

MARK YOUR CALENDARS

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

2019 Annual Meeting

May 29 - June 1, 2019
 Lowes Philadelphia Hotel
 Philadelphia, PA



“THE NEW WORLD OF WORK” — UPDATES

By Elizabeth Neumeier, Program Chair

When you pick up your registration materials in Chicago, the conference binder will contain information on the speakers and a brief summary of each session. For some sessions, additional reference material is included. Please note that, due to speaker availability, the time slots for some of the concurrent sessions have been changed from what appeared in the program mailed to members in January.

We are delighted that NLRB General Counsel Richard F. Griffin, Jr. now will be joining Bernard Fishbein, Chair of the Ontario Labour Relations Board, at our opening plenary session, “*The Emerging Gig Economy: What Are the Rules?*” This will provide an excellent opportunity to compare and contrast the approaches our two countries are taking to the rapid changes in the new world of work.

You, no doubt, have heard that our distinguished speaker, David Weil, is no longer head of the Labor Department’s Wage and Hour Division. We look forward to hearing what he has to say.

The “*Innovations in Remedies*” concurrent session is proving to be popular with those registering early for our Annual Meeting. The speakers will dive deeply into systemic remedies to address findings of a poisoned work environment in the Toronto jail (Chris Albertyn), NLRB-fashioned remedies, including reimbursement for consequential harm (Peter Ohr), and broadly into how different remedies are fashioned in other countries, where there is a reluctance to force continuation of a failed employer/employee relationship through reinstatement orders (Arnold Zack).

Two Distinguished Papers will be presented: “*Labor Law, Unions and the Gig Economy*” by William B. Gould IV, and “*Med-Arb in Labor Relations*” by Joshua M. Javits.

The topic “*The Impact of Outside Law and Outside Parties on Discharge Arbitrations*” will be covered by a great panel: Donn C. Meindertsma, Esq., Conner & Winters, LLP; Christopher Grant, Esq., Schuchat,

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PRESIDENT’S CORNER

— BACK COVER

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. 📌

PLEASE JOIN US:

2017 Fall Education Conference

September 15 – 17, 2017



**Miami Four Seasons
Miami, FL**

The Chronicle

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Looking Forward To Seeing You In Chicago

By Margo Newman, 2017 Host Committee Chair

Here are a few updates from my article that appeared in the Winter issue of the Chronicle. The good news - John Stout was able to secure a block of 75 tickets to the Wednesday, May 24 Cubs night game at Wrigley Field against the San Francisco Giants. The bad news - all the tickets have been spoken for. Since people's plans change all the time, there might be tickets available for resale closer to the game. If you missed the opportunity to get in with our ticket block in Sections 209 & 211, you can always secure tickets on your own by contacting Sarah McDonough (SMcDonough@cubs.com). Tell her you are part of the NAA (Stout) group on May 24, and she will see what she can do for you. Game time 7:05 p.m. While we will be sitting together, it is everyone's responsibility to get to the ballpark on their own. The best means of transportation is by CTA red line (north to Howard) (www.transitchicago.com/redline/) from the station at State and Lake. Exit at Addison, which is immediately east of Wrigley Field. Just follow the crowds! More good news! The cocktail reception is scheduled to begin at 6:00 p.m., so you can attend that as well, before heading off to the ballgame.

Your registration packets included an information sheet entitled Welcome to Chicago as well as Chicago 101, a visitor's guide, and information and a sign-up sheet for the Saturday night symphony. These, as well as other information and registration materials, are included on the Upcoming Meetings tab of the website (www.naarb.org), as well as our dedicated website (www.naameetings.org). These sites will be continually updated, so keep checking them. Our tennis outing/tournament is back and will be held on Thursday, May 25 from 4:30 - 6:00 p.m. at Maggie Daley Park, just blocks from the hotel. Linda Byars is organizing it, so if you are interested in



participating, or want more information, contact her at lindabyars@byarsandbyars.com.

I understand that tickets for the President's dinner on May 23 at Harry Caray's Italian Steak House are already sold out. Let the Operations Center know if you want to be placed on a waiting list.

We will be following the great tradition of the Dine Around on Thursday evening, May 25. There are six great restaurants to choose from, hosted by your terrific colleagues, including: Rocky Perkovich - *Pranzi* at 434 West Ontario (www.pranzichicago.com); Jackie Zimmerman & Dan Nielsen - *Trattoria No. 10* at 10 N. Dearborn (www.trattoriaten.com/); Jeanne Vohnhof - *Santorini* (in Greektown) at 800 W. Adams (www.santorinichicago.com/); Steve Bierig - *India House* at 59 W. Grand Ave. (www.indiahousechicago.com/chicago-menu.html); Fred & Barbara Dichter - *Le Colonial* at 937 N. Rush (Vietnamese - vegetarian/gluten free options) (www.lecolonialchicago.com/menus/dinner); George Fleischli - *Catch 35* at 35 W. Wacker Drive (www.catch35.com/menus/menu-dinner-chicago/). Remember, the hosts have agreed to help organize the outing, but are not responsible for paying the tab!!! Checks will be split evenly, regardless of what is ordered. If the participants at a par-

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CHICAGO—NEW WORLD OF WORK (Continued from Page 1)

Cook and Werner; and Russ Eisenstein, Senior Counsel, Internal Revenue Service, moderated by Rocky Perkovich.

Both concurrent sessions on Saturday morning, May 27, will be highly interactive so drink your morning coffee and put on your thinking cap. Three of our past CPRG chairs, Paula Knopf, Ed Krinsky, and George Fleischli, will lead us through some very tricky ethical dilemmas. The social media panel, Michelle Miller-Kotula, Bill Lowe, and Mary Ellen Shea, have put together a handy crib sheet on social media, trends

in the workplace and arbitration, and recent court cases.

As for the "Hottest Topic" session, we will set up a room with round tables for an open discussion of "Civility in the Workplace." The divisions in our politics are intruding into all aspects of civil society. The most carefully drafted "no harassment" policies are being applied in an atmosphere in which people (employees, supervisors, and managers) are feeling empowered to assert their strongly-held views. Conflicts often arise between members of a bargaining unit. Is a strict enforcement of a "no tole-

rance" the best approach? What is working and what is not?

NOTE to EMPLOYMENT ARBITRATORS on the AAA panel: You should have received or soon will receive from AAA registration information about the Arbitrator Continuing Education (ACE) being offered by AAA on Wednesday afternoon May 24, 2017, at the Fairmont Hotel. This training is only available to arbitrators who are already on the AAA employment arbitration panel. Registration for this course is being handled by the AAA. 📌

LOOKING FORWARD TO SEEING YOU IN CHICAGO *(Continued from Page 3)*

ticular restaurant so desire, a separate bar tab can be run to account for non-drinkers. Some sign up will be available through online contact, but we will also keep room at the restaurants for people to sign up at the registration desk at the hotel.

Our Friday night dinner entertainment will include a performance by Mentalist Jason Suran, (www.jasonsuran.com), as well as dancing to the tunes we love played by a DJ from Bizar Entertainment. Feel free to send your requests to me ahead of time, (mnewmanarb@gmail.com), and I will include them on the list Margie is compiling of her favorites!

As I stated in my Winter Chronicle article, the CAF river cruise is one of the highest rated points of interest and a must visit in Chicago (www.architecture.org/experience-caf/tours/detail/chicago-architecture-foundation-river-cruise-aboard-chicagos-first-lady-cruises/). Meeting registrants will receive a coupon for \$10 off the purchase price of each ticket between Monday and Thursday (not including the weekend) in their registration packets. So plan to come early or stay late!

For those of you planning your own dinners, Rocky Perkovich's restaurant guide, entitled "Where the Chicagoans Eat," as well as Barry Simon's insight into "How to Eat Like A



Chicagoan," appear on the websites and will be available at the registration desk. What a great way to explore one of Chicago's many neighborhoods - through its food!! If you have any questions about the city or want additional information, visit www.choosechicago.com. 🗣️



MILESTONES

Edited by Michael P. Long

NOTEWORTHY HONORS & PROFESSIONAL ACTIVITIES

Walt De Treux – NAA’s new Executive Secretary-Treasurer of the NAA for 2017/18, has received the *Peggy Browning Award* in a ceremony in Philadelphia in March. The *Peggy Browning Fund* was established after the death of Peggy Browning, a very prominent labor attorney in Philadelphia who was the first female member of the NLRB. She died at a young age of breast cancer. The mission of the Peggy Browning Fund is to educate and inspire the next generation of advocates for workplace justice through fellowships, workers’ rights conferences, networking, and other programs by providing unique opportunities for law students to work for economic and social justice. Each year the organization honors individuals in the labor-management field such as Walt De Treux, who exemplify the ideals promulgated by the works of Peggy Browning.



■■■
William F. Hempfling – has been named President-Elect for the Long Island Chapter of the Labor Employment Relations Association.

■■■
Michel Picher – has been awarded membership in the **Order of 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.



PUBLICATIONS & PRESENTATIONS

Ted St. Antoine and **Fred Dichter** – report that they had to leave their wonderful winter wonderlands to make a presentation on the ethical obligations of employment arbitrators at the Midwinter Meeting of the ABA Labor Section’s ADR Committee on January 29, 2017 in Puerto Vallarta, Mexico. The discussion focused on the Academy’s two sets of guidelines and the potential applicability of the Labor Code to employment arbitrations.

■■■
Rosemary A. Townley – has been very busy. In October 2016, she was named to Super Lawyers in ADR and the Top Women Lawyers in Metro New York.

In January 2017, Rosemary was admitted as a Fellow to the Chartered Institute of Arbitrators (FCIArb) in London, an inter-



national professional organization in ADR that is devoted to raising the profile of arbitration and mediation worldwide. She is also a member of the New York Branch.

Also in January 2017, she moderated a program at the Annual Meeting of the Section on Labor and Employment Law of the New York State Bar Association on the topic: “Legal Constraints on the Freedom to Speak in the Workplace: From the Gridiron to the Classroom.”

In February 2017, Rosemary, who must have a wonderful regimen of vitamins, served as a Participant in the 66th weeklong session of Working Group II –Dispute Resolution of UNCITRAL (United Nations Commission on International Trade Law) that was held at the UN in New York City. She was representing the New York International Arbitration Center (NYIAC). The Working Group has been attempting to prepare an instrument for recommendation to the Secretariat for the enforcement of international settlement agreements that arise from the conciliation process. The Group will continue its work later this year in Vienna.

Then on March 15, 2017, she presented at the jointly sponsored program by the AAA and the Section on Dispute Resolution of New York State Bar Association as part of the ADR Skills Program Series at the New York Law School. Rosemary addressed the commercial arbitration topic “Requests for Emergency Relief in Arbitration: Effective Solution or Misguided Interim Relief?” 🗑️

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 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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MIAMI FEC PROGRAM

**By Barry Winograd, FEC Program
Committee Chair**

The Academy's Fall Education Conference in Miami on September 15-17, 2017 will provide members with a variety of substantive programs to complement the beautiful location and activities arranged by Bob Moberly and his Host Committee.

After Friday's welcome, the program on Saturday includes plenary sessions in the morning, a luncheon speaker highlighting current labor relations issues, and concurrent sessions in the afternoon to round out the day. Closing plenaries are planned for Sunday morning.

A highlight of the FEC will be Saturday's luncheon address about labor relations at this critical juncture of U.S. history. Our featured speaker is Philip Miscimarra. Originally appointed to the National Labor Relations Board in 2013, Mr. Miscimarra was recently named Chairman. Those members who recall his discussion of NLRB deferral to arbitration at the Annual meeting in Chicago in 2015 know that he is an outstanding speaker, forthright and articulate in sharing his views. We are fortunate he has agreed to a return visit to the Academy to consider the road ahead in labor law and practice.



Philip Miscimarra

The luncheon speaker is only a part of an appealing FEC. One session is *Mum's the Word: Evidence Privileges and the Production of Medical Records*. It will feature Canadian and U.S. members considering complex disputes that require arbitrators to deal with the intricacies of attorney-client, work product, medical, and privacy concerns. Find out how to receive the evidence you need to know without having the hearing grind to a halt.

Another session will focus on the *Immokalee Arbitration Agreement: An Innovation in Dispute Resolution*. The agreement was created outside the usual context of collective bargaining and covers an array of agricultural producers in Florida. It is designed to ensure fair standards in food production and to permit enforcement of workplace protections for low-wage agricultural




"The Fifth Circuit issued the *Murphy Oil* case."

the same everywhere? Is there "science" to be learned?

Do you want to stay abreast of what is likely to be the most important judicial development in workplace law in the past several decades? If so, you should attend the session on *Class Action Waivers: Staying or Not?* Academy experts will review three cases now pending before the U.S. Supreme Court questioning whether the NLRB correctly held that arbitration agreements waiving class action rights are unlawful. The cases are scheduled for oral argument in October after our meeting. A decision is expected in the 2017-18 term of the Supreme Court.

With millions of immigrants in workplaces throughout the U.S., and ongoing turmoil involving the status of immigrants, *Immigration Rights and Remedies: The Essentials*, should be a helpful presentation. Increasingly, arbitrators are called upon to know and apply the law, and relevant contract language, in a range of industrial and service sectors. Legal experts and experienced arbitrators will boil down what you need to know.

The FEC is in the final stage of development as *The Chronicle* goes to press. Stay tuned for more details. Better yet, make plans now to join us in Miami. 



"The Fair Food Program of the Coalition of Immokalee Workers."

workers, some of whom have been toiling in slave-like conditions. Participants include Academy members serving on the panel, along with the employer and employee representatives who negotiated the agreement.

At the FEC, you can find the answer to the burning question, "Who is SAM, anyway?" In *Navigating Fees for Service in the U.S. Federal Sector*, you can expect a nuts-and-bolts session that will assist your daily practice and your financial bottom line.

Another featured program will examine *The Science of Settlement*, building off the insights, practical wisdom, and humor of member Barry Goldman's well-received book by that title. Canadian members with substantial experience in negotiating settlements will share their views. Is work on settlements

WELCOME TO MIAMI

By Robert Moberly, 2017 FEC Host Committee Chair

It's not too early to think about the 2017 NAA Fall Education Conference in vibrant Miami. From September 15-17, 2017, we will be at the beautiful **FOUR SEASONS MIAMI**. This hotel received rave reviews from NAA members during our last two Miami meetings. Consider down-



loading the Four Seasons App, loaded with useful information about Miami and the hotel. The Four Seasons Miami is in the Brickell area—an area widely recognized as the “new heart of Miami.”

PRESIDENTIAL DINNER.

The Presidential Dinner on Thursday night, September 14 will be at the nearby 25th story **Atrio Restaurant**, with incredible views of Miami and Biscayne Bay. Reviews cite “superb” cuisine, “fantastic” service, and “excellent all the way around” (Zagat), as well as “sophisticated, smart and clearly sensational,” with “luscious cuisine” (Open Table). Kudos to Host Committee members Marty Soll and Jeanne Charles Wood for identifying this restaurant as the best among many excellent possibilities. All registrants will be invited to the dinner on a first-come, first-served basis until we reach room capacity.



SATURDAY NIGHT. Saturday night offers many attractive choices. The **Miami Marlins** are playing the Milwaukee Brewers in its modern park with

a retractable roof; we reserved a block of tickets behind home plate. Also, many good restaurants are available for the Dine Around. Host Committee member Mark Lurie has identified about 100 restaurants within a one-mile radius of the hotel; over 25 of these restaurants have ratings of 4 or more on a 5-point scale. Additionally, there are several music and dancing venues in downtown Miami.

CULTURAL. Cultural venues abound. **Museum Park**, a beautiful waterfront setting on Biscayne Bay, hosts the new **Perez Art Museum** and the new cutting-edge **Frost Science Museum** with a planetarium and aquarium. **Vizcaya Museum and Gardens**, a National Historic Landmark, and the new **Adrienne Arsht Performing Arts Center** also are close by.

TOURS. **Island Queen Cruises** along Biscayne Bay



Vizcaya Museum and Gardens



Perez Art Museum

provide great views of the downtown Miami skyline, Fisher Island, the Port of Miami, Miami Beach, and Millionaire's Row. **Art Deco Walking Tours** conducted by the Miami Design Preservation League will take you through the Miami Beach Art Deco District, including visits to several interiors. **Big Bus Miami Hop-On Hop-Off Tours** explore the most popular and scenic sites in the Miami area. The above tours generally operate daily, at a reasonable cost, and no reservations are required. **Miami Culinary Tours** in Little Havana and Wynwood are available on Saturdays.

CUBAN HERITAGE. In **Little Havana**, close to downtown along 8th Street (Calle Ocho), you can find hand rolled cigars (**The Little Havana Cigar Factory**), monuments to Cuban heroes, colorful murals, and elderly men playing dominoes as they discuss politics. The best Cuban food is at the world-famous **Versailles**, but **La Ventanita**, a must-stop for presidential candidates, serves great Cuban coffee, pastries, finger foods, and cigars. The most authentic Cuban guayaberas in town can be found at **Guayaberas Etc.** in Coral Gables.

SHOPPING. Shoppers will love the new luxury shopping center at **Brickell City Centre**. Additionally, the long-established **Mary Brickell Village** shopping area is a few blocks from the hotel.

MIAMI BEACH/FLORIDA KEYS. 20 minutes away is Miami Beach, home to the venerable **Wolfsonian-FIU Museum**, the **New World Symphony**, and world class beaches. For those willing to travel further south, the **Conch Republic of the Florida Keys** awaits.

TRANSPORTATION. Trolleys and the MetroMover have stops near the hotel and are free. They offer great ways to see Miami's art deco past and impressive architectural future. Taxi service, Uber, and Lyft are ubiquitous.

To explore online, and to request hard copies of free Miami guides, see <http://www.miamiandbeaches.com>. Your NAA Host Committee looks forward to greeting you in Miami with a big **HOLA!** We are Linda Byars, Fred Dichter, Paula Knopf, Mark Lurie, Bill McKee, Robert Moberly (Chair), Doug Ray, Marty Soll, and Jeanne Charles Wood. See you soon! 🍹

REGIONAL ROUNDUP

Reported by Kathy L. Eisenmenger
National Coordinator of Regional Activities

No grass grows under any of the Regions' efforts, nor for NAA President Margie Brogan to make the rounds of as many of the Regions' activities as her cross-continental schedule allows. The Regions are deeply in her debt for her profound interest with the many and varied activities. The Regions prove to be robust, both in the connections made in these last few months and by the events and plans for more this year and early 2018. The future is a glass half full for the endeavors the Regions plan to make in the coming year.

CANADA REGION

NAA President Margaret ("Margie") Brogan will be meeting Canadian arbitrators on May 4, 2017. The Canadian conference will be in August 2018.

Regional Chair is Jules Bloch – jbloch@smpatico.ca

CENTRAL MIDWEST

The Region holds a desire for a meeting or a program, but to be held after the NAA annual conference this may. Stay tuned for further developments.

Regional Chair is Jacalyn Zimmerman –
JacalynZimmerman@gmail.com

METROPOLITAN D.C.

Regional Chair is Sean Rogers – rogerssj@erols.com

METROPOLITAN NEW YORK

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

Michigan

The Michigan Region held its Winter/Spring meeting at The Courthouse Grille, 41661 Plymouth Road, Plymouth, MI 48170 on Tuesday, March 28, 2107. Mary Bedikian, Professor of Law in Residence & Director of the Alternative Dispute Resolution Program at Michigan State University and former District Vice President for the Detroit Region of the American Arbitration Association, was the featured speaker.

Regional Chair is Charles Ammeson – cammeson@tplaw.com

MID-ATLANTIC

Mid-Atlantic Members continue to make news: Regional Member and Governing Board Member, Walt De Treux, was honored by the Peggy Browning Fund on March 7 in Philadelphia. Past honorees include President Margie Brogan and NAA Members Alan Symonette and Joan Parker.

The Region will hold its Summer Do-Dah, a collegial gathering with good food and drinks, at the home of colleague Martha Cooper

on July 23rd from 5 p.m to 8 p.m. All members are welcome and are invited to contribute to the repast!" Mariann Schick will pass the torch of Regional Chair after the Region's October meeting.

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

MISSOURI VALLEY

Regional Chair is George Fitzsimmons –
georgefitzsimmonsllc@hotmail.com

NEW ENGLAND

The New England Chapter, in conjunction with the American Arbitration Association, the Labor Guild of Boston, the Labor Relations Connection, and the Labor Employment Relations Association Chapters of Boston, Central Pennsylvania, Maine, and Rhode Island, hosted a program describing the significant changes to the standards for review of grievance settlements and arbitration decisions in the National Labor Relations Board's *Babcock & Wilcox Construction Co.* decision. The 2014 decision now requires advocates and arbitrators to demonstrate that they adequately considered Board law and the settlement or award is permitted under the board law. The presentation included NLRB Deputy General Counsel Jennifer Abruzzo, John Doyle, NLRB Deputy Assistant General Counsel, and NLRB staff members from the the Boston, Albany, and Hartford Regional Offices. The NLRB representatives discussed the General Counsel's Guideline Memorandum concerning the deferral standards. The presentation was held on April 5, 2017 at the Sturbridge Host Hotel and Conference Center, Sturbridge, Maine.

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

NORTHERN CALIFORNIA

Regional Chair is Nancy Hutt – nancyhutt@naarb.com

OHIO-KENTUCKY

The Ohio-Kentucky Region again co-sponsored the 2017 Arbitrator & Advocate Symposium in Columbus, Ohio with the FMCS and Central Ohio LERA (COLERA). The symposium was on April 27-28 at the Crowne Plaza Columbus North. On Thursday morning, April 27th, before the symposium begins, the Region held its annual meeting. President Margie Brogan attended to address the Region, and was also the first speaker at the symposium. NAA members are welcome.

Regional Chair is Daniel Zeiser – danzeiser@aol.com

PACIFIC NORTHWEST

Region 17 is hosting its annual NAA Region 17 Arbitrators Conference on September 11th preceding the Portland (Oregon) LERA's annual conference. NAA Member Luella Nelson leads the planning efforts for the Conference. We know she will do her usual outstanding job. Those interested in visiting beautiful Portland at a fantastic time of the year should hold the date!

Regional Chair is David Gaba – davegaba@compasslegal.com

(Continued on Next Page)

SOUTHEAST

The NAA Southeast Region held its annual regional meeting on February 24-25, 2017 in Orlando, Florida at the Doubletree Hilton Orlando Airport Hotel. The February 24th Advocates Training program, led by NAA Arbitrator Jeanne Charles Wood, attracted forty-four participants. The program showed the NAA produced film "Labor Arbitration in America." NAA SE Regional Chair Phil LaPorte's program continued with a description of the arbitration process. Advocates representing labor and management perspectives addressed participants on the topic of Case Preparation and Presentation. Rich Siwica of Egan, Lev & Siwica (union) and Jay Seegars of Baker Hostetler (management) imparted the critical importance of case evaluation and preparation. Miami-based NAA member Martin Soll concluded the session on evidence and standards of proof.

In the afternoon, the Advocates Training Program divided into three sessions focusing on private sector, public sector, and postal sector cases. NAA Arbitrators Hal Smith and Fred Dichter led the private sector session, Jeanne Charles Wood and Martin Soll led the public sector session, and Harry Gudenberg and Jim Odom led the postal sector session. Each group received a series of case scenarios posing questions on arbitral procedures, standards of proof, and the eternal question of what constitutes "just cause" for discipline. Participants enjoyed the revamped format and commented on the benefits they obtained from arbitrators experienced in that specific sector to discuss the arbitration process and case analysis. The NAA discussion leaders finished the program by having a plenary session for participants to ask questions and to receive definitive answers to the questions raised during each session.

The NAA Southeast held its regional meeting Friday evening with a cocktail reception attended by advocates, arbitrators, and agency representatives to exchange views and socialize. NAA President Margaret Brogan kicked off the Saturday morning program. Her comments focused on the changing nature of work and how the "gig economy" is changing the relationship between workers and employers. Agency updates were provided by FMCS Director of Arbitration Services Arthur Pearlstein, Charles Dorsey of the American Arbitration Association, and Roland Watkins of the National Mediation Board. NAA Board of Governors Member Kathy VanDagens and NAA Member and former CPRG Chair Ed Krinsky presented the subject "Public Perception and Ethical Challenges of Labor Arbitration." A panel discussion by Mr. Siwica and a bargaining unit member provided a highlight with a description of the Dispute Resolution Process at Walt Disney World and the Building Trades, the International Brotherhood of Teamsters, and Actors Equity. A former Disney character regaled the attendees with descriptions of work assignments, job classifications and jurisdictional questions. Disney's Orlando theme park employs over 35,000 employees. The final session featured Steve Myers, Business Agent with the IBT, and Ernesto Mayor, Jr., an attorney with Thompson, Sizemore, Gonzalez and Hearing, who discussed why they use the arbitration procedures they do and from where and why they select the arbitrators they use. During this session, President Brogan explained the procedure to apply

and be admitted to the National Academy of Arbitrators and how NAA members had met the test of ability, acceptability, integrity, and fairness.

The 2018 NAA Southeast Regional Meeting will be held in Atlanta on February 23-24.

Regional Chair is Phil LaPorte – plaporte@gsu.edu

SOUTHERN CALIFORNIA

Regional Chair is Robert Bergeson –
robertbergeson@earthlink.net

SOUTHWEST ROCKIES

The Region held its 40th Annual Labor-Management Conference on February 16-18, 2017 at the DoubleTree Hotel, Dallas Love Field, Dallas, TX. The Region held true to devoting the first day to separate, all-day sessions for experienced and new arbitrators, and training for arbitration advocates. NAA Members William McKee and Kathy Eisenmenger presented a variety of topics primarily for discussion. One of the salient benefits was the kick-off for all 25 arbitrators to introduce themselves, their geographic location, their background before becoming an arbitrator, and where they currently were in their practice. Bill and Kathy were joined throughout the day by NAA Member Rex Wiant to discuss ethics, NAA Member John Sass to discuss how to write an award to stand the test of litigation, and new NAA Member Sidney Moreland to discuss ongoing cases. In the advocates training, NAA Member Kathy Fragnoli marshaled the efforts of NAA Members Maretta Comfort Toedt, I.B. Helburn, Ed Bankston, and former NAA Member Carl Bosland to an energetic group challenged with case scenarios in mock arbitration situations. The training involved pre-hearing issues, case preparation, discipline and just cause, researching tools, remedies, subpoenas, opening statements, arbitrability, direct and cross examination, handling objections, closing statement, enforcing the award, and matters raised by the participants in their discussions. The long day concluded with a plenary session where John Sass introduced FMCS Director of Arbitration Services Arthur Pearlstein and Mr. Patrick Tatum, Vice President of Labor, Employment and Elections in the AAA's Fresno, California office. Messrs. Pearlstein and Tatum provided updates from their respective organizations. An enjoyable evening ensued with a social hour, dinner, and speaker hosted by the Greater Houston Chapter of the Labor and Employment Relations Association. The guest speaker was none other than Mr. Joe Bontke, Outreach Director for the U.S. Equal Employment Opportunity Commission, a professional comedian and frequent speak on LGBT and other workplace discrimination issues.

Chair Tom Cipolla introduced the second day of the conference. Rex Wiant served up a Red Light - Green Light (with a twist) session placing Sid Moreland, Ms. Debra Simmons Never (Arbitrator), David Watsky (labor advocate), and John Jansonius (employer advocate) on the hot seat. Prior to the luncheon, the Region held separate "Poster" sessions on the topics of residency

(Continued on Page 10)

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REGIONAL ROUNDUP *(Continued from Page 9)*

requirements in the public and private sector, theft, discipline and discharge for inefficiency, and religious discrimination including dress codes and religious holidays. NAA Member T. Zane Reeves facilitated the poster session with the efforts of individual session guides, NAA Members Don Petersen, Leroy Bartman, Louise Wolitz, Ruben Armendariz, Beber Helburn, M. Zane Lumbley, assisted by a cadre of talented labor-management practitioners. One of the poster sessions invited attendees to come sit and visit with “newer” arbitrators with a wealth of experience nonetheless. NAA President Margie Brogan, with an entertaining if not highly personal introduction by Tom Cipolla, mapped out the nascent “gig” economy and the developments for employers, employees and employee representatives as luncheon speaker. President Brogan attended the entire conference from beginning to end, a feat not for the faint of heart. The afternoon session provided attendees with selections on topics of “Due Process in Both Public and Private Sector Grievance Arbitrations,” “Airline Labor Relations in Transition,” the “Police and Fire” case update, and “Ethics for Advocates and

Arbitrators.” Saturday morning brought the labor-management relationship practitioners from the U.S. Postal Service, the National Association of Letter Carriers, the American Postal Workers Union, the Mail Handlers Union, and the National Association of Rural Letter Carriers for the traditional open-mike gab-fest with arbitrators.

Save the dates for on February 15-18, 2018, for the 41st annual conference to be held at the Houston Hobby DoubleTree Hotel, Hobby International Airport, Houston, TX. More information may be obtained in the future on the Region’s website at www.naaswr.org.

Regional Chair is Tom Cipolla – tcipollapc@msn.com

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REPORT OF THE CPRG

By Dan Nielsen

The Chair of the CPRG is required to report to the membership via The Chronicle every Spring on the activities of the Committee, including case activity. Last Spring, a production error prevented that report from being presented. (The production error was that I failed to produce the report by the deadline.) That material was instead presented in the Fall. Since then, fortunately, there has been very little case activity to report.

Case Activity

A generalized complaint of corruption against a member serving as a grievance arbitrator in the postal sector was brought by an individual complainant. After a great deal of correspondence, the Chair dismissed the complaint for lack of meaningful cooperation in the investigation.

A would-be complainant contacted the Chair about a perception that a member had engaged in ex parte communications and had provided different versions of an Award to the complainant and the employer. After some questioning, it became apparent that, among other things, the complainant was engaged in an employment arbitration, not a labor arbitration, and was confusing the arbitrator with the AAA case administrator. This case was not pursued.

Beyond the usual activity of responding to member inquiries (professional responsibilities is one area in which it is NOT easier to ask for forgiveness than it is to ask for permission – call beforehand!!), the following has been the most significant of the Committee's activities:

Complaint Guide

As mentioned in the last column, the Committee has decided that a plain language guide to the Academy's complaint procedure should be devised for posting on NAARB.org, and perhaps ArbitrationInfo.com, explaining what is and is not a complaint, a basic guide to

the proper contents of a complaint, and the process the Committee uses to follow up on complaints once they are filed. The Committee's feeling is that a guide will not increase the likelihood of a complaint being filed, given that anyone with access to Google can find the Code and the By-Laws, but that a guide should help to narrow and focus the scope of the complaints we receive, and allow complainants to have greater confidence in the process. A draft is in process under the capable guidance of Susan Meredith and Melissa Biren, and should be finalized in Chicago.

Inside Baseball Stuff

The Committee has identified several corrections that must be made to the CPRG Policies and Procedure Guide, to clarify that a Hearing Officer may impose the penalties of advice or private reprimand without first consulting with two past Presidents of the Academy. That is not a substantive change, but the current wording is outdated and confusing. We would also define what the penalty of "Advice" amounts to, since it is not defined anywhere. The Committee would define "Advice" as:

Advice: Advice is the lowest level of discipline, suitable for violations that are deemed minor and/or inadvertent. Advice may include guidance about what the violation was, and how to avoid such violations in the future. It may also include directions to take remedial action, such as sending a letter of apology or carefully reviewing the Code.


The Committee is also recommending an amendment to the By-Laws to correct an evident drafting error. The By-Laws use the term "censure" in a section where the clear intent is to refer to "reprimand." This is simply a correction, and not a substantive change.

The Committee has also resolved to take steps to preserve the institutional memory of the CPRG in an easily accessible format for incoming members and future Chairs. Over the next year, a com-

prehensive document will be prepared, drawing together all the significant policy reports and papers related to the Code and its development. This should provide context and some form of legislative history for the CPRG as it seeks to administer and enforce the Code in the future.

Finally, the Chair undertook an expedition to the wilds of Cortland last summer, to enjoy the hospitality of Katie, Suzanne, and David, and also to read through the accumulated files of the CPRG, which are stored in a fireproof cabinet in the Operations Center. (I am not making that up – I have pictures of the cabinet on my phone.) That information has been abstracted into a report on the history of penalties imposed under the Code, to provide guidance to Hearing Officers and CPRG Chairs, and to seek consistency in the penalties members may experience if they violate the Code.

Educational Efforts

In both Denver and New Orleans, the Committee had the pleasure of presenting at the FEC on the issue of, naturally enough, professional responsibilities. In Denver, a panel including Rob Badgley, counsel for our liability carrier, Sara Adler, Chair of the Legal Representation Fund, and yours truly for the CPRG, discussed the full range of how you can get into trouble, how we can help you avoid it in the first place, and how to get out of trouble if avoiding it doesn't work. In New Orleans, former CPRG Chair (and Past President) Shyam Das and current CPRG member Susan Grody Ruben, joined me in presenting an update on CPRG activities and a discussion of a series of scenarios. This was a fairly easy assignment since a group of 60 arbitrators in a room will have 90 opinions on any ethics scenario, and will cheerfully share those opinions. Of the eight scenarios, roughly three and half were discussed by the time the session drew to a close. 

Make the Best Use of the Legal Representation Fund

By Luella Nelson, LRF Alternate Coordinator

In response to recent inquiries into Legal Representation Fund (“LRF”) coverage by members who have been sued, subpoenaed, and/or named as the forum in suits seeking to enjoin an arbitration hearing, we want to remind members of the LRF and the policy put in place by the Board of Governors in 2011, and offer a few options and suggestions.

The LRF policy requires members who may make an LRF claim to contact the LRF Coordinator (Sara Adler) or one of the Alternate Coordinators (Luella Nelson or Barbara Deinhardt) before contacting the insurer. Failure to do so can be grounds for denying a claim for LRF coverage. The sooner you make the contact, the better, even if you are not sure you will need LRF coverage, so we can offer advice (or, at least, sympathy) and have a file open if coverage becomes necessary. The contact information is:

Sara Adler: sadlerarb@earthlink.net
or call (310) 474-5170

Luella Nelson: luella.nelson@SBCGlobal.net
or call (503) 281-8343

Barbara Deinhardt: bdeinhardt@aol.com
or call (917) 763-0906

Please follow up with an e-mail to Sara at sadlerarb@earthlink.net, preferably attaching a scanned copy of whatever was served on you. If you are unable to scan the documents, please fax a copy to Sara at (310) 474-6919. In contacting any of the LRF Coordinators by telephone, please remember that Sara and Luella are on the West Coast, while Barbara is on the East Coast, and time your call accordingly.

The policy requiring members to contact the LRF first comes into play at least once in most years. If the member has already contacted the insurer before contacting the LRF, a recommendation to the President and Secretary-Treasurer against LRF coverage is very likely, and LRF coverage is very unlikely. The LRF Coordinators remain available to give reassurance and brainstorm options, even if the member jumps the gun on contacting the insurer, but calling one of us first allows us to offer the maximum available assistance. We have a few recommendations to facilitate your dealing with being sued or subpoenaed. Number one is to have professional liability insurance. Members of all levels of experience have been named in suits and/or subpoenaed. We have had members incur legal costs running into five figures even where the suit was without merit. Several organizations offer neutral’s insurance to members. Complete Equity Markets developed a policy specifically for NAA members, with a higher deductible that matches the maximum fees the LRF may reimburse if coverage is approved (\$3,000) and a correspondingly lower premium. It is a judgment call whether to opt for that coverage or take coverage (with Complete Equity or

another insurer) with a smaller deductible. If you are doing a lot of other kinds of ADR work, you may want the smaller deductible, since the LRF reimburses only in cases involving labor-management arbitration. Also, consider the various riders available; for example, coverage for depositions and discovery or for ERISA work. The second recommendation is to shred the exhibits and your notes, and erase or delete any recordings (analog or digital), as soon as you issue the award. (If you have already been subpoenaed, scratch that; you must retain whatever has been subpoenaed until the court has ruled on the subpoena.) Strip your file of everything except correspondence regarding administrative matters. If you use a computer for notes, correspondence, etc., it may be difficult to get rid of all the copies that wind up squirreled away on the hard drive, in e-mails, and in other digital spaces, but do your best. Our third recommendation is to consider whether someone may provide legal representation in order to protect their own interests. For example, if the AAA is administering the case, it may use its attorneys to respond. Then, the AAA may want its attorney to respond on your behalf. Often in AAA cases the Arbitrator is served at AAA; this is not actual service on the Arbitrator, but may be a good time to call the LRF Coordinators. A fourth recommendation is to remember that the LRF Coordinators do not offer legal advice or representation to members ourselves; we process the claims for representation costs, make recommendations for or against coverage to the NAA President and Executive Secretary-Treasurer, and do some hand-holding and brainstorming. Legal representation comes from attorneys, not from us. A final recommendation is, if you are served with legal documents, take a deep breath and remember it will come out OK. Then pick up the phone and call an LRF Coordinator. 📞

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PREQUEL: Sara Adler's History

By Nancy Kauffman

The newest additions to the History Committee's interviews of former NAA Presidents and others who have contributed significantly to our field include Jane Devlin's interview of Michel Picher and Fred Horowitz' interview of Sara Adler. Here is an excerpt from Sara's interview, which was conducted in December 2016.

FRED: Sara, you've had a wonderful history with our Academy and you served productively in a variety of roles. Why don't you tell us about how you got interested and how your career within the Academy evolved.

SARA: Well, I got interested because Joe Gentile told me I should get interested in it. Frankly, I'd never heard of the Academy before Joe introduced me to it. They had one, as I recall, disastrous financial experience of meeting in Los Angeles and never went back. But Joe did take me to that one. I think I attended one other meeting as an intern. I knew from Joe that that was something I should aspire to. It was always on my radar in my arbitration profession. For me it has been a wonderful place to get to know other people who do what we do and to learn to do it better. It's never been a principal place for me to find clients or build a practice or do any of that. That, I think, was important to some people in the Academy and maybe it worked for them. It never worked for me. The local organizations were much more fruitful in terms of building relationships and developing work.

I reached the level of President in a way that, I think, was fairly unique in the sense that I never served on any major committee. I did the things in the Academy that I was good at and that I liked doing. I was on and chaired program committees and I was good at that. I was editor of *The Chronicle* for a number of years. In fact, I moved it from a newspaper to a newsletter, which I am very proud of even though some people still mourn the other. But if you're going to take it with you to read, it is a whole lot easier in its current format, although now, of course, you can read it online. I served off and on as the legal representation point person for the Academy, I think successfully. It's been a job I have enjoyed. I never served on CPRG. I never served on Membership. I never did those kinds of committees. I always thought there were a lot of people who were better qualified to do those tasks and I was really good at what I was doing. It's unusual in the Academy to move up from those sorts of lesser known committees or project assignments. Then I moved through the Board of Governors and Vice Presidency. I served on the Research and Education Foundation and as its President. I was around and I was active.

For me, being active is the only way that organizations work. That's a hard lesson for people to learn. Some people come to one or two meetings and they don't understand why they're not one of this "in group" which isn't an "in group" except to the extent that people put in time and effort and have gotten to know each other. It's a great organization that may have been terribly important at an earlier stage and now I think it's nice for those of us who were in it. I don't think, with

the exception of the places that Arnie Zach got it written into law, that membership is hugely important as a job-creating device. Most people in the field don't know what the NAA is or what it represents in integrity and experience.

FRED: I've always viewed the Academy, among other accomplishments, as being the gatekeeper of Labor-Management Arbitration. I don't know whether you share that view?


SARA: I think historically it has been terribly important. Ben Aaron was in from the beginning and was local so I got to know more about the history from Ben than I did from some of the other early greats. It started out being somewhat wild-west. In fact, the Code of Professional Responsibility came from some group of the early Academy deciding that they had to have ethics rules because of what some of their members were doing. We now talk about how wonderfully ethical we are and how we enforce the rules of ethics and how we sort of drive it in the Labor-Management community. All of which is true. But, at least if Ben is to be believed, and I do believe him on this subject, it's not because inherently all labor-management arbitrators were always ethical all of the time.

I think that the Code of Professional Responsibility has served us extraordinarily well. It serves us best when not only do we adhere to it, but also when AAA and FMCS actively enforce it because they have a much broader reach than we do: It covers all of their panel members, most of whom are not and likely never will be members of the Academy.

FRED: When you were President or in another one of your leadership roles, what is your proudest accomplishment other than converting *The Chronicle* to a newsletter?

SARA: Hopefully, the thing that will turn out was the most important thing that I did was to get started the NAA-University of Missouri's journalism website explaining the reality that "this is arbitration vs. this is mediation." Not only is it well done (which it is), but it will get known in the journalistic profession so that there will be more fact-based reporting and less of the kind of uninformed and too often sensationalistic reporting and/or confusion between arbitration and mediation. It drives me crazy, I think it drives most of us crazy, when a journalist uses the terms arbitration and mediation alternately or wrongly. Arbitration is a topic that is currently subject to enormous journalistic coverage.

FRED: At the time of this interview our University of Missouri website is just gaining some traction. It is relatively new. But what was your role in creating that?

SARA: Well, it was getting the Board of Governors to agree to all of the bits and pieces that we had to commit to in order to get the project off the ground. That was during my Presidential year. It was also a time in which it was beginning to be clear that arbitration was going to be under fire and, God knows, that's only gotten worse in the few years since. 

REMEMBERING...

Arvid Anderson

By Mark Thompson

Arvid Anderson, one of the most prominent labor relations neutrals in the United States and a past president of the Academy, died in July 2015 at the age of 94 in Minneapolis. He was especially known for his role in achieving labor peace during the New York City government financial crisis in the 1970s.

A native of Hammond, Indiana, Arvid's interest in labor peace was first inspired when as a teenager he witnessed the violence related to a steelworkers organizing campaign in Indiana and the Chicago Memorial Day Massacre of 1937. He also experienced the horrors of war while a member of the Army Air Force in World War II. Part of his service was spent as a POW after his bomber was shot down by the Germans.

After the war, Arvid studied labor economics at the University of Wisconsin and then graduated from law school at the university. He returned to active military duty during the Korean War as a navigator and also served as an officer in the Judge Advocate General's branch. After his military service, Arvid became a commissioner of the Wisconsin Employment Relations Board, when the state was a pioneer in extending collective bargaining rights to public employees.

In 1968, he was invited to head the newly-formed New York City Collective Bargaining Board, a tripartite body with three neutral members. In addition to Arvid, the other neutrals were Saul Wallen and Eric J. Schmertz. Arvid's tenure began with a strike by city sanitation workers, which followed walkouts by transit and education workers. The Board was empowered to mediate disputes and issue non-binding recommendations after fact-finding. These disputes had a high profile in New York politics, as Mayor John Lindsay and Gov. Nelson A. Rockefeller both were involved in attempting to achieve settlements. In 1972, New York State banned strikes by most public employees, and New York City required that disputes be referred to arbitration after the Board declared an impasse. Arvid wrote many interest arbitration awards.

During his service with the Collective Bargaining Board, Arvid was an active arbitrator and member of the Academy. He was president of the Academy in 1987. Among his arbitration clients were Major League Baseball and the MLB Players Association. In 1986, he famously awarded New York Yankee Don Mattingly \$1.975 million, the highest award in the history of baseball salary arbitration at that time. The award aroused the wrath of the Yankees' owner, George Steinbrenner, who thereby enhanced Arvid's reputation as a neutral, although not his tenure as a baseball arbitrator.

Arvid was described as a "quiet Midwesterner" with a droll sense of humor. After an official of the New York City government threatened to appeal one of his awards, to the courts, to the Pope, if necessary, Arvid replied that he had already been to Rome and cleared the award with the Holy Father. The award stood as issued.

(Continued on Next Page)

Rodney E. Dennis

Submitted by Douglas Bantle

Rodney Dennis died at home in St. Simons Island, GA, on September 8, 2016. He was born on January 26, 1928, in Sayre, PA, the son of Harry M. and Josephine Dennis. A member of the National Academy of Arbitrators since 1978, Rodney was a nationally known Arbitrator and Mediator. He served in the US Air Force between 1946 and 1948, earning the Word War II Victory Medal and the Army of Occupation Medal. Upon his return from service, he graduated from Harpur College (BA) and Elmira College (MA). Following employment with the General Electric Company, he became Assistant to the Vice President for Research at Cornell University in Ithaca, New York. He then moved on to the New York State School of Industrial and Labor Relations at Cornell, initially acting as the Administrative Director in the School's Extension Division and then as a Senior Extension Associate. This was the time when he also began work as a Mediator and Arbitrator, a career he assumed full time in 1983. Although Rodney worked in a large variety of industries while on the panels of the American Arbitration Association, Federal Mediation and Conciliation Service, and the National Mediation Board, as the son of a railroader, he had a special affection for friends and colleagues in the rail industry from both labor and management. He served, for example, as the Chairman of two Presidential Emergency Boards with the Long Island Railroad and the UTU and Clerks. He was also Chairman of the National Arbitration Board for Class I Railroads and Engineers. With his wife, Charlotte Gold Dennis, he lived at various times in New York City; on Martha's Vineyard; in Palm Beach Gardens, FL; and in Chilmark, England. Rodney was predeceased by his former wife Ann and their two sons, Michael and James. He is survived by his wife Charlotte, his son and daughter-in-law, John and Judith Dennis of Apopka, Florida, and his brother James of Trumansburg, New York.

Richard Mittenthal

By George Roumell

Last winter we lost a great friend and arbitrator when Richard (Dick) Mittenthal died at the age of 89. Dick's life could be described by analogy to a relay runner. He began his career working with the legendary arbitrator Harry Platt and, within a short time after working with Arbitrator Platt, Dick Mittenthal's career took off for he was the fastest and the best on the relay team.

Over a career spanning many decades, Richard Mittenthal became an umpire in a number of industries, including his legendary service as the umpire between the United States Postal Service and the American Postal Workers Union where he established the interpretation of their many contracts that have continued to be followed to this day. Along the way, Dick served as President of the Academy and we, here in Michigan, at the State Bar only last year recognized his great contributions to the arbitration profession when the Labor and Employment Section of the State Bar awarded Richard Mittenthal the Distinguished Service Award recipient which has only been awarded in the history of the Bar to approximately 15 persons.

One could make the argument that though Richard Mittenthal has passed, he will always be with us – not only because of his published opinions, but his landmark article which has been cited many times and continues in its vitality even though published more than 50 years.

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REMEMBERING... RICHARD MITTENTHAL (Continued from Page 16)

ago, namely, Past Practice and the Administration of Collective Bargaining Agreements, 59 Michigan Law Review 1017 (1961).

To understand the meaning of Richard Miententhal's career as an arbitrator and his effect on the professional life of all of us, reference is made to the comments in an obituary in honor of Richard Miententhal written by Arbitrator Barry Goldman in the Michigan Labor and Employment Lawnotes (Spring 2016) wherein Arbitrator Goldman wrote:

To honor his memory, I want to quote two passages from his autobiography, "A View from the Middle of the Valley":

In the early 1990s, the International Association of Machinists struck two railroads. The rail industry's response, given the industry-wide bargaining, was to lock out the machinists at all of the other railroads. The result was a nationwide shutdown of the freight railroad system. The U.S. Congress regarded this shutdown as a national emergency and enacted legislation to stop the strike and require all parties concerned to submit the dispute to binding arbitration. Moreover, Congress called for an arbitration process similar to what happens in baseball salary disputes, "all or nothing," unless the parties agreed to some other more conventional process. That meant each side would list the changes in wages and working conditions it sought and the arbitrator would be required to accept one list or the other. No arbitral compromise, no middle ground, was possible in such circumstances.

I was appointed the arbitrator by the President although I am certain the actual appointment was made by the Federal Mediation & Conciliation Service. This was a high-visibility assignment. Before the hearings began, I met with the parties and their attorneys. I soon realized that what Congress had mandated was sheer madness. Any decision I made under an "all or nothing" standard, given the demands being made by the parties, would have had a profound and destabilizing impact on the parties relationship and would negate many longstanding arrangements. I attempted to persuade the parties to choose instead conventional interest arbitration that would allow for the gradualism and compromises on which collective bargaining rests. Long discussions followed, almost all of them outside my presence. One or more weeks passed and the parties then advised me that they had accepted my advice, had returned to the bargaining table, and had successfully negotiated an agreement to end the dispute. However, it appeared that one or both of the parties did not wish to acknowledge publicly that they had reached agreement. They asked me to write an award incorporating the terms of their agreement as if I had decided the case on its merits. I had no objection for the legislation creating this Board expressly empowered the parties to choose some other arbitration procedure in dealing with this dispute. Moreover, there is an old arbitration adage, "A bad agreement is better than

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a good award.” Any agreement voluntarily reached by the parties is always preferable to one imposed upon them by an arbitrator.

Toward the end of the book Dick quotes this from Judge Learned Hand:

[A] judge's life, like every other, has in it much of drudgery, senseless bickerings, stupid obstinacies, captious pettifogging, all disguising and obstructing the only sane purpose which can justify the whole endeavor. These take an inordinate part of his time; they harass and befog the unhappy wretch, and at times almost drive him from that bench where like any other workman he must do his work. If that were all, his life would be mere misery, and he a distracted arbiter between irreconcilable extremes. But there is something else that makes it – anyway to those curious creatures who persist in it – a delectable calling. For when the case is all in, and the turmoil stops, and after he is left alone, things begin to take form. From his pen or in his head, slowly or swiftly as his capacities admit, out of the murk a pattern emerges, his pattern, the expression of what he has seen and what he has therefore made, the impress of his self upon the not-self, upon the hitherto formless material of which he was once but a part and over which he has now become the master. That is a pleasure which nobody who has felt it will be likely to under-rate.

Thank you, Arbitrator Mittenenthal, for showing the rest of us how it's done.

Barry Goldman said it all. But perhaps the reader of this obituary would like to know how a group of lay persons, who are neither lawyers nor arbitrators, felt about Dick. He was a member of a discussion group here in Detroit. Recently, that discussion group, discussing world affairs, made the comment, “Well, that's what Dick thought. He believed in one world, one world at peace”. Now, that is what an arbitrator is all about, particularly one who was one heck of a legendary tennis player around Michigan.

I join Barry Goldman in saying we will miss our friend and fellow Michigander very much. He was special! 

IN MEMORIAM

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

Nicholas Duda

NAA Member since 1988

Ernest Weiss

NAA Member since 1988

SLATE OF OFFICERS AND GOVERNORS 2017-2018

PRESIDENT-ELECT

DAVID A. PETERSEN

Pittsburgh, PA

David is a full time arbitrator, mediator and fact finder in Pittsburgh, Pennsylvania.

David has been a member of the National Academy of Arbitrators since 1986 and he has served as the Academy's Executive Secretary-Treasurer and as a member of the Academy's Executive Committee for the last fifteen years.



David has been arbitrating in the public and private sectors since 1979. He serves on a number of direct-appointment panels of arbitrators and is listed on the rosters of neutrals maintained by the American Arbitration Association, the Federal Mediation and Conciliation Service, the National Mediation Board, the Pennsylvania Bureau of Mediation, and the Pennsylvania Labor Relations Board.

David is a member of the College of Labor and Employment Lawyers, the Allegheny County Bar Association, the American Bar Association, the Association for Conflict Resolution, the Labor and Employment Relations Association, the National Association of Railroad Referees, and the Pennsylvania Bar Association.

David graduated from the University of Kentucky (BA), the University of Pittsburgh (MBA), and the Duquesne University School of Law (JD).

David and his wife of forty-four years, Angela, have a daughter Elizabeth who lives in Chicago, IL and twin sons Matthew, who lives in Port Matilda, PA with his wife Mehgann and daughters Lilly and Emma, and Robert who lives in Fort Worth, TX with his wife Melissa.

VICE PRESIDENTS

Second One-Year Terms

LAURA J. COOPER

Minneapolis, MN

JAMES J. ODOM, JR.

Birmingham, AL

VICE PRESIDENTS

First One-Year Terms

WILLIAM A. MARCOTTE

Toronto, ON

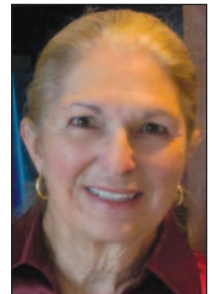
William A. Marcotte has been extensively involved in labour relations since 1974. Academic experience includes his doctoral thesis (University of Toronto, 1980) on the constructed reality of the collective agreement negotiations process from a phenomenological perspective and lecturer and visiting professor appointments at the University of Toronto and University of Western Ontario in the 1980's where he taught collective bargaining courses at the post-graduate level. Bill's research experience includes involvement as: a chief researcher, a research director, member, and chair of various ad hoc and legislatively-created committees and task forces on collective bargaining legislation and issues. His work experience in the field includes: union executive and negotiator, employer-side negotiator, fact-finder, mediator, Federal conciliation board chair, and of course, arbitrator. In this latter role, his full-time practice of some thirty years includes both provincial and Federal jurisdictions. He became a member of the NAA in 1998.



ELIZABETH C. WESMAN

Camas, WA

Betsy Wesman is a full-time labor arbitrator, based in Camas, Washington. She is also an Emeritus Professor from the Martin J. Whitman School of Management at Syracuse University, where she taught Labor Relations, Arbitration and Human Resource Strategy courses for 20 years.



She was admitted to the Academy in 2001 and is listed on several labor arbitration panels, including the Federal Mediation and Conciliation Service, the American Arbitration Association, the National Mediation Board, the Oregon Employment Relations Board, and the Washington Public Employment Relations Commission. Betsy is immediate past President of the NAA Research and Education Fund and past President of the National

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VICE PRESIDENTS

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Association of Railroad Referees. She holds a Ph.D. from the New York State School of Industrial and Labor Relations at Cornell University. Her academic research and published works have been primarily in the areas of conflict resolution, employment discrimination, and arbitration of Title VII disputes. She has also lectured at numerous management and labor training programs and in the School of Professional Psychology at Pacific University in Portland Oregon.

Betsy began her arbitration practice in Upstate New York,

moved with her husband, Bob Lind, to North Carolina – so he could “commute” to London for 9 years – and they both landed with relief finally in the Northwest close to children and grandchildren. Moving twice in ten years was a challenge in keeping up her practice, but it was also gratifying to find that, in very varied parts of the country, most advocates still remember how much courtliness contributes to the smooth running of an arbitration hearing. Betsy’s off-duty passion and mental recreation is her horse, Baronesa, a black Andalusian mare, and they are currently competing at the intermediate level in Working Equitation, an Iberian sport that tests the all-around versatility of horse and rider.

BOARD OF GOVERNORS

Three Year Terms

STEPHEN F. BEFORT

Minneapolis, MN

Stephen F. Befort is the Gray, Plant, Mooty, Mooty, and Bennett Professor of Law at the University of Minnesota Law School. He practiced in the labor and employment field extensively before joining the University of Minnesota Law School faculty in 1982. Professor Befort teaches courses in Labor Law, Employment Law, Employment Discrimination, Alternative Dispute Resolution, Disability Law, and a seminar on Advanced Topics in Labor and Employment Law. He has authored five books and more than 40 articles on labor and employment subjects. He has twice been selected as the Law School’s teacher of the year. He is Co-Editor of the ABA Journal on Labor and Employment Law and a fellow of the American College of Labor and Employment Lawyers. He currently serves as Chair of the U.S. Branch of the International Society for Labor Law and Social Security and as Co-Chair of the Labor Law Group.



Steve Befort also is an active arbitrator and mediator. He serves on both federal and state arbitration rosters as well as on several permanent panels. He was elected to the National Academy of Arbitrators in 2004 and served for three years as a co-editor of the Academy’s annually published Proceedings. He is a co-author of: Laura J. Cooper, Mario F. Bognanno, & Stephen F. Befort, *More Than We Have Ever Known About Discipline and Discharge in Labor Arbitration: An Empirical Study* (Vandeplas Publishing 2015).

RICHARD D. FINCHER

Paradise Valley, AZ

Richard Fincher is a full-time mediator and arbitrator of labor, employment, and commercial disputes. His primary practice includes labor and employment arbitration. He serves on the Labor, Commercial, Mass Claims, and Employment Panels of the American Arbitration Association. He serves on the labor arbitration panel for FMCS and the National Mediation Board.



For nine years, he served as Chairman of the Phoenix Employment Relations Board (PERB) and is currently Chair of the Public Safety Disability Board for the Town of Paradise Valley, Arizona.

Richard is a former Board member for the Labor and Employment Relations Association (LERA) and the Association for Conflict Resolution (ACR). He has authored several journal articles on arbitration and mediation, and is co-author of the text “Emerging Systems for Managing Workplace Conflict,” published by Jossey-Bass.

He is currently an Adjunct Instructor at the Scheinman Institute on Conflict Resolution at Cornell University, teaching in the neutral education and student clinical programs. From 2009 to 2014, he served as a USAID Scholar in Workplace Dispute Resolution for the country of Vietnam. In 2013, he was appointed as Director of the Asian Labor Arbitration Project (ALAP) at Cornell. In 2014, he lived in Vietnam for a semester as a Fulbright Scholar. He has served

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BOARD OF GOVERNORS

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as a visiting instructor in Beijing, Wuhan, and Anhui, China, and is researching comparative labor arbitration in China and Cambodia.

Richard was raised in Rochester, NY, graduated from Cornell University, and was employed by the American Arbitration Association in Washington, D.C. He later graduated from the DePaul University College of Law, having interned for Region 13 of the NLRB. He practiced labor and employment law in Chicago for many years. Living in Arizona, his hobbies include hiking the mountains and taking his jeep off-road for an adventure. His email is rdf@work-placeresolutions.com.

MICHELLE MILLER-KOTULA

Washington, PA

Michelle has served as a full-time labor arbitration for 11 years in both the public and private sectors. She has been a proud member of the National Academy of Arbitrators since 2012. She serves on numerous arbitration and mediation panels including the Federal Mediation and Conciliation Service, the American Arbitration Association, the National Mediation Board, the Pennsylvania Bureau of Mediation, the Pennsylvania Labor Relations Board, the Ohio State Employee Relations Board, and numerous private sector, public sector, and education permanent panels. She is the region chair of the Western PA region of the NAA, served as the Host Chair for last year's annual meeting in Pittsburgh, and is currently on the Program Committee, Outreach Committee, and the Advocacy Continuing Education Subcommittee Training chair-designate.

Michelle said being part of the NAA has been a highlight in her career as a labor arbitrator. She loves having the opportunity to network with her arbitrator friends she has met over the years—all who have been very supportive to her career in labor arbitration. She enjoys the opportunity to visit different cities for the NAA meetings.

She began her career in labor arbitration by following in her father's footsteps. Bill Miller, her mentor, is also a member of the NAA and encouraged her early on to have the goal to become an active member of the NAA. Michelle previously spent 16 years working in local government in Washington County, Pennsylvania where she was the Director of Human Resources. She holds a BA degree in Business Management from Saint Vincent College located in Latrobe, PA, and an MA from Saint Francis University. She has been certified as



a professional in Human Resources for over 20 years. She is an active member of the Southwestern PA Chapter of LERA and serves as an officer in the organization.


She was the first women President of the Saint Vincent College Alumni Association and serves on the alumni council. She is married to Jeff Kotula who is the President of the Washington County Chamber of Commerce. They have two daughters, Malley (age 12) and Maeve (age nine). She is the current President of the Joe Walker Elementary School Parent Teacher Organization and coaches youth cheerleading. She enjoys spending time with her family, cooking ethnic as well as new recipes, and traveling to new destinations.

JEANNE M. VONHOF

Chicago, IL

Jeanne M. Vonhof has served as a labor arbitrator and mediator for more than 25 years, with offices in Chicago, Minneapolis, and Denver. In the private sector she serves on permanent arbitration panels in the steel, auto, mining, manufacturing, transportation, grocery, hotels, food service, construction, and communications industries. She serves on permanent arbitration panels with employers and unions working in the public sector as well, including state and local governments, school districts, including charter schools, and transit authorities, and hears many police and firefighter cases for individual districts. In the federal sector she has served on permanent panels for more than 20 years, and has served as an arbitrator hearing grievances at the national level for several federal agencies. She also hears grievances between the Postal Service and several Postal unions.

Ms. Vonhof also teaches labor and employment law courses at several Chicago-area universities, including beginning and advanced courses on arbitration, and courses on the Family and Medical Leave Act, drugs and alcohol, threats and violence in the workplace, sexual and racial harassment, social media, the Americans with Disabilities Act, and other issues. She is a frequent speaker at regional and national conferences on arbitration-related issues. In addition, she has helped train arbitrators and mediators on how cultural diversity affects the mediation and arbitration process.

Ms. Vonhof also helps parties design dispute resolution systems to fit their needs, and has served as a mediator, arbitrator, and fact-finder in many different settings. She has been a member of the National Academy of Arbitrators since 1998, and has served on various committees, including serving for five years on the Program Committee for the annual meeting. Before becoming an arbitrator and mediator, she worked as a labor and employment lawyer in Chicago and Pittsburgh. 



Plan to Attend

2018 Annual Meeting

May 23 – 26, 2018



**The Fairmont Hotel Vancouver
Vancouver, BC**

Plan to Attend

2019 Annual Meeting

May 29 – June 1, 2019



**Loews Philadelphia Hotel
Philadelphia, PA**

Mark Your Calendar

2018 Fall Education Conference

October 26-28, 2018



**Sheraton Austin Hotel at the Capitol
Austin, TX**

25 & 40 Year NAA Members To Be Recognized in Chicago

The following members were admitted to the National Academy of Arbitrators in 1992 & 1977 and will be recognized at the Annual Business Meeting on May 27, 2017 at the Fairmont Chicago, Millennium Park:

25 Year Members

Charles A. Askin
Walnut Creek, CA

Diane Dunham Massey
Sugar Land, TX

Mark Berger
Kansas City, MO

Donald S. McPherson
Kenwood, CA

Terry A. Bethel
Bloomington, IN

Allen Ponak
Calgary, AB

Sheila S. Cole
Delmar, NY

Nancy D. Powers
Minneapolis, MN

Laura J. Cooper
Minneapolis, MN

Michael Prihar
Camarillo, CA

Louis V. Imundo, Jr.
Dayton, OH

James L. Reynolds
Sanibel, FL

Rose F. Jacobs
Rosedale, NY

Elliott D. Shriftman
Southampton, NY

Homer C. La Rue
Columbia, MD

Paul D. Staudohar
Lafayette, CA

Marilyn M. Levine
Valley Stream, NY

Bruce Welling
London, ON

40 Year Members

David L. Beckman
Louisville, KY

Barnett M. Goodstein
Dallas, TX

Gerald Cohen
St. Louis, MO

J. Joseph Loewenberg
Wynnewood, PA

Joseph F. Gentile
Thousand Oaks, CA

John E. Sands
Roseland, NJ

Donald P. Goodman
Fort Worth, TX

Clifford E. Smith
Ames, IA

THE PRESIDENT'S CORNER



By Margaret Brogan

Forgive me if you have heard this before, but a while back I had one of those terrible, horrible, no good, very bad arbitration days. It started out with my getting up too early, never one of my talents, and catching a morning train to a hearing. It was not until I entered the station, limping, that I realized I had two different shoes on – one brown, one black, one high heel, one no heel. I hoped I would get to my location in time to buy a new pair, but that didn't happen. My Amtrak train was delayed and then died on the tracks, requiring me to climb from one train to another on a wet track in the pouring rain. The conductor told me I was "light on my feet" which I knew was operator-speak for "why are you wearing two different shoes?" Calamities continued: an uncomfortable jostling on a crowded train; a harrowing cab ride with a mean driver in the days before GPS, when we all got lost; and a very late arrival to the hearing. I was greeted by, "You do know, Ms. Arbitrator, that you are wearing two different shoes?" followed by, "You were so late we settled the case." I limped home.

Being a new Academy member at the time, I hesitantly shared that story with Academy folks on the Internet. The response was warm and sympathetic. It seems many have similar stories, and folks shared their own moments of comic miscues. It was one of my first experiences of being struck by the kindness and collegiality of the Academy.

Today, about twenty years later, my time as President is

drawing to a close. This is my last column, and I am quite aware of the honor and responsibility that comes with this opportunity to communicate with all of you. I have so enjoyed traveling from Region to Region, and am struck once again with the incredible warmth, kindness, and hospitality of our members. I have relished seeing old friends in their neighborhoods, and meeting new ones. The Southwest/Rockies, Southeast, and Ohio/Kentucky Regional conferences are true role models for all of us in education, training, and networking. They draw advocates and newer arbitrators and bring positive visibility to the Academy. I also spent a good part of a week joining our friends to the North in Toronto who, as we know, are highly accomplished professionals and very fun people. We are lucky to have them in our organization. When it was time to go it was indeed hard to leave Canada (for many reasons)! We all may not see each other at national NAA meetings, but we are friends and colleagues under the same tent – individuals who perform the great service of workplace dispute resolution, often with passion. I will always be proud of this work.

I have described in prior columns my Outreach Initiative, now chaired by Walt De Treux, an effort to assist Regions in improving mentoring and training models, and find ways to get advocates and appointing agencies to buy in, thereby helping those newer arbitrators we believe could be successful to eventually become NAA members. As I have

traveled, I have marveled at the creative mentoring efforts already in place. The Southwest/Rockies and the Northern California Regions are perfect examples of where experienced arbitrators do not "pull-up-the-ladder," but do what they can to help newer arbitrators. They encourage, train, introduce them to advocates, recommend them for panels, and assist them with that dreaded NAA application. This is happening many places elsewhere for sure, and I am excited about the results of the Outreach Initiative's first year of information gathering. Beyond sharing that info, we hope to make a difference in helping the Regions connect the dots between the newer arbitrators and appointing agencies and advocates.

That takes me back to my initial shoe saga. We all have stories and, while many are common, most are unique to us. Those stories are shaped by our experiences and background, by our culture and color, by our gender, by our sexual preferences, and by our age and physical limitations. We only benefit as an organization when folks who come from different paths and places join us, our Canadian members a prime example. A goal of the Outreach Initiative is to implement the idea of increased diversity and inclusion in the arbitrator ranks – a concept we see implemented in companies, public employment, unions, law firms, the judiciary. It is my view that we are stronger and more relevant when we are open to diversity of all types, when we respect and treasure age and experience, and when we work together and share our stories.

Come to Chicago and tell your story. I will do my best to wear matching shoes. 