

MARK YOUR CALENDARS

PLAN TO ATTEND...

2016 Fall Education Conference

September 30 – October 2, 2016
Loews New Orleans Hotel
New Orleans, LA

2017 Annual Meeting

May 24 – 27, 2017
Fairmont Chicago, Millennium Park
Chicago, IL

2017 Fall Education Conference

September 15 – 17, 2017
Four Seasons Miami
Miami, FL

2018 Annual Meeting

May 23 – 26, 2018
The Fairmont Hotel Vancouver
Vancouver, BC

2018 Fall Education Conference

October 26 – 28, 2018
Sheraton Austin Hotel at the Capitol
Austin TX

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PRESIDENT'S CORNER BACK COVER



By Jane Devlin and Paula Knopf

New Orleans is known as the city of the Mardi Gras. Wikipedia, the simple source of unauthoritative knowledge, describes Mardi Gras as including:

. . . .wearing masks and costumes, overturning social conventions, dancing, sports competitions, parades, etc. In many areas, the term "Mardi Gras" has come to mean the whole period of activity related to the celebratory events, beyond just the single day.

In the past, the NAA's Fall Education Conference (FEC) has been known to challenge traditional concepts, take place during national sporting competitions, and even have people donning costumes. This year's FEC in New Orleans is sure to showcase some of the best minds in the NAA, address new topics, and celebrate the past. Who knows, there may even be masks or other surprises! Most importantly, it will be an opportunity for NAA members to come together, share ideas, and explore emerging and important issues.

The Program is designed to be challenging, enlightening, and enjoyable on both professional and personal levels.

Although we are fortunate enough to be members of an ideal profession where we can choose to work, retire, or work as little or as much as we wish, we all must face the reality that this "gig" might not be the only thing we can or should do with our lives. Or we might have to ask ourselves whether we are working as well as we should be? A celebrated author and two very candid members will address "head-on" the topic of retirement, answering why, when, and what's next?

A Canadian-U.S. panel of experts will fulfill the promise of their plenary session's title, "Interest Arbitration Can Be Interesting." The panel will discuss and compare approaches and developments in Canada and the U.S. and the challenges faced in an era when public sector interest arbitration is under attack.

We believe the other two plenary ses-

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Submissions

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 Daniel Zeiser, Managing Editor, at danzeiser@aol.com or contact the feature author directly.

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

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.

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.

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

We hope these features, complementing our current roster of outstanding columns and features like *Technology Corner*, *Canadian Perspective*, and *Arbitration Outside the CBA*, capture your attention and interest. 🏠

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Sheraton Austin Hotel at the Capitol
Austin, TX

The Chronicle

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New Orleans FEC

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sions will break new ground in terms of topics for FECs. With Innocence Projects all over North America exposing problems with litigation as a method of determining facts, let alone “truth,” one of our own members from the California Innocence Project will lead a session with a colleague from the New Orleans Innocence Project to tell us what arbitrators can learn from new developments in forensic science and their work in the field.

We will also have a plenary session addressing gender identity and transgender issues in the workplace. The panelists will discuss emerging trends in this area, collective bargaining agreement provisions, and the current state of the law in Canada and the U.S.

The concurrent sessions will present attendees with difficult choices. You might wish you could go to all of them! But you will have to choose between:

- The Ethics Panel (for those who want continuing education credit and who seek insight into the inner workings of the CPRG);
- A Louisiana and New Orleans labor history session;
- An in-depth discussion about remedies when there is cause for discipline but not for discharge and there is an order for reinstatement, and;
- A discussion of the role of the NAA in dealing with issues of public policy and public interest.

Lest anyone be concerned that this is either too much or not enough “learning,” lunchtime on Saturday will give you the chance to relax and catch up with friends or discuss matters of professional and personal interest. We will have the luncheon tables set up with signs indicating the topics to be discussed at each table. Topics will include a U.S. case law update, a Canadian case law update, Retirement, the Presidential Election, and Great Travel Ideas, among others. For those of you who want to simply enjoy lunch with friends to discuss whatever you choose, there will also be tables where you can simply socialize.

New Orleans is a unique city. Gil Vernon’s innovative website for the Fall FEC will provide a more detailed description of the program and all that New Orleans has to offer. We hope it will entice you to come. An FEC is a special chance to share ideas, be stimulated by colleagues, and enjoy friendships with other NAA members. This FEC should be a special opportunity to combine education, enjoyment, and the enchantment of New Orleans itself. 🍸

...wearing masks
and costumes,
overturning social
conventions,
dancing, sports
competitions,
parades, etc.
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has come to mean
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activity related to the
celebratory events,
beyond just the
single day.



NOTICE

An add-on **Skills Enhancement Workshop** will be offered for an extra fee on Friday afternoon, September 30, 2016, from 1:30 to 5:00 p.m. in advance of the New Orleans FEC meeting. Ernie DuBester, FLRA Member (and Former Chair), and FLRA Senior Attorneys Debbie Shrager and Tabitha Macko, along with NAA Arbitrators David Vaughn and Jeanne Charles Wood, will be leading a training on “*Arbitrating Effectively in the Federal Sector*.” It will be open to members and non-members. Space is limited, so please register as soon as possible. 🍸



2016 FEC - New Orleans Host Committee

PUB CRAWL

**By Gil Vernon,
Host Chair**

"Work hard, play hard"

isn't a bad life motto. I am lucky. I have the "play hard" part of the Fall Education Conference in New Orleans.

There is so much to say about this culinary and musical mecca. Just about everything you will need to know can be found at a new website dedicated to NAA meetings, which coincidentally can be found at NAAMeeting.org. There you will find information about the program, transportation from the airport, places near the hotel for a quick cup of caffeine or a cocktail, and a guide to "exploring" New Orleans. By "exploring" we really mean shopping, sightseeing, music, and gaming. There are links to dozens of venues in each of these categories.

The hardest part of being a local arrangements chair for a meeting in New Orleans is trying to narrow a list of restaurants. So we didn't. You will find several types of lists under the restaurant tab of NAAMeetings.org. If you never ventured out of the hotel it would be sad, but you couldn't help but be happy eating and drinking at Café Adelaide. It is one of the Brennan family restaurants that includes Commander's Palace and the only one with a female executive chef. If the food doesn't make you stay, the \$0.25 martinis at lunch will at least slow you down.

However, if you decide to explore, take a look at our extensive alphabetical listing on the website, which also lists the ZAGAT rating and cost and walking distance and time from the hotel. The list is actually sorted from an Excel spreadsheet created by Justine. If you would like a copy of the Excel file, so you can search by distance or cuisine, drop us a note using the comment section at the bottom of the NAAMeeting.org homepage.

The restaurant section lists some personal favorites of New Orleans neighbors Ed Bankston, as well as Bill and Betty Holley. The Holleys are also setting up the traditional "Dine Around." Sign up will be available at the meeting. I will be in charge of a new feature of the fall meeting called the "Dive Around." For Canadians, the translation of that would be "p-u-b c-r-a-w-l."

MILESTONES

Edited by Michael P. Long

NOTEWORTHY HONORS & PROFESSIONAL ACTIVITIES



James B. Dworkin – a longtime member of the Purdue community and chancellor of the North Central campus for more than 16 years, has been honored by the university's Board of Trustees.

Trustees surprised Jim with a resolution of appreciation and by authorizing the naming of the

James B. Dworkin Student Services and Activities Complex on the North Central campus. Scheduled for completion in May, the Complex is an 86,000 square foot facility that will foster the creation and enhancement of programs and activities to transform the student experience and facilitate the engagement and development of the regional community. Jim will take a one-year sabbatical before returning to the West Lafayette campus as a full professor in Krannert School of Management, where he began his Purdue career in 1976.

"There are few people as admired, accomplished and trusted as Jim," said Purdue President Mitch Daniels. "We are not only fortunate to have this opportunity to honor his past accomplishments, but also to celebrate the fact that he will continue his service to Purdue for years to come."

"It's also a fitting tribute that his name will live on at the North Central campus for his legacy of service to the campus and community and for his dedication in helping build Purdue Northwest to ensure its impact well into the future" said Michael Berghoff, chair of the Board of Trustees.



Martin Malin – Chicago Kent Professor and NAA Vice President, has been selected as the 2016 recipient of the American Bar Association's **Arvid Anderson Award** as the nation's outstanding public sector labor and employment lawyer. The Award is presented annually by the Labor and Employment Law Section to an individual who has "substantially contributed to the development of public sector labor law as exem-



plified by Arvid Anderson." The nomination of Professor Malin noted his vast scholarship, esteem in the profession, and leadership in the development of the public sector. Former Academy President **Arvid Anderson** was the inspiration for, and the first recipient of, the Award. He was a pioneer in the field, first with the Wisconsin

Employment Relations Commission and then as the Chair of the New York City Office of Collective Bargaining. The Award will be presented to Professor Malin at the Section's Annual Conference in Chicago on Friday, November 11th.



Richard McLaren – Professor of Law and Interim Dean, the University of Western Ontario, was appointed by the World Anti-Doping Agency (WADA) as Chair of a three person independent panel to investigate allegations of a state-backed doping conspiracy involving the 2014 Winter Olympics in Sochi,

as well as wider allegations of doping in Russia. The final report of the committee uncovered further widespread doping in Russia. At this writing, actions of the WADA are pending.



Michel Picher – has been honoured by being admitted to the **Order of Canada**, his country's highest civilian honour, based on his contribution to labour arbitration in Canada. Established in 1967 by Her Majesty Queen Elizabeth II, the **Order of**

Canada is the cornerstone of the Canadian Honours System and recognizes outstanding achievement, dedication to the community, and service to the nation.

Michel Picher – has been further honoured by the

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MILESTONES *(Continued from Page 5)*

employers and unions in the Canadian railways at a dinner held in Montreal celebrating his 28 years as their arbitrator in the Canadian Railway Office of Arbitration. In addition to receiving a lovely plaque, Michel was further honored by the announcement that the permanent arbitration hearing room, presently at Windsor Station in Montreal, but soon to move to a new location, will be called the “**Michel Picher Hearing Room.**” Michel notes that the work of arbitrators can be lonely enough, often with little recognition. He states, “Needless to say, I am profoundly touched. I should add that my task in the railways was much assisted by fifteen years of excellent prior decisions written by **Ted Weatherill.**” **George Nicolau** comments, “Those of you who know Michel will agree that the honor is well deserved. And those sitting in that room as arbitrators will know, simply because of his presence, that they must do their very, very best.”

PUBLICATIONS & PRESENTATIONS

Shyam Das – recently presented on Sports Arbitration at a Quinnipiac-Yale Dispute Resolution Workshop sponsored by the Quinnipiac University School of Law Center on Dispute Resolution and Yale Law School. Following that, he and **Kathleen Miller** jointly taught a class on arbitration at Yale Law School. Shyam states that the students were eager to learn more about labor arbitration, and it was a delight to discuss their many probing questions.



Robert A. Grey – is a Contributing Author to the newly released BNA Bloomberg treatise “The Family Medical Leave Act, 2015 Cumulative Supplement.” Bob is also a Senior Editor of the newly released BNA Bloomberg treatise “The Railway Labor Act, Third Addition, 2015 Cumulative Supplement.” He is serving as a Senior Editor of the in-progress Fourth Addition.

(Continued on Next Page)

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 are not on line, just mail it to:

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MILESTONES *(Continued from Page 6)*

Barry Goldman – and co-author Stuart Israel have written and published a book entitled, Opinions – Essays on Lawyering, Litigation and Arbitration, the Placebo Effect, Chutzpah, and Related Matters. The title accurately reflects what is inside this 346 page collection of essays, a must read for all labor arbitrators. **Ted St. Antoine** states in the Forward that this is a fun book, but also a serious work in the best sense. Ted continues that the authors have treated riveting themes so artfully that even the most sleep-deprived will likely wind up at rapt attention.



William H. Holley, Jr. – has finished work on the 11th edition of the Labor Relations Process (1st edition published in 1980) along with a new co-author, William H. Ross, a former student of Bill's, who received his Ph.D. from the University of Illinois and is now head of the Department of Management, the University of Wisconsin-LaCrosse. The traditional book signing was held at Toomer's Corner under the new oaks on Labor Day.



Mariann Schick – along with NAA colleagues **Randi Lowitt**, **Michelle Miller-Kotula**, **Doug Bantle**, **Melissa Biren**, **Alan Symonette**, and **Dick Adelman**, provided advocacy training under the auspices of the Mid-Atlantic NAA Chapter, along with the chapters from Metropolitan D.C., Metropolitan New York, Upstate New York, and Pittsburgh in an Arbitration Symposium sponsored by the FMCS. The distinguished speakers reviewed numerous hypotheticals with participants in various breakout sessions and plenary gatherings on Private Sector Discipline and Contract Interpretation. **Sean J. Rogers**, of the D.C. chapter, organized the session on Federal Sector Arbitration Advocacy Skills in which colleagues **David Vaughn**, **Charlie Feigenbaum**, **Alan Symonette**, and **Dan Brent** joined to impart their knowledge of arbitration in that area. Both sessions received “rave” reviews from participants.



Perry A. Zirkel – recently published an article that can be found at Zirkel, P. “Judicial review of teacher-school board grievance arbitration: An empirical analysis,” *Journal of Law and Education*, 45(2), 181–

225 (2016). It provides a more detailed analysis of the material covered in his earlier article entitled “Non-Attorney Representatives in Labor Arbitration: Unauthorized Practice of Law,” which provided an overview of the gradual legalization of labor arbitration and the continuing practice of non-attorney representatives.

ON A PERSONAL NOTE

Paul Gerhart – and his wife Suzanne were the highest bidders at the NAA Research and Education Foundation's charity auction of various gifts offered by NAA members. As a result, Paul and Suzanne visited Arizona and experienced an off-road trip and lunch hosted by **Richard Fincher**, who owns a Jeep Wrangler and enjoys the hobby of off-roading in the desert. Paul had a great time and declares that “the spring scenery and flowers were spectacular.” 🪖



REGIONAL ROUNDUP

Reported by Kathy L. Eisenmenger
National Coordinator of Regional Activities

CANADA

Regional Chair is Jules Bloch - jbloch@sympatico.ca

CENTRAL MIDWEST

Regional Chair is Brian Clauss -
brianclauss@brianclaussadr.com

METROPOLITAN D.C.

The DC Region continues to hold regular breakfast meetings at Jake's American Grille, 5018 Connecticut Avenue, NW, Washington, DC. All NAA members are welcome to join us. Recent speakers have included: Allison Beck, Esq., Director FMCS; Carol Waller Pope, Chairman, FLRA; and Arthur Pearlstein, Director, Arbitration Services, FMCS.

At a recent members-only meeting, the Region voted to make substantial contributions to the NAA REF and the College of Labor and Employment Lawyers.

A planning group was initiated to plan a social event to include labor and management attorneys and representatives in a "Meet the Arbitrator" format. The DC Region was a sponsor of, and DC Region Members participated in, the 37th FMCS Arbitration Symposium in Atlantic City on May 5 and 6, 2016. Of particular note, DC Region Members presented a full-day training program on Federal Sector Arbitration Advocacy Skills.

Regional Chair is Sean Rogers - rogerssj@erols.com

METROPOLITAN N.Y.

On March 10, 2016, the Region met for dinner with a panel to consider the question: Arbitrators and Arbitration Under Attack – How should we, as a community of arbitrators, respond? The panel includes Dick Adelman, Melissa Biren, Debbie Gaines, Gayle Gavin, and Howard Edelman. We enjoyed an open discussion with all in attendance, with meaningful recommendations and suggestions for the future and valuable feedback to the NAA.

We continue to work on putting together an education program for the spring or fall for arbitrators and advocates alike. Another social program is also in the works for the spring. We plan to work with the NLRB contacts to jointly present a session on the Supreme Court's *Babcock & Wilcox* decision and how it affects labor arbitrators.

Regional Chair is Melissa H. Biren - mhbiren@aol.com

MICHIGAN

Greetings from the Michigan Region. We held two meetings this season, on September 29, 2015 and January 19, 2016. Our January meeting featured a speech by prominent employment arbitration lawyer Kathleen Bogus on employment arbitration, joined by Janice Holdinski, Vice President of the American Arbitration Association. Our September meeting discussed various aspects of labor arbitration.

On April 29, 2016, we welcomed with pleasure our guest speaker Allen Ponak, NAA President. At the meeting, a toast was given to departed member of our Region and former NAA President Richard Mittenenthal.

Regional Chair is Charles F. Ammeson -
cammeson@tpalaw.com

MID-ATLANTIC

The Mid-Atlantic Region held its Mid-Winter "Do-Dah" on February 20th, an evening of good food, drinks, and conversation, at the home of our colleague Walt De Treux and his lovely wife, Maryann. About 16 members and spouses attended, bringing contributions in hand for the repast. The De Treuxs provided a fabulous main course and libations. There was plenty of room in their spacious home where everyone could mingle and dine in a leisurely fashion. Many thanks to the De Treuxs for all their efforts. A joint meeting was held on May 10, 2016 with the Philadelphia LERA to discuss "Hot Topics." The local AAA office joined with us and LERA in sponsoring the meeting. The chapter donated two baskets of goodies to the REF silent auction in Pittsburgh, one with known brands from Philadelphia and the other with tasty bites from Atlantic City.

Regional Chair is Mariann E. Schick -
schickarb@comcast.net

MISSOURI VALLEY

Regional Chair is George Fitzsimmons -
georgefitzsimmons11e@hotmail.com

NEW ENGLAND

The New England Region had a terrific turnout for the fall get-together (and quasi business meeting) over a fine dinner on November 5, 2015. Long-tenured colleague, Tim Bornstein, was the Honored Guest. Tim has served the NAA as Vice President, on the Board of Governors, the CPRG, and the Membership Committee. We applauded Tim on the occasion of his retirement from a distinguished and active practice (thereby turning over more business to the rest of us). Marcia Greenbaum toasted (roasted!) Tim with the opening words: "What can I say about Tim that he has not already said about himself?" As always, Marcia spoke the truth, and thereafter more friends expounded on Tim's success, his teaching, his writing, and his deigning to issue 3500 awards (for which he was richly paid). Surprisingly, Tim took this all in, extended

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his thanks to all, but said nothing more. We wished Tim well as he rode off into the New England darkness.

NAA member (and distinguished economist) Allan McCausland followed this with a startling presentation based on his research: "The Impact of Technology on Employment and Earnings." The presentation focused on two major findings/trends. First: technology is eating up so many jobs that in the not so distant future it will be extremely hard for anyone to find any remunerative work. Second: the labor union participation rate has been rapidly sinking for the past fifteen years and will continue to decline (as the first trend prevails). The implications are enormous and have yet to be enumerated, much less subject to any proposed solutions. Allan's research graphically demonstrates the specific, imminent (and mostly negative) impacts that technology imposes on employment and earnings. Be prepared: computers analyzing photographic images from cameras around the field may replace all baseball umpires. Computers instantly (and accurately) call balls and strikes, never miss a call at the bases, and determine definitively when a runner crosses home plate safely. Consider: vehicles equipped with computerized controls that can be operated by remote command will make cabbies and truck drivers obsolete; mega-radio stations using computerized programming to deliver what their audiences want will replace disc jockeys; avatars could replace psychologists to conduct interviews with veterans; and algorithms already replace some work of news writers and stock traders. Allan explained how artificial intelligence means that computers now "learn" on their own, eliminating the need for computer programmers. Thus, feed a computer enough arbitration decisions and it will be able to issue reasoned decisions and awards, replacing 99% of arbitrators (us)! There was a collective, but audible, gasp as Allan announced the latter possibility. We should all be glad we were born in the last century.

Regional Chair is Mary Ellen Shea - ArbitratorMEShea@gmail.com

NORTHERN CALIFORNIA

The Region held a dinner meeting on March 1, 2016, and hosted as the guest speaker Allan Ponak, NAA President.

Regional Chair is Nancy Hutt - nancyhutt@naarb.com

OHIO-KENTUCKY

The OH-KY Region again participated in the annual FMCS/COLERA/NAA Arbitrator & Advocate Symposium on April 28-29, 2016 in Columbus, Ohio. Prior to the Symposium, the Region held its annual meeting with NAA President Allen Ponak as guest. Allen began symposium with an address to the participants. The Region has also adopted a First Friday of the month luncheon with NAA members and

newer arbitrators as a regional activity. Several newer arbitrators have joined the Academy after being regulars at these meetings and the Region continues to identify potential new members. Finally, a Regional dinner and social meeting is planned for Friday, September 2nd at the home of Region Chair Dan Zeiser. If anyone is in town, feel free to stop by.

Regional Chair is Dan Zeiser - danzeiser@aol.com

PACIFIC NORTHWEST

Region 17 held its annual Arbitrators' Day Conference March 9, 2016 in Seattle for arbitrators active in the Pacific Northwest, which drew attendees from five different states. Topics included the Board's New Deferral Standards, an update on the *Friedrichs* case following the death of Justice Scalia, Brady/Giglio Issues in Law Enforcement Arbitration, the Role of the Arbitrator at the Hearing, and the ever-popular Ask the Advocates session in which management and union advocates told us how we are doing and what we could do better to serve the parties. The Region also worked closely with the Washington State Bar Association's Labor & Employment Law Section to develop a joint advocate-neutral CLE session on Avoiding Ethical Pitfalls in Arbitration and a social reception. These events, which immediately followed the arbitrators' program, were extremely well received, sold out quickly, and was attended by approximately 100 advocates and arbitrators. We rounded out the day with dinner at a local restaurant with a number of the arbitrators, speakers, and guests. Planning for our Fall Meeting is underway: perhaps a return to Hawaii!

Regional Chair is David Gaba - davegaba@compasslegal.com

SOUTHEAST

The Southeast Region held its annual meeting on February 26-27, 2016 at the Crowne Plaza Atlanta Airport Hotel in Atlanta. The region sponsored an Advocates Training program on Friday, February 26th led by NAA Arbitrator and Georgia State University Professor Philip LaPorte. Four NAA Arbitrators, Donald P. Crane, Frederic Dichter, Martin Soll, and Jeanne Charles Wood, served as Arbitrator/Coaches for this program. Each Arbitrator/Coach met with a small group of participants to prepare a mock case to be presented at arbitration. Each group prepared their case with one arbitrator and presented their case to another NAA arbitrator. Participants worked with all four NAA arbitrators during the day-long training program. This was the first NAA program that ninety percent of the participants had ever attended. Participants came from the American Federation of Government Employees, the Amalgamated Transit Union, AT&T, the Communications Workers, MARTA, and the United Food and Commercial Workers.

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REGIONAL ROUNDUP *(Continued from Page 9)*

The Region's annual meeting began with a reception and dinner on Friday evening attended by fifty NAA members and guests. Regional Chair Phil LaPorte welcomed everyone, then asked for a moment of silence to remember NAA SE region arbitrators Dick Mittenthal and Jim Sherman, who had recently passed away. Phil reported the latest BLS data on the unionization rates for the states of the Southeast Region; i.e., Alabama, Georgia, North Carolina, South Carolina, and Tennessee. On Saturday, February 27th, NAA President Allen Ponak gave the Presidential Address outlining recent criticism of arbitration and the steps the NAA is taking to inform the media and the public about the distinctions between labor arbitration and those arbitration systems imposed on consumers that are viewed as biased and one-sided. AAA Assistant Vice President Charles Dorsey; Arthur Pearlstein, Director, Office of Arbitration Services, FMCS; and NMB Director of Arbitration Services Roland Watkins offered the Agency updates.

NFL Attorney James M. Walters gave an overview of three recent cases between the National Football League and the NFL Players Association. Attorney Walters described the issues raised by both arbitrators and federal judges in the Ray Rice, Adrian Peterson, and Tom Brady suspension cases. The Players Association's attorney, James T. Langford, provided his perspective on how the NFL overreached in each case and considered the mitigation of the imposed discipline to be the application of contractual provisions and "the law of the shop." NAA Arbitrator Jack Clarke raised questions about each case in terms of whether all three federal judges exercised legal authority rather than interpreting a Collective Bargaining Agreement.

The next panel dealt with the NLRB's new policy on deferral to arbitration. Attorney Robert Weaver gave an overview of the Board's new policy and the case in which it decided to issue the new policy. NLRB Field Examiner Mike Ziegler provided the Board's perspective and Evan Pontz gave management's view. The final session of the day featured a wide-ranging discussion from five top advocates on what arbitration procedures they use and where they get their arbitrators. NTEU National Counsel Bill Harness, CWA District Counsel John Quinn, Kaiser Permanente Labor Relations Manager Richard Daly, AT&T Legal Counsel Jim Glenister, and attorney Jim Fagan gave their thoughts on various arbitrator procedures and the pluses and minuses of using AAA, FMCS, direct appointments, and permanent panels. Each speaker described experiences using streamlined procedures, expedited arbitration, and conventional arbitration. The overall evaluations from the fifty-plus meeting participants were overwhelmingly positive. The NAA SE region thanks President Ponak and all the other speakers and supporters who made the 2016 annual meeting a success.

Regional Chair is Phil LaPorte - plaporte@gsu.edu

SOUTHERN CALIFORNIA

Region 16 held a meeting on March 2, 2016, hosting NAA President Allen Ponak. Allen spoke of the challenges facing arbitrators and arbitration. His excellent presentation stimulated a most rousing discussion with our never shy members. As always, the regional meeting was open to non-member arbitrators. In June, George Marshall reprised his panel on remedies from the FEC. Future events include an advocacy training session in conjunction with Orange County LERA and a weekend retreat in the wine country around Temecula, CA. In addition to workshops, there will be time for wine tours with spouses and friends.

Regional Chair is Jon Monat - j.monat@verizon.net

SOUTHWEST ROCKIES

The region held its annual Labor-Management Spring Conference on March 4 and 5, 2016, preceded by its separate full-day sessions for Advocates Training and Arbitrators Training on March 3, 2016. The 2017 Southwest-Rockies Region Conference will be held over the period February 16-18 at the DoubleTree Hotel at Love Field, Dallas, TX.

Regional Chair is Thomas A. Cipolla - tcipollapc@msn.com

UPSTATE NEW YORK

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

WESTERN PENNSYLVANIA

The Region with NAA Members Michelle Miller-Kotula, Host Chair, Walt De Treux, Program Chair, and the entire cadre of local members worked hard to prepare for the 2016 Annual NAA Meeting in Pittsburgh scheduled for June 22 - 25, 2016 at the Wyndham Grand Pittsburgh Downtown.

Regional Chair is Michelle Miller-Kotula - millerkotula@comcast.net

SPECIAL WORD:

On May 5, 2016, NAA Regions of the D.C., Mid-Atlantic, NY, Upstate NY, and Western Pennsylvania presented a full day of various topical sessions by NAA Members Mariann Schick, Randi Lowitt, Melissa Biren, Andrée McKissick, M. David Vaughn, Richard Adelman, Michelle Miller-Kotula, Sean J. Rogers, Joseph Kaplan, Douglas Bantle, and Charles Feigenbaum. The NAA topics included What Every Advocate Needs to Know about discipline and contract interpretation in private sector arbitration and arbitration advocacy skills in the federal sector. The NAA presentation was in coordination with the 37th FMCS ARBITRATION SYMPOSIUM on Friday, May 6, 2016. 🖊️

Research and Education Foundation


By Catherine Harris, President, and Elizabeth C. Wesman, Immediate Past President

The Research and Education Foundation is pleased to report that the REF Board of Directors considered two new proposals at the Annual Meeting in Pittsburgh. The first is a research proposal to study “The Effects of Compulsory Interest Arbitration on Reaching Impasse and on Wage Levels: Evidence from a Unique Change in Canadian Laws.” The project is directed by Chris Riddell, Associate Professor at the New York State School of Industrial and Labor Relations at Cornell University. In his proposal, Professor Riddell noted, “The role of interest arbitration in public sector collective bargaining is back at the forefront of public administration concerns, largely due to fiscal challenges that have emerged following the financial crisis of 2008.” Attending Board members were enthusiastic about the proposal, but since both REF reviewers were unable to attend the Board Meeting, the Board will conduct an e-mail vote regarding approval before the Fall FEC.

A second proposal, approved by the Board, was for support of a follow-up session to last year’s presentation on “Aging Gracefully” in which the presenters will discuss their decisions to retire and life after retirement. Donald Carter, a very well regarded Canadian Arbitrator and Professor Emeritus of the Queen’s University Faculty of Law, and NAA member Susan Meredith will share their respective experiences in reaching the decision to discontinue their arbitration practices. The featured speaker, Steven Price, is the author of “How to Survive Retirement – Reinventing Yourself for the Life You’ve Always Wanted” and will bring both wisdom and humor to a topic important to so many of us. The Board approved a grant to cover Mr. Price’s travel and one night’s stay in New Orleans as well as a small honorarium.

We are also delighted to report that the 2016 Silent Auction was a terrific success. The Board is grateful to the many members, members’ spouses and companions, and regions who donated such wonderful auction items. Thanks as well to an enthusiastic bidding membership (and guests) who were collectively responsible for a \$9,376 contribution to the REF Fund.

Please keep in mind that the REF welcomes requests for funding for research proposals and other projects related to labor-management relations. If you know of any person or organization needing such funding, please direct them to the REF link on the NAA website. In addition, being mindful of the “Education” goal of the Research and Education Fund, the REF encourages members to seek funding for proposed Fall Education Conference sessions geared specifically to educating the membership, which might be best presented by an expert outside of the NAA Membership.

Finally, thanks to those members who continue to support the work of the Research and Education Fund. Your contributions truly support the quality of research and education in our profession. 

By Sara Adler

If you are sued or subpoenaed you absolutely **MUST** contact one of the LRF Coordinators **BEFORE** notifying your insurance company! Failure to do so will make you ineligible for LRF coverage.

The Coordinators for 2016-17 are:

Sara Adler, Coordinator
310-474-5170; sadlerarb@earthlink.net

Luella Nelson, Assistant Coordinator
503-281-8343; luella.nelson@SBCGlobal.net

Barbara Deinhardt, Assistant Coordinator
718-237-8693; bdeinhardt@aol.com

LRF IMPORTANT REMINDERS



The reason for this requirement is that the vast majority of matters involving our members will not require action by the insurance company, but every notification is counted as an occurrence for underwriting purposes. Thus, notification to the insurer eventually increases our premiums without any corresponding benefit from the insurance—a result we are trying to avoid.

The LRF is not insurance. It is a fund for the protection of labor-management arbitration. The insurance many of our (most prudent) members carry covers a range of neutral activity, but not all, unless you also purchase additional riders or endorsements, such as ERISA. To get the most complete information, contact our broker, Complete Equity Markets, Inc. Our main contact person is Kaitlyn Hassall who can be most efficiently reached at khassall@cemins.com or 847-777-7416.

Please note, the maximum reimbursement from the LRF is \$3,000 and most members carry a policy with a \$3,000 deductible. If you choose, you can get a higher deductible with a somewhat lower premium, but the extra deductible will not be reimbursed by the LRF.

The procedure for reimbursement requires a recommendation from the LRF Coordinator with the final decision being made by the President and Secretary-Treasurer. If the reimbursement is approved, it is necessary to submit some acceptable document showing the amount paid.

Please feel free to contact Sara Adler with any questions or concerns. In a few cases, issues relate to both legal matters and ethics. For ethics advice, go to the CPRG. If you are not sure which advice you need, contact either committee and we will direct you to the right place. 🗑️

CPRG REPORT TO THE

By Dan Nielsen

The CPRG is required to report annually to the membership on its activities. This column details the Committee's cases and other activities in the period between the end of the 2015 Annual Meeting in San Francisco and the end of the 2016 Annual Meeting in Pittsburgh.

CASE ACTIVITY

The CPRG has resolved two cases pending from the prior year, opened three new cases, resolved two of those three, and has one open case as of this writing.

In the resolved cases:

- A member who was alleged to have engaged in excessive delay in issuing an award resigned from membership in the Academy after the appointment of, and investigation by, a hearing officer. Resignation automatically resolves the case. The Chair has confirmed that the member removed any reference to Academy membership from all designating agency listings.
- A member was alleged by an individual complainant to have engaged in numerous violations over the course of a year-long, 20 plus day hearing on the discharge of a school principal. The Chair, in consultation with two other CPRG members, determined that there was no probable cause to believe a violation had occurred.
- A member was alleged by an individual complainant to have engaged in numerous violations over the course of a very lengthy hearing on the discharge of a tenured university professor. The Chair investigated,

including conferring with counsel for both the university and the union. In consultation with two other CPRG members, the Chair determined that there was no probable cause to believe a violation had occurred.

- A labor organization brought a complaint of a conflict of interest, failure to disclose pertinent information, or both against a member serving as an interest arbitrator, based on the member's political contributions and acceptance of other appointments from the same employer and different unions while the interest arbitration was pending. The Chair investigated and concluded that the labor organization knew about the political contributions when the member was selected for the case, and that the member had promptly disclosed the contributions after the appointment. The Chair further concluded that the acceptance of other cases involving one party, without more, is a routine feature of a busy practice and is not an occasion for mandatory disclosure. In consultation with two other CPRG members, the Chair determined that there was no probable cause to believe a violation had occurred.

In the open case:

- A generalized complaint of corruption against a member serving as a grievance arbitrator has been brought by an individual complainant. The matter is being held in abeyance as premature, since the underlying proceeding has not been concluded.

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MEMBERSHIP 2015-2016

Another file is technically open, but appears to be dormant and there are no plans on the CPRG's part to awaken it. Yet another never moved beyond preliminary discussions and was administratively closed by the Chair until such time as a formal complaint is received.

NON-CASE ACTIVITY

Informal CPRG activities include assisting members who have contacted the Chair for advice on their professional responsibilities in a wide range of situations.


The Executive Committee has authorized the Chair to travel to the Cortland office for the purpose of creating a log of prior cases involving penalties against members, with enough descriptive detail to allow comparisons to be drawn in future cases. There currently is not an index or historical database, which leaves hearing officers in an unfair position when determining penalties for sustained complaints.

In response to a request by the FMCS, the Committee has created a process for providing written advice to designating agencies on questions of Code compliance. The FMCS is interested in having opinions available that can be shared with its roster arbitrators when complaints are received about their conduct, illustrating what the problem might be with what they have or have not done. This is intended more for non-Academy arbitrators, who may not be as well versed in their professional responsibilities as members are. The process will mirror a probable cause investigation, in that the agency will describe the conduct and the ethical concern, and the CPRG Chair will provide a letter stating how he or she would analyze the situation if it came to the Committee as a complaint. That letter will be reviewed by two other members of the

CPRG, in the same fashion as a probable cause determination would be. Once a draft is finalized and has the approval of the Chair and two members, it will be provided to the agency. Each letter will caution that it represents the opinion of the Chair, and future Chairs may have differing opinions.

The Committee is discussing some possible procedural changes and clarifications, including a time limit for bringing complaints. There is not currently any clear time limit and it creates an unfair situation. However, an actual statute of limitations would probably require an amendment to the By-Laws. The Committee is discussing options that would not require an amendment, as that process is lengthy and difficult. We are also looking at the possibility of putting a guide on the website for persons seeking to file a complaint. The Code and the By-Laws only are available now and they are not particularly user friendly. It is the Committee's view that providing guidance will not generate more complaints, but instead will serve to narrow and focus the complaints that are filed.

As reported in the Fall 2015 edition of the Chronicle, the CPRG has collaboratively worked up a revision to Opinion Letter No. 6 regarding disclosure and recusal obligations to clarify and correct what we believed to be unhelpful advice in the letter.

Finally, the Chair would like to thank Howard Foster, James Darby, William Miller, and Betsy Wesman for their advice and contributions. All four left the CPRG at the close of the Annual Meeting for other assignments within the Academy. The 2016-2017 members of the CPRG are Melissa Biren, Linda Byars, Elliott Goldstein, Susan Grody Ruben, Susan Meredith, Dan Nielsen, Dennis Nolan, James Oakley, Alan Symonette, and Barbara Zausner. 

REMEMBERING...

Remembering Theodore K. High

By Bruce B. McIntosh



Theodore K. High, a man with an infectious laugh, gracious wit, and wonderful warm sense of humor, passed away on June 27, 2015. He is survived by his wife, Barbara, his children Peter and Sandra, step-children, Tom and Brian, and their children.

He received his Bachelor's and Master's Degree at Indiana University and later graduated from Yale Law School. After law school, he joined the National Labor Relations Board in Washington, D.C., became an Attorney General for the State of Ohio, and Chief Counsel for the Ohio Public Commission. After that, his soaring achievements as an arbitrator led to his membership in the National Academy of Arbitrators for forty-two years, including being a salaried arbitrator in Major League Baseball.

To all who had the opportunity to meet, know, and be with him and enjoy his wit and gift for storytelling, his always friendly and insightful manner will remain in our memories.

As many of our fellow members of the Academy have opined, he did make us and the world a better place and will be missed by us as well as the labor-management community. Emails flooded our Regional Chairman with comments such as "Ted was a giant in every way," "he always seemed to have the insight to see through the toughest conundrums," "bright," "analytical," "deliberative," and "articulate," on top of which "he was a very kind and wonderful man."

His countless decisions and awards are a credit to our profession, clearly written, and preserved in many publications. As also shared by these various emails, "our profession was fortunate indeed that he graced it" and he was, "simply, what all arbitrators should strive to be . . . a role model of competence and humility from which all of us could learn."

Ted was a giant in every way and, for those of us who had the opportunity to be with him, whether for a brief, repetitive or extended period of time, we are fortunate that he graced us with his presence and willingness to listen and share his thoughts, whether it be involving an arbitration or simply interaction among ourselves and those we serve. Our profession was fortunate, indeed, that he graced it.

Remembering Kenneth M. McCaffree

June 23, 1919 - May 13, 2016

By Howell L. Lankford

Ken was born in Wichita, Kansas, the second son of a family of poor tenant farmers. Neither of his parents formally completed high school. Ken spent his first eight school years in a one-room schoolhouse. His parents' sacrifice and encouragement sent him to junior college in El Dorado, Kansas and then to Southwestern College in Winfield. He married Mary Ellen, whom he had met in high school. He served in the Naval Minesweeper Fleet from 1942 to 1946, including 18 months in the Mediterranean.

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REMEMBERING... (Continued from Page 16)

Ken earned an M.A. in Economics from the University of Denver and then a Ph.D. in Economics from the University of Chicago in 1949. He was part of the Economics faculty of the University of Washington for 32 years until his retirement in 1981. His initial areas of focus were labor markets and labor relations, but in the 1950s and 60s he was drawn more and more to the economics of health care delivery. In 1964, Ken was elected president of the Group Health Association of America, the primary founder of the HMO movement. By the early 1970s, his work in health care economics led to his appointment as Professor of Health Services in UW's School of Public Health and Community Medicine. He was in demand as a consultant in that area both to private industry and the public and federal sectors. President Nixon appointed him to the Health Services Industry Advisory Committee.

Ken did some arbitration work while teaching at UW, but his arbitration career flowered after his retirement at the age of 62. He became a member of the Academy in 1983. Meanwhile, Mary Ellen continued her long and distinguished career as a state legislator and public administrator. They had three boys and two girls who, along with Mary Ellen, were the focus of Ken's life.

Ken seldom attended national conferences, but he was always at regional lunches and he and Mary Ellen were frequently at regional meetings. Mary Ellen passed away in 2014.

As an arbitrator, Ken was a great problem-solver and a fine draftsman. One of my favorite Ken stories involved an award he issued in a dispute at the Hanford site. Hanford cases sometimes involve rules, procedures, and locations that are beyond the arbitrator's security clearance even though everybody agrees that they would be relevant, and sometimes more than just relevant. Ken once worked backwards from his record to try to reconstruct some of the missing rules and procedures. He always did an elegant job of factfinding, and this was no exception, and he immediately received a registered letter—not merely certified, but registered—informing him that he was illegally in possession of classified materials and directing him to destroy all copies of his award immediately!

Ken was always a delight in conversation and a great “reality check” asset for troubling cases. He was actively engaged in the world and grateful for his longevity right up until the day of his final stroke, about a week before his death. He will be missed. 🪦

IN MEMORIAM

It was recently learned that the following Members have passed away:

Gladys Gershenfeld

NAA Member since 1981

Martin Teplitsky

NAA Member since 1981

C. Brian Williams

NAA Member since 1978

A Remembrance will appear in a future *Chronicle*.

National Academy of Arbitrators

2016 – 2017 COMMITTEE CHAIRS & COORDINATORS

**2016 Fall Education Conference
Host Committee - New Orleans**
Gil Vernon, Chair

**Fall Education Conference
Program Committee - New Orleans**
Jane H. Devlin, Co-Chair
Paula Knopf, Co-Chair

**2017 Annual Meeting
Program Committee - Chicago**
Elizabeth Neumeier, Chair

**2017 Annual Meeting
Host Committee - Chicago**
Margo R. Newman, Chair

**Advocacy Continuing
Education Sub-Committee**
Louis L.C. Chang, Chair

Amicus Brief Advisory Committee
Stephen F. Befort, Chair

Annual Proceedings
Mark Thompson, Editor
Alvin L. Goldman, Associate Editor
Kathryn VanDagens,
Online Proceedings Editor

ArbitrationInfo.com Committee
Elizabeth C. Wesman,
NAA Managing Editor and Chair

Auditing Committee
William McKee, Chair

Chronicle
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Assisting Managing Editor

**Committee on
Honorary Membership**
Roberta Golick, Chair

**Committee on
Professional Responsibility
and Grievances**
Daniel J. Nielsen, Chair

Coordinator of CLE
Fredric R. Dichter, Coordinator
Bonnie G. Bogue, Assistant Coordinator (CA)
Martha R. Cooper, Assistant Coordinator (PA)


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THE PRESIDENT'S CORNER *(Continued from Back Cover)*

times, there will be a hub from which these ideas can be collected and shared throughout the NAA. A place where there can be a coordination of members helping others. What works in the Southwest/Rockies Region may not work in Philadelphia, what works in New York may not be possible in Chicago, and vice versa, but there will be one place where these models will be housed for future use, perhaps modified, perhaps improved upon, and where new ideas can take seed.

Of course we all know that labor arbitration work is declining. But we are also losing more NAA folks, some sadly to death, some happily to retirement, than we are admitting new members. I am often told by advocates that they have a need

for arbitrators due to attrition, and they have difficulty identifying arbitrators, sometimes due to the lesser influence of the appointing agencies in certain parts of the country. I work with talented newer arbitrators who tell me they are having difficulty getting selected. Let's try to connect those dots.

Maretta Toedt told me a lovely story about NAA treasure Margery Gootnick. When President, Margery attended the Southwest/Rockies Conference and asked to meet the non-members. She then insisted on sitting with them at the meal, talking to each one of them, learning from them, and giving advice. As Margery typically did, she left a lasting mark. Let's emulate our mentors. 

2016 – 2017 COMMITTEE CHAIRS & COORDINATORS

Coordinator of Legal Affairs

Jan Stiglitz

Coordinator of Legal Representation

Sara Adler, Coordinator

Luella E. Nelson, Assistant Coordinator

Barbara Deinhardt, Assistant Coordinator

Designating Agency Liaison Coordinator

Joshua Javits, Coordinator

Employment Arbitration Committee

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Future Sites Committee

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Nancy Kaufmann, Chair

International Studies Committee

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Membership Committee

Sarah Kerr Garraty, Chair

National Coordinator of Regional Activities

Kathy L. Eisenmenger, Coordinator

New Member Orientation Committee

Richard Adelman, Chair

Jules Bloch, Chair-Designate

Nominating Committee

Robert B. Moberly, Chair

Parliamentarian

Jane H. Devlin

Professional Organization Liaison Committee

Fredric R. Dichter, Chair

Public Employment Disputes Settlement Committee

Timothy D.W. Williams, Chair

Tribunal Appeals Committee

George R. Fleischli, Chair

THE PRESIDENT'S CORNER



By Margaret Brogan

New member introductions. These “pithy” talks are a highlight of our meetings. Each of us has stood at the podium on our first official day as member and tried to capture the essence of ourselves, as well our emotions on entering this Academy. Some of us have been very serious, some have been extremely funny, some have donned baseball caps or told poems, and some have almost sung. (Yes, Mattye Gandel, you almost convinced me to do that.) Some of us had the great honor, as did Randi Abramsky, Ellen Alexander, Michelle Miller-Kotula, and Andy Strongin, of being handed their NAA certificates by their Academy member Dads.

But what we all have in common is that, as we stood at that podium, or looked back at our practice, we remembered the arbitrators who helped us along the road. We remembered those folks who took our calls, read our awards, trained us, and introduced us to advocates. Those who let us watch. The colleagues who took pride in our success. A star like Dick Mittenhal, who took the time year after year to speak about award writing to new members: Listening to him changed the way I wrote and thought as an arbitrator. The intellect and generosity of Frances Bairstow, who delighted in sharing her skills, answering our questions, and hearing our stories. She helped me see the joy in what we do. The giants among us, like George Nicolau, who has provided wisdom and grace in the most difficult of cases and industries, yet has time for steady mentorship and unwavering friendship, along with providing great leadership to this Academy. It will be my honor to present George with a Special Award at the FEC in New Orleans, a unanimous decision of the Board of Governors.

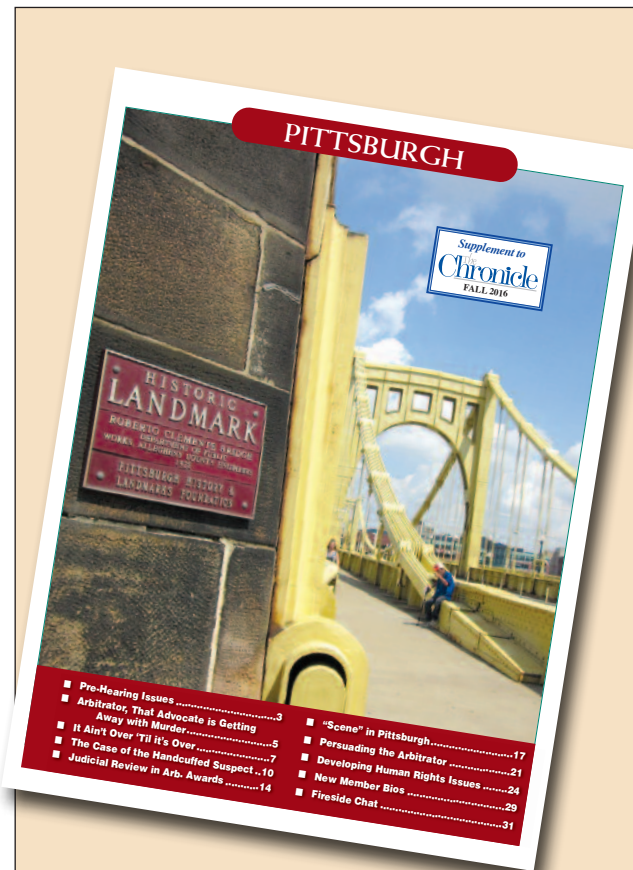
Extending a hand, and pulling a fellow arbitrator up the ladder, is a great gift by an Academy member, and I would even say it is our obligation. But, as we all know, it is a gift to ourselves. Beyond the feeling of satisfaction, there is no better way to improve our own craft than to mentor and train others. Most of us already spend much energy in mentoring and assisting new arbitrators. But in speaking to many, I have heard numerous times of our frustration that, as hard as we work to assist a promising new arbitrator, they often hit a wall in being selected, making it difficult, if not impossible, for them to stay in the profession.

With these thoughts in mind, I am beginning an Outreach Initiative this year, with the approval of the Board of

Governors. Chaired by Walt De Treux, it will build and improve upon the mentoring and training that already exists and help create new models. The goals will be for the Regions to identify newer arbitrators and, crucially, partner with advocates and appointing agencies who will be willing to recommend and utilize the services of arbitrators we have mentored and trained. I personally hope that an end result of this initiative will be to improve upon our diversity and visibility as an institution.

But this will not be a cram-down “one-size-fits-all” approach. Development and mentoring will be on a Regional basis, not imposed from above. Many terrific models already exist in our various Regions. Let’s share those ideas. Let’s explore and develop new models. Let’s resurrect older concepts that worked. Let’s learn from each other’s triumphs and failures. Using the approach of the successful Regional Education Committee, one both Walt and I chaired at different

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ACADEMY HOLDS ITS 2016 ANNUAL MEETING IN PITTSBURGH

See the insert in this edition of *The Chronicle* for details and pictures from the Pittsburgh Meeting