I do believe that the hearing officers and members of the Boards of Review by their professional demeanor throughout the hearing lend a strong sense of importance, responsibility and relativity to the proceedings. I suggest that with telephone proceedings, all of our quality measurements will be met with more ease, with less cost than in-person hearings and the due process would be promoted because hearings would be held more often and on a timelier basis.

*I would like to extend a big "Hello" and a sincere thank you to Maureen Bucek for all her help and assistance with this article.*

# COUNTERPOINT

by Tim McArdle, California

Telephone hearings have been around for a long time. They first came into practice in the early 1970s where the parties were geographically distant from one another. They were an alternative clearly preferable to the old "split hearing" procedure where the parties did not have the opportunity to confront each other.

Telephone hearings have a lot going for them. There is no calendar time lost traveling to outstation hearing sites. There is no rental cost for hearing facilities. They clearly are preferable to not having a hearing at all and frequently are preferable to delaying a hearing because one of the parties cannot be present at an in-person hearing. Also, as my esteemed colleague notes, they eliminate any concern for the hearing officer's personal security.

Although technology and the service and costs associated with telephone hearings have improved dramatically over the past several years, telephone hearings nonetheless entail costs of their own. Telephone conference calls are expensive in their own right. It can be problematic to have to negotiate a telephone menu to locate the employer's witness and representative. Such a practice is a poor substitute for greeting parties personally in the lobby and escorting them to the hearing room. After all, this is the first and only opportunity parties have for face-to-face interaction with a person who is making serious decisions that impact their lives and businesses.

In most states, parties are entitled to a copy of the record. This means the case file in telephone hearings must be duplicated and mailed to the parties in advance of the hearing. This entails costs for duplicating equipment and staff time to perform the duplication and mailing. Postage costs can be significant as well. Even at that, because case files sometimes are lost in the mail, information security concerns are prompting some states to send case files by far more costly courier service.

Finally, there is some evidence that telephone hearings engender less customer satisfaction and result in a greater rate of higher authority appeals. Thus, it is questionable that telephone hearings actually generate cost savings. Rather, it would appear that any such savings are illusory.

The real cost of telephone hearings, however, may be far higher than the dollar expenses involved. In a telephone hearing, the visually observable demeanor of the witnesses is not available to the hearing officer. While it is now generally understood that witness demeanor is of limited value in assessing credibility, demeanor has usefulness far beyond any evidentiary value associated with it. The hearing itself is a very dynamic process and the hearing officer needs to be able to tailor the hearing in response to changes that take place during the course of the hearing. For example, in a telephone hearing, the hearing officer cannot observe whether or to what degree a witness understands a question. The hearing officer in an in-person hearing can see the puzzled or bemused expression on the witness's face and reconsider that question or the next question accordingly. Similarly, the witness's expression or manner of conveying the answer may provide additional information that would not be available in a telephone hearing. Also, in an in-person hearing, the hearing officer can observe the regard the witnesses have for one another. Moreover, the hearing officer in a telephone hearing may conclude erroneously that a witness is angry based upon the sound of the witness's voice, whereas the hearing officer hearing the case in-person may come to a very different conclusion based upon visual observation of the witness's behavior. Then there are the control factors, where the hearing officer conducting a telephone hearing does not really know if the persons testifying are who they say they are, or if the witness is being coached, or is testifying from notes. Then there are issues dealing with interpreters, documents introduced during the hearing, loquacious witnesses, and on and on.

Perhaps the biggest cost of conducting a telephone hearing, however, lies in a key finding my colleague Allan Toubman and I made in conjunction with research conducted for an article we authored for the University of Michigan Journal of Law Reform (29 U. Mich. J.L. Ref 407, 1996). We found that parties in telephone hearings call fewer witnesses compared to those in in-person hearings, that parties at telephone hearings are less likely to request subpoenas, and that claimants in particular are less likely to be represented. As a consequence, telephone hearings result in a diminished evidentiary record upon which to base a decision. This, in turn, may result in the possibility of an increased risk of an erroneous

*Counter Point* continued on page 7

# 2008 Annual Conference AGENDA

## Sunday, June 8, 2008

Noon - 5:00 p.m. Registration Open

1:30 - 3:30 p.m. Pre-Conference Board of Governors Meeting

6:00 - 8:00 p.m. Welcome Reception

## Monday, June 9, 2008

9:45 - 10:45 PLENARY - USDOL UPDATE  
RECENT DEVELOPMENTS & LEGAL ISSUES Cheryl Atkinson, USDOL

11:00 - Noon PLENARY - TRAINING Angela Bullard, CA

1:30 - 2:30 PLENARY-TRANSLATORS -LEGALISSUES  
WHAT IS REQUIRED TO SATISFY TITLE VI? Naomi Barry-Perez,  
Civil Rights Center

### 2:50 - 3:50 WORKSHOPS

1. WORKING WITH TRANSLATORS IN THE HEARING TBA

2. SCHOOL EMPLOYEES - REASONABLE  
ASSURANCE Pam Mertens, USDOL  
Division of UI Legislation

3. U. I. DIRECTORS VIEW OF APPEALS Tom Clendenning, FL UI  
Director

### 4:00 - 5:00 WORKSHOPS

1. TRANSLATORS- PRACTICAL WAYS TO  
MEET THE LEGAL REQUIREMENTS TBA

2. REPEAT SCHOOL EMPLOYEES--  
ASSURANCE Pam Mertens, USDOL

3. REPEAT U.I. DIRECTORS VIEW OF APPEALS Tom Clendenning, FL

## Tuesday, June 10, 2008

8:30 - 9:30 PLENARY - STRUCTURE OF THE  
U.C PROGRAM Joe Edwards, Staff Assistant  
AZDES EA Program

### 10:00 - 11:00 WORKSHOPS

1. FRAUD AND OVERPAYMENT - DEBIT CARDS  
AND OTHER NEW ISSUES Geoff Landward, Mike Miller,  
UT

2. DO'S AND DON'TS FOR HIGHER  
AUTHORITY REAPPOINTMENT Peggy Meads  
Clayton Mitchell, MD

3. RESOURCES ON THE NAUIAB AND  
USDOL WEBSITES Jim Hilly, ME  
Stephanie Garcia, USDOL

1:30 - 2:30 PLENARY - NATIVE AMERICANS - SOVEREIGNTY TBA

### 2:45 - 3:45 WORKSHOPS

1. NATIVE AMERICAN EMPLOYERS TBA

2. ORGANIZATIONAL CHANGE IN APPEALS:  
IMPROVING QUALITY AND THE BOTTOM LINE Allan Toubman, ME (Ret)  
Hilda Whittington, IL

3. DOES THE UI SYSTEM NEED HIGHER  
AUTHORITY BOARDS Donna Watts-Lamont, MD  
Ann Richardson, CA  
Ann Yahner, DC

# June 8 - 12 Scottsdale, Arizona

4:00 - 5:00	<b>WORKSHOPS</b>	
	1. NATIVE AMERICANS IN THE HEARING RECOGNIZING CULTURAL DIFFERENCES	Jackie Manchevsky, Canada Judge Janet Romo
	2. DOES THE UI SYSTEM NEED HIGHER AUTHORITY BOARDS	Donna Watts-Lamont, MD Ann Richardson, CA , Ann Yahner, DC
	3. VENDOR WORKSHOP	Clear-to-There

### Wednesday, June 11, 2008

8:30 - 9:30	PLENARY - MYTHS OF DRUG TESTING	Dale Gieringor, ESQ
9:50 - 10:50	PLENARY - ETHICS & PRO SE LITIGANTS	Tim McArdle, CA Allan Toubman, ME (Ret)
11:00 - 12:00	<b>WORKSHOPS</b>	
	1. ABLE AND AVAILABLE FEDERAL STANDARDS, PART TIME, DISABILITY	Pat O'Neal, USDOL Pam Mertens, USDOL
	2. INFORMATION SECURITY - WHY WE SHOULD CARE	Linda Ackerman,
	3. ETHICS AND PRO SE LITIGANTS Allan Toubman, ME (Ret)	Tim McArdle, CA
1:30 - 2:30	PLENARY - JUDICIAL PERSPECTIVE ON UC	Judge Maurice Portley
2:50 - 3:50	<b>WORKSHOPS</b>	
	1. APPEALS TECHNOLOGY FROM THE STATES	Mike Miller, UT Dorothy Johnson, FL Kristy Westphal, AZ, AZDES
	2. IDEAS ON INFORMATION SECURITY	
	3. HIGHER AUTHORITY REMEDIES	Marilyn White, AZ Jim Plasterer, WI
4:00 - 5:00	PLENARY - DOMESTIC VIOLENCE	Robin Runge, Director, American Bar Assoc. Comm. On Domestic Violence

### Thursday, June 12, 2008

8:30 - 9:30	GENERAL MEMBERSHIP - BUSINESS MEETING PRESIDENT'S REPORT, COMMITTEE REPORTS, ELECTION OF OFFICERS, 2010 SITE SELECTION NEW PRESIDENT'S CHARGE	Donna Watts-Lamont, MD President
9:50 - 11:30	PLENARY - FEDERAL CASE AGING AND TIME LAPSE	Mary Vransy, USDOL, Division of Performance Management Steve Massey, USDOL Division of UI Legislation Pat O'Neal, USDOL Appeals and Legislation
1:00 - 2:00	PLENARY - MILITARY ISSUES	Linda Fitzgerald
2:05 - 3:05	<b>WORKSHOPS</b>	
	1. PROS AND CONS OF CENTRAL PANELS	Ann Yahner, DC
	2. BEYOND THE FEDERAL CRITERIA, WHAT MAKES A QUALITY HEARING AND THE CRITICAL ELEMENTS OF THE FEDERAL REVIEW CRITERIA	Jay Arcellana, CA Steve Massey, USDOL
	3. INDEPENDENT CONTRACTORS	TBA

# Election of Board of Governors Set for Scottsdale

The Nauiab board of Governors held it's spring meeting in Oxford, Mississippi in early March 2008. At this meeting the Board approved and now proposes the following slate of officers for 2008-2009, to be considered at the Scottsdale Conference in June 2008:

President-Elect H.W. Funderburk, Jr. (SC)

First Vice President Lynn Fitch (MS)

Second Vice President Dorothy Johnson (FL)

Secretary Karl Jahnke (OK)

Treasurer Alice Mitchell (GA)

At-Large Members James A. Hilly (ME)

Stephen Wilson (IL)

Michael Milwee (DC)

Clayton Mitchell (MD)

Pete Lansdowne (AZ)

## Proxy Form

The Notice of Annual Membership Meeting and Proxy Statement are now available on the website at [www.nauiab.org](http://www.nauiab.org). If you are unable to attend the annual meeting in Scottsdale, you may cast your vote on the proposed slate by proxy. To be eligible to vote, you must be an active voting member of NAUIAB and current in payment of annual dues as of 12 noon M.S.T. on June 11, 2008. Instructions for submitting your completed proxy form are posted on the website.

## Counter Point from page 4

deprivation of benefits. Finally, on a more esoteric level, in-person hearings preserve and promote what has been referred to as the dignitary nature of the proceedings, while a telephone hearing to many parties is nothing more than just another department interview.

I do not mean to suggest in any of this that telephone hearings do not have their place in modern day administrative adjudication, or that they deny due process, which clearly they do not. Indeed, in single party cases with uncomplicated issues, a telephone hearing would be perfectly acceptable from any perspective. Nor do I mean to be critical of the many states that have made the transition to telephone hearings in recent years. They have minimized the problems associated with the transition and overall are doing an excellent job. What I am saying is that telephone hearings come with inherent shortcomings which must be taken into account in conducting the hearing. I also maintain that in-person hearings provide a superior format for making the record and ensuring the parties are afforded the highest possible level of due process of law.

Please note: the opinions expressed in this article are mine alone and not necessarily that of my employing agency or any other organization.

## Insightful Humor

by Conny Franken, Indiana

*Whoever tells the best story wins.*  
JOHN QUINCY ADAMS

*Only lawyers and mental defectives  
are automatically exempt for jury duty.*  
GEORGE BERNARD SHAW

*An example of Inept Interrogatories  
DA: All right, Mr. C., is it not a fact  
that this witness came into this court  
here and admitted to having sexual  
relations with you in open court, in  
front of the jury?*

*An example of MOVIE Law  
The justice system works swiftly in the  
future now that they've abolished all  
lawyers. DOC, Back to the Future II*

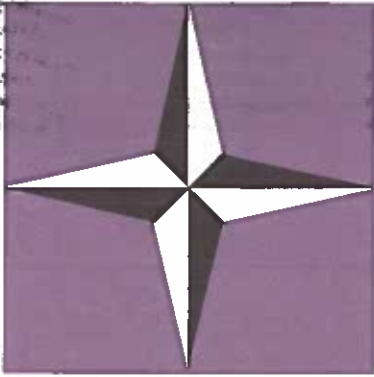
*The only thing a lawyer won't question  
is the legitimacy of his mother.*  
W.C. FIELDS

*There is a general prejudice to the  
effect that lawyers are more honor-  
able than politicians but less  
honorable than prostitutes. That is an  
exaggeration. ALEXANDER KING*

*An example of T.V. Law  
Divorce lawyers..God's way of telling  
you to stay single. LENNY BRISCOE,  
Law and Order...*

*Avoid lawsuits beyond all things; they  
pervert your conscience, impair your  
health, and dissipate your property.*  
JEAN De La BRUYERE

*A primary school teacher heard  
children crying and rushed to the  
playground to see what was wrong.  
There, she found Timmy, John and  
Lisa, the latter crying furiously. When  
she asked what had happened,  
Timmy told her, "John took Lisa's  
apple. Then she hit him on the head  
and called him several dirty names,  
and he kicked her in the stomach."  
The teacher replied, "Well, then, we'll  
all have to go to the principal's office.  
Where is the apple now?" Timmy  
smiled and produced the orange  
from his pocket. "I have the apple.  
I'm Lisa's lawyer."*



Spring 2008

# NAUIAB Navigator

www.nauiab.org

Charting a Course in UI Appeals

A Newsletter of the National Association of Unemployment Insurance Appellate Boards



Agenda, Conference Registration and Hotel

Reservation Information is on-line at

[www.nauiab.org](http://www.nauiab.org)

Then just click on the Conference Logo

If you want a conference registration package sent to you or please contact Marilyn White at 602 229-2714 [marilynwhite@azdes.gov](mailto:marilynwhite@azdes.gov)

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FWD



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