when more and more of us understand the bitter truth of President Kennedy's remark that "life is unfair."

Yet we fortunate few who are arbitrators inhabit, in most of our working hours, a different kind of world. We hold a position that is filled not on the basis of personal or political connections or physical beauty or old school ties but on the basis of a cold bipartisan judgment of performance. We are enjoined to seek the truth, and in few forums is that search as untrammeled or as effective as in our hearings. We are constrained by a contract, but that contract is validated by the mutual consent of those living under it. Within that constraint, we are free to be fair and to do justice. I suggest to you that today the average working man under a contract has a much better chance to get justice done him in his workplace than in the law courts of his community. No arbitrator would claim infallibility, but few of his mistakes are the product of carelessness or callousness, and no professional arbitrator has ever been adjudged guilty of corruption. The arbitrator, however humble he may be as an individual, can be proud of the high purposes of his office and of the industrial jurisprudence that he and his colleagues and collaborators have created in the past quarter-century. In a time of rising discontent, disorder, and conflict, arbitration has contributed to the fairness and the stability of American industrial relations. But the arbitrators must also recognize that the true architects, builders, and proprietors of this unique institution of arbitration are the uncounted thousands of labor and management representatives who bestow upon the arbitrator the privilege of serving.

II. SOME DEVELOPMENTS IN THE HISTORY OF THE NATIONAL ACADEMY OF ARBITRATORS

CLARE B. MCDERMOTT *

I am reminded of the man mentioned by Jim Hill who stood up on a similar occasion and said, "I want to say something before I make my speech." What I want to say is that this will not be a definitive history of the National Academy of Arbitrators. I was concerned about the possibility that the title assigned to me might have been misleading.

I have chosen to interpret my directions from the Program Committee as a franchise to take a few minutes to outline what I

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see as four or five seminal events in the Academy's first 25 years. In short, this will be a bird's-eye view of some Academy policies.

A major difficulty in my way is that I speak in mixed company; that is, the audience is composed of some who are members of the Academy and some who are not. What might be perfectly fascinating to the former might be a matter of great indifference to the latter. Moreover, candor might compel disclosure of certain problems to an audience made up entirely of Academy members, while discretion would require silence about those points when speaking to nonmembers of the Academy. Nevertheless, I must plunge ahead with my best judgment as to several significant developments in the Academy's past.

None of these involved kings and battles, and no empires were at stake. The conclusion which does leap from the documents, however, is that early in its career and almost as a matter of institutional instinct, certain policy decisions were taken which have had a permanent effect on the Academy and, consequently, on the field of labor arbitration in general.

It is necessary first, however, to get the Academy founded. This may be familiar ground for some members, but I suspect it is not for many members and surely not for most guests. Some time in late July or early August of 1947 about a dozen active arbitrators were in Washington in another connection, and they discussed informally the advisability of establishing a professional association of individuals actively engaged in the arbitration of labor disputes. I think it is noteworthy that even at the prefounding meeting, if it can be called that, it was stated clearly that the association contemplated was not to compete with or overlap the American Arbitration Association in any way. The founders were thinking of an organization chartered to do what was not otherwise being done at that time. That informal Washington group then decided to convene a meeting to organize such an association, and it elected Whitley McCoy as its temporary chairman.

The resulting organizing meeting was called for and held in the old Stevens Hotel in Chicago on September 13, 1947, and, since Whit McCoy could not attend, Dave Wolff was elected as temporary chairman. Forty-three arbitrators were invited to attend that meeting. They established the National Academy of Arbitrators, drafted the original constitution and bylaws, and set

up the original committees. A nominating committee was appointed, which proposed Ralph Seward for the office of president; Clark Kerr, Whitley McCoy, and Bill Simkin as the three vice presidents; Pete Kelliher as secretary-treasurer; the 11 members of the Board of Governors were Douglass Brown, Al Colby, Lloyd Garrison, Aaron Horvitz, Clifford Potter, Harry Shulman, Ed Warren, Willard Wirtz, Dave Wolff, Paul Dodd, and Saul Wallen.

There is an amusing incident related to this organizing meeting, and the possibility that it might be apocryphal should not inhibit my repeating it. I heard it just yesterday and credit it to Charles Killingsworth. There was a photographer on hand to take pictures of a group of the leading lights, and when the photographer said, "Smile. Say 'Cheese,'" a wag in the group said, "No, you must realize you are dealing with arbitrators. You should say 'Fees.'"

At least one significant matter stood out even as early as that organizing meeting. Since the Academy was not to compete with or duplicate efforts of the AAA or FMCS, it was not to select or appoint arbitrators. That thought early was put in the Academy's constitution and now stands as Section 2 of Article 2.

Another early policy decision was that the Academy would not act as a lobbying organization. This came up with specific reference to the matter of whether or not there should be a uniform arbitration act. It was decided that the Academy would take no position on that question, but, if asked, it would advise on what provisions should be included in such a statute, if a jurisdiction were to determine to adopt one.

The initial statement of the Academy's purpose was:

> "To establish and foster high standards and competence among those engaged in the arbitration of industrial disputes on a professional basis; to adopt canons of ethics to govern the conduct of arbitrators; to promote the study and understanding of the arbitration of industrial disputes."

The organizing meeting also appointed two committees, the Membership Committee and the Ethics Committee, which have been over the years the two most important and hard-working committees in the Academy. It is here that a fundamental point might be made. If one accepts the view that history is " . . . the intellectual form in which a generation renders account to itself

of its past," then such an accounting would have to grant substantial credit to the Academy's policies on membership standards and its efforts in the field of ethics.

Between the organizing meeting on September 13, 1947, and January 16, 1948, the Membership Committee obviously was very busy. It recommended addition to the Academy of 62 more persons who, with the 43 who were invited to the organizing meeting, made up 105 charter members who were invited to the first annual meeting January 15 and 16, 1948, at the Drake Hotel in Chicago. With recent admissions, the Academy now has about 400 members. An unfortunate footnote to the charter member situation was that, when the Board of Governors 20 years later thought of issuing formal charter member certificates to those persons, only 61 were alive.

The Membership Committee recommended that Academy membership be conferred only on those who already were active arbitrators. That early policy decision also has been held to down to the present, for the current membership policy is as stated on page 2 of the 1971-1972 *Directory*: "The applicant should have substantial and current experience as an impartial arbitrator of labor-management disputes."

Thus, the Academy is not an organization of those who *want to become* arbitrators, but of those who *are* arbitrators. There was nothing elitist about the decision to structure the Academy for those who *were* arbitrators. It was only a practical realization that the organization then being formed could not train or certify persons as "graduate" or competent arbitrators.

The Membership Committee's problems never end. It now must deal also with the question of whether experience, assuming it to be "substantial and current," as mediator or fact-finder in the public employee sector should count under the Academy's current membership standards.

The other fundamental committee established at the organizing meeting also began its work early, but it wisely decided to proceed slowly with the difficult problems involved in drafting a Code of Ethics which would realistically fit the great variety of arbitration processes demanded by the wide range of the parties' interests and desires. Discussion of the Ethics Committee's work, which evolved into the current Ethics and Grievance Committee, in 1964, would be a suitable subject for treatment all by itself.

Shortly after its formation, the Ethics Committee became involved in a substantial way in the formulation of the Code of Ethics and Procedural Standards for Labor-Management Arbitration which was published in 1950 by the cooperation of the American Arbitration Association, the Academy, and the Federal Mediation and Conciliation Service. Eleven members of the Academy's Ethics Committee in 1949-1950 were also members of the group of consultants on revision of the American Arbitration Association Code of Ethics, and more than 20 other consultants were or later became Academy members.

Thus, publication of the revised Code of Ethics was in no small way a result of the Academy's early concern for the ethical conduct of its members. That concern presently is exhibited to the new member by the requirement that, with his initial dues payment, he submit a signed statement that he subscribes to that Code of Ethics.

Over the years the Ethics Committee has considered general questions raised with it, published several opinions on the ethical content of specific conduct of arbitrators, and in the early 1960s began a long and arduous consideration of the problem then reached by the more mature Academy—a formal grievance procedure for trying and advising, censuring, suspending, or expelling a member on charges of unethical conduct.

That effort took literally thousands of hours of work by committee members and the expenditure of thousands of dollars for formal legal advice, and resulted in 1965 in what is now Article 4, Sections 2 and 5, of the Academy's bylaws. These matters required consideration of the law of defamation; possible liability for wrongful censure, suspension, or expulsion; and review of the Academy's status as a private, voluntary association which does not control entry into the profession. One important but incidental result of all that was that in 1965 the Academy was incorporated as a nonprofit corporation in Michigan. It now is authorized to do business as such in Pennsylvania, where the executive secretary's office has been located.

Let me turn for a moment to what may be the Academy's most visible activity and also one of its most important influences on labor arbitration—the annual meeting. An interesting aside to those of you who sometimes feel imposed upon by the cost of arbitration is that the registration fee for the 1951 annual meet-

ing at the Blackstone in Chicago was $5.00, plus some added charge for those who also attended the banquet.

I think all would agree that the Academy's annual meeting is the highlight of the arbitration year, with between 600 and 700 persons in attendance. That large number is both a source of pride to the Academy and somewhat of a problem as well. The pride stems from the fact that the Academy is the only professional association of which I am aware that seeks out attendance at its meetings of large numbers of its clients and asks many of them to be frank and often blunt in criticizing the activity of its membership. That would seem to indicate either a disturbing tendency toward masochism or achievement of a confident level of maturity as an organization. I believe the latter, but I have heard members embrace the former suggestion with feeling.

The possible problem stemming from the large number in attendance at the annual meeting arises from the fact that, with no more than 150 or 175 members in attendance and over 500 nonmembers, an individual member, especially a relatively new one, well may feel altogether overwhelmed and intimidated by strangers at his own meeting. That is not sound and is being met, in part at least, by the decision for this and the last two years to have two days of activities devoted to members only before the arrival of guests in strength.

In any event, the range of subjects discussed at our annual meetings has been wide and the quality of give-and-take excellent. I think it is clear beyond doubt that these have strengthened the arbitration process. The published annual proceedings literally constitute a library on labor arbitration and are the best repository of material on the substantive and procedural problems that I know of. Consider how often, when you are researching a particular problem, you are referred again and again to the annual proceedings of the National Academy of Arbitrators.

I will cite only two examples, one early and one late, of discussions at annual meetings which had significant bearing on the arbitration process. The early one is the so-called Braden-Taylor debate about whether the arbitrator should act legalistically, as would a judge, or whether arbitration was a problem-solving device, growing naturally out of collective bargaining. Charles Killingsworth already has dealt with those details.

A very recent example of an annual meeting's influence on arbitration is seen in the result of Ralph Seward's somewhat nostalgic address at the 23rd annual meeting in Montreal in 1970. In speaking on "Grievance Arbitration—The Old Frontier," Ralph suggested that it was not a permanent condition of nature that all grievances be treated in the same manner and through the same procedures, noting that expedited procedures had been used in the past in safety cases in the steel industry and more recently in other cases on the waterfront.

Ralph's ideas always are provocative, but that one probably set a record for quick fruition, for the United Steelworkers and some companies in the steel industry now have a going operation of "expedited arbitration" in several areas of the country. That system provides for quick hearing and a decision within 48 hours in certain nonprecedential cases. The system is too new for meaningful evaluation at present, but it surely is an example of the fruit borne by an annual meeting idea.

I have mentioned several areas where I feel the Academy can be proud of having successfully accomplished its original and important purposes: namely, membership policy, ethics and grievance activity, and the annual meetings. In all fairness, it should be said that there is one area where the Academy can be equally proud of its *efforts* but less so of the *results* obtained, and that is in the training of new, qualified arbitrators.

It should be perfectly clear that many individual members of the Academy, and especially committee chairmen, have worked long and hard on this important effort, most recently Pearce Davis and Tom McDermott. They have coordinated efforts with AAA and FMCS and sometimes with university programs. Various cities have seen training programs, including Chicago, Cleveland, Pittsburgh, and St. Louis.

The problem nevertheless seems to defy solution, for I think it is clear that no significant number of new and qualified arbitrators have come from scratch to recognized acceptability as a result of any of those training programs. The problem is difficult. First, there is no recognized formal training leading to a degree as "arbitrator." Perhaps that is as it should be. The Academy surely is not structured to turn out persons it would then certify to be qualified arbitrators. The parties must decide whether a given person fits that description. The problem is further muddied by

the debate about whether or not there actually is a shortage of qualified arbitrators in a given area. Some underused arbitrators feel there is not. I do not mention this point to criticize the Academy's efforts. They have been admirable in a difficult and thankless task. But it is clear enough, I think, that as yet they have been unsuccessful, and that deserves recognition in any effort at looking backward.

One final suggestion: There are quite a few points on which favorable and unfavorable comments could be made after one has plowed through all available annual meeting minutes, all Board of Governors minutes, all *Newsletters*, and many, many committee reports. Most such points, however, would be only of footnote interest in the present context, and some which may be more important internally probably should be kept within the family. These would deal with matters of efficiency of the conduct of the Academy's affairs and with the structure best suited to that end.

There is one matter which I must mention, however, because it is directly related to my main subject. The Research and Education Committee is a standing committee under the Academy's bylaws, but it has not been activated since 1966. I propose here that the committee be activated and charged with the responsibility to do on a more authoritative and long-range basis the definitive task on the Academy's history that I could not do in the time that reasonably can be devoted to a short talk such as this. Various segments of the Academy's activities could be examined in parts by several persons, and this could be done year by year or by subjects. It would merit ultimate publication in some rather permanent form and, I think, would justify an expenditure of Academy funds.

Perhaps a related step might be taken. As early as 1965, the Cornell School of Industrial and Labor Relations proposed (and the Board of Governors just about agreed) to act as archivist of Academy records. Nothing has been done about that since that time. Maybe we should follow that up now, which would bring some order to our records.

The history of the Academy is important to an understanding of the arbitration profession. Each year more of the details, of the founders' activities especially, are being lost. There are major gaps already, but many of those who moved and shook in the

early days still may be interviewed so that those details may be regained and preserved, for the Academy as an institution must begin to take better care of preserving the significant events in its earlier years.

III. ARBITRATION IN THE FUTURE

MORRIS L. MYERS *

I have been attending Academy meeetings since about 1955 when the meeting was held in Cleveland. At that time I was terribly impressed with being in the presence of members of the Academy, and the problem I have today is that I am still uncomfortable in talking before many of them who are now here. In fact, speaking here reminds me of an experience I had when I was in high school and was attending a summer music camp in Interlochen, Mich. There was a nationwide Sunday night broadcast from Interlochen and I was the cymbal player for Dvorak's New World Symphony. The only thing I had to do throughout the symphony was to make a soft cymbal crash about one third of the way through the fourth movement. I sat throughout the first three movements and, when the fourth movement began, started counting hundreds of bars of rests. At the appropriate time I stood and then made my attempt at the soft cymbal crash solo. I went through the motions all right, but I was so scared that I didn't hit the cymbals together. I only hope that my speech today is not a repetition of that sad experience!

The subject of my talk is "Arbitration in the Future," and I have used the year 1980 as my target date to prognosticate what arbitration will be like then. I believe that there will still be concern over the cost of arbitration and predict that the cost will be substantially greater than it is today, at least on a per diem basis. I also believe that there will be a continuing concern over delay in arbitration and predict that the delay will have decreased somewhat from that which exists today, primarily due to the pressures on the arbitrators from the parties — pressures which will have been initiated from the work force itself. Even as of now, in certain quarters of the work force, we have seen an impetuosity regarding the time it takes to get a dispute resolved through arbitration, and it is my belief that this impetuosity will increase in both volume and intensity.

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