ARBITRATION 1991
THE CHANGING FACE OF ARBITRATION IN THEORY AND PRACTICE
DEDICATION

This 44th Annual Proceeding of the National Academy of Arbitrators is dedicated to past presidents of the Academy, Gerald A. Barrett (1972) and James C. Hill (1969), both of whom died recently. Their contributions to the Academy and the arbitration profession will be long remembered, as past Academy Presidents Lewis M. Gill (1971) and Eva Robins (1980) explain beginning on the following page.
Gerry Barrett was the epitome of the polished professional arbitrator. He brought to the hearings a quiet dignity and calm assurance, which would have graced the bench of any courtroom, but coupled that with a naturally genial disposition that put those appearing before him at ease.

His written opinions were models of succinct and clear reasoning. We can all profit from his 1973 presidential address in Atlanta, in which he eloquently called upon us to not encumber our opinions with unnecessary verbiage, but rather to state the reasons for the decision in plain and understandable English.
Granted that not all of us can do that as well as Gerry did, we should heed his admonition as best we can.

Besides a striking degree of sheer professional competence, Gerry had a keen sense of what Abe Stockman called the "necessary proprieties"—an understanding of the importance of arbitrators presenting not only the appearance but also the actuality of high ethical standards in conducting our work. It is no coincidence that the Code of Professional Responsibility was launched during the presidency of Gerry Barrett in 1973. There were others, to be sure, who share the credit for that remarkable document, which was brought to completion during the tragically shortened term of President Dave Miller in 1974. But it is well to remember that it was Gerry who launched the project and enlisted the distinguished trio of Academy members (Chairman Bill Simkin, Ralph Seward and Syl Garrett) who headed the tripartite committee of Academy, FMCS, and AAA representatives that developed the final product. That Code, which has stood the test of time so well, stands as a fitting monument to Gerry and the others who brought it into being.

Lewis M. Gill
It is an honor for me to write the dedication to Jim Hill for the 1991 volume of the NAA Annual Proceedings. Jim was a cherished friend and colleague, a superb arbitrator, a painstaking teacher and example to arbitrators and advocates, and a recognized expert in the field of labor relations. To those of us who were fortunate enough to know and work with him, when we learned our craft, Jim was a great teacher. His arbitration hearings were prime examples of integrity, impartiality, and fairness. He was able to achieve and hold the confidence of the parties and grievants involved in labor/management disputes, an ability
apparent in the lasting quality of the relationships he established. He wrote with grace; his analysis of problems was painstaking and without bias; the clarity of his thinking, writing, and teaching was elegant.

Jim was a graduate of Swarthmore College, studied at London School of Economics, the University of Chicago, and Columbia University, from which he received his M.A. in economics. He taught economics at Amherst, Sarah Lawrence, Columbia and Cornell, and helped his wife, Ruth Mary (Reny) Hill, to found the Lower Bay School for West Indian children in Bequia in the Grenadines. He was President of the Academy in 1969.

No comment about Jim would be complete without recalling his wonderful, zany humor, which gave us—colleagues, friends, and parties—such joy.

We miss him.

Eva Robins
PREFACE

Change is inevitable if we are to continue as a dynamic entity. This fact was brought home to members of the Academy at its 44th Annual Meeting, held in Washington, D.C., from May 26 to June 1, 1991. With Justice William J. Brennan and Justice Thurgood Marshall leaving the U.S. Supreme Court, arbitrators as well as the whole labor relations community can expect changes. As the Distinguished Speaker at the Friday luncheon, Justice Brennan had both good news and bad news for the arbitration profession (Chapter 1). In his presidential address Howard Block continued the theme of change by promoting legislation to guarantee due process to all employees, thus ensuring a “kinder and gentler” society (Chapter 2).

Although John Dunlop assured Academy members that the good old days of George Taylor and med/arb are not dead, he encouraged arbitrators to look for ways to help the parties solve more serious problems outside the bounds of the arbitration process (Chapter 3). Dick Mittenthal, Bob McKersie, and Ted St. Antoine were convinced formalized arbitration is here to stay and reassured their Academy colleagues that this change is not all bad, provided it represents what the parties want (Chapter 4).

Judge Frank Easterbrook agreed that the winds of change would continue to buffet arbitrators about in the courts, ensuring that arbitrators stay within their proper jurisdiction and within the bounds of common sense in their decisionmaking. Richard Gear (management) and David Silberman (union) took expected issue with some of the conclusions, but generally agreed that arbitrators would do well to shape their awards in a way that would not invite court reversal (Chapter 5).

Mark Rothstein suggested that new health-related issues would be brought to arbitration due to the burgeoning “employer welfare state,” but George Cohen felt that these issues would not require different arbitral talents. However, sexual harassment cases are likely to bring change to arbitration, according to Tim Bornstein, Helen Neuborne of NOW, and Gaull Silberman of EEOC. They warned arbitrators to purge whatever male chauvinism still lurks in their decisions (Chap-
Bruce Fraser made a similar appeal on behalf of "other-ness" generally, suggesting that diversity in the workplace may require new approaches to resolving labor-management disputes. Richard Bird of Canada agreed with him, but Michael Gottesman took exception, urging arbitrators to stick to the contract and let the parties negotiate whatever changes they deemed necessary (Chapter 8).

Bill Usery, William Childs, and Michael E. Bennett, told of their special experiences at NUMMI and Saturn, where changes in the workplace permitted employees to participate in decision-making at every level (Chapter 9). On the other hand, nothing seems to have changed in the federal sector, although FLRA Vice Chair Jean McKee hopes to improve procedures so that more Academy members will take federal-sector cases. Jerry Ross and Earl Williams gave some recommendations for making federal-sector arbitration more palatable (Chapter 10).

Some things never change, and the Code of Professional Responsibility remains an important part of the arbitration scene. Rich Bloch, Walt Gershenfeld, and Sandy Porter discussed aspects of the Code dealing with the perception of impartiality (Chapter 11). The potpourri workshop sessions yielded information about hearing conduct and discharge of strikers (Chapter 12).

Other Academy business included amendments to its Constitution and Bylaws (Appendix B), and we would be remiss to omit mention of the "Capitol Steps" performance at the Friday dinner-dance, which kept the audience in a hilarious mood from beginning to end.

The excellent program was arranged by a committee headed jointly by Tia Denenberg and Beber Helburn, who succeeded last year's chair, Tony Sinicropi. Joe Sharnoff and Herb Fishgold jointly chaired the Arrangements Committee.

The cooperation of the authors in submitting their manuscripts on time is appreciated. Although we will miss Camille Christie, we look forward to working with the new special editor, Cheryl Drew.

July 1991

Gladys W. Gruenberg
Editor
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