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## Issues for Consideration

Marshall L. Rosenberg

David Weisenberg

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## ISSUES FOR CONSIDERATION

Judge Marshall L. Rosenberg  
Judge David Weisenberg

As a result of the overwhelming lack of response to this Journal's last member-oriented contest (no entries whatever on the topic of eavesdropping and wiretap evidence in administrative proceedings), the Editor still has on hand the many valuable prizes acquired on his last world wide tour. These will be freely distributed to those readers who submit the most thoughtful, informed and philosophically sound answers to any or all of the following questions, by September 1, 1982.

1. Do government imposed time constraints on ALJs have an affect upon the parties' right to a fair hearing?
2. Does the imposition of specific fair hearing requirements limit the flexibility of the administrative process?
3. Is adherence to rules of evidence and/or procedure helpful or harmful to the parties?
4. What is the appropriate role of the administrative law judge?
  - a) Fact finder?
  - b) Adjudication of a dispute between parties?
  - c) Uphold agency policy through interpretation of statute or rules and regulations?
  - d) Attempt to ascertain "truth"?
  - e) Do "substantial justice"?
  - f) Test the credibility of the witnesses?

Should the higher administrative reviewing board:

- a) Review the case file de novo?
  - b) Use the substantial evidence test?
  - c) Reverse credibility findings of the ALJ?
  - d) Hear cases itself or remand for further proceedings where further hearings are necessary?
6. In government benefit cases, where only the claimant appears, should the ALJ conduct an inquest to determine eligibility? If yes, should the ALJ stop after claimant makes a prima facie case or should the ALJ test claimant's testimony?
7. Should the ALJ state the evidence relied upon and the reasoning used in accepting one witness' testimony over another's?

8. When the reviewing body reverses the ALJ, should that body state what error was committed below and give the reasoning as to why a reversal is necessary?
9. In benefit hearings, should the ALJ hear and determine legal or factual issues not appearing on the face of the determination granting or denying benefits? How should the judge handle the problem of "notice," as required by due process, when new factual or legal issues are raised at a hearing?
10. What weight should be accorded hearsay? What is the legal posture of taking evidence "For What It Is Worth"?
11. What should the ALJ do where a party fails to follow statutory requirements, rules and regulations or agency guidelines but such requirements lack standards or are vague or are so technical as not to be understandable to that party?

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#### The Improvement of the Administration of Justice

Readers of this publication are commended to Handbook of the Judicial Administrative Division of the American Bar Association (Sixth Edition), recently published under the above title. Among the contributors to the Handbook who have also served as lecturers at NAALJ Seminars are Prof. Edith L. Fisch, who wrote the chapter on Evidence, Dean Robert B. McKay (Judicial Councils and Judicial Conferences) and Dean Ernst John Watts (Judicial Education and Training). Judge Marvin H. Morse, a long-time supporter and honorary member of NAALJ, is co-author of a particularly interesting and persuasive chapter on The Improvement of Administrative Procedure. The chapter was written with Judge Samuel B. Groner.

Copies of the Handbook may be obtained from the American Bar Association, Circulation Department, 1155 East 60th Street, Chicago, Illinois 60637. The price is \$16 per copy. There is no charge to members of the Judicial Administration Division.

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