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THE EVOLVING WORLD OF WORK

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PROCEEDINGS OF THE FIFTY-EIGHTH
ANNUAL MEETING
NATIONAL ACADEMY OF ARBITRATORS

Chicago, Illinois May 25 - 28, 2005

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The Bureau of National Affairs, Inc. Washington, D.C.

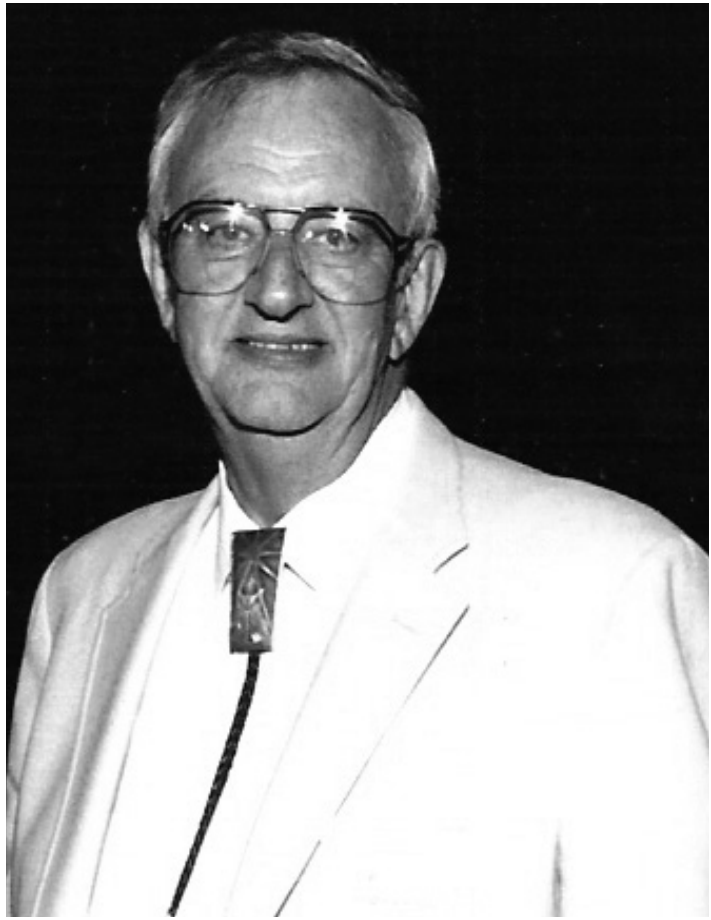
Published by BNA Books
1231 25th St., NW, Washington, DC 20037
http://www.bnabooks.com
Printed in the United States of America

ISBN: 1-57018-563-8; 978-1-57018-563-2
International Standard Serial Number: 0148-4176

In Memoriam

Alfred C. Dybeck

President of the *National Academy of Arbitrators* in 1989, died April 9, 2005, in Carnegie, Pennsylvania.



I first met Al on his second coming to Pittsburgh, in 1965. He had been here for a short time before that, working for the National Labor Relations Board, and then had been transferred to a higher level in the NLRB's hierarchy in Milwaukee. After a short stint in Milwaukee, he came back to Pittsburgh in 1965, at the invitation of Sylvester Garrett, to become an arbitrator with the Board of Arbitration for United States Steel and the United Steelworkers.

Al's tall bearing impressed me and, as I soon learned, his ability to unravel the sometimes twisted threads of the parties' careening arguments in an arbitration hearing, getting to the heart of a problem and settling it rationally, impressed me even more. I got to know Al well over the next nine or ten years while we, along with two other full-timers, were part of Garrett's Board of Arbitration.

Al loved to read, and his reading was not torn-bodice fiction, but was on history, especially ancient, medieval, and renaissance. We often went to lunch together and sometimes to dinner. During those sessions Al and I had many serious discussions and arguments about history, politics, society, and labor relations, and life in general.

There were occasions when our feelings became heated, and Al's voice would rise to nearly a shout, and it would resound throughout the restaurant. This loud expression did not stem from arrogance on Al's part or from any sense of superiority. He never was overbearing or in bad temper. It was just his way of showing that his whole being was part of and behind the expression of his position on some given matter. He could show me that I was a fool without rancor and without making me angry or dejected.

I cannot fail to bring out the importance of Al's laughter. If his voice rose in decibels in argument, it exploded when he would laugh, which was often, and infectious. He would burst out with a clarion roar of laughter, which, I often said, could be heard in Harrisburg, 200 miles away. When Al first came to our home for dinner, some of my kids heard his explosively loud laugh. They were so impressed that they gathered on the stairs and recorded his laughter on a tape recorder. They became the hit of our neighborhood in the playing of that tape.

What was most impressive about Al was his disgusting tendency to be right in almost every instance. That was very discouraging to me. Al loved history and naturally had read much about it. It soon became clear that if he said some event had happened in 1537, and I said it was 1538, the great majority of the time, he would

be right. Beside that, "it was on a Thursday." My later looking up the point would show that Al had been right. From those regular meetings, Al and I became very good friends.

As an arbitrator, Al was quickly able to see to the heart of where the facts, as he found them, met and were governed by the terms of the labor agreement. Al was not given to flights of philosophical fancy along any lines of this or that school of arbitral caprice. He simply decided the case. Consistent with that habit of his keeping his feet solidly on the ground was the fact that his opinions were relatively short, although giving due regard for every significant phase of the parties' opposing arguments. He was, moreover, notably prompt in writing and rendering his opinions. There rarely was even a slight delay in getting his decision made and issued.

Al served for a long term of years as Chairman of the Board of Arbitration of United States Steel and the Steelworkers.

It did not take long for Al's talent to be recognized by the National Academy of Arbitrators. He served on a number of important committees, and performed the very heavy and meaningful duties of the office of Secretary for two 3-year terms. He then moved quite naturally to the office of President of the Academy.

In getting to know Al well, I was also in position to become better acquainted with his sweet and loving wife, Leah, and to a lesser extent, with his son, who turned out to grow at least as tall as his father. For perhaps 30 years or so, Al and his family lived about a mile from my home. We spent much time with each other.

I cannot close my tributes to Al without stressing his basic and profound exhibition of an unusually deep affection for humanity in general, and for his many firm friends, in particular. He was an extremely decent human being and cared about people. He was not in any way phony. That, more than his professional contributions to the field of labor arbitration, is what made me genuinely like him. I, and all who knew Al personally, liked him as the outstanding human being that he was.

If we can keep in mind those warm feelings about Al, he will always be with us in spirit.

Clare B. McDermott

REMEMBRANCES

Following the tradition begun by former editor, Charles Coleman, we remember our departed colleagues, active and standing, whose deaths have been reported since the publication of the 2004 Proceedings.

REMEMBERING

Louis Aronin

Lou Aronin, 83, died after a long bout with cancer on April 29, 2005. Despite his affliction, he remained active to the end, having held a hearing the day before he died. He was a man of amazing stamina with a powerful work ethic. Lou was born in New York and earned his BA at Brooklyn College. He moved to Baltimore in 1948 where he joined the NLRB serving until 1968 as a field examiner and hearing officer, in the meantime earning his LLB from the University of Baltimore in 1960. In 1968, Lou became Executive Director of the New Jersey PERC and in 1970 he took the position as the Deputy Director of the U.S. Civil Service Commission's Office of Labor-Management Relations. Simultaneously, Lou taught labor law and labor relations at the University of Maryland and Georgetown as an adjunct faculty member. Upon retiring in 1978, he began his successful arbitration practice. He joined the Academy in 1983. Lou was a generous person who will be missed. [Based on the Chronicle Remembrance of Charles Feigenbaum.]

William Stanley Devino

William Stanley Devino, a committed teacher, prolific author, skilled arbitrator, compassionate mentor, and a devoted friend, died on April 8, 2005, at his home in Bangor, Maine, after a long illness. Stan was born on November 17, 1926, in Burlington, Vermont, and served in the Army in World War II. He received his BA from the University of Vermont in 1951, an MA in Economics from the University of Connecticut in 1953, and a PhD in Economics from Michigan State in 1959. He joined the faculty at the University of Maine in 1960, became Director of the School of Business Administration and, in 1965, Stan became the first Dean of the College of College of Business Administration, retiring from that position in 1996. During his tenure as Dean, Stan was

an active New England arbitrator. Parker Denaco recalls one of Stan's pearls of wisdom: "This is a tough job. You have to do what you think is right and write your decision as though you will never do another case." He will be missed. [Based on the Chronicle Remembrance of Parker Denaco.]

Alan B. Gold

Alan Gold received his law degree at the University of Montreal in 1941, having learned French for that purpose, and shortly thereafter enlisted in the Royal Canadian Artillery where he handled court-martials. In the 1960s, he was the chief arbitrator for public employee labour disputes in Quebec and chairman of the Quebec Labor Relations Board. In 1970, Alan was named a provincial court judge and, in 1983, he was appointed Chief Justice of the Quebec Superior Court. He retired from this position in 1992 to practice law specializing in international arbitration. In the meantime, Alan also lectured in Labour Law at McGill, was a member of McGill University's Board of Governors from 1974 to 1983, and served as Chair of the McGill Industrial Relations Centre Advisory Committee until 1985. He then served as Chancellor of Concordia University from 1987 to 1992, vice-chair of Place des Arts, and a governor of the Societe Pro Musica and of I Musici de Montreal. He had a passion for classical music, Mozart especially. Alan loved theater and could discourse as eloquently about Shakespeare and Odets as he could about port regulations and libel laws. He will be remembered as a warm, kind, humorous, wise, and rare friend who enriched the lives of thousands of others in countless ways. At his funeral in Montreal there was a standing-room crowd of 1100. Mourners praised Alan as a man "who made a difference in the law, the world of the arts, higher education and all the people he came in contact with." [Based on the Chronicle Remembrance of Frances Bairstow.]

Ronald W. Haughton

Ron Haughton, an early Secretary of the NAA, passed away following a stroke in July 2005, three weeks short of his 89th birthday. Ron was born in Hamilton, Ontario, and came with his family to the United States when he was 11. His first job was in assembly at General Electric, before getting his BA from the University of Washington and MA from the University of Wisconsin. From

1942–1945 he directed the strike division of the War Labor Board. He was Assistant to the Director of the U.S. Conciliation Service from 1945–1947 and then Assistant Director of the Institute of Industrial Relations at UC Berkeley. Ron served as the Ford-UAW umpire from 1950–1955, and while still in that post became Co-Director of the Institute of Labor and Industrial Relations at Wayne State (1956–1979). He chaired the Ford–UAW Joint Pension Board for over 28 years. Mark Kahn recalls that Ron was a fine arbitrator, but his heart was in mediating disputes, enjoying the satisfaction of having persuaded the parties to reach their own agreement. In 1979, President Carter appointed Ron as the first Chairman of the Federal Labor Relations Authority. Ron also served as Chairman of the Essential Industries Dispute Resolutions Board in Bermuda, chaired several presidential emergency boards and was a permanent arbitrator with Autolite, Goodrich, Bendix, Whirlpool, Amour, Clark Equipment, Columbia Gas, Parke Davis, and their unions. He was twice a Fulbright Scholar in India. Ron was a lifelong Quaker who lived by the values of finding and nurturing the light in every person he met. [Based on the Chronicle Remembrances of Arnold Zack and Mark Kahn.]

James J. Healy

James J. Healy, a charter member of the NAA, died at his home in Phoenix on June 6, 2005, at the age of 88. Jim was born in Beaver Dam, Wisconsin. He earned his MA in the University of Wisconsin labor relations program in 1936 and went to George Washington to teach labor economics. The next year he came to the economics department at Harvard where he worked with Sumner Slichter in writing *Union Policies and Industrial Management* (1941). During World War II, Jim served as Vice Chair of the New England Regional War Labor Board, of which Saul Wallen was chair. After the war, he and Wallen opened an office as arbitrators. In 1953, Jim and John Dunlop wrote the landmark book, *Collective Bargaining*. In 1958, he was promoted to full professor at the Harvard Business School, the first to have reached that rank without a doctoral degree. Jim served as permanent umpire between Ford and the UAW in the 1970s. Jim was also a great mediator. It is hard to consider him gone, but I shall continue to be grateful for his support and encouragement. [Based on the Chronicle Remembrance of Arnold Zack.]

Fred E. Kindig

Fred Kindig of Columbus, Ohio, died on Friday, February 4, 2005, from complications following surgery. Fred was Professor Emeritus of Quantitative Methods at Ohio State. His career as a labor arbitrator spanned 50 years. After graduating from Penn State in 1942, Fred worked for Westinghouse, where he was active in the Association of Salaried Employees. He later earned an MA in Industrial Engineering and a PhD in Economics from the University of Pittsburgh. Fred was particularly sought after in cases involving time and motion studies. He had a phenomenal career in the rubber industry, serving on panels for the URW and all of the major rubber companies, in some cases for more than thirty years. He issued over 300 awards on the Goodyear panel alone. Fred often talked of the early days of arbitration when hearings were very informal, and rarely, if ever, did an attorney appear. Throughout his career, Fred typed his awards on a manual typewriter, referring to himself as the "fastest two-fingered typist in the West." Fred was a kind, sensitive, and generous man. He was an inspiration to his intern, Chip Kohler, and a respected colleague. [Based on the Chronicle Remembrances of Ted High and Chip Kohler.]

Leonard E. Lindquist

Leonard E. Lindquist, 92, died in Minneapolis on September 10, 2004. He was a co-founder of the law firm Lindquist & Vernnum (1968) and was the first Minnesota member of NAA. After his immigrant father died when he was 13, Leonard worked to help his mother raise his three siblings, hitchhiking to the Dakotas for farm work, riding a freight train to Montana to harvest wheat, and spending a year in a logging camp. He later worked his way through the University of Minnesota laying bricks. Leonard joined the NLRB in 1939. After World War II service as a naval officer, he began his labor law practice representing the Minnesota Nurses Association and the International Brotherhood of Teamsters at Honeywell. Later, he helped form the NFL Players Association. Leonard also represented employers including ITT. He was one of that early and rare breed of arbitrators who worked "all three" sides of the table. His work as an arbitrator began in the early 1950s, and he joined the NAA in 1953. At the University of Minnesota, Leonard served on the IR Center Advisory Council,

taught labor arbitration at the law school, and served as a federal-court-appointed Special Master for Discrimination Disputes at the University. Leonard's law firm pioneered the principle of mandatory pro bono work for all partners and associates. His life of public service was unmatched. He chaired special commissions for the governor and served two terms in the Minnesota legislature, where he championed anti-discrimination laws in employment, housing, and elder care. Leonard was as true a friend as one could have and a remarkable man. He will be sorely missed. [Based on the Chronicle Remembrances of Jack Flagler and Mike Bognanno.]

Robert J. Mueller

On July 2, 2005, just after his 80th birthday, the Academy lost a remarkable man. During World War II, by the time he was 20 years old, Bob had qualified as a B-17 and B-29 pilot. Thereafter he attended college and law school at the University of Wisconsin. Bob supported his growing family by owning and operating a 10-stool restaurant; turning his home into a rooming house for fellow students; hauling furniture; working nights in a machine tool shop; all the while being a student himself. He was a jack of all trades. He had a remarkable understanding of how things worked and how to fix them. He was skilled carpenter, woodworker, and furniture maker. Bob's start as a mediator and arbitrator came with the Wisconsin Employment Relations Commission. After four years there, he launched a 44-year career in arbitration serving as a role model for many younger arbitrators. Bob was a "people person." He loved to interact with people from every station in life. Armed with a great sense of humor and a repertoire of corny jokes, he make friends easily. But his constant light-heartedness was deceiving. He had a remarkable intellect that gave him the ability to focus on the facts that controlled the outcome of a case and write an award in language that was direct and to the point. Bob knew what was important in life—keeping a sense of humor and a sense of proportion. He leaves behind many friends and family members who will miss him dearly. [Based on the Chronicle Remembrances of Arvid Anderson and George Fleischli.]

Carlton Snow

The end of a remarkable life came much too early on November 19, 2004, when Carlton J. Snow died of an apparent cerebral hemorrhage, just two months after the death of his beloved wife, Sally. Born in 1939, Carlton earned a BA in English and history from Taylor University, a Master of Divinity from Fuller Theological Seminary, an MA in history, and JD from the University of Wisconsin. After teaching briefly at Loyola Law School, Carlton joined the College of Law, Willamette University in 1971 where he was a faculty member and eventually Dean and Director of the Center for Dispute Resolution. He was a prodigious scholar and award-winning teacher. In slightly over 30 years, he issued over 3,000 arbitration decisions—an astonishing level of productivity while publishing in scholarly journals, being an outstanding, caring teacher, and an effective law school administrator. Carlton was admitted to the NAA in 1979 where he chaired the Continuing Education Committee and helped to firmly establish our fall meetings. He was later on the Board of Governors and was a Vice President at the time of his death. Carlton's acts of kindness were legion and documented in the tributes that followed his death. He was as decent a human being as one could meet—the model for a life lived with humility, dignity, and an immense generosity of spirit. The loss to the Academy, which he loved so much, and to all of us as individuals, is profound. [Based on the Chronicle Remembrance of Beber Helburn.]

MEETING TRIBUTE AND DEDICATION TO

ALEX ELSON

Introduction
By George R. Fleischli*

On the inside cover of your program, you will see a box with the following dedication:

> *The National Academy of Arbitrators is pleased to dedicate this Program to one of our Founders and a beloved colleague, Alex Elson, in honor of his long service and valuable contributions to our organization and the arbitration profession, and in honor of the 100th anniversary of his birth.*

Alex Elson is the rock on which this Academy was founded, and he does each of us honor by sharing this day with us, as he has honored us with his presence on so many days in the past. Allow me to introduce Aaron Wolff, who, in addition to being one of the finest writers in our business, has had the good fortune to be a protégé, partner, and friend to Alex Elson over many years. Ronnie will share his thoughts with us as well as those of Richard Mittenthal.

Honoring Alex Elson
By Aaron S. Wolff** and Richard Mittenthal***

To honor Alex Elson today, Dick Mittenthal and I were asked to comment on some of Alex's accomplishments in and out of the National Academy of Arbitrators. Dick was to highlight some of what Alex has done with and for the Academy and deeply regrets not being able to be here today to honor Alex personally. It is

*President (2004), National Academy of Arbitrators, Madison, Wisconsin.
**Member, National Academy of Arbitrators, Chicago, Illinois.
***Member and past President, National Academy of Arbitrators, Novi, Michigan.

the first annual meeting Dick has missed in 48 years. I'll read his prepared statement after relating some of Alex's activities outside of the Academy. We were given 10 minutes or less to do this, an obviously impossible task.

Alex is a very modest man and may not like all we say today, but it deserves to be said and I hope he will forgive us.

After graduating from the University of Chicago law school in 1928, Alex went to work drafting legislation for two years from the Illinois Legislative Reference Bureau in Springfield where he (and I quote him) "learned to write simply, directly and without ambiguity." So on his first job Alex mastered the goal of every arbitrator.

From 1929 to 1934, he worked as a legal aid lawyer with United Charities of Chicago. While there he drafted a bill to limit the use the wage assignments, he got a senator to sponsor it, and it became Illinois law. Throughout his life, Alex sought to end discrimination of any kind and to better the lives of the poor, disenfranchised, and underdogs as well as the middle class. As a youth he was closely associated with Hull House, later became a board member for many years and knew Jane Addams. Less than a decade ago, he was asked to give a commemorative speech dedicating a statute of Jane Addams a few blocks from here. But Hillary Clinton came to town that day and usurped most of his speech time. In 1965, he did an evaluation for the Ford Foundation about legal aid for the poor and middle class and some of his recommendations were implemented.

From 1934–1938 he was associated with a small but distinguished law firm, Tolman, Chandler & Dickinson. While there he was appointed as co-draftsman of a proposed revision of an ancient Illinois Criminal Code. In 1934, he published his first Illinois Civil Practice Form book. Later editions followed in the 1950s and 1960s for both state and federal practice forms. A federal judge once told me that those editions were the best form books he had ever seen.

In 1938 Alex accepted the job of Regional Attorney of the Wage and Hour Division of the U.S. Department of Labor. In four years there, he argued many cases in the federal courts against employers as well as some judges who were hostile to New Deal legislation such as overtime pay and a 25 cent minimum wage. Just before Pearl Harbor, he was appointed Regional Attorney for the Office of Price Administration, covering eight states. One of his first tasks was to draft national regulations for the rationing of tires.

In 1945, he entered private practice. About the same time, he became part-time Regional Vice Chairman of the War Labor Board where he was exposed to collective bargaining agreements, grievances, and arbitration. Soon thereafter he began arbitrating. His role as arbitrator is partially recorded in the annals of the National Academy, of which he is a founding member.

Between 1948 and 1979 he entered several small partnerships. The last ones were the Willard Lassers, from 1956 to 1963, where I was an associate, and then with Willard and myself from 1963 to 1979. Alex mentored Willard as an arbitrator before Willard was appointed judge of the Circuit Court of Cook County. Alex also mentored me and Dan Winograd who is an Academy member and a judge in Colorado.

During the McCarthy era, Alex stepped in where many lawyers feared to tread. During the 1950s he became a specialist in loyalty and security cases and handled between 75 and 100 such cases for civilian and government employees who were scientists, lawyers, doctors, and low-level administrators. Finding these clients admirable, he charged only a flat fee of $500 even though most cases took more than 50 hours.

Since 1954, when I was hired by Alex, his practice remained fabulous and exciting. He was chosen by many railway labor unions as co-counsel in numerous proceedings and litigation. Among them was *Chicago & North Western v. Order of Railroad Telegraphers*, in which the Supreme Court ruled 5 to 4 that the Norris-LaGaurdia Act barred the issuance of an injunction in a major dispute under the Railway Labor Act. During the 1950s and 1960s, Alex was special counsel to the railroad firemen whose jobs the railroads sought to eliminate along with other crew members. Over 10 years, he and our small firm of three were engaged in two emergency board hearings, lengthy hearings before a special Presidential Railroad Commission appointed by President Kennedy (the PRC), followed by an arbitration hearing established by Congress and much ensuing litigation. When the PRC issued its report in 1962 finding against the Firemen, the Firemen's PRC member filed a dissent which the New York Times reported as being cogent and lawyer like. Alex, Willard, and I managed to laugh at that since we wrote the dissent.

Alex's practice also included about 15 stockholder class or derivative actions, three or four of which went to the Supreme Court. The most famous, lasting 14 years from 1956 to 1970, was *Borak v. J.I. Case Co.* It was filed in federal court in Milwaukee to challenge

a merger based on a false and misleading proxy statement. Alex argued the case at every level. After the district court dismissed the complaint, the 7th Circuit reversed it 3 to 0. Surprised when defendants obtained certiorari, Alex argued his first Supreme Court case in 1963 and won affirmance by a unanimous Court, which established an implied private right of action for violations of Section 14(a) of the Securities Exchange Act of 1934 and its proxy rules.

I don't know how Alex did it, but throughout his years as a busy lawyer and arbitrator he found time to teach, engage in much pro bono work as well as write more than 70 articles, essays, comments, and reports on a wide variety of topics with primary focus on social issues, ethics, professional responsibility, legal aid, corporate governance, and, of course, arbitration. His teaching included a summer at Yale Law School, several years at the University of Northwestern Law School, and a seminar on constitutional law at Arizona State University. Also, for about 15 years beginning in 1933 and for three or more times each year, Alex taught a course in "Law & Social Work" at the University of Chicago School of Social Service Administration.

As to his pro bono work, I can scarcely cover it. There are too many bar association committees and chairmanships to list. But I should mention his role as a member and chair of the Chicago Bar's Development of the Law Committee and as Chair of the Illinois State Bar's Civil Rights Committee. As a long-time member of the American Law Institute, which as you know endeavors to "restate" the law, Alex eventually had to write articles and letters attempting to restate the ALI itself which he believed had strayed too far by packing it with corporate lawyers who were more interested in their clients' interests rather than the public's. Earlier he was active in the National Lawyer's Guild and later, when a group of young lawyers founded the Chicago Council of Lawyers in 1975, Alex, at age 70, was asked and agreed to be on its first board. Between 1960–1968, at the Governor's request, Alex served as Chairman of the Illinois Board of Mental Health Commissioners. In 1968, he was elected to the board of the Institute for Psychoanalysis; he served until 1992 and was its president from 1975–1979. He joined the Illinois Chapter of the ACLU when it was founded decades ago, later became Chairman of the Board, and then made an honorary member. In 1992, the ACLU bestowed on him its Civil Liberties Award.

What I have said today reflects the tip of an iceberg in a life that has been exceedingly full and productive. Alex has lived that life because it was what he believed in. He is a man for all seasons and all reasons.

Finally, Alex would be the first to tell you that his accomplishments would not have been possible without Miriam Elson, his wife and partner for 72 years.

Alex, our hats are off to you and, on a personal note, I say, "thanks for the memories."

* * *

I now turn to Dick Mittenthal's perspective on Alex and the Academy.

Alex Elson is an Academy icon, not because of his age but because of the large contributions he has made over the years. He was one of the few living founding members of the Academy.

In the early 1970s, he was invited to give a paper on arbitral ethics at the Montreal annual meeting. It was that paper, and his exquisite sensitivity to questions of ethics, that prompted the most significant project in our history—the development of a new Code of Professional Responsibility. Thereafter, Alex served with distinction as a member, and later, Chairman, of the Academy Committee that administered the new Code. I sat on that Committee while Alex was Chairman and admired how he could, in his quiet but compelling manner, lead the Committee members to consensus on highly contentious matters.

Alex is one of the few Academy members who turned down the presidency when offered because he thought the Academy needed younger leadership. That was some 20 years ago. His restraint was the Academy's loss. But he continued to serve us. It was Alex who conceived the idea of the Academy's Research and Education Foundation and he was instrumental in bringing it into being.

I still remember his touching performance as the honoree at the "fireside chat" not too many years ago. He is the only person in that role who looked at his interviewer throughout his talk and thus lent an intimacy to the session that it had never had before.

Most important, Alex has been a steady, thoughtful, and important voice in Academy affairs for 58 years. His friendship and good fellowship are treasured by all of us. I raise my glass to honor one of our finest, a true "gentleman and scholar." Alex, we admire and love you.

PREFACE

The Academy's Fifty-Eighth Annual Meeting was held at the Fairmont Chicago Hotel from May 25 through May 28, 2005. The program, entitled, "Arbitration 2005: The Evolving World of Work," began with a spirited session on "Work and Family Conflict" and extended into the arbitration of cases where there are alleged threats of workplace violence. The meetings also considered such diverse topics as employer neutrality and card checks, recent court rulings related to arbitrator disclosure, evidence in labor arbitration, and the labor-management partnership at American Airlines. Invited papers were presented on fair procedures in arbitration and workplace justice without unions in addition to work/family issues in arbitration.

Chapter 1 of these Proceedings contains President George Fleischli's address which begins with a reflection on his career stretching from Judge Advocate in the U.S. Air Force through government mediator, arbitrator, hearing examiner, and general counsel, to his present status as a full-time arbitrator remembering many who helped him along that journey. The focus of his address deals with what is probably the most essential of the four qualifications found in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes, namely, impartiality. Fleischli examines the concept in ways that many may not have considered. He describes the conscious effort by arbitrators to neutralize biases and personal preferences when deciding cases. Eventually, Fleischli notes, this behavior becomes second nature and the habit extends into the rest of an arbitrator's life so that there is an effort to "see the other side" in nearly all matters—even when it may be unpopular. Finally, he considers some of the rising "threats to the perception of impartiality" involving disclosure (which is addressed by Arbitrators Goldberg and Kagel in Chapter Nine of this volume) and the recent demise of the "no solicitation" rules in the Code of Professional Ethics.

Distinguished Speaker Michael Moskow, President and CEO of the Federal Reserve Bank of Chicago, addresses job loss and displaced workers in Chapter 2. In particular, he examines the factors affecting the rate of displacement and the ability of workers

to find new jobs as well as the policies of the Fed that are designed to help displaced workers. The pace of change in the economy has increased so that even though we see lower unemployment rates, the rate of job displacement—workers losing jobs for reasons that are completely beyond their control—remains high. A key balancing act for Monetary Policy, explains Moskow, is the relationship between the rising rate of labor costs and unemployment. For the present, this relationship is about what one would expect, in Moskow's view. Moskow acknowledges productivity improvements and increases in the standard of living that are due to increased international competition. But he also recognizes the significant price that some workers pay as the economy is forced to adjust to the changes brought on by the "creative destruction" of such competitive pressures. Ideas to address these costs to workers include longer term unemployment benefits, "wage subsidies" for displaced workers who suffer wage losses even thought they find new jobs, and creative new approaches to retraining.

The center-ring controversy of the meeting is captured in three papers discussing work and family conflict issues in Chapter 3. The principal paper was presented by Professor Joan Williams. In this thought-provoking article, Williams presents her analysis of 78 arbitration decisions involving the discipline or discharge of employees caught between the often conflicting demands of work and family. Her analysis yields several interesting conclusions. Management most often prevails when employees lie about the reason for an absence or fail to make serious efforts to arrange for family care in order to be available for work. On the other hand, grievants tend to win when employers fail to apply workplace rules consistently and fairly. One of the study's most interesting findings is that virtually half of the sampled cases resulted in split decisions, typically with the arbitrator viewing family care responsibilities as a mitigating factor justifying a reduction in the level of discipline. Williams concludes by arguing that it is unrealistic for employers to require employees to conform to the standards of an "Ideal Worker" with no family responsibilities. Instead, she suggests that arbitrators should find a lack of just cause for discipline where a worker has arranged both regular family care as well a back-up plan that falls through.

Two commentators provide different perspectives on Professor William's paper. South Carolina arbitrator and Professor Dennis Nolan, although finding much useful information in Williams' paper, offers the cautionary assessment that the accepted role of

a labor arbitrator is to apply the terms of the collective bargaining agreement rather than to dispense one's own notion of social justice. San Francisco arbitrator and Professor Chris Knowlton, on the other hand, sees Williams' work as assisting the evolution of just cause to keep pace with changing societal notions of worklife fairness.

The next three chapters each present an invited paper. In Chapter 4, Minneapolis arbitrator and Professor Laura Cooper reviews the historical development of procedures in labor arbitration cases. Her article debunks the notion that the existing procedures used in labor arbitration cases were the result of negotiations between parties of relatively equal bargaining power. Her review of the historical evidence leads her to conclude that labor arbitration procedures evolved over decades through the combined influences of arbitrators, the War Labor Board, the American Arbitration Association, the National Academy of Arbitrators, lawyer advocates, and the impact of various publications. This evolution, she concludes, offers some reason for hope that fair procedures also may evolve in the field of employment arbitration even in the absence of negotiations between parties of relatively equal strength.

Chapter 5 presents a summary of a study conducted by three University of South Carolina Professors—Hoyt Wheeler, Brian Klass, and Douglas Mahony. The study involved a national mail survey of over 800 employment arbitrators undertaken for the purpose of ascertaining procedural practices in employment arbitration cases and a comparison of outcomes in employment arbitration with other types of institutional decision makers in similar cases. Among other findings, the study concludes that employees are far less likely to obtain favorable outcomes in employment arbitration forums than they are in labor arbitration forums.

The third invited paper returns to the topic of conflicting work and family demands. In Chapter 6, Chicago arbitrator and Professor Martin Malin and Professor Monica Biernat present the initial findings of an empirical study exploring the impact of demographic characteristics in disciplinary arbitrations involving work family conflict. The authors asked members of the Academy to rule on four mock grievance vignettes. The authors' preliminary examination of the response data found that the grievant's gender had no effect on case outcome, but that the arbitrators tended to rule more favorably for married parents than similarly situated single parents.

Chapter 7 discusses the hot topic of neutrality and card check agreements through the lens of management and union advocates. Chicago attorneys George Matkov, Larry Hall, and Mark Mahoney provide the management perspective, while Michigan attorney Leonard Page provides the union perspective. While the two papers may disagree as to the scope of an employer's obligation to remain neutral under a neutrality pledge, they agree that the principal challenge for arbitrators in hearing alleged violations of such agreements is in crafting an appropriate remedy. Both papers suggest that the least objectionable route for an arbitrator to take upon finding an employer violation is to provide the union with greater communication and access rights to unit employees.

In Chapter 8, Philadelphia Arbitrator Margaret Brogan moderates a feisty exchange between union advocate, W. Daniel Boone of the Oakland, California, law firm of Weinberg, Roger, and Rosenfeld and management side advocate, John S. Schauer of Seyfarth Shaw, Chicago. The question before all three is whether an alleged threat in the workplace is really a threat warranting disciplinary action or merely shop talk—a figure of speech or unspecific venting. Using a scenario developed by Brogan, the three engage in an examination of situations where words alone, even in the absence of physical violence, may justify significant discipline or discharge. By varying the details of the scenario, the parties clarify the important factors contributing to a likely outcome if the case goes to arbitration. They also consider strategies for approaching such cases as well as remedies in a situation where there is not sufficient cause for discharge but some basis for a continuing concern on the part of the employer about the fitness of the grievant to return to work.

Chapter 9 addresses the ethics of disclosure. Moderated by Cleveland Arbitrator Calvin Sharpe, California Arbitrators Matthew Goldberg and John Kagel reflect on two cases where their decisions were attacked in court because of alleged failures on their parts to disclose past professional associations with the prevailing party. Despite the Code of Professional Responsibility and rulings by the Committee on Professional Responsibility, judges continue to entertain claims based on standards developed in other arbitration venues, e.g., commercial arbitration, where the parties do not have a continuing relationship. In their respective papers, the arbitrators discuss the leading cases involving disclosure and other recent developments in this area of arbitration

ethics. In closing, Kagel reminds arbitrators that they can "never be too careful" about disclosure.

In the meeting's most interactive session, San Francisco arbitrator Barry Winograd led a simulation exercise in which a five-member arbitration panel as well as audience members were asked to rule on a series of ten unfolding evidentiary objections in a mock arbitration case. Chapter 10 chronicles this session. Winograd first contributes an essay that reviews the ongoing legal and policy debate concerning the admissibility of evidence in arbitration proceedings. He then sets out the simulation exercise and that is followed by an empirical postscript that summarizes the voting results on the ten evidentiary issues.

Chapter 11 is a four-part series of panel discussions contributed by arbitrators and advocates from American Airlines, the U.S. Postal Service, the Illinois Public Sector, and the railway industry.

At American Airlines, the Transport Workers Union and management have developed labor-management dispute resolution panels under the Railway Labor Act as the preferred method to deal with difficulties in the implementation of particular new contract language. Panels have been included in the agreement at the time new procedures are agreed upon. This approach is preferred by both union and management over reliance on third parties to resolve disputes. The idea for such panels grew out of the parties' 1983 Agreement when they mutually recognized they would have loose ends to deal with regarding a new part-time employee provision. Since then, even in mid-term, the parties have seen the value of creating a new committee when necessary to address a particular set of contract implementation problems. These committees work only because *both* parties are committed to the process and to avoiding third-party intervention. From the union point of view, the panels are desirable because of the speedy answers they provide and because they dispose of all but a handful of cases every year that must then be processed on to arbitration.

The Postal Panel moderated by Arbitrator Amedeo Greco addressed a number of developments, among them the adoption of "contract interpretation manuals" at the national level for use by people in the field. The manuals have helped the parties at the local and regional levels to narrow their disputes to novel matters. Arbitrators rely on the manuals, but more importantly, the parties resolve thousands of cases based on the provisions of the manuals. Arbitration cases have been cut by 49 percent. Other issues raised in the postal session are the inexperienced advocate

and how arbitrators should deal with them; billing standards for arbitrators; and the precedent value of a National Award issued by Carlton Snow regarding an arbitrator's authority to develop particular remedies. Finally, an extended part of the exchange in Chapter 11 involves the way the Postal Service is responding to its new competition from fax and e-mail. Declining revenues and added security threats have contributed to the challenges of management and labor.

Part 3 of Chapter 11 turns to a discussion of recent public policy developments in the state of Illinois. Arbitrator Ed Benn shared his recent experiences with three overturned decisions by the Illinois courts in a session chaired by Chicago Arbitrator Jeanne Vonhof. He was joined by union advocate, Gilbert Feldman, and management advocate, James Baird, in a discussion of the court's apparent expansion of the arbitral role—to go beyond the labor agreement to consider the public interest in fashioning an award or remedy. Benn sought to re-title his session, "The story of one arbitrator's personal journey into the abyss of the Illinois court system; or I know that's what the U.S. Supreme Court says, but this is Illinois and the only thing that matters is politics." Feldman and Baird contributed to a spirited discussion of what makes the public sector unique in Illinois.

Toronto Arbitrator Margo Newman moderated the session reported in the final part of Chapter 11 concerning the railroad industry. She was joined by Arbitrator Herb Marx who has enjoyed, using his term, "a chronologically enriched" career as an arbitrator in the industry. The focus of the discussion is on whether railroad arbitration is becoming more adversarial. Bill Miller of the United Transportation Communications Union clearly believes the process has become more litigious as employers are more inclined to appeal adverse arbitral decisions to the courts. Moreover, he sees labor relations on the company side as less involved in up-front decisions that impact on the labor agreement. In his view, labor relations has been transformed from being "a source of advice and counsel to other departments to being their arbitral janitor." Lisa Mancini of CSX, of course, disagreed with this characterization of labor relations on her railroad. Richard Radek of the Locomotive Engineers characterized arbitration on the railroads as experiencing both the "best of times and the worst of times." He agreed with Miller that it had become more adversarial because at the present time he has more arbitration decisions and enforcement proceedings than at any other time in his 23-year career.

However, he noted that it varied enormously by property with Canadian National having very few disputes going to arbitration while at Union Pacific there are over 1100 pending cases. Mark MacMahon, Norfolk Southern, recounted his early experiences with Adjustment Board hearings and disagreed that adversarial relations had worsened. Although there is more litigation, he asserted that many of the cases resulted from the railroad's motion to compel *arbitration*. He has seen only one case to enforce an award in his 20-year career. The vigorous discussion that followed their opening remarks was effectively refereed by Referee Marx.

Chapter 12, written by Toronto arbitrator William A. Marcotte, reports on Canadian labor trends. This session consisted of two presentations. First NAA member Pam Picher discussed a recent decision of the Ontario Divisional Court that appears to expand arbitral jurisdiction over remedial matters. Second, Professor Daphne Taras discussed the activities of the Arthurs' Commission that currently is reviewing the Canada Labour Code. Her remarks particularly focused on the adjudication of unjust dismissal complaints by non-unionized, non-managerial employees in federally regulated sectors.

Chapter 13, the concluding chapter, is Academy Member Arvid Anderson's fireside chat with Arbitrator Jim Stern. Arvid began with his early recollection of taking the trolley car, as a lad of 15, to visit the site of the Republic Steel strike of 1937 where 10 strikers were shot to death by police on Memorial Day. He knew there had to be a better way and the rest of his chat deals with the many contributions he has made in helping to find it. He first recounts the highlights of his early career with the Wisconsin Employment Relations Board. He then more fully details his experiences in developing the New York City Office of Collective Bargaining as its first director.

The editors wish to thank a number of people for helping to bring this volume to fruition. First, we acknowledge the terrific job of the Program Committee under the able leadership of its chair, Margaret Brogan. Without the Committee's effort to recruit first rate speakers and other participants, the quality of this volume could not have been what it is. This obviously leads us to thank the many contributors, authors, and panel participants, who provided the quality material and commentary that we have here. Of course, precedent to all of the above, we must thank President George Fleischli for his insight in appointing the Program Committee and providing the leadership and support necessary to de-

velop a great program in Chicago. Finally, we note with sadness the passing of Cynthia Zirkle of BNA who worked with us on editing this volume. The Academy wishes to extend its condolences to her family and friends and express our appreciation for her efforts on our behalf. Thanks also to Tim Darby and Anne Scott who completed the work that Cynthia began and whose patience and assistance brought this project to fruition.

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