

APPENDIX D

1980 REPORT OF THE COMMITTEE  
ON THE DEVELOPMENT OF ARBITRATORS\*

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During the past year the committee has given increasing attention to the intern method of developing new labor arbitrators. Reports have been received from members of the Academy engaged largely in ad hoc work, who were finding it feasible to use assistants who became interns as their training progressed. Inquiries disclosed that more than 20 Academy members, apart from the large umpire offices, were using interns in various ways, and this led to the intern program which the committee arranged in conjunction with the Academy's Annual Meeting in May 1979 at Dearborn.

The program started with an informal, get-acquainted breakfast which Secretary Richard Bloch generously offered to have in his suite; attending were six mentors, ten interns, several members of the committee, and eight or ten candidates from the national training program for women arbitrators who accompanied Jean McKelvey and Alice Grant. On Wednesday afternoon, more than 30 interns, mentors, committee members, and guests took part in a more formal session to compare experiences and gain greater insight on gaining acceptability. John Van N. Dorr, Arnold Zack's intern, served as chairman, and the speakers were Lawrence Schultz of the Federal Mediation and Conciliation Service and Thomas Colosi of the American Arbitration Association. Although the chairman could not be present

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for the entire meeting, he received reports that the discussion was lively and helpful.

Encouraged by the success of the Dearborn program, the committee arranged for a similar program on Wednesday afternoon, June 11, during the Annual Meeting in Los Angeles. This time the speakers were Michael Hoellering (AAA) and Lawrence Schultz (FMCS), and John Van N. Dorr again served as chairman. Following the program, a video tape on "Problems of Evidence," produced by Arnold Zack and Richard Bloch, was shown and discussed.

Early in 1980, the committee mailed out a request for information about intern arrangements. Responses were received from 24 Academy members, 15 of whom indicated that they were currently working with one or more interns. Five others reported that they had used interns in the past, and four said that they would be interested in working with interns. On the basis of the interest expressed in these responses, a questionnaire was formulated, designed to obtain further information about methods of utilizing interns as well as background information that might be helpful with future intern arrangements. It was sent to our list of interns, two-thirds of whom responded. The results were analyzed by John Van N. Dorr, who made his report during the intern meeting on June 11. His analysis is attached as an addendum to this report.

In view of the popularity of the intern program and the committee's new emphasis on the use of interns, the special session for interns will no doubt become an annual event on the committee's agenda. In addition, permission has been obtained for interns currently working with Academy members to accompany their mentors to the seminars arranged by Arnold Zack's subcommittee both at the Annual Meeting and at other locations. Interns are also free to attend the Thursday and Friday programs during the Annual Meeting if they have registered. Altogether, this should afford valuable training for interns associated with Academy members.

The chairman has received several inquiries from Academy members, including one of the large umpire offices, about people who might be available for internships and their particular background and training. As more members come to recognize how useful interns can be, it seems likely that the number of inquiries of this kind will increase. Thus, a subcommittee has been created to maintain a list of people who have completed

formal training programs in various parts of the country, together with what background information is available, for reference when such inquiries are received. Members of this subcommittee are James Gross, Paul Prasow, and Jean McKelvey, chairperson.

### **Continuing National Training Program**

The committee has continued to take an active interest in the establishment of a continuing training program for qualified candidates who aspire to become labor arbitrators. The program was described in previous reports.

The chairman met with Richard Reilly, manager of the AAA office in Boston, and Michael Hoellering, AAA vice president, to get a better understanding of the Boston office activities that are designed to assist interns and others interested in gaining broader acceptance as labor arbitrators. That office maintains a list of people recently added to the labor panel in its region and others with ample qualifications, and it sends them notices of seminars, meetings of the Industrial Relations Research Association, and "Meet the Arbitrator" sessions that the Boston office arranges periodically. It also encourages them to contact experienced arbitrators in the New England area, largely Academy members, to arrange to attend hearings as observers; the expectation is that subsequently they will write practice opinions.

A similar program is being conducted in the Academy's Ohio region, under the auspices of the Cleveland and Cincinnati offices of the AAA, with the Cleveland FMCS office assisting. Two candidates in the Cleveland area have completed the formal requirements of this program, and both have been placed on the AAA labor roster; one is also on the FMCS labor panel, and the application of a second person is pending. Of the five candidates presently preparing applications for entry into the program, two are women. The six candidates in the Cincinnati-Dayton area are in various stages of their careers as arbitrators. Four are hearing their own cases. One has been admitted to both the AAA and FMCS labor panels.

Inquiries about this program have been received from the AAA regional offices in Atlanta and Dallas. An outline of the basic approach was forwarded to each office, but as yet there have been no reports on progress.

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### Traditional Training Programs

A new arbitrator-development program was organized last winter in St. Louis, under the auspices of the Labor Law Section of the St. Louis Bar Association. John Dunsford, an experienced St. Louis arbitrator and member of the Academy, was selected to conduct the academic part of the program. According to Professor Dunsford's report last April, six candidates who met the requirements of background or experience in labor relations were selected by a Bar Association committee for the three-day course. Six or seven others were admitted on an audit basis. Those officially enrolled will continue the course by attending hearings with experienced arbitrators and writing practice awards.

Twenty-three candidates completed the national program for training women labor arbitrators, co-sponsored by the American Arbitration Association, the Federal Mediation and Conciliation Service, and the New York State School of Industrial and Labor Relations at Cornell University, and a luncheon was held in their honor on November 14, 1979, in New York City. Jean McKelvey, director of the program, was the principal luncheon speaker and chose as her subject "Arbitration and Affirmative Action." Attending the luncheon were representatives of law firms, employers, and unions as well as those who taught the various sections of the course. At least two of the graduates of this program are serving as interns with members of the Academy.

The American Bar Association's Section of Labor and Employment Law announced in its spring bulletin that eight of the fourteen participants in the training program given at the Columbia University College of Law had satisfactorily completed phase two, during which they observed arbitration hearings and wrote practice awards, and were entering phase three, during which they were to be selected as arbitrators. Three other candidates are still working in phase two.

The Los Angeles training program, also previously reported, is in its final stage during which the candidates observe actual hearings with experienced arbitrators and write practice awards. So far as the committee has been advised, no figures have been released as to the number of candidates expected to complete the program.

**Report on a Survey of Arbitration Interns<sup>1</sup>**

Those wishing to become labor arbitrators have available to them three primary routes by which to enter the field—a training program, an internship, or merely hanging out a shingle. The aspiring arbitrator's central challenge, whatever approach is used, is the achievement of acceptability by the parties.

To ascertain what the salient characteristics and problems of the internship process are for individuals presently following that route into the arbitration field, an eight-page, 20-question survey was sent in January 1980 to 30 selected individuals believed to be interning with established arbitrators. Twenty-one questionnaires were returned, but only 13 of those responding had an intern relationship with one or more mentors. Five respondents had completed the Cornell/AAA/FMCS Women's Arbitrator Development program but were not interning, and three respondents were not actively involved in arbitration but would like to become arbitrators.

The survey reveals that the one-on-one relationship that is usually associated with the intern approach is viewed by the interns as a major asset in learning the art of labor arbitration. It provides most interns with an opportunity to observe hearings, to discuss "real" procedural and decisional issues, and, for many interns, to participate in the decision-making process by preparing practice opinions or preliminary drafts for their mentor's use.

The intern approach is clearly a highly personal one in which the nature of the participant's relationship can have great impact upon how fruitful the process is for the intern. Having a mentor who is outgoing, well regarded by the parties, and with many contacts in the field is viewed as an asset. Similarly, having a mentor who can comfortably discuss his/her decisions on procedural points in a hearing, elucidate the principles guiding his/her thinking in a case, and present a broad range of experiences (including mediation and fact-finding) is most useful to the intern.

The mentor and intern should expect a relationship that lasts at least two, and perhaps four or more, years. There appears, however, to be a lower age limit of about 30 years below which

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<sup>1</sup>Prepared for the Committee on the Development of Arbitrators by John Van N. Dorr III, Manchester, N.H.

only the exceptional person can become a full-time arbitrator, no matter what the intern's experiences and the mentor's efforts may be.

There is, of course, the prospect that the successful internship will result in a transfer of some clients from the mentor to the intern. The possibility of friction resulting over such loss of clients must be considered part of the relationship.

Finally, once the intern begins to receive his/her own cases, it is likely that at least some of these will be discussed with the mentor. The implication of such discussion for the intern's role with the parties who selected him should be considered by the mentor and the intern.

The following is a summary of the data and other information garnered from the responses of the 13 interns who are working with Academy arbitrators.

#### *Intern Demographics*

The average intern's age was 36 years, and ages ranged from 27 to 58 years. Seven interns were male and six were female; eleven were married, one was divorced, and one was single. Six respondents were based in New England (three in Massachusetts), four were from the Central States, two were from the Middle West, and one was from the West. Five respondents have J.D. degrees, two have M.B.A.s, four have Ph.D.s, and two have either a B.S. or an A.B.

Internship was a part-time activity for the respondents, and they support themselves primarily through law practice, professorships, miscellaneous part-time work, their spouse's income, or combinations thereof.

Intern course work in the labor relations field ranged from none to a Ph.D; most had had between two and four courses dealing with some aspect of labor relations.

#### *Internship Characteristics*

Most respondents had between three and four years' association with their mentors; one internship had been interrupted and one intern had changed mentors. The interns had observed an average of 22 of their mentor's cases, although one had observed none and another had observed 60. In this regard, the respondents fell into two general categories—those having observed 25 or more cases, and those who had observed 12 or

fewer cases. The interns had also observed an average of three arbitrators in addition to their mentor, and they had attended an average total of four cases with these arbitrators.

Most respondents expect an internship of four or fewer years (although one stated that the relationship would be permanent), and most also expect to maintain contact with their mentors after they start hearing their own cases on a regular basis (four stated that they did not expect to do so). Most did not view the intern relationship primarily as a financial base for the first years of arbitration work, but rather as a vehicle for learning.

The intern relationship involves not only attending hearings, but also, for 10 of the 13 interns, drafting some of the mentor's decisions and, for seven of them, doing research for the mentor. Other duties include reviewing of records and transcripts and preparation of factual backgrounds; reviewing and commenting on the arbitrator's decision before it is sent to the parties; and listening to hearing tapes and reviewing evidence for the mentor. None reported doing office work and case scheduling.

Of those who attend the mentor's hearings (all but one of the respondents), five "usually" or "always" obtain permission from the parties to observe the hearing and seven "occasionally" or "never" do. The interns sit at the head of the table with the mentor (six of the interns also do so when observing other arbitrators) and take notes. However, only three reported suggesting comments or questions, and none reported doing direct questioning during the course of the hearing.

While most interns expressed a desire to sit as a hearing officer, only four reported having done so and another reported being twice accepted as hearing officer in an arrangement in which the parties were to tell the intern before the hearing whether they wanted him to be arbitrator of record. In both cases he was selected as arbitrator of record.

Eleven interns attend hearings in the vicinity of their home or office, while nine reported also attending hearings out of town. Most mentors provide the intern's transportation (the intern riding with the mentor) and pay for meals. Some mentors also pay for their intern's lodging expenses and provide other financial assistance when it is needed.

There was a broad range in the number of draft opinions written by interns for their mentor's use. One respondent estimated having written between 190 and 300 opinions, while another reported writing 75, another 40, and the rest 25 or

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fewer. Usually the intern's drafts are based on his notes and the case is discussed with the mentor before the draft opinion is written. Some interns write the opinions before discussing them with the mentor. Normal practice is for the mentor to state who wins, usually why, and then the intern writes the draft for the mentor's review. By way of comparison, only one of the ten respondents who reported writing practice opinions discussed the cases with the mentor prior to writing, but all exchanged awards with the mentor after the practice award was written. The amount of revision carried out by the mentor was not ascertained. Most interns are paid either per opinion, or at hourly rates, or one-third of their mentor's study time, or an amount proposed by the intern.

*Development of Contacts with the Parties*

Most interns are introduced at hearings and at labor relations functions attended by the mentor as "a new arbitrator working with me." All 13 respondents reported receiving active encouragement from their mentors to get on arbitration panels, nine reported that their mentors lobbied in their behalf to get them on panels, six reported that their mentors encouraged other arbitrators to support their efforts to get on panels, and one reported that the mentor helped solicit recommendations for places on panels where recommendations were required.

Nine interns reported attending an average of three training and social programs each year where employer and union representatives were present; AAA-sponsored programs were the ones most frequently attended. Given the excellent opportunities such programs afford for meeting the parties, learning something about them and their concerns, and letting them attach a face to a name, the infrequency of attendance at such meetings is surprising. One explanation may be that different panel administrators attach different priorities to facilitating interchange between the parties and the neutrals, thereby not giving interns in some regions the opportunities available to those in other regions.

Another important way for interns to gain professional contact with the parties is through sitting as hearing officers. Yet only six interns reported that their mentors suggested that parties use them as hearing officers. The four who had sat as hearing officers either took notes for their mentor's use, drafted



awards for the mentor's signature, or drafted awards that both they and their mentors signed. Normally, the intern is suggested as a hearing officer when the mentor's schedule does not permit a hearing within the time desired by the parties. The infrequent use of interns as hearing officers may be due to a reported reluctance of the parties to use someone other than the arbitrator they have selected.

Another method by which interns can meet the parties on a professional level is by attending the mentor's mediation sessions or fact-finding hearings. Five interns reported having attended mediation sessions, but only one actively participated in the process. Five attended fact-finding hearings. One respondent reported mediating during the course of the mentor's fact-finding hearing.

#### *Status as Arbitrator in Own Right*

Most respondents perceived becoming listed on a panel of arbitrators as a prerequisite to developing a regular arbitration practice. However, five of the interns, including three who had been interns for more than three years, were on no panels. The period between internship and listing on a panel ranged from zero months to more than three years. Three had been listed within less than one year and four were listed two or more years after becoming an intern. No single reason was given for the delays in listing, although some interns expressed frustrations over the qualification requirements of some agencies.

Seven of the interns had been selected as arbitrators, fact-finders, or mediators independent of their roles as interns, and in each case their first selection had occurred by the end of their second year of internship. Six reported having served as arbitrator in up to 16 hearings (average of eight), two reported serving as fact-finder in five and ten cases, respectively, and the same two had also served as mediator in 13 and six cases, respectively. The AAA was the most frequent source of cases (five interns reported receiving between one and nine cases through the AAA), while two persons reported direct selections by the parties and two reported appointment by state panels or from state lists. The data did not reflect general increases in caseloads in the second and third years, probably because of the low number of responses to this question.

Notwithstanding the intern's activity as a neutral in his/her

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own right, almost all reported discussing the cases with the mentor before sending out the award, five of the seven reported that their mentor had at least occasionally reviewed the award before it was sent out, and three reported having changed their minds as a result of discussions with their mentor. Thus, the mentor generally serves as a sounding board and teacher after the intern has begun to try his own wings.

Other information obtained relative to the interns' arbitration practice was that the per diem ranges from \$150 to \$250, with most per diems set at \$250; and that most interns issue their awards within 20 to 30 days after hearing or briefs.

*Suggested Activities to Increase Intern Acceptability*

There are four principal factors that can significantly influence the speed with which an individual gains exposure to the parties and, the intern hopes, acceptability: the effort he makes on his own behalf, the effort the mentor makes on the intern's behalf, the activities of neutral agencies in increasing the exposure of new arbitrators, and the potential formal role of the National Academy of Arbitrators in the internship process. Information as to the interns' experiences in each of these areas was elicited by the questionnaire.

Of primary importance to an intern's advancement are the efforts he makes on his own behalf. The often-repeated advice given to aspiring arbitrators is that they should try to gain the broadest possible exposure short of pushing themselves onto the parties, both by writing for publication and meeting the parties. Most interns reported doing at least some writing or speaking on labor relations matters. It is impossible to tell from the data what the impact of these efforts have been, although the responses show that almost equal proportions of those who have written or spoken, and those who have not, have heard cases of their own.

Other activities by interns include attending hearings, writing practice opinions, attending training programs and workshops (both for their educational value and to meet the parties), and researching and keeping current on the literature in the field.

The mentor's activities can also be crucial to an intern's rapid development. These activities can range from simply being a highly regarded arbitrator whose decision to select an individual as an intern imparts an initial aura to the intern, to the arbitra-

tor's taking the initiative in approaching the parties and neutral agencies on the intern's behalf. Some arbitrators are reported as limiting these activities to introducing the intern as an associate at hearings and little else.

In addition, the mentor performs a vital training and teaching role—answering questions, discussing issues, providing advice on decision-making and procedural matters, and restoring enthusiasm which often flags during the long early intervals between the intern's selections as arbitrator. All interns reported receiving this kind of support.

Finally, various responses alluded to close personal relationships between mentors and interns, involving not only financial assistance and emotional support, but also close friendships; most interns reported that they had great respect for their mentors.

The data suggest that because an internship involves a close relationship between two individuals, candidates should be wary of undertaking an internship with an arbitrator with whom they feel less than comfortable. Similarly, arbitrators considering taking on an intern should be able to withstand close questioning about their conduct of hearings and their decision-making process since the internship involves an intensive learning process in a field in which there is, at times, more than one defensible answer to an issue and more than one way of dealing with procedural matters arising at a hearing.

Neutral administrative agencies were seen by respondents to be a source of both frustrations and opportunity. The frustrations stem primarily from the requirements for listing on the AAA and FMCS panels. It was suggested that research and writing work for the mentor should carry some weight in the evaluation process for listing.

Opportunities lie in the relationship of the neutral agencies and the parties. In this regard, it was suggested that the agencies should encourage the use of new arbitrators; that they should send out the names of new arbitrators as often as possible; that they should arrange gatherings at which new arbitrators can have the opportunity to meet the parties; that they should afford interns an opportunity, with agency blessing, to observe other arbitrators at work; and that they should sponsor education workshops for new arbitrators. It was also suggested that the agencies might inform new arbitrators of how the parties rate them in the selection process and that they might ascertain from

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the parties their evaluation of various aspects of the intern's performance—to be released to the intern once there are sufficient responses to protect the parties' anonymity.

Most of the suggested practices are already being used in one or more AAA regions. The AAA Boston regional office has been notable in its efforts on behalf of new arbitrators. Not only is the New England area one in which the AAA is the most frequently used administrative agency, but its Regional Director, Richard M. Reilly, has taken a personal and active interest in expanding the ranks of arbitrators available to the parties. So far as the committee has been advised, there is no feedback system in any of the regions which informs new arbitrators of what they are doing "right" or "wrong."

Finally, with regard to the role of the National Academy of Arbitrators, it was suggested that the Academy could in various ways lend its expertise to the development of new arbitrators via the intern route. Among activities suggested were the formal adoption of a policy to encourage the use of new arbitrators by the parties; the development of a list, to be made available to the parties, of Academy mentors and their interns; and permitting interns to attend Academy training sessions and meetings where the mentor is not present, but upon his recommendation. It was also suggested that the Academy might fashion a process whereby interns could meet other Academy members and they, in turn, if they feel comfortable with the intern and his work, could recommend him to other parties.

The thrust of the suggestions was that Academy members, generally recognized as at the top of their field, both can and should take an active role in the development of new arbitrators. It is interesting to note, however, that although seven of the interns responding to the questionnaire reported local NAA meetings in their areas, only two had attended these meetings. These two found the meetings very helpful.

### *Conclusion*

A significant number of people are interested in becoming labor relations neutrals and have taken the initiative to seek an association with established arbitrators. While the details of such associations range broadly, it is clear that most of those who have undertaken the intern route have found it personally rewarding. The results in terms of gaining caseloads are not

clear. The participants are unanimous, however, in their view that the intern process, when undertaken with a serious commitment by both participants, is the best way to train new arbitrators and helps give them an opportunity to establish themselves.

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