

MARK YOUR CALENDARS

PLAN TO ATTEND...

2011 Annual Meeting

May 25 – 28, 2011
San Diego Marriott Hotel & Marina
San Diego, CA

2011 Fall Education Conference

September 16 – 18, 2011
Four Seasons Miami
Miami, FL

2012 Annual Meeting

June 6 – 9, 2012
Hyatt Regency Minneapolis
Minneapolis, MN

2012 Fall Education Conference

October 12 – 14, 2012
Francis Marion Hotel
Charleston, SC

2013 Annual Meeting

June 5 – 8, 2013
Fairmont Hotel Vancouver
Vancouver, BC

2013 Fall Education Conference

October 18 – 20, 2013
Hilton St. Louis at the Ballpark
St. Louis, MO



*By Margie Brogan and
Barry Winograd*

Co-Chairs, 2011 Annual Meeting

The San Diego Annual Meeting Program offers very topical, interactive, and intriguing sessions. The status of public sector collective bargaining, and the role of interest arbitration, is forefront. Fittingly, this topic, which

touches all of us, is the opening of our meeting. Throughout the three days we will address issues such as privacy in the electronic age and arbitrating in the fishbowl of media attention, with emphasis on the differences and similarities between Canadian and U.S. perspectives. The Duty of Fair Representation will be explored both in terms of its ethical minefields and how the Duty may generally affect the actions of advocates and arbitrators. Concurrent sessions will showcase special forums of arbitration, including NFL injury hearings, health care expedited systems, credit disputes between Hollywood writers and producers, airline merger seniority disputes, and the postal industry. The future of light rail will be addressed by experts in the field. Attendees may explore the world of labor arbitration after *Pyett*. Just cause will be revisited by advocates soliciting testimony and arguing

(Continued on Page 3)

ON THE INSIDE

FEATURES

San Diego	1
2011 FEC	8
25 & 50 Year Members	9
REF	14
Legal Representation	18
Nominations and Slate	26
SW Rockies Region Conference	29

COLUMNS

Milestones	3
Focus On	9
Regional Roundup	10
Alongside Every Good Arbitrator	16
Heard on E-Street	19
Remembering	22

PRESIDENT'S CORNER
BACK COVER

ADVOCACY


Continuing Education Committee Presents San Diego Program

by *Janice K. Frankman,*
Chair ACE Committee

We are looking forward to Wednesday, May 25, in San Diego, the day before the Annual Meeting and Conference convenes, when we will present a full day of quality advocacy training. We will also provide opportunity for advocates to network with each other and arbitrators, sharing experiences and tips for best practice in labor arbitration. A lively, interactive day will provide skill-building, informative and practical sessions designed to benefit both newly minted and seasoned advocates. The program is the result of important contributions by several Committee members who have shared ideas, materials and their individual experience as trainers and presenters.

Following registration which opens at 8:00 a.m., the day will begin at 8:45 a.m. with brief introductions, followed by Dennis Nolan's presentation, "How did we get here?! In a Nutshell: The Evolution of Labor/Management Relations and Arbitration". Three sessions, each in a different format, have been developed by Sara Adler and Dick Fincher; Sharon Imes, and Mei Bickner. They are captioned, "Winning Your Case: The "Nuts and Bolts" of Labor Arbitration", "Does the Contract Really Say That?" and "Putting it all Together". Finally, the day will close with a moderated session, "Let's Talk", to encourage candid exchange between advocates and arbitrators about all those questions we have always wanted to ask but haven't dared or which were not answered through the day.

Many well-recognized arbitrators and advocates will be a part of the day. An expanded description of the sessions and complete identification of all presenters, moderators and panelists are provided at the NAA website together with a guest registration form which encourages participation in the full conference.

We hope for a good balance and mix of labor and management advocate registrants. Please encourage all you know to register for this Program and the full Conference experience. A brochure is available for distribution at Regional meetings and other professional events. The Committee believes we will benefit individually and as an Academy through increased visibility, understanding and appreciation for our work together. Thanks for your support!! 

The Chronicle

The Chronicle is published by the National Academy of Arbitrators (Operations Center located at Suite 412, 1 North Main Street, Cortland, New York 13045). Copyright 2011. All rights reserved.

The Chronicle is strictly an internal newsletter of the Academy, and no reproduction of any of its contents is authorized without express written consent of the Managing Editor.

The Chronicle is published three times a year: Spring, Fall, and Winter. Copy deadlines are March 15 (Spring), July 15 (Fall), and November 15 (Winter). Please direct submissions to Walt De Treux, Managing Editor, and the NAA Operations Center. For submission instructions, contact NAA Operations Center at (607) 756-8363 or email, naa@naarb.org

2010-2011 NAA OFFICERS

Gil Vernon, *President*

Margaret R. Brogan, *Vice-President*

Shyam Das, *Vice-President*

Allen Ponak, *Vice-President*

Barry Winograd, *Vice-President*

David A. Petersen, *Executive Secretary-Treasurer*

Roberta L. Golick, *President-Elect*

The Chronicle

Managing Editor

Walter De Treux

Managing Editor Designee

Susan Grody Ruben

Assistant Managing Editors

Ann S. Kenis

Benjamin A. Kerner

Columnists

Linda S. Byars

Lisa Salkovitz Kohn

Howard G. Foster

Michael P. Long

Barry Goldman

Kenneth Paul Swan

Reporters

Ruben R. Armendariz

Charles P. Fischbach

Joseph Licata

Melissa H. Biren

Kathy Fragnoli

Ira B. Lobel

Carl Bosland

Richard M. Gaba

Michael P. Long

Timothy J. Brown

Sharon Gallagher

William W. Lowe

Emily M. Burke

Thomas K. Goldie

Patrick McDonald

Brian Clauss

Barry Goldman

C. Allen Pool

James S. Cooper

Lynne M. Gomez

Richard J. Roth

James M. Darby

Harry Gudenberg

Jan Stiglitz

James Dorsey

Joyce M. Klein

Kathryn A. VanDagens

Richard D. Fincher

Randy Levinson

Louise B. Wolitz

Production Manager

Kathleen E. Griffin

WELCOME TO *San Diego*

By Jan Stiglitz and Kathy Fragnoli

For those of you who are not familiar with San Diego, here are answers to some frequently asked questions:

What's the weather like?

San Diego is temperate – not necessarily warm. You should expect daytime temperatures in the low to mid 70's and cooler evenings. Don't be surprised if you don't see the sun in the morning or evening. We are subject to having a marine layer that creates "May gray" and "June gloom." The good news is that rain is extremely rare in late May.

How do I get to the hotel?

From the airport: rental car or taxi (appx. \$12-14). From the train station: trolley (take the Orange line trolley to the Convention Center (\$2.50), then walk .3 miles to hotel at 333 West Harbor Drive) or taxi (appx. \$5.00).

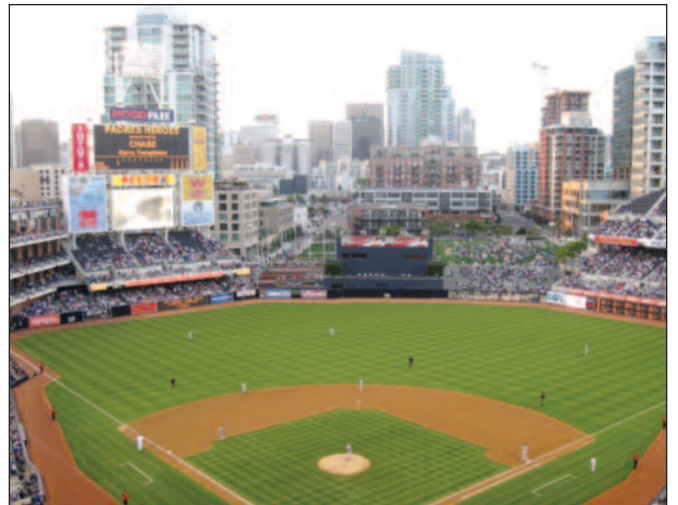
How do I get around?

San Diego does not have much in the way of public transportation. I've lived here for 31 years and have never been on a bus. There's a trolley that you can catch from around the hotel but it may not take you where you really want to go. But most downtown attractions are within walking distance and the zoo is only a short cab ride away. The trolley can get you to the border if you want to visit Tijuana (which I do not recommend) and Old Town, which I do recommend. If you want to venture up north to La Jolla (which I recommend) it's a \$30 cab ride or you'll need a car. The good news about driving in San Diego is that it's not LA. The traffic moves rapidly through most areas and with a little advance notice, the City will put in a turn signal wherever you want to make a left turn.

What's there to do?

Simple answer – everything. We've got theater, music, professional baseball, beaches for sunning and surfing, bays for sailing and fishing, and over 30 golf courses within a half hour drive.

For more information, please do not hesitate to contact Jan Stiglitz at js@cwsf.edu or Kathy Fragnoli at kfragnoli@aol.com. We look forward to having you with us this May. 🍹



ANNUAL MEETING *(Continued from Page 1)*

a case – after which a panel of Arbitrators and a System Board of airline representatives will rule. Invited Papers will dissect the U.S. Supreme Court's recent arbitration decisions and will address the fascinating topic of the working environment and culture of China. We will answer the question as to whether workplace bullying is indeed the new violence.

Distinguished Speaker Wilma B. Liebman, Chair of the NLRB, will give her perspective as to the current state of U.S. labor law, from her unique vantage point. We will be graced by Edgar (Ted) Jones, who will chat about his illustrious career, while seated beside our realistic fire. Vella Traynham, FMCS Director of Arbitration Services, will be fittingly honored during the NAA Presidential speech of Gil Vernon.

Please join us in a beautiful setting, and enjoy all our program has to offer. 🍹

Howard S. Block To Receive Honorary Life Membership In San Diego

Chair **George Nicolau** announced that the Board of Governors, having approved the recommendation of the Honorary Life Membership Committee, will be presenting Past President Howard S. Block with Honorary Life Membership at the Membership meeting in San Diego on Saturday, May 28, 2011. 🍹

MILESTONES

Edited by Michael P. Long

NOTEWORTHY HONORS & PROFESSIONAL ACTIVITIES

Kathy Fragnoli – was listed in D Magazine as one of the “Best Women Lawyers in Dallas” in the field of Alternative Dispute/Mediation in the magazine’s May 2010 issue. D Magazine compiled its exclusive list of the top female attorneys in North Texas from nominations submitted by their peers who had witnessed the nominated attorney’s work first-hand and considered the nominee to rank among the current best in that field.



Martin H. Malin – has been running and writing – and talking. Marty was recently elected to the Board of Governors of the College of Labor and Employment Lawyers. In addition, the second edition of his book, Public Sector Employment: Cases and Materials, was published by West in late December with a 2011 copyright date. Marty was not without an expert opinion as he was interviewed live on the air on WMAQ, Channel 5 (Chicago’s NBC affiliate) on the morning news on Feb. 28, discussing the bill to virtually eliminate public sector collective bargaining in Wisconsin.



George Nicolau – has been re-named as the grievance arbitrator for the National Hockey League and the National Hockey League Players’ Association.



Michel Picher – has scored another touchdown. He has recently been re-appointed as the salary cap arbitrator for the Canadian Football League (CFL).



Frank X. Quinn – gave two speeches to the Texas Bar on “Framing the Issue.” There was no issue, however, as Frank was appointed to the Credentials committee for the Fifth circuit of College of Labor and Employment Lawyers.



Phil Tamoush – will be busier than ever. He has been named to the Permanent National Arbitration Panel of the U.S. Citizenship and Immigration Service (Department of Homeland Security) as well as the single Permanent Arbitrator between the Pacific Maritime Association (PMA) and International Longshore and Warehouse Union, Local 26 (Watchmen’s Unit).

Hoyt Wheeler – has been named a Fellow of the Labor and Employment Relations Association (LERA) for exceptional contributions to research in Labor and Employment Relations.



Arnold Zack – is delighted to extend an invitation to any NAA members who might be interested in attending the 20th anniversary Celebration of the Asian Development Bank Administrative Tribunal meeting in Manila on Sept 5, 2011. As an international organization, the ADB has its own internal court system, and the Tribunal is the 5 judge court, in which Arnold serves as President, and makes rulings based on its Statutes and Regulations

The September 5 meeting will bring together Presidents, judges, management and staff people from many of the other international organizations with like responsibilities. The focus of the sessions will be on improving the transparency, visibility and credibility of the various internal systems (their substitute for grievance machinery) prior to cases proceeding to the Tribunal. The ADB web site is as follows: <http://www.adb.org/documents/events/2011/adbat/default.asp>.

PUBLICATIONS & PRESENTATIONS

Carl C. Bosland – has written a book. In April 2011, Carl’s new book, entitled *Federal Labor Arbitration Practice: An Advocate’s Guide*, was published by Dewey Publications, Inc. The book provides federal sector advocates, both union and management, with practical guidance and best practices to effectively prepare and present their cases to an arbitrator. The published work is primarily an arbitration advocacy practice book that also includes primers on substantive areas such as basic contract interpretation principles, just cause, and evidence, as well as some of the unique aspects of federal sector arbitration law and practice. More information about the book may be accessed at <http://deweypub.com/store/09FLAP.html>.



Stanley Dobry and Gladys Gruenberg – were error free when they delivered a presentation entitled “Writing the Perfect Opinion” at the Chicago-Kent Law School in connection with an FMCS regional meeting. Stan pointed out that Arabic rug weavers would deliberately weave in a mistake, as “only Allah can make something perfect.” Thus, he present-

(Continued on Next Page)

MILESTONES *(Continued from Page 4)*

ed the fundamental underlying philosophical question: if it is deliberate, is it truly an error? The presentation ended with the quote from Louis Brandeis, who said that there is no such thing as good legal writing, only good legal *rewriting*.



Peter Doeringer – was the featured speaker at the 43rd *Decent Work Forum* organized by the International Labour Office (ILO) in Geneva. His lecture, “*Racing Towards the Bottom: Why Apparel Sweatshops are Re-Emerging in the U. S. and Lessons From Europe About What Can Be Done*” examined the tradeoffs among jobs, productivity growth, and “decent” work in the garment districts of New York and Los Angeles. The Decent Work Forum is intended to promote the Decent Work Agenda of the ILO through the free-ranging exchange of ideas.



William B. Gould, IV – delivered a speech to the Turkish Federation of Employer Associations extolling the virtues of collective bargaining and alternative dispute resolution in March in Ankara, Turkey.



Dave Gregory – the Dorothy Day Professor of Law and the Executive Director of the Center for Labor and Employment Law at St. John’s University School of Law, has chaired and hosted a major conference. *The Theology of Work and the Dignity of Workers* Conference at St. John’s in March was keynoteed by AFL-CIO President Richard Trumka. UAW President Bob King, NLRB Chair Wilma Liebman, and our own **Ted St. Antoine** were among the many featured speakers.

Dave Gregory will also chair and host a conference entitled *Worlds of Work: Employment Dispute Resolution Systems Across the Globe*, at Cambridge University, July 20-23. **Ted St. Antoine** will be the keynote speaker, and Dave and Ted will be joined by FMCS Director George Cohen, Bill Gould, Jack Getman, and Sir Bob Hepple QC.



Michael P. Long – presented a seminar entitled “*The Road to Success in Labor Arbitration – How to be a More Effective and Efficient Advocate*” in conjunction with the American Arbitration Association in November. In addition, Mike has been named the Impartial Chairperson of the Chrysler - UAW Internal Appeal Board.



Susan Grody Ruben – was a panelist in a Cornell University ILR School Scheinman Institute on Conflict Resolution ADR webinar. While at Cornell, she also spoke about public sector

collective bargaining to Professor David Lipsky’s grad-level collective bargaining class.



Kathryn VanDagens – one of our newest members, conducted a webinar for the AAA on “*Solving the Puzzle of Just Cause*.”

ON A PERSONAL NOTE

Linda Byars – has done it again, without doing anything. She became a “grandmommy” for the third time on December 13th. She will be happy to share pictures with you if you ask her.



Donald Goodman – keeps on going with service even as he culminates an almost lifelong task. Don was reelected to his fifteenth term as Treasurer of the Sons of the Republic of Texas, who are descendents of those who resided in the Republic of Texas during 1836 to 1846. Don was also presented with the Patriot’s Medal by the Texas Society Sons of the American Revolution. And then **Donald Goodman**, after twenty-two (22) years of research and a review of over 5,500 documents, finished his book on his family history. His research took him to several states domestically and on trips to England, Wales and France. The book was published by Lulu Enterprises, Raleigh, NC.



Harry Graham – knows his wine. Harry’s pick for the greatest sweet wine in the world is Chateau d’Yquem, a favorite of Jefferson. Yquem produces just a small quantity of dry white wine, called Ygrec. While in a wine shop in St. Emilion, France, Harry was presented a glass of unidentified white wine and asked to identify it. “Ygrec, 07” was Harry’s prompt response. That was correct, and all assembled, including Harry’s wife Joyce, were astonished.



James M. Harkless – is still making sweet music. In February Jim joined the Harvard Glee Club Alumni Chorus in Honolulu for a joint concert with the *Kyoto U. Old Boys* who traveled from Japan. Their Glee Club formed in the 80’s after the Harvard Glee Club sang there, and the alumni have had several joint concerts since then. This was Jim’s first, and he was the oldest in both groups. The groups performed at the Central Union Church – just across the street from where President Obama lived with his grandparents. Both groups also visited Pearl Harbor and sang one song there together. Jim says it was a wonderful experience that he’ll never forget.

(Continued on Page 6)

MILESTONES *(Continued from Page 5)*

Bill Holley – may try to, but can't really take any credit for his Auburn Tigers' winning the national football championship.



George E. Larney – is racing around with his daughter. In this year's Marathon in Sedona, Arizona, which was run on Sat. Feb. 12, 2011, George and his daughter Diana ran the 5K race together. For Diana, the mother of two sons, 11 and 7, this was her first organized race experience. Noting the saying that it's not whether you win or lose, but rather how you run the race, George and Diana plan to train to run the longer 10K race together next February.



Mariann Schick – recently gave a power point presentation on The Crafts of Mexico to a discussion group at The Philadelphian, a residential complex in Philadelphia. Pictures of Mexican ceramics, wood carvings, and textiles that she has collected over the last fifty years, from all parts of Mexico, were featured. Schick's family purchased a home in Mexico in 1961 when only a few expats lived in the fishing village of Ajijic on Lake Chapala, an area that has now become the largest ex-patriot community anywhere. Despite having sold the family "hacienda" (she says she's using the term very loosely) in 2009, she continues to travel extensively throughout Mexico adding to her collection. Many of her pieces, in various media, were recently donated to the Down Jersey Folk Life Center near Vineland, New Jersey, an area with a large Mexican population. 🪵

Continuing Call for MILESTONES

Honors? Publications? Exceptional activities - professional or otherwise?

Please alert us if you know of a noteworthy activity or event, whether it involves you or another member. We are a diverse and vigorous group, and, while one may be modest and restrained regarding personal accomplishments with the parties to disputes, friends and colleagues in the National Academy from around Canada and the USA enjoy hearing about not only your professional service but also your noteworthy activities outside the hearing room as well.

Please send your news to Mike Long by e-mail at mlong@oakland.edu (preferred way). If you're not on line, just fax it to Mike Long at (248) 375-9918, or mail it to:

Professor Michael P. Long
Chair, Department of
Human Resource Development

495-A Pawley Hall
Oakland University,
Rochester, MI 48309.

Phone/fax
(248) 375-9918



Plan to Attend 2011 Fall Education Conference September 16 – 18, 2011

Four Seasons Miami Miami, FL

Reminder to Members:

The 2011 Fall Education Conference at the Four Seasons Hotel Miami will occur two weeks earlier than originally announced; the new conference dates are September 16-18, 2011. Thank you.

EDITOR'S NOTE

Many Thanks...

For three years and nine issues, I had the fortunate and exciting experience of serving as Managing Editor of *The Chronicle*. When I somewhat impulsively accepted the role, I certainly had no idea what I was getting into. Three years later, it was clearly one of the most rewarding decisions of my career. I have thoroughly enjoyed interacting with so many members of the Academy, who came up with brilliant ideas, who worked hard to report on meeting sessions or create interesting columns, and who unselfishly shared their own time and experience to produce a quality publication.

"Thank you for letting me serve as Editor for the past three years."

The thanks deserved are too numerous to mention in this short note, but some folks deserve special recognition. Don McPherson coached me through the early issues and remained a source of advice and wisdom throughout. Katie Griffin is the real star behind the scenes. She is as responsible for the success of *The Chronicle* as any Managing Editor will ever be. Presidents Michel Picher, Bill Holley, and Gil Vernon, and especially Executive Secretary-Treasurer David Petersen, were steadfast in support of our efforts to expand and revise the publication and improve its quality.

Susan Grody Ruben will take over as Managing Editor at the San Diego meeting. I step to the side knowing that she will take *The Chronicle* to an even higher level of professionalism and quality.

The Chronicle is truly a wonderful forum for Academy members to recount and share their experiences in the Academy and in the field of arbitration. Thank you for letting me serve as Editor for the past three years. I hope you enjoyed our work, and I hope you continue to support *The Chronicle* in the years to come. 🗡️

— Walt De Treux

The Chronicle runs several features and columns highlighting the lives, stories, and work of the members of the Academy. We are always in need of new subjects for the articles and new story ideas. If you have any suggestions, want to write, or would like to see someone profiled in one of these columns, please contact Walt De Treux, Managing Editor, at detreuxarb@comcast.net or contact the feature author directly.

Alongside Every Good Arbitrator..., written by Linda Byars (lindabyars@byarsandbyars.com), highlights the volunteer accomplishments of spouses and partners of Academy members;

On The Job Training provides first person accounts of arbitrators who have to experience hands-on the work lives of employees who appear before them.

A Look Back in Academy History features historical moments, large and small, in the Academy's past.

NAA Book Review is a review by an NAA member of a book written by an NAA member.

Tales from the Hearing Room is a compilation of members' stories of strange, funny, and unusual happenings during arbitration proceedings.

Off Duty Conduct, written by Barry Goldman (bagman@ameritech.net), highlights the esoteric passions that members pursue in their time away from the hearing room.

Milestones, edited by Mike Long (mlong@oakland.edu), reports on noteworthy accomplishments of NAA members.

We hope these features, complementing our current roster of outstanding columns and features like *Technology Corner*, *Heard on the E-Street*, *Canadian Perspective*, *Regional Roundup*, and *Arbitration Outside the CBA*, capture your attention and interest. 🗡️

2011 FEC

Miami is Worth a Second Look!

by Elizabeth Neumeier, Host Chair and Susan Grody Ruben, Program Chair

The NAA is returning to the Miami Four Seasons Hotel for the 2011 Fall Education Conference. This location received rave reviews from those attending the 2007 FEC.

Mark your calendars for September 16-18!

The NY Times rated Miami one of the top places to go in 2011, confirming the prescience of NAA Future Sites Coordinator Jim Odom in booking our space.

Make your plans now!

The Presidential Dinner will be Thursday evening, September 15.

- Preceding the FEC will be a Skills Enhancement Workshop during the day on Friday, September 16. The SEW focuses on The Neutral's Role in Public Education Reform. FMCS Director George Cohen will fill us in on new initiatives underway in which we can take a leading role.
- Our opening dinner will be at the Four Seasons on Friday evening,
- University of Miami Medical School Department of Psychiatry and Behavioral Sciences Professor David Loewenstein will address our Saturday morning plenary on the topic of memory, aging, and the workforce.
- Breakout sessions on Saturday afternoon and Sunday morning will cover "inside" topics including the "business" of arbitration and "memorable moments" in arbitration.
- Watch for more schedule details in the registration packet. There is a Miami/Ohio State football game on Saturday for the sports fans among us.
- You will have time to explore on your own Saturday evening. The Conference will end at noon on Sunday, leaving more time to enjoy the Four Seasons pool and spa, as well as the palm trees and mojitos of South Florida.






FOCUS ON

The Law and Legislation Committee Open Call for Correspondents

By Alan Symonette

The Committee on Law and Legislation is one of six standing committees provided under the Article IV of the By-Laws. In an effort to revitalize its function, President Vernon has redefined its mission to serve as an informational resource for pending federal, state and local legislation related to Labor and Employment Relations and Arbitration. Given the current economic and political climate, it is expected that a significant amount of local and state legislation will be proposed and it will have significant impact on public sector collective bargaining. As part of this effort, President Vernon

has asked me to recruit correspondents for the Committee. It is hoped that the correspondents would monitor and report on any relevant legislation for publication in *The Chronicle* and the Academy's web site. This information would include content, status and potential impact on labor and employment relations and arbitration. Correspondents will only be expected to report on legislation that originates within their geographic region. If you are interested in serving or have any questions, please contact Alan Symonette at asymonette@symonetteadr.com. 

25 & 50 Year NAA Members To Be Recognized in San Diego

*The following members were admitted to the National Academy of Arbitrators in 1986 & 1961
and will be recognized at the Annual Business Meeting on May 28, 2011
at the San Diego Marriott Hotel & Marina:*

25 Year Members:

Robert A. Creo <i>Pittsburgh, PA</i>	Arthur T. Jacobs <i>Rye, NY</i>	Robert D. Steinberg <i>Culver City, CA</i>
Edna E.J. Francis <i>Los Angeles, CA</i>	James M. O'Reilly <i>St. Louis, MO</i>	Gil Vernon <i>Hudson, WI</i>
Mark J. Glazer <i>Bloomfield Hills, MI</i>	Robert V. Penfield <i>Columbia, MO</i>	James E. Westbrook <i>Columbia, MO</i>
Mark M. Grossman <i>Brookline, MA</i>	David A. Petersen <i>Pittsburgh, PA</i>	Hoyt N. Wheeler <i>West Columbia, SC</i>
William H. Holley, Jr. <i>Auburn, AL</i>	Lois A. Rappaport <i>New York, NY</i>	Perry A. Zirkel <i>Allentown, PA</i>

50 Year Member:

Clare B. McDermott
Pittsburgh, PA

REGIONAL ROUNDUP

Reported by **Walt DeTreux**
National Coordinator of Regional Activities

An important part of the Academy's Visibility Initiative is to encourage the Regions to sponsor and co-sponsor regional education conferences. Many Regions are currently active in such endeavors, and individual Academy members are frequent and sought-after speakers for various labor-management seminars and conferences. The issue does not appear to be whether there is an audience for such educational efforts because clearly there is. Rather, the issue is how to showcase and promote NAA involvement in those efforts.

In March, I had the wonderful experience of attending the Southwest Rockies Region Annual Meeting in Dallas, Texas. I saw first hand the model for what the Academy leadership envisions for all regional education conferences. As best described in Kathy Eisenmenger's article in this issue, the Region begins its conference with advocate and new arbitrator training. Of all topics and issues to be discussed at a conference, training for advocates and for new arbitrators consistently draws the most attendees. And it is these two groups on which Regions should focus when designing their programs. There is no better way to increase NAA visibility than by impressing the NAA and its crucial role in the arbitration process on advocates and new arbitrators (hopefully, future NAA members).

In the year since Past President Bill Holley, current President Gil Vernon, and President-elect Roberta Golick announced the Visibility Initiative, several Regions, including the Central Midwest and New England (just to name two), have organized and begun planning for comprehensive regional education conferences. In the next year, we hope to see other Regions, who may be less active than they desire, to follow. To that end, President Vernon has appointed a Regional Education Conference Resource Committee to assist Regions in creating and planning regional education conferences. Andria Knapp, Linda Byars, Diane Massey, Sarah Garraty, and I stand ready to give whatever guidance is needed to Regions who want to duplicate the success of the Southwest Region in their own areas.

Please remember that Regions who wish to co-sponsor events with other organizations must seek approval from the Academy President (please copy me on any such requests). We strongly encourage co-sponsorship with existing labor-management and neutral organizations, such as LERA, AAA, FMCS, and related state organizations.

CANADA

Mark your calendars - the next biannual meeting of Canadian arbitrators will be held in Arizona on March 3-5, 2012. Paula Knopf chairs the meeting organizing team. The result of a recent survey of arbitrators indicated a preference for a warm location in winter. The Phoenix/Scottsdale area was a popular choice, no doubt influenced by the success of the 2010 meeting held in Scottsdale. We look forward to the 2011 Annual Meeting in San Diego. There will be a brief business meeting of the Region on Saturday May 28, to follow the Canadian session moderated by Susan Stewart, entitled "Arbitrating in the Fishbowl - Guppies or Sharks?" For those curious about the title, this session offers a panel discussion by Canadian NAA members who have taken the "bait" to discuss the ways for arbitrators to speak publicly, such as intervening in cases before the courts or speaking to the media.

The Region mourned the loss to our community this past December with the passing of member Ian Springate. The Region has made a charitable donation in Ian's memory.

Regional Chair is Jim Oakley – joakley@nfld.net

CENTRAL MIDWEST

Like the rest of the nation, the Central Midwest Region has been watching the unfolding events in Madison, Wisconsin. The NAA's arbitration advocacy training program had been set for the day before the seventh Wisconsin Public Sector Labor Relations Conference at the end of April. Given the recent and drastic changes to Wisconsin public sector labor law, they were both cancelled. The Wisconsin Employment Relations Commission and the Central Midwest region hope to present their respective programs later this year.

The Region is currently exploring co-sponsoring additional events in our region. We will be sending a large contingent to San Diego and look forward to the conference.

Regional Chair is Brian Clauss –
brianclauss@midwest-arbitrator-mediator.com

METROPOLITAN DC

Regional Chair is Mike Wolf – Wolfdc@erols.com

METROPOLITAN NEW YORK

At our last meeting, on February 3, 2011, there was a lively and engaging discussion premised around the following topic: The Hotel Industry of NYC: How have the parties fared for some seventy years under a very broad arbitration clause? We were fortunate to have, as participants, David Rothfeld, Esq., representing the Hotel Industry and Richard Maroko, Esq., representing the New York Hotel Trades Council. The Chair served as moderator and participant, having been one of the Impartial Chairpersons (arbitrators) for the industry for the past fifteen years.

(Continued on Next Page)

REGIONAL ROUNDUP *(Continued from Page 10)*

The NY Region's next meeting, on May 11, 2011, will include a labor and employment law update. It will be followed by a discussion of when it is appropriate for a labor arbitrator, determining just cause for a discharge, to award front pay but **not** reinstatement, after finding that the discharged employee was guilty of serious misconduct but not such as would normally justify discharge. An award written by the Chair and the Southern District of NY's validation of that award on a petition to vacate will be discussed. Members of the region who did the same thing or who were tempted to do the same thing have been invited to speak about their thoughts on this form of remedy and, particularly, the meaning of "and, if not, what shall be the remedy?"

Regional Chair is Elliott Shriftman – elliott.shriftman@gmail.com

MICHIGAN

The members of the Michigan Region were honored to host NAA President, Gil Vernon, on March 22, at the restaurant in the Four Points by Sheraton near Detroit Metro airport. The President chatted with regional members regarding the NAA and the current condition of arbitration, particularly in his home state of Wisconsin.

On Tuesday, May 17, State Bar of Michigan Professional Standards Investigative Counsel, Danon Goodrum-Garland, will meet with the regional members. The topic of discussion is the ethical obligations imposed on arbitrators and mediators by the Michigan Rule of Professional Conduct. In particular, Goodrum-Garland will discuss the new MRPC 2.4, "Lawyer Serving as a Third-Party Neutral," and will provide insight to the members regarding the new rule and the mandatory disclosures required by arbitrators and mediators, particularly when a party appears *pro se*. MRPC 2.4 is fashioned after the ABA Model Rule and was adopted by the Michigan Supreme Court without much fanfare. The comments state that the rule was "designed to help parties involved in alternative dispute resolution to better understand the role of a lawyer serving as a third party neutral." Goodrum-Garland will offer the Professional Standards committee's position on the new rule and its expectations regarding attorney conduct.

Regional Chair is Kathryn VanDagens – kvandagens@comcast.net

MID-ATLANTIC

Members of the Region continue to attend and support LERA, AAA and FMCS programs. The October jointly sponsored program with the AAA was a resounding success which attracted advocates on both sides of the aisle. Attorneys Hope Pordy of Spivack Lipton, LLP and Jonathon Krause of Morgan, Lewis & Bockius, discussed: *The Anti - Retaliation Provision of the Fair Labor Standards Act*. The reception

which followed afforded an opportunity to further the discussion and to meet, greet and network in the space provided by our AAA hosts as well.

Two initiatives were considered by the membership at the February business and planning meeting. One is an examination of the policy of the NLRB regarding General Counsel's *Guideline Memorandum Concerning Deferral to Arbitral Awards and Grievance Settlements in Section 8(a) (1) and (3) Cases*. This program is intended to attract the interest of arbitrators and advocates of Labor/Management disputes as related to safeguarding employees' statutory rights. The other is a presentation and discussion of policy and developments of the EEOC by the new regional director. This program is expected to be of particular interest to those of us whose practice includes employment arbitration. Some but not all of the participants in these programs have been identified, and the dates and locations for the presentations have yet to be finalized.

Regional Chair is John Paul Simpkins – adr6800@verizon.net

MISSOURI VALLEY

The Missouri Valley Chapter of the NAA meets at noon on the second Friday, September – May. A summary of recent meetings are summarized below.

Gladys W. Gruenberg presented her ideas about how to write the "perfect" award at the December meeting. Her suggestions included the following:

1. Never assume anything and, if the parties don't ask for your opinion on a particular matter, don't give it.
2. Write less rather than more. An opinion is not for an academic journal.
3. Keep citations to a minimum. Every case is unique; there are no precedents.
4. Write for everybody involved: yourself, the grievant, the parties, appeal boards, the courts, whatever. Be careful if it's a federal case; use language that matches laws and regulations.
5. Omit conjecture and what-ifs. Don't try to resolve potential problems.

In summary, the opinion should include all facts and documents that are necessary for a reviewer to understand what was at issue and how the arbitrator arrived at the award. Don't expect to do justice; just resolve the issue in accordance with the facts, the contract, and the law if applicable.

At the January 14, 2011 regional meeting, Jim O'Grady led a

(Continued on Page 12)

REGIONAL ROUNDUP *(Continued from Page 11)*

roundtable discussion on Regional Visibility Initiatives. Suggestions included:

- the development of a speaker's bureau
- becoming more pro-active with Labor and Employment Relations Association and the bar association of St. Louis on behalf of NAA
- discussion of ethical obligations of arbitrators
- wearing the NAA pin at hearings & other events
- plan a seminar to update parties on developments in arbitration
- prepare press releases about NAA members and events for release regionally.

In November 2010, Bill Slade of the American Arbitration Association focused his President's address on the costs of arbitration, urging process and fee reductions to make the proceedings more amenable for use. Noting the January 2011 AAA increase in labor arbitration filing fee (\$225 per side) plus imposition of the cancellation fee from the first (previously 2nd) agreed upon hearing date change (\$150), plus \$50 increase in arbitrator AAA membership fees, Anne Draznin offered the February meeting of the St. Louis NAA chapter a description of possible costs for a typical labor arbitration as a basis for discussion. It appeared that Court Reporter and Attorney fees combined came to about three times the Arbitrator fees, including travel, cancellation and docketing fees, which indicated that a return to less legalistic basic party conducted arbitration, could be considerably less costly.

Regional Chair is Ed Harrick – eharric@siue.edu

NEW ENGLAND

Region 1 held its first meeting of the new year on Wednesday, March 16, 2011 at the Papa Razzi Restaurant in Wellesley, Massachusetts. Incoming NAA President Roberta Golick welcomed assembled members and guests, gave a brief update on Academy activities, and encouraged guests who are interested in being admitted to the Academy to speak with her. She then introduced the new regional chairperson, Nancy Peace. Nancy reported on the state of the region's treasury, including payment of a previously approved donation to The Labor Guild, and described upcoming activities. Joan Dolan reported on the preliminary work she and Elizabeth Neumeier had done on a fall program for advocates that will be jointly sponsored with the Boston office of the American Arbitration Association.

Region 1 members Marc Greenbaum and Sarah Kerr Garraty presented a program on the impact of the Massachusetts Supreme Judicial Court's recent Boston Housing Authority on the arbitrability of grievances arising after a public sector con-

tract has expired. There was considerable discussion following this presentation.

At the April meeting, Region 1 member Mark Irvings discussed "The Brave New World of Employment Arbitration."

Regional Chair is Nancy Peace – npeace@igc.org

NORTHERN CALIFORNIA

The Northern California region on December 13th held a very successful and well attended "Meet the Arbitrator" program in Oakland, California. Thanks go to the energy and drive of Andrea Knapp, Jerilou Cossack, Bonnie Bogue, and Katherine Thompson for a successful program.

On April 27, the Region hosted a dinner meeting for President Gil Vernon in San Francisco at the Delancy Street Restaurant.

Regional Chair is C. Allen Pool – callenpool@comcast.net

OHIO-KENTUCKY

The Ohio-Kentucky Region meeting was held on April 16, 2011 at the Columbus, Ohio airport Marriott. Speakers included the Academy President Gil Vernon, Christine Newhall (AAA), Vella Traynham (FMCS), Professor Alan Miles Ruben and Marvin J. Feldman. We enjoyed a large turnout and a highly intense professional meeting.

The following were recently elected as officers of the Region: Greg Van Pelt, Regional Chair; Floyd Weatherspoon, Vice-Chair; and Mitch Goldberg, Secy-Treasurer.

Regional Chair is Greg Van Pelt – greg@gregvanpelt.com

PACIFIC NORTHWEST

Under the capable leadership of Joe Duffy, the Region's 2011 Labor Arbitrators Conference on March 14th in Portland, Oregon was well attended by both NAA and non-NAA members. The Conference was co-sponsored by the Oregon Employment Relations Board and the Oregon Chapter of the Labor and Employment Relations Association. Tom Levak and Tim Williams led the presentations on *Developments in Interest Arbitration* and *Addressing the Attack on Arbitration*. Labor and Management attorneys assisted in several of the conference presentations as did Agency representatives. This forum continues to be an excellent way for the Region to focus on timely topics such as *Social Media Issues in the Workplace*. At the business meeting following the conference, the Region applauded the selection of Howell Lankford as a nominee for the NAA Board of Governors and recognized the Region's incoming Chair, Robert Landau of Alaska.

Regional Chair is Sylvia Skratek – skratek@naarb.org

(Continued on Next Page)

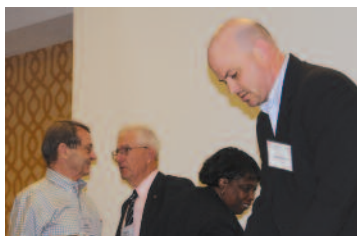
REGIONAL ROUNDUP *(Continued from Page 12)*

SOUTHEAST

The Southeast Region held its annual meeting on February 25 and 26, 2011 in Orlando Florida.

The Region hosted over 50 attendees at the advocates training session on Friday and over 100 attendees at the Saturday seminar.

The highlights of the program included an address by Allison Beck, Deputy Director of FMCS on many of its current initiatives, presentations by NAA Members on several current issues including: Zero Tolerance – When it should or should not apply, led by Gerald Cohen; Due Process Dilemmas led by Betsy Wesman; and a panel discussion on When is the Arbitrator's Decision Final.



Andrew Barton, Vella Traynham, Harry Gudenberg, & James Odom, Jr.



Vella Traynham



Allison Beck



Deep in arbitration preparation.



Judy Willoughby & Ron Watson of the NALC.



Discussions over dinner.

Photographer: Harry Gudenberg

Our 2012 annual meeting will be held in Atlanta, Georgia on February 24 and 25, 2012.

Regional Chair is Harry Gudenberg – hrg19@bellsouth.net

SOUTHERN CALIFORNIA

On February 25 we had a small, but energetic meeting of members, including next year's President-Elect Sara Adler, Governing Board member Fred Horowitz (yes, our pride is showing), Doug Collins, Paul Greenberg (traveling up from Palm Springs), and yours truly. We must be traveling fools for we lost Phil Tamoush to Northern Cal., Mark Burstein to New Mexico and Lou Zigman to Hawaii (poor guy).

From an intellectual standpoint we had an interesting discussion of novel remedial issues.

In April, we had a visit from President Gil Vernon at a meeting open to non-members. We look forward to the big San Diego clam bake in May, as to which Fred reported the host committee is at the top of its game and promises chamber of commerce weather (realizing for most of the attendees this would be anything above freezing and dry) and confirming our singular regional educational effort will be another major Meet the Arbitrator program similar in scope to last year's effort which resulted (thanks particularly to Lou Zigman) in the participation of some two dozen panel members and between 160-180 attendees.

Look forward to seeing many of you in San Diego and to receiving, along with Phil Tamoush, my 25-year pin... Cannot believe I am no longer breaking the curve, but am the curve. I thank my close, but departed friend Bob Leventhal for convincing me to join this organization which I held in such high esteem when I was an occasional advocate.

Regional Chair is Bob Steinberg – rdsteinberg@msn.com

SOUTHWEST ROCKIES

The Southwest Region has changed its name to the "Southwest Rockies Region." The SW Rockies Region held its annual Spring conference in Dallas, Texas this year during March 3 through 5 (*see article in this issue*). In October 2011, the SW Rockies Region will hold its annual education conference in Galveston, Texas.

Regional Chair is Don E. Williams – williamsarb@aol.com

UPSTATE NEW YORK

Regional Chair is Douglas J. Bantle – bantle@rochester.rr.com

WESTERN PENNSYLVANIA

The Western Pennsylvania Region met on March 18, 2011 for its quarterly luncheon at the Pittsburgh Athletic Association. Our tradition is to invite all NAA member and non-member neutral labor arbitrators in the Region to attend. We have also invited five advocates to the March meeting as part of the program to give the attendees their perceptions of local labor-management matters.

Our next quarterly luncheon for the Western Pennsylvania Region will held on June 3, 2011, at the Pittsburgh Athletic Association.

Regional Chair is Michael McDowell – mmcdowell@arbitrationsandmediations.com 

Three Cheers for the REF!

By Chris Knowlton

Thanks to membership support, the REF has made great strides toward goals it established two years ago.

The REF enhanced awareness of its work among the membership. At its May 2009 Chicago meeting, the REF Board decided to hold a Silent Auction to raise funds and increase membership awareness of the REF. Thanks to the REF's Auction Committee, Betsy Wesman, Barbara Zausner, and Paula Knopf, the Auction will be held in San Diego. Members have generously donated rare wines, art works, vacation homes, handcrafts, meals and memorabilia to entice conference registrants and make the event a success. With on-going publicity about the Auction and the REF's recent accomplishments, along with the Canadian Regional Challenge, members are now talking about the REF.

The REF increased donations and donors. In 2010, the REF increased membership support by 45%. More members contributed than ever before. One hundred and forty-eight members, 23% of the membership, now support the REF. 2010 donations totaled \$23,656, the largest annual amount collected. In these economically challenging times, the membership's response validates the importance of the REF to the NAA's leadership in our field.

The REF increased its grant proposals. The REF undertook a widespread advertising campaign to increase awareness among scholars and educators about the availability of funds for projects and research that contribute to our knowledge and understanding of arbitration and support ethical practices. It updated and clarified the process of applying for a grant and posted that information, along with a description of the REF, its goals, and a list of its projects, on the NAA website. The REF also published specific announcements inviting grants in academic journals, professional newsletters and online networks.

The REF recently approved two exciting new grants:


- *Arbitration Hearing Film.* With the REF's support, Pennsylvania State University's Department of Labor Studies and Employment Relations is producing an educational film of a fictional arbitration hearing.

The film will be accompanied by a written teaching guide and will be a valuable resource for academic classes and training programs.

- *Research on Access to Justice for Employment Disputes.* The REF has also funded a study by the National Workrights Institute to determine whether employees with viable discrimination claims have access to justice through litigation. The ability to obtain counsel for discrimination claims is a critical question in the debate about pre-dispute employment arbitration, and solid data is needed to understand this aspect of the discussion.

The REF increased awareness of the NAA in the labor and employment arbitration community. For each of its projects, the REF requires prominent acknowledgement of its contribution, along with a description of the NAA, in any reports, articles or other materials created as a result of the project. The REF also requires broad dissemination of the results of its grants as a condition of funding.

The REF adopted a Conflict of Interest Policy and is increasing transparency through website improvements. The REF is engaged in an effort to improve the integrity and transparency of its operations. To this end, it published its By-Laws online in the NAA's Member Center where it is available for all members to review. The REF adopted a Conflict of Interest Policy outlining Board member responsibilities in the event of a conflict of interest regarding a pending grant proposal. This Policy, along with the REF's Agenda, Minutes, and Financial Statements, will soon be published in an online Board Book in the Member Center.

The REF Needs You! The REF is now receiving an ongoing stream of proposals. Its ability to fund worthy projects depends on your contributions. *Make the REF part of your regular giving in 2011. If you are not a Life Member, with cumulative donations totaling \$1,000, become one. Support the San Diego Auction. Contact Betsy Wesman [ecwesman@aol.com] to donate an item or service and, when you're in San Diego, have fun bidding on the fabulous items donated by your colleagues.* 

REF SILENT AUCTION

by Elizabeth C. Wesman

We are still accepting donations for the REF Silent Auction to be held at the San Diego meeting for the benefit of the Research and Education Foundation. To date we have more than 25 items donated, and we thank the NAA members who have been so generous in supporting the auction.


Our most recent donations from individuals include three days at a magnificent beach house on Oregon's Southern Coast at Brandon, Oregon from Geraldine Randall; dinner for four prepared by Marty Malin and served at his home in Oak Park, Illinois; and a handsome Royal Doulton lawyer figurine and fun, talkative lawyer doll (imagine!) – both donated by Sara Adler.

We are also delighted to report that the **Great Canadian Region Challenge** has not gone unanswered. The **Missouri Valley Region** has responded to the Canadian Challenge by donating a Stan Musial autographed jersey for the REF Auction in San Diego. (Note: Stan Musial was a recent recipient of the Presidential Medal of Freedom.) This is a genuine replica of the

jersey worn by the World Series winning 1944 St. Louis Cardinals. It is signed by Stan and features the number "6" he wore throughout his 22 year career with the Cardinals and which was retired by the club in 1963.

Not to be outdone, the **Southeast Region** is donating at least four tickets to Walt Disney World in Orlando, Florida. This would make a great family side trip in perfect Florida weather on your way to the Fall Meeting in Miami and the New England Region donated a \$300 gift certificate from a Gloucester, MA fishery to have lobsters delivered to the lucky purchaser.

Now we need the other regions to respond. The Canadians have thrown down the gauntlet – let's have a full U.S. Regions response!

We will be accepting additional donations until May 10, 2011, so please scour your treasures and contact either Barbara Zausner (bzausner@hvc.rr.com) or me (ecwesman@aol.com) if you have an item to donate. 

2010 Donors NAA Research & Education Foundation Donors Contributing in Each of the Past 5 Years [2006-10]

Richard G. Boulanger
Margery F. Gootnick
Frederic R. Horowitz

Jacqueline A. Imhoff
Anita Christine Knowlton
Martin H. Malin

Susan R. Meredith
David A. Petersen
Theodore J. St. Antoine

Joseph M. Sharnoff
Barry Winograd

2010 Donors

Ruben R. Armendariz
Robert Gary Bailey
Frances Bairstow
LeRoy R. Bartman
Stephen F. Befort
Michael A. Berzansky
Patricia Thomas Bittel
Jules Bloch
Richard N. Block
Mario F. Bognanno
Bonnie G. Bogue
Richard G. Boulanger
Daniel F. Brent
Deborah M. Brodsky
Margaret R. Brogan
Susan R. Brown
Timothy J. Brown
Scott E. Buchheit
Timothy J. Buckalew
Suzanne R. Butler
Linda S. Byars
Thomas Christopher
Barbara Chvany
Sheila S. Cole
James R. Cox
Shyam Das
Barbara Deinhardt
Frederic R. Dichter

Richard W. Dissen
Stanley T. Dobry
Joan G. Dolan
James Clair Duff
Kathryn Durham
James B. Dworkin
Howard C. Edelman
Sharon Henderson Ellis
Peter Feuille
Richard D. Fincher
Charles Fischbach
Phyllis E. Florman
Milden J. Fox, Jr.
Sharon Gallagher
Sarah Kerr Garraty
Gladys Gershenfeld
Albert Gese
Eleanor E. Glanstein
Mark J. Glazer
Thomas Goldie
Alvin L. Goldman
Elliott H. Goldstein
Roberta L. Golick
Lynne Gomez
Margery F. Gootnick
Robert A. Gorman
Amedeo Greco
Marcia L. Greenbaum

Paul Greenberg
Harry Gudenberg
James M. Harkless
Catherine Harris
Richard Grant Higgins
Earle William Hockenbery
Lawrence T. Holden
William H. Holley, Jr.
Frederic R. Horowitz
Jacqueline A. Imhoff
Charles F. Ipavek
Arthur T. Jacobs
Joshua Javits
Margaret Nancy Johnson
Richard R. Kasher
Linda DiLeone Klein
Paula Knopf
Ildiko Knott
Anita Christine Knowlton
Lisa Salkovitz Kohn
Edward B. Krinsky
Stan Lanyon
Marilyn M. Levine
Randy Levinson
William Lowe
Mark I. Lurie
Susan T. Mackenzie
Martin H. Malin

George E. Marshall
Diane Dunham Massey
Andree Y. McKissick
Donald S. McPherson
Michael B. McReynolds
Susan R. Meredith
Kathleen Miller
Dennis E. Minni
Robert B. Moberly
Harvey A. Nathan
Margo R. Newman
Dennis R. Nolan
James C. Oakley
Nancy E. Peace
Edward A. Pereles
John D. Perone
David A. Petersen
Earl R. Pfeffer
Stuart M. Pohl
Allen Ponak
C. Allen Pool
Nancy D. Powers
Robert J. Rabin
William R.K. Rader
Gerard G. Restaino
Arthur A. Riegel
George S. Roukis
Stephen J. Rosen

Alan Miles Ruben
Susan Grody Ruben
Theodore J. St. Antoine
Martin F. Scheinman
Mary Jo Schiavoni
Stanley H. Sergeant
Joseph M. Sharnoff
Elliott D. Shriftman
Kenneth N. Silbert
John Paul Simpkins
Clifford E. Smith
Lamont E. Stallworth
Donald F. Sugerman
Chris Sullivan
Alan A. Symonette
Jeffrey B. Tener
Katherine J. Thomson
Jack D. Tillem
Maretta C. Toedt
Rosemary A. Townley
Rolf Valtin
M. David Vaughn
Gil Vernon
Jeanne M. Vonhof
John S. Weisheit
Elizabeth C. Wesman
Hoyt N. Wheeler
Rex Wiant, II

David R. Williamson
Barry Winograd
Daniel M. Winograd
Aaron S. Wolff
Louise Wolitz
Arnold M. Zack
Barbara Zausner
Louis M. Zigman

Special Gifts

In Memory of:
Maurice Benewitz
Lloyd Byars
Charles Coleman
Richard Gaba
Betty Gaston
Walter Gershenfeld
Arthur Goldstein
William Harper
Dallas Jones
Maureen O'Sullivan
Matt Shipman

In Honor of:
The Marriage of
Margaret R. Brogan
And Barry Winograd

ALONGSIDE EVERY GOOD ARBITRATOR

By Linda Byars

A column featuring the volunteer accomplishments of our partners

LLOYD ST. ANTOINE

By Linda Byars*

Lloyd St. Antoine is the wife of Ted St. Antoine, who describes Lloyd for the purposes of this article as, first and foremost, “indispensable helpmate.” Ted’s position as dean at the Michigan Law School required Lloyd’s volunteer participation as principal hostess while managing her own household consisting of four teenage offspring, Ted’s increasingly ill mother, and two nieces (or, at different times, three nephews) who were staying with them while going to college. At the time, Lloyd also was acquiring a Master’s in Special Education. She did student teaching and worked with persons trying to recover their speech after suffering strokes or serious head injuries. At the same time, Lloyd managed to put on cocktail parties for upwards of 100 guests and almost single-handedly prepare formal dinners for distinguished visitors. Ted describes some compensating memorable moments: for example, the evening Justice Douglas became even more opinionated as he finished off a pint of vodka.

As their children began college, Lloyd helped foot the bills by working as office manager to a man who became Ann Arbor’s top realtor. Lloyd also typed Ted’s arbitration decisions, at least until he mastered the word processor.

Lloyd and Ted share common interest in charitable work including the high arts and the needy. In Ann Arbor, Lloyd worked with a world-class ancient instruments group, Ars Musica. Until it fell victim to a drastic downturn in state support for the arts, Lloyd was Executive Director and then President of this locally based small orchestra that specialized in playing the music of

the baroque and earlier eras on original or replica instruments of the period (Bach, Handel, Pergolesi, etc.), with an occasional nod to Mozart. Ars Musica received rave reviews for its performances as far away as New York City. Persons interested in this particular field will readily recognize some of its famous guest personnel: conductors and violinists Roger Norrington, Jaap Schroeder, Nick McGegan, and John Holloway; vocalists Emma Kirkby and Drew Minter; and fortepianists Malcolm Bilson, Robert Levin, and Steven Lubin. The high point for Lloyd was presenting “Mozartfest,” a four-day educational and performance festival including the playing of 10 Mozart concertos by 11 top fortepianists (one was a home-town standout and regular, Penny Crawford, Lloyd’s invaluable professional organizer and adviser).

In the mid-1990s Lloyd began helping out at Arbor Hospice, which cares for the dying and those with terminal illnesses in a multi-county area. At first she worked in fundraising. To Ted’s totally unbiased eye and even to those of us who know her less well, Lloyd has a wonderful way with words, and she soon became their primary writer of major grant applications. She topped this off by co-chairing Hospice’s annual live fundraising event, the “Chair-ity Affair.” Local artists decorate all kinds of simple chairs and these (along with much more elaborate and expensive items, from jeweled necklaces to week-long vacations) are then auctioned off in an atmosphere of much goodwill and conviviality. Naturally, Lloyd and her co-chair set an all-time record for money raised. Lloyd then decided she should become more directly involved in patient care and signed up for feeding breakfasts. Being Lloyd, she was often dissatisfied with the way food

arrived from the kitchen and was constantly tinkering to make it more enticing. Recently federal regulations have disqualified her as inadequately trained for the task (!) and so, pending the necessary training, she’s back to her original work as a fundraiser. She has even managed to recruit at least one other volunteer, Ted, to help with the fundraising.

The readers of this article may find themselves exhausted just reading about Lloyd’s generous work for and on behalf of others. Ted was concerned that colleagues would think he kept her so busy that she has had no time for herself. Let it be known that, somehow, she has found the time to fit in three book-reading groups, a memoir-writing class, and a weekly yoga session. We in the Academy who have been graced by her presence at nearly every meeting in the past 35 years are not surprised at her considerable talents and generous spirit.

* *Ted, the person who knows Lloyd best, lovingly provided the information for this article.* 🍷

Mark Your Calendar: 2013 Annual Meeting June 5 – 8, 2013

The Fairmont Hotel Vancouver
Vancouver, BC



One Member's Point Of View

By James Cooper

If you do not like this article, blame Helen Witt because she suggested that I do this for *The Chronicle* during the Presidential luncheon in Ottawa. If you like it, send me an e-mail.

This all started during the summer of 2001 when I purchased an 8' pop-up camper and my family (wife, 2 kids, 1 dog) spent eight weeks camping across the country (12 National Parks; 6 State Parks; lots of private camp grounds and innumerable "if you kids don't behave we are going home tomorrow!"). During this extended tour across the continent, I decided to encourage my children to keep a journal of their activities. My son (age 6) lasted a day or two and mostly drew pictures of tanks, airplanes and bazookas. My daughter (age 11) lasted a week or two, but would always begin by asking me what happened a week ago Wednesday. My wife said, forget it, she was too busy cleaning up after the four of us. I did not ask the dog.

I, however, found the journal writing to be very relaxing. I do not know why, but I discovered that it somehow slowed me down and made me think about what we had done, how much fun it had been (mostly) and what we should do next. Let me explain that this journal was not a work of art, it was just a short description of where we had gone, what we had seen and how much everything cost. Mundane to the point of recording what each of us had for lunch or what we cooked over the campfire or how much the admission was to the Corn Palace in Mitchell, South Dakota. I discovered that when I went back to read what I had written years earlier, I had completely forgotten about what we had done, but as soon as I read the words, the whole activity reappeared in my memory like some long forgotten girlfriend, wonderfully comforting.

For the next few years I only did my journal while we were on our camping trips, which we took but for a lot less than eight weeks. Soon I expanded my journal activity to include any trip with the family, whether to Florida (to visit my wife's folks) or to California (to visit mine) or simply to New York City for a weekend. But then I discovered that I found the journal so relaxing and enjoyable that I expanded it to include the NAA meetings I attended and so that is where Helen Witt comes in. She suggested that I share with others bits and pieces of my journal from various NAA meetings so that is what this article is all about. Of course when I explained my journal to my 27 year old nephew, he said "oh you are blogging with a pen and paper." I guess that is what this amounts to.

8:45 a.m. Monday May 19, 2008: I am on my way to the National Academy meeting in Ottawa. The one-way bus fare

is \$44 – a real bargain. Of course this will take me all day – 8 a.m. to 6 p.m. but if I flew it would still sufficiently mess up my day anyway.... I read the NAA *Chronicle* on the bus. There were at least 8 or 10 Remembrances – the members are dying off faster than we can admit new ones. This is a profession on its way out of business. There are fewer and fewer cases with more and more young people trying to break in.... When I got off the bus I decided to walk to the Bed and Breakfast. Big mistake! Especially since I did not read the clearly marked directions from the B&B. I went the wrong way and ended up miles south of the City. When I finally asked someone how far to go, he laughed and told me I was way off and suggested I take the bus. While I was waiting for the bus, he pulled up and said his family voted 3 to 1 to take me downtown. They were very nice and dropped me off at the Home Sweet Home B & B.

1:50 p.m. Wednesday, May 21, 2008: Starting where I left off on Monday.... Brian [B & B Owner] loaned me his bicycle and I rode to Parliament Hill. I discovered they had a walking tour – so I took it. Among the more interesting things on the tour was a large cat shelter – built 100 yards from the Parliament. It shelters stray cats and other small animals who get fed by a small army of volunteers who keep the place clean, painted and looking immaculate.

Susan Mackenzie runs a good membership committee meeting. It was fun and reminded me of the old "executive sessions" at the Labor Relations Commission – only instead of arguing over whether to issue an unfair labor practice complaint, we're admitting or denying membership... I like working with this committee but sorely miss Harvey Nathan and Elliot Goldstein – their commonsense and great sense of humor always made the meetings even more fun.

10:00 a.m. Saturday, May 24, 2008: Thursday night I went to see the opening night of the Ottawa Rapidz – a new minor league baseball team. Five of us piled into a taxi, Andrew and Tracy Strongin, Alan Symonette and Chris Knowlton. The ticket cost \$10 and you could sit anywhere in the park... it was empty. The baseball was okay except the Rapidz made six errors. The wait in line for hamburgers (Tracy waited with me) was half an hour. Luckily all we missed was the game. We got a free bus ride home!

My next meeting was Seattle in October 2008.

Noon, Friday, October 3, 2008: I finished [my case] on Wednesday afternoon, drove back to the office, changed and drove to the airport, I had until 8:50 p.m. before my plane left.

(Continued on Page 18)

LEGAL REPRESENTATION FUND

By Sara Adler, LRF Coordinator

This is a good news/bad news report. I have been contacted by various members with legal issues, some discussed below, but no funds have been expended by LRF since my last report.

One member reinstated an employee but granted limited back pay due to a failure to mitigate damages. The employee filed an ethics complaint with that state bar association naming the member and both parties' lawyers. Presumably the bar association will see this for what it is, but the experience has been understandably upsetting. For those of you with the basic insurance, there is a low-cost rider that covers representation for professional ethics complaints being filed. To the best of my knowledge this is a first for any member, but I have to believe that it's happened to neutrals in other practice areas

for Lloyds of London to be offering the rider. Something to consider.

Another member sued a public sector grievant in the equivalent of a small claims court for the grievant's portion of the fees (after the Union declined to take the case). The grievant countersued alleging that the member had no contract with him and was charging inflated fees for the arbitration. Stay tuned. Even better, if you know a grievant will be proceeding *pro se* get both parties to deposit fees up front. Just remember, if you're a lawyer, your state may require that those fees be held in a trust account.

Lastly of interest, a member was threatened with suit very early on in a matter being administered by the AAA. When inquiry was made, AAA assured the member that AAA would provide

representation if the member was actually sued. In what I consider a sensible move, the member recused himself before any legal action was taken. That case could only go downhill and his time, energy and emotions could be better spent elsewhere!

Please remember, **it really is important that you contact me (sadler-arb@earthlink.net or 310-474-5170) before you contact your insurance company.** In many cases, with member permission, the matter can be satisfactorily resolved without insurance company/attorney help at no cost to the Fund. If you can't reach me relatively quickly, get in touch with Luella Nelson (luella.nelson@naarb.org or 503-281-8343). It would be a decided kindness if you keep in mind that Luella and I are both on the West Coast. 

Point Of View (Continued from Page 17)


I got to the airport, dropped off my rental car off and got to the terminal at 7:30. I went to check in and discovered my plane left at 7:15 p.m. I was so upset with myself because if I had checked my schedule more carefully – I would have seen that I was leaving earlier and I would have made it on time. The net effect was that I had to go standby on the next available flight in order to avoid additional fees and air fare... In order to get the next plane to Seattle – I had to take the 6 a.m. flight to JFK and then catch a noon flight to Seattle. Went home, got up at 3:30 a.m., showered, dressed and walked Zack, got to airport at 5 a.m. and to Gate 20 at JFK where I waited until noon (5 hours to finish *Boston Globe* and *New York Times*). Got on flight to Seattle for 5 hour flight to Seattle (5 hours to finish *Globe* and *Times* – total newspaper time, 10 hours!) Arrived at Membership Committee meeting at 3:30 but was worth the effort.

Afterwards walked to 11th Avenue Inn (uphill, 1.5 miles). Changed and rented bike at Play It Again Sports (\$50 for two days) and rode to Washington Athletic Club and joined Alan Krebs and Bob Landau for Presidential Dinner (Alaskan salmon: delicious!). This morning ... rode my bike to Westin where I joined Margie Brogan (also runs great Membership

Meeting), Beber Helburn, Linda Byars, Jane Devlin, John Sass, Howard Foster and Elliot Goldstein (yeah!) for rousing membership argument over reinstituting "veteran's preference" which I was against, but got roundly out voted.

9: 15 a.m., Saturday, October 4, 2008: I'm sitting at the New Membership Introductions – and now seeing the people we admitted last spring. I finally get a chance to put a face with a file. A lot of fun.

10:23 a.m. Sunday, October 5, 2008: The symphony dinner was wonderful I sat with Sylvia Skratek, her husband and Paul Staudohar and Marcia Greenbaun. The food was catered by Wolfgang Puck (Seattle native!) was excellent – the medallions of beef and the creamed cauliflower were particularly good. It was buffet so I had seconds and stuffed myself... Symphony Hall, Benaroya Hall is spectacularly beautiful with plush comfortable seats and lots of leg room. Lynn Harrell, the cellist was guest performer and they performed Shostakovich's *Cello Concerto #1*. It was a wonderful performance. At intermission, half the audience left – I was amazed with Richard Strauss' *Ein Heldenleben* coming up. I did not understand how they could leave.

Interested in continuing? I am looking for fellow journalists to contribute! If so, e-mail me (jcooper@jcooperlaw.com) and I will work them into another article. 



HEARD ON THE E-STREET

Compiled by Howard Foster

The electronic "Mail List" often generates wide-ranging discussions and debates on questions of interest to members. This column presents excerpts from recent contributions. Our purpose is to air a range of views on arbitration topics that are important enough to move members to write. Comments and suggestions are welcome and encouraged. Members who are not on the Mail List and would like to subscribe should contact Doug Collins at doug.collins@roadrunner.com. The Mail List is a private forum for the exclusive use of members of the National Academy of Arbitrators (NAA). It is NOT an official function of the NAA. The opinions expressed by subscribers do not necessarily reflect the position of the NAA on any issue.

Barry Goldman wondered what members thought about a solicitation he received for his bio, a list of his cases, and copies of his awards. The solicitation was from an outfit called R.C. Simpson, Inc., and it noted that "this information is for the exclusive benefit of employers and their legal counsel who may have occasion to select an arbitrator in a matter in which they become involved." Barry's posting triggered a lengthy discussion of the role of these services in arbitrator selection, which segued into the general subject of publishing awards – and then into the irony of typos.

I wonder if this is a matter that should be referred to the CPRG. I'd like to see an opinion issued holding that it's a violation of the Code for NAA members to provide such information, particularly to disclose confidential awards, for the commercial use by a company such as Simpsons. **Doug Collins**

Simpson's has been in the business of rating arbitrators for at least 40 years. It traditionally got decisions from management members. Periodically NAA members have been outraged but the rating goes on, beyond our reach. That's their business. I'd just ignore it. **Arnold Zack**

After I issued my first award, a law school friend called and told me he had just seen my evaluation written by this company. He sent it to me. The report, which indicated that it was based upon review of one award, set forth a series of general assessments of my arbitral philosophy. While the report was very positive and ironically was accurate in many ways, there was absolutely no way this company's comments could ever have been discerned from that award. On that day I realized no one should ever respond to companies like this. Stay away. **Marty Scheinman**

In the past few years members have observed a growth in the number of advocates whose practice specialties are other than labor-management law. When they turn to sources such as Westlaw or Simpson's or BNA or AAA, etc. to learn about the arbitrators on the panel list, are they likely to be aware of the limitations of the information provided (non randomness and

incompleteness of case lists, limitations of result summaries, etc.)? A session on The Value and Deficiencies of Arbitrator Information Sources should provide a useful guidepost for them, especially if we can get designating agencies to provide a link to the resulting Proceedings piece when they send lists to the parties. **Alvin Goldman**

I am with those who think we should not touch this issue. Others have stated how unrepresentative the published decisions are and that many are not published. Many arbitrators, myself included, have never submitted a decision for publication. I think we run the risk of looking defensive if we have any kind of a session on this topic, but most importantly there is nothing we can (or even should) do about rating services. That is the business of those who create and use them. Our job is to approach each case with an open mind and decide each case on its own merits. Good advocates know when they should lose as well as when they should win. They are nearly as unhappy with winning a loser as they are with losing a winner. It is steady, reasoned predictability that the parties both want and deserve. Let's just do our job and they can do theirs. **Jeff Tener**

But then what about publishing awards in order to promote that "steady, reasoned predictability"?

I agree that anything we say about arbitrator scoring should always point out how unreliable those scores are, largely because they are based on only the relatively few cases that any given arbitrator has submitted for publication. But what about Jeff's comment that he has never submitted a decision for publication? I have submitted very few as well, and none recently, either because the case seemed of insufficient general interest or because of the parties' presumed preference for keeping their dispute as private as possible. But now that I see how much information is being posted online, I am wondering if we should all revisit our individual practices regarding publication. For the good of our profession, should we be obtaining permission to

(Continued on Page 20)

HEARD ON THE E-STREET *(Continued from Page 19)*

publish more of our decisions? Does the increasing availability of on-line data bases change our thinking about this? I submit that we should remember how much our founders and mentors did to develop the record of published awards that we all benefit from when we read Elkouri. Don't we have a responsibility to continue doing the same for the "newbies" who, we hope, will follow in our footsteps? **Suzanne Butler**

In response to the recent thread of comments regarding the dearth of published opinions and the resultant impact upon research and available information, I believe that a program for advocates that focuses on encouraging the granting of permission to publish awards, as opposed to the "scorecard" methodology used by the parties that will continue regardless of our input, is a worthwhile endeavor. Although I also have never submitted an award for publication, I did attempt to do so on one occasion post-award as I believed it concerned a "cutting-edge" issue. Not surprisingly the losing party would not agree to its release for reasons I fully understand, as many advocates do not wish to see their losses in print. Perhaps addressing this issue at an advocates' meeting might open the door for additional publication. Support should be given to any effort that encourages the publication of awards to further the interests of scholarship, deepen the understanding of the importance of labor arbitration, and counter the negative publicity that condemns the privacy of any arbitration system. **Rosemary Townley**

Before I started *Discipline and Discharge*, I asked BNA if they would supply arbitrators with a form request that was written in cooperation with the NAA and said, in essence, all of the parties are advantaged when good arbitral decisions are made public, and that is why the NAA has agreed to allow arbitrators to send out this form request with their Awards. We talked about it for ages and nothing ever happened. I still think it is a good idea, since it speaks to the embarrassment many of us feel in asking for permission to submit Awards for publication. **Norm Brand**

The simplest answer to that, in a digital age, is to persuade the FMCS to reinstitute the requirement that all roster arbitrators submit a copy (electronic) of their awards. That would make a large number of awards, from a pretty good cross section of arbitrators, public records that could then be data-mined by whoever cared to do it. Many state appointing agencies have such requirements, although they are quite often honored in the breach for grievance awards. The folks at FMCS wouldn't want to do this, because of staff time concerns, but if the NAA was willing to facilitate the process, something might be worked out. **Dan Nielsen**

Any discussion at a meeting, no matter how it is framed, is likely to shift from the research purpose for publication to the selection of arbitrators. We don't want to go there. Yes, I'd like to see more publication of awards. We all like to be able to consider the

judgment of our colleagues when we write our own decisions. How many times have you heard the parties say they couldn't find any awards on point? That should be a signal that your award needs to be published, whatever you decide. It is only those awards that provide the basis for "Elkouri." **Barry Simon**

It's important that we in the U.S. submit for publication at least some of the awards that the parties permit us to submit so that our colleagues and the advocate community have some awareness of the bases on which we decide issues. We are all aware the awards published by BNA are not representative, but, given the voluntary nature of arbitration in the U.S., LA is better than having no source of published awards. If, as a result of an award that has been published, I am not selected for a case, so be it. While a session on publication criteria would be useful, I would be uncomfortable devoting a meeting session to arbitrator selection. That is the parties' business and I don't think they should be in the position of being asked to tell us the criteria they use to make those decisions. **Rich Block**

Then, after further discussion of this issue under the subject heading of "Published Awards" —

Is it just me, or is there not a case for saying a group of people who conduct a long discussion about "publishing" awards should perhaps NOT be published? **Michel Picher**

Best spell-checker malfunction I have seen in a while — the brief I was working on yesterday cited what the author described as several "Seminole cases," and no, he was not referring to tribal or BIA cases. **Lisa Salkovits Kohn**

Can anyone beat actually sending an award with a section titled: Positions of the Panties? **Sarah Garraty**

When I was a young law professor I had a new secretary (as they were then called) fresh out of school. I dictated the test for the duty of fair representation by a trade union as not "arbitrary, discriminatory or in bad faith"; she heard and typed "arbitrary, discriminatory or in bad taste". I have often wondered how much more refined labour [NOT a typo – curse you, American spellchecker!] relations would be if her test had become universally adopted. **Ken Swan**

On a related topic, Alvin Goldman wondered whether there are separate publication rules for arbitration awards in the federal sector.

I assume that all of you received the e-mail note soliciting federal sector decisions for publication on arbsearch.com and cyberFEDS.com. I checked the FLRA's Guide to Arbitration and its website and can find nothing concerning whether such decisions automatically are in the public domain or whether, as in the

(Continued on Next Page)

HEARD ON THE E-STREET *(Continued from Page 20)*

private sector, the parties must consent to publication. Can anyone advise us concerning whether we must get the parties' consent before submitting these cases for publication? **Alvin Goldman**

I think the answer to a request for submission of public documents is that they are public documents. If the reporting service wants them, they can secure them from the public agency that has them through a FOIA request or whatever statute may apply to that agency. The Code regulates your handling of awards, not the general rights of the public to access the awards elsewhere. If the reporting service is coming to you, rather than going through the agency, and is asking you to submit your awards for publication, the Code is clear on the conditions for doing so. **Dan Nielsen**

I don't think we should assume that public sector awards are "public" or that they should be publicly available. The federal FOIA/Privacy Act exempts much of the information in personnel records from disclosure. Our awards, in turn, frequently discuss facts and allegations in those records that would be subject to a FOIA exemption. Do you really want to make available to the public awards in which an employee is found by the arbitrator to be not guilty of some off-duty immorality or of theft on the job? In such cases, the redactions might require more than just some names. If there is an assumption that public sector awards are automatically launched into the public domain, then *all* such awards would have to be subject to that assumption, including awards with quotes or summaries of information that would otherwise be protected from disclosure under FOIA. Do we want to undertake responsibility for the time needed to make those redactions or for the possibility of a lawsuit from an employee claiming a violation of Privacy Act rights? Moreover, the consent of the union and employer for disclosure in such cases does nothing to protect the rights of individual employees under the Privacy Act. In short, I think we need much more research of both federal and state laws before we make any more assumptions about this issue. **Mike Wolf**

"Sorry, Mr. Arbitrator, the dog ate my brief." Do you accept it late? Do you take off points?

Union attorney sends in a timely brief; management attorney sends its brief one week late. Management attorney says its mistake was inadvertent and that it did not read the union's brief prior to sending its brief. Union attorney says I should disregard Management's brief. Should I? **Joshua Javits**

I don't think you may disregard management's brief. Management would claim lack of due process if you ruled in the Union's favor. When it happened to me, I gave the timely party an opportunity to submit a reply brief. It was over the objection of the other party, but it seemed the only way to resolve the issue. **Rich Block**

The appropriate remedy, IMHO, is to allow both sides to file a reply brief. BTW, I *always* exchange briefs to avoid this sort of problem, although sometimes the parties insist on doing it themselves, and sometimes they screw up and send a copy to opposing counsel prior to the deadline. **Doug Collins**


I say you take the attorney at his word and not have reply briefs. There is a lot to be said for exchanging briefs through the arbitrator. No issue if that is done. **Fred Dichter**

Finally, there was this exchange on an early retirement.

Having reached the advanced age of 85, which includes 50 years as an arbitrator, I have decided to join the leisure class. The Academy and its members will always remain an important part of my life. **Howard Block**

I used to know a guy named Howard Block, but he was younger than you. He was a great guy who could really perform on the dance floor. Ted Jones was always hanging around him and bragging about the friendship. (Incidentally, if you are the person I think you are, Ted Jones claims you owe him \$50. Send the money on to me, I'll see that he gets it.) Did you know Tom Roberts or Bill Murphy or Dallas Jones or Tony Sinicropi? What is this leisure class you mention? **Jack Dunsford**

I have been informed reliably, albeit anonymously, that a person who says he is Howard Block is not the one whom Jack Dunsford, Tom Roberts, Bill Murphy, Tony Sinicropi, Dallas Jones and I have known for more years than can be counted. The real Howard would never ever lay down the baton at the early age of 85. He always swore to us that he would arbitrate, if the proper occasion required it, by leaping from his coffin and calling for order. We must wonder who the pseudo Howard really is. At 90, I am senior to him and must reject, if this is indeed the real Howard Block, his premature effort to desert his compadres. **Ted Jones**

Dear Howard, not being a very careful reader of contracts or other documents, I looked over your announcement and conclude that if you deduct your 50 years of arbitrating from your fanciful, alleged, and clearly unacceptable age of 85, that makes you a mere 35 years of age, and quite suitable for a new career as an arbitrator here in Cambodia. We are doing recruiting and interviewing today for a new member of the neutral Arbitration Council, and I have submitted your name thinking that way over here no one would object to your candidacy. It is a relatively easy commute from Palm Desert, and a perfect opportunity for starting to develop a career without any prior professional baggage. I can understand any hesitancy you might have to accept this new career offer by this innovative thing called e-mail, but I will hold open the opportunity and discuss it further with you at the San Diego meeting. **Arnold Zack** 

REMEMBERING...

REMEMBERING JOHN F. CARAWAY

By Barry J. Baroni

John F. Caraway, attorney-arbitrator and 40-year member of the National Academy, died on January 25, 2011 at the age of 88. John earned his law degree from Tulane University and his L.L.M. from the University of Chicago. He also served as an officer in the U.S. Navy during World War II and the Korean Conflict.

Admitted to the Louisiana Bar, John maintained a New Orleans downtown law office and was an adjunct instructor at Loyola University School of Law.

As an Academy member, John chaired the national meeting in New Orleans on two occasions and served as chair of the Southwest Region of the Academy. John gained high acceptability as an arbitrator and was always active on national and regional programs of the Academy and training programs of the American Arbitration Association.

John was a very active member of the American Arbitration Association, having served on the Louisiana Advisory Council representing the Labor-Management Committee. He was also the recipient of the American Arbitration Association's Distinguished Service Award.

After his retirement, John became a popular World War II and Korean War historian sought after for speaking engagements by many local groups. Returning to New Orleans after Hurricane Katrina, John was taken by the devastation left in its wake. In 2001, he published a very moving book entitled, Coming Back to Life, on changes the hurricane made to New Orleans and the city's gradual rebirth.

I was privileged to have John Caraway as one of my mentors in this profession and will always remember him as a compassionate, caring and supportive friend and colleague. Anyone who knew John will remember him fondly as a true New Orleans gentleman who enjoyed life and the company of others.

REMEMBERING ROBERT KUBIE

By James P. O'Grady

Bob Kubie, attorney-arbitrator, died at age 86 on February 26, 2010 in Charlotte, NC where he had moved to be near his daughter Rachel. He was buried at Arlington National Cemetery in October 2010. He was admitted to the NAA in 1988 and served as the Regional Chair for Missouri in 1991-92.

During WWII, he fought with Fifth Rangers in Germany on the front line in 1945. He had trained for a tank battalion and wanted infantry but was assigned to a machine gun squad. He was wounded and captured when the Germans broke through their perimeter on the Irsch-Zerf road some miles behind their lines. He was shot in the hand and face by what he thought was an American burst. The Germans performed surgery on his face. He was recaptured by the Third Division of the Seventh Army and sent to Paris for reconstructive surgery. Afterwards, he was assigned to his home in Connecticut for rest and recuperation. While there he sailed up and down the New England coast with his younger brother. He was to join the Sixth Rangers in the Pacific, but he claimed the Bomb saved him.

After the war, he went to Harvard College and Columbia Law School. He put his legal training to work in public service as a legislative aide to Senator Herbert Lehman, then the SEC and U.S. Labor Department. He had a life long devotion to the rights of all, particularly those of color and in poverty. He married and fathered twins Rachel and Benjamin. He also had a stepson Tim Duncan. He was a brother to Ann Rabinowitz and John Benjamin of New York City.

He was a proud member of the Screen Actors Guild performing in local theatre and frequently did voice-over work for television advertising in St. Louis. Because of his character, he will be missed and remembered by all who knew him.

(Continued on Next Page)

REMEMBERING ERIC SCHMERTZ

By Dan Brent

Eric Schmertz was a major force in the arbitration community in New York City and New York State for five decades. He died on December 18, 2010 at his home in Mt. Kisco, New York.

Eric's service as Neutral Member of the New York City Office of Collective Bargaining for fifteen years, as Director of the New York State Board of Mediation under Gov. Nelson A. Rockefeller and on the New York State Public Employment Relations Board under Governor Mario M. Cuomo, his role in arbitrating and mediating the biggest strikes and contract disputes, and his legendary *savoir faire* have been well chronicled. Eric was debonair and confident, a raconteur and a thoughtful proponent of dispute resolution. Eric was never afraid to take on the political establishment in rendering his awards, and his talent for resolving complex and seemingly intractable disputes brought him widespread recognition as an arbitrator and mediator. Eric helped end strikes by firefighters in New York City and Chicago, mediated a contract for Connecticut state employees in 1986 and helped settle the 1991 strike by New York City sanitation workers. He also settled a 1967 dispute involving the famous Radio City Music Hall Rockettes, and he resolved a 1969 strike involving thousands of New York City cab drivers. His service as a salary arbitrator for Major League Baseball and the MLBPA in one of the earliest salary arbitration cases augmented his life-long fondness for baseball, emanating from his prowess as an infielder demonstrated at New Rochelle, NY High School, after which the Pittsburgh Pirates offered him a contract despite his potential professional baseball career being disrupted by his Navy service in the Pacific during World War II.

Eric Schmertz was a dean of the New York arbitration community in another way. He taught labor law and related courses in arbitration and dispute resolution at Hofstra Law School as a founding member of the school's faculty from 1969 until he retired as Dean of the Law School, and he was instrumental in the legal education of many current members of the National Academy—including Ralph Berger, Daniel Brent, Robert Douglas, Jay Nadelbach, Elliott Shriftman—and countless advocates appearing in labor-management disputes. As Dean of Hofstra Law School, Eric developed sponsorship for a series of endowed chairs, and he strengthened the Law School's position among its peers by recruiting first-rate faculty and securing the School's financial foundation. His unstinting efforts were crucial in Hofstra's evolution as a leader in dispute resolution education and its growth to become a prominent law school. Dean Schmertz was also involved in developing Hofstra University's renowned series of Presidential Conferences, each of which features noted politicians, journalists and scholars convened to address and evaluate the impact and legacy of a recent President of the United States. Hofstra University established the Eric J. Schmertz Distinguished Professorship in Public Law and Public Service in 1993, and conferred an honorary Doctor of Laws degree on him in 2007.

Eric proudly enjoyed the success of his former students as they gained acceptability as arbitrators. Many of us who were students at Hofstra Law School learning labor law, arbitration, and dispute resolution with Professor Schmertz consider that common bond as a hallmark of our continuing friendship and collegiality thirty-five years later.

Eric Schmertz brought a quiet dignity to all his endeavors. He was soft-spoken, yet powerfully persuasive. His extraordinary example as an arbitrator, mediator, and educator influenced the way many of us practice dispute resolution, particularly labor-management arbitration. His influence will continue to be felt profoundly for successive generations of advocates and neutrals.

(Continued on Page 24)

REMEMBERING IAN SPRINGATE

By Susan L. Stewart

Ian Springate, of Ajax, Ontario, passed away on December 4, 2010, at the age of 63. The word "beloved" and the phrase "the best of us" have been used by many of his colleagues when speaking of the loss to our community occasioned by his death. Ian was an eminent arbitrator, respected by all of those who appeared before him for his intelligence, sense of fairness and his courtesy. He was a true gentleman, warm, kind and generous. Ian was helpful to new arbitrators and was someone who truly cherished his colleagues. At his funeral, Ian's brother Russ noted Ian's encyclopedic knowledge, and his ability to switch from the history of South American liberation movements to a critique of Canadian economic policy and from there to a discussion of the development of moral thought in Egypt. An encounter with Ian inevitably left his colleagues not only enlightened, but always happier. Ian had a distinctive laugh and all of his colleagues knew that when they heard its warm peal, it was inevitable that their day was going to get better.

In addition to a B.A. and an LL.B., which arbitrators commonly possess, Ian had an M.B.A. degree. Ian made significant contributions to labour relations and emerging human rights jurisprudence as the Chair of the Ontario Human Rights Boards of Inquiries, a Vice-Chair and then Alternate Chair of the Ontario Labour Relations Board and as Chair of the Ontario Grievance Settlement Board. He was the author of many important decisions of these statutory tribunals, decisions that constitute the foundation for the current jurisprudence in many areas, and that are remarkable for the clarity and the sound and thoughtful judgment that they reflect. He was a busy arbitrator, and issued many significant arbitration decisions as well.

Ian was one of seven children and was the proud father of four daughters. He adored his wife, Stacey, and spoke of her often with great admiration and affection. Ian saw himself as a very fortunate man. He loved his family, his profession and his life. We are fortunate to have known him as a friend and a colleague. He is a loss to our community and we miss him so very much.

REMEMBERING GERALD MCKAY

By Tom Angelo

By any measure, Gerry McKay was a credit to his profession. He was enormously popular and served as permanent umpire in both local and national bargaining relationships. Gerry was also a fixture in the construction industry, serving as arbitrator for scores of project labor agreements and tripartite panels established through multi-employer Master Agreements. He also served as emergency permanent arbitrator for national neutrality agreements, frequently "hearing cases" over the phone in conference calls at all hours of the day and night, weekends, holidays. Demand for his services was so great he routinely decided over 300 disputes each year.

Gerry was born and raised in Minnesota, interrupted by two years in Paris while his father worked with the Marshall Plan. He attended the University of Minnesota where he obtained

(Continued on Next Page)

his B.A., a Masters in Public Administration and his law degree (graduating *cum laude*). As an undergraduate he met and married his wife Sandra. In 1972, Gerry and Sandy went to Guatemala where they worked for 18 months for the Fletcher School of Law and Diplomacy. He then went to Washington, D.C. where Gerry practiced law until he was hired by the FMCS and came to San Francisco as a mediator. In the late 1970's he began arbitrating and quickly became one of the premier arbitrators in the area. He was compassionate, inquisitive, professional and unstintingly fair. The parties felt Gerry had a deep understanding of collective bargaining relationships and the realities of that continuing "marriage."

Gerry took great pride in his two sons and his wife. Sandy earned a Ph.D in English education and has taught in a dozen locations around the world. Their home was flush with art from their many travels, and they each encouraged the other's intellectual and professional pursuits.

Gerry was one of the most approachable arbitrators in the Bay Area. He encouraged new arbitrators and was unstinting in his willingness to assist them in getting established. He also served as a resource for local arbitrators with questions on difficult issues or practices in a wide range of industries. Gerry was respectful of the parties and their advocates. No one left his hearing without believing they had had a full opportunity to present their case. And his success was due in no small measure to his ability to understand a dispute, look past the rhetoric, and do what was right for the bargaining relationship. And he did this with an enduring sense of humor that made the process enjoyable, not just tolerable.

Despite his heavy caseload Gerry regularly engaged in his passions for scuba diving and photography, followed closely by his love of gourmet cooking. Gerry also took up golf late in life, regularly demonstrating that he could enjoy himself no matter how many swings it took.

Gerry leaves a great hole in the lives of all of us who worked with him. 🪦

IN MEMORIAM

*It was recently learned that the following
Member has passed away:*

Jack Stieber
NAA Member since 1963

A Remembrance will appear
in a future *Chronicle*.

SLATE OF OFFICERS AND GOVERNORS 2011-2012

PRESIDENT-ELECT

SARA ADLER

Los Angeles, CA

Sara Adler was born and raised in Chicago, IL. She graduated from the University of Chicago in 1961. Her first post-college job was as a teacher in a mental hospital's high school, which turned out to be excellent training for an arbitrator. After migrating to Los Angeles in 1963, she had a checkered career including more teaching in special education, a stint as a social worker in a community of Gypsies (that's what they called themselves – aka Rom or travelers) and law school at UCLA (including working with Ben Aaron on his plan for local public sector collective bargaining).

Following law school, Sara's first job before passing the bar exam was as a consultant for the UC Davis Center on Criminal Justice Administration's project on Own Recognizance Release (discovering that, at least at the time, murderers were the most likely to be rooted in the community and appear for trial). As a card-carrying lawyer, she spent time working with a sole practitioner (who later became a judge and still later a commercial arbitrator), as the Associate Director of the Paralegal Training Program at the University of Southern California and sharing her husband's nine month sabbatical in Europe.

That break (which resulted in the birth of her third son) was soon a vague memory as she went to work as a labor/litigation associate at a large law firm. She was rescued from that by Joe Gentile (the California one) who accepted her as an apprentice in 1978. As they say, the rest is history.



In addition to arbitrating and mediating, Ira has served as a member of three Presidential Emergency Boards – PEB 236 (United Airlines-IAMAW) (2001), PEB 241 (MetroNorth-IBT) (2007), and PEB 242 (Amtrak-Coalition of 9 Railroad Unions); Special Master (FLSA class action); Chair of a tripartite Dispute Resolution Committee (ERISA class action involving the PBGC); Administrative Judge for the EEOC; Chair of the GAO Personnel Appeals Board; and Chair of the Foreign Service Grievance Board.

He is a Charter Fellow in the College of Employee Benefits Counsel and a Fellow in the College of Labor and Employment Lawyers.

He is a graduate of the Cornell University School of Industrial and Labor Relations and George Washington University Law School and is a member (inactive) of the Virginia, District of Columbia, and Massachusetts Bars.

In addition to serving on the Board of Governors, as Chair of the Designating Agency Liaison Committee, and as a member on several committees, Ira has been a frequent contributor at Academy meetings. He continues to lecture and write extensively on matters related to the practice of labor and employment and benefits arbitration and mediation. He looks forward to continuing to serve the Academy as a Vice-President and helping to further the interests of the organization and its members and the profession.

Ira and his wife, Susan, a physician, reside in Potomac, Maryland. They enjoy sharing their free time with their four daughters and their families.

VICE PRESIDENTS

Second One-Year Terms

MARGARET R. BROGAN

Philadelphia, PA

SHYAM DAS

Ardmore, PA

VICE PRESIDENTS

First One Year Terms

IRA F. JAFFE

Potomac, MD

Ira F. Jaffe has been self-employed as a full-time Impartial Arbitrator and Mediator of labor and employment disputes since 1980 and a member of the NAA since 1987. During that period, he has presided over more than 4,000 cases and serves on scores of panels in the private and public sectors.



JOHN SASS

Golden, CO

John went to the University of Colorado law school where he learned about labor law and arbitration from Academy members Bill Rentfro and Don Sears. After graduation, Bill helped him land a job with a firm that represented labor unions, individual employees, and Taft-Hartley Trust Funds. At that time, the firm only had one office in Denver, but it later added offices in Phoenix and Albuquerque. In 1977, John moved to Phoenix to help develop that office.

In 1980, John left the firm to start his own practice as a "neutral" in all kinds of labor and employment matters. He moved back to Colorado in 1987.

In addition to his traditional labor arbitration work, John is also a member of the AAA's Employment Arbitration Panel and Employee Benefits Arbitration Panel. He has served as a contract Hearing Officer or Administrative Law Judge for a wide variety of state and local government entities; as a Special Master for the U.S. District Court in Colorado; as mediator or arbitrator for employment related cases that are already in court; and as an independent Fact-Finder in sexual harassment and other types of



(Continued on Next Page)

VICE PRESIDENTS

(Continued from Page 26)

cases, including “interest” cases involving new contracts for teachers and firefighters in the Rocky Mountain region.

John was admitted to the Academy in 1987 and has attended almost every meeting since. His wife, Carol, was a middle school special education teacher for 35 years and was President of her local district affiliate of the Colorado Education Association. Carol retired from full-time teaching in 2005. She regularly attends NAA meetings with John, and loves the Academy and its people as much as John does. Within the Academy, John has

served on the Board of Governors, Legal Representation Committee (5 years), Program Committee, Nominating Committee (twice), Continuing Education Committee; Membership Committee (6 years), Auditing and Budget Committee (3 years), and the Special Committee on Meeting Attendance (2 years). In addition, he was the Arrangements Chair for the 1993 Annual Meeting in Denver and for the 2003 Fall Educational Conference in Colorado.

On the Regional level, John was the Rocky Mountain Regional Chair for a total of 11 years. After the Rocky Mountain Region was abolished in 2007 due to declining membership, he became a proud member of the expanded, very active, and very friendly Southwest Region.

BOARD OF GOVERNORS

Three Year Terms

RICHARD ADELMAN

New York, NY

Dick was born and raised in the Bronx. He graduated from Bronx High School of Science, Syracuse University and NYU Law School. He clerked for United States District Judge Gus J. Solomon in Portland, Oregon, and then was a teaching fellow at Stanford Law School. After Stanford, Dick spent two years in the Appellate Court Branch of the Enforcement Section of the NLRB in Washington, D.C., arguing cases around the country, and then he joined Battle Fowler, a NYC law firm, where he was mentored by Ted Kheel, one of the Academy’s founding members. As Ted’s designee, Dick heard cases and wrote decisions. After leaving Battle Fowler, Dick continued to practice law, representing both labor and management, as he developed an arbitration practice. In 1992, he became a full-time arbitrator, and in 1993, he was admitted to the Academy.



Dick has an active arbitration practice in the metropolitan NYC area. He is on several panels, and is the impartial chair for contract disputes at the NYC Transit Authority. His major off-duty activity has been mentoring young people (when he was younger) and new arbitrators for the last 15 years. He co-founded a mentoring program for minority students in Roslyn, NY, where he lived for 30 years, and is on the board of the friends of a public high school in NYC which Syracuse University has adopted. He was the chair of the NYS Bar Association sub-committee that established an Arbitrator Mentoring Program, and the first chair of the Program, which over a dozen Academy members have completed.

Dick and Anita have been married for almost 48 years. They now live in NYC and White Meadow Lake, New Jersey. They have three married children and seven grandchildren. Dick thanks the Academy for this surprise opportunity to serve on the Board of Governors.

SHARON HENDERSON ELLIS

Brookline, MA

Sharon Henderson Ellis began her practice as a fulltime arbitrator and mediator in 1982. Presently, she combines arbitration with teaching as an adjunct faculty member at Boston College



Law School. Prior to teaching at Boston College, she taught for several years at New England School of Law, teaching Labor and Employment Arbitration. Prior to becoming an arbitrator, Sharon was an attorney/hearing officer for the Massachusetts Labor Relations Commission.

Sharon was inducted into the NAA in 1987 and shortly thereafter served as the Chair for Region 1. As a member of the Academy, Sharon has been most involved with the Academy’s Committee on Issues in Employment Arbitration. Currently, she co-chairs the committee with Marty Malin. Introducing Sharon at a session of the Fall Education meeting in 2009, Sara Adler described her as the Academy’s “conscience” on issues of due process in employment arbitration. Sharon was a major force behind the Academy’s recommendation to the Senate Judiciary Committee on the enactment of procedural safeguards in cases of unilaterally imposed employment arbitration. She served as a member of the Program Committee for the 2009 annual meeting and has participated on the continuing education committee among others.

Sharon is married to Fred Ellis, an attorney with an active tax and ERISA practice in Boston. Their son Jeff, who came to Sharon’s Academy induction when he was six years old, is way too far away in California, where he has been since he started college in 2000. An Investment Analyst, Jeff is enjoying student life again as an MBA candidate at UCLA Anderson. The Ellises reside in Brookline, Mass. with two watch pugs named Sophie and Winston; and they spend occasional weekends in their cabin on Moose Pond in Maine, especially when they can convince friends to join them.

Sharon enjoys a pretty active life away from work—often in the great outdoors. Having grown up in a small town in the Cascades in Washington State, she developed a lifelong love of downhill skiing. Later, she decided to experiment with warmer climates, first by serving in the Peace Corps in Tunisia, and lately, by spending several summers either bicycling in Italy with friends or volunteering with Communities Without Borders helping AIDS orphans in Zambia. In her spare time (!) she rides, and has been known to frequent the White Stallion Ranch in AZ.

Sharon graduated from the University of Washington in Seattle and Suffolk University Law School in Boston.

(Continued on Page 28)

BOARD OF GOVERNORS (Continued from Page 27)

HOWELL L. LANKFORD

Milwaukie, OR

Howell L. Lankford (B.A., Reed College; M.A. and K. Phl., Northwestern University; J.D., University of Oregon) worked as a carpenter, chauffeur, stunt extra, driver manager, assistant restaurant manager, insurance agent, and Assistant Professor of Philosophy before becoming an attorney (now inactive) and then an Administrative Law Judge for the Oregon Employment Relations Board. He has finally managed to hold down a steady job for over thirty years as a labor arbitrator.



He is a past Chair of the Northwest Region of the National Academy of Arbitrators and of the Oregon State Bar's Labor and Employment Section. He is also the former editor of the *Washington Labor Law Digest* and of the University of Oregon's Labor and Education Center's Monograph series; and he wrote the Oregon State Bar CLE chapter on enforcing public sector collective bargaining agreements in *Labor & Employment Law*, 1990, 1994, 1997, 2002 & 2010.

He is a member of the arbitration panels administered by the FMCS, the AAA, and the States of Oregon, Washington, and Montana; and he is on permanent panels throughout the Northwest in the private sector, in state and local government (including sole classifications arbitrator for the State of Oregon and SEIU), in K-12 and higher education, in the health care and airline industries, and in the Postal Service. He also does a steady stream of grievance mediations and of interest arbitration cases; and he spent five years moonlighting as the Police Internal Affairs Auditor for the City of Eugene, Oregon.

He does arbitration and trial training presentations throughout the year for just about anybody who asks, on either side of the aisle, for free. And the high school trial team he helped to coach won the 2007 Oregon State Championship!

BARRY SIMON

Arlington Heights, IL

Growing up on the north side of Chicago, Barry Simon is one of four current NAA members to have graduated from Sullivan High School. He received a B.S. in Management from the University of Illinois at Chicago Circle. He then served as a Program Specialist in the American Library Association's Office for Library Personnel Resources where he wrote numerous journal articles on personnel issues and served on the Advisory Committee to the Illinois Library Task Analysis Project. While at ALA, he earned a J.D. from the Loyola University (Chicago) School of Law.



Barry began working for the Chicago and North Western Transportation Company in Labor Relations in 1976, serving as a Labor Relations Officer, Manager of Arbitration and Labor Counsel. With primary responsibility for arbitration, he presented cases before many neutrals who were already or soon to become members of the NAA. As an advocate, he attended his

first meeting of the NAA in 1985 and has missed only two meetings since then.

Barry left the railroad at the end of 1988 to become a full-time arbitrator. His practice covers a broad range of industries in both the public and private sectors. As he was building up his practice, Barry also served as an Adjunct Professor at the Lake Forest Graduate School of Management, first teaching Human Resources Management and then Negotiations and Conflict Resolution.


Barry has been a member of the NAA since 2002. He has served on the Designating Agency Liaison Committee, the Continuing Education Committee and the FEC Program Committee, and he chaired the 2009 Annual Meeting Local Host Committee. He also was a member of the Railroad Cases Committee, which resulted in the inclusion of railroad arbitration cases toward admission to the Academy. He is currently a member of the Special Committee on Meeting Attendance.

Barry was a founding member of the National Association of Railroad Referees, and he held the offices of Vice-President, Secretary-Treasurer and President. Having completed two 2-year terms as President in September, he became the NARR's representative on the National Mediation Board's newly created Arbitration Forum. Barry has also chaired the Chicago Bar Association's Labor & Employment Law Committee and is a member of the ABA Committees on State and Local Government Bargaining and Employment Law and Railway and Airline Labor Law.

Barry's wife, Joyce, is a Certified Public Accountant and has accompanied him to nearly every Academy meeting. They have a son and a daughter and five grandchildren. When they aren't arbitrating and accounting, Barry and Joyce enjoy the theater and traveling on small cruise ships.

SUSAN L. STEWART

Toronto, ON

Susan graduated from Queen's Law School in 1979. After articling at the Ontario Labour Relations Board and practicing law in Toronto, in 1986 she commenced her adjudication practice as a Vice-Chair of the Workers' Compensation Appeals Tribunal. She commenced her arbitration practice in 1998 and in 1989 was appointed as a Vice-Chair of the Grievance Settlement Board. Susan's arbitration practice continues to encompass all sectors in both provincial and federal jurisdictions. She has served as Chair of the Labour/Management section of the Ontario Bar Association and as an executive member of the Ontario Labour Management Arbitrators' Association. In 2001, Susan was appointed as Chair of the Ontario Grievance Settlement Board. Susan's responsibilities there include chairing Governance Council, composed of the Union representatives and Crown Employers of the Province of Ontario. Susan currently serves as the Chair of the Public Employment Disputes Settlement Committee. She is a frequent speaker on labour relations matters. 



Southwest Rockies Region Labor Management Conference

By Kathy Eisenmenger

On March 3 through 5, 2011, the Region hosted its 34th Annual Labor Management Conference in Dallas, Texas. The



Ernest DuBester, FLRA

first day of the conference presented the 12th Annual Arbitrator Training Session and the 9th Annual Advocate Training Program. The Honorable Member of the Federal Labor Relations Authority (FLRA), Ernest DuBester, favored the attendees with a luncheon speech. Member DuBester's prior experience as a labor arbitrator contributes to his adjudicative role on the FLRA and the goal to bring to the parties a greater understanding of Federal sector labor relations.

The arbitrators' morning session focused on the unique aspects of Federal sector arbitration under the Federal Service Labor-Management Relations Statute (5 U.S.C. Chapter 71) ("the Statute"). Member DuBester and George Birch, a staff member to FLRA Chair Carol Waller Pope, ambitiously steered the attendees through a number of issues in four (4) hours that these two gentlemen normally present in a three-day course. DuBester and Birch fielded a volley of complex questions from the attending arbitrators in addition to dispensing valuable information about the FLRA's actions, particularly on the subjects of the Authority's review of exceptions to arbitration awards, management's rights under the Statute and fashioning remedies consistent with the legal limitations within the Federal sector.

The arbitrator session continued in the afternoon with a roundtable of issues that confront arbitrators in their practice. NAA Member William McKee, Ph.D., one of the presenters, explored the possible benefits and cautions of having a website as a labor arbitrator. NAA Member Patrick Halter moderated a panel discussion with NAA President Gil Vernon, Vella Traynham of the FMCS and Molly Bargaquest of the AAA Dallas office. Traynham suggested that an arbitrator confirm with the employer-federal agency before arbitrating the case that the agency has obligated funds for the arbitration costs and has issued to the arbitrator a purchase order prior to the hearing. The FMCS also encouraged the parties to inform the Office of Arbitration Services if an arbitrator is late in rendering an award. Traynham advised arbitrators to inform the FMCS of the names of the parties and the grievance issue (similar to information shown on the FMCS Form R-19, Arbitrator's Report and Fee Statement) when the parties contact the arbitrator directly, even where the FMCS has not issued an appointment letter to the arbitrator. Traynham reminded the arbitrators that FMCS rules permit potential sanctions against arbitrators who routinely do not submit the FMCS R-19 form at the conclusion of a case or send the notification letter to the FMCS showing that the case was withdrawn or settled.

Bargaquest stated there are approximately 923 labor arbitrators on the AAA's Labor Arbitrator Roster, which is about 8% of the total number of arbitrators nationally on AAA panels across all subject areas. The AAA is attempting to promote the diversity of the arbitrators on its panels. Bargaquest reported that 85% of the arbitrators on AAA rosters are male, 15% are female and 18% represent "diverse" race or national origin.

The Advocacy Program on March 3, 2011, began with NAA Member Norman Bennett, Esq., leading active discussions between the panelists and members of the audience. Messrs. Steve Hickman, Esq. (*Tulsa, OK*), Steve Andrews, Esq. (*Tulsa, OK*), John Burnett, Esq. (*Little Rock, AR*), and, Mike Jones, Esq. (*Mountainburg, AR*), comprised the panel. The discussion generally involved the procedural steps of arbitration from pre-hearing to post-arbitration award. NAA Members John Sass, Esq., and Carl Bosland, Esq., coordinated the session "Understanding and Applying the Rules of Evidence" later in the afternoon. (The Region proudly recognizes that John has been nominated by the NAA Nominating Committee for Vice President for the election to be conducted at the San Diego, CA meeting in May 2011).

The day's program moved into the evening with a social hour, dinner and an advocacy presentation. G. William Baab, Esq., of Baab & Denison, LLP (*Dallas*) and John V. Jansonius, Esq., of Aiken Gump Strauss Hauer & Feld, LLP (*Dallas*) shared their thoughts and observations of developing trends about how advocacy has changed over the last three decades in grievance and arbitration processes. The bilateral presentation benefits from the wealth of experience from these two highly regarded labor-management practitioners.

The Region's Chair, Don E. Williams, Esq., opened the Conference's Friday program. NAA Member Kathy Fragnoli, Esq., presented an enlightening, thought-provoking and entertaining session "Dealing With the Knucklehead Across the Table: How Understanding Personality Types Can Make You a Better Labor Professional." Fragnoli played to a standing room



Kathy Fragnoli, Esq., NAA Member

audience real life interviews to illustrate the various personality types and engaged in discussion about how to reduce personality conflicts faced by labor professionals. For information and fun, one can take a confidential personality test by going to

(Continued on Page 30)

SOUTHWEST ROCKIE REGION *(Continued from Page 29)*

Fragnoli's website, www.resolutiontraining.org, and select the "Classes and Clients" tab.

NAA Member Sass moderated the later morning general session with two "Super Lawyers" recognized in the Best Lawyers in America, Arthur Carter of Haynes Boone, LLP (*Dallas*) and Rod Tanner of Tanner & Associates (*Fort Worth*). Discussion among the group primarily focused on the 14 Penn Plaza v. Pyett Supreme Court decision, 129 S. Ct. 1456 (2009). The attendees generally agreed that U.S. private sector unions are opposing collective bargaining clauses that would waive individual employees' rights to pursue statutory claims in court or before administrative agencies on the grounds that many statutory claims are not well suited to the grievance and arbitration process and the costs involved in pursuing such claims. The attendees also expressed concern about duty of fair representation claims against the unions and potential conflicts of interest. There was further discussion that unions are not receptive to the idea of giving individual employees access to the grievance and arbitration process at the employees' own expense to use their own attorneys, although employees may not have such an objection. The attendees also discussed the possible but difficult scenario a union may face where the employer seeks to include a Pyett-type clause in the collective bargaining agreement and bargaining unit members may view the clause as a favorable condition. The panelists agreed that an employer could not properly implement a Pyett-type clause without the express consent of the union because a waiver of individual rights to sue the employer by the union must be express and voluntary.

NAA President Gil Vernon favored the attendees at our luncheon meeting with news and updates from the Academy. The Region was happy to host the NAA's Executive Committee at the sunny and relatively warm climes of Dallas. The NAA's Executive Committee members are Gil Vernon, Roberta Golick (NAA President for 2011-2012), William Holley, David Petersen and Elizabeth Neumeier. NAA Member Walt De Treux, National Coordinator of Regional Activities, and NAA Member Sara Adler, Esq., (President-Elect commencing June 2012), joined the Executive Committee's members while at the Dallas Conference.

The afternoon sessions included "Meet the Arbitrators" that was moderated by NAA Members LeRoy Bartman, Ph.D., and James P. O'Grady, Ph.D. NAA Members Ruben Armendariz, Esq., Tom Cipolla, Esq., Patrick Halter, Esq., Michael B. McReynolds, Esq., Carl Bosland, Esq., Lynne Gomez, Esq., Dan Jennings, Ph.D., and Louise Wolitz, Ph.D., discussed with the attendees how arbitrators view discipline and contract interpretation cases, how they conduct hearings, and other issues raised by the audience. Chair Don Williams held a workshop on the current issues under the Texas Local Government Code. Elizabeth Dierdorf, with the City of Fort Worth, and Tom Stribling, with the Combined Law Enforcement Associations of Texas (CLEAT), joined Arbitrator Williams in discussing promotional by-passes, disciplinary actions, union representations and other items of interest.

NAA Member Frank Quinn, Ph.D., held forth his popular



Photographer: Bill Drasky

(L-R) Bill Holley, Gil Vernon, David Peterson

"Ethics of Arbitral Discretion." The discussions included the requirement for arbitrators to render timely awards, for arbitrators to disclose possible conflicts of interests and other issues with reference to the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes.

NAA Member Harold Moore shared a presentation with Jeffrey Roberts, a representative of the Council of Prison Locals 33, American Federation of Government Employees, which represents bargaining unit employees of Federal prisons. The group covered the peculiarities of scheduling arbitration hearings with the Union and the Federal Bureau of Prisons, Agency staffing, local union presentation and security subjects.

NAA Member Katie Durham moderated a panel of practitioners in postal service arbitrations. Beverly Demery, a senior Labor Relations Specialist, represented the Postal Service Dallas office. Kathy Baldwin, a National Business Agent, represented Region 10 of the National Association of Letter Carriers. Jack Crawford from Houston represented the American Postal Workers Union for the Southern Region. Charles Reynolds, Director, Southern Region, represented the National Postal Mail Handlers Union. Among the several topics addressed during the lively discussion were the subjects of the arbitrator's retention of jurisdiction for post-hearing remedy issues and the cancellations of hearings by the parties.

NAA Member T. Zane Reeves, Ph.D., moderated the session

(Continued on Next Page)

Please Join Us 2012 Annual Meeting

June 6 – 9, 2012

Hyatt Regency Minneapolis, Minneapolis, MN



SOUTHWEST ROCKIES REGION *(Continued from Page 30)*

pertaining to the presentation and defense of discipline or discharge cases. Panelists Tony Puckett, Esq., of McAfee and Taft, and James Moore, Esq., of Moore & Vernier (both of *Oklahoma City, OK*) participated in lively discussion attended by thirty (30) individuals. Arbitrator Reeves also presented his paper, entitled "The Last Straw: Before You Fire an Employee." It was suggested that in lieu of the seven tests of just cause formulated by Arbitrator/Professor Carroll Daugherty several decades ago that the parties use a different approach. The four basic elements consist of: 1) the degree of the penalty should be in keeping with the seriousness of the offense and not used to punish the employee; 2) give consideration to whether the facts demonstrate that discharge was the only reasonable

option for the employee's wrongdoing; 3) consult the factors set forth in *Douglas v. Veterans Administration*, 5 MSPR 280, 81 FMSR 7037 (1981), used to determine an appropriate penalty for misconduct committed by federal government employees; and, 4) avoid discharge where there is evidence that the employee will cease the unacceptable conduct and can be restored as a trustworthy employee.

The Conference ended with its traditional Saturday morning session convened by NAA Member I. B. Helburn, Ph.D., for a fluid flow of issues with arbitrators, union leaders who represent Postal Service employees and Postal Service labor relations representatives.

The NAA Southwest Rockies Region plans to hold its annual Fall meeting in October 2011 in Galveston, Texas. 🗡️



MARK YOUR CALENDAR

2012 Fall Education Conference

October 12 -14, 2012

Francis Marion Hotel
Charleston, SC

President's Corner *(Continued from Back Cover)*

Pioneer Days (a winter festival) in Ridgeland where among other things they toss chickens from the roof of the bank and release greased pigs at the softball field. If you catch one you get to keep it and make a tasty winter meal. I think it's a veiled form of socialism. The paper published several photos documenting the happy winners. And speaking of winners, keep in mind that the Republicans, including Scott Walker, swept Barron and Dunn Counties in 2010. This is rural America, and it is conservative.

So it was, seriously, a pleasant surprise and with great pride that I also noticed on the front page an article with the headline: "Prairie Farm Board, Teachers Reach Settlement and Resolution Passed in Support of Collective Bargaining Rights". Prairie Farm is one of the roughly 25% (and growing) school districts in the state that have opposed Governor Walker's bill and temporarily neutralized it by quickly extending their collective bargaining agreements. The bill is not applicable until the expiration of existing contracts. By voluntarily extending contracts into

the future, the parties retain their collective bargaining agreements including important features such as the grievance procedure and rights arbitration. When the Walker bill becomes applicable, even a grievance procedure and arbitration are prohibited subjects of bargaining. The hope is the political environment might change before the labor agreements expire and teachers and staff are so drastically impacted. The School Board resolution read:

Be it resolved that the Prairie Farm School District Board of Education respectfully urges Governor Scott Walker to reconsider and delete the proposal in the Budget Repair Bill severely restricting the collective bargaining process between local governmental bodies and their employee. This provision of the Governor's recommended bill is inconsistent with the Wisconsin tradition of local control over local community issues.

The Prairie Farm Board of Education recognizes the significant fiscal challenges facing state and

local governments in the coming budget biennium. The leadership challenge we share as state and local leaders is in determining how to work together to protect the public structures that are the foundation for strong local communities and fundamental to the continued prosperity, stability, and economic strength of our state. We ask the Governor, as the state's chief executive, to work within the existing collective bargaining framework and to convene a collaborative partnership of state leaders, local officials and public sector workers to move forward and work together in the best interest of our state's future. (Adopted this 24th day of February, 2011.)

The message I take from this is that basic notions of fairness and collective bargaining are alive and may prevail. And the solution to the labor relations crisis in Wisconsin, in some significant measure, may be found at the bargaining table with labor and management standing together. And the folks in Prairie Farm didn't even need our help. 🗡️

THE PRESIDENT'S CORNER



By Gil Vernon

COLLECTIVE BARGAINING IN WISCONSIN :

IT MAY RISE IN PRAIRIE FARM

Thinking about what to write in my last column for *The Chronicle* caused me to reminisce about the first column I wrote as *Chronicle* Editor in 1991 (wow, 20 years ago).

In that first column, I wrote about my then favorite newspaper, *The Colfax Messenger*, a weekly from a village of 1062 with a real life “Lake Wobegon” feel. The point I was making then was that *The Chronicle* and *The Colfax Messenger* share something in common: they are community newspapers.

The Managing Editor of our community newspaper, Walt De Treux, is ending his term. Join me in thanking him for doing a fantastic job and wishing his replacement Susan Grody Ruben good luck. We have other community events coming up too. Let me thank in advance David, Katie Griffin and staff, Margie Brogan, Barry Winograd, Fred Horowitz and Janice Frankman for all their efforts in putting the meeting in San Diego together. You will be reading about their efforts in more detail in this issue of our community newspaper.

Back to the other community newspaper, my favorite front page picture in *The Colfax Messenger* from years ago was a fuzzy black and white picture of a farmer in bib overalls and a crooked John Deere hat holding a bucket next to a bush. The caption read, “Last week’s snow brought this bucket of berries to the Gus Fehr patch. Gus says he doesn’t ever remember it snowing this early or getting berries this late.” *The Colfax Messenger* also had an “out of our past” column which reached into its archives for old news. It turns out they even covered labor relations. One entry in 1979 from the “50 years ago this week” column

read something like this: “Velma Lundquist, a telegrapher at the Colfax Tower on the Soo Line Railroad got two weeks paid vacation”.

Well, unless you’ve been under a rock, you may have noticed labor relations continues to make news in Wisconsin. Of course this brought to the surface questions about whether the NAA should take a stance on this public policy debate.

The Executive Committee discussed this question at its mid-winter meeting. In these circumstances, we decided that as an organization we should refrain from comment. There is no NAA policy that directly applies to this situation, but in addition to the fact there is no particular political charge in our mission statement, we took some guidance from our policy concerning legislative matters:

“The Academy will not take an official position as to whether there should be statutory regulation, state or federal, regarding voluntary labor arbitration but still may indicate its judgment on the desirable content of statutes.”

This policy applies to the organization only. Members are of course publicly free to express their views within the confines of the By-Laws and the Code (see Article VI, Section 6 of the By-Laws and CPRG Advisory Opinion No. 23). However, caution as a group has served us well. To take public stands on matters that preserve arbitration could be viewed as driven by self-interest. Moreover, being a “neutral” carries its own implication.

The Wisconsin issue is not a matter where we can walk the line set forth in our policy on legislative matters as we did with the Arbitration Fairness Act. There we restated our long-standing policy that arbitration, preferably, should be

voluntary. We further stated that if mandatory arbitration were to take place it should take place according to certain standards of fairness. So, first of all, we already had organizational consensus on the mandatory arbitration. Secondly, our prior organizational policy was easily extended to the public policy debate. Lastly, we were invited by Senator Feingold to state our views.

In the case of Wisconsin, we have no prior consensus and there are a variety of opinions among members on the subject. We would also be somewhat of an uninvited guest. Moreover, perhaps one of the biggest reasons not to step into the fray in Wisconsin is a practical one. It would not have moved the dispute toward resolution in favor of the retention of collective bargaining rights. The Governor’s motivation, as has been revealed, was political and ideological and the proportions of the debate went far beyond influence on the basis of pure reasoned principle concerning the merits of collective bargaining.

I will share with you my public comments made about the Wisconsin situation in recent speeches at the Southeast and Southwest regional meetings. I said as President: “the NAA doesn’t do politics”. But speaking as an individual and as a neutral observer of labor relations and collective bargaining, I noted that my ears always perk up when I hear common ground between labor and management.

This, believe it or not, brings me full circle to small towns and small town newspapers. My new favorite small town newspaper is the *Hay River Review*. It is a monthly serving Barron and Dunn County villages of Prairie Farm (population 499), Ridgeland (population 265), Dallas (population 365) and Hillsdale (population not available because it is so small). Keep in mind that the front page picture and article in a recent summer issue of the *Hay River Review* was about the paving of the church parking lot. Also, keep in mind there recently was extensive coverage of

(Continued on Page 31)