

and graduated there in 1934. . . . This was in the depression, there weren't that many jobs around for lawyers coming right out of law school. I wound up with a cravat firm in New York. . . ." Now some of you may think that this is a mistake—that Russell Smith was really saying that he went to work for the *Cravath* firm (Cravath, Swain & Moore) in New York. But who is to say what is the truth here? Surely the historical truth is what is recorded in the archives. There it is, and there it will stay. *Russell Smith went to work for a cravat firm in New York*. And is it not right that he did so? After all, which is better preparation for a life as an arbitrator—the polished mahogany of Wall Street, or the realities of the garment trade? And so, in celebrating 50 years in the world of work, we find ourselves indebted, yet again, to an unsung, anonymous worker who, in transcribing the Smith interview, instinctively understood the importance to posterity of a little revisionist history.

III. ACADEMY ANECDOTES: FIFTY YEARS OF RELIGION, ROYALTY, SEX, AND MYSTERY

GLADYS W. GRUENBERG*

A 50th anniversary celebration brings to mind a welter of historical incidents, and it is difficult to sort them out in a coherent fashion. In fact, I think I will adopt Lew Gill's disclaimer while he was editor of the Academy Newsletter in 1963. He noted that there was an "undue mass of stuff to write about." As a result, he offered apologies "to those who are about to be slighted."¹ To that I say, "Amen."

To organize the wealth of material in the archives of the National Academy of Arbitrators, I decided to use the categories that an elementary school teacher announced to her writing class.² She told her fourth grade students to write a short story involving four main topics: (1) religion, (2) royalty, (3) sex, and (4) mystery. After about five minutes, she noticed that Johnny Smith in the back row was sitting idly looking out the window, while all the other children were busily writing. She went over to him and asked whether he was

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¹NAA Newsletter (Nov. 1963), 1.

²Among Academy members, Jim Hill is considered the originator of this story, but others attribute it to English novelist Somerset Maugham.

having trouble with the assignment. Johnny answered: "Oh, no, I'm done." The teacher couldn't understand how he could have completed his story in so short a time, so she asked him to read aloud what he had written. This is what he read: "My God," said the King, "the Queen's pregnant! Who done it?" You must admit that all four elements are there.

Although I'm supposed to take a bit more time than Johnny, I am going to use those four categories—religion, royalty, sex, and mystery—to tell some of the stories that made writing the Academy history an interesting and enjoyable experience.

Religion

While you may wonder how religion can play a significant role in Academy activity, one Academy founder and president who was also a Jesuit priest left his mark on many of us. At least three former Academy presidents whom I consulted about material for this presentation urged me to include stories about Father Leo Brown of Saint Louis University.

Apart from his reputation as arbitrator and mediator, Leo Brown was probably better known for his poker playing than for his evangelizing. Legend has it that during the early Academy meetings a room was designated with a sign noting the location of Father Brown's "Seminar on the Laws of Probability," where many Academy members donated to his "charity" well into the wee hours of the morning. Bert Luskin, who was Academy secretary when Father Brown was president, told the story about the phone ringing during one of those poker sessions and the caller asking for the room's host. After listening to the pitch for a couple of seconds, Leo handed the phone to Bert with the wry comment: "I think this is for you." It turned out to be a solicitation from the red light district.

Father Brown's poker games in Las Vegas were also legendary. He always showed up in mufti so as not to give scandal, but sometimes his colleagues on the Atomic Energy Labor-Management Relations Panel who were hearing cases at the Nevada Flats test site forgot discretion when they left and said, "Goodnight, Father," whereupon the other poker players would give a dubious glance at his winnings and make some comment about divine guidance. Father Brown even managed to have panel members act as his acolytes at Mass services in St. Anne's church in Las Vegas at the crack of dawn before going to the hearing.

Leo Brown always dressed as a priest for hearings, however, and sometimes a witness would try to impress him by asking for his blessing or fingering rosary beads during recesses. One Irish business agent became very annoyed at such display and announced that he too went to Mass regularly and hoped that Father Brown would not let religion interfere with a just decision.³

Religion influenced at least one policy decision of the Academy. Some of you may recall that in the 1960s invocations were de rigeur at all banquets, and Catholics were not supposed to eat meat on Fridays. In his instructions to the Arrangements Committee chair, Academy President Ben Aaron warned that all denominations were to be represented for the before- and after-meal prayers. He also made sure that the Friday meal featured a fish choice.⁴ In later years the invocation and benediction were replaced by a few moments of silence in memory of our departed members. I often wonder whether they are listening. This brings to mind a philosophical rhyme by James Thurber, quoted by Ben Aaron in the 1966 Newsletter when suggesting an elaborate "heraldic device" for the Academy:

Fools rush in where angels fear to tread;
And the angels are all in heaven,
But few of the fools are dead.⁵

I considered including ethics under the religion heading but decided against it. After all, morality is so well known as a qualification for Academy membership that it does not need any historical amplification. But I could not resist a comment by Peter Seitz of New York when he chaired a special committee on membership standards:

Once the quantitative test is passed [50 cases in 5 years], nothing short of proof that the applicant is a certified idiot or a moral monster should prevent his being enveloped in the maternal breast of the Academy.⁶

For in-depth study of arbitrator ethics, I refer you to The Code of Professional Responsibility for Arbitrators of Labor-Management Disputes in the appendix of the *Academy History*, which you received in your registration packets.

³This material was derived from Gruenberg, *Labor Peacemaker: The Life and Works of Father Leo C. Brown, S.J.* (Institute of Jesuit Sources 1981).

⁴Gruenberg, Najita & Nolan, *The National Academy of Arbitrators: Fifty Years in the World of Work* (BNA Books 1997), 82 [hereinafter referred to as *Academy History*]. Most of the material in this presentation is derived from the *Academy History*.

⁵NAA Newsletter (Aug. 1966).

⁶*Academy History*, 151.

Royalty

Now we come to royalty. Oh, yes, the Academy had royalty in the persons of founders, World War II alumni, and past presidents. Although they would deny any special status, the aura was all around them. Part of this elite group was referred to as the “eastern establishment.” In the early days, most arbitrators were located along the Atlantic seaboard from Virginia to Massachusetts. In 1949, 50 of the 104 Academy members, were concentrated in major eastern cities (approximately 50%).⁷ Because the Academy’s limited finances at the time prevented reimbursement of expenses, Board and committee members were selected not only for their obvious talent but also to minimize travel expenses and to encourage communication. Members in other parts of the country felt left out of the loop. Time and time again, early letters and reports complain about dues delinquencies, allegedly due to lack of inclusion in decision making.⁸

There was a splinter group of the eastern establishment that was even more difficult to penetrate—a special fraternity I have named the “Kings of Malapropery.” If you heard Bill Wirtz’s fireside chat at the Academy’s 45th Annual Meeting in Atlanta in 1992, you will remember that one of the questions asked at the end of Wirtz’s presentation related to his penchant for collecting Malapropisms, and he regaled us with a few gems he had submitted to the 1963 Newsletter:

We’ve got to keep our ear to the grindstone.
Let’s pull up our trousers and throw down the gauntlet.
Whenever I smell a rat, I nip it in the bud.

Not to be outdone, Jim Hill of New York submitted a speech he delivered to what he characterized as a “totally unresponsive audience”:

I presented a brief but learned essay on some developments in the language of arbitration and labor relations, giving a few of the more recent tidbits not yet stolen by Wirtz or [Lew] Gill, including the “garnished annual wage” and the fellow who struck a defiant pose and proclaimed that “you all ain’t goin’ to put the anus on me.”

Hill went on to distinguish the malaprop from other types of usage:

⁷*Id.* at 40–41.

⁸*Id.* at 38–39.

Mixed maxim: If you don't ratify [the contract], you'll be walking up a blind alley on a limb.

Spoonerism or slip of the tongue: fricken chickasee.

Slip of the mind: After all some of us are human!

Simple Stengelese: When people don't want to go to ball games, there's just nothing you can do to stop 'em.

Newsletter Editor Lew Gill added his own version of a "slip of the mind" by an advocate: "My witnesses' honesty is beyond integrity."⁹ You will have to admit that the admission standards of the "Kings of Malapropery" were well above those of the Academy as a whole.

Another clear sign of inclusion in the elite echelon in the early days was an invitation to attend one of the numerous cocktail parties sponsored by companies and unions during the annual meetings. Although there is no evidence of anything akin to Lincoln bedroom solicitation, companies vied for the honor of hosting respected arbitrators. Hearsay has it that one company representative, especially anxious to curry favor, deliberately stood at the entrance to receptions sponsored by other companies as if he were the host. He made sure everyone saw his badge so that his company could take credit for the parties.

The solicitation of arbitration business that normally occurred at these affairs was characterized as "flesh peddling" by Jack Dunsford, as "a circus environment" by Arnie Zack, and as a "scandal" resembling "an Oriental bazaar" by Peter Seitz.¹⁰ In later years the Board of Governors insisted that these parties be curtailed and authorized an Academy-sponsored hospitality room as a substitute. I leave it to your judgment as to how successful this policy has been.

The status of the inner circle was made even more evident during discussions about training new arbitrators. As spokesperson for those who thought that the Academy was growing too fast and that membership standards should be tightened, Peter Seitz, the Academy's poet laureate, penned the following lines, entitled "A Sonnet Designed to Discourage Any New Academy Programs for the Development of Pubescent Arbitrators":

Time was when little kids of nine or ten
 In fantasy would dream of their careers,
 Vocationally, in a world of men
 As cops, or locomotive engineers.
 And little girls, so far as one could see,

⁹NAA Newsletter (June 1963).

¹⁰Academy History, 84, 134.

Would play with dolls or cook a mess of fudge
 In preparation for maturity
 When they will serve as household wife and drudge.
 Today, those little boys and girls require
 A higher and more profitable Fate;
 And nothing less will satisfy desire
 Than they be retained to arbitrate!
 They leap out of their cribs and incubators
 And in a flash, they're Instant Arbitrators!¹¹

Later, he emphasized the point with this limerick:

A Sage Arbiter once drew his sword,
 And chided the clamoring horde:
 "You impatient rash youth
 Are all acting uncouth,
 Get yourselves a New War Labor Board."¹²

He could do just as well in prose, as Ralph Seward pointed out, quoting Seitz during a discussion on the development of qualified new arbitrators:

With respect to the development of qualified, experienced and acceptable new arbitrators, please record me as saying "nyet." My reasons (without limitation and subject to supplementation and elaboration) are:

One. I distrust young persons. They are unduly ambitious and usually seek success at my expense. They tend to be disrespectful; and when they do not behave in that way, are fawning and hypocritical. Show me a "new arbitrator" and I will show you a person with his hand in my pocket, claiming my sustenance as his own and robbing my grandchildren of their security.

Two. Young persons are too inexperienced to exercise good judgment. They are arrogant in their opinions and attitudes. When you tell them what is right they argue or do not believe you.

Three. Young persons are like camels with noses in our tents. They do not have a decent sense of propriety.¹³

Luckily for the Academy and for most arbitrators here today, Seitz's sentiments did not represent majority thinking, and, seriously, probably not even his own, considering how many interns he and Eva Robins assisted.¹⁴ During the 1970s and 1980s many

¹¹*Id.* at 180.

¹²*Id.*

¹³Seward, *The Development of Qualified New Arbitrators: Workshop: Discussion*, in *Collective Bargaining and the Arbitrator's Role*, Proceedings of the 15th Annual Meeting, National Academy of Arbitrators, ed. Kahn (BNA Books 1962), 222, 223.

¹⁴See, e.g., Robins & Seitz, *Not Training But Sharing (The Rewarding Experience of Two Veteran Arbitrators)*, 37 Arb. J. 41 (1982), where they support the mentor method of training as distinguished from formal classroom sessions.

Academy members, especially Jean McKelvey of New York, Ted St. Antoine of Michigan, Gladys and Walter Gershenfeld of Pennsylvania, and Howard Block of California, contributed to American Arbitration Association, Federal Mediation and Conciliation Service, and Department of Labor training programs in the private and public sectors.

On several occasions the Academy has had to cope with rebellion by newer members, who continued to feel “dissed” by the royalty. The drive for more democracy could not be denied among Academy members. The Nominating Committee slate was challenged several times in the 1970s. The Academy brass immediately reacted to accommodate the grievances, and the mavericks were ultimately co-opted by appointments to special committees or eventual election to the Board of Governors.

Even our current president, George Nicolau, was a maverick in his early days as an Academy member. At several membership meetings he rose to the call for “new business” with the suggestion that the Academy should be more democratic. In fact, he even succeeded in changing the Academy’s election procedure without going through the time-consuming constitutional process. He relied on *Robert’s Rules of Order* to support his “germane motion of the whole” to amend the bylaws. And, as I am sure you have already guessed, the very next year he was elected to the Board of Governors.¹⁵ Thereafter, he confined his revolutionary endeavors to the inner circle and continued to climb the ladder to his present position. Nicolau apparently found out—as we all do in time—that service to the Academy is the main fuel for upward launch when the Nominating Committee is considering potential candidates for Academy office.

In order to promote greater sociability and friendship between newer and older Academy members, the Future Directions Committee, headed by Jack Dunsford and Bill Murphy, recommended that accepted candidates be oriented to Academy culture at a national meeting before they attain official membership status. New members discovered, sometimes to their surprise, that the orientation sessions and the new members reception gave them an opportunity to meet their respected elders in an informal, social atmosphere. This association helped to make the Academy’s constitutional goal of “encouraging friendly association among the members of the profession” a reality.

¹⁵*Academy History*, 229.

But the elitism charge continued to be leveled against the Academy's governance on the supposition that the World War II (WWII) alumni were an exclusive group. And, of course, they were. Obviously, no new WWII alumni could be produced, in spite of Seitz's challenge to get "yourselves a New War Labor Board."¹⁶ During the 1980s, Academy membership increased from 500 to 690. In his February 1990 President's Column, Al Dybeck perceived the newcomers' frustration:

I have sensed a certain rumbling among our "younger" members indicating a feeling of isolation from the internal operations of the Academy. . . . [D]espite some liberalization of the nomination and election procedure some years ago, it might be said that we are still a bit oligarchist in nature.¹⁷

The 1990 Annual Meeting program addressed this complaint with a panel discussion on "New Voices in the Academy." One new voice, Barbara Tener, summarized the results of a questionnaire submitted to members who had joined the Academy since 1980:

The perception that access to the governance . . . of the Academy is restricted and that the governing body does not reflect the membership is widely held, even among the allegedly elite (many of whom denied the title). . . .

Members . . . are frustrated by the apparent inability of the existing structure to represent our increasing numbers and our evolving and varying interests.¹⁸

This rebellion produced a new self-examination, which Bill Murphy characterized as "masochism,"¹⁹ by two special committees, Howard Block's Committee on Committees and Ben Aaron's Committee on Governance. To facilitate an influx of new official blood, both recommended that no committee chair serve more than three years and that no officers or Board members be appointed to any committee during their terms of office.²⁰

Since 1990, that policy has opened many chair opportunities to newer members so that their talents and loyalty to the Academy can be tested in the fire of responsibility. For example, of the 23 committee chairs listed in the 1994–1995 Membership Directory,

¹⁶See text, *supra*, at note 11.

¹⁷Dybeck, *The President's Column*, *The Chronicle* (Feb. 1990), 2.

¹⁸Tener, *New Voices in the Academy: Part III. Comments on Governance*, in *Arbitration 1990: New Perspectives on Old Issues*, Proceedings of the 43rd Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1991), 270, 271.

¹⁹Murphy, *The President's Column*, *The Chronicle* (Oct. 1986), 2.

²⁰*Academy History*, 268–69.

only 9 were admitted to the Academy before 1980, and none was an incumbent officer or Board member. An important result was a generational change in the Academy's leadership. But democracy can go only so far even in an organization that prides itself on promoting due process in the workplace. The committees did not recommend a contested officer election slate or a mail ballot. It might be said that the Academy progressed from what Al Dybeck called oligarchy to some form of limited democracy.²¹ Committee appointments are still made exclusively by the newly elected president, and newer members still assume that they must do some serious but guarded solicitation if they wish to invade the royal entourage. Thus the historical aphorism: The more things change, the more they remain the same.

Sex

Now we come to sex. Of course, what I really mean is gender. The wives of Academy members (the word "spouse" was not yet in vogue) were not invited to Academy meetings in the early days. The first "ladies" program occurred in 1962.²² Academy wives were mentioned in a 1963 Newsletter, in connection with a chapter meeting in Philadelphia. Editor Gill reported:

The Philadelphia social this year, hosted by the affable subcontracting authority, Scotty Crawford, will feature yet another Quaker first—a business session *with wives participating*.

The subject, product of the fertile Crawford mind, is "The Role of the Arbitrator's Wife in Arbitration," and a wild free-for-all, with laughter and divorces galore, is anticipated.²³

If new members felt a certain clannishness within the Academy during its early days, Jean McKelvey must have had that feeling in "spades," but for a different reason, namely, the "old-boys network." Although she was a World War II alumna, she was the sole woman Academy founder. Hence, in the Academy we refer to the "founding fathers and mother."

In 1970, as Academy president, McKelvey sponsored a drive to train new arbitrators and emphasized the lack of women in the arbitration profession by entitling her presidential address "Sex

²¹ See text, *supra*, at note 16.

²² *Academy History*, 82.

²³ NAA Newsletter (June 1963), 9 (emphasis in original).

and the Single Arbitrator.”²⁴ Realizing that Academy membership is dependent on acceptability in the labor-management community, she berated the audience for not doing more to promote acceptability of women arbitrators. To emphasize the importance of cultural adjustment as a first step in such change, as emcee at the Academy luncheon, McKelvey introduced the male speakers’ wives first, listing their educational and professional accomplishments, and thereafter she referred to the male speakers merely as “their charming and gracious husbands.” As Ben Aaron remembers it, not only did she “bring the house down, but she put an end, once and for all, to the use of the ‘charming and gracious’ formula.”²⁵ Bill Wirtz commented later that she should have ended the recital with “A-women” instead of “Amen.”²⁶

McKelvey compared her presidential appointments to those in the movie *Putney Swope*, where initially the film showed only one black man on the company board. When he became CEO, he announced there would be a few changes, and the next frame shows only one white man at the board meeting. She commented, “I did something like that,” although her ability to appoint women as committee chairs was limited by the fact that there were only four women in the Academy in 1970.²⁷

As the first glow of enthusiasm for civil rights spread to professional organizations in the late 1960s, the Academy searched for ways to augment the number of women in its ranks. At the time there were only four women members in a total of 360. In 1974, an affirmative action plan was proposed to temporarily water down membership standards to encourage more female applicants. But the plan was “shot down,” according to its sponsors, because the women Academy members themselves were adamantly opposed to any “bending” of the standards on the ground that such action would demean their status.²⁸

Somewhat later, special arbitrator training programs for women, initiated by Jean McKelvey and sponsored by the American Arbitration Association, Cornell University, the Federal Mediation and Conciliation Service, and the Industrial Relations Research Asso-

²⁴McKelvey, *The Presidential Address: Sex and the Single Arbitrator*, in *Arbitration and the Public Interest, Proceedings of the 24th Annual Meeting, National Academy of Arbitrators*, eds. Somers & Dennis (BNA Books 1971), 1, 28.

²⁵Letter from Ben Aaron to Gladys Gruenberg, January 21, 1997.

²⁶*Academy History*, 131.

²⁷McKelvey, Presidential Interview, June 1, 1989.

²⁸*Academy History*, 153.

ciation in the Western New York region, were partially responsible for the influx of women members in the 1980s. As of June 1995, there were 65 women arbitrators representing 10 percent of the Academy's total membership of 668, 56 of whom, or 86 percent, had been admitted since 1980. Today, when the labor arbitration caseload is declining, Academy members find it difficult to work up enthusiasm for training new arbitrators, male or female. The 10 percent female:male ratio is likely to remain stable well into the 21st century.

It appears, however, that the Academy has the "glass ceiling" typical of most organizations in the United States. Although at least one woman is regularly elected to the Board of Governors and as one of the four vice presidents, no woman has been Academy president since Eva Robins of New York was elected in 1980, 17 years ago. Omitting charter members, for the 18 living presidents elected after 1960, the elapsed time between their admission and nomination ranged from 11 to 32 years, with an average of 22 years and a median of 20 years. In the light of this history, women Academy members may have to wait until the year 2000 to rupture the ceiling for the third time and claim the presidency.

Another sex-related item was the Academy's gender-neutral editorial initiative under the direction of Gladys Gershenfeld. This involved amending all Academy documents to eradicate sex bias, particularly the male pronoun and words like chairman. The most controversial change involved the substitution of "chair" for chairman. Art Stark of New York, in the objecting minority, came up with a memorable couplet in support of the status quo:

A rose by any other name would smell as sweet.
A chair by any other name is still a seat.²⁹

Mystery

The finale of my recitation is entitled "mystery." The greatest mystery surrounding the Academy is how the organization managed to survive for 50 years. As you read the history of the Academy, you will be struck again and again by one financial crisis after another. Bankruptcy was looming around every year's end, but somehow the organization pulled through. In the early years, funds were collected, according to founder Byron Abernethy of

²⁹Letter from Art Stark to Gladys Gruenberg, March 6, 1997.

Texas, by “passing the hat.” At the First Annual Meeting Secretary-Treasurer Peter Kelliher of Illinois reported a balance of \$59.64.³⁰ To put things in perspective, Lew Gill remembered that the registration fee for the St. Louis meeting in 1958 was \$8.00, which included a luncheon and the Friday night dinner. Of course, at the time an average arbitrator’s daily per diem was \$50.00.³¹ So much for the good old days! The annual dues were established on a sliding scale from \$10 to \$100, with members deciding on their own how much they would pay.³² It was not until 1975 that the Board raised dues to \$200, the same for every member. A revolt, especially among some part-time academic arbitrators, threatened to wreck the organization.³³ But mysteriously it all subsided and today the Academy dues are \$350 with occasional additional assessments for the legal representation fund. That amount is less than the current per diem of most arbitrators.

No one doubts that, if it had not been for the subsidy provided by the educational or joint union-management institutions that employed the Academy’s secretary, it is unlikely that the bills could have been paid. It was not until the late 1980s that the membership came to the realization that we should stop electing our secretaries on the basis of their “moochability,” as Mickey McDermott used to say, and set up a national office independent of any outside assistance.³⁴ Finally in 1990, the Board of Governors authorized opening a national office that was not quite independent but at least had its own address in Ithaca, New York. Cornell University subsidized some administrative expenses. That lasted for six years under Dana Eischen’s secretariat, but today we are again under a university umbrella. Our present secretary-treasurer is Bill Holley, a professor at Auburn University’s College of Business in Alabama. Forgive me for another historical aphorism: What goes around, comes around.

The mystery of the Academy’s continued existence can be found in the loyalty and dedication of its membership—beginning with a few more than 100 dedicated professional arbitrators who sought common cause and friendship. We start the next 50 years with more than 650 members, women and men who still feel that warm camaraderie within a group that Ralph Seward characterized as a

³⁰*Academy History*, 27.

³¹Telephone call from Lew Gill to Gladys Gruenberg, May 14, 1997.

³²*Academy History*, 39.

³³*Id.* at 136–37.

³⁴*Id.* at 219.

“lonely profession,”³⁵ who go on their appointed rounds dispensing what Peter Seitz called “black magic.”³⁶ In his presidential address, Dick Mittenhal listed “freedom and independence” among the “joys” of the arbitration profession, adding (albeit before Gladys Gershenfeld’s gender-neutral editorial guide was adopted):

No one supervises us. No one tells us when to work or how to do our job. The arbitrator’s award is his alone. . . . He can work out of a business office or out of his home. . . . He can begin his study day at 8:00 A.M. or 8:00 P.M. He can work sitting, standing, or, as in my case, lying down. . . . He is free, in other words, to do as he wishes. It is a splendid life style.³⁷

Yes, the mystery is how a disparate group of labor arbitration professionals—attorneys, educators, social scientists, retired judges and government bureaucrats, and retired union and management representatives, among others—could find common purpose. Looking for something we have in common reminds me of a story about the comedian Henny Youngman on the occasion of his 90th birthday. When a reporter asked him to what he attributed his longevity, Youngman replied, “Breathing.” Maybe that explains the mystery. Welcome to the Academy’s next 50 years!

³⁵*Id.* at 42.

³⁶Seitz, *How Arbitrators Decide Cases: A Study in Black Magic*, in *Collective Bargaining and the Arbitrator’s Role*, Proceedings of the 15th Annual Meeting, National Academy of Arbitrators, ed. Kahn (BNA Books 1962), 159.

³⁷*Academy History*, 144–45.