

3-15-2000

## The Role of Demeanor Evidence in Determining Credibility of Witnesses in Fact Finding: The Views of ALJs

Gregory L. Ogden

Follow this and additional works at: <http://digitalcommons.pepperdine.edu/naalj>



Part of the [Administrative Law Commons](#), and the [Evidence Commons](#)

---

### Recommended Citation

Gregory L. Ogden, *The Role of Demeanor Evidence in Determining Credibility of Witnesses in Fact Finding: The Views of ALJs*, 20 J. Nat'l Ass'n Admin. L. Judges. (2000)  
available at <http://digitalcommons.pepperdine.edu/naalj/vol20/iss1/1>

This Article is brought to you for free and open access by the School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Journal of the National Association of Administrative Law Judiciary by an authorized administrator of Pepperdine Digital Commons. For more information, please contact [Kevin.Miller3@pepperdine.edu](mailto:Kevin.Miller3@pepperdine.edu).

# THE ROLE OF Demeanor EVIDENCE IN DETERMINING CREDIBILITY OF WITNESSES IN FACT FINDING : THE VIEWS OF ALJS

Professor Gregory L. Ogden\*

## I. INTRODUCTION

This article presents the views of ALJ's on the role of demeanor evidence for determining the credibility of witnesses' testimony in fact finding. While several empirical studies have investigated whether demeanor evidence increases the accuracy of credibility determinations, these studies have not focused on professional fact finders who are experienced in the fact finding process, and who routinely make credibility determinations in administrative hearings.<sup>2</sup> The opinions of ALJ's add an important new perspective on the issue of whether demeanor evidence increases the accuracy of credibility determinations. The views of ALJ's were determined through the techniques of survey research, utilizing a questionnaire.<sup>3</sup> The ALJ's who were surveyed for this study did not rate the importance of demeanor evidence very highly in making credibility determinations. These views on the value, or relative lack of value, of demeanor evidence in making credibility determinations were consistent with the findings of the researchers in the other studies.<sup>4</sup> If the ALJ's who regularly make credibility determinations as part of their fact finding duties do not believe that demeanor evidence is very valuable in making credibility

---

\*Professor of Law, Pepperdine University. An earlier version of this article was given by the author as the 1999 NAALJ Fellowship paper at the Silver Anniversary meeting of the NAALJ in Asheville, North Carolina, in September 1999. The author would like to thank Mike Asimow, Ed Felter, and Ed Schoenbaum for comments on the questionnaire that provides the basis for the study. The author would also like to thank his research assistant, Nicole Cimino, for compilation of survey results, and for his staff, particularly, Sheila MacDonald, for proficiency with graphs, and spreadsheets. Finally, the author would like to thank the more than 100 administrative law judges, most of them NAALJ members, who took time out of their busy schedules to complete the survey questionnaire that provides the basis for this article.

<sup>2</sup>See text at footnotes 21 - 23, *infra*

<sup>3</sup>See Appendix One, Survey Questionnaire, *infra*.

<sup>4</sup>See text at footnotes 35 - 42, *infra*.

determinations, then this calls into question whether agencies and reviewing courts should give weight or deference to ALJ credibility determinations based on demeanor evidence.<sup>5</sup> The role and value of demeanor evidence as perceived by ALJ's is explored in this article. The article also explores the role of other credibility factors and the views of ALJ's on a number of related fact finding issues.

The article will define demeanor evidence for purposes of the study,<sup>6</sup> and will explain the administrative law principle of judicial review that gives weight or deference to credibility determinations based on demeanor evidence.<sup>7</sup> The article will briefly discuss the social science research on demeanor evidence.<sup>8</sup> The article will explain the survey questionnaire and the methodology used to obtain the views of ALJ's.<sup>9</sup> The article will identify and discuss the data pool of survey questionnaire respondents, and their profiles.<sup>10</sup> The article will then provide a statistical analysis of the data, and the implications of the data for judicial review of fact finding. The statistical analysis will compare and contrast weighted means for specific responses to questions that have five choices.<sup>11</sup> The article will also discuss related implications of the survey results for credibility determination issues.<sup>12</sup> Finally, the article will conclude with a call for further study of issues raised but not fully explored herein.

## II. DEMEANOR EVIDENCE

Demeanor evidence refers to the non-verbal cues given by a witness while testifying, including voice tone, facial expressions, body language, and other cues such as the manner of testifying, and the witnesses's attitude while testifying.<sup>13</sup> Demeanor evidence is recognized in the law as an important basis for determining the

---

<sup>5</sup>See text at footnotes 17 - 20, *infra*.

<sup>6</sup>See text at footnotes 13 - 16, *infra*.

<sup>7</sup>See text at footnotes 17 - 20, *infra*.

<sup>8</sup>See text at footnotes 21 - 23, *infra*.

<sup>9</sup>See text at Section III, Survey Methodology, *infra*.

<sup>10</sup>See text at footnotes 24 - 34, *infra*.

<sup>11</sup>See text at footnotes 35 - 41, *infra*.

<sup>12</sup>See text at footnotes 42 - 46, *infra*.

<sup>13</sup>Wellborn, *Demeanor*, 76 Cornell L. Rev. 1075, 1078 (1991) (cited as Wellborn).

credibility of a witness.<sup>14</sup> The opportunity to observe the demeanor of a witness while testifying provides historical and modern justification for public trials in which the fact finder observes the witness testify in a face to face hearing. Demeanor evidence has been assumed to be crucial for determining whether a witness is telling the truth or a falsehood. The rules of law governing live testimony, confrontation rights, and hearsay rules have all been shaped by this assumption about demeanor evidence.<sup>15</sup> Observing demeanor evidence has been considered part of the right to confront witnesses since before the adoption of the U.S. constitution.<sup>16</sup>

In administrative law, the importance of demeanor evidence for determining credibility of witnesses's is assumed in the law of judicial review of fact finding. In federal administrative law, the *Universal Camera*<sup>17</sup> case held that the evidence supporting an agency's fact findings may be less substantial (under the substantial evidence test) when the agency rejects fact finding of an ALJ who has observed live testimony of witnesses' and has based fact finding on credibility determinations than when the agency accepts those fact findings in the same circumstances.<sup>18</sup> This rule is based on the assumption that hearing live testimony and observing demeanor evidence provides a more reliable basis for determining credibility than does reading a transcript of the same testimony. California follows a similar rule in its new administrative procedure act<sup>19</sup> by requiring reviewing courts to give great weight to credibility determinations based on demeanor evidence in reviewing the factual basis of a decision.<sup>20</sup> Both the California and federal rules defer to fact findings by an ALJ when credibility determinations are based on demeanor evidence.

Social science research casts significant doubt on the core assumption behind the weight given to demeanor evidence in making

---

<sup>14</sup>See, e.g., Cal. Evid. Code §780(a) (West 1999).

<sup>15</sup>Wellborn, *supra* note 13, at 1076.

<sup>16</sup>Blumenthal, *A Wipe of the Hands, A Lick of the Lips: The Validity of Demeanor Evidence in Assessing Witness Credibility*, 72 Neb. L. Rev. 1157, 1176-1179 (1993) (hereinafter Blumenthal).

<sup>17</sup>*Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 71 S. Ct. 456, (1950).

<sup>18</sup>*Id.*

<sup>19</sup>Cal. Gov't. Code §§11400-11470.50 (West, 1997).

<sup>20</sup>Cal. Gov't. Code §11425.50(b) (1997).

credibility determinations.<sup>21</sup> Specifically, the psychological studies show that the non verbal cues associated with demeanor evidence do not provide increased accuracy in making credibility determinations, either in detecting whether a witness is telling the truth or lying, or in assessing the believability of a witness who may be sincere but inaccurate or mistaken in their testimony.<sup>22</sup> While non-verbal cues such as looking away or fidgeting have a popular but inaccurate association with telling a lie, the only non-verbal cues that have been actually correlated with deception are the vocal cues.<sup>23</sup> The results of these studies raise questions about the rationale for the judicial review rules. The studies also raise questions about the evidentiary value of public trials with live testimony. If reading a transcript is as good a way to determine credibility, trials with live testimony could be replaced with trials by deposition, or transcript.

Before considering changes to the existing trial process based on these studies, it is fair to ask whether these studies provide a valid basis for comparison with the administrative hearing process. The existing studies used individuals who were not experienced professional fact finders, and the studies did not completely replicate trial conditions. While the studies did replicate witnesses' giving testimony as would be done in a trial, that was not done in the context of a live hearing. Crucially absent in the studies was the real world hearing process in which the fact finder was able to hear testimony from a number of witnesses, was able to consider documentary evidence, and was able to hear all of the evidence in the case before making credibility determinations. Also, the study participants were not professional fact finders who have experience with making credibility determinations.

Does reliance on study participants who are not ALJ's make any difference in the applicability of the study results to administrative hearings? We do not know, but this suggests the need for survey research of professional fact finders, such as ALJ's. The survey research reported below obtained the views of experienced ALJ's who are professional fact finders in adjudicatory hearings. The experience

---

<sup>21</sup>See, e.g., Wellborn, *supra* note 13, at 1075; Blumenthal, *supra* note 16, at 1161.

<sup>22</sup>Wellborn, *supra* note 13, at 1079-1081; Blumenthal, *supra* note 16, at 1190-1191.

<sup>23</sup>Blumenthal, *supra* note 16, at 1192-1194.

base of those ALJ's comes from actual hearings in the administrative process. However, the study methodology is different than in the previous psychological studies. ALJ's were not tested in specific role plays to determine whether they could detect deception any better than untrained individuals. That could be a flaw in the process if one wanted to exactly replicate the prior studies methodology. However, it is useful to assess through a questionnaire the ALJ's views of credibility determinations based on experience with administrative hearings. Demeanor evidence in the real world of trial practice might have a different flavor than in scientific studies that are divorced from the courtroom.

### III. SURVEY METHODOLOGY

A survey questionnaire was designed using survey research methodologies. The questionnaire is set forth in Appendix one at the end of the article. The first page of the questionnaire asked questions designed to establish a profile of the survey respondents. The profile results are contained in the next section of the article. The second page provided definitions of key terms used in the survey. Questions one through three contained sub parts asking respondents to rate on a five point scale various statements related to demeanor evidence, credibility determinations, and testimonial conflicts. Questions four and five asked survey respondents to rank types of demeanor evidence, and factors in credibility determinations on a five point scale as to importance for fact finding. Questions six and seven contained sub parts asking respondents to rate on a five point scale various statements related to fact finding. Finally, question eight asked survey respondents to rank nine possible factors, on a nine point scale of importance, as to those factors' importance in fact finding.

Once the completed questionnaires were received, the data was entered, and calculations were performed to provide a basis for data analysis. In most cases, weighted means were calculated to provide a more accurate basis for data comparison. The size of the data pool, 112 respondents, was large enough to provide significant results. Those results are discussed and analyzed in section V of the article.

### IV. SURVEY QUESTIONNAIRE RESPONDENTS

The survey questionnaire was distributed to ALJ's who are

members of the NAALJ, and to ALJ's with the California Office of Administrative Hearings. The survey was sent to ALJ's by e-mail, fax, and regular mail. Copies of the survey were distributed at the 1999 NAALJ Conference. The survey response rate was approximately 50%.<sup>24</sup> The survey questionnaire respondents included 112 administrative law judges (ALJ's) or comparable officials.<sup>25</sup> The vast majority (76%) of the respondents were ALJ's.<sup>26</sup> The survey respondents were overwhelmingly (88%) from state agencies.<sup>27</sup> A majority (59%) of respondents were central panel<sup>28</sup> staff.<sup>29</sup> The experience levels of respondents varied from less than five years to more than ten years, and the largest group (47%) of respondents had more than ten years of experience.<sup>30</sup>

The survey respondents are responsible for ALJ duties in a significant variety of types of cases including (in order by size of response) licensing, regulatory, entitlement, civil service, social security, and worker's compensation.<sup>31</sup> The other category included a significant number of additional types of cases, and one respondent's

---

<sup>24</sup>The e-mail and fax response rates were even higher, 65%, which could be a result of easier response time and effort compared to regular mail. The regular mail response rate was lower, but there were fewer survey questionnaires sent by regular mail.

<sup>25</sup>Appendix Two: Survey Respondents a)Work Status, p. 33, *infra*.

<sup>26</sup>85 (76%) of the respondents identified themselves as ALJ's. Fifteen (13%) of the respondents identified themselves as hearing officers. Five (4.5 %) of the respondents identified themselves as referees, and seven (6%) chose the "other" category. Appendix Two: Survey Respondents a)Work Status, p. 33, *infra*.

<sup>27</sup>99 (88%) of the respondents were affiliated with state agencies from 21 different states. Six (5%) of the respondents were from federal agencies, four (3.5%) were from local agencies, and three (2.5%) were in the "other category." Appendix Two: Survey Respondents b)Type of Agency, p. 33, *infra*.

<sup>28</sup>Central panel staff means that the ALJ's worked for a separate agency like the California Office of Administrative Hearings that provides ALJ's for administrative hearings before other agencies.

<sup>29</sup>66 (59%) of the respondents identified themselves as central panel staff. 36 (32%) of the respondents identified themselves as agency staff, and ten (9%) identified themselves as other. Appendix Two: Survey Respondents c) Structure of Office, p. 33, *infra*.

<sup>30</sup>53 (47%) of the respondents had more than ten years of experience as an ALJ. The next largest group, 35 (31%), had experience levels of five years or less, and the smallest group, 24 (21%), had six to ten years experience. Appendix Two: Survey Respondents d) ALJ Experience, p. 33, *infra*.

<sup>31</sup>The six identified categories, in order of size of response, were 1) licensing, 76 (28%); 2) regulatory, 61 (22%); 3) entitlement, 49 (18%); 4) other, 48 (17.5%); 5) civil service, 29 (10.5%) 6) social security, 5 (2%); and 7) worker's compensation, 4 (1.5%). Appendix Two: Survey Respondents e) Type of Caseload, p. 33, *infra*.

central panel agency heard 100 different types of cases brought against state agencies.<sup>32</sup> The survey respondents have a variety of job duties with the largest (38%) group having the responsibility to hear the case and to prepare a proposed or recommended decision.<sup>33</sup> The number of cases heard and/or decided each year by survey respondents varied somewhat with the largest group (45%) having more than 100 cases.<sup>34</sup>

## V. SURVEY RESULTS

The typical survey respondent was a state ALJ who worked in a central panel agency, who had significant levels of experience as an ALJ, who had responsibility for hearing and deciding a wide variety of types of cases, and who heard and decided a significant number of cases each year. The survey results are most valuable for this group of survey respondents. The substantial under representation of federal and local ALJ's in the survey makes the relevance of the survey results less applicable to federal ALJ fact finding, or to the local administrative agency hearing processes. In federal administrative law, there are no central panel judges. In local administrative law, the hearing processes are much more informal, and usually the state administrative procedure act does not apply. The findings are most relevant to fact finding among central panel ALJ's in state administrative hearings. The survey probed a number of issues with a primary emphasis on the role of demeanor evidence, other credibility factors, and other factors in the fact finding process from the perspective of ALJ's.

---

<sup>32</sup>Appendix Two: Survey Respondents e) Type of Caseload, p. 33, *infra*.

<sup>33</sup>66 (38%) heard the case and prepared a recommended or proposed decision. The next largest group, 61 (35%), heard the case and prepared a decision. The other three choices in order were: 1) variety of duties depending on the case, 29 (16.5%); 2) other, 14 (8%); and 3) hearing case only, 4 (2%). Appendix Two: Survey Respondents f) Job Duties, p. 33, *infra*.

<sup>34</sup>The largest group, 50 (45%), heard and/or decided more than 100 cases per year. The other two groups were: 1) 41 (36.5%) heard and /or decided 51 to 100 cases per year; and 2) 21 (19%) heard and /or decided less than 50 cases per year. Appendix two: survey respondents G) number of cases, p. 34 *infra*.



## A. DEMEANOR EVIDENCE AND CREDIBILITY WEIGHTED MEAN CHART A1\*

Demeanor Evidence	most important factor	3.71
Demeanor Evidence	one of many factors	1.78
Demeanor Evidence	less important than other	2.89

(\* 1 equals strongly agree, 2 equals agree, 3 equals neutral, 4 equals disagree, and 5 equals strongly disagree).

A strong majority (67%) of ALJ's disagreed, with a weighted mean of 3.71 on a five point scale,<sup>35</sup> that demeanor evidence is the most important factor used to determine a witnesses's credibility.<sup>36</sup> This weighted mean contrasts with the other weighted means,<sup>37</sup> and is consistent with ALJ ratings of the relative lack of importance of demeanor evidence in other survey questions.<sup>38</sup> Most (91%) ALJ's agreed, with a weighted mean of 1.78 on a five point scale, that demeanor evidence is one of many factors used to determine a witnesses's credibility.<sup>39</sup> This rating is substantially higher than the rating of the first question.<sup>40</sup> Based on these ratings, demeanor evidence is considered to be one factor in determining the credibility of a

---

<sup>35</sup>On this scale, one equals strongly agree, two equals agree, three equals neutral, four equals disagree, and five equals strongly disagree.

<sup>36</sup>Survey respondents disagreed (53, 47%) or strongly disagreed (22, 20%), with a weighted mean of 3.71 on a five point scale, that demeanor evidence was the most important factor to determine a witnesses's credibility. Appendix Three: Survey Results Question 1 a), p. 44, *infra*.

<sup>37</sup>*Id.* The combination of 67% disagreeing, or strongly disagreeing with the statement, coupled with the third largest group selecting neutral (21, 19%), and with the highest weighted mean for question one, at 3.71, is indicative that demeanor is not highly rated by ALJ's for determining a witnesses's credibility.

<sup>38</sup>See text at note 93, *infra*.

<sup>39</sup>Survey respondents agreed (67, 60%), or strongly agreed (35, 31%), with a weighted mean of 1.78 on a five point scale, that demeanor evidence is one of many factors used to determine a witness's credibility. Appendix Three: Survey Results Question 1 b), p. 45, *infra*.

<sup>40</sup>Appendix Three: Survey Results Question 1 b), p. 45, *infra*. The combination 91% strongly agreeing, or agreeing, coupled with the lowest weighted mean at 1.78, for question one, is more strongly indicative of ALJ's opinions on the relative importance of demeanor evidence.

witness, but not the most important factor. A bare majority (51%) of ALJ's agreed, with a weighted mean of 2.89 on a five point scale, that demeanor evidence is less important than other credibility factors to determine a witnesses's credibility.<sup>41</sup> Based on this rating, demeanor evidence is less important than other credibility factors, but this rating is not as high in weighted means as the previous rating.<sup>42</sup> These low ratings by ALJ's as to the importance of demeanor evidence for determining witness credibility are consistent with the other studies as to the low predictive value of demeanor evidence for determining the credibility of witnesses.

#### WEIGHTED MEAN CHART A2\*

Experienced ALJ making credibility determinations	more effective than other persons	2.74
Experienced ALJ determining witnesses's testimony is false	reasonable degree of certainty	2.47

(\*1 equals strongly agree, 2 equals agree, 3 equals neutral, 4 equals disagree, and 5 equals strongly disagree).

If ALJ's rated the importance of demeanor evidence more highly, their experience with fact finding might provide an explanation for differences with other studies. Surprisingly, ALJ's did not rate experience as a fact finder very highly in making credibility determinations. A strong minority (48%), with a weighted mean of 2.74, agreed that an experienced ALJ can more effectively determine a witnesses's credibility than can other persons. This rating was equaled by a strong minority (48%) who were neutral or disagreed with this

---

<sup>41</sup>Survey respondents agreed (49, 44%), or strongly agreed (10, 9%) with a weighted mean of 2.89 on a five point scale, that demeanor evidence is less important than other credibility factors to determine a witnesses's credibility. The responses to this question also included 22 (20%) disagreeing, and 21 (19%), neutral, with 10 (9%), strongly disagreeing, as to the same statement. Appendix Three: Survey Results Question 1 c), p. 46, *infra*.

<sup>42</sup>Appendix Three: Survey Results Questions 1 b), 1 c), pp. 44-45 *infra*. A weighted mean of 1.78, is much lower than a weighted mean of 2.89, and the percentage of agreement or strong agreement with the statement is 91% for question 1 b), compared to 53% for question 1 c).

statement.<sup>43</sup> ALJ's were slightly more positive about the value of experience in discerning false testimony. A majority (63%) of ALJ's agreed, with a weighted mean of 2.47, that an experienced ALJ can determine to a reasonable degree of certainty whether a witness is making a false statement using demeanor evidence along with other credibility factors.<sup>44</sup> This last rating is higher on the agreement continuum than the previous rating but the differences between the two ratings are not large. The only difference is the relative greater frequency of conflicting witnesses's testimony versus the relative lesser frequency of witnesses's making false statements discussed in the analysis of question two.<sup>45</sup> Demeanor evidence and other credibility factors may play a less prominent role in conflicting witness cases, which are far more frequent, than they do in false testimony cases, which are far less frequent. Witness conflicts can be due to many reasons other than false testimony, such as the witnesses's capacity to recall, and other factors discussed in question five.<sup>46</sup>

## B. TESTIMONIAL CONFLICTS

### WEIGHTED MEAN CHART B1\*

Witness gives	False Testimony	2.86
Witness vs. Witness	Conflicting Testimony	2.08
Witness vs. Document	Conflicting Evidence	2.60

(\*1 equals very frequently, 2 equals frequently, 3 equals occasionally, 4 equals rarely, and 5 equals never).

---

<sup>43</sup>A minority of ALJ's agreed (48, 43%) or strongly agreed (6, 5%), with a weighted mean of 2.74, that an experienced ALJ can more effectively determine a witnesses's credibility using demeanor evidence or other credibility factors than can other persons. An equal minority of ALJ's were neutral, (31, 28%), or disagreed (23, 20%), with this same statement. A small number of ALJ's strongly disagreed (4, 4%) with this statement. Appendix Three: Survey Results Question 1 d), p. 47, *infra*.

<sup>44</sup>A majority of ALJs agreed (64, 57%), or strongly agreed (7, 6%), with a weighted mean of 2.47, that an experienced ALJ can determine to a reasonable degree of certainty whether a witness is making a false statement using demeanor evidence along with other credibility factors. A smaller number of ALJs were neutral (26, 23%), disagreed (11, 10%), or strongly disagreed (4, 4%). Appendix Three: Survey Results Question 1 e), p. 48, *infra*.

<sup>45</sup>See text at notes 47 - 50, *infra*.

<sup>46</sup>See text at notes 65 - 79, *infra*.

A two-thirds majority (75, or 67%) of ALJs selected occasionally (weighted mean of 2.86) as the frequency with which witnesses give false testimony in administrative hearings.<sup>47</sup> This contrasts significantly with the more than two thirds majority of ALJs who selected either frequently (69, or 62%), or very frequently (17, or 15%) as the frequency (weighted mean of 2.08) with which witnesses present testimony that conflicts with the testimony of another witness.<sup>48</sup> Finally, in the middle of the three (weighted mean of 2.60), a bare majority (60, or 54%) of ALJ's selected occasionally, and slightly more than one third (39, or 35%) of ALJ's selected frequently as the frequency with which witnesses present testimony that conflicts with documentary evidence.<sup>49</sup> These ratings indicate that testimonial conflicts among witnesses are frequent, that conflicts between witnesses's testimony and documents are less frequent, and that the occurrence of false testimony by witnesses' in administrative hearings is far less common. This latter finding may defy the conventional wisdom that witnesses's lie all of the time, but it has even more significance for the issue of discerning truth or falsity of testimony through demeanor evidence. If false testimony is only an occasional occurrence in administrative hearings, then demeanor evidence is much less frequently relied upon to determine truth or falsity of a witnesses's testimony. This could explain in part the relatively low value placed by ALJ's on demeanor evidence in the fact finding process.<sup>50</sup> This could also weaken the criticism of those scholars whose studies suggest that demeanor evidence is not a very good indicator of truth or falsity.<sup>51</sup> If falsity is only an occasional problem, then the shortcomings of demeanor evidence may be less important.

---

<sup>47</sup>Appendix Three: Survey Results Question 2 a), p. 49, *infra*.

<sup>48</sup>Appendix Three: Survey Results Question 2 b), p. 50, *infra*.

<sup>49</sup>Appendix Three: Survey Results Question 2 c), p. 51, *infra*.

<sup>50</sup>See text at notes 94 - 95, *infra*.

<sup>51</sup>Wellborn, *supra* note 13, at pp. 1094-1095

**WEIGHTED MEAN CHART B2\***

ALJ fact finding contrary to	witness who has given false testimony	2.25
ALJ fact finding consistent with	witness testimony (conflicting witness testimony)	2.29
ALJ fact finding consistent with	witness testimony (conflicting documentary evidence)	3.06

(\* 1 equals very frequently, 2 equals frequently, 3 equals occasionally, 4 equals rarely, and 5 equals never).

An almost two thirds majority (63%) of ALJ's selected either frequently or very frequently, with a weighted mean of 2.25, as the frequency with which ALJ's make fact findings contrary to the testimony of a witness who has given false testimony.<sup>52</sup> Similarly, an almost two thirds majority of ALJ's selected either frequently (63, or 56%) or very frequently (9, or 8 %) as the frequency (weighted mean 2.29) with which ALJ's make fact findings consistent with a witnesses's testimony when there is conflicting testimony of another witness.<sup>53</sup> Finally, a more than three fourths majority of ALJ's selected either occasionally (54 or 48%) or rarely (34 ,or 30%) as the frequency (weighted mean of 3.06) with which ALJ's make fact findings consistent with a witnesses's testimony when there is conflicting documentary evidence.<sup>54</sup> These ratings suggest that conflicting documentary evidence is given more weight in resolving evidentiary conflicts than is conflicting witnesses's testimony. Also, the ratings suggest that when an ALJ encounters false testimony by a witness, the ALJ is likely to make fact findings contrary to that false testimony.

---

<sup>52</sup>A majority of ALJ's selected very frequently, 18, 16%, or frequently, 53, 47%, as to when an ALJ makes fact findings contrary to the testimony of a witness who has given false testimony. Other responses to this question were occasionally, 35, 31%, rarely, 6, 6%, and never, 0, 0%. Appendix Three: Survey Results Question 3 a), p. 53, *infra*.

<sup>53</sup>A majority of ALJ's selected very frequently, 9, 8%, or frequently, 63, 56%, as to when an ALJ makes fact findings consistent with the testimony of a witness when there is conflicting testimony of another witness. Other responses to this question were occasionally, 38, 34%, rarely, 2, 2%, and never, 0, 0%. Appendix Three: Survey Results Question 3 b), p. 54, *infra*.

<sup>54</sup>Appendix Three: Survey Results Question 3 c), p. 55, *infra*.

## C. FACTORS IN CREDIBILITY DETERMINATIONS

### 1. Types of Demeanor Evidence

#### WEIGHTED MEAN CHART C1\*

Manner of testifying	e.g., evasive or direct	1.67
Witnesses's attitude while testifying	positive or negative	2.33
Body language		2.53
Facial expressions		2.69
Voice tone		2.90

(\*1 equals very important, 2 equals important, 3 equals neutral, 4 equals not important, and 5 equals very not important).

ALJ's were asked to rank five types of demeanor evidence as to importance in making credibility determinations.<sup>55</sup> The five factors, ranked in order of importance were: 1) The manner of testifying, e.g., evasive or direct, in which 91 % of ALJ's rated this factor (weighted mean of 1.67) as either very important (51, or 45.5%) or important (51 or 45.5%);<sup>56</sup> 2) the witnesses's attitude while testifying (positive or negative), in which a two thirds majority of ALJ's rated this factor (weighted mean of 2.33) as either important (60, or 54%) or very important (15, or 13%);<sup>57</sup> 3) Body language, in which a majority of ALJ's rated this factor (weighted mean of 2.53) as either important (52, 47%), or very important (10, or 8%);<sup>58</sup> 4) Facial expressions, in which slightly less than a majority of ALJ's rated this factor (with a weighted mean of 2.69) as either important (50, or 45%), or very important (5 or 4%);<sup>59</sup> and 5) Voice tone, in which only 41 % of ALJ's rated this factor (with a weighted mean of 2.90) as important (42, or 37.5%), or very important (4, or 3.5%), and 50% rated this factor either neutral (37, or 33%), or not important (19, or 17%).<sup>60</sup>

<sup>55</sup>Appendix One: Survey Questionnaire, Questions 4a) through 4 e) pp. 56-60, *infra*.

<sup>56</sup>Appendix Three: Survey Results Question 4 d), p. 59, *infra*.

<sup>57</sup>Appendix Three: Survey Results Question 4 e), p. 60, *infra*.

<sup>58</sup>Appendix Three: Survey Results Question 4 c), p. 58, *infra*.

<sup>59</sup>Appendix Three: Survey Results Question 4 b), p. 57, *infra*.

<sup>60</sup>Appendix Three: Survey Results Question 4 a), p. 56, *infra*.

The significance of the rank order of these items is somewhat clear. The ALJ's rated the traditional components of demeanor evidence, as noted in the Wellborn study, body, face, and voice, lower than manner and attitude. The weighted mean for manner of testifying is statistically significantly lower, indicating a significantly higher rating for that factor compared to the other factors. This same phenomenon occurs to a lesser extent with the rating for attitude. The body, face, and voice ratings are consistently lower, with not a lot of difference between the three items as 0 weighted means. The bottom ranking for voice suggests the relative lack of value of hearing, or auditory information relative to visual cues.

This question also asked ALJ's to specify combinations of factors (as to types of demeanor evidence) that were important aspects of demeanor evidence. A wide variety of responses were given, some duplicating factors listed in question four, and others adding interesting additional factors.<sup>61</sup> The interplay between manner and attitude, and the other demeanor evidence factors is most interesting. One respondent put it succinctly, that a witness who was evasive and had a bad attitude could not be believed, whereas many other respondents linked manner and attitude with face, voice, and body as important combined factors.<sup>62</sup> The number of responses to the combination of factors question suggests that the sum of all demeanor evidence factors may be more important than any one factor by itself at least in the eyes of experienced ALJ's who responded to the survey. This combined effect is not something directly tested in many of the surveys of this subject.<sup>63</sup> The combined effect phenomenon when used by experienced ALJ's may provide an independent justification for the value of demeanor evidence particularly when coupled with other non-demeanor evidence factors addressed later in the survey as well.<sup>64</sup>

---

<sup>61</sup>Appendix Three: Survey Results Question 4 Combination of Factors, pp. 61-62, *infra*.

<sup>62</sup>*Id.*

<sup>63</sup>See Wellborn, *supra* note 13, at pp. 1082-1083.

<sup>64</sup>See text at notes 86 - 95, *infra*.

## 2. Top Five Credibility Determination Factors

### WEIGHTED MEAN CHART C2\*

1. Prior inconsistent Statements	1.46
1. Implausibility of testimony	1.46
3. Plausibility of testimony	1.50
4. Existence of facts testified to	1.60
5. Opportunity to perceive matters testified to.	1.66

(\*1 equals very important, 2 equals important, 3 equals neutral, 4 equals not important, and 5 equals very not important).

ALJ's were asked in question five to rank fourteen factors as to their importance in making credibility determinations including not only



demeanor evidence factors, but also other credibility factors.<sup>65</sup> The factors are listed in increments of five, based on comparative rank. The top five factors follows: 1) Prior inconsistent statements (tied for first as to weighted means, with a mean of 1.46) in which 97% of ALJ's rated this factor as either very important (63, or 56%) or important (46, or 41%);<sup>66</sup> 2) implausibility of testimony (tied for first as to weighted means, with a mean of 1.46) in which 96% of ALJ's rated this factor as either very important (65, or 58%) or important (43, or 38%);<sup>67</sup> 3) Plausibility of testimony (third as to weighted mean, with a mean of 1.50) in which 94% of ALJ's rated this factor as either very important (62, or 55%) or important (44, or 39 %);<sup>68</sup> 4) Existence of facts testified to (fourth as to weighted mean, with a mean of 1.60) in which 93% of ALJ's rated this factor as either very important (50, or 45%) or important (53, or 48%);<sup>69</sup> 5) Opportunity to perceive matters testified to (fifth as to weighted mean, with a mean of 1.66) in which 89% of ALJ's rated this factor as either very important (51, or 46%) or important (48, or 43 %);<sup>70</sup>

### 3. NEXT FIVE CREDIBILITY DETERMINATION FACTORS

#### WEIGHTED MEAN CHART C3\*

6. Admission of untruthfulness	1.69
6. Nonexistence of facts testified to	1.69
8. Capacity to perceive, recall, or communicate matters testified to	1.79
9. Bias, interest, or motive	1.83
9. Prior consistent statements	1.83

(\*1 equals very important, 2 equals important, 3 equals neutral, 4 equals not important, and 5 equals very not important).

<sup>65</sup> Appendix One: Survey Questionnaire, Question 5a) through n), pp. 63-76, *infra*.

<sup>66</sup> Appendix Three: Survey Results Question 5 h), p. 70, *infra*.

<sup>67</sup> Appendix Three: Survey Results Question 5 n), p. 76, *infra*.

<sup>68</sup> Appendix Three: Survey Results Question 5 m), p. 75, *infra*.

<sup>69</sup> Appendix Three: Survey Results Question 5 i), p. 71, *infra*.

<sup>70</sup> Appendix Three: Survey Results Question 5 d), p. 66, *infra*.

The rank order of the next five credibility determination factors in increments of five, based on relative importance, follows: 6) Admission of untruthfulness (tied for sixth as to weighted means, with a mean of 1.69) in which 89 % of ALJ's rated this factor as either very important (46, or 41%) or important (54, or 48%);<sup>71</sup> 7) Nonexistence of facts testified to (tied for sixth as to weighted means, with a mean of 1.69) in which 87% of ALJ's rated this factor as either very important (50, or 46%) or important (46, or 41%);<sup>72</sup> 8) Capacity to perceive, recall, or communicate matters testified to (eighth as to weighted mean, with a mean of 1.79) in which 90% of ALJ's rated this factor as either very important (42, or 37.5%) or important (59, or 52.5 %);<sup>73</sup> 9) Bias, interest, or motive (tied for ninth as to weighted mean, with a mean of 1.83) in which 89% of ALJ's rated this factor as either very important (36, or 32%) or important (64, or 57%);<sup>74</sup> 10) Prior consistent statements (tied for ninth as to weighted mean, with a mean of 1.83) in which 85% of ALJ's rated this factor as either very important (41, or 37%) or important (54, or 48 %).<sup>75</sup>

#### 4. FINAL FOUR CREDIBILITY DETERMINATION FACTORS

##### WEIGHTED MEAN CHART C4\*

11. Character of testimony	2.18
12. Character for honesty or veracity of lack of either	2.25
13. Attitude of witness (positive or negative) toward proceeding or testifying	2.48
14. Demeanor evidence	2.49

(\*1 equals very important, 2 equals important, 3 equals neutral, 4 equals not important, and 5 equals very not important).

The rank order of the final four credibility determination factors,

<sup>71</sup>Appendix Three: Survey Results Question 5 l), p. 74, *infra*.

<sup>72</sup>Appendix Three: Survey Results Question 5 j), p. 72, *infra*.

<sup>73</sup>Appendix Three: Survey Results Question 5 c), p. 65, *infra*.

<sup>74</sup>Appendix Three: Survey Results Question 5 f), p. 68, *infra*.

<sup>75</sup>Appendix Three: Survey Results Question 5 g), p. 69, *infra*.

follows: 11) Character of testimony (eleventh as to weighted mean, with a mean of 2.18) in which 73% of ALJ's rated this factor as either very important (18, or 16%) or important (61, or 57 %);<sup>76</sup> 12) Character for honesty or veracity or lack of either (twelfth as to weighted mean, with a mean of 2.25) in which 70.5% of ALJ's rated this factor as either very important (14, or 12.5%) or important (65, or 58%);<sup>77</sup> 13) Attitude of witness (positive or negative) toward proceeding or testifying (thirteenth as to weighted mean, with a mean of 2.48) in which 54% of ALJ's rated this factor as either very important (13, or 12%) or important (46, or 42%);<sup>78</sup> and 14) Demeanor Evidence (fourteenth as to weighted mean, with a mean of 2.49) in which 62% of ALJ's rated this factor as either very important (8, or 7%) or important (62, or 55%).<sup>79</sup>

#### 5. Significance of Data Related to Credibility Determination Factors.

None of the top five credibility determination factors were demeanor evidence factors. The first four of the top five were verbal content factors, and the fifth was a surrounding circumstances or capacity factor. None of the next five factors were related to demeanor evidence. Three of the five were verbal content factors, and the other two were surrounding circumstances or capacity factors. The last two of the final four factors were demeanor evidence factors, while the first two of the final four were verbal content factors. Demeanor evidence was dead last, with a weighted mean of 2.49. This ranking confirms that ALJ's do not consider demeanor evidence to be comparatively very helpful in making credibility determinations. This law rating of demeanor evidence could be consistent with Wellborn and other studies of this issue in that ALJ's have figured out through experience what the psychological studies show experimentally that demeanor evidence of various types does not allow one to accurately discern truth or falsity, or believability of a witnesses's testimony.

The relative ranking of factors is interesting for other reasons. The predominance of verbal content factors in the top five factors list

---

<sup>76</sup>Appendix Three: Survey Results Question 5 b), p. 64, *infra*.

<sup>77</sup>Appendix Three: Survey Results Question 5 e), p. 67, *infra*.

<sup>78</sup>Appendix Three: Survey Results Question 5 k), p. 73, *infra*.

<sup>79</sup>Appendix Three: Survey Results Question 5 a), p. 63, *infra*.

provides further support for the idea that credibility can be determined as easily through reading a hearing transcript as through hearing live testimony. The predominance of verbal content factors in the other two groups supports this same point, as do the surrounding circumstances factors in the latter two groups. The last two factors, witness attitude, and demeanor evidence, were the only factors that could not be easily accessed through a hearing transcript, and these factors had the lowest rating.

#### D. AGENCY ACCEPTANCE OF ALJ FACT FINDING

##### WEIGHTED MEAN CHART D1\*

ALJ fact finding	Agency accepts or adopts	1.32
ALJ fact finding based on credibility determinations with conflicting witnesses testimony	Agency accepts or adopts	2.16
ALJ fact findings based on uncontradicted testimonial or documentary evidence	Agency accepts or adopts	2.09

\* 1 equals very frequently, 2 equals frequently, 3 equals occasionally, 4 equals rarely, and 5 equals never).

96 % of ALJ's selected very frequently (74 or 72%), or frequently (25, or 24%) as the frequency (weighted mean of 1.32) with which agencies accept ALJ fact finding in the decision process.<sup>80</sup> 69.5 % of ALJ's selected very frequently (25 or 24.5%), or frequently (46, or 45%) as the frequency (weighted mean of 2.09) with which the ALJ has based fact findings on uncontradicted testimonial or documentary evidence when agencies accept ALJ fact finding in the decision process.<sup>81</sup> 64% of ALJ's selected very frequently (26 or 24%), or frequently (43, or 40%) as the frequency (weighted mean of 2.16) with which the ALJ has made credibility determinations based on conflicting witnesses' testimony when agencies accept ALJ fact finding in the decision process.<sup>82</sup>

<sup>80</sup>Appendix Four: Survey Results Question 6 a), p. 78, *infra*.

<sup>81</sup>Appendix Four: Survey Results Question 6 c), p. 80, *infra*.

<sup>82</sup>Appendix Four: Survey Results Question 6 b), p. 79, *infra*.

**WEIGHTED MEAN CHART D2\***

ALJ better at credibility determinations than agency	1.28
ALJ better at weighing conflicting evidence than agency	1.35

(\* 1 equals strongly agree, 2 equals agree, 3 equals neutral, 4 equals disagree, and 5 equals strongly disagree)

98% of ALJ's (with a weighted mean of 1.28) strongly agreed (82, or 73%) or agreed (28, or 25%) that an experienced ALJ is in a better position to make credibility determinations than the agency that reviews the ALJ's decision and a hearing transcript.<sup>83</sup> 97% of ALJ's (with a weighted mean of 1.35) strongly agreed (68, or 62%) or agreed (39, or 35%) that an experienced ALJ is in a better position to weigh conflicting evidence than the agency that reviews the ALJ's decision and a hearing transcript.<sup>84</sup>

The survey results for the first three items establish that agencies accept ALJ fact findings in a very high percentage of cases, and that the acceptance rate is slightly more frequent when the ALJ fact findings are based on uncontradicted testimonial or documentary evidence than when they are based on credibility determinations of conflicting witnesses's testimony. This makes sense in that conflicting witness cases may, on average, be closer cases as to the evidence related to fact issues in dispute, as opposed to uncontradicted cases. As to the last two items, the survey results are not surprising. ALJ's are very likely to believe that they are more capable of weighing conflicting evidence and making credibility determinations than the agency itself. Based on ALJ experience alone, this would be a rational conclusion to reach. The rationality of the conclusion is supported by the combination of factors phenomenon explained above.<sup>85</sup> ALJ's have the opportunity to see all factors operating together. This conclusion is not undermined by the ALJ's choices of credibility factors which can be easily applied when reading a hearing transcript. Aside from the combination of factors, ALJ's have the opportunity to hear all of the evidence in a dynamic process.

<sup>83</sup>Appendix Four: Survey Results, Question 7 a), p. 81, *infra*.

<sup>84</sup>Appendix Four: Survey Results, Question 7 b), p. 83, *infra*.

<sup>85</sup>See text at notes 60-61, *supra*.

## E. FACT FINDING FACTORS USED BY ALJ'S

### 1. Top Four factors

#### WEIGHTED MEAN CHART E1\*

1. Ability to hear all of the evidence	1.67
2. Direct and cross-examination	2.61
3. Ability to hear live testimony	3.03
4. Other credibility determination factors	3.97

ALJ's were asked to rank eight factors as to their importance to an experienced ALJ in making accurate fact findings. The ranking methodology was a nine point scale with one as highest importance, and nine as lowest importance.<sup>86</sup> The factors are listed here based on comparative rank: 1) Ability to hear all of the evidence (weighted mean of 1.67);<sup>87</sup> 2) Direct and cross examination (weighted mean of 2.61);<sup>88</sup> 3) Ability to hear live testimony (weighted mean of 3.03);<sup>89</sup> 4) Other Credibility Determination factors (weighted mean of 3.97).<sup>90</sup>

### 2. Next Four factors

#### WEIGHTED MEAN CHART E2\*

5. Variety of above factors depending on case	4.20
6. Fact finding experience	4.25
7. Nature of fact issues in the case	4.66
8. Demeanor evidence	5.22

<sup>86</sup>Appendix One: Survey Questionnaire, Questions 8 a) through 8 h), p. 85-92, *infra*.

<sup>87</sup>Appendix Four: Survey Results, Question 8 a), p. 85, *infra*.

<sup>88</sup>Appendix Four: Survey Results, Question 8 e), p. 89, *infra*.

<sup>89</sup>Appendix Four: Survey Results, Question 8 b), p. 86, *infra*.

<sup>90</sup>Appendix Four: Survey Results, Question 8 d), p. 88, *infra*.

5) Variety of above factors depending on the case (weighted mean of 4.20);<sup>91</sup> 6) Fact finding experience (weighted mean of 4.25);<sup>92</sup> 7) Nature of fact issues in the case (weighted mean of 4.66);<sup>93</sup> and 8) Demeanor evidence (weighted mean of 5.22).<sup>94</sup>

The significance of the ranking of fact finding factors for the overall focus of the study can not be underestimated. Demeanor evidence ranked dead last in terms of relative importance as a fact finding factor, and the weighted mean for demeanor evidence, 5.22, was significantly lower than the weighted means for the top three factors. This rating is highly consistent with the comparatively low ranking of demeanor evidence in the earlier questions focusing on credibility determinations.<sup>95</sup> The ALJ's in the survey have confirmed the relatively low value that they place on demeanor evidence by comparison to other relevant factors. This is consistent with the Wellborn article, in that if demeanor evidence is not all that useful a tool for discerning truth or falsity, or even basic believability, as Wellborn documents in his article, then it will be considered to have low value, or to be less important in fact finding, by professional fact finders when compared to other relevant factors.

As to the higher ranked factors, the top three, the highest ranked factor was ability to hear all of the evidence, with a weighted mean of 1.67, the lowest mean, and the highest importance rating. There was almost a one point weighted mean gap between this factor, and the second highest ranked factor, direct and cross-examination, which had a weighted mean of 2.61. One would expect that direct and cross examination would rank first, or that there would be a very small gap between first and second place, based on weighted means. It is intriguing that this is not the case. This ranking is consistent with the whole record principle of judicial review. Also, this ranking supports the proposition that the whole record requirement is not just a judicial review principle but also is a vital part of fact finding process by ALJ's. It is not surprising that direct and cross-examination is the second

---

<sup>91</sup>Appendix Four: Survey Results, Question 8 h), p. 92, *infra*.

<sup>92</sup>Appendix Four: Survey Results, Question 8 f), p. 90, *infra*.

<sup>93</sup>Appendix Four: Survey Results, Question 8 g), p. 91, *infra*.

<sup>94</sup>Appendix Four: Survey Results, Question 8 c), p. 87, *infra*.

<sup>95</sup>See text at footnotes 35 - 42, *supra*.

highest ranked factor for reasons that are too obvious to restate here. The third highest factor, the ability to hear live testimony, with a weighted mean of 3.03, is also intriguing. One would expect that this factor would be much lower if there is in fact little difference between basing fact finding on a transcript and basing fact finding on live testimony. The ranking of this factor is supportive of the idea that a transcript is not as good a vehicle for fact finding as live testimony, but the reasons why this is so are unclear. Also, the bottom ranking of demeanor evidence eliminates an obvious explanation for the differences. A possible explanation is the combination of factors phenomenon, but that alternative, variety of above factors depending on the case, is ranked fifth, with a weighted mean of 4.20, so that explanation does not hold water. The other possible explanation, other credibility determination factors, is ranked fourth, with a weighted mean of 3.97. There is almost a one point gap in weighted means between that factor, and the ability to hear live testimony factor. This factor can provide some of the explanation, but not all of it.

Other intriguing aspects of the rankings are the ranking of fact finding experience, sixth on the list, with a weighted mean of 4.25, and the ranking of nature of the fact issues in the case, seventh on the list, with a weighted mean of 4.66. One would have expected fact finding experience to be ranked up there with direct and cross-examination, especially by an experienced group of professional fact finders that make up the survey respondents. There are several possible explanations for the relatively low ranking of fact finding experience. First, fact finding is not easy, and, while experience helps, other factors are far more important at the end of the day. Second, fact finding relies more on the ALJ's judgment and common sense than it does on experience. Third, the formal structure of the hearing and fact finding process provides a substitute for the value of experience. Finally, there may be a combination of these explanations that is controlling. It is not possible to be certain about this given the limitations of the survey methodology. Even more surprising is the low ranking of the nature of the fact issues factor in the survey. One would have expected this factor to be much higher if for no other reason than the variety of types of cases heard by the central panel judges who make up the vast majority of survey respondents.



## VI. CONCLUSION

This study has provided a valuable addition to the debate over the value of demeanor evidence in making credibility determinations. The views of ALJ's were a missing piece of the puzzle that has now been supplied. The consistency of ALJ views as to the relatively low value of demeanor evidence is remarkable, as is the comparison with the other studies. The views of ALJ's on the other issues probed in the questionnaire are also interesting, and probably warrant further study of the fact finding process as well as the process of determining credibility. Surveys of civil and criminal court judges could add other pieces to the puzzle.

### APPENDIX ONE SURVEY QUESTIONNAIRE

---

NAME (Optional)

**Statistical Information** (mark with an X before the right choice for each line)

A) Work Status:

Administrative Law Judge    Hearing Officer    Referee  
 Other (Specify)

B) Type of Agency:

Federal Agency    State Agency    Local Agency  
 Other (Specify)

C) Structure of Office:

Central Panel Staff    Agency staff    Other (Specify)

D) ALJ Experience:

5 or Less    6-10 Years    10 Years or More

E) Type of Caseload:

Licensing     Entitlement     Regulatory  
 Worker's Compensation     Social Security     Civil Service  
 Other (Specify)

F) Job Duties:

Hearing Case Only  
 Hearing Case and Preparing Recommended or Proposed Decision  
 Hearing Case and Preparing Decision  
 Variety of Duties (Depending on Case)  
 Other (Specify)

G) Number of Cases Heard and/or Decided per year:

Less than 50  
 51 to 100  
 More Than 100

**DEFINITIONS:** For purposes of this questionnaire, the following terms will have the stated meaning:

**Preponderance of Evidence:** This is a standard for the burden of proof, or burden of persuasion, for a party in a civil or administrative hearing when that party is responsible for offering evidence as to a disputed issue of fact. This test is satisfied when the evidence offered by the moving party is more probable than not. This standard is widely used in federal administrative law, 5 U.S.C. §556(d); *see also Steadman v. SEC*, 450 U.S. 91, 98 (1981).

**Demeanor evidence:** This term refers to the non verbal cues given by a witness while testifying, including voice tone, facial expressions, body language, and other cues such as the manner of testifying, and the witnesses's attitude while testifying. Many studies suggest that it is difficult to determine veracity of testimony based on demeanor evidence. *See Wellborn, Demeanor*, 76 Cornell L. Rev. 1075 (1991).

Demeanor evidence is used by triers of fact to assess the credibility of a testifying witness.

**Credibility of Witnesses' Testimony:** This term refers to the process for assessing the truthfulness or believability of a witnesses' testimonial statement offered in a judicial or administrative hearing to prove or disprove a disputed issue of fact. Factors that may be considered by a trier of fact to determine a witnesses' credibility includes "any matter that has any tendency in reason to prove or disprove the truthfulness of his [or her] testimony...", see Cal. Evid. Code §780 (1967), and specifically can encompass the following: 1) demeanor and manner of testifying; 2) character of testimony; 3) capacity to perceive, recollect, or communicate; 4) opportunity to perceive; 5) character for honesty or dishonesty; 6) bias or interest; 7) prior statements that are consistent or inconsistent with the testimony 8) existence of non-existence of facts testified; 9) attitude of witness; and 10) admission of untruthfulness. See Cal. Evid. Code §780 (a)-(k) (1967).

**Findings of Fact:** This term refers to the resolution of disputed issues of fact by a trier of fact in a decision or opinion written by a judge following a judicial or administrative hearing. See F.R.C.P. Rule 52(a). Findings of fact can apply to issues of basic fact as well as ultimate fact, and can include mixed questions of law and fact, such as a determination of discriminatory intent. See *Pullman-Standard v. Swint*, 456 U.S. 273, 287 (1982).

**Administrative Law Judge (ALJ):** The term administrative law judge, or ALJ, refers to all persons who preside over hearings in administrative cases, regardless of title.

## SURVEY QUESTIONS

Please base your responses to the following questions on your experience as an administrative law judge who has presided in contested cases in which a hearing was held, testimony was given, and you prepared a proposed or final decision with fact findings or their equivalent.

1. Please rate the following statements: (mark with an X before the right choice for each line)

a) Demeanor evidence is the most important factor used to determine a witnesses's credibility.

Strongly Agree  Agree  Neutral  Disagree  
 Strongly Disagree

b) Demeanor evidence is one of many factors used to determine a witnesses's credibility

Strongly Agree  Agree  Neutral  Disagree  
 Strongly Disagree

c) Demeanor evidence is less important than other credibility factors to determine a witnesses's credibility.

Strongly Agree  Agree  Neutral  Disagree  
 Strongly Disagree

d) An experienced ALJ can more effectively determine a witnesses's credibility using demeanor evidence or other credibility factors than can other persons.

Strongly Agree  Agree  Neutral  Disagree  
 Strongly Disagree

e) An experienced ALJ can determine to a reasonable degree of certainty whether a witness is making a false statement using demeanor evidence along with other credibility factors.

Strongly Agree  Agree  Neutral  Disagree  
 Strongly Disagree

2. Please rate the following statements based on your experience as an ALJ : (mark with an X before the right choice for each line)

a) A Witness gives false testimony in an administrative hearing.

Very Frequently  Frequently  Occasionally  
 Rarely  Never

b) A Witness presents testimony that conflicts with the testimony of another witness.

Very Frequently  Frequently  Occasionally  Rarely  
 Never

c) A Witness presents testimony that conflicts with documentary evidence.

Very Frequently  Frequently  Occasionally  Rarely  
 Never

3. Please rate the following statements based on your experience as an ALJ : (mark with an X before the right choice for each line)

a) An ALJ makes fact findings contrary to the testimony of a witness who has given false testimony.

Very Frequently  Frequently  Occasionally  Rarely  
 Never

b) An ALJ makes fact findings consistent with a witness's testimony when there is conflicting testimony of another witness.

Very Frequently  Frequently  Occasionally  Rarely  
 Never

c) An ALJ makes fact findings consistent with a witness's testimony when there is conflicting documentary evidence.

\_\_\_ Very Frequently \_\_\_ Frequently \_\_\_ Occasionally \_\_\_ Rarely \_\_\_ Never

4. Please rank the following list of types of demeanor evidence as to importance in making credibility determinations

1 2 3 4 5  
Very Important Important Neutral Not important Very Not Important

voice tone \_\_\_\_\_

facial expressions \_\_\_\_\_

body language \_\_\_\_\_

the manner of testifying(e.g., evasive versus direct) \_\_\_\_\_

the witnesses's attitude while testifying  
(positive or negative) \_\_\_\_\_

Combination of factors (Specify which)

---

---

---

---

---

5. Please rank the following list of factors as to how important these factors have been in your experience for making credibility determinations

1                      2            3                      4                      5  
Very Important    Important    Neutral    Not important    Very Not Important

Demeanor evidence \_\_\_\_\_

Character of testimony \_\_\_\_\_

Capacity to perceive, recall, or communicate  
matters testified to \_\_\_\_\_

Opportunity to perceive matters testified to \_\_\_\_\_

Character for honesty or veracity or lack of either \_\_\_\_\_

Bias, interest, or motive \_\_\_\_\_

Prior consistent statements \_\_\_\_\_

Prior inconsistent statements \_\_\_\_\_

Existence of facts testified to \_\_\_\_\_

Nonexistence of facts testified to \_\_\_\_\_

Attitude of witness (positive or negative)  
toward proceeding or testifying \_\_\_\_\_

Admission of untruthfulness \_\_\_\_\_

Plausibility of testimony \_\_\_\_\_

Implausibility of testimony \_\_\_\_\_

Other factors (Specify) \_\_\_\_\_

\_\_\_\_\_

6. Please rate the following statements based on your experience as an ALJ : (mark with an X before the right choice for each line)

a) The agency accepts (or adopts) my fact findings when it decides (or reviews) my decision (or proposed decision).

\_\_\_ Very Frequently \_\_\_ Frequently \_\_\_ Occasionally \_\_\_ Rarely  
\_\_\_ Never

b) When the agency accepts (or adopts) my fact findings I have made credibility determinations based on conflicting witnesses's testimony.

\_\_\_ Very Frequently \_\_\_ Frequently \_\_\_ Occasionally \_\_\_ Rarely  
\_\_\_ Never

c) When the agency accepts (or adopts) my fact findings I have based those findings on uncontradicted testimonial or documentary evidence.

\_\_\_ Very Frequently \_\_\_ Frequently \_\_\_ Occasionally \_\_\_ Rarely  
\_\_\_ Never

7. Please rate the following statements based on your experience as an ALJ : (mark with an X before the right choice for each line)

a) An experienced ALJ hearing a case is in a better position to make credibility determinations than the agency that reviews the ALJ's decision and a hearing a transcript.

\_\_\_ Strongly Agree \_\_\_ Agree \_\_\_ Neutral \_\_\_ Disagree  
\_\_\_ Strongly Disagree.



b) An experienced ALJ hearing a case is in a better position to weigh conflicting evidence than the agency that reviews an ALJ's decision and a hearing transcript.

\_\_\_\_ Strongly Agree    \_\_\_\_ Agree    \_\_\_\_ Neutral    \_\_\_\_ Disagree  
\_\_\_\_ Strongly Disagree.

8. Please rank the following factors as to their importance to an experienced ALJ in making accurate fact findings (Rank one (1) as highest importance, and nine (9) as lowest importance):

Ability to hear all of the evidence \_\_\_\_\_

Ability to hear live testimony \_\_\_\_\_

Demeanor Evidence \_\_\_\_\_

Other credibility determination factors \_\_\_\_\_

Direct and cross-examination of witnesses \_\_\_\_\_

Fact finding experience \_\_\_\_\_

Nature of fact issues in case \_\_\_\_\_

Variety of above factors depending on the case \_\_\_\_\_

Other factors (Specify)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**APPENDIX TWO****SURVEY QUESTIONNAIRE RESPONDENTS: OVERVIEW**

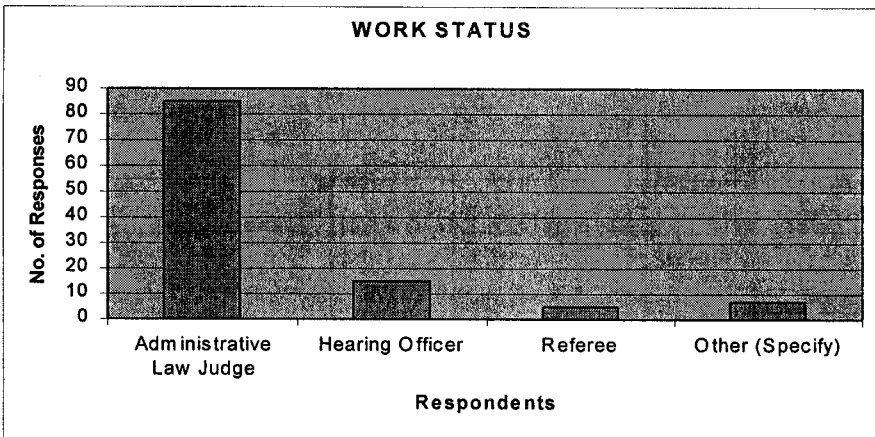
<b>A) Work Status:</b>	<b><u>Number</u></b>	<b><u>Percentage</u></b>
Administrative Law Judge	85	75.89%
Hearing Officer	15	13.39%
Referee	5	4.46%
Other (Specify)	7	6.25%
<b>Total</b>	<b>112</b>	<b>100 %</b>
<b>B) Type of Agency:</b>		
Federal Agency	6	5.35 %
State Agency	99	88.39 %
Local Agency	4	3.57 %
Other (Specify)	3	2.67 %
<b>Total</b>	<b>112</b>	<b>100 %</b>
<b>C) Structure of Office:</b>		
Central Panel Staff	66	58.93%
Agency Staff	36	32.14%
Other (Specify)	10	8.93%
<b>Total</b>	<b>112</b>	<b>100 %</b>
<b>D) ALJ Experience:</b>		
Five Years or Less	35	31.25%
Six to Ten Years	24	21.43%
More Than Ten Years	53	47.32%
<b>Total</b>	<b>112</b>	<b>100 %</b>
<b>E) Type of Caseload:</b>		
Licensing	76	27.94%
Entitlement	49	18.01%
Regulatory	61	22.42%
Worker's Compensation	4	1.47%
Social Security	5	1.83%
Civil Service	29	10.66%
Other (Specify)	48	17.64%
<b>Total</b>	<b>272</b>	<b>100 %</b>
<b>F) Job Duties:</b>		
Hearing Case Only	4	0.0229
Hearing Case and Preparing Recommended .....	66	37.93%
Hearing Case and Preparing Decision	61	35.05%
Variety of Duties (Depending on Case)	29	16.66%
Other (Specify)	14	8.04%
<b>Total</b>	<b>174</b>	<b>100%</b>

**(G) NUMBER OF CASES HEARD AND/OR DECIDED PER YEAR**

Less than 50	21	18.75%
51 to 100	41	36.61%
More Than 100	50	44.64%
Total	112	100%

**APPENDIX TWO: SURVEY RESPONDENTS**

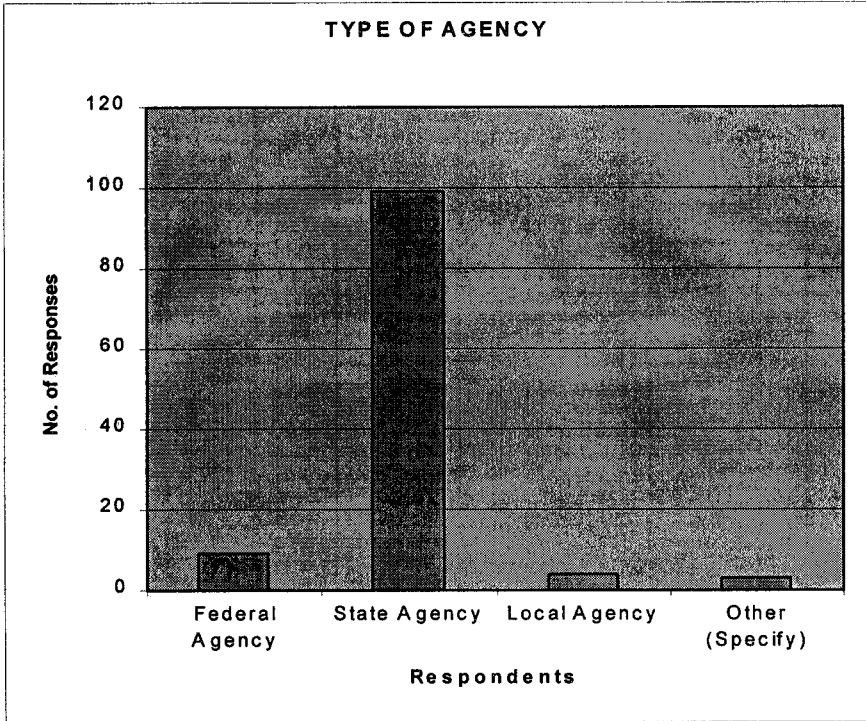
<b>A) Work Status:</b>	<b>Number</b>	<b>Percentage</b>
Administrative Law Judge	85	75.89%
Hearing Officer	15	13.39%
Referee	5	4.46%
Other (Specify)	7	6.25%
Total	112	100 %



Other Category included the following: 1) Administrative Appellate Panel from Administrative Law Judge; 2) Administrative Officer; 3) Administrative Law Officer; 4) Administrative Law Assignment Judge (marked as ALJ); 5) Director; 6) Director’s Representative; 7) Senior Administrative Law Judge; 8) Supervisor, Administrative Law Judge.

**B) Type of Agency:**

Federal Agency	9	7.83%
State Agency	99	86.09%
Local Agency	4	3.48%
Other (Specify)	3	2.61%
Total	112	100%



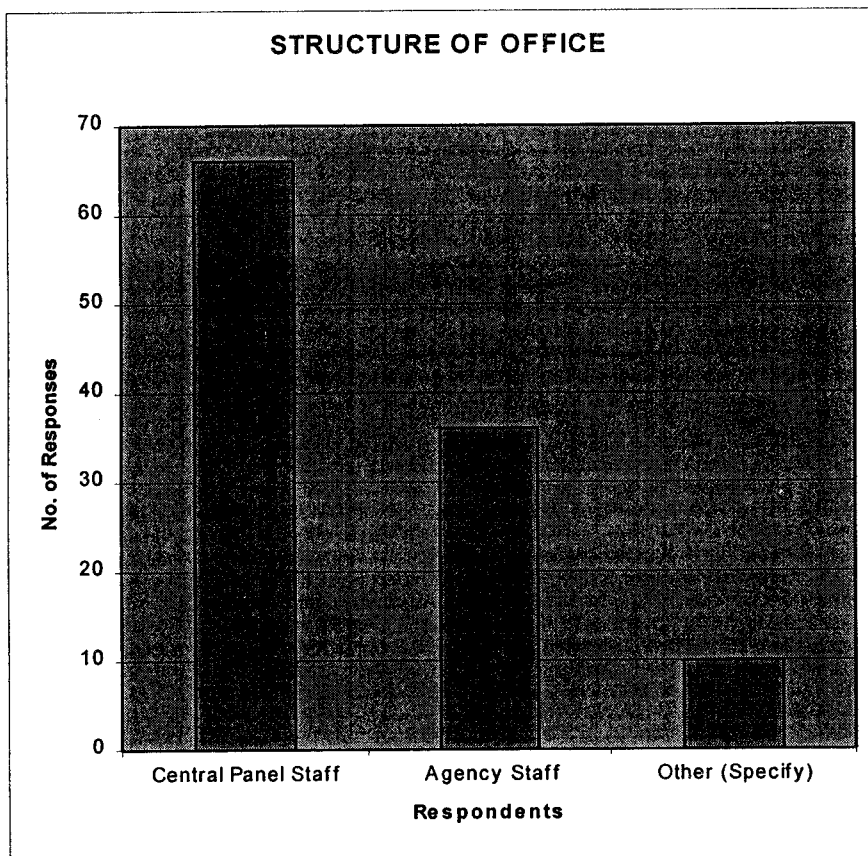
**States and agencies for which survey respondents work:**

1. Alabama, Administrative Hearings Division, State of Alabama
2. California, Office of Administrative Hearings (all four offices)
3. Connecticut, OPH, Commission on Human Rights and Opportunities
4. Georgia
5. Illinois, Illinois Department of Professional Regulation  
Illinois, Chicago Dept. of Administrative Hearings
6. Kansas, Office of Administrative Hearings
7. Kentucky, Division of Administrative Hearings, Office of the Atty General of KY  
Kentucky, Natural Resources & Environmental Protection Cabinet Office of Administrative Hearings
8. Louisiana, Appeals Tribunal Office, LA Department of Labor  
Louisiana, Division of Administrative Law

9. Maryland, Office of Administrative Hearings
10. Minnesota, Office of Administrative Hearings
11. Missouri, Division of Motor Carrier and RR Safety
12. New Jersey, Office of Administrative Law
13. New York (housed in NYS Environmental Conservation)  
New York, Department of Motor Vehicles, Traffic Violations  
Bureau New York, New York State Department of Health
14. North Carolina, Office of Administrative Hearings North  
Carolina, Office of Hearings and Appeals, SSA
15. Pennsylvania, Harrisburg, Bureau of Hearings and Appeals,  
Dep't of Public Welfare
16. South Carolina, National Appeals Division  
South Carolina, S.C. Administrative Law Judge Division
17. Tennessee, Department of State Administrative Procedures  
Division
18. Texas, ALJ, Finance Commission of Texas
19. Virginia, DMV Commonwealth of Virginia  
Virginia, U.S. Department of Agriculture National Appeals  
Division
20. Washington, King County Hearing Examiner  
Washington, Vancouver, OAH
21. Oregon

### **Question B- Other Answers**

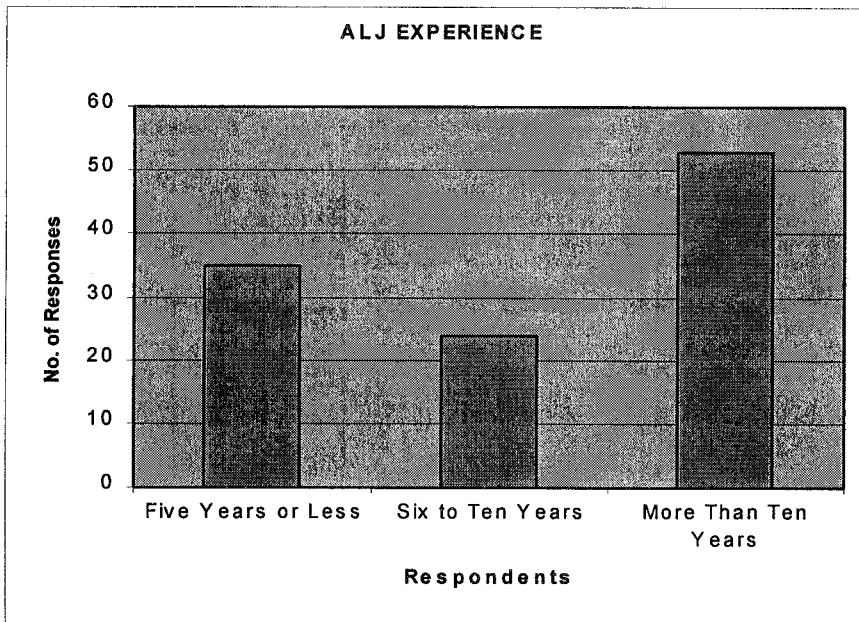
1. California State Central Panel
2. Municipal (#11)
3. An office of administrative law not associated with any state agency, but they have state wide jurisdiction.

**Question C- Structure of Office- Other Answers**

1. Housed in NYS Dept. of Environmental Conservation, and reports to agency head. The General Counsel's Office is outside of the reporting line. Almost all hearings are here and recommended to the agency head. In one type of hearing the ALJ's are final decision makers. There are also hearings held for other state agencies, these are hear and recommend only. 2. Agency staff if this means that Judges are a part of the agency directly. 3. The ALJ works as an offshoot of the Texas state finance commission which is a citizen board/umbrella agency. 4. Appointed official 5. On agency premises, but independent 6. Housed in an agency, but not "staff". They are gubernatorial appointees subject to confirmation by both houses of the General Assembly with 3 year terms. 7. Contractor 8. Modified Central Panel 9. Agency employee (but marked as agency staff).

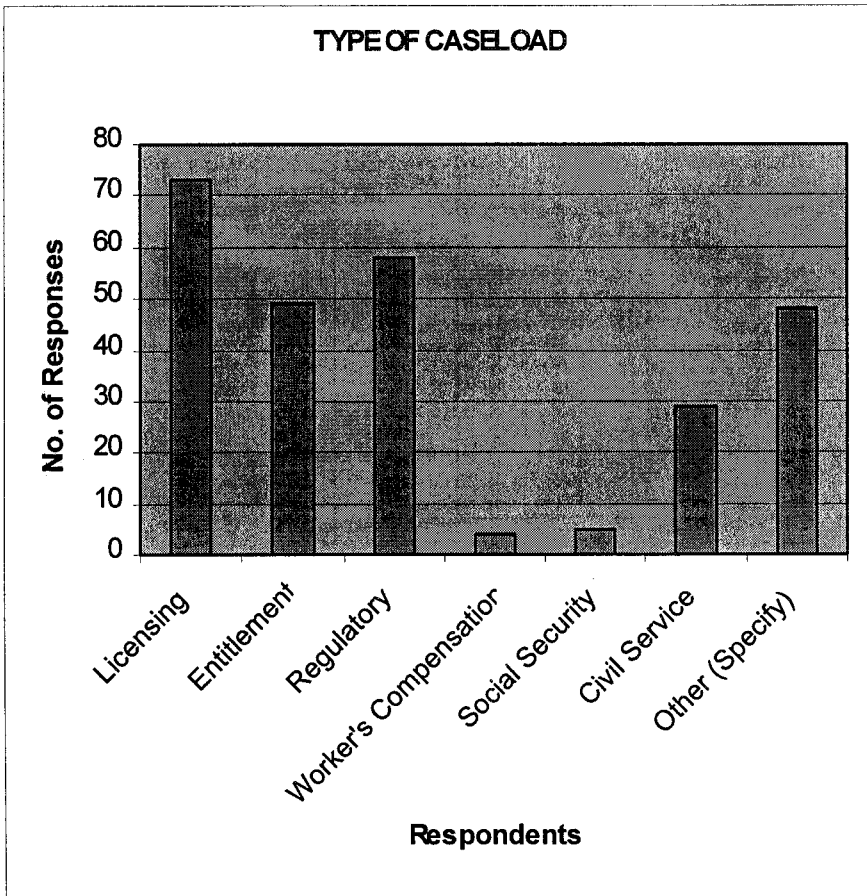
**D) ALJ Experience:**

Five Years or Less	35	31.25%
Six to Ten Years	24	21.43%
More Than Ten Years	53	47.32%
<b>Total</b>	<b>112</b>	<b>100%</b>



**E) Type of Caseload:**

Licensing	73	27.44%
Entitlement	49	18.42%
Regulatory	58	21.80%
Worker's Comp.	4	1.48%
Social Security	5	1.50%
Civil Service	29	7.34%
Other (Specify)	48	11.32%
<b>Total</b>	<b>272</b>	<b>100%</b>



**Question E-Other Answers:**

1. Agriculture
2. Approximately 100 additional causes of action against State agencies
3. Cases heard for 77 state agencies
4. Child abuse
5. Civil Rights
6. Civil rights including employment, housing, and public accommodation discrimination
7. Civil rights, special education, education
8. Civil rights, employment, public accommodation
9. Discrimination in Employment, Housing, ADA,
10. Employment discrimination

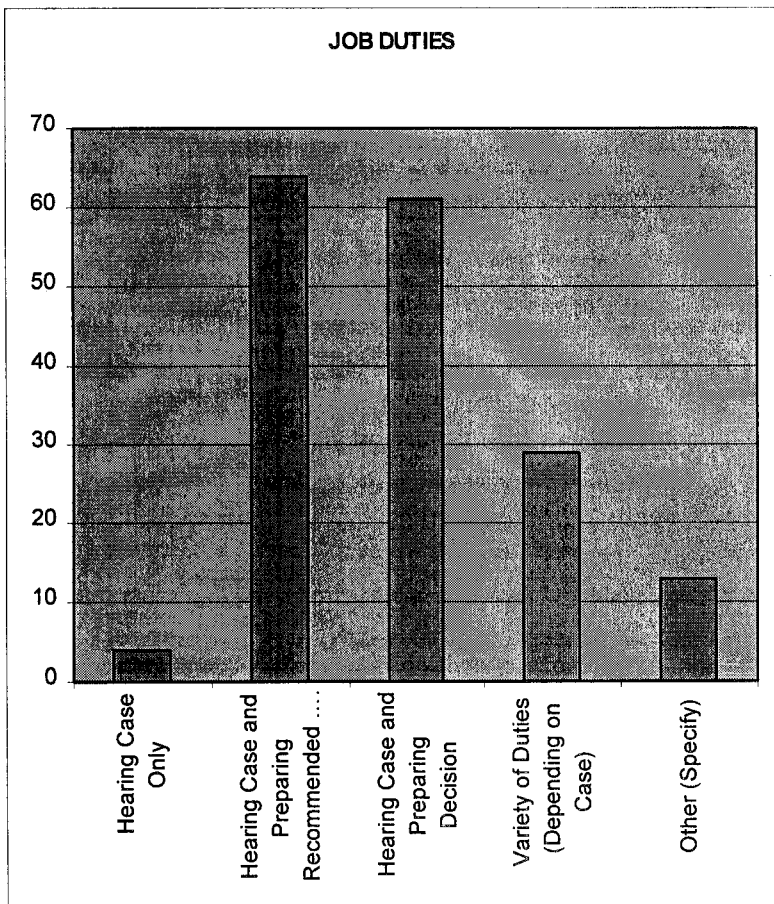


11. Employment security
12. Enforcement
13. Environmental
14. Forfeiture
15. Full 20 agency jurisdiction
16. Generic
17. Health related issues enforced by the State Health Department
18. Human Rights
19. Human Rights
20. Inmate grievances, psychiatric commitments, special education
21. Labor Board
22. Land use, environmental
23. Many state agencies
24. Medicaid
25. Most agencies within the executive branch.
26. Motor vehicle license suspensions, psychiatric admissions, state employee grievances and discipline, special education cases, entitlements, professional licensing and discipline.
27. Municipal Ordinance Violations
28. Municipal ordinance violations, vehicle impoundment, dangerous animal and/or humane destruction cases.
29. Occasionally for counties- disability retirement, discrimination, FPPC fines, school teacher dismissals and layoffs, CalTrans hearings, Regional Center fair hearings.
30. Ordinance Violations
31. Property Taxes
32. 12 years of regulatory experience, and currently works in social security.
33. Retirement, teacher dismissals, student discipline, employee discipline/discharge.
34. Retirement
35. Revocation, suspension of permits, and sanction (enforcement) hearings.
36. Several different state agencies
37. Special education, ABC's, ADA, employment, child support, environmental, discrimination, etc.
38. Tax
39. Tax appeals

- 40. Tenure, welfare, misc.
- 41. Too numerous to list, deal with more than 100 other state agencies
- 42. Unemployment
- 43. Unemployment Insurance
- 44. Unemployment insurance tax

**F) Job Duties:**

Hearing Case Only	4	2.34%
Hearing Case and Preparing Recommended	64	37.43%
Hearing Case and Preparing Decision	61	35.67%
Variety of Duties (Depending on Case)	29	15.10%
Other (Specify)	13	5.58%
Total	171	100%



**Question F- Other Answers**

- A) Appellate review, drafting agency environmental decisions, manager of office and administrator. (66)
- B) Ethics officer, drafting of hearing rules, occasional rule making hearing on substantive agency rules (45)
- C) Hear cases and issue final binding order (appealable directly to state court) (11)
- D) Hearing cases, issuing oral decisions, imposing fines and penalties, administrative (88)
- E) L & M, PHC, SC, mediation, bid protests (21)
- F) Mentor to new ALJ's, subject matter specialist, mediations, settlement conferences (65)
- G) Motion practice (36)
- H) Pre-hearing, Scheduling, Research (68)
- I) Pre-hearing and settlement (46)
- J) Rarely presiding at hearing only (35)
- K) Review of HO decisions (73)
- L) Ruling on motions, presiding at settlement conferences of other ALJs (96)
- M) Supervising ALJ (2)
- N) Variety- settlement conferences, ruling on various motions, etc. (93)

**Variety:**

1. Coordinate schedules/calendars, provide advice, guidance, and additional 10 other major duties, ADR, and training, etc. (27)
2. Hearing and making recommendation, sometimes presiding before agency collegial body and advising on final decision, sometimes making final decision. (4)

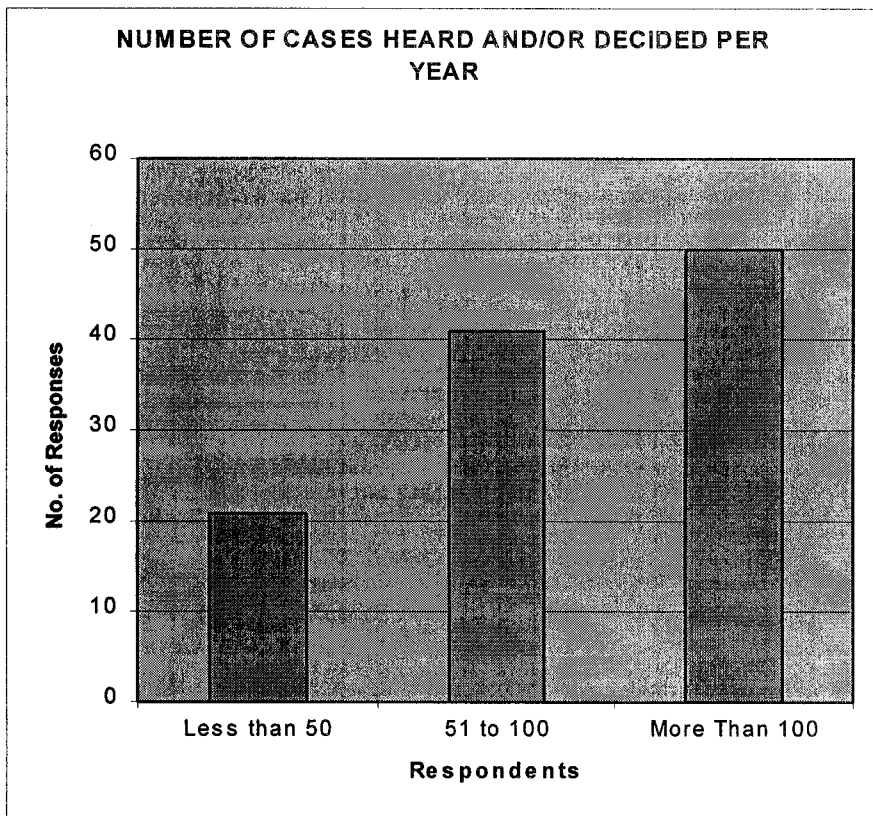
Hearing Case and Preparing Recommended or Proposed Decision. 1.1.  
Motor Carrier Cases (6)

**Hearing Case and Preparing Decision**

1. Initial decision (See NJSA 52:1413-1 et seq.; NJSA 52:14B-10(c), etc. (30)
2. Insurance verification cases (6)
3. Special education (19)

**G) Number of Cases Heard and/or Decided per year:**

Less than 50	21	18.75%
51 to 100	41	36.61%
More Than 100	50	44.64%
Total	112	100 %

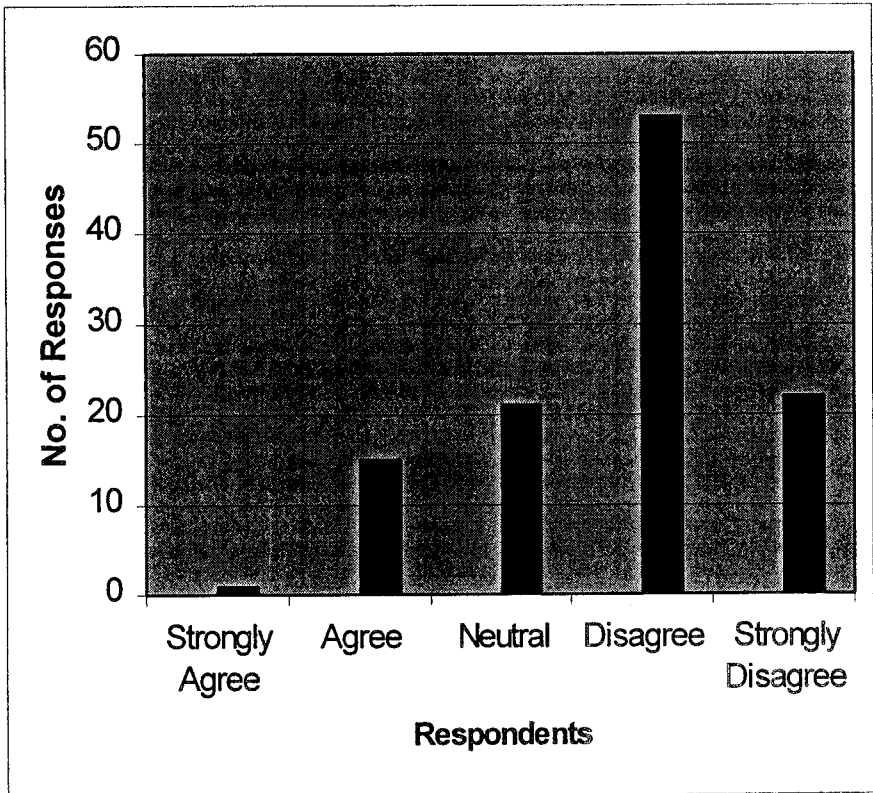


**APPENDIX THREE**

**1. Please rate the following statements: (mark with an X before the right choice for each line)**

**a) Demeanor evidence is the most important factor used to determine a witnesses's credibility.**

Strongly Agree	1	1 %
Agree	15	13 %
Neutral	21	19 %
Disagree	53	47 %
Strongly Disagree	22	20 %
Total	112	100 %



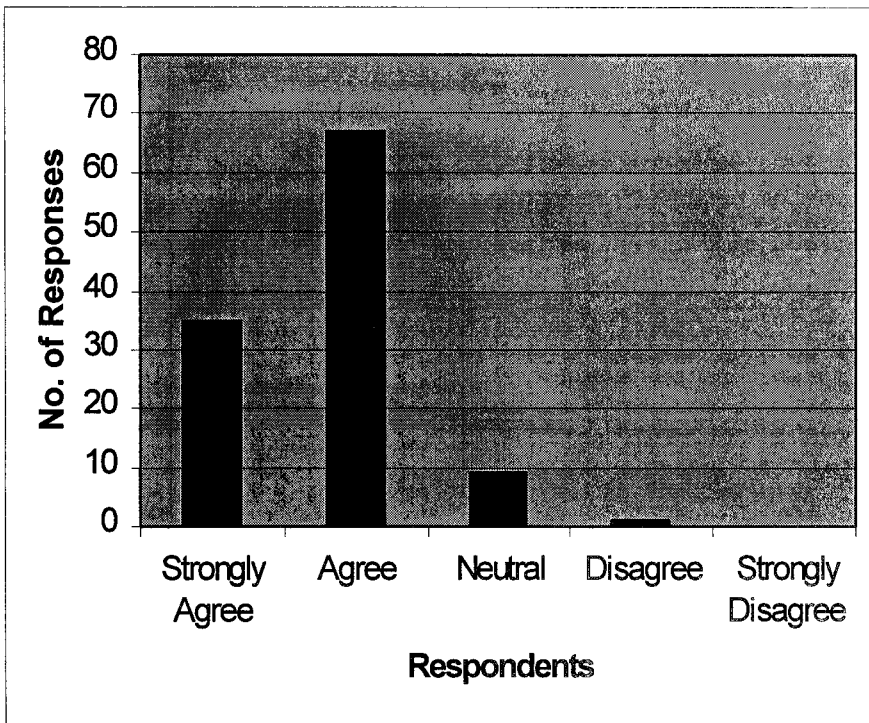
The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being

the numerical value for strongly agree, two for agree, three for neutral, four for disagree, and five for strongly disagree; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question.

**The weighted mean for Question 1A equals 3.71**

**b) Demeanor evidence is one of many factors used to determine a witnesses' credibility.**

Strongly Agree	35	31 %
Agree	67	60 %
Neutral	9	8 %
Disagree	1	1 %
Strongly Disagree	0	0 %
Total	112	100 %

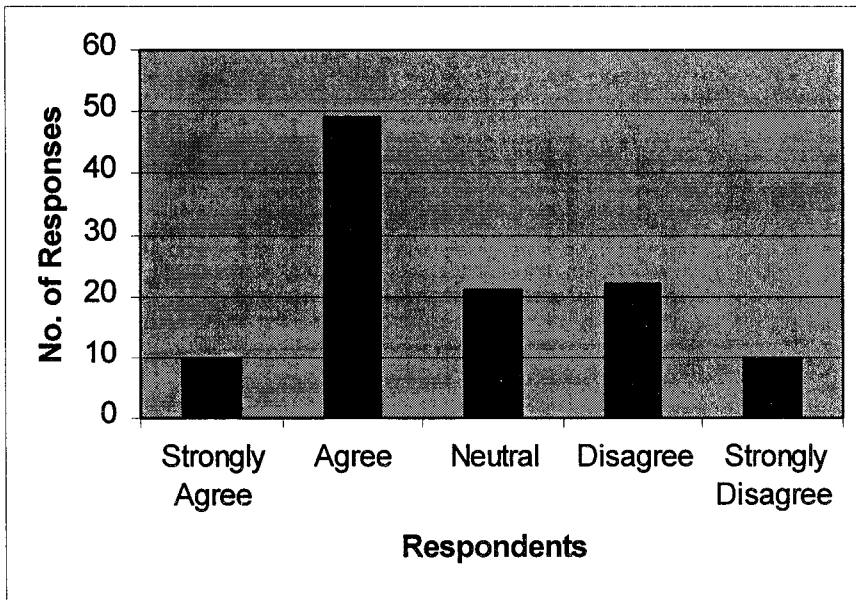


The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for strongly agree, two for agree, three for neutral, four for disagree, and five for strongly disagree; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question.

**The weighted mean for Question 1B equals 1.78**

**c) Demeanor evidence is less important than other credibility factors to determine a witnesses's credibility.**

Strongly Agree	10	9 %
Agree	49	44 %
Neutral	21	19 %
Disagree	22	20 %
Strongly Disagree	10	9 %
Total	112	100 %

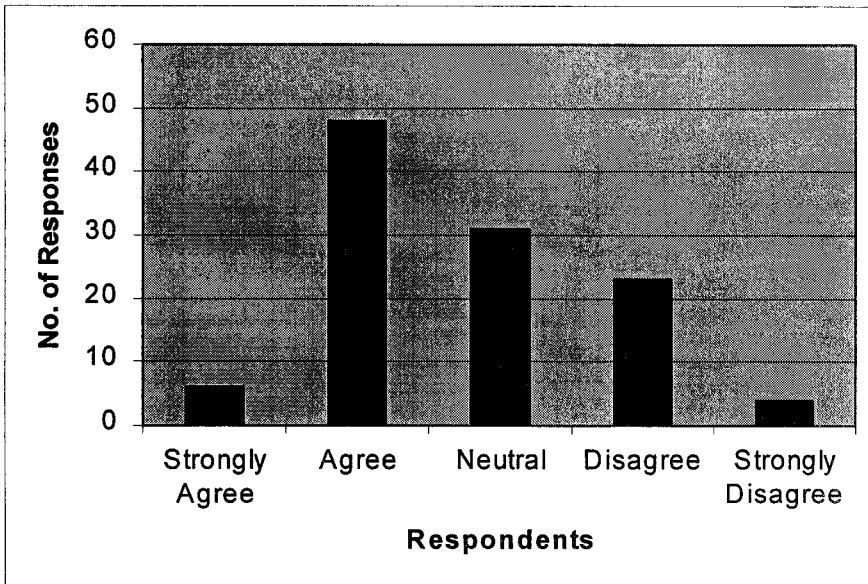


The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for strongly agree, two for agree, three for neutral, four for disagree, and five for strongly disagree; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question.

**The weighted mean for Question 1C equals 2.89**

**d) An experienced ALJ can more effectively determine a witnesses's credibility using demeanor evidence or other credibility factors than can other persons.**

Strongly Agree	6	5 %
Agree	48	43 %
Neutral	31	28 %
Disagree	23	20 %
Strongly Disagree	4	4 %
Total	112	100 %



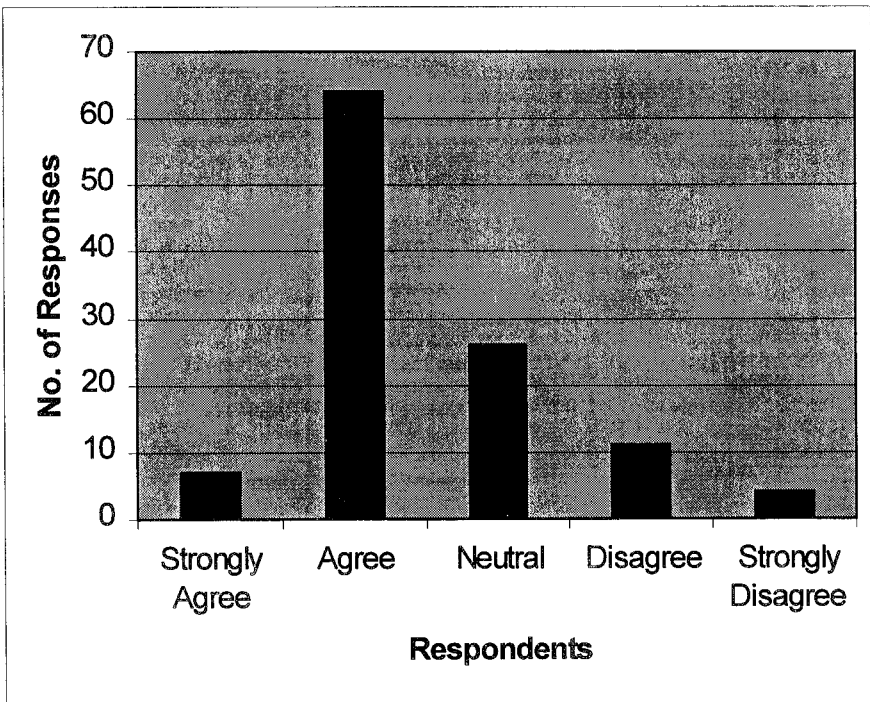


The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for strongly agree, two for agree, three for neutral, four for disagree, and five for strongly disagree; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question.

**The weighted mean for Question 1D equals 2.74**

**e) An experienced ALJ can determine to a reasonable degree of certainty whether a witness is making a false statement using demeanor evidence along with other credibility factors.**

Strongly Agree	7	6 %
Agree	64	57 %
Neutral	26	23 %
Disagree	11	10 %
Strongly Disagree	4	4 %
Total	112	100 %



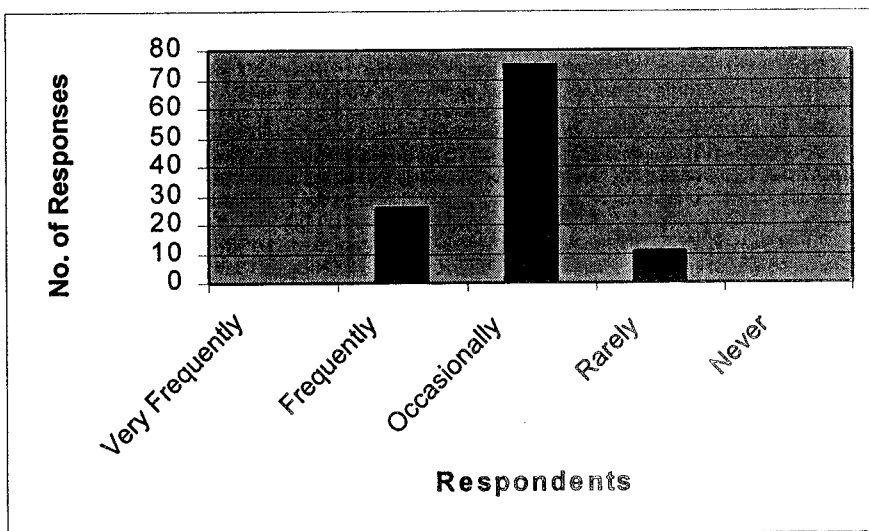
The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for strongly agree, two for agree, three for neutral, four for disagree, and five for strongly disagree; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question.

**The weighted mean for Question 1E equals 2.47**

**2. Please rate the following statements based on your experience as an ALJ: (mark with an X before the right choice for each line)**

a) **A Witness gives false testimony in an administrative hearing.**

Very Frequently	0	0 %
Frequently	26	23 %
Occasionally	75	67 %
Rarely	11	10 %
Never	0	0 %
Total	112	100 %

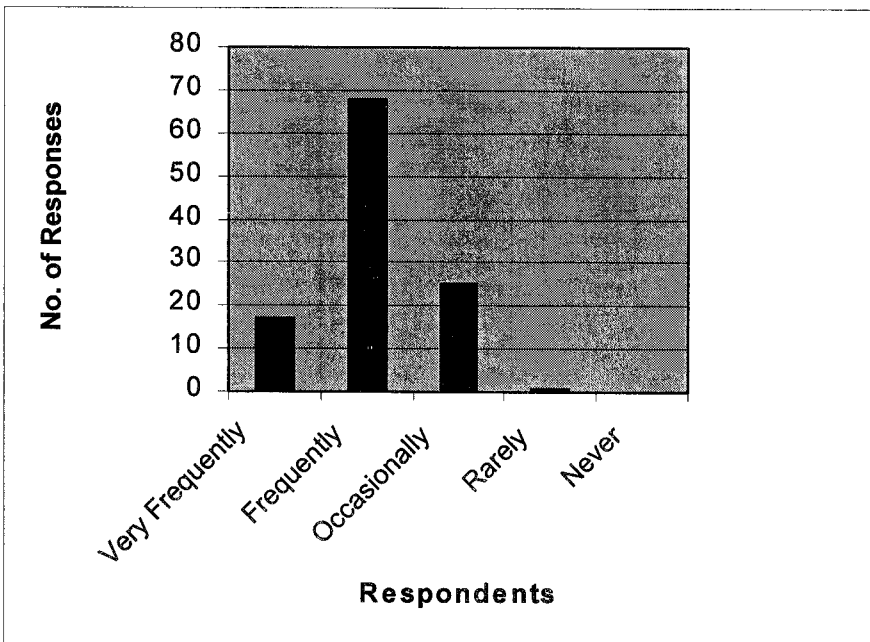


The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very frequently, two for frequently, three for occasionally, four for rarely, and five for never; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question.

**The weighted mean for Question 2 A equals 2.86**

- b) **A Witness presents testimony that conflicts with the testimony of another witness.**

Very Frequently	17	15 %
Frequently	69	62 %
Occasionally	25	22 %
Rarely	1	1 %
Never	0	0 %
Total	112	100 %

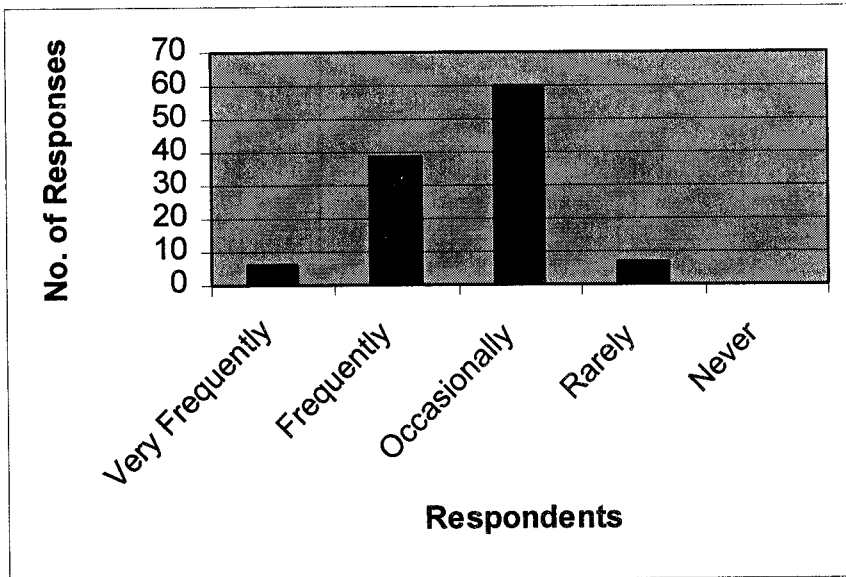


The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very frequently, two for frequently, three for occasionally, four for rarely, and five for never; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question.

### The weighted mean for Question 2 B equals 2.08

- c) **A Witness presents testimony that conflicts with documentary evidence.**

Very Frequently	6	5 %
Frequently	39	35 %
Occasionally	60	54 %
Rarely	7	6 %
Never	0	0 %
Total	112	100 %



The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very frequently, two for frequently, three for occasionally, four for rarely, and five for never; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question.

**The weighted mean for Question 2 C equals 2.60**

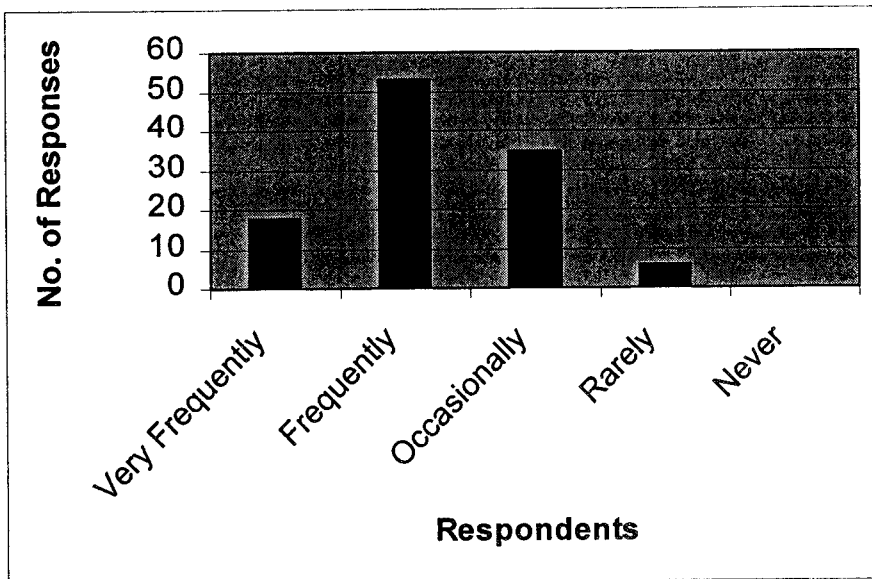
### **Question #2- Other Answers**

1. Response to question 2(a) was- maybe more frequently than I realize, although the person checked occasionally. (#84)
2. 2(a) frequently to occasionally. (Two answers were marked.) (43)
3. 2(b)- Frequently re: minor details, occasionally re: major details (35)
4. 2(b)- frequently answer based on 12 years of regulatory experience. Rarely answer based on current job/hearings. (39)
5. 2(c)- Frequently re: minor details; occasionally re: major details. Two answers were marked. (35)

3. Please rate the following statements based on your experience as an ALJ: (mark with an X before the right choice for each line

a) **An ALJ makes fact findings contrary to the testimony of a witness who has given false testimony.**

Very Frequently	18	16 %
Frequently	53	47 %
Occasionally	35	31 %
Rarely	6	6 %
Never	0	0 %
Total	112	100 %



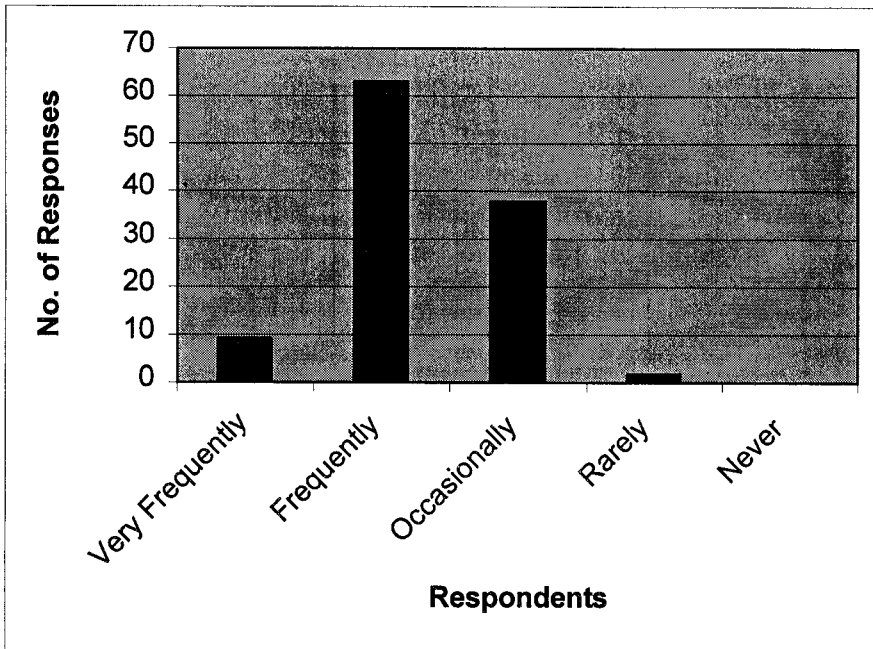
The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very frequently, two for frequently, three for occasionally, four for rarely, and five for never; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a

basis for comparison among responses to a particular question. **The weighted mean for Question 3 A equals 2.25**

**b) An ALJ makes fact findings consistent with a witnesses's testimony when there is conflicting testimony of another witness.**

Very Frequently	9	8 %
Frequently	63	56 %
Occasionally	38	34 %
Rarely	2	2 %
Never	0	0 %
Total	112	100 %

The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being



the numerical value for very frequently, two for frequently, three for occasionally, four for rarely, and five for never; 2) count the number of responses for each numerical value; 3) multiply the number of

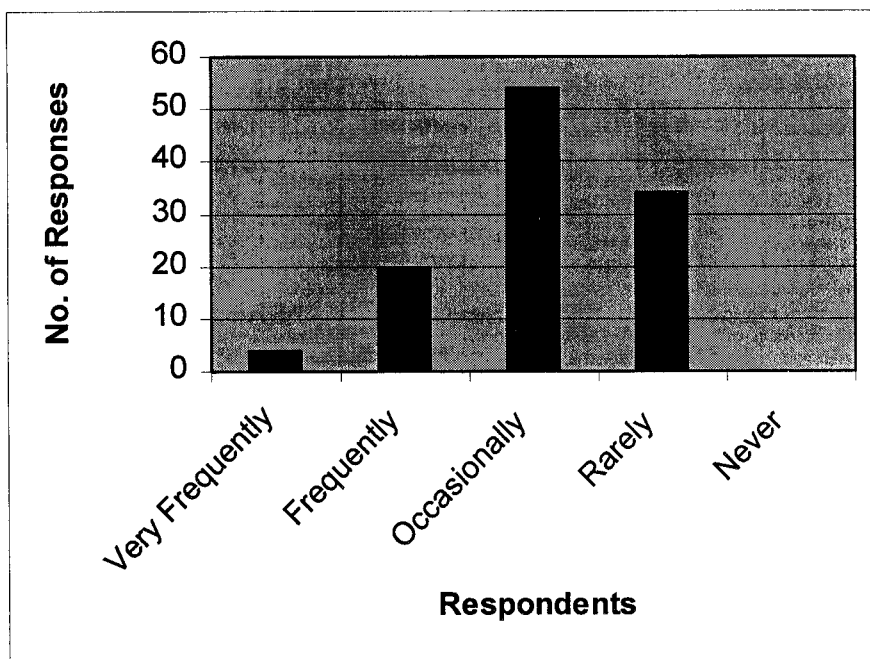
responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question.

**The weighted mean for Question 3 B equals 2.29**

**c) An ALJ makes fact findings consistent with a witnesses's testimony when there is conflicting documentary evidence.**

Very Frequently	4	4 %
Frequently	20	18 %
Occasionally	54	48 %
Rarely	34	30 %
Never	0	0 %
Total	112	100 %

1. The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very frequently, two for frequently, three for occasionally, four for rarely, and five for never; 2) count the number of responses for each numerical value; 3) multiply the number of responses for





each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question.

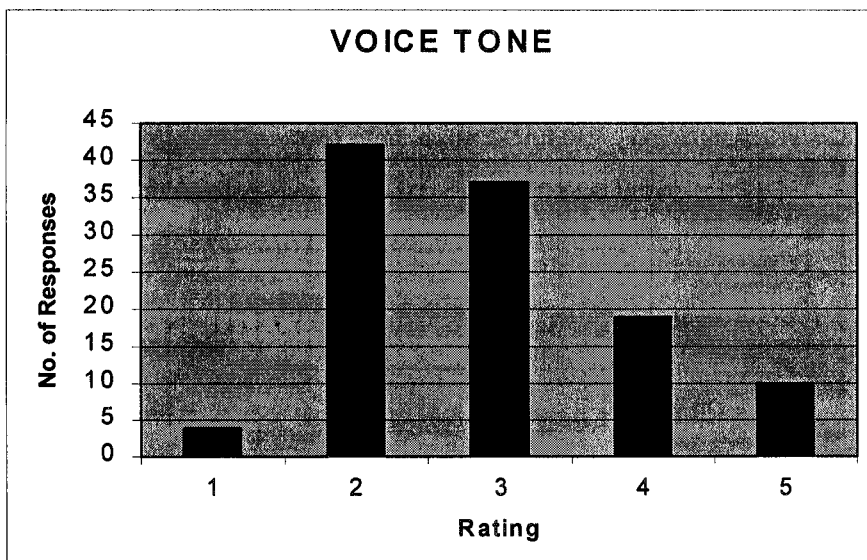
**The weighted mean for Question 3 C equals 3.06**

**4. Please rank the following list of types of demeanor evidence as to importance in making credibility determinations**

Very Important	1
Important	2
Neutral	3
Not important	4
Very Not Important	5

	Rating	No. of Respondents	
<b>A. VOICE TONE</b>			
<i>Very Important</i>	1	4	3.5%
<i>Important</i>	2	42	37.5%
<i>Neutral</i>	3	37	33%
<i>Not important</i>	4	19	17%
<i>Very Not important</i>	5	10	9%
Total		112	100%

The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very important, two for important, three for neutral, four for not important, and five for very not important; 2) count

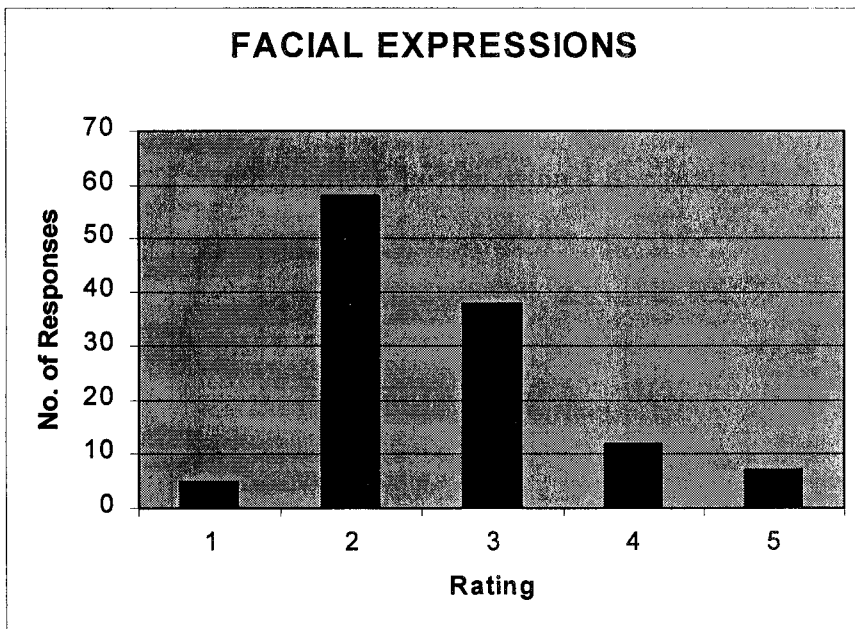


the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 4 A equals 2.90**

## B. FACIAL EXPRESSIONS

	Rating	No. of Respondents	
<i>Very Important</i>	1	5	4 %
<i>Important</i>	2	50	45 %
<i>Neutral</i>	3	38	34 %
<i>Not important</i>	4	12	11 %
<i>Very Not important</i>	5	7	6 %
Total		112	100 %

The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very important, two for important, three for neutral, four for not important, and five for very not important; 2) count



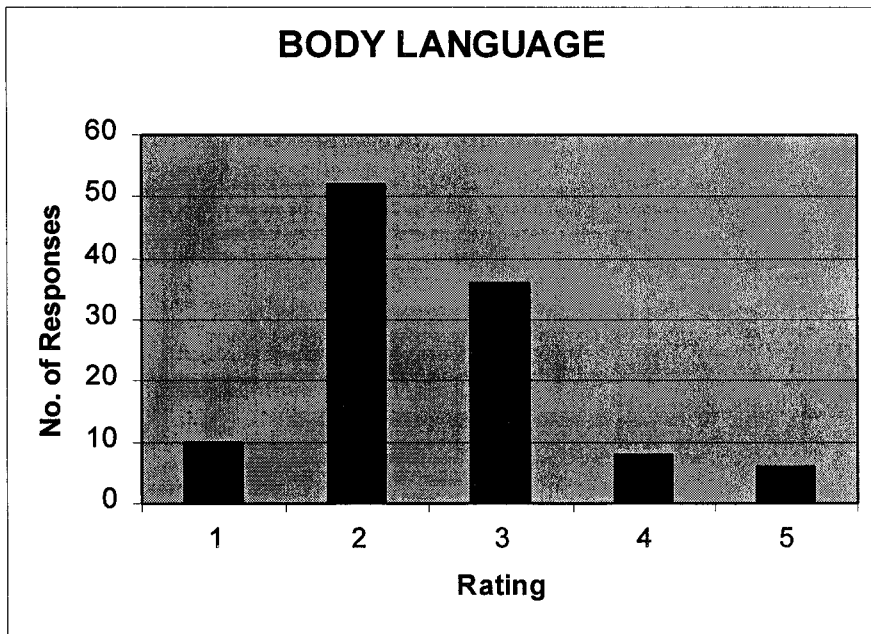
the number of responses for each numerical value; 3) multiply the

number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 4 B equals 2.69**

**C. BODY LANGUAGE**

	Rating	No. of Respondents	
<i>Very Important</i>	1	10	8 %
<i>Important</i>	2	52	47 %
<i>Neutral</i>	3	36	32 %
<i>Not important</i>	4	8	7 %
<i>Very Not important</i>	5	6	5 %
<b>Total</b>		<b>112</b>	<b>100 %</b>

The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being



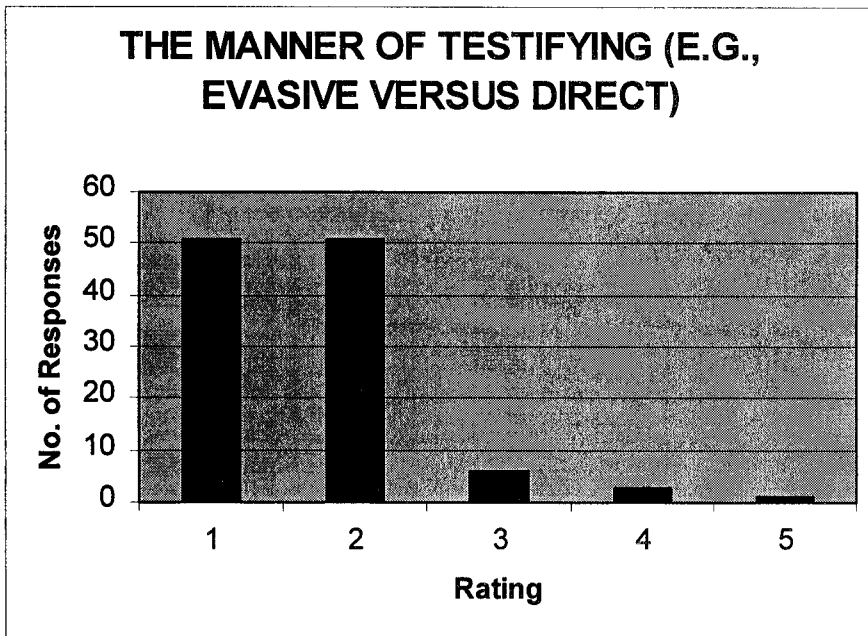
the numerical value for very important, two for important, three for

neutral, four for not important, and five for very not important; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 4 C equals 2.53**

#### D. THE MANNER OF TESTIFYING (E.G., EVASIVE VERSUS DIRECT)

	Rating	No. of Respondents	
<i>Very Important</i>	1	51	45.5 %
<i>Important</i>	2	51	45.5 %
<i>Neutral</i>	3	6	5 %
<i>Not important</i>	4	3	3 %
<i>Very Not important</i>	5	1	1 %
Total		112	100 %

The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very important, two for important, three for

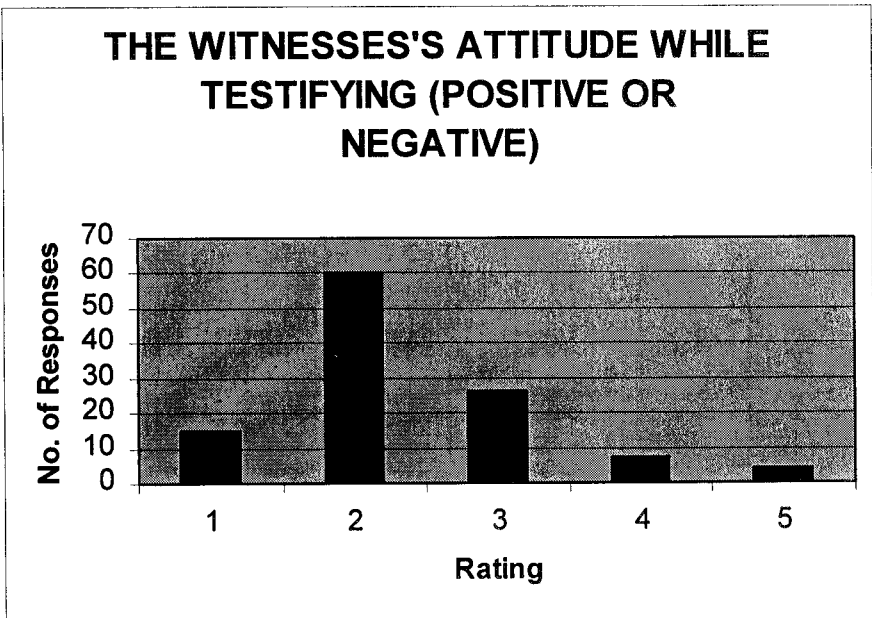


neutral, four for not important, and five for very not important; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 4 D equals 1.67**

**E. THE WITNESSES'S ATTITUDE WHILE TESTIFYING (POSITIVE OR NEGATIVE)**

	Rating	No. of Respondents	
<i>Very Important</i>	1	15	13 %
<i>Important</i>	2	60	54 %
<i>Neutral</i>	3	26	23 %
<i>Not important</i>	4	7	6 %
<i>Very Not important</i>	5	4	4 %
<b>Total</b>		<b>112</b>	<b>100 %</b>

The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very important, two for important, three for



neutral, four for not important, and five for very not important; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 4 E equals 2.33**

#### **Question #4- Combination of Factors**

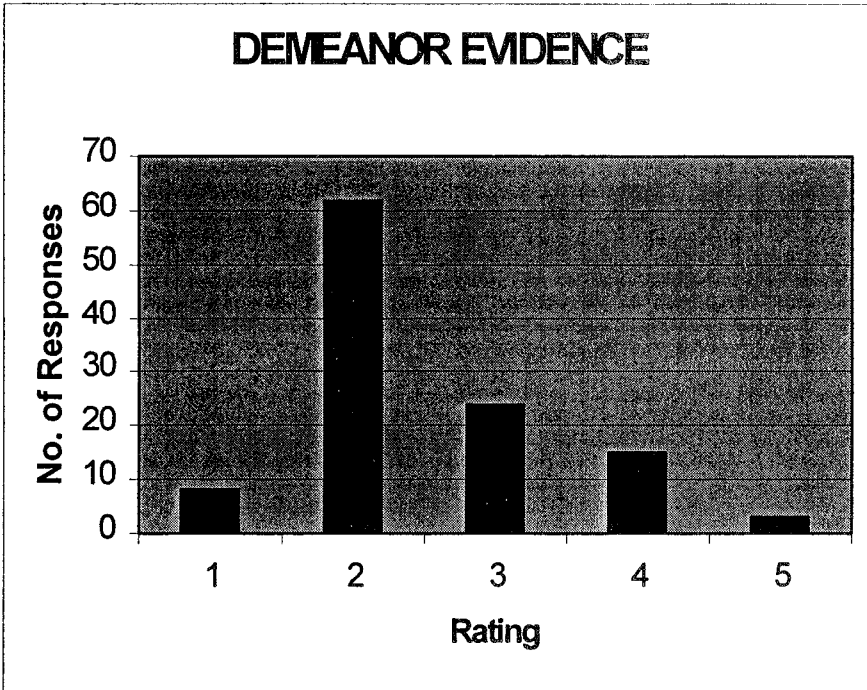
1. Mostly manner of testifying and witness's attitude while testifying. (71)
2. Manner, body language, and facial expressions. (72)
3. Gave combination of factors a rating of 3. (73)
4. Phrasing, eye contact, body language. (78)
5. Attitude, manner of testifying, facial expressions. (81)
6. Plausibility, consistency, detail, explanations, psychology. (83)
7. Truth and proof differ (36)
8. Manner, attitude and demeanor, consistency with other material in the record, other witnesses are all and part of the mix weighing differently in each situation (37)
9. Physical demeanor is very deceptive and of little value. Evasiveness, taking into account cultural differences can be valuable. The other factors listed are subject to too much bias of a judge and to other inconsequential issues. (39)
10. All of the factors should be jointly considered (43)
11. Ability to tell a consistent story when cross-examined; plausibility (45)
12. Manner of attitude, but reasonableness in light of all the evidence and human experiences is most important. (46)
13. Body language, facial expression, and voice tone are the most important, but can be deceiving. (57)
14. Voice tone, facial expressions, and body language (60)
15. It is the whole package and articulating its components in isolation is very different (61)
16. Lay witnesses (factors in BAJI Civil), Experts (factors in BAJI civil) (64)
17. First 3 (86)

18. Consistency with documents plus those with 2 above (manner of testifying and witness's attitude (87)
19. All are important (5, 8, 24, 27, 30, 40, 58, 82, 92, 95, 98)
20. Responsiveness to all questions, consistency of answers and reasonableness of answers to the facts involved (102)
21. Voice tone, manner of testifying (103)
22. Facial expressions, answers, tone of voice (5)
23. Voice, body language, attitude (13)
24. All of the above plus eyes, eye contact, whether nervous (15)
25. Evasive with bad attitude (17)
26. Selective memory (21)
27. Volunteering info., selective recall, evasion (23)
28. Manner of testifying, attitude, improbabilities, inconsistencies, body language (25)
29. These factors may be used positively or negatively (e.g. exaggerated) vis a vis credibility. (26)
30. Voice intonations, manner of testifying (29)
31. Preparedness of the witness in his explanation of his actions; attentiveness to the process; willingness to explain discrepancies; degree of nervousness or uncomfortableness with the proceeding. (104)
32. Facial expressions and body language are often expressed in a witness's manner and attitude. The individual must be observed
33. Attitude, Manner, body language (111)
34. Manner, Voice, and overall body (112)

5. Please rank the following list of factors as to how important these factors have been in your experience in making credibility determinations.

A. DEMEANOR EVIDENCE

	Rating	No. of Respondents	
<i>Very Important</i>	1	8	7 %
<i>Important</i>	2	62	55 %
<i>Neutral</i>	3	24	22 %
<i>Not important</i>	4	15	13 %
<i>Very Not Important</i>	5	3	3 %
Total		112	100 %



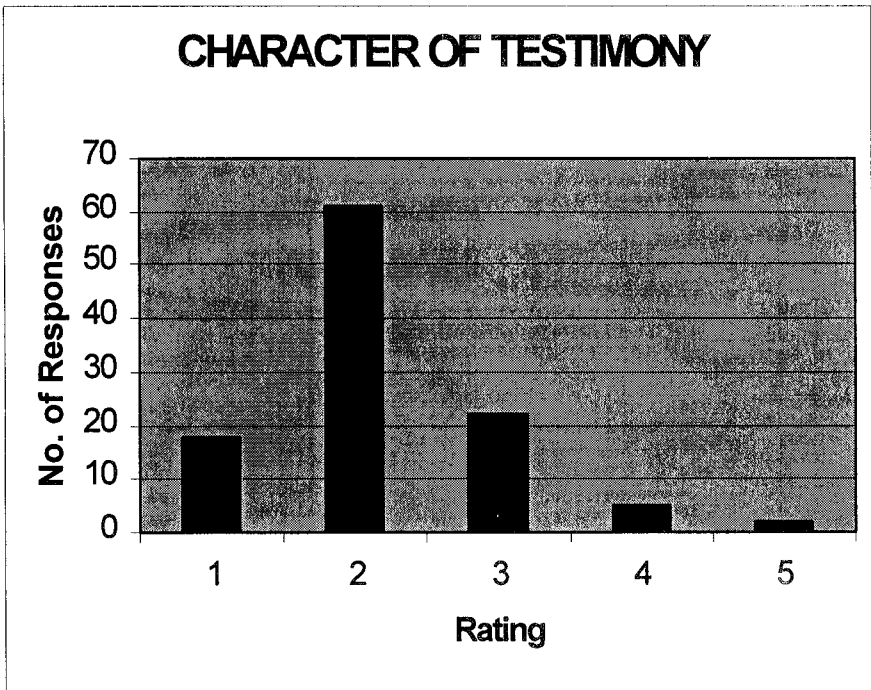
The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very important, two for important, three for neutral, four for not important, and five for very not important; 2) count the number of responses for each numerical value; 3) multiply the



number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 5 A equals 2.49**

**B. CHARACTER OF TESTIMONY**

	Rating	No. of Respondents	
<i>Very Important</i>	1	18	16 %
<i>Important</i>	2	61	57 %
<i>Neutral</i>	3	22	20 %
<i>Not important</i>	4	5	5 %
<i>Very Not important</i>	5	2	2 %
<b>Total</b>		<b>108</b>	<b>100 %</b>

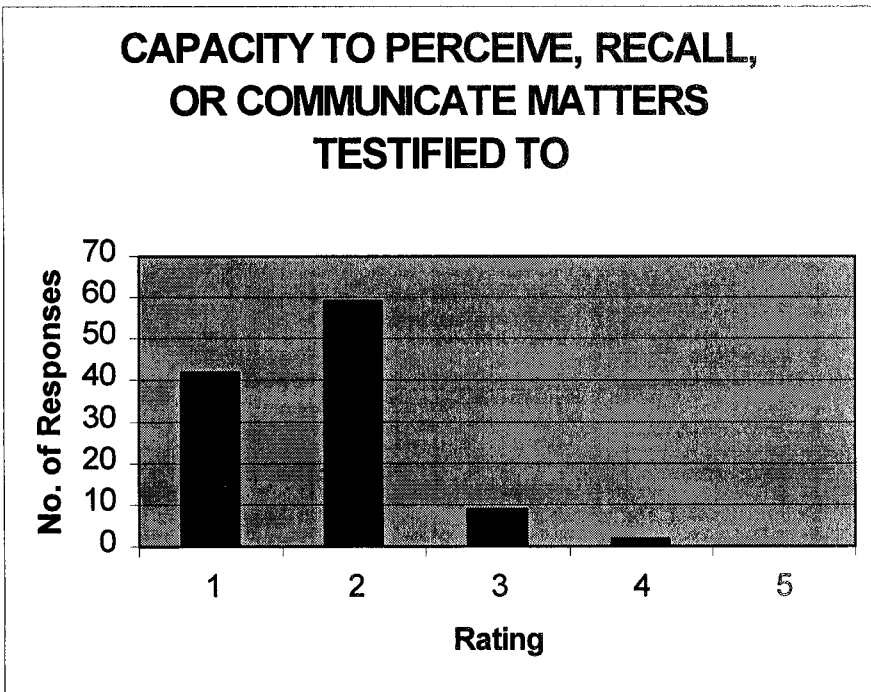


The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very important, two for important, three for

neutral, four for not important, and five for very not important; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 5 B equals 2.18**

**C. CAPACITY TO PERCEIVE, RECALL, OR COMMUNICATE MATTERS TESTIFIED TO**

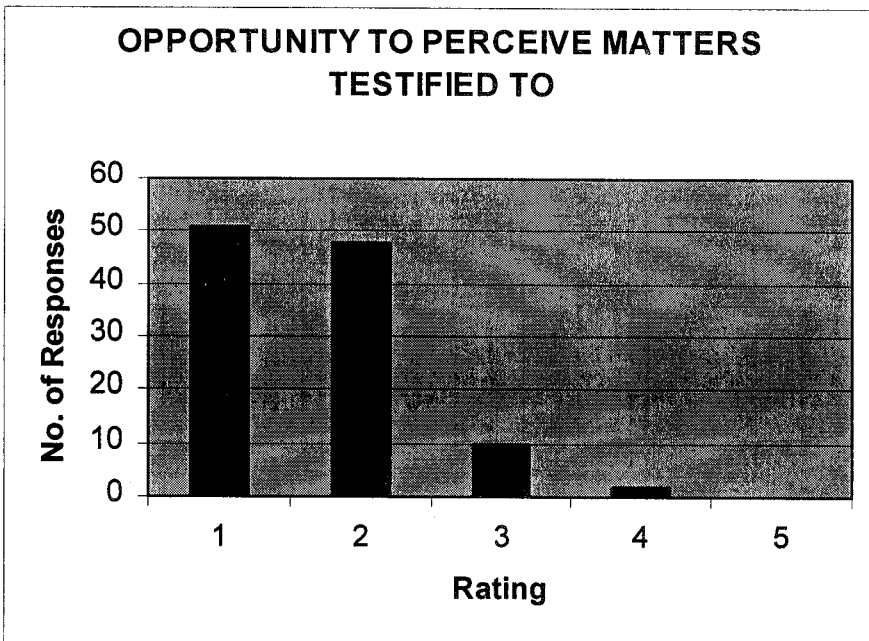
	Rating	No. of Respondents	
Very Important	1	42	37.5 %
Important	2	59	52.5 %
Neutral	3	9	8 %
Not important	4	2	2 %
Very Not important	5	0	0 %
Total		112	100 %



The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very important, two for important, three for neutral, four for not important, and five for very not important; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 5 C equals 1.74**

**D. OPPORTUNITY TO PERCEIVE MATTERS TESTIFIED TO**

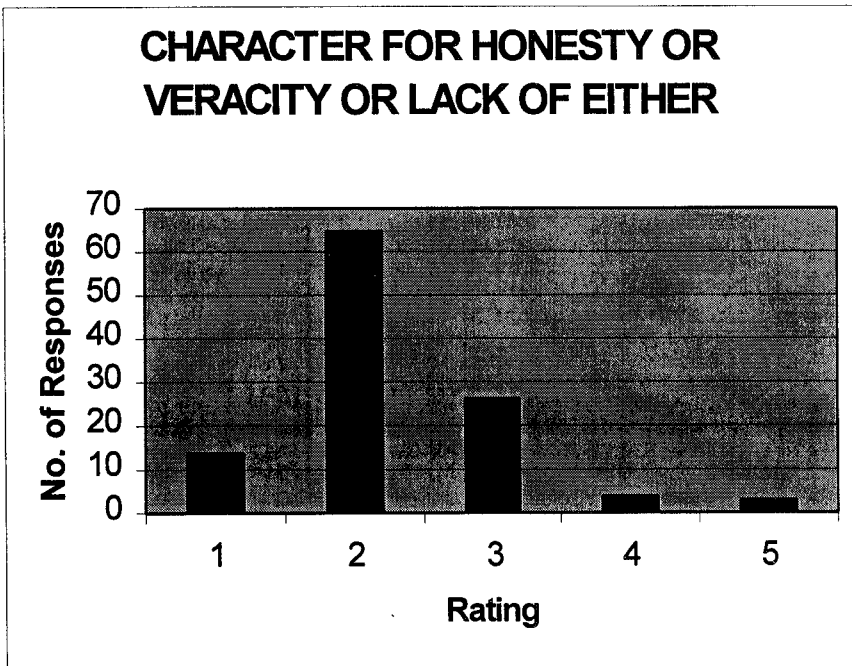
	Rating	No. of Respondents	
<i>Very Important</i>	1	51	46 %
<i>Important</i>	2	48	43 %
<i>Neutral</i>	3	10	9 %
<i>Not important</i>	4	2	2 %
<i>Very Not important</i>	5	0	0 %
Total		111	100 %



The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very important, two for important, three for neutral, four for not important, and five for very not important; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 5 D equals 1.66**

**E. CHARACTER FOR HONESTY OR VERACITY OR LACK OF EITHER**

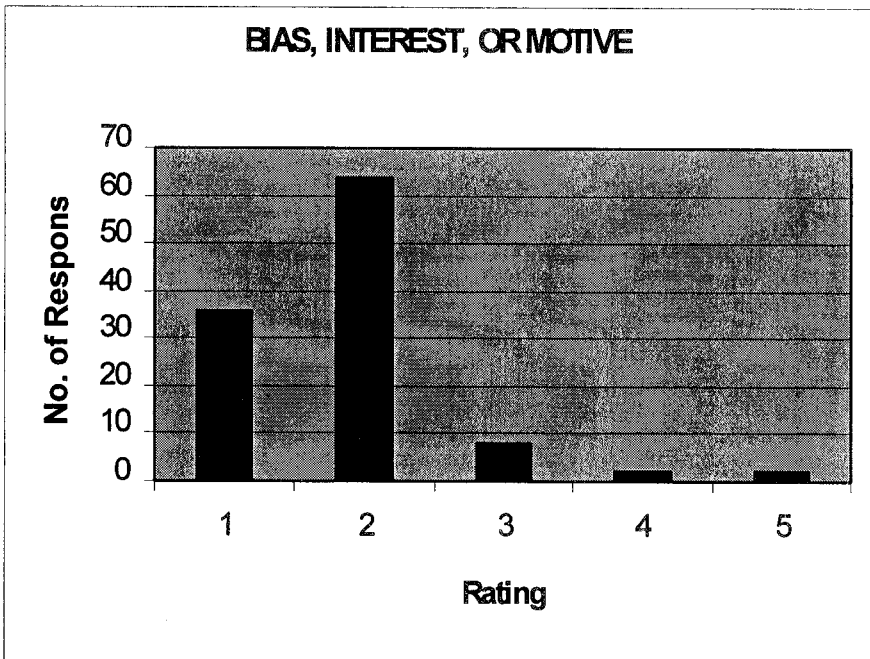
	Rating	No. of Respondents	
<i>Very Important</i>	1	14	12.5 %
<i>Important</i>	2	65	58 %
<i>Neutral</i>	3	26	23 %
<i>Not important</i>	4	4	3.5 %
<i>Very Not important</i>	5	3	3 %
Total		112	100 %



The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very important, two for important, three for neutral, four for not important, and five for very not important; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 5 E equals 2.25**

**F. BIAS, INTEREST, OR MOTIVE**

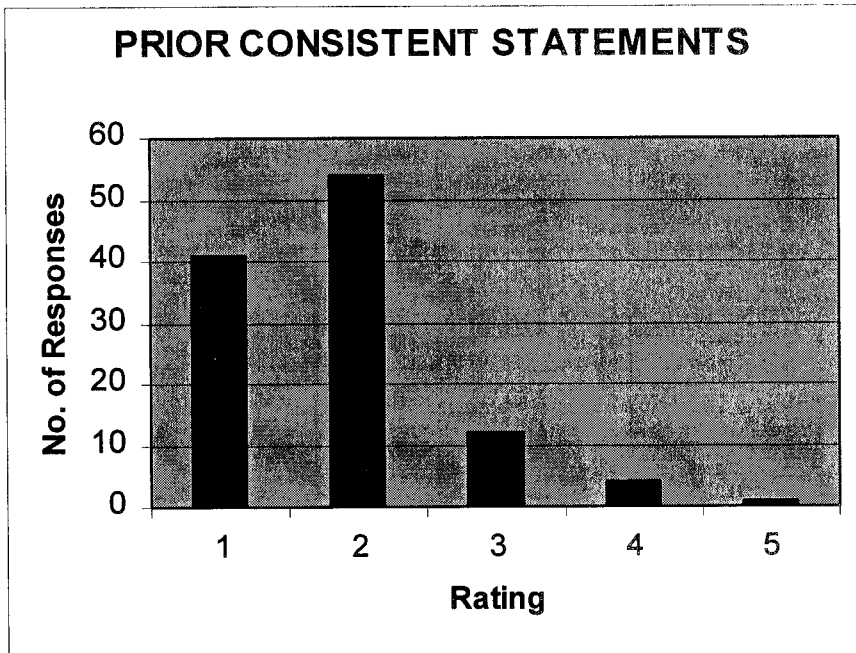
	Rating	No. of Respondents	
<i>Very Important</i>	1	36	32 %
<i>Important</i>	2	64	57 %
<i>Neutral</i>	3	8	7 %
<i>Not important</i>	4	2	2 %
<i>Very Not important</i>	5	2	2 %
Total		112	100 %



The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very important, two for important, three for neutral, four for not important, and five for very not important; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 5 F equals 1.83**

### G. PRIOR CONSISTENT STATEMENTS

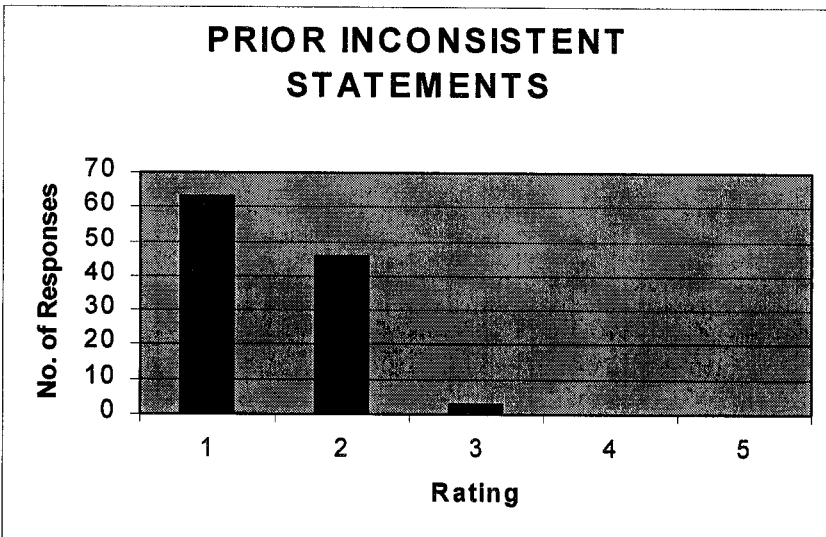
	Rating	No. of Respondents	
<i>Very Important</i>	1	41	37 %
<i>Important</i>	2	54	48 %
<i>Neutral</i>	3	12	11 %
<i>Not important</i>	4	4	3 %
<i>Very Not important</i>	5	1	1 %
Total		112	100 %



The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very important, two for important, three for neutral, four for not important, and five for very not important; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 5 G equals 1.83**

#### H. PRIOR INCONSISTENT STATEMENTS

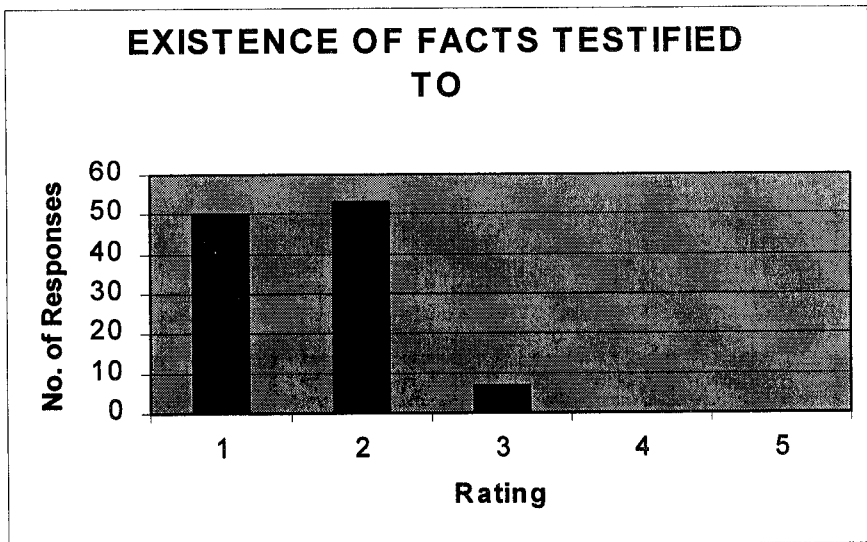
	Rating	No. of Respondents	
<i>Very Important</i>	1	63	56 %
<i>Important</i>	2	46	41 %
<i>Neutral</i>	3	3	3 %
<i>Not important</i>	4	0	0 %
<i>Very Not important</i>	5	0	0 %
Total		112	100 %



The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very important, two for important, three for neutral, four for not important, and five for very not important; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 5 H equals 1.46**

### I. EXISTENCE OF FACTS TESTIFIED TO

	Rating	No. of Respondents	
<i>Very Important</i>	1	50	45 %
<i>Important</i>	2	53	48 %
<i>Neutral</i>	3	7	7 %
<i>Not important</i>	4	0	0 %
<i>Very Not important</i>	5	0	0 %
Total		110	100 %



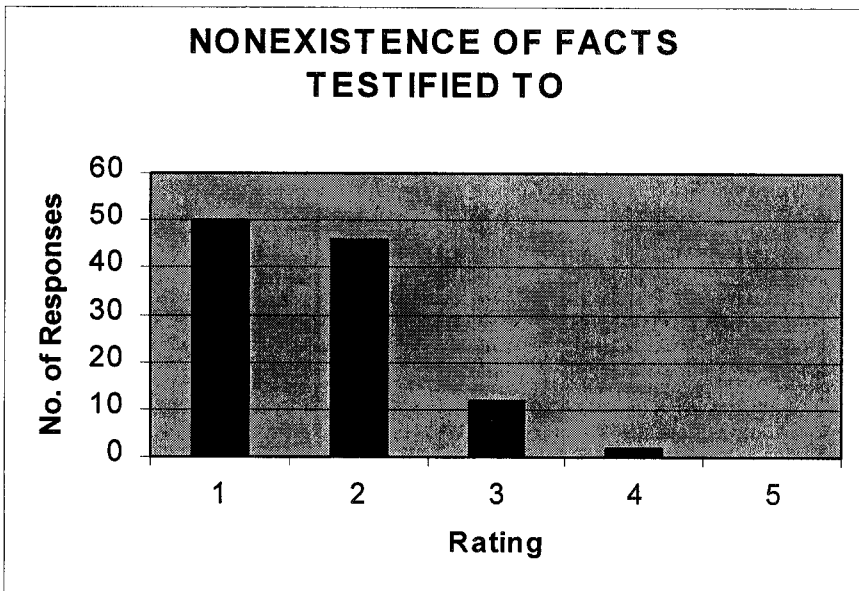
The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being



the numerical value for very important, two for important, three for neutral, four for not important, and five for very not important; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 5 I equals 1.60**

#### J. NONEXISTENCE OF FACTS TESTIFIED TO

	Rating	No. of Respondents	
<i>Very Important</i>	1	50	46 %
<i>Important</i>	2	46	41 %
<i>Neutral</i>	3	12	11 %
<i>Not important</i>	4	2	2 %
<i>Very Not important</i>	5	0	0 %
Total		110	100 %

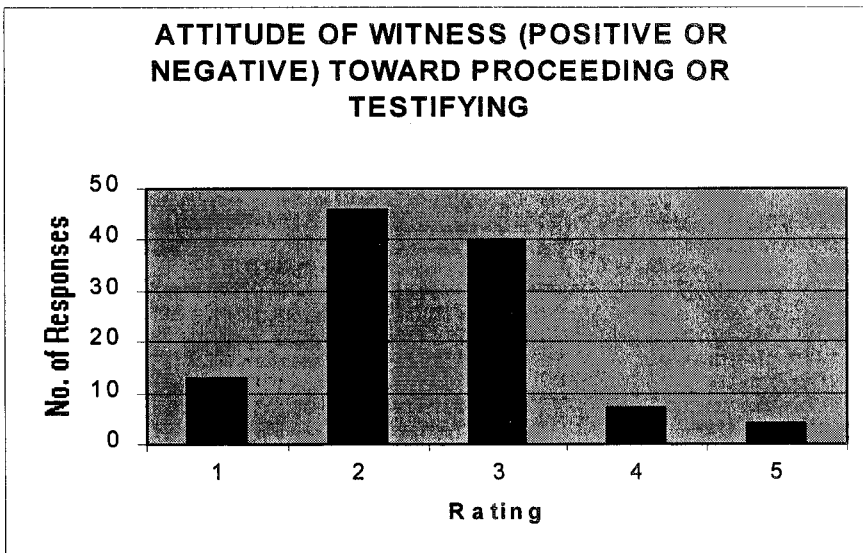


The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being

the numerical value for very important, two for important, three for neutral, four for not important, and five for very not important; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 5 J equals 1.69**

### K. ATTITUDE OF WITNESS (POSITIVE OR NEGATIVE) TOWARD PROCEEDING OR TESTIFYING

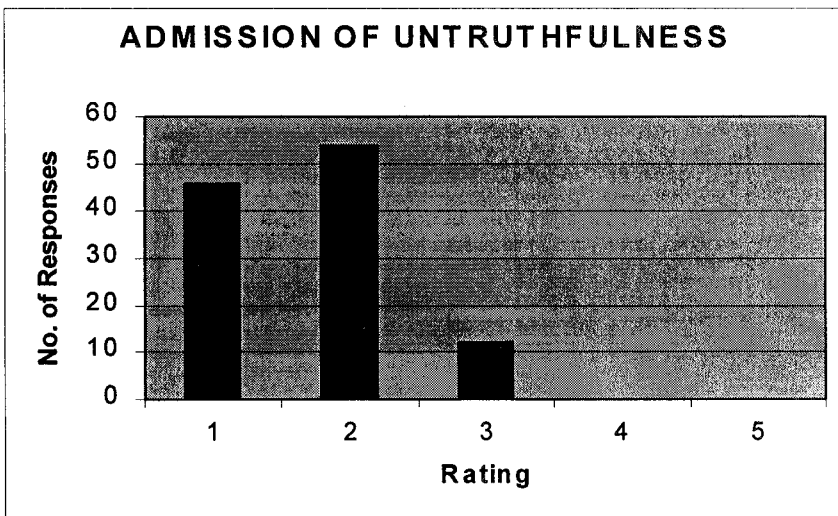
	Rating	No. of Respondents	
<i>Very Important</i>	1	13	12 %
<i>Important</i>	2	46	42 %
<i>Neutral</i>	3	40	36 %
<i>Not important</i>	4	7	6 %
<i>Very Not important</i>	5	4	4 %
Total		110	100%



The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very important, two for important, three for neutral, four for not important, and five for very not important; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 5 K equals 2.48**

**L. ADMISSION OF UNTRUTHFULNESS**

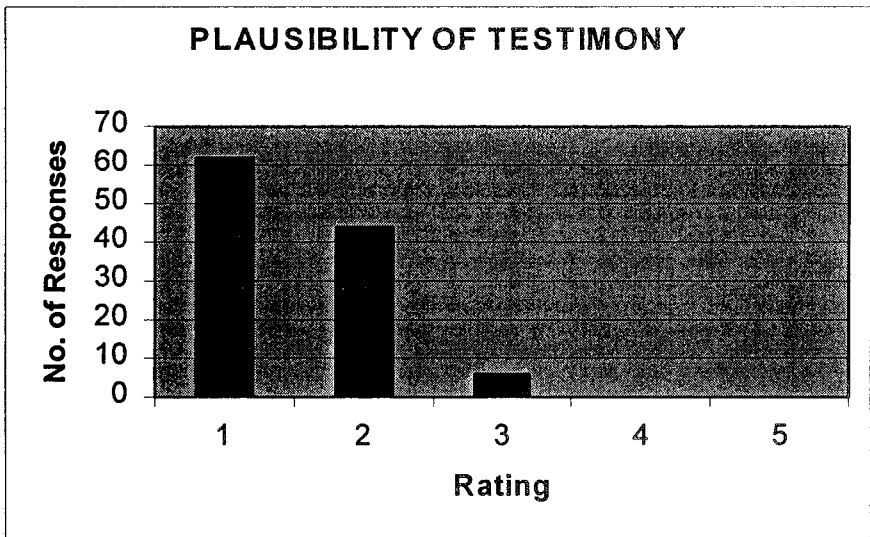
	Rating	No. of Respondents	
<i>Very Important</i>	1	46	41 %
<i>Important</i>	2	54	48 %
<i>Neutral</i>	3	12	11 %
<i>Not important</i>	4	0	0 %
<i>Very Not important</i>	5	0	0 %
Total		112	100 %



The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very important, two for important, three for neutral, four for not important, and five for very not important; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 5 L equals 1.69**

### M. PLAUSIBILITY OF TESTIMONY

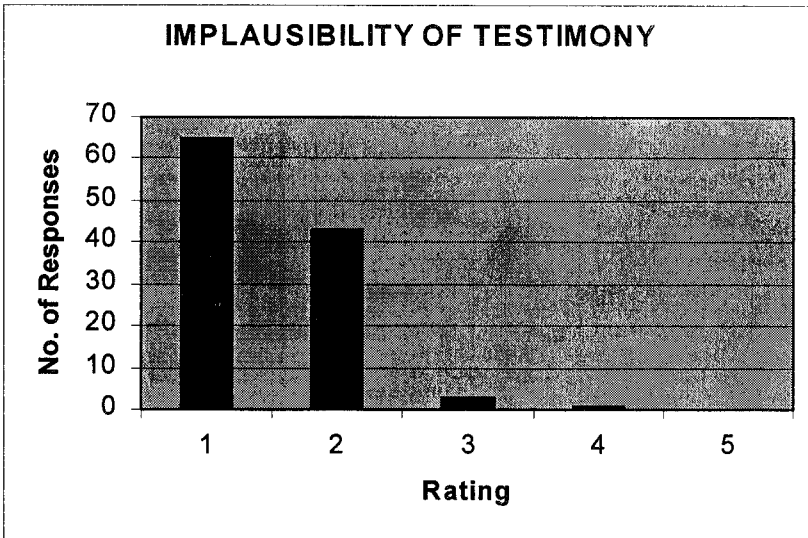
	Rating	No. of Respondents	
<i>Very Important</i>	1	62	55 %
<i>Important</i>	2	44	39 %
<i>Neutral</i>	3	6	6 %
<i>Not important</i>	4	0	0 %
<i>Very Not important</i>	5	0	0 %
Total		112	100 %



The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very important, two for important, three for neutral, four for not important, and five for very not important; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 5 M equals 1.50**

**N. IMPLAUSIBILITY OF TESTIMONY**

<i>Very Important</i>	1	65	58%
<i>Important</i>	2	43	38%
<i>Neutral</i>	3	3	3%
<i>Not important</i>	4	1	1%
<i>Very Not important</i>	5	0	0%
Total		112	100%



The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very important, two for important, three for neutral, four for not important, and five for very not important; 2) count

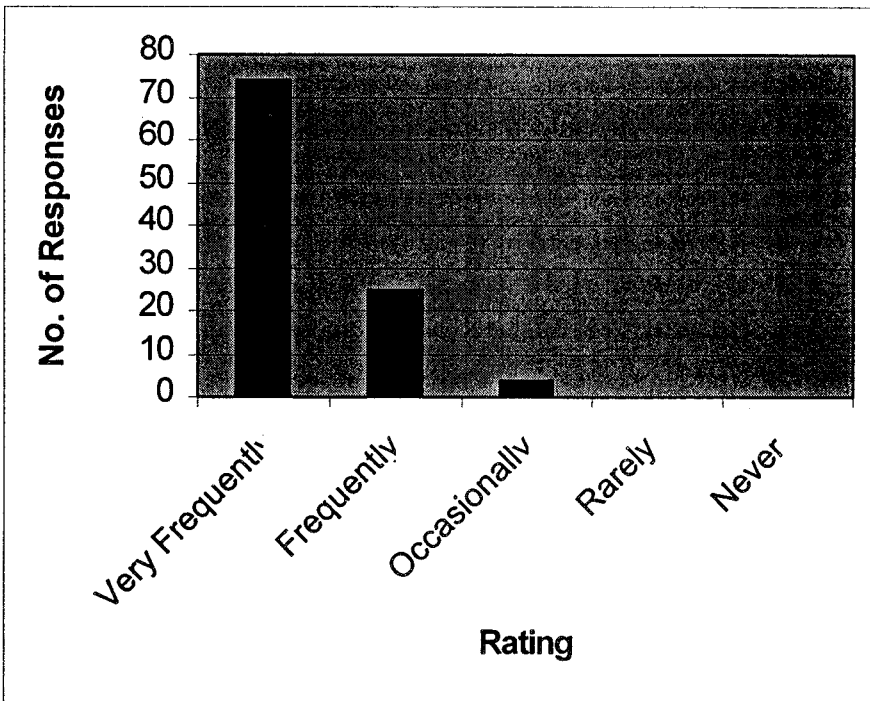
the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 5N equals 1.46.**

## APPENDIX FOUR

6. Please rate the following statements based on your experience as an ALJ: (mark with an X before the right choice for each line)

a) The agency accepts (or adopts) my fact findings when it decides (or reviews) my decision (or proposed decision).

Very Frequently	74	72 %
Frequently	25	24 %
Occasionally	4	4 %
Rarely	0	0 %
Never	0	0 %
Total	103	100%



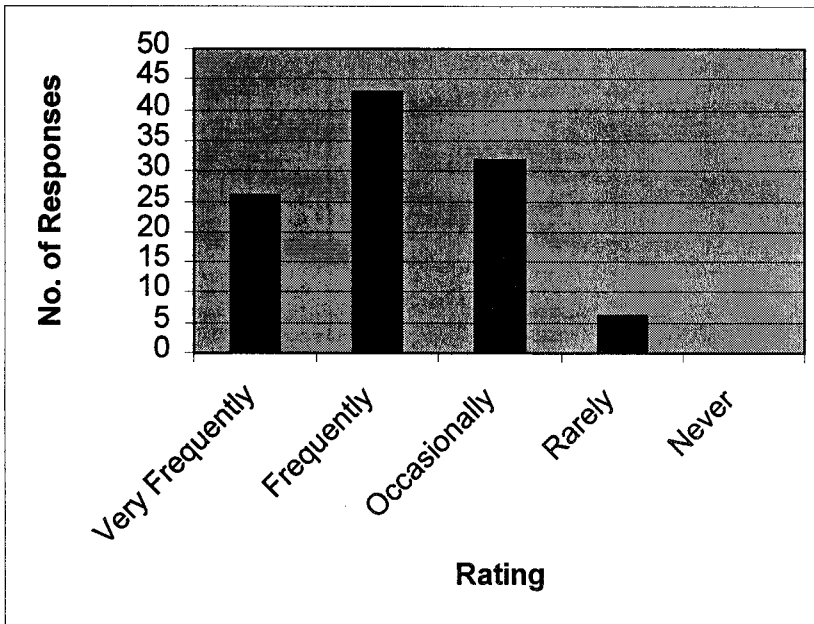
The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being

the numerical value for very frequently, two for frequently, three for occasionally, four for rarely, and five for never; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question.

**The weighted mean for Question 6 A equals 1.32**

**b) When the agency accepts (or adopts) my fact findings I have made credibility determinations based on conflicting witnesses's testimony.**

Very Frequently	26	24 %
Frequently	43	40 %
Occasionally	32	30 %
Rarely	6	6 %
Never	0	0 %
Total	107	100 %



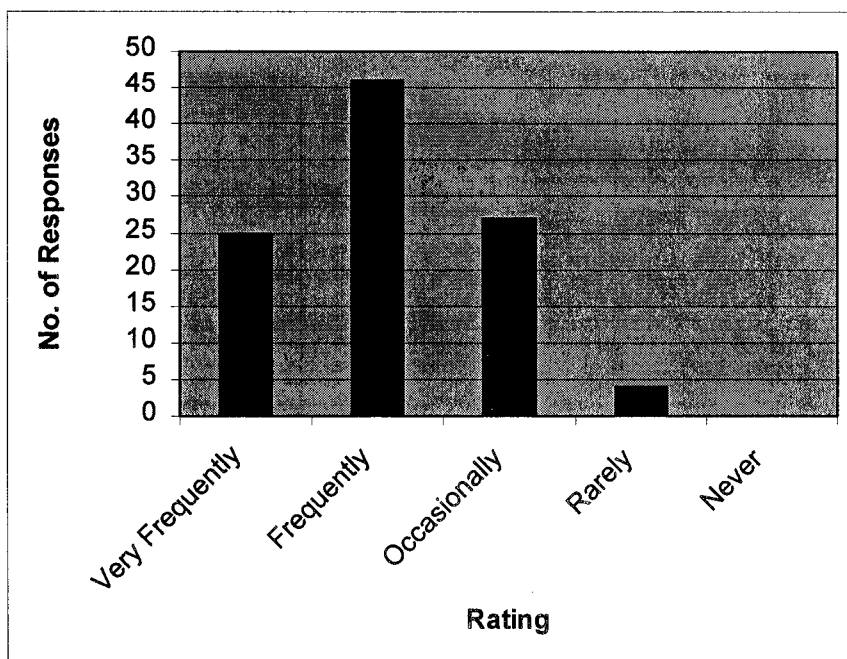


The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very frequently, two for frequently, three for occasionally, four for rarely, and five for never; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question.

### The weighted mean for Question 6 B equals 2.16

**c) When the agency accepts (adopts) my fact findings I have based those findings on uncontradicted testimonial or documentary evidence.**

Very Frequently	25	24.5 %
Frequently	46	45 %
Occasionally	27	26.5 %
Rarely	4	4 %
Never	0	0 %
Total	102	100 %



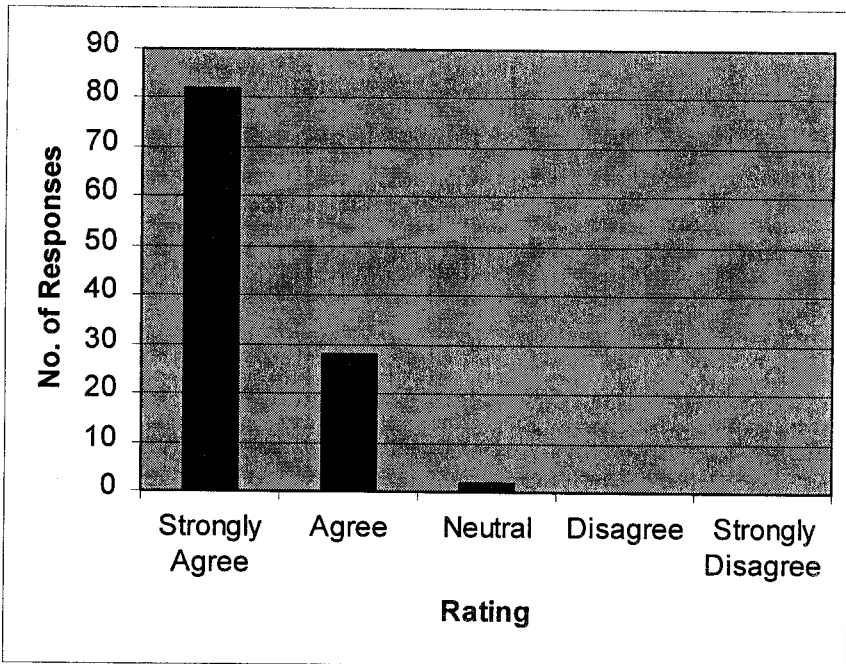
The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for very frequently, two for frequently, three for occasionally, four for rarely, and five for never; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question.

**The weighted mean for Question 6 C equals 2.09**

**7. Please rate the following statements based on your experience as an ALJ: (mark with an X before the right choice for each line)**

**a) An experienced ALJ hearing a case is in a better position to make credibility determinations than the agency that reviews the ALJ's decision and a hearing a transcript.**

Strongly Agree	82	73 %
Agree	28	25 %
Neutral	2	2 %
Disagree	0	0 %
Strongly Disagree	0	0 %
Total	112	100 %

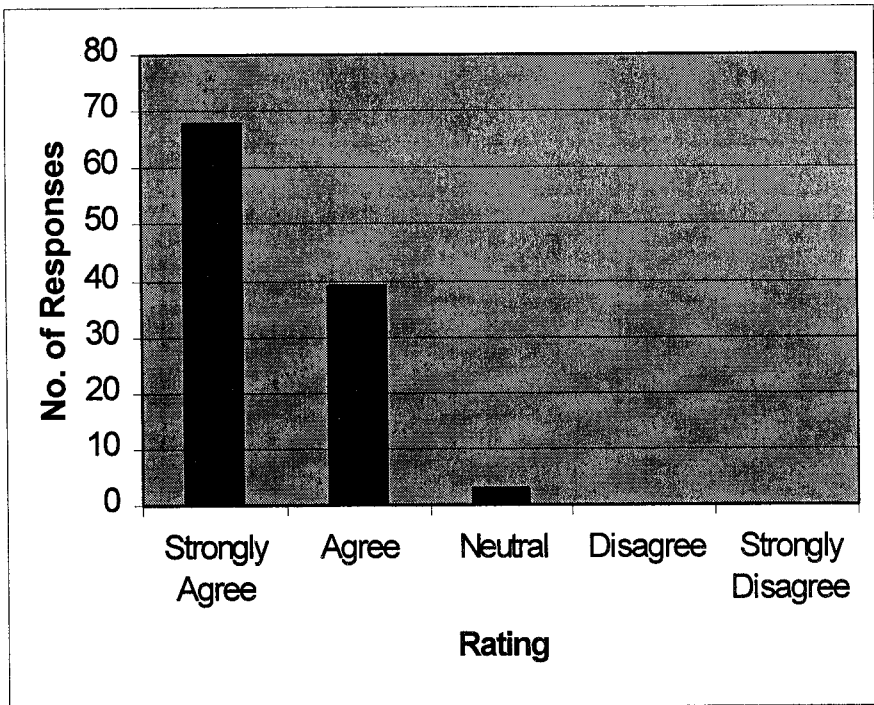


The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for strongly agree, two for agree, three for neutral, four for disagree, and five for strongly disagree; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question.

**The weighted mean for Question 7 A equals 1.28**

**b) An experienced ALJ hearing a case is in a better position to weigh conflicting evidence than the agency that reviews an ALJ's decision and a hearing transcript.**

Strongly Agree	68	62 %
Agree	39	35 %
Neutral	3	3 %
Disagree	0	0 %
Strongly Disagree	0	0 %
Total	110	100 %



The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for strongly agree, two for agree, three for neutral, four for disagree, and five for strongly disagree; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a

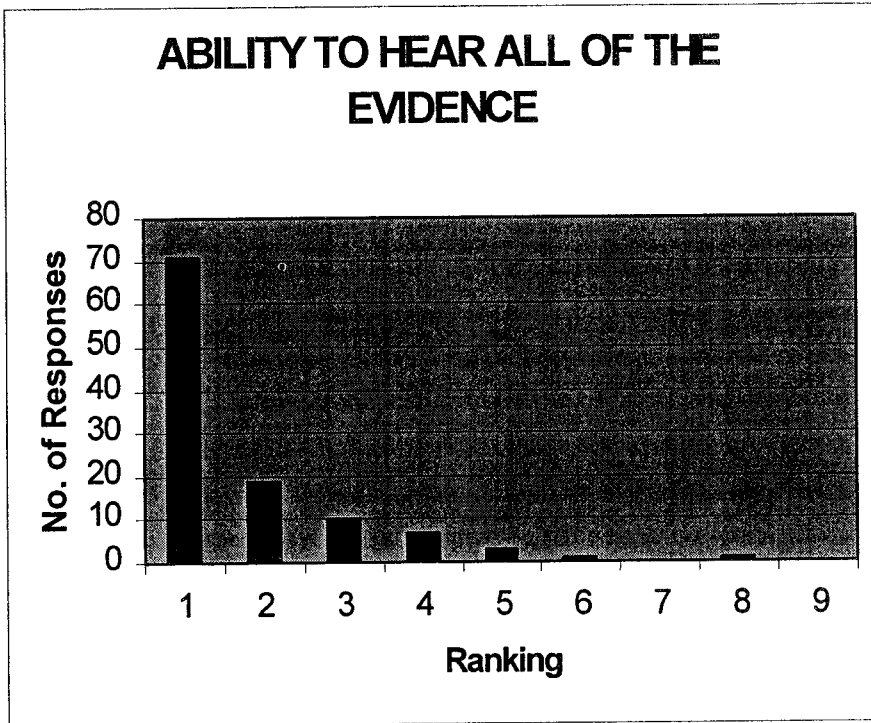
basis for comparison among responses to a particular question.

**The weighted mean for Question 7 B equals 1.35**

8. Please rank the following factors as to their importance to an experienced ALJ in making accurate fact findings (Rank one (1) as highest importance, and nine (9) as lowest importance):

A. ABILITY TO HEAR ALL OF THE EVIDENCE

Ranking	No. of Responses	
1	71	64 %
2	19	17 %
3	10	9 %
4	7	6 %
5	3	3 %
6	1	1 %
7	0	0 %
8	1	1 %
9	0	0 %
Total	112	100 %

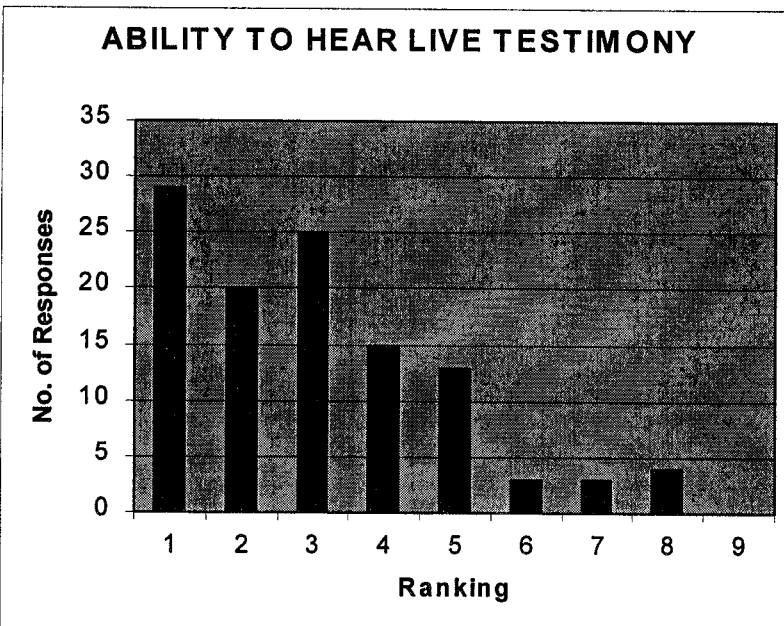


The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for strongly agree, two for agree, three for neutral, four for disagree, and five for strongly disagree; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question.

**The weighted mean for Question 8 A equals 1.67**

## B. ABILITY TO HEAR LIVE TESTIMONY

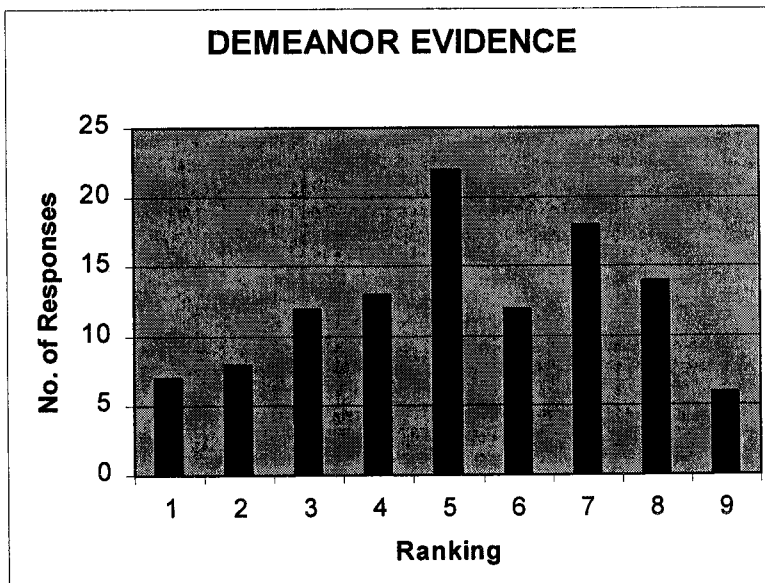
Ranking	No Of Responses	
1	29	26 %
2	20	18 %
3	25	22 %
4	15	13 %
5	13	11.5 %
6	3	3 %
7	3	3 %
8	4	3.5 %
9	0	0 %
Total	112	100 %



The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for strongly agree, two for agree, three for neutral, four for disagree, and five for strongly disagree; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 8 B equals 3.03**

### C. DEMEANOR EVIDENCE

Ranking	No. of Responses	No. of Responses
1	7	6 %
2	8	7 %
3	12	11 %
4	13	12 %
5	22	20 %
6	12	11 %
7	18	16 %
8	14	12 %
9	6	5 %
Total	112	100 %

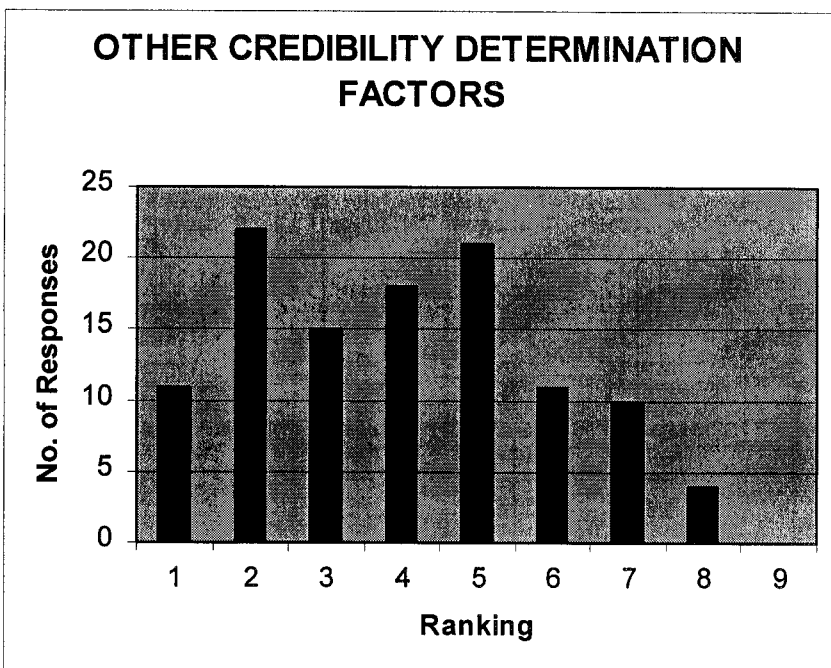




The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for strongly agree, two for agree, three for neutral, four for disagree, and five for strongly disagree; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 8 C equals 5.22**

#### D. OTHER CREDIBILITY DETERMINATION FACTORS

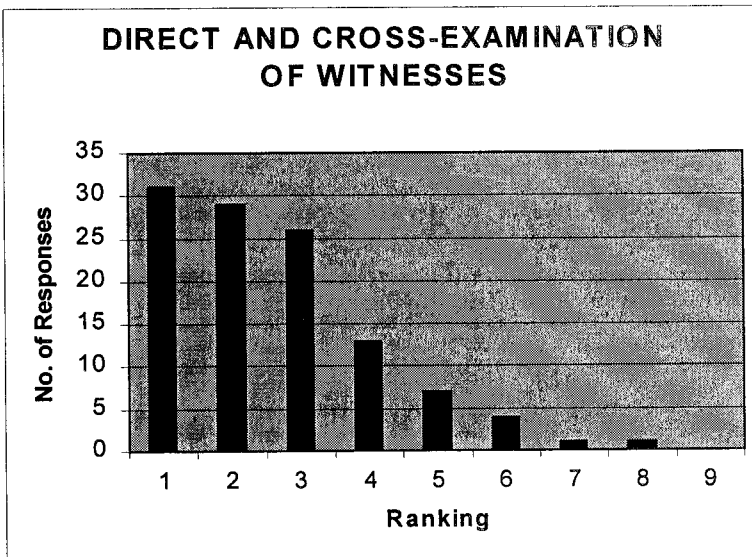
Ranking	No. of Responses	No. of Responses
1	11	10 %
2	22	19.5 %
3	15	13 %
4	18	16 %
5	21	19 %
6	11	10 %
7	10	9 %
8	4	3.5 %
9	0	0 %
Total	112	100 %



The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for strongly agree, two for agree, three for neutral, four for disagree, and five for strongly disagree; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 8 D equals 3.97**

#### E. DIRECT AND CROSS-EXAMINATION OF WITNESSES

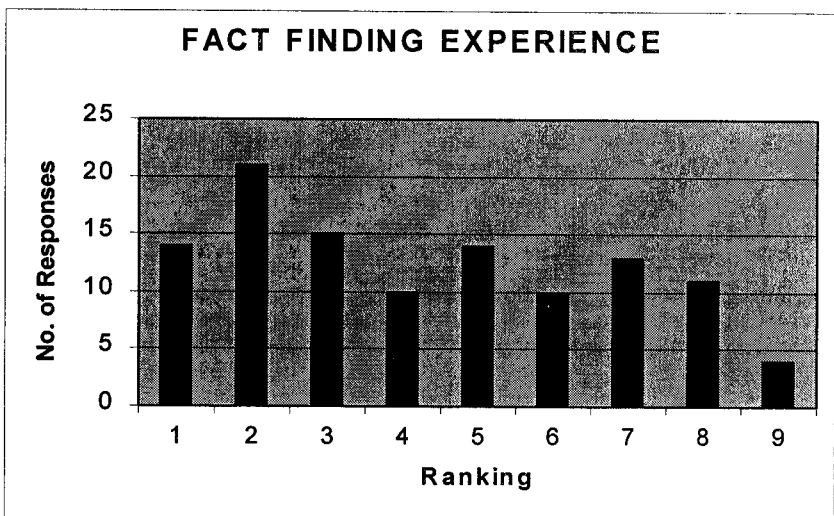
Ranking	No. of Responses	
1	31	27.5 %
2	29	26 %
3	26	23 %
4	13	12 %
5	7	6 %
6	4	3.5 %
7	1	1 %
8	1	1 %
9	0	0 %
Total	112	100 %



The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for strongly agree, two for agree, three for neutral, four for disagree, and five for strongly disagree; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 8 E equals 2.61**

#### F. FACT FINDING EXPERIENCE

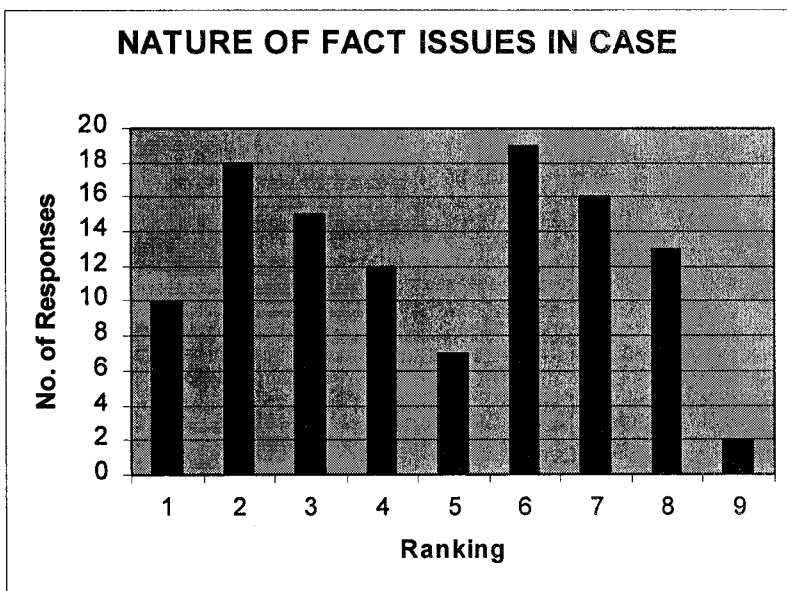
Ranking	No. of Responses	
1	14	12.5 %
2	21	19 %
3	15	13 %
4	10	9 %
5	14	12.5 %
6	10	9 %
7	13	11.5 %
8	11	10 %
9	4	3.5 %
Total	112	100 %



The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for strongly agree, two for agree, three for neutral, four for disagree, and five for strongly disagree; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 8 F equals 4.25**

### G. NATURE OF FACT ISSUES IN CASE

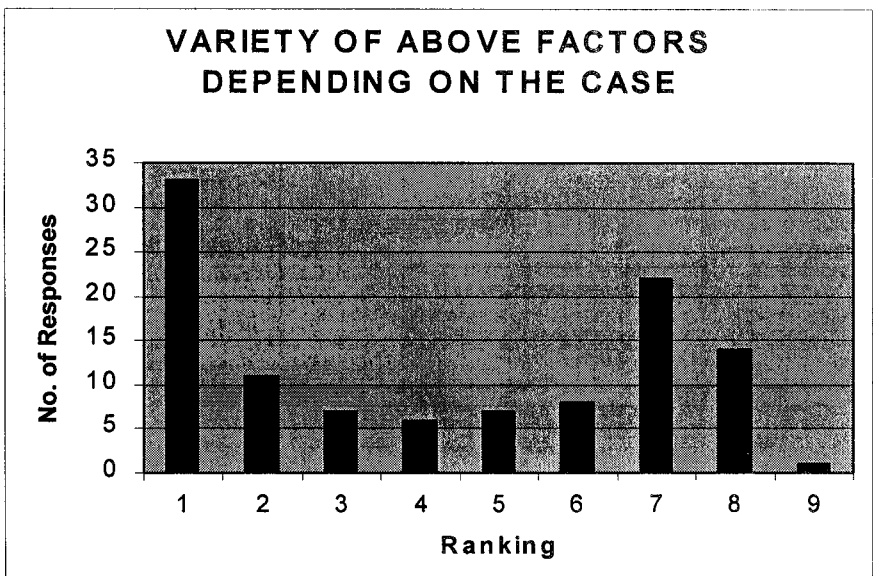
Ranking	No. of Responses	%
1	10	9 %
2	18	16 %
3	15	13 %
4	12	11 %
5	7	6 %
6	19	17 %
7	16	14 %
8	13	12 %
9	2	2 %
Total	112	100 %



The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for strongly agree, two for agree, three for neutral, four for disagree, and five for strongly disagree; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 8 G equals 4.66**

#### H. VARIETY OF ABOVE FACTORS DEPENDING ON THE CASE

Ranking	No. of Responses	No. of Responses
1	33	30 %
2	11	10 %
3	7	6.5 %
4	6	6 %
5	7	6.5 %
6	8	7 %
7	22	20 %
8	14	13 %
9	1	1 %
Total	109	100 %



The weighted average, or mean, score is computed using the following steps: 1) assign a numerical value to each type response, with one being the numerical value for strongly agree, two for agree, three for neutral, four for disagree, and five for strongly disagree; 2) count the number of responses for each numerical value; 3) multiply the number of responses for each numerical value; 4) add the total of all multiplied values; and 5) divide that total by the total number of responses. The result is the weighted average, or weighted mean. This figure allows a basis for comparison among responses to a particular question. **The weighted mean for Question 8 H equals 4.20**

### **Question #8- Other Answers**

1. Documents, knowledgeable witness (78)
2. Motive, ability to witness, reputation for truthfulness (82)
3. Plausibility, detail, explanations, psychology (83)
4. For situation involving expert testimony (clarity and logical coherence of explaining how they arrived at their conclusions from the data, chose their test methods, etc.) (85)
5. No special specifics (39)
6. Supporting documentation (could be a #2-3 depending on the nature of the case) (43)
7. Plausibility of testimony and consistency of witness when cross-examined (45)
8. Complexity of facts or law (58)
9. Totality of the file and seeing and hearing everything and asking questions to develop the record and test the witnesses (87)
10. Own knowledge and experience (95)
11. Consistency and clarity of testimony, corroborating evidence, lack of bias, prejudice or reason to lie, uninterested, neutral witness (4)
12. Competence of attorney, quality of evidence (legible and complete documents), clear unambiguous questions and answers (9)
13. Quality of representation (21)
14. Important to have heard many of the same kind of cases (broad spectrum) (26)

15. Witness attitude, complaint drafted by agency (29)
16. Witness' capacity to perceive, recollect, or communicate, opportunity to perceive (31)