



# The NAALJ News

Volume 16, Number 3

The Newsletter of the National Association of Administrative Law Judges June 2006

## EXCITING SEATTLE PROGRAM FEATURES JUDGES, JUSTICES, AND ACADEMICS

Administrative law judges from all over the nation will descend upon Seattle September 6 - 8. The 2006 conference will focus on the changing landscape of administrative adjudication in the 21st century, and the myriad of challenges and choices facing administrative law judges. Register by July 15 to receive the early registration discount.

This year's program is innovative in many ways. It includes two judicial ethics sessions, a session on assessing credibility using the Japanese film *Rashomon*, and a practical judicial skills session taught by the Chief Justice of the Alaska Supreme Court. It includes a session on the new Uniform Mediation Act by the director of the University of Washington's mediation program, and a session on the hidden biases of judges.



*A Washington State Ferry glides across Puget Sound with the historic Smith Tower in the background. The Smith Tower was Seattle's first skyscraper, opening on July 4, 1914.*

*Photo: Tim Thompson*



*Seattle's downtown skyline is dramatically lit at dusk. Photo: Seattle's Convention and Visitors Bureau*

This year's program is breaking ground by featuring two career-focused sessions. One is a session on career bridges for ALJs to explore opportunities both inside and outside of administrative adjudication. Another is a session on "management" versus infringement on ALJ independence. The planners have ensured we have a first-rate faculty, including experienced administrative law judges, court judges, professors, and practitioners.

Please notice that attendees who attend all eight hours of National Judicial College sessions will have the ability to receive National Judicial College Credit. See [www.walja.org](http://www.walja.org) for details.

Receptions and networking opportunities will make the conference a memorable event. The conference will be topped off with the Annual NAALJ Banquet, a keynote address by Washington Chief Justice Gerry Alexander, and a silent auction benefitting the NAALJ Foundation.

Please view the three-day program at [www.walja.org](http://www.walja.org).

## SLEEP WELL IN SEATTLE Accommodations for the 2006 NAALJ Conference

The 2006 NAALJ Conference planners had an easy choice in selecting the Red Lion Hotel on Fifth Avenue in downtown Seattle. The hotel has built a great reputation on the comfort and quality of its accommodations.

The 2006 NAALJ Conference room rate is an outstanding \$119 plus tax. You will not find a price this low at a comparable hotel in Seattle. The Hotel Group Code is 0609nation.



Below is a list of amenities attendees will enjoy at the Red Lion:

1. Wi Fi - Complimentary wireless Internet access in all guest rooms and public areas allows you to stay on top of business or pleasure from almost anywhere in the hotel.
2. Top Quality Beds - Stay Comfortable Pillow Top Mattresses.
3. Comforts - Robes, coffee makers, irons, hair dryers, and refrigerators in guest rooms.
4. Gym - State of the art health club - open 24 hours a day.

Concierge - Award-Winning Concierge and Guest Services Staff. Need tickets to a ball game? Eager to try the cuisine at Seattle's finest -- and hardest to reserve -- restaurants? Or do you just need advice on which of our city's sites are worth seeing? No matter your needs, our award-winning concierge service stands ready and eager to help.

6. Fine Dining - Terrace Garden Restaurant - the very best in Northwest cuisine in peaceful, sky-lit surroundings. The Garden's outdoor patio is the largest in the entire city, and is the perfect spot to while away those long summer evenings and enjoy expansive views.

7. English Pub - The street level Elephant and Castle provides genuine English pub charm, entertainment, and outdoor dining. Cozy up to the fireplace, join in a game of pool and darts or just sit back and enjoy a pint and a hearty meal.

8. Business Center - Full-service business center is available 24 hours per day. The center provides internet and email access as well as copy and fax service.

9. Doggie Program - At The Red Lion, we believe your four-legged family members deserve the same respect, pampering and attention that you do. Check in with your pooch and you'll receive: a special one-page reference guide detailing the ins and outs of your pet's stay in Seattle; a complimentary goodie bag filled with treats and toys to enhance your pet's stay; a soft, durable and comfortable doggie pillow, a food and water tray; dispose-a-scoop doggie waste bags; and, of course, a special Doggie Napping Door Hanger so your best friend can get some much needed rest.



[www.redlion5thavenue.com](http://www.redlion5thavenue.com)

## SEATTLE CONFERENCE 2006 Enjoy the City and Surrounding Environment

In addition to the breathtaking mountain and water views, the best in urban recreation is available right outside your hotel room. Seattle was voted the fittest city in both 2004 and 2005; one of the top three best walking cities; the most child-friendly city in 2004; and eighth among the top ten arts destination in the United States.



*Mt. Rainier, at 14,411 feet, is the dramatic backdrop to Seattle's Elliott Bay.*

*Photo: Seattle's Convention and Visitors Bureau*

No visit to Seattle would be complete without exploring the Pike Place Market, the famous Space Needle, the Experience Music Project, and the Science Fiction Museum. Also consider sailing on a short ferry ride to shop on Bainbridge Island, or walking the underground tour in historic Pioneer Square.

Conference planners have developed an optional Saturday trip for attendees who want to get out of the city and experience nature as well as the finer things in life. It is the private Snoqualmie Falls and Winery Tour. On this tour you'll see and taste wines at both the Chateau Ste. Michelle and Columbia wineries. This sightseeing excursion will lead you deep into the rolling Cascade foothills past lush horse ranches and flower farms, to popular Hollywood locations for such famous productions as *Twin Peaks*, *Northern Exposure*, and *The Vanishing*.

Scenic single lane rural roads lead you up to the peaceful shadow of Mount Si through the Snoqualmie River Valley to the edge of the breathtaking 270 foot Snoqualmie Falls (often featured in the television series *Twin Peaks*). Coasting over both floating bridges on Lake Washington, we will take a picturesque ride past the University of Washington, through quaint rural farm lands, lush forests, and charming east side towns.

Music fans who arrive early can experience Bumbershoot, Seattle's favorite end of summer party, which is scheduled for September 2nd, 3rd, and 4th. Visit [www.bumbershoot.com](http://www.bumbershoot.com) to see why this 36-year old festival remains one of the biggest and best celebrations of art and culture in the United States. Bumbershoot features the widest and wildest spectrum of music, film, comedy, dance, theatre, literary arts, visual arts, and kids activities, plus the color and festivity provided by street performers, crafts and food booths.

Seattle offers many other outstanding day trip opportunities. Consider a guided sea kayak tour, a winery visit, or a trip to Mount Rainier National Park, North Cascades National Park, or Olympia National Park. Beautiful British Columbia also beckons Seattle visitors with Victoria and Vancouver just a few hours away.

## 2006 SEATTLE CONFERENCE BRIEF DETAILS

•**Theme:** Building Bridges for Better Administrative Adjudication

•**Dates:** September 6 - 8 (registration begins on September 5).

•**Website:** [www.walja.org](http://www.walja.org)

•**Registration Fees:**

- \$375 for Current Members of NAALJ, NAWJ, and CCAT if post-marked or paid by July 15, 2006
- \$425 for Current Members of NAALJ, NAWJ, and CCAT if post-marked or paid after July 15, 2006
- \$400 for Non-members paid by July 15, 2006
- \$450 for Non-members paid after July 15, 2006

•**Registration form** and online (credit card) registration are available at [www.walja.org](http://www.walja.org).

•**Hotel:** \$119 plus tax; Red Lion on 5th Avenue (downtown Seattle)  
1.800.325.400  
Group Rate Code: 0609nation

•**Contact:** [conference@walja.org](mailto:conference@walja.org); 2006 NAALJ Conference, PO Box 6268, Olympia, WA, 98507

•**CLE:** 14.75 approved by WSBA. Non-Washington Attendees are responsible for obtaining accreditation from their jurisdictions. WALJA will maintain attendance records.

•**Co-hosts** of the conference are NAALJ, the Washington Administrative Law Judges Association, the Seattle University School of Law.

•**Co-sponsors** of the conference include the National Association of Women Judges, the Washington State Office of Administrative Hearings, the National Judicial College, Thomson-West, and Evans Case Load Inc.

•**Federal ID** for Conference is 54-2196152 (Washington Administrative Law Judges Assoc).



*The Public Market sign hovers over the Pike Place Market, with Elliott Bay, Puget Sound and West Seattle in the background.  
Photo: Tim Thompson*



## From the President by Lois Oakley

### CHANGES

Despite our best efforts to resist its imperative, change and the disconcerting implications of change are uninvited guests in our personal and our professional lives. Changes can unexpectedly intrude upon the workings of our association and have a similarly disquieting impact.

A major change in the structure of our association has been occasioned by the resignation of NAALJ Executive Director, John Hardwicke. The Board has accepted his resignation and has expressed its gratitude, on behalf of the membership, for his many contributions to the enhancement of state administrative adjudication. NAALJ has been enriched by John's service as Executive Director. I hope that you will join me in sending John our best wishes.

As you know, the University of Baltimore has been very generous to NAALJ through its provision of office space for the association as well as the services of a law student to assist the Executive Director with association activities. The Board has directed me to express its gratitude to the University of Baltimore for this generous support.

In related news, the Board has determined to adopt a conservative approach to the future operations of the association. As you will read elsewhere, the finances of the association have stabilized after two years of deficit spending. On another positive note, the mid-year conference proceeds are projected to be more positive than in recent years. Although this is welcome news, the Board has determined to proceed cautiously and to refrain from approving additional financial obligations at this time.

There are no immediate plans to identify an Executive Director for NAALJ. The Secretariat, Laura Bierman, will continue to provide capable sup-

port for the association's membership services and its bookkeeping needs.

As with any change, these changes in the operations of the association will require adjustments. We plan to keep you informed, and welcome your suggestions as we continue our journey in the support of excellence in administrative adjudication.

*Please send your thoughts to  
[loakley@osah.ga.gov](mailto:loakley@osah.ga.gov)*



## The Treasurer's Letter by L. David Brunke

### OUR FINANCIAL HEALTH

If you read my letter in the last issue of The NAALJ News, you will recall that I was projecting a budget deficit for fiscal year 2006, which ended June 30, 2006. However, due to higher than anticipated affiliate dues income and an unfortunate and unforeseen turn of events (resignation of the Executive Director), NAALJ will now have a surplus (about \$4,500). As of May 2006, NAALJ's year-to-date revenue was \$44,644.84, whereas expenses totaled only \$40,089.51.

In view of the Board's decision not to fill the Executive Director's position at this time, it will not be necessary to increase membership dues, which is never a popular thing to do, despite the fact it may be necessary at times. Instead, the Board will rely on revenue initiatives combined with cost-cutting measures. Revenue initiatives will focus on increasing membership by adding affiliates, recruiting executive agency members, proposing a change in the organizational structure, including special practice sections or affiliates, and by proposing a name change to broaden the association's appeal. Other cost reduction measures will focus primarily on distributing the NAALJ Journal to the membership online and

on increasing the subscription fee (currently 134 subscriptions at \$20 each).

The budget for fiscal year 2007 places considerably less reliance on conference revenue (only \$665 instead of \$15,665). In fact, the revenue expected from the 2006 Mid-Year should easily satisfy the requirement. Accordingly, any revenue from the 2007 Annual Conference (Seattle) will provide a further financial cushion for the association. As of May 31, 2006, the total assets of the association were \$57,851.19, compared to \$57,212.43 the year before. As of April 30, 2006, the total assets of the NAALJ Foundation were \$3,260.53. Since 2000 the Foundation has been somewhat inactive because NAALJ shifted the Journal revenue and expenses to the association. Nonetheless the Foundation is available as a mechanism to receive grants and other donation as well as to fund educational endeavors, including scholarships and fellowships.

**KUDOS TO IOWA:  
Another Successful Midyear  
Conference**

*by Lynda Lee Moser*

*Pictures by John G. Farrell*

The Iowa Association of Administrative Law Judges hosted this year's NAALJ Midyear Conference in beautiful downtown Des Moines. In hosting the conference, the Iowa Association adopted the catch phrase, "If you plan it well, they will come." Relying on the conference evaluations as an indicator, it can be said that those who came to America's heartland were well rewarded.



This year's conference offered a program of outstanding legal education for judges and administrative law practitioners on the changing face of administrative law.



Comments from the conference evaluations encouraged implementation of comments made by the panel on Enhancing Public Trust and Confidence in the Administrative Law Process.



Writing tips offered by Dr. Nancy Jones of the University of Iowa College of Law, who presented a session entitled, "The Persuasiveness of Grammar and Style" were found to be useful. Drawing rave reviews was Professor Gary Wells of Iowa State University who presented an evidence session on Witness Recollection and Eye Witness Testimony.



You can access the conference materials for these sessions in the conference binder materials that are now available at the NAALJ website at [www.naalj.org](http://www.naalj.org). Once you have accessed the website, locate the conferences button to click on "Upcoming Conferences." From there, click the Des Moines conference. At the conference page itself, click on "Related Links" found in the left-hand column and scroll to the bottom where

you can click on the Binder link under 2006 NAALJ Conference Binder.



In the binder you will find Dr. Jones' materials on pages 463-477. Her writing presentation focused on shaping sentences artfully by using balanced constructions, serial constructions, and suspended sentences to give rhythm to your writing.



Dr. Wells' materials, which begin at page 486, entertain the question of whether the testimony of an eyewitness is accurate. According to Dr. Wells, the memory does not improve with time such that identifications made by eyewitnesses a mere five days after an incident can be impaired. This is because other variables besides memory factor into the recollection of an eyewitness. For instance, because of the tendency of the memory to become impaired even with the passage of a short period of time, an eyewitness is vulnerable to the power of suggestion by law enforcement.





NAALJ extends much gratitude to the planners and presenters of this year's Midyear Conference. The membership richly benefited from the dedication of these individuals to the field of administrative law.

**FLORIDA ANNOUNCES  
PLAN TO FORM  
STATE AFFILIATE**

*by Bob Cohen*

Seeking to further the goals of NAALJ to promote camaraderie and professionalism in the adjudication of dispute process, the State of Florida announces its intent to form an affiliate organization. The affiliate will initiate through the efforts of members of the Division of Administrative Hearings (DOAH), but will be open to all administrative adjudicators in the state, regardless of whether they are employed by DOAH or by one of the other agencies that adjudicate disputes in Florida.

The Florida affiliate will seek to take advantage of the benefits of membership in NAALJ, such as the NAALJ Journal, access to the expertise of administrative law judges from around the country, fresh ideas that will promote the efficient adjudication of disputes, quality training, networking, and the opportunity to participate in high quality national educational conferences.

Bob Cohen, Director and Chief Judge of DOAH, is excited by the opportunity to form an affiliate in an organization he supports. "The opportunities to bounce ideas off our counterparts in other states, alone, is well worth the price of admission," he says. Stay tuned for details on membership in the newest NAALJ affiliate organization.

**PROPOSED NAALJ  
NAME CHANGE**

*by Tyrone Butler*

The National Association of Administrative Law Judges has over the years developed a membership that includes not only persons with the job title "Administrative Law Judge", but other administrative adjudicators whose job titles may differ radically. Even though these job titles may be "Hearing Officer", "Hearing Examiner", "Referee, etc. the basic function is to hold due process hearings and render decisions with findings of fact and conclusions of law, among other prerequisites, based on the record developed at a fair hearing or on papers submitted by adversarial parties.

In recognition of this anomaly that exists in the various job titles ascribed to our membership it has been suggested that NAALJ change its name in order to reflect this diversity.

A motion was made and seconded at our last board meeting to change our organization's name from the "National Association of Administrative Law Judges" to the "National Association of the Administrative Law Judiciary". This change would describe the total arena of administrative adjudication represented by our membership without changing or disturbing our very familiar acronym "NAALJ".

This matter will be presented to you the membership at our annual meeting in Seattle this September. I hope that you will all support this forward looking improvement to the image of our organization.

**PROPOSED SLATE  
of NAALJ Officers  
2006 – 2007**

**President:**

Catherine Bennett

**President-Elect:**

David Brunke

**Treasurer:**

Steven Wise

**Secretary:**

Robert Cohen

**New Board Members:**

Lori Eisele  
Beverly Nash  
Peter Plummer  
Toni White-Bogan

**Incumbent Board Members:**

Thomas Dewberry  
James Horan  
Chris McNeil  
Brian Watkins

**Immediate Past President:**

Lois Oakley

**FROM THE BENCH  
*by Edwin L. Felter***

**THE CENTRAL ADMINISTRATIVE TRIBUNAL OF VIETNAM PROPOSAL**

At present, disputes concerning government action in individual cases involving persons (corporate or individual) in Vietnam are resolved under Vietnam's Law of Complaints and Denunciations.<sup>2</sup> There are two avenues of recourse: (1) appeal up the management line, conceivably all the way up to the Prime Minister; or, (2) within 30-days after the second-level management "complaint resolution," file a lawsuit in the Administrative Court<sup>3</sup> of the Provincial Court or forever lose this avenue of recourse. There is widespread dissatisfaction with the present system, among businesses, government officials and lawyers.

Consequently, STAR Vietnam's principal Vietnamese Government Client Agency for reform of the Law of Complaints and Denunciations is the Government Inspectorate (GI), a Vietnamese government agency.<sup>4</sup>

When the author was in Vietnam for almost one month in December 2003, the GI was considering three proposals to create a system of due process to resolve administrative complaints beyond the second management level: (1) create administrative tribunals or appeal boards in the different agencies; (2) expand and fortify the “administrative courts;” or, (3) create the Central Administrative Tribunal of Vietnam. When the author returned to Vietnam in March 2006, the GI’s recommendation to the National People’s Assembly was to create the Central Administrative Tribunal of Vietnam (a vertical, executive branch organization, analogous to combining U.S. State and Federal systems. STAR Vietnam is credited with persuading the GI that the central administrative tribunal is the best option for major reform of the process dealing with the handling of administrative complaints.

Many countries with market economies need administrative tribunals or appeals boards in addition to courts. International experience has demonstrated that these tribunals provide fairness and impartiality on the one hand and efficiency and expertise on the other in reviewing and correcting administrative actions, affecting members of the public, within the executive branch.<sup>5</sup> In addition, these tribunals have raised the level of professionalism in the appeals process and relieved senior government officials from dealing with individual disputes so it may focus on making policy and regulations. These administrative tribunals have also eliminated the risks involved in reviewing the decisions of agency subordinates.

Although located within the executive branch of the government in countries around the world, administrative tribunals, or appeals boards, follow procedures that are quite similar to those employed in the judicial branch courts in carrying out their functions. Such procedures are necessary for administrative decisions that affect specific individuals, in order to maintain public confidence in the system of administrative justice and to assure the public that such decisions are fairly, objectively and impartially made and reviewed.

Objectivity and impartiality are best achieved by having complaints against an agency’s actions heard by tribunals presided over by “tribunal members,” “administrative judges,” “hearing officers” or “commissioners” who are practically and functionally independent of the government officials who took the action or decision complained of. Although decisions of such administrative tribunals are subject to review by the courts, the courts do not ordinarily reverse such decisions unless they find that there was a legal error, or that the proceedings before the tribunal were not fairly and impartially conducted.

There are two basic models for establishing administrative tribunals: (1) an independent central tribunal separate from the agencies; or (2) appeals boards within agencies, but with mechanisms to ensure independence from the administrative decision makers.<sup>6</sup> STAR Vietnam pointed out two possible models in Vietnam that could be built upon. One is the Advisory Board for the Resolution of Complaints at NOIP (National Office of Intellectual Property), which hears complaints concerning intellectual property (primarily trademark disputes) at the first settlement level. Another potential model could be within the Government Inspectorate, which could establish either a central tribunal or appeals boards at the agencies but which are under the GI and not the agencies, thus, assuring independence of the agencies. It is absolutely necessary that any administrative tribunal operate independently from the investigative, enforcement, and regulatory functions and from agency decision makers.

The major concerns of the Law Committee of the National People’s Assembly appear to be: (1) cost; and, (2) human resources to staff the central tribunal with sufficient and sufficiently expert judges.

The next major step for Vietnam involves drafting a specific legislative proposal to integrate organic provisions creating a central administrative tribunal and an administrative procedure act into the Law of Complaints and Denunciations, and presenting it to the National People’s Assembly, hopefully, for enactment into law.

Thus, Vietnam stands at the brink of a quantum leap forward in legal reform, both substantive and systemic.

*Footnotes:*

1. STAR Vietnam is a U.S.A.I.D. organization in Hanoi. Its mission is to assist in the implementation of all aspects of the Bilateral Trade Agreement (BTA) between the U.S. and Vietnam. STAR is the acronym for Support for Trade Acceleration.
2. The “Denunciations” portion deals with employment law concerning government officials.
3. The “Administrative Court,” in reality, is a division of a court of general jurisdiction, and it does not possess the level of expertise existing in typical executive branch administrative tribunals.
4. The Government Inspectorate (GI) is equivalent to the U.S. GAO, or at the State-level, the State Auditor.
5. Some countries also find such tribunals useful in resolving certain kinds of specialized disputes. For example, in Singapore, the Ministry of Law’s Intellectual Property Office has a Copyright Tribunal to handle copyright disputes between private parties at first instance. There is also a “Strata Titles Board” that specializes in disputes between flat owners in high-rise public housing units.
6. The proverbial “impenetrable wall.”

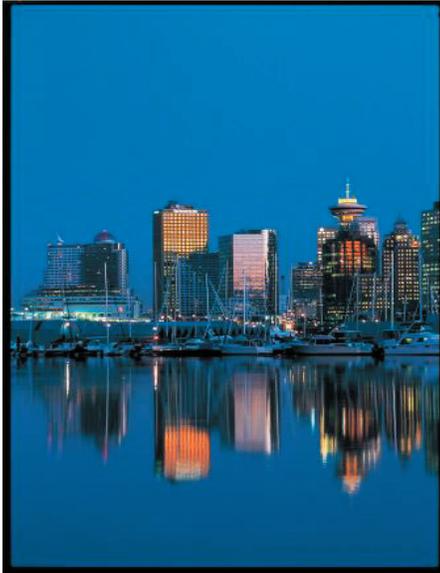
**RELATIONSHIP WITH  
COUNCIL OF CANADIAN  
ADMINISTRATIVE TRIBUNALS**

The Council of Canadian Administrative Tribunals (CCAT) and NAALJ have executed a Letter of Agreement whereby both organizations have agreed to promote each other’s activities for their mutual benefit and that of administrative justice in general. Each organization has agreed to grant the other reciprocal membership privileges to attend conferences and other events where membership discounts apply. This privilege will be promoted exclusively by announcements on CCAT and NAALJ websites. Furthermore, this agreement will remain in effect for a period of two years and may be renewed for such further period as determined by the respective Boards.

The agreement was signed on June 13, 2006, on behalf of CCAT by Carl F. Dombek, President, and on behalf of NAALJ by the Hon. Lois F. Oakley, President.

## UPCOMING CONFERENCES

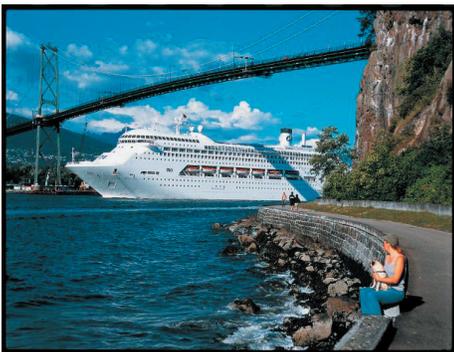
### *Administrative Justice Without Borders*



*Coal Harbour Twilight  
Tourism Vancouver/ Tom Ryan*

### **Vancouver May, 2007**

Plan now to expand your horizons by attendance at an international meeting of administrative adjudicators in Vancouver in May, 2007. The Council of Canadian Administrative Tribunals is organizing its fourth international gathering of administrative adjudicators and expects attendees from fifty (50) countries. The theme of the conference is "Administrative Justice Without Borders." As information about this conference becomes available, it will be posted on the NAALJ website.



*Stanley Park Seawall  
Tourism Vancouver/ Tom Ryan*



*False Creek Evening  
Tourism Vancouver/ Al Harvey*



Council of Canadian  
Administrative Tribunals  
[www.ccat-ctac.org](http://www.ccat-ctac.org)

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