



# NAHO NEWS

*...benefitting hearing officials  
and the individuals they serve...*

NATIONAL ASSOCIATION OF HEARING OFFICIALS

MARCH 2019

## NAHO ELECTION TIME

Janice Deshais (CT), President

It is time this year to elect NAHO officers and regional representatives to serve a two-year term from *January 1, 2020, to December 31, 2021*. As reported in another article, there are ten elected positions: President, Vice-President, Secretary, Treasurer, and six regional representatives. There are two other members of the Board who are not elected: the Immediate Past President and an at-large member appointed by the President.

The Board meets monthly by teleconference and in-person once a year at the annual conference. The Board formulates policy, plans and assists at the annual conference, and sets the general direction for NAHO. Board members, along with non-members of the Board, staff the various committees or ad hoc committees that do the work of NAHO. Regional representatives keep their regions apprised of information about news from NAHO and serve as contacts for regional members to the Board. The duties of these positions and the committee structure is outlined in the Bylaws, which are on the NAHO website at [www.naho.org](http://www.naho.org).

Board members are volunteers, and are not paid for their service. They may be reimbursed for certain out-of-pocket expenses or partial expenses and are reimbursed for some of their travel and lodging expenses for attendance at the annual conference (currently, one-half

of airfare and lodging costs). Board members also receive free registration for the annual conference. The Board reserves the right to change this policy, depending on NAHO's financial circumstances.

NAHO members nominated for an elected position must be members in good standing. Associate members are not eligible to vote or serve on the Board. A member may not serve more than two consecutive terms in any office.

If you are interested in nominating someone or running for office, please note the following.

1. The time frame for submitting nominations will be August 1 to August 30, 2019. A member may nominate themselves or another member. If a member nominates someone else, the Nominating Committee will contact that person to ascertain their interest in running for that position. Anyone not willing to run will not be placed on the ballot.
2. Candidates for President, Vice-President, Secretary and Treasurer may be from any geographical region. Candidates for Regional Representatives must be from the region they will represent. See the website for regional descriptions at [www.naho.org](http://www.naho.org).

*Continued on page 6...*

### IN THIS ISSUE

NAHO Election Time .....	1,6
President's Post: New Year Revival .....	2
From the Editor: Join us in New Orleans .....	3
NAHO Elections Ahead .....	4
New Orleans: Save the Date .....	4
Fun Facts About New Orleans .....	4
Excuse Me: Interrupting Racial, Ethnic and Gender Biases In Administrative Law Proceedings ...	5
Member Spotlight: Louise Mack .....	6
Problem Communications .....	7
Sweet Gherkins, Pepé Le Pew and Martina Navratilova .....	8-9
Board Profile: Norm Patenaude .....	9-10

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## THE PRESIDENT'S POST

# New Year Revival

Janice Deshais (CT), President

It's a new year. Time for renewal, a refresh, a new you. Time for new challenges and adventures. As Oprah says, time to live our "best life."

But, with a new year comes another year back in the hearing room. Who are these lawyers and others arguing in front of us? We have heard what they are saying before. We hear ourselves talking, but what are we saying and is it making any difference? What is all this and why should we care? Where is our refresh, our new start?

Although we may make promises in our personal life to make the coming year a better one for ourselves, when we get back to work it seems like the "same old, same old" all over again. We are faced with finishing that decision we put aside over the holidays or starting the hearings that did not disappear like we hoped they might as we sat by the fire in December with our adult beverage in our "comfy pants." How do we press the "restart" button to revive ourselves at work?

I have been a hearing officer and a supervisor of hearing officers for a long time and have lived this situation myself or through my staff many times. I have found some ways to deal with this reality and I offer the following advice that helps me when I can't be at the beach or sipping a Margarita by the pool in a tropical climate.

1. Give yourself a break. You cannot always be on the very top of your game and you cannot listen with rapt attention to every matter before you. Sometimes, your "real life" gets in the way. Sometimes, you have heard the same stories and heard the same kinds of evidence many times and it can sound like "blah, blah, blah" to you. Being a hearing official can be a difficult job. Give yourself a break and remember to put it all into perspective. And remember, sometimes you need an actual break. A vacation can be a great "refresher". A "mental health day" at the movies, a local spa, or a day of golf or skiing can be a wonderful thing. Even if you can't go somewhere, taking a long bath is also a great way to get away.
2. Take time to breathe. There are times when clearing your head or backing away from a situation can make a difference. If you can, give yourself some time to take a breath. Don't feel pressure to move along if you need time to manage the hearing on your terms. Take a break off the record to re-group. Think about a motion before you rule on it. Think about a matter you want to discuss at the hearing before you deal with it. Remember, you are in charge and you control the hearing.
3. If you have a lot on your plate - make a list of "small bites." Making a list can help relieve the pressure you feel to remember everything you need to do and the feeling that you need to do it all at the same time before you forget. Making a list can help you prioritize what needs to be done, and break down the things you need to do into smaller manageable tasks. You will feel like you are making progress as you accomplish these smaller tasks. Making an outline of a decision is an invaluable list to make. You can list everything you need to include and add to that list as you think of more without worrying that you can't write the decision fast enough to include all the points you need to make.
4. Let others help - even the parties. Let others relieve the pressure you place on yourself. You can't always be totally charged on all cylinders. Ask the parties to repeat themselves, if you didn't hear or understand something. (I am amazed at how often hearing officers I have supervised don't ask for this simple act.) Direct the parties to give you a written summary of their testimony or file a detailed report on an issue. Take a break before you rule on a motion - you don't have to know what to do right away. Leave the room or go off the record to think. Ask colleagues to sit in the room and act as a second pair of ears for you. (You know they'll help if they can.) Make sure you have all you need before you adjourn the hearing, even if it takes a bit longer.
5. Don't let this become a performance issue. Tell your boss if you are having problems. He or she cannot read your mind. (I still can't read minds after all these years, despite being told an issue should have been obvious to me.) Your supervisor would rather help you now before this becomes a performance issue. You don't have to get into personal details, but telling your boss that you are having a difficult time could make you feel better and allow your supervisor to help you.
6. This too shall pass. As hard as it may be to remember at times, you will get back on your game. Most obstacles and hard times do pass. We all have bad days at work. We can do something to manage them. Your "real life" problems and distractions may come and go and hearings may get tedious at times, but I hope my suggestions help you to cope and live your "best life" - even as a hearing official. 🍷



Janice Deshais (CT)



## FROM THE EDITOR

# COME JOIN US AT NAHO'S ANNUAL CONFERENCE IN NEW ORLEANS IN NOVEMBER!

Bonny Fetch (ND), Past-President, Editor

**N**AHO has always recognized that hearing officials need more than skills training to function effectively in our jobs. For years at our conference, NAHO has offered classes in stress management and self-assessment. Two years ago we added a yoga class to the curriculum. The response was so strong that last year we added classes in yoga and meditation. I had the privilege of teaching these classes.

Unlike our past conferences, this year's attendees will not have to choose between mindfulness training and hearing officer skill classes. Our planning committee eliminated those scheduling conflicts. Yoga will be offered each morning before substantive classes begin, and meditation will be offered as the last class of the day. In addition, plans are in the works to include a special Moonlight Yoga and Meditation class.

But, you may ask, why would a hearing official need to participate in yoga and meditation? The reasons are many.

The purpose of yoga is to create strength, awareness and harmony in body, mind and spirit. Regular practice of yoga increases flexibility and improves balance.

It also creates mental clarity and sharpens concentration. The relaxation techniques incorporated in the practice of yoga can lessen chronic pain, such as neck and lower back pain, arthritis, headaches, and carpal tunnel syndrome. Yoga is helpful in managing stress and lowering blood pressure.

Meditation is the active process of encouraging stillness in the mind. Our minds are constantly in motion, jumping from thought to thought about things that happened in the past, what is going on in the present, and what might happen in the future. As a result, we have difficulty learning to slow down and to function effectively in the present. Meditation is one of the most effective ways to tune down our constant mind chatter. Even a few minutes of meditation a day can reduce anxiety and stress levels and dramatically improve our ability to cope with and enjoy everyday life.

Yoga and meditation incorporate the principle of mindfulness. Mindfulness is the intentional experiencing of our thoughts, feelings, bodily sensations, and surrounding environment in the present moment, without judgment. We are able to move beyond the assignment of right or wrong to our thoughts and feelings; we

simply accept them. When we practice mindfulness, we attune our thoughts to what we are sensing in the moment rather than rehashing the past or imagining the future.



Bonny Fetch (ND)

Mindfulness can be practiced in many of our usual activities throughout the day. For example, this morning while I showered, I let go of my mind's chatter. I stopped worrying about the lists of things that I need to do today and tomorrow. Instead, I brought my thoughts, feelings, and awareness of my surroundings into the present. I took time to feel the water as it hit my skin. I was able to actually discern the separate tiny streams of water as they came out of the jets of the shower head. I took notice of each of the smells that I love: the shampoo with its lavender and rosemary scents, the lemon conditioner, one of my favorite soaps - China Musk, and finally, amber body lotion. Wow, how could I not take time and presence of mind to revel in this experience! Aside from enjoyment, I felt calmer and more mentally focused.

And how does a mindful shower or walk help us as hearing officials? Well, the failure to be fully present in the moment can have adverse effects. We may miss important information, we may make mistakes, we may fail to appreciate the issues before us. Through daily practice of mindfulness, I find that I make fewer mistakes and I have a better overall feeling of well-being. Those changes often translate into a calmer, deeper understanding of my work in the day before me. Try it for yourself.

So, come prepared to enjoy the NAHO Conference in November in New Orleans! The opportunity to learn new hearing officer skills will be available – as will the chance to improve our mindfulness. I look forward to joining you there. 🐾





FOR THE NATIONAL ASSOCIATION OF HEARING OFFICIALS  
2019 ANNUAL PROFESSIONAL DEVELOPMENT CONFERENCE

**Nov. 4-6**  
**New Orleans, Louisiana**

**Renaissance New Orleans Pere Marquette French Quarter Hotel**

## FUN FACTS ABOUT

# New Orleans

Due to the high water table in the New Orleans area (let's face it—the city was built on a swamp), there are no underground graves or tombs. The deceased of New Orleans are all buried in above-ground tombs. There are some very old tombs in the city with some old and interesting epitaphs. In fact, the cemeteries of New Orleans are so interesting that guided cemetery tours are among the more popular tourist attractions.

*New Orleans was founded in 1718, making it the 11th oldest city in the United States. It was founded by Jean Baptiste Le Moyne, Sieur de Bienville who, believing it to be safe from hurricanes, developed the city in a rectangle. That original rectangle is now known as the French Quarter.*

Alcohol is available in New Orleans at

any moment of the day or night. Bars are permitted to stay open 24 hours a day. Liquor is sold in grocery stores. Drinking on the street is allowed as long as one drinks from plastic cups. Bars frequently provide patrons with plastic “to-go” cups.

*New Orleans is definitely the spookiest city in the U.S. for two reasons: (1) Voodoo was introduced to the U.S. in New Orleans; and (2) It is the preferred destination for paranormal investigators as it is believed to be the place with the highest spiritual activity in the U.S.*

New Orleans Voodoo Queen Marie Laveau performed exorcisms and voodoo rituals here in the 1800s. Her tomb receives more visitors each year than Elvis Presley's grave.

It's illegal to ride on a Mardi Gras float in New Orleans without a mask.

*New Orleans is the birthplace of jazz music and is said to have started with a drum, which some attribute to the fact that New Orleans was the only place where slaves were allowed to own drums.*

Although Bourbon Street seems aptly named today, it was not named for the American whiskey but rather for the Royal House of Bourbon, a ruling family in France in 1721 when the street was named. 🍷

## NAHO ELECTIONS AHEAD

Janice B. Deshais (CT)

2019 is an election year! No, we are not anticipating a convention or funding war-chests, but NAHO elections are as important to NAHO as any other event! Being on the Board as an officer or a regional representative is a great way to support NAHO and ensure it will continue to serve hearing officials now and in the future!

An election will be held this year for officers and regional representatives to serve a two-year term from January 1, 2020, to December 31, 2021. There are ten elected positions: President, Vice-President, Secretary, Treasurer, and six regional representatives. There are two other members of the Board who are not elected: the Immediate Past President and an at-large member appointed by the President.

Nominations will be accepted from **August 1 to August 30, 2019**. A member may nominate themselves or another member. Nominees must be members in good standing and willing to serve.

If you have any questions about positions on the Board, feel free to contact any Board member. Information about NAHO committees and the duties of officers and regional representatives can be found in the Bylaws on the NAHO website at [www.naho.org](http://www.naho.org). 📄



# EXCUSE ME: INTERRUPTING RACIAL, ETHNIC AND GENDER BIASES In Administrative Law Proceedings

By Professor Chris Chambers Goodman, Esq.

*Professor Goodman, Pepperdine School of Law, presented this topic at the 2018 NAHO Annual Professional Development Conference in San Diego*

**W**e hear a lot about implicit bias operating in many aspects of daily life such as employment screening, criminal sentencing, mortgage lending, and even musician auditions. In the legal profession, continuing legal education requirements include elimination of bias programs. While eliminating bias seems to be a worthy goal, it is unattainable. Biases operate in our everyday lives to help us process information more quickly and more efficiently, though not always more effectively or fairly. Biases can be explicit where a person is aware of the bias that the deliberate bias and will admit it, or the biases can be implicit which are more intuitive, reactive, and sometimes even automatic such that most people will deny that any bias is operating. Reducing or interrupting bias is especially important for hearing officers as a first line of judicial intervention and perhaps for many claimants, the only judicial officer they will encounter. This article offers a few brief suggestions to: (1) show administrative law judges and hearing officers how to identify manifestations of implicit bias; (2) provide concrete strategies for reducing their own biases, and (3) note communication tips for addressing and responding to biases in others.

The first suggestion is to take several of the implicit attitude tests, which can be found at <https://implicit.harvard.edu/implicit/takeatest.html>. These tests cover biases ranging from race and gender to weight and age and provide an important background for assessing the existence

of various categories of potential implicit biases. This background helps hearing officers identify situations that might involve implicit bias on the part of someone else. Other types of bias that operate include: confirmation bias where we are more likely to listen to, remember, and apply information that confirms our preconceived notions; expectation and availability biases, which are based on our ability to recall examples that fit a particular stereotype or bias thus reinforcing that stereotype or bias; and feedback loops, where biases inform our decision-making process, which then reconfirms our bias such that future decision-making processes are similarly impacted. Some criticize the implicit attitude test because we really cannot figure out what is going on in someone's brain (although we have good means of determining this with brain scans and other neuro-imaging processes). The tests that are available online are more rudimentary assessments that have been criticized for relying upon physical processing of information. For instance, those who have physical limitations or are not as adept at typing with two fingers may seem or appear to be more biased based on a slower response time. In addition, while there is some evidence, there is not significant evidence, to establish a causal connection between those who score high in a particular bias area on the test and actual engaging in biased conduct in the real world. Nevertheless, the tests are useful starting points.

In terms of concrete strategies for reducing biases, acknowledge micro-inequities that may exist based on race, gender, ethnicity or national origin. Then, activate decision-making on a conscious level so that a rationale, rather than a gut feeling,

supports all decisions.

Consider stereotypes presumptions and

assumptions based on competence, intelligence, emotions, and communication abilities. Take the time to make the right decision. Being more deliberative helps to avoid defaults to bias, as does enhancing exposure to counter-stereotypic examples (such as the former President Barack Obama in a case involving African-American claimants), to get into the mindset of "accomplished," "intelligent," and "worthy" as descriptive terms being associated with African Americans.

One final point is to watch your communication style. How does your tone or manner change when speaking to certain people as opposed to others? Who do you look at in the eye as they speak and for whom do you look away or check your paperwork? How do you manifest impatience or lack of concern, on the one hand, and interest and concern, on the other, which has an impact on the claimant or other parties in front of you? Being vigilant about your assumptions, activating consciousness, and noticing your subtle and explicit messaging will go a long way towards interrupting racial, ethnic and gender biases in administrative proceedings. ⚡



*Christine Goodman*

# NAHO ELECTION TIME *From page 1.*

3. All nominations must include the nominee's name and a brief biographical description. Nominations may be mailed to NAHO, P.O. Box 330865, Fort Worth Texas 76163, or by email to [Janice.deshais@naho.org](mailto:Janice.deshais@naho.org).
4. All nominations must be received by midnight ET on August 30, 2019. If you mail the nomination, a postmark of no later than 8/30/19 is required.
5. Ballots will be sent electronically before or on September 19, 2019, and must be returned on or before October 19, 2019. If you cannot

receive electronic mail, please send an email no later than September 1 to [Janice.deshais@naho.org](mailto:Janice.deshais@naho.org) and a ballot will be mailed to you. Ballots received after October 19, 2019, will not be counted.

6. The Nominating Committee will prepare an official result of the voting and certify the outcome to the President, who will present that result at the NAHO membership meeting at the annual Conference in November in New Orleans. The newly-elected Board members will then be installed at the Conference.

Please consider serving on the Board or nominating someone you believe would be a valuable member of the Board. NAHO is as strong as its Board members - we need you! 🐾



## MEMBER SPOTLIGHT



### Louise Mack, CPM, CHO Hearing Officer | Office of Appeals Mississippi Division of Medicaid Jackson, MS

**Which agency do you work for, how long have you been a Hearing Officer/ALJ, and what sort of hearings do you conduct?**

I am employed with the Mississippi Division of Medicaid and have been conducting eligibility hearings since 2011.

**What is your favorite part of your job?**

The favorite part of my job is writing hearing opinions, especially those that are

reversed because the individual meets all eligibility requirements. It is a rewarding feeling to know that with the approval of Medicaid benefits, these individuals have access to the services they qualify for and hopefully can live a more healthy life.

**Which part do you find the most challenging?**

I have learned that challenges can be stepping stones; therefore, the most challenging part for me is the intricacies in regards to specific cases. The final administrative decision is not based solely on policy, but on testimony and other factors pertinent to the eligibility requirements.

**What do you know now that you wish you had known when you first began conducting hearings?**

I know now that there are conferences, including the National Association of Hearing Officials, which I can attend periodically for continued professional development. Through these organizations' well-designed courses, I can enhance, develop, and strengthen my knowledge to be a more effective Administrative Hearing Officer. I wish that I could have attended a certified program for hearing officers prior to conducting hearings.

**What is the best piece of advice you have ever received, and how has it helped you in your profession?**

One of the best pieces of advice I have ever received is, "One Person Can Make a Difference." This advice has helped me to become more aware of how I conduct myself by being the best that I can be at all times. All hearings should require an individual with knowledge of policies and procedures, as well as impeccable moral character. Therefore, this piece of advice has me committed to conducting hearings with respect, empathy, integrity, and fairness to all parties. 🐾

# PROBLEM COMMUNICATIONS

By Karen Gorman, Inspector General and Chief Hearing Officer,  
Los Angeles County Metro Transportation Authority

*Karen Gorman presented this topic at the 2018 NAHO Annual Professional Development.*

**T**he 2018 NAHO Conference in San Diego included a session on ex-parte communications between the hearing official and others concerning a pending case. “Others” may include the public, parties, their lawyers, elected officials’ offices, press, or anyone outside of the court staff.

An ex-parte communication is defined by the NAHO Model Rules, section V, as communications between a hearing official and fewer than all parties. Your agency should have a rule that prohibits a hearing official from receiving or disclosing information about a pending case unless all parties receive the information and have an opportunity to be heard on it.

If an expert is utilized by the hearing official, that must be disclosed to the parties and they should receive the substance of the expert’s advice. A hearing official might consult with a supervisor, or court personnel on a procedural or technical point, but the hearing official cannot allow someone else’s thoughts to replace their own judgment. The hearing official must maintain their independence. If you feel all alone, it’s because you are.

It is best to set up procedures for your court to avoid improper contacts, such as not to give out the hearing official’s direct telephone number, but only provide the clerk’s or administrative office number and they should screen calls to avoid access to the hearing official.

A hearing official must be careful at social functions not to interact with persons who have matters pending before them, even if the case is not discussed. If a contact

occurs, such as if someone approaches you at a store or in a restaurant, inform them that you can’t speak to them and walk away. Make note of it and inform the other lawyers or parties at the next hearing of the encounter and how it was handled.

In a high-profile case a party or their representative may contact an elected official or the press about their case. If those persons contact the court, let your supervisor or staff handle the contact. If you have a communications department, contacts with the press or public officials might be best handled by that department. Some information may be public and that may be disclosed by them. It would be wise to have a court protocol with a somewhat standardized response and trained personnel already in place about how such contacts will be handled before the event arises.

Effective communications with security personnel is an important consideration. The safety of the hearing officer and staff, as well as the parties is critical. Staff should communicate with security personnel to put them on alert if you expect a problem. This doesn’t have to involve giving them a lot of information about the substance of the case.

A hearing officer must never have “loose lips” about a pending case. They can’t gossip to friends or family about what happened recently in a pending matter. Think about if your remarks were repeated, might it appear as if you are biased or leaking information that might be beneficial for someone to know related to the case to use for their benefit. Confidentiality is required for the job of a hearing official while a case is pending, and sometimes beyond. The NAHO Model Rules, section IX, advise

that a hearing official should not disclose confidential information, never use such information for their own interests, follow their agency rules on disclosure of information, and never discuss the merits of a pending case except in their written opinion or in court to all parties.

Improper commentary or ex-parte communications can have serious consequences. Consider the East Texas state district judge who resigned from the bench .... “after an investigation by the State Commission on Judicial Conduct” alleging she engaged in improper ex-parte communication by texting the Polk County Assistant District Attorney while presiding over a criminal trial to privately communicate information to the assistant district attorney prosecuting the case to “suggest questions for the prosecutor to ask during the trial.”<sup>1</sup>

Other contacts or comments that might appear to be not too significant or innocent could still lead to a request for a hearing official to recuse themselves, having to start a case all over, or affect the public perception of whether the decision making at your agency is fair and has integrity.

A short annual memo to or training of staff on this topic might be a good precaution that demonstrates your agency commitment to excellence in this area. 🏆



*Karen Gorman*

<sup>1</sup> (edited excerpt) By John Council, October 23, 2013



# SWEET GHERKINS, PEPÉ LE PEW AND MARTINA NAVRATILOVA

By Toni Boone, OR, Vice-President

Labels are convenient, no doubt. Is that marinara sauce featured in the menu covering spaghetti, linguine or fettucine? Does your adolescent daughter want the walls of her room painted Periwinkle blue or Cerulean blue? (The difference matters greatly.) Grocery shopping would be much more complicated if we couldn't readily distinguish our Baby Kosher Dills from our Sweet Gherkins.

Human beings are also given various labels. The effects of labeling human beings have been studied since the 1930s. In a classic study, teachers were told that some of their students had scored in the top 20% on a test designed to identify impending intense intellectual development over the following year. The students actually had been randomly selected and had fared no better on the test than their unselected peers. A year later, the researchers returned to the school to find that the children who had been identified as brighter, but who had actually performed no better than their peers, now outperformed their unselected peers by 10 to 15 IQ points. By fostering the development of those who had been identified as smarter, the teachers produced a self-fulfilling prophecy in which the selected students did, in fact, surpass their peers intellectually.

Another classic study in 1983 showed similar effects. Some college students watched a video of a little girl named Hannah playing in a low-income housing district and were told Hannah's parents were high school graduates with blue-collar jobs. Other students watched a video of Hannah playing in a middle-class neighborhood and were told her parents were college-educated professionals. Both groups then observed a video showing Hannah answering the same set of questions, in exactly the same way. When Hannah was labeled as "middle-class" she was believed to be performing

at around fifth-grade level; when she was labeled as poor, she was believed to be performing below a fourth-grade level—despite the fact that both groups observed identical videos of her performing academically.

The right to be tried by an impartial adjudicator is a cornerstone of our justice system. As hearing officials, we are not only tasked with being wholly impartial, but also with avoiding any appearance of bias. Administrative adjudicators may be disqualified from hearing a case whenever a reasonable, disinterested observer would think that the judge might be biased against a party. Consequently, hearing officials must be diligent in identifying and combating both implicit and explicit biases. As members of the justice system, we certainly strive to fight discrimination based on gender, race, national origin, religion or sexual orientation. But these are not the only bases for bias or discrimination, which brings us back to labeling.

A simple illustration of the harm that can be caused by labeling has been provided to us by Warner Brothers. In one of their more memorable cartoons, a solid black female feline crawls under a freshly-painted white fence. Although she doesn't realize it, she has been adorned with a broad white stripe from the top of her head to the tip of her tail. She is accustomed to being greeted warmly by human beings and cannot understand why they now cringe and flee whenever she approaches. Everyone seemingly scorns her. Everyone, that is, except Pepé Le Pew. Even Pepé, who is a genuine skunk, misidentifies her, labels her, as one of his own species.

Terms often used to describe people include such words as nerd, bully, jerk, loser, snob, wimp, slacker, geek, punk, and nut-case. The foregoing words are merely labels; they are not descriptions. People are complex, multifaceted be-

ings. Labels do not help to communicate the complexity and multidimensionality of a person. They limit our understanding of that person to an assumption which may be baseless. When meeting someone, we often readily accept a label that has been ascribed to them by someone else without any evidence of the validity of that label. Labels may be a convenient shortcut to communicating an idea but labels become stereotypes and stereotypes lead to bias.

Imagine you're about to preside over a hearing when the petitioning party approaches wearing a "Make America Great Again" t-shirt. In the split second it takes for you to observe that t-shirt, labels begin to accumulate in your mind. It doesn't require conscious thought to produce them. Categorization based on split-second visual observations is a shortcutting tool the brain utilizes without conscious thought. The labels that might come to mind, in this instance, depend upon your own political point of view—your own political bias. If you perceive his/her political views to be like yours, the labels that come to mind might be 'nationalist' or 'independent-minded.' If you identify his/her views, based on the t-shirt, to be unlike yours, the labels that come to mind might include 'extremist,' 'ideologue' or, worse yet, 'homophobe,' 'racist' or 'misogynist.'

Once we attach a label to someone, it becomes definitive—it holds power. In antebellum America, because of the one drop rule, persons of mixed race who appeared to be white were labeled black even if they were seven-eighths European in ancestry. Identifying these persons as



Toni Boone (OR)

*Continued on page 9...*



## Sweet Gherkins, Pepé Le Pew and Martina Navratilova *From page 8.*

black had no basis in biology but labeling and then categorizing these people as black had disastrous economic, social and political effects.

The variations in human skin tone are virtually infinite as we can see from some of the adjectives that have been used to describe complexion: pasty, tanned, ruddy, swarthy, rosy, sallow, peaches-and-cream, bronzed, olive, pallid, caramel, florid, fair, dusky, alabaster, café-au-lait, freckled, ebony, porcelain, mahogany, waxen, and umber. Yet, in our society, we often describe complexion and racial milieu with one of two words—black or white—and both are inaccurate.

Our political points of view as a nation range from one end of the political spectrum to the other and, if plotted on a graph, would probably result the normal distribution—a bell curve. However, the media have seemingly eliminated the majority of the viewpoints situated in the midrange to focus on political extremes. They have reduced us to two woefully inadequate and undescriptive labels—red and blue. Politicians seem increasingly polarized but it is debatable whether the American public is. Certainly, the application of the oversimplified “red” and “blue” labels does nothing to bring the public or politicians closer together.

Many, if not most, labels have some sort of negative connotation, some stigma, accompanying the label. Even labels as seemingly innocuous as “southern” have a negative connotation according to a 2010 Stanford University study. The study revealed that southern accented speakers are perceived by Stanford undergraduates to be less intelligent and less wealthy compared to those with a standard American accent. A more recent study indicated both northern and southern children displayed accent-based biases as early as age five which led them to believe that people with northern accents are ‘smarter’ and ‘in charge’ and people with southern accents are ‘nicer.’

Like it or not, subconscious categorization based on split-second visual observations is the way the brain functions. Once that categorization occurs, it is a universal and unswerving practice for humans to divide their social world into ‘us’ and ‘them.’ The variety of groups with which we identify and/or associate can be extensive and typically includes political affiliation. When a party appears before you wearing a “Make America Great Again” t-shirt or a “Dump Trump” t-shirt, it precipitates the belief that you share some essential characteristic with the party or that you oppose the party’s views. Regardless of whether you identify with their political point of view or vehemently disagree with it, the mere categorization of that individual, based on what you believe his or her political leanings to be, can lead to bias.

Society has collectively acknowledged that implicit bias may exist with respect to gender, race, national origin, religion and sexual orientation. In this age of increasing political polarization, it is incumbent upon us to acknowledge that implicit bias may also exist with respect to political affiliation. We owe it to the parties and to the system to combat that bias just as much as we try to battle all the others.

If the political beliefs of a party appearing before you become known to you, get your mind off those labels that suddenly emerge unbidden. Human beings, and in particular human beings appearing in court, should have only one label—their name. No other label is necessary. No other label is of value to you as a hearing official. Because labels precipitate stereotypes that lead to biases, no label other than a name is desirable. To quote Martina Navratilova, “Labels are for filing. Labels are for clothing. Labels are not for people.” Consciously and conscientiously disregard categorizing by political affiliation when you’re presiding over hearings. Remember that unfortunate, paint-covered feline from the Warner Brothers cartoon and forget the labels. 🐾

### BOARD PROFILE

## Norman Patenaude, NH Immediate Past-President

I received my undergraduate degree in Foreign Relations from Assumption College in Worcester, MA, served in the US Army and earned a



*Norman Patenaude (NH)*

law degree from the University of New Hampshire School of Law with assistance of the GI Bill. While I attended law school I interned at the NH Legislature down the street and got interested in government work. After I graduated from law school I worked as a hearings officer at various state agencies, including Labor, Employment Security, Retirement, and Board of Nursing. Since my retirement a few years ago I have served on the Workers’ Compensation Appeals Board and the Personnel Appeals Board.

I chair a three-member Workers’ Compensation appeals tribunal that includes, by law, a member from organized labor, a member from the employer/insurer group and the attorney-neutral member who conducts the hearings and writes the decisions based upon the outcome of the deliberations. Most cases of occupational injuries or illnesses involve eligibility for benefits, disputed medical bills, reviews of continued eligibility and disputed legal fees to which a claimant is entitled when he or she prevails on appeal. Since I speak two other languages I find interpreter hearings very interesting. Findings of credibility are important for me in every case and there are very few self-

*Continued on page 10...*



## BOARD PROFILE: Norman Patenaude, NH Immediate Past-President

*From page 9.*

represented claimants at these hearings because of guidance on the procedures from an ombudsman staff person at the agency and the fee-shifting statute that encourages attorneys to accept referrals. I also sit on the Personnel Appeals Board which hears appeals from civil servants who challenge a disciplinary action like a letter of warning, a suspension or a termination. The Board's decision can either affirm, modify or reverse the action of an agency head and can seriously affect an employee's income stream, benefits and retirement plans in the case of an employee's termination. The state agencies are represented by staff attorneys and the state employees are represented by union counsel or grievance representatives. I have sat on some very contentious hearings that lasted for several days!

I joined NAHO just before I attended my first conference in Santa Fe, NM in 1999. Yes, 2019 marks my 20<sup>th</sup> year with the organization! I have spent the majority of those years on the Board as an at-large member, Northeast Regional Representative, two terms as Vice-President, two-terms as President and am currently serving my second term as Immediate Past-President which will end later this year – then I will draw my NAHO pension and relax! Lol. I have attended almost every annual conference since 1999 and have the magnets on the refrigerator to prove it! The training that I have received at the conferences made me a better hearing officer and appellate board member. I will always remain grateful to the organization, its board members and its instructors for their guidance and wisdom and I will forever cherish the many friendships I have formed with so many colleagues from across the country and its territories. I am proud to state that NAHO has been an important part of my professional formation over the years! 🎉

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