National Academy of Arbitrators
WINTER 2017

The Chronicle

MARK YOUR CALENDARS

PLAN TO ATTEND...

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
Loews Philadelphia Hotel
Philadelphia, PA

"The New World of Work"

By Elizabeth Neumeier, Program Chair

When the program committee first began planning for May 2017, we knew that the world of work was changing rapidly. It seemed that every week there was a new ruling by a court, the NLRB, or the Obama administration that impacted the workplace in a significant way. The committee decided, with support from the advocates' advisory committee, to reserve a time slot to deal with "The Hottest Topics." Good thing we did! By the time you read this *Chronicle* article, there will be more changes in the offing as a result of the U.S. elections. Taken together, these changes may challenge many accepted concepts about the nature and rules of the workplace as we have known them since World War II.

The opening plenary session will be: *"The Emerging Gig Economy: What Are the Rules?"* A federal judge in a wage-hour class action involving Lyft drivers lamented that the task was like trying to fit a square peg into two round holes and implored Congress to come up with new classifications to deal with emerging technology and employers in high-tech industries. Ontario has already undertaken a review of their labor laws and Bernard Fishbein, Chair of the Ontario Labour Relations Board, will share the results with us. You can read the draft of the "Changing Workplaces Review" here:

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ON THE INSIDE

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.

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.

Editor's Note:

The Fall 2016 issue included a Fireside Chat with Jim Harkless. Unfortunately, there were two errors in the article. Jim entered Harvard in 1948, not 1958, and became an NAA member in 1973, not 1975. I apologize to Jim for the errors.

MARK YOUR CALENDAR

2017 ANNUAL MEETING MAY 24 – 27, 2017

Fairmont Chicago, Millennium Park
Chicago, IL

The Chronicle

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

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

"The New World of Work"... *(Continued from Page 1)*

https://www.labour.gov.on.ca/english/about/workplace/index.php

Speakers will discuss whether existing labor and employment legislation fulfill its mandate in the new economy, whether contract work is replacing traditional employment and implications of the emerging gig economy for unions, "employees," employers, legislators, and arbitrators.

The second plenary session, commencing at 10:30 AM on May 25th, will be *"Discipline in Sports."* The structure of both amateur and professional sports results in many interesting issues when discipline is imposed. George Nicolau will moderate a panel of Richard H. McLaren, NAA member from London, Ontario; Thomas DePaso, General Counsel of the National Football League Players Association; and Dan Halem, Chief Legal Officer for Major League Baseball.

Our distinguished speaker will be David Weil, author of "The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It" and head of the Labor Department's Wage and Hour Division in the Obama administration. Visit his website: http://www.fissuredworkplace.net/

Thursday afternoon, there will be two series of concurrent sessions. First, from 1:30 to 2:45 PM, you will have a choice of: "*Innovations in Remedies*" with Peter Sung Ohr, NLRB Regional Director from Chicago, and Christopher Albertyn, NAA member from Toronto; and "*Distinguished Papers.*" From 3:00 to 4:15 PM, we will have some familiar presentations: "*Postal Service Current Issues,*" "*Designating Agencies Report: A Look Back and A Look Ahead,*" and "*Canada – Human Rights Claims – Different Forum, Different Outcomes?*"

Friday morning, May 26th, will open with a powerful plenary session on a topic much in the news and one that garners significant publicity for arbitrators and arbitration: "*Law Enforcement Labor Relations and Arbitration and 21st Century Policing.*" We will have an excellent discussion, not only about arbitration of police discipline, but also about the role of interest arbitration with departments undergoing DOJ review or subject to DOJ consent decrees. This session will feature David A. Johnson of Franczek Radelet, who has been deeply involved in the Chicago Police - FOP negotiations and the DOJ review of the CPD; Sean M. Smoot, Chief Legal Counsel of the PBPA and the only union representative on the recent White House Task Force on Policing; and Alan Symonette, NAA member from Philadelphia.

The fourth and final plenary session, commencing at 10:30 AM on May 26th, will be on "*Cameras Around Every Corner, Computers Everywhere: American and Canadian Perspectives on Employee Privacy, at Work and at Play, in 2017.*" In this interactive session, two Canadian and two US lawyers will respond to the vignettes and provide the current legal analysis from both a Management and a Union perspective, teasing out the cross-border differences and similarities. Issues will include:

• Privacy and medical records and how the records can be adduced into evidence.

• Cameras in the workplace, both the placement of the cameras and the use of the films in an evidentiary hearing.

• When can an employer monitor and use your Facebook posts for discipline?

• When can an employer follow you around with a camera? Can the Employer use the film footage in an evidentiary hearing?

• When can an employer use cell phone records or recorded cell phone conversations for the purpose of discipline?

After a stellar Presidential Luncheon, you will again have hard choices to make. Starting at 1:30 PM on May 26th there will be a breakout session on *"Throw Out the Devil and Deal with the Details in Complex Airline Arbitrations," "The Impact of Outside Law and Outside Parties on Discharge Arbitration"* and, of particular interest to arbitrators who handle public safety cases, we will dive deep into "Lights, Bodycams, Action!" with renowned expert Will Aitchison, Esq. from Portland, Oregon. This session will cover how and why body cameras are becoming a part of many law enforcement workplaces, the policy concerns

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WELCOME TO CHICAGO

HOME OF THE WORLD SERIES CHAMPION CHICAGO CUBS

By Margo Newman, 2017 Host Committee Chair

I know I should start talking about the wonderful art, architecture, history, and beauty of Chicago that awaits you when you attend the 2017 Annual Meeting from May 24-27, 2017 (not to mention the fabulous weather), but I cannot seem to get my mind off the Cubs! A heart-wrenching Game 7 win for a city whose north side has waited 108 years to gloat or, at least, rejoice! And guess what? You, too, can relive the NLDS by kicking off the meeting at a Wednesday night game at Wrigley Field against the San Francisco Giants. As I previously advised, we have secured access to group tickets for the game on May 24, and tickets are going fast. To check out availability, contact John Stout at *johnstout@johnstout.ca*.

The Academy has held its Annual Meeting in Chicago many times for good reason. It is easily accessible by non-stop flight to either Midway or O'Hare from most major U.S. and

Canadian cities. Transportation from either airport to the Fairmont downtown is readily available by train (CTA) or taxi. And we all know what a wonderful hotel the Fairmont is, with its great location on the river, and classic comforts and amenities. If you are not already a member of the Fairmont President's Club, I suggest you enroll for free at *https://www.fairmont.com/fpc/*. Amedeo Greco has graciously agreed to put together a list of the benefits of membership and other cost-saving tips for places located in the area around the hotel. Barry Simon will provide information for getting around Chicago and events during the meeting.

Plan to come to Chicago early. There is so much to do and see. Our location next to Millennium Park makes the Art Institute, Grant Park, Navy Pier, Chicago Riverwalk, walking/shopping on Michigan Avenue, and taking a fabulous river cruise given by the Chicago Architecture Foundation (CAF) easily accessible. 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/)*. We have arranged to get meeting registrants a coupon for $10 off the purchase price of each ticket between Monday and Thursday (not

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"The New World of Work" *(Continued from Page 3)*

behind body cameras, the negotiability of body camera policies, and the types of issues likely to arise in bargaining over the implementation of policies. It will also address the science behind video evidence, why videos may not provide a complete or accurate account of an incident, and how best to evaluate video evidence.

On Friday afternoon, starting at 3:00 PM, the Labor and Employment Research Association (LERA) has been invited to present a session on the topic of "No-Poaching and Independent Contractor v. Employee Status Disputes; Definition, Analysis and Resolution." The NAA Employment Arbitration Committee will present a session on "e-*Discovery in Arbitration: Emerging Issues and Recent Case Studies*."

We will only be offering two concurrent sessions on Saturday morning, May 27th, starting at 9:00 AM. We will talk about ethics with Ed Krinsky and George Fleischli in "Do the Right Thing." And, because we simply must keep up, we will have an interactive session on the latest in "*Social Media – The Latest Concerns in the Workplace of Today and the Future*." The annual treat known as "*The Fireside Chat*" will feature John Kagel, interviewed by Ted Weatherill.

NOTE TO EMPLOYMENT ARBITRATORS on the AAA panel: You will be able to complete your Arbitrator Continuing Education (ACE) requirement on Wednesday afternoon May 24, 2017 at the Fairmont Hotel. The AAA will be publicizing the availability of this 2.5 hour training only to arbitrators who are already on the AAA employment arbitration panel. This session is completely separate from the NAA meeting, but is being scheduled at this time as a convenience to NAA members on that panel. There will be a separate fee payable to the AAA and registration for this course will be handled by the AAA. The AAA will also be publicizing the NAA annual meeting to members of its employment arbitration panel in the Chicago area, with the hope that some of them will choose to attend.

Welcome To Chicago. . . *(Continued from Page 3)*

including the weekend). It is worth a revisit if you have already done the cruise, as the landscape is ever-changing.

While neighborhood local comedy and theater abound (Second City, Steppenwolf, Royal George, Apollo), Hamilton will still be playing at the PrivateBank Theater, which is also within walking distance of the Fairmont. I understand that you can get tickets, if you are willing to pay the price! If you check out *www.hamiltonchicago.org/* and click on Buy Tickets, it will send you to a resale site for availability.

Of course, Chicago offers lots of good food as well as great sights. Everyone who registers for the meeting will receive an invitation to the President's dinner, first-come first-served, until the room capacity is filled. Apropos of continuing the Cubs' victory celebration, the venue for this Tuesday night (May 23) dinner is the original Harry Caray's on Kinzie Street, a short walk from the hotel. Who can forget Harry's rendition of 'Take Me Out to the Ballgame' during the 7th inning stretch at Wrigley during his last years as sportscaster for the Cubs. Bill Murray's Daffy Duck rendition during the World Series did not do him justice!

Jackie Zimmerman and Steve Bierig have agreed to continue the great tradition of organizing the Dine Around, which will take place on Thursday night. The selection and sign up for restaurants will be available, along with all other meeting materials, on the Academy website (*www.naarb.org*). There will be some great choices, and I encourage new members to participate as a way to get to know your colleagues in a less formal setting and have a great meal. For those of you planning your own dinners, Rocky Perkovich's Chicago Restaurant Guide, updated by Barry Simon, as well as Barry's insight into How to Eat Like A Chicagoan, will appear on the website and be available in your registration packet. What a great way to explore one of Chicago's many neighborhoods - through its food!!!!

This year, our Friday night dinner entertainment will feature a special treat before dancing to the tunes we love played by a DJ from Bizar Entertainment. Our group will participate in a customized performance by Mentalist Jason Suran, who comes to us from NYC. Check him out at *www.jasonsuran.com*. Fred Dichter will again be organizing a group to attend the Saturday night (May 27) performance of the Chicago Symphony Orchestra, with a program that includes Gershwin Piano Concerto in F and Dvorak's Symphony No. 6.

So much to do, so little time! (Not to mention the great program being offered

by Liz Neumeier's program committee). So plan to come early and/or stay late. Chicago is lovely in May! If you have any questions about the city or want additional information, visit *www.choosechicago.com* or feel free to contact me at *mnewmanarb@naarb.org*. Looking forward to seeing you all in Chicago in the Spring!

Research and Education Foundation

By Catherine Harris and Richard Fincher

During the hiatus between the 2016 annual and fall meetings, the REF Board of Directors approved, by electronic vote, a proposal by Chris Riddell, Associate Professor, ILR School, Cornell University, to study the effects of compulsory interest arbitration on reaching impasse and on wage levels. Professor Riddell is collecting data in Ontario, Canada where a series of changes in dispute resolution procedures have created ideal laboratory conditions for his study. A presentation of the study and its results will occur at a future Academy meeting.

The second installment of the Aging Gracefully program, a program supported by the REF, was presented at the New Orleans FEC and was well received by the members. Steven Price, author of "How to Survive Retirement – Reinventing Yourself for the Life You've Always Wanted," was the featured speaker. He was joined by Donald Carter, a distinguished Canadian arbitrator and Professor Emeritus of the Queen's University Faculty of Law (by video conference), and NAA member Susan Meredith (in person) who shared their respective experiences in reaching the decision to retire from their neutral practices. Any members with suggestions for other educational or training programs that may be appropriate for REF funding are encouraged to contact REF President Catherine Harris or Vice-president Richard Fincher.

At the 2016 fall education conference, the REF Board of Directors voted to extend the grant, already previously approved in 2014, to fund *arbitrationinfo.com* for an additional three years. All other terms and conditions pertaining to the grant remain unchanged. The REF is extremely pleased to be providing financial support to a project that has already begun to influence the reporting of labor and employment arbitration cases by providing background information in a form readily accessible to journalists.

As you travel your respective territories, please do not forget that the REF is always seeking new applications for funding of research, educational, and training projects of benefit to our profession. If you know of any individual (NAA member or non-member) or organization seeking financial support for a project related to labor and employment arbitration, please direct them to the REF link on the Academy website, which sets forth our funding criteria.

Due to the next annual meeting taking place in Vancouver, Canada, there will be no Silent Auction until the 2019 annual meeting. The complications of conducting a silent auction in a foreign country are sufficiently onerous that postponing the event for the next annual meeting held in a U.S. city was deemed a better alternative. With our single most important funding source not available to us until 2019, all NAA members are urged to consider regular donations to the REF at the time of dues payment, an option listed on the dues payment invoice. Due to the generosity of our own members, as well as the families and friends of deceased members who have made contributions in memory of their loved ones, we are currently able to continue supporting quality research and education projects, but future funding depends on continued contributions.

Many thanks to all of the NAA members who continue to support the work of the REF through projects that promote understanding, competence, and integrity in our profession!

MILESTONES

Edited by Michael P. Long

NOTEWORTHY HONORS & PROFESSIONAL ACTIVITIES

Norm Brand – whoops, that's President Norman Brand as Norm takes over as President of the College of Labor and Employment Lawyers on January 1, 2017.

■■■

Claude Dawson Ames – has been reappointed to the Bankruptcy Dispute Resolution Program ("BDRP") Panel by the Judges of the Northern District of California as a Resolution Advocate. Claude's reappointment marks his sixteenth (16) year on the Court's BDRP panel.

■■■

Richard Fincher – in October taught classes in employment mediation and labor arbitration at the Wuhan University School of Law in Wuhan, China. The law school has 90 professors and 2000 students. While in Wuhan, Richard visited the Wuhan Municipal Labor Arbitration Center, and interviewed the Center Director, the Case Administrator, a full-time Arbitrator, and a pro bono plaintiff lawyer.

Richard indicates, "As everyone knows, Chinese labor arbitration is radically different than the western model. It is more like a court system. The system is managed by the national Ministry of Labor (MOHRSS) and funded by the local community, so it is not independent of the government. The three most common claims concern unpaid wages, failure of the employer to pay social security, and discharge severance. Half of the workers are represented by legal aid. Awards are reviewed for consistency by the Case Administrator and subject to influence.

The system is not a creature of collective bargaining and is a mandatory step for workers seeking to address their claims to court. In Wuhan, the backload of cases is substantial. The full-time arbitrator handled 200 cases in 2015. Cases are repeatedly mediated and mediation resolves 60% of the workload. Although the law implies that there will be three-person arbitrator panels, in reality there is a solo arbitrator; and he handles two cases per day. Direct testimony is minimal, as witnesses are presumed to not be offering the truth.

The Wuhan Center is actively recruiting private arbitrators, through seeking nominations from local attorneys, universities, and employers. Arbitrators are becoming specialized, as some only hear social security cases. In other cities, the private Arbitrators are trained and certified."

■■■

Martin H. Malin – has been his normal, industrious self. On October 8, he chaired a full day program presented by the College of Labor and Employment Lawyers for students at law schools in the Seventh Circuit. Marty moderated two morning panels featuring "Hot Issues" in labor and employment relations. He also moderated an afternoon panel on "Transitions to Practice: Getting Noticed, Getting Hired and Being Successful."

On October 21, Marty presented a paper entitled, "Extending Mike Zimmer's Cross Border Comparative Work: The Role of Property Rights in U.S. and Canadian Labo(u)r Law" at a symposium at Seton Hall University Law School in memory of the late Professor Michael Zimmer. The papers from the symposium will be published in 20 Employee Rights & Employment Policy Journal ___ (2016).

On November 4, Marty presented a paper, "14 Penn Plaza v. Pyette: Opportunity or Oppression for U.S. Workers - Lessons from Canada" at the University of Chicago Legal Forum. The paper will be published in the University of Chicago Legal Forum.

On November 11, the ABA Section on Labor and Employment Law presented Marty with the Arvid Anderson Award for lifetime contributions to public sector labor law. Also on November 11, Marty served as one of three speakers on a panel on "Bargaining in the Public Sector in Post-Recession Years" at the ABA Section on Labor and Employment Law's Annual Meeting.

Then on November 12, Marty moderated a panel on "A Theatrical Post-Trial View of a Sexual Harassment Case: Perspectives." The panel followed a short one-act play featuring some of the participants in a hotly contested sexual harassment trial speaking about their experiences. The program was presented by the College of Labor and Employment Lawyers in conjunction with the ABA Section on Labor and Employment Law's annual meeting. NAA Member **Jeanne Charles Wood** also served as a member of the panel.

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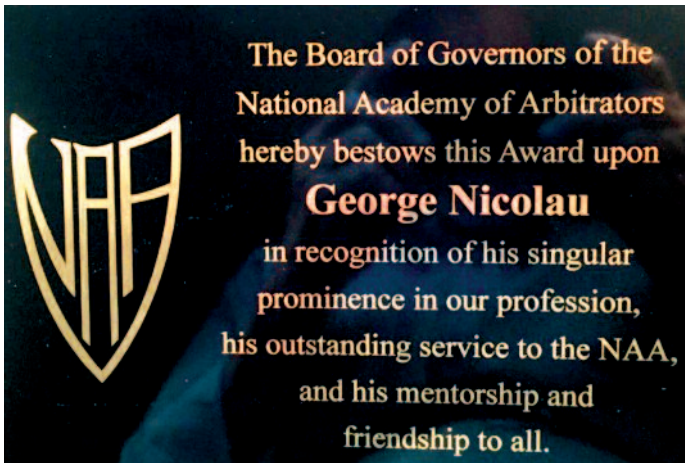
MILESTONES *(Continued from Page 7)*

George Nicolau – has received a wonderful accolade from us. At its October meeting in New Orleans, the National Academy of Arbitrators honored George Nicolau in recognition of his singular prominence in our profession, his outstanding service to the NAA, and his mentorship and friendship to all



Before his serious comments to his colleagues, George relayed a personal story. Having heard there would be some of kind presentation, though he was not informed what it would be, George told his children and grandchildren that some kind of award would be given at the meeting in New Orleans. Addy, George's wonderful eight year old granddaughter, quizzed him about it. The dialogue went something like this:

Addy: That's wonderful grandpa, but what's it called; is it named after you?

GN: No.

Addy: But what's it called?

GN: I think it's called FTSTA AA 92.

Addy: Grandpa, is that a password or maybe some kind of code from the dark web?

GN. No Addy, what it means is For Those Still Arbitrating At Almost 92.

George then got serious and spoke about the failure of the public to understand and appreciate the difference between voluntary arbitration in the collective bargaining labor-management sector and mandatory, forced arbitration in the consumer sector and the non-unionized workforce. Congratulations to George Nicolau - still an inspiration and teacher to us all.

Elizabeth Neumeier – has completed her service to the Massachusetts Commonwealth Employment Relations Board (CERB), where she served for over eight years. Liz had been appointed by Governor Deval Patrick in August 2008, as one of two per diem members of the CERB. CERB is the successor to the Labor Relations Commission, where a number of NAA members once served.

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Jan Stiglitz – is glad that it has all paid off. Years ago, Jan was taught Labor Law at Albany Law School from John Sands, who was then in his first year of teaching. Now Jan has practiced what he began in his class and has been honored as the Distinguished Alumni in Residence at Albany Law School. Jan says that this was a great "bookend" to his law school career which began as a student at Albany Law School in 1972 and ended this semester when he taught his last class as a full time faculty member at California Western School of Law.

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Kenneth Swan – is the 2016 recipient of the University of Toronto's Bora Laskin Award. This award, named in honour of the late Canadian Chief Justice Bora Laskin, has been established by the University of Toronto to honour those who have made outstanding contributions to Canadian labour law. Ken is well known as a distinguished arbitrator, a respected scholar, and a dedicated civil libertarian. For twenty-five years, he served as President of the Ontario Labour-Management Arbitrators' Association. In this capacity, he was effective in persuading successive governments of the vital importance of an independent arbitral profession and in influencing the content of labour legislation. Ken was presented with the Award at a special dinner event held in conjunction with Lancaster's Labour Arbitration and Policy, and Bargaining in the Broader Public Sector Conferences in Toronto on December 8, 2016.

■ ■ ■

Jeanne M. Vonhof and Jeanne Charles Wood – were both inducted as Fellows into the College of Labor and Employment Lawyers. The induction ceremony took place at a black-tie gala at the Grand Ballroom on Navy Pier in Chicago on November 12, 2016.

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MILESTONES *(Continued from Page 8)*

PUBLICATIONS & PRESENTATIONS

Stephen Befort – has authored a new Disability Law casebook, entitled, Disability Law: Cases and Materials by Stephen F. Befort and Nicole Bounocore Porter (West Academic Publishing 2016).

■■■

Robert A. (Bob) Grey – is a Senior Editor of the newly released BNA Bloomberg treatise "The Railway Labor Act, Fourth Edition, Cumulative Supplement," released for publication on November 30, 2016.

Bob is a Contributing Author to the newly released BNA Bloomberg treatise "The Family Medical Leave Act, 2015 Cumulative Supplement."

■■■

Dennis R. Nolan – along with Professor Rick Bales, just published the third edition of Labor and Employment Arbitration in a Nutshell (West Academic Publishing).

■■■

Theodore J. St. Antoine and Charles B. Craver – along with Marion G. Crain, are co-editors of the newly published Labor Relations Law: Cases and Materials (Carolina Academic Press, 13th ed., 2016.). Ted in his own inimitable fashion states "Charlie and Marion Crain of Washington University in St. Louis did all the hard work. I only get credit for longevity."

ON A PERSONAL NOTE

James P. O'Grady – is staying youthful. He just completed a term as president of the Missouri Athletic Club's Forever Young Club. Its members are seniors who work at remaining vigorous by meeting monthly along with their spouses and friends to hear current topics presented by knowledgeable speakers followed by Q&A and discussion. Members also take monthly trips throughout the Midwest and make contributions to the Club's Children's Charity Society. Jim will continue his service by serving on the Board of Directors of both the club and the Children's Charity Society.

■■■

Mariann Schick – Chair of the Mid-Atlantic region, has been elected to the Board of Directors of Los Amigos del Arte Popular, (LADAP), a group of enthusiasts and lovers of Mexico and collectors of its folk art. The group is the chief U.S. sponsor of the Feria Maestros del Arte (*www.mexicoartshow.com*), a juried craft show of artisans from all over Mexico, which is held annually in November at The Chapala Yacht Club, near Guadalajara, Mexico.

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:

Professor Michael P. Long
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Phone: (248) 375-9918

SURPRISE!

Sara Adler, LRF Coordinator

From time to time, after an Award is issued, there is a criminal investigation based on something that was said in the hearing or something written in the Award. The investigating agency (up to and including the FBI) may then contact the arbitrator for information. This is an excellent time to contact the LRF before deciding whether to cooperate with the request.

Historically, we have been able to work out a response that meets the needs of the investigating agency and preserves arbitral immunity within our ethics rules. If a subpoena has been issued, we have always been able to have it withdrawn. There is certainly no guarantee that we will always be as successful in intervening, but it is always worth a shot.

Please remember that we are always here to help no matter what surprises you get.

ArbitrationInfo.com Committee

By Elizabeth C. Wesman, Chair and Managing Editor

The ArbitrationInfo.com Web site continues to increase its audience reach. To date, we have more than 160 regular subscribers (people who have asked to be notified when there is a new post). We continue to reach out to journalists to let them know about the site. In addition to the several hundred emails that we sent to journalists at the time of the launching of the Web site, we continue to contact journalists on a regular basis. For example, we have sent out approximately 18 "atta-boy" e-mails to journalists who have covered a labor relations or arbitration issue with even-handedness and intelligence. Response to those e-mails has been uniformly positive – it appears to matter to those journalists that someone has recognized their efforts. In addition, the e-mails suggest that they refer the Web site to any of their colleagues who may write in the labor relations area.

Following the NAA meeting in Pittsburgh, Professor Carli Conkin, one of the Web site editors and a faculty member at the University of Missouri Law School, submitted a proposal for a panel for the 2017 meeting of the ABA Section on Dispute Resolution in San Francisco. The proposal has not only been accepted, but will be featured as a "showcase" program – with few concurrent programs running in the same time slot, to encourage greater attendance. This exposure is a clear indication of how valuable the contribution of the University of Missouri Law School is to the quality and exposure of our Web site.

Finally, I am delighted to report that NAA members Lise Gelernter and Robert Gray have agreed to join our committee. Both have already proved to be valuable additions to the work of the ArbitrationInfo.com Web site.

REGIONAL ROUNDUP

Reported by Kathy L. Eisenmenger
National Coordinator of Regional Activities

The Regions pursue their varied efforts to enlighten and inspire the members, other arbitrators, and practitioners of labor-management and employment disputes. Several regions reached out to brother and sister organizations in their ongoing pursuit for excellence, as described below. Further, NAA Members Catherine Harris and Arnold Zack were slated to instruct "Arbitration for Advocates" for the Federal Mediation and Conciliation Service training on November 29-December 1, 2016.

CANADA REGION

Regional Chair is Jules Bloch - *jbloch@sympatico.ca*

CENTRAL MIDWEST

Inspired by the activities and events hosted by other regions, the Region is currently planning a program for early this year. Stay tuned and visit the Regional Activities in the NAA website.

Regional Chair is Jacalyn Zimmerman - *JacalynZimmerman@gmail.com*

METROPOLITAN D.C.

Regional Chair is Sean Rogers - *rogerssj@erols.com*

METROPOLITAN NEW YORK

On September 14, 2016, the Region and NYC LERA jointly sponsored a skills enhancement workshop on NLRA Deferral. Jennifer Abruzzo (Deputy General Counsel of the National Labor Relations Board) and John Doyle, Jr. (Deputy Assistant General Counsel in the NLRB's Division of Operations-Management of the Office of the General Counsel) joined us from Washington, D.C. to lead the program. We were also delighted to have three NLRB Regional Directors from the Regional offices in the NY-NJ Metropolitan area participate on the panel, including Karen Fernbach (Manhattan – Region 2), David Leach, III (Newark – Region 22) and James Paulsen (Brooklyn – Region 29). We had a terrific turnout for this program and a lively and interesting discussion among the participants.

On October 20, 2016, Region 2 held a "meet and greet" with the case managers at the American Arbitration Association's NYC office. Susan Pfeiff from the NJ AAA office joined us as well. After the attendees had a chance to talk informally, Ann Lesser (AAA Vice President-Labor, Employment and Elections) made a presentation on the status of labor cases at AAA and AAA initiatives.

We ended this calendar year with a holiday party graciously hosted by NAA Member Howard Edelman and his wife, Leslie.

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

MICHIGAN

The Michigan Region held its Fall meeting at the Courthouse Grille in Plymouth, Michigan on November 1, 2016.

Member George Roumell, Jr. remembered Member David Tanzman, who passed August 31, 2016, at age 97. David will be remembered as having a memorable and exceptional ability to bring resolution to the most complex of controversies, on top of being a kind and generous man of great faith. Most importantly, David will be remembered as the devoted husband for 74 years of Lottie Tanzman of Oak Park, MI, who died June 29, 2016. David and Lottie are remembered as cherished members of both the Michigan labor-management relations community as well as the Detroit Jewish community. David was known as a man who always had a smile on his face and made everyone feel welcome to minyan. In his younger days, David was known to many as a World War II hero, who looked like a movie star in uniform. David was also honored as a 25 year member of the National Academy in 2012. David was as an arbitrator, mediator, and instructor in the field of labor-management relations since 1974. He served as a former mediator and Assistant Regional Director of the Federal Mediation and Conciliation Service from 1948-1979, a Program Director of Wayne State University, and at the University of Michigan Institute of Labor and Industrial Relations. David was a graduate of Wayne State University with a liberal arts degree. David was appointed to the Michigan Employment Relations Commission by then-Governor Blanchard in 1983, and served as MERC Chairperson from 1986 until retirement in 1992.

Member Barry Goldman received recognition for his recent co-authored book *Opinions—Essays on Lawyering, Litigation and Arbitration, the Placebo Effect, Chutzpah, and Related Matters*. Barry also received a free dinner as a notable award for his "Arbitrator's Lament," which ends:

"I'm tired and bored and wired and sore,
and angry and greasy and itchy
And queasy and hungry and grumpy and creepy,
and sleepy and weary and twitchy
The gods are cruel and men are fools,
and fate is unforgiving
But, though I curse, it could be worse:
I could have to work for a living.

(Continued on Page 12)

James Pedersen from the University of Michigan-Dearborn Center for Labor and Community Studies presented "Labor Education and Training in the New Right-to-Work Michigan," that focused on the pending Michigan legislation (Michigan House Bill No. 5829), that would provide for "Independent Bargaining" between a public employer and a public employee without intervention of a labor organization, bargaining agent, or exclusive representative. After considerable comment and cross-examination, curiosity prevailed as to how "independent bargaining" and "exclusive representation" would be reconciled in practice.

George Roumell, Jr. resigned his chairmanship of the Michigan Region and Charles Ammeson, our newest NAA member, was appointed by acclamation.

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

MID-ATLANTIC

Several Regions' NAA Members, i.e., 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 presented two separate full-day sessions on May 5, 2016. The day's sessions pertained to "Private Sector: Discipline & Contract Interpretation: What Every Advocate Needs to Know" and "Federal Sector: Arbitration Advocacy Skills." During the symposium on May 6, 2016, other NAA Members Joyce M. Klein, Jay Nadelbach, Margaret Brogan, Deborah M. Gaines, Kinard Lang, and Jacquelin F. Drucker participated in an interesting bevy of presentations and a mock arbitration to wrap up the day.

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

MISSOURI VALLEY

NAA Board of Governors Ed Harrick organized the Region's Fall seminar entitled "Arbitration Advocacy" and held in St. Louis, MO on October 18, 2016. Members George Fitzsimmons, Gerald Fowler, Gladys Gruenberg, James "Jim" O'Grady, Tom Cipolla, and Jerry Diekemper provided instruction for various sessions in the training co-sponsored with the FMCS, LERA, U.S. Arbitration & Mediation and the Greater St. Louis Labor Council. The program was designed for attorneys, and Union and Employer officials.

Regional Chair is George Fitzsimmons - *georgefitzsimmonslle@hotmail.com*

NEW ENGLAND

The New England Region is actively ramping up its visibility in the region by planning brown bag lunches in different areas of the Region and having member arbitrators conduct presentations on practice-based topics of interest to the area's labor-management community. In April 2017, we will host a day-long workshop on the *Babcock & Wilcox* deferral policy to be presented by the NLRB, similar to the workshop conducted at the NAA FEC in Denver 2015. This workshop will be open to the labor-management community; we plan to recruit co-sponsors for the event from the Labor Sections of the State Bar Associations and other relevant organizations.

We continue to hold our bi-annual dinners in the Boston area. On November 1, 2016, Justice Barbara Lenk of the Supreme Judicial Court of Massachusetts was the guest speaker. It was fascinating to hear how the oldest, continuously functioning appellate court in the country works on a day-to-day basis. The Justice was also interested to learn, first-hand, what labor arbitration is, its evolution, how we work, and differences between labor and commercial arbitration practice. We felt the Justice came away with a better insight into our work, which should serve her well when the court's deliberations involve an arbitration award.

We are happy to welcome Bonnie McSpiritt and John Alfano as new members to the Academy. Bonnie and John have worked tirelessly over their careers and we are excited about their participation in the New England Region.

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

NORTHERN CALIFORNIA

NAA Member Andrea Knapp and Michigan Region NAA Member Kathryn VanDagens presented "Becoming a Labor Arbitrator" for the FMCS on October 24-28, 2016.

Regional Chair is Nancy Hutt - *nancyhutt@naarb.com*

OHIO-KENTUCKY

On September 2, Region Chair Dan Zeiser and his lovely wife, Lori Gallo, served as host and hostess of a Regional social. Attending were Mitch Goldberg and his wife, Chris, Susan Grody Ruben, Nancy Margaret Johnson, Anna Duval Smith, and Tom Nowel and his wife, Lynne.

Planning is well under way for the FMCS/COLERA/NAA (OH-KY Region) Annual Arbitrator & Advocate

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Michael J. Fox Benefit For Parkinson's Research

> ***"We raised nearly $6 million and had a lot of fun."***

NAA members met from all over the US and Canada in New York Saturday night, November 12, for the Michael J. Fox benefit for Parkinson's research. We raised nearly $6 million and had a lot of fun. As you can see our President and her husband, Barry Winograd attended. Also present, George Nicolau, Jules Bloch and his daughter, Allanah, Scott and Pam Buchheit, Fred and Barb Dichter.

[**Editor's Note**: *Thanks to Linda Byars for the photo.*]

REGIONAL ROUNDUP *(Continued from Page 12)*

Symposium in Columbus, Ohio on April 27-28, 2017. Margie Brogan will be the opening speaker at the symposium. Academy members are welcome to attend. Contact Regional Chair Dan Zeiser for information.

Regional Chair is Daniel Zeiser - *danzeiser@aol.com*

PACIFIC NORTHWEST
Regional Chair is David Gaba - *davegaba@compasslegal.com*

SOUTHEAST
The Region will hold its annual meeting on February 24 and 25, 2017, at the DoubleTree Orlando Airport Hotel, Orlando, FL. Contact Regional Chair Philip A. LaPorte, (404) 316-6798 or visit NAA *southeast.org* for more information.
Regional Chair is Phil LaPorte - *plaporte@gsu.edu*

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

SOUTHWEST ROCKIES
The Region will host its 40th Annual Labor-Management Conference February 16-18, 2017, at the DoubleTree Hotel, Dallas Love Field, Dallas, TX. A copy of the full program is available online as well as registration on the Region's website, *www.naaswr.org*.

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

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

PRACTICE OF INTEREST ARBITRATION

AN ACROSS-THE-BORDER COMPARISON

By Lise Gelernter

In an "interesting" plenary session in every sense of the word, Canadian and United States union-side and management attorneys compared and contrasted how and when interest arbitration is practiced in their respective countries and regions. NAA member Bill Kaplan moderated the session with panel participants Bob Bass, a Toronto-based attorney who represents management; Steven Barrett, a labor-side attorney in Toronto; Alaine Williams, a Philadelphia-based labor-side attorney; Ryan Cassidy, a management attorney in Philadelphia; and NAA member Walt De Treux, also from Philadelphia. Although there was a great deal of congruence on both sides of the border in the advocates' and arbitrators' concerns about and the practice of interest arbitration, one of the big differences between the two countries was the prevalence of interest arbitration.

Walt De Treux explained that interest arbitration in the private sector in the U.S. is very rare. For the public sector, there is a hodgepodge of state laws that govern the process. Where interest arbitration is available in the U.S., it is very often reserved for police and fire departments and other public safety services. Some states set clear standards for arbitrators to follow when deciding how to fashion a fair interest arbitration award, but many, including Pennsylvania, are "free-for-all" states in which there are no standards guiding the arbitrators and the arbitrator often serves as a mediator on a tripartite panel. However, Steven Barrett pointed out, even where there are no clear statutory standards, the most common factors arbitrators take into account are the employer's ability to pay; comparability with other localities; and the need to attract and retain employees.

In Canada, provincial law governs the interest arbitration process. Bob Bass explained that, in Ontario, the province with the largest population in Canada, interest arbitration is used in most private and public healthcare settings. The practice is long-standing, and the affected parties use it very often; about 50% of contract disputes are decided by interest arbitration. Doctors, who are entitled to interest arbitration in some other provinces, are currently pursuing a case under the Charter of Rights to get the right to interest arbitration in Ontario. Furthermore, in the City of Toronto, interest arbitration is used for impasses for transit employees, government lawyers, judges, correction officers, and university faculty. In the federal sector, the employees have a choice of either striking or engaging in interest arbitration.

Left to right: Steven Barrett, Bob Bass, William Kaplain, Alaine Williams, Walt De Treux, Ryan Cassidy

First, when Bill Kaplan asked the panel to address the question of how arbitrators are selected, there was an international union and management consensus that advocates try to pick an experienced arbitrator who understands the industry or workplace at issue, who can be trusted to be reasonable, and who can figure out how budgets work. In Canada, Steve Barrett explained, where the Minister of Labor maintains a roster of arbitrators, the issue of keeping a separate roster of interest arbitrators is a perennial issue. In the U.S., Walt De Treux said that the AAA has had discussions about the possibility of recognizing people as experienced interest arbitrators.

Given that only a small group of arbitrators engage in interest arbitration on a regular basis in both countries, and that many of the more active interest arbitrators are getting older, the advocates were concerned about the plans for getting new interest arbitrators into the system. Alaine Williams said that picking a "newbie" is something she would do if the person was mentored by an experienced interest arbitrator. Walt De Treux said there has been some training available for arbitrators who want to become interest arbitrators and it has yielded a few additions to the roster of acceptable interest arbitrators. All the panelists agreed that training for new interest arbitrators, including on the subject of the math that would be used in budgeting, would be very helpful in making sure there are well-qualified interest arbitrators in the future.

The second issue that the panel addressed was the question of whether

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Aging Gracefully – Part II

By Michelle Miller-Kotula

This plenary session in New Orleans was moderated by NAA member Elizabeth Wesman. It was a continuation of the Aging Gracefully session presented at the NAA's Fall Education Conference in 2015. The purpose of this part II session was to follow up on this topic and have the panelists provide useful suggestions for making the most of our later years, including ways to plan for a rich and rewarding next stage of our lives. Former NAA member Donald Carter and NAA Member Susan Meredith provided candid insights into their decisions to withdraw from our profession, explaining why they made this choice and how they are now adjusting. The noted author Steven Price who wrote "How to Survive Retirement: Reinventing Yourself for the Life You Always Wanted" talked to the audience.

Mr. Carter served as an arbitrator and mediator from 1972 to 2015. He presented a video entitled Life After Arbitration. He was delighted to share his experience in dealing with retirement. He was unable to join the conference in person and explained his absence would be more apparent as he related his own experience retiring from the arbitration profession.

Steven Price, Susan Meredith, and Elizabeth (Betsy) Wesman. Donald Carter participated via Skype.

He said he chose to move beyond the life of active arbitration. His choice was not completely voluntary, but one he had made and now fully accepts. He discussed his previous career as a law professor and part-time labor arbitrator, later taking a larger case load as an arbitrator. He remained less than a full–time arbitrator, because his wife, Cathie, retired from her job, their grandchildren began to arrive, and it was time to enjoy long planned trips. He considered this type of work to be the perfect balance in his life. He noted that, by working part-time, he received fewer invitations to arbitrate. People he worked with in the

(Continued on Page 16)

An Across-The-Board Comparison *(Continued from Page 14)*

interest arbitration is a "high risk" occupation for arbitrators. Walt De Treux said that, in Pennsylvania, where the neutral really serves as a mediator, and the bargaining can be contentious and nasty, service as an interest arbitrator can present risks ranging from alienating one or more parties to hearing comments for many years about an award he or she made. But he also saw interest arbitration as a "high opportunity" option. Both Alaine Williams and Ryan Cassidy agreed that the neutral is on the "hot seat" and that parties unhappy with the outcome may take it out on the arbitrator. Ms. Williams, however, thought that, from her point of view, a good interest arbitration result is one that makes both parties a little unhappy. Mr. Bass and Mr. Barrett also agreed that interest arbitration can be high risk, but reassured arbitrators that, if they feel comfortable in their roles and decisions, they will do fine. Mr. Bass added that he thought it would be "unseemly" of arbitrators to turn down an interest arbitration case if asked to participate.

The third question the panel considered was whether interest arbitration is a process of adjudication or collective bargaining. The panel agreed that interest arbitration should be seen as a continuation of the collective bargaining process, although Mr. Cassidy said that because of the way Pennsylvania law works, interest arbitration is often the *beginning* of the collective bargaining process.

The fourth and last issue the panel discussed revealed a big difference between Canada and the U.S. on constitutional protections of collective bargaining processes, including strikes. Mr. Barrett explained the legal evolution in Canada, which culminated in the 2015 Supreme Court holding in *Saskatchewan Federation of Labour v. Saskatchewan*, that there is constitutional protection for public employees' right to strike as part of the Charter-protected freedom of association to collectively bargain. Because the Court's earlier decisions had reached an opposite conclusion, there was a possibility that this doctrine would not last. Ms. Williams loved the decision, but predicted that there was "no way" that a state court in the United States would rule similarly.

Although the prevalence of interest arbitration may differ between the two countries, the panel revealed that practitioners in both Canada and the U.S. had very similar attitudes about and experiences in the process of interest arbitration. The biggest divergence across the border appeared to be in the constitutional treatment of collective bargaining. Future developments in Canada will be of interest to both countries' labor relations professionals!

Aging Gracefully – Part II *(Continued on Page 16)*

past had retired and he found more cases were being settled than arbitrated.

In 2013, Mr. Carter said he was a part-time arbitrator, working on several panels. He intended to continue with this limited arbitration work as long as his health allowed. However, his wife was diagnosed with a mild cognitive disability. The doctors warned her condition could become more serious. In the fall of 2015, his wife's condition progressed to early dementia and she lost her driver's license. He needed to be both a chauffeur and take over more household duties. Mr. Carter decided after 44 years of involvement in labor arbitration that he needed to close his practice.

As he looks back, he said he was fortunate he retired in a gradual manner. He took up some new activities on an incremental basis. He spent more time going with his wife to the theatre and movies and dining out with his wife and friends. He learned to cook and found it enjoyable.

He discovered that, after being completely retired, there is life after arbitration. He said it may not offer the same rush of excitement, but there is much to be said about feeling less rushed and less driven to meet deadlines. He misses his colleagues, but not the hassle of travel. His days are very full and satisfying. He has more time to enjoy his wife's company as they approach their 50th wedding anniversary. He has found more time to help their children with their busy lives and watch grandchildren grow and prosper. He found a good and productive life after arbitration.

One of Mr. Carter's best pieces of advice is to make sure you have sufficient outside interests in place before you make your decision to retire. Plan for the next stage of your life before it begins. He found that, once he took that step, rather than being faced with a void, he was ready to begin writing a new chapter in his life. He thanked the NAA for providing him with this opportunity to share his thoughts and he offered a fond farewell to his many good friends in the arbitration profession.

Susan Meredith shared her story about retiring from a profession she loves. She retired in 2015 after 40 years as a labor management neutral. She said she came to realize that retirement is another stage of adult development and she enjoys it. Over the years she loved going to arbitration hearings and listening to the stories told by the parties. She enjoyed many years being with those who worked in labor relations. However, as she continued to work, she found she liked to travel less, and at times she thought she heard the same stories being repeated.

Ms. Meredith suggested getting rid of the work you do not like as much, such as certain panels or ones that require difficult travel. She stated she found transitional type work as she eased into retirement. When she agreed to serve on a search committee it took up much of her time, but helped to fill the void of less arbitration work. As time went on, she gave up more arbitration panel work. She had grandchildren born in 2013, 2014, and 2015, and enjoys being able to show up and help with her family.

The last case Ms. Meredith heard was in July 2015. She later realized she was too busy to tell that she missed arbitration work less. She admits that she sometimes felt left out, but then would feel a sense of relief. She truly has been enjoying the process of retirement. She has looked forward to finding new ways to fill her time.

Author Steven Price focused on how to make a seamless transition from professional life to retirement. He provided a history of retirement in the United States. He discussed arbitrators, as independent contractors, have the choice when to retire, rather than being required to retire. He said when a person contemplates retirement, he or she needs to review the pros and cons of retirement reasons. Some pros include loss of interest, loss of stamina, physical limitations of travel, a spouse's or one's own illness, financial windfall, putting more balance in life, and doing more of what the person wants to do. Reasons not to retire might include finances, fear of isolation, boredom, and not wanting to feel useless. He suggested that, if a person is interested in retirement, to build a balance sheet and decide when to retire.

He discussed the many volunteer opportunities that exist such as helping at a senior center, teaching, coaching, being a guest lecturer, or taking continuing education courses. Many universities and community colleges offer low or reduced tuition to retirees. He explained there are several ways to enrich your life. For example, hobbies could be turned into businesses.

He recommended individuals not be afraid of retiring and plan to fill any voids. He said not to be afraid of losing status with your friends because, once you retire, you will meet new friends who will give you a new status. Take time to do more pleasurable things. Relocate if necessary to give yourself a new start. He said, when a person finds himself or herself being busy as a retired person, he or she will begin saying no more often, but yes to more enjoyable activities. He ended his presentation by encouraging the audience to plan ahead to ease into the transition of retirement.

Arbitrator Ethics

By James E. Dorsey

The *Code of Professional Responsibility for Arbitrators of Labor-Management Disputes* contains privately developed standards of professional behaviour for voluntary arbitrators acting under many diverse legislated and privately developed dispute resolution procedures. "Professional Responsibility" encompasses both good practice standards and ethical considerations.

The Code's six sections are: (1) Arbitrators' qualifications and responsibilities to the profession; (2) Responsibilities to the parties; (3) Responsibilities to administrative agencies; (4) Pre-hearing conduct; (5) Hearing conduct; and (6) Post-hearing conduct.

The Committee on Professional Responsibility and Grievances (CPRG) is one of five standing committees of the Academy. Daniel J. Nielsen (current Chair), Shyam Das (a former Chair), and Susan Grody Ruben (Member) reviewed the purpose and working of the Committee in administering and enforcing the Code.

There are fourteen current advisory opinions issued by the CPRG and adopted by the Board of Governors. The Chair issues advisory letters and provides informal advice on request. The Committee provides education in group sessions and *The Chronicle* articles.

The Chair investigates and attempts to resolved complaints of Code violations. Failing resolution, the Chair will consult two Committee members and determine if there is probable cause of a violation. If there is, a Hearing Officer is appointed to adjudicate if there is a violation and determine a penalty, which ranges from advice to expulsion. In the past, members have resigned when confronted with likely expulsion. The Tribunal Appeals Committee hears appeals from decisions of Hearing Officers. (Bylaws Article IV, Sec. 2).

The single largest volume of complaints and findings of probable cause are undue delay in issuing awards. Avoidance

Susan Grody Ruben, Dan Nielsen, and Shyam Das.

of delay (Section 2.J) is one of an arbitrator's responsibilities to parties.

The difficulty of distinguishing between good practice and ethical considerations was central to the lively discussion among attending members. There was time to discuss only three of the six factual scenarios prepared for the session.

Scenario 1. A four-hour hearing followed by five days of writing generated a 31-page decision and an account for five days. One party, with whom you have worked over the years and have upcoming hearings, resists paying its share of this bill and offers an attractive business compromise of 50% of four days. Should you accept, resign from current appointments, sue? Is this a business or an ethical concern? Will acceptance of the proposal result in favorable treatment of one party and compromise impartiality? Can you have communications about an account with one party and not include the other party?

Shyam Das points to: "An arbitrator must uphold the dignity and integrity of the office and endeavour to provide effective service to the parties" (Code 1.C.1). Susan Grody Ruben points to: "When it is known to the arbitrator that one or both of the parties cannot afford normal charges, it is consistent with professional responsibility to charge lesser amounts to both parties or to one of the parties if the other party is made aware of the difference and agrees" (Code 2.K.1(6)).

Scenario 2. The Grievor testified on day four of a discharge hearing. During a daily break, you overhear the Grievor make a statement in a public washroom inconsistent with her testimony. What do you do? Ignore it as a statement not under oath, not probative, and not to be considered on credibility? Disclose to counsel and offer to recuse? Recuse without explanation because what you report to counsel will become an issue in any subsequent hearing? Recall and question the Grievor? Can you decide fairly and impartially on the basis of the record? There were as many opinions as attendees.

Shyam Das advises the arbitrator to recuse saying the overheard comment makes it impossible to proceed without disclosing the comment. Disclosure will open you to summons in a future proceeding. "The burden of disclosure rests on the arbitrator. After appropriate disclosure, the arbitrator may serve if both parties so desire. If the arbitrator believes or perceives that there is a clear conflict of interest, the arbitrator should withdraw, irrespective of the expressed desires of the parties" (Code 2.B.5).

Scenario 3. A quarter of your work is on a permanent panel in a public sector collective agreement where the parties agree the loser (non-prevailing party) pays arbitration costs and fees. The employer owes $30,000 which it has not paid for over a year and is unlikely to pay in the near future because of political gridlock within the employer. The union has paid for all its losses. Several hearings are scheduled. Should you order the union to pay and the employer to reimburse the union? Ask the union to pay "with a proviso in the Award that the employer must reimburse the Union?" Refuse to proceed with any future hearing unless each party pays into your trust account an amount to cover three days of per diem? Wait and hope?

Dan Nielsen advises slow paying parties are a fact of the business. If you want the work, then work and wait. Others prefer the trust deposit option. Will it operate to the disadvantage of either party? Will it discourage proceeding to arbitration or promote settlement?

It would have been fun to have had time for the other scenarios.









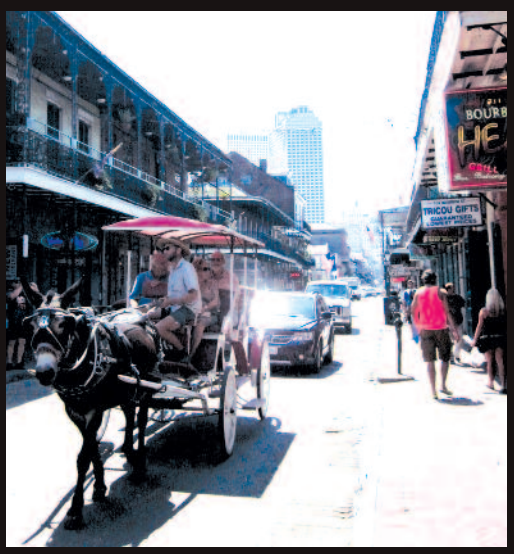
NATCHEZ





Scene in New Orleans

The Academy's Fall Education Conference held from, September 30 – October 2, 2016 at the Loews New Orleans Hotel was another successful FEC, with 128 members, 60 spouse/companion/partners, and 1 intern attending. There were a total of 39 participants of the Skills Enhancement Workshop held on Friday, September 30. Jane H. Devlin and Paula Knopf were the Program Co-Chairs and Gil Vernon served as Host Chair. Many interesting and thought provoking topics were discussed at the plenary and concurrent sessions throughout the meeting. An amazing time was had by all!




NO PARKING
ANY TIME

NAA'S Public Role

By James Cooper

The NAA has three public faces (not to mention over 600 "private faces"), which George Fleischli introduced at this session. In addition to the NAA's direct public relations role, there is the role implementing the Code of Ethics that provides guidance to our members and a relief valve for those who find something wrong with the performance of one of our colleagues. The NAA also interacts with three agencies that regularly support our services: FMCS, NMB, and AAA. This session, however, was devoted to the truly direct public relations role, those faces that publicly display and describe the NAA and its goals.

First up was that famous leader of the Second Line, Gil Vernon, who has worked tirelessly (but with a crazy hat and much vigor) to get the web site "arbitrationinfo.com" online with the full support of the University of Missouri School of Law (Profs. Rafael Gely and Bob Bailey, Proprietors). It is really a terrific Web site and there is no excuse for any journalist (or 8th Grader!) not to visit this and learn the basics of arbitration and an update on current events. Gil encouraged all to subscribe to the Web site and contribute articles for publication on the site. (How one contributes articles to the Web site was explained, but I missed it. E-mail Gil Vernon or Bob Bailey to get your articles on the site.)

Next up, Barry Winograd presented the Amicus Brief as our second foray into the public image. How and why and who makes decisions on whether to submit an Amicus Brief (to the Supreme Court, Circuit Courts of Appeal, NLRB) was explained in full (how, any member; why, because the case is significant to our members; who,

Barry Winograd, Walt De Treux, George Fleischli, and Gil Vernon.

the Board of Governors). There followed a terrific story from Dennis Nolan about his attempt, many years ago, to prevent the NAA from filing an Amicus Brief in *Circuit City*. He faced off with David Feller (who favored filing to prevent pre-employment arbitration agreements) before the Board of Governors. Dennis thought he was very persuasive before the lunch break, but came back only to find that George Nicolau had switched sides over lunch and voted with Feller. George, who was present at this session, denied that he even hinted at his opinion before lunch ("I never make decisions when I am hungry!"). However, Dennis bet David a dozen doughnuts that the Supreme Court would vote 5:4 in favor of *Circuit City,* which it did. At the next NAA meeting, Dennis found twelve dozen doughnuts in his room when he arrived. David may have been on the wrong side of that argument, but he paid that fat debt.

Third in the batting order, Walt De Treux, presented a public face that encourages development of new arbitrators. His new Outreach Committee encourages the regions to set up new arbitrator recruitment programs. The best example was the work of Dick Adelman in New York, where the New York State Bar Association is involved in a program that assists new arbitrators in their early years. This program has produced more than 15 new NAA members, including five new NAA members in the past two years. While Walt's Committee has no money to distribute to the regions to help recruit applicants, it is pretty clear that such funding would be necessary in order to create an effective outreach campaign.

The net take on this session: the NAA's public presence is improving from minuscule to readily accessible.

A Short History of Louisiana Labor Organizing And Its Impact On Charter Schools

By James Cooper

Longtime NAA member Paul Barron led a discussion of the New Orleans labor scene, dealing first with the history of unionization in Louisiana and then the New Orleans Parish school system immediately before and after Hurricane Katrina. Advocates, attorney Louis L. Robein, III (labor) and attorney Scott Schneider (School Board), presented a historical context and participated in a spirited dialogue. Barron frequently interjected comments and questions. While attorney Robein's history started at the Civil War and quickly brought us through the turmoil of Reconstruction, Huey and Earl Long, etc., the audience insisted that they were more interested in focusing on the New Orleans schools pre-Katrina and post-Katrina. The discussion of that situation took the majority of our time.

Pre-Katrina, the New Orleans School Board had 56,000 students in 128 public schools and 6,000 employees. The AFT Local had a three-year contract for 4,000 teachers with one year left on the contract when Katrina hit on August 29, 2005. Before Katrina, the New Orleans Parish Schools suffered from insufficient resources, a dysfunctional school board, and the effect of desegregation resulting in many years of white flight that left the system primarily black. Test scores and graduation rates were low. Many white and black students had already abandoned the public schools for an active Catholic school system before Katrina hit. A large number of school buildings in the Catholic system and the public system were damaged substantially by Katrina.

Inasmuch as the teachers' contract had no *force majeure* language, the School Board placed the teachers on "disaster leave" and paid no one. The teachers sought to enforce contract rights for pay and pension contributions through the arbitration clause in the agreement. (Interestingly, Tulane University paid every staff member during the time the University was closed post-Katrina, an intelligent move that kept the University intact). Attorney Schneider represented the School Board and said that the arbitration claims were ultimately settled.

Louisiana had a statute that allowed the state to take over "failing schools." In the wake of Katrina, the Louisiana Board of Elementary and Secondary Education seized all but twelve of the existing Parish schools, placing the remaining schools in the Recovery School District. It was in this milieu that the move arose to convert existing schools into charters and create new charters in Orleans Parish. Rather than controlling local schools centrally, charters are operated by an independent board of directors. Nevertheless, charter schools are funded by the State and the Parish. (Paul Barron is on the Board of one charter school.)

Louis Robein, Paul Barron, and Scott Schneider.

In the last year, the AFT Local, with the support of the state teachers union, moved to organize the teachers charter by charter. (The Union was and continues to be represented by attorney Robein). The Boards of two charter schools voluntarily recognized the Union and there were NLRB elections in two other charter schools. The teachers voted for representation by the AFT in one charter and rejected representation in the other. The fight is now whether the charter schools are subject to NLRB jurisdiction as "private" enterprises or whether they serve a "public" function and therefore are governed by State law. That case is before the NLRB with strange bedfellows. The national NEA and AFT take the position that the charter schools are "public" and governed by state law; the New Orleans United Teachers (the AFT local) claim they are private and governed by federal law. How this plays out may be the subject of next year's FEC conference.

Most states with charter schools did not suffer the way New Orleans did, although it is clear that many school districts around the country would love to undo years of teacher negotiations and contracts. Lost in all of this is what is in the best interest of the students notwithstanding that each side repeats the shibboleth of "the children's best interest." Children always get the short end of the stick when power and money are at stake. A balanced approach to educating inner city, primarily black, students is an absolute necessity if the country is ever going to come to terms with the vast disparity in educational opportunity and income earning capacity between black inner-city school systems in every state and the wealthier, white suburban schools ringing most of those cities. Unfortunately, the invited expert, Professor Jana K. Lipman, an associate professor at Tulane University, could not attend the session. She may have all the answers.

DISCIPLINARY REMEDIES REVISITED

Who Pays for the Time of the Grievance/Arbitration Process?

By Linda Byars

NAA member Lise Gelernter, who teaches arbitration and other subjects at the University at Buffalo School of Law, moderated the panel discussion. NAA members Howard Foster and Stephen Befort also participated in the discussion that included the subject, "Who Pays for the Time of the Grievance/Arbitration Process?"

Using the NAA Proceedings, Howard Foster summarized the discussions on this subject at Academy meetings beginning in 1969 with Ted Jones. In 1979, William Fallon and two advocates addressed the topic, "What Arbitrators Are Doing Wrong," which included a discussion of reinstatement without back pay. In 2006, Richard Mittenthal and David Vaughn presented their paper on arbitral discretion on the discharge penalty, which included discussing responsibility for the length of the grievance/arbitration process. Mittenthal addressed the subject again in a 2009 paper entitled, "Remedies in Discipline Cases: Impact of Delay in Determining Back Pay."

Steve Befort summarized the empirical findings of the study that he and NAA members Laura Cooper and Mario Bognanno conducted with some help from the REF. The study includes 2055 published and unpublished awards of 81 arbitrators, involving discipline and discharge over a 24 year period (1982-2005) in the Minnesota public and private sector, and compares the outcomes (uphold the discharge, reinstate with full back pay, reinstate with partial back pay, reinstate without back pay, and entitlement to future vacancy) by sector, by arbitrator's attorney status, by arbitrator's NAA status, and by last chance agreement status.

L to R: Stephen Befort, Lise Gelernter, Howard Foster

Some noteworthy findings include: NAA members reinstated without back pay 20 percent of the time, whereas non-NAA members reinstated without back pay only 13 percent of the time. Attorney arbitrators reinstated without back pay 18 percent of the time, whereas non-attorney arbitrators reinstated 14 percent of the time. The mean length of employer imposed suspensions was one week, while the mean length of the no back pay periods for discharges reduced by arbitrators to suspensions was eleven weeks. The mean length of the no back pay period for decisions reinstating with no back pay was 225 days for the public sector and 178 days for the private sector. Reinstatement without back pay during the period 1982-1989 was 20 percent, between 1990-1997 was 17 percent and between 1998-2005 was 14 percent. The full study can be found in the Proceedings at www.naarb.org.

One of the cases included in the empirical study and used for discussion was a decision by Howard Foster. The case involved a nurse with 30 years of service who had engaged in serious, albeit exaggerated, misconduct. The time from filing of grievance to award was 17 months. Several NAA members offered their opinions of the appropriate remedy, including David Vaughn, who stated his opinion that the parties must share responsibility for any delays and that, as a general matter, arbitrators should not change assessment of an appropriate penalty based on such delays. Vaughn said that he does not view reinstatement without back pay as an affirmative alternate remedy but as a last resort, after considering and rejecting all other choices. Foster explained that he reinstated the nurse without back pay and that David's analysis was "spot on." Foster says that, for him, reinstatement without back pay is what is left when everything else is wrong.

How New Science And Lessons From The Innocence

By Jerry Sellman

As a trier of fact, arbitrators are confronted with determining which witnesses are telling the truth or, in most cases, which witnesses more accurately relate the facts. Our own Jan Stiglitz[1] and attorney Kristin Wenstrom[2] presented fascinating case studies of how science and lessons learned from the Innocence Movement can be used by arbitrators.

Kristin Wenstrom and Jan Stiglitz

The Innocence Project was founded in 1992 at Cardozo School of Law to exonerate wrongly convicted persons through DNA testing and reform the criminal justice system to prevent future injustice. Since 1992, a number of Innocence Project organizations have been created across the country as non-profit law offices that focus on representing innocent prisoners serving life sentences and helping them transition into the free world upon their release. Innocence Project New Orleans (IPNO) uses its cases to explain how wrongful convictions happen and what we can all do to prevent them. IPNO works with legislators, judges, lawyers, law enforcement, and policymakers to protect the innocent within the criminal justice system. IPNO also provides intensive support and guidance to each of its clients upon their release. Since 2001 IPNO has freed or exonerated 28 innocent men who spent, combined, 574 years in Louisiana and Mississippi's prisons for crimes they did not commit. Over 4,500 applicants have applied for assistance. IPNO currently represents 14 people.

While the initial focus of obtaining exonerations was based on DNA testing, of 1886 exonerations obtained nationwide since 1989, only 344 were based on DNA testing. The other exonerations resulted from the discovery of other factors such as mistaken eyewitness identification, witness perjury, false accusations, false confessions, or false or misleading forensics.

So, what can arbitrators learn from the experience of the Innocence Movement in general and the IPNO specifically about assessing the testimony of witnesses and evidence presented? Interestingly, quite a lot. While advocates pitch the testimony of their witnesses as truthful and that of the opponent as untruthful, often the reality of the situation is not who is telling the truth, but which witness represents more accurately what happened. Testimony is ultimately based upon memory, and the Innocence Movement has identified several factors that have an impact on memory.

Witnesses' memories are affected by the conditions surrounding them at the time of an incident, including distractions, multi-channel sensory exposure, and angle of view. In addition, a witness's memory is reported in response to questions that may or may not jog their memories, questions that may assume facts not in evidence, or questions that are based on the testimony of others. Arbitrators, as fact finders, should be aware of and pay attention to these factors as they can dramatically affect the reliability of a witness's testimony.

IPNO has determined that witnesses make mistakes in their testimony, for example in the identification of perpetrators, based on factors categorized as Estimator Variables or Condition Variables. Estimator Variables, which are uncontrollable circumstances existing at the time of the crime, include:

- ☐ Cross-racial identification
  - Witnesses are better at identifying members of their own race than those of other races.
- ☐ Stress
  - High levels of stress significantly impair a witness's ability to encode details, such as facial features, into memory.
- ☐ Weapon focus
  - The visible presence of a weapon negatively affects memory for faces and identification accuracy because witnesses tend to focus on the weapon instead of the perpetrator.
- ☐ Duration of time
  - Of the event
  - Between the event and the identification
- ☐ Lighting
- ☐ Distance

In challenging the recollection of a witness, the level of stress cannot be underestimated. In a study commissioned by the military, over 500 military personnel enrolled in survival school training underwent intense interrogations, some under the threat of physical force. After twenty-four hours, they were asked to identify their interrogators. Those subjected to threats of violence were much more likely to misidentify their interrogator: 68% of subjects chose the wrong person when viewing photo arrays, 56% in live lineups, and 51% in sequential photo lineups.

While Estimator Variables affect the reliability of testimony, individuals also observe things differently. Stated another way, different observers observe different things. To illustrate this, the audience viewed the Selective Attention Test Video by Daniel J. Simons, in which six basketball players (three wear-

Movement Can Assist You As The Arbitrator and Trier of Fact

ing white shirts and three wearing black shirts) are bouncing a basketball. The Audience is instructed to count the number of times the players in the white shirt pass the basketball. While concentrating on the number of passes, many individuals (including several in the audience) did not observe a black gorilla walking through the group or a curtain in the background changing color!

Condition Variables are circumstances that are subject to control in developing a witness's testimony after the commission of a crime. These elements can reduce the reliability of the testimony. Examples of Condition Variables are:

☐ Selecting the type of lineup used

- show up (police ask if this is the guy)
- live line-up (uncommon)
- photo array (most common)
- multiple viewings
- selection of fillers
- blind administration
- instructions given to eyewitness before he makes an identification
- communicating with the witness after he makes an identification

To illustrate the effect of Condition Variables, the audience was shown a video of a robbery. In a subsequent lineup of individuals, the audience was asked which one of the six individuals was the suspect. While several in the audience identified one or another as the suspect, it turns out the perpetrator was not in the lineup!

In a study conducted by Roy S. Malpass, it was found that when the perpetrator is absent from the lineup, witnesses who were warned that the perpetrator might not be in the lineup misidentified a suspect only 33% of the time, compared to 78% of the witnesses who were not instructed.

Misidentification of suspects in photo arrays and lineups have been well documented. One such case involved Jennifer Thompson, who wrote about her experience in the book Picking Cotton. Ms. Thompson was raped and mistakenly identified Ronald Cotton as her attacker. She picked his photo out of a photo array and then selected him in a live lineup. Ronald did 10 years before he was exonerated by DNA testing, which showed that the actual perpetrator was Bobby Poole, a serial rapist who was already in prison for another crime. Now Thompson and Cotton travel the world telling their story. Jennifer Thompson has talked about the pressures that eyewitnesses, especially victims, feel to make an identification.

Ms. Wenstrom gave an example of how communication after a witness identifies a suspect affects the testimony. In some cases where the police officers had clapped hands and said "That's the suspect," "That's who we thought it was, too," or something more subtle like "Good job," etc., such action falsely increased the certainty or confidence of the witness. If a witness had only been 70% sure that the person chosen was the perpetrator, after receiving the positive reinforcement, the witness became more confident that they got it "right." When testifying in front of the jury and asked, "How certain are you that the defendant was the person you saw?" the witness might say "100%" not "70%" (which was the truth).

Triers of fact should be aware of the perceptions that individuals use in relating the facts as they know them to be. Witnesses often craft reports that are less than accurate based upon their perception of the events that occurred. Likewise, the trier of fact also often brings his or her own biases to the interpretation of facts. These are factors that a fact finder should keep in mind when assessing the testimony presented.

As cognitive as we humans are, our minds often do not assimilate the details of what we see or hear when viewing an image for a short duration or when listening to a lot of information in a short period of time. The audience participated in two exercises to illustrate the point.

The following image was flashed on the screen:

Many in the audience did not see "the" appearing twice.

As an additional example, Ms. Wenstrom read a series of words, many of which had an association with another word in the series. After all of the words were read, she asked the audience to write down all of the words they remembered. While many in the audience remembered quite a few of the words (after all, we are arbitrators!) some of the words the audience thought were read (when suggested by Ms. Wenstrom) had not been read at all! This illustrates that a report can often contain information that the reporter assumed was heard, but actually had not occurred.

Arbitrators are routinely confronted with conflicts in the testimony presented. The next time this happens to you, consider the factors cited here that cause the testimony to be less reliable, not necessarily untruthful. Keep in mind the science and lessons learned from the Innocence Program. These are useful tools in seeking the real facts of the case.

[1] Mr. Stiglitz co-founded the California Innocence Program in 1999 and is a member of the NAA.

[2] Ms. Wenstrom has been a staff attorney at Innocence Project New Orleans since 2008.

EMERGING WORKPLACE GENDER IDENTIFICATION AND TRANSGENDER ISSUES

Gender is Fluid—Not Fixed, Binary, Or Anatomy-Based

By Marsha Cox Kelliher

The presenters for this session were Arbitrators James C. Dorsey, Q.C. and Marsha Kelliher, J.D., LL.M. After providing definitions for many of the terms used during the presentation, Arbitrator Dorsey provided an overview of Canadian law, which is much more settled and clear than U.S. law. In Canada, there is a broad acceptance of diversity in equity initiatives and rights claims. For example, transsexual individuals have been protected under "civil status" in the Quebec *Charter of Human Rights and Freedoms* since 1982.

Arbitrator Dorsey explained that the substantive rights and obligations of Canada's *Human Rights Codes* are incorporated into each collective agreement. As a result, in Canada, arbitrators have the power and responsibility to implement and enforce these rights and obligations as if they were part of the collective agreement. This framework advances promotion of expeditious resolution of workplace disputes and bolsters human rights protection. He also provided examples of contract language found in Canadian collective bargaining agreements.

Arbitrator Kelliher shared the history of Title VII and how courts and the EEOC have gone from interpreting the language prohibiting discrimination based on "sex" as not including gender identity and sexual orientation claims to providing coverage following the Supreme Court's decision in *Price Waterhouse v. Hopkins,* which provided a new framework for analysis. She also covered Executive Orders, other bases of claim such as the Due Process and Equal Protection clauses of the 14th Amendment of the U.S. Constitution, and proposed legislative solutions to provide language that would directly address discrimination based on sexual orientation, gender identify, and sex. Arbitrator Kelliher also provided resources for sample contract language.

Jim Dorsey and Marsha Cox Kelliher

Following their presentations, Arbitrators Dorsey and Kelliher engaged the audience with workplace scenarios and entertained questions from the audience.

2017-2018 SLATE ANNOUNCED

President-Elect		
	One year term	**David A. Petersen** (Pittsburgh, PA)
Vice Presidents		
	Second one year terms	**Laura J. Cooper** (Minneapolis, MN) **James J. Odom, Jr.** (Birmingham, AL)
	First one year terms	**William A. Marcotte** (Toronto, ON) **Elizabeth C. Wesman** (Camas, WA)
Board of Governors		
	Three year terms	**Stephen F. Befort** (Minneapolis, MN) **Richard D. Fincher** (Paradise Valley, AZ) **Michelle Miller-Kotula** (Washington, PA) **Jeanne M. Vonhof** (Chicago, IL)

Each of the above candidates has agreed to serve if elected at the 2017 Annual Business Meeting. Under Article VII, Section 2 of the Academy By-Laws:

> Other candidates for office (except for the office of President) may thereafter be nominated by members of the Academy. To be valid, a nomination must be made in writing by at least thirty (30) members in good standing and must be filed with the Executive Secretary-Treasurer, either as a single petition or as separate petitions, at least sixty (60) days prior to the Annual Meeting at which the election is to occur. If nominations [by petition] have been made within the period specified, the President shall promptly announce to the membership of the Academy the names of said nominees.

Thank you to the members of the 2017-2018 Nominating Committee: Robert B. Moberly, *Chair*, Randi Hammer Abramsky, Shyam Das, Kathy Fragnoli, Allen Ponak, Theodore J. St. Antoine, and Barbara Zausner.

Habitat For Humanity During The FEC In New Orleans

By Linda Byars

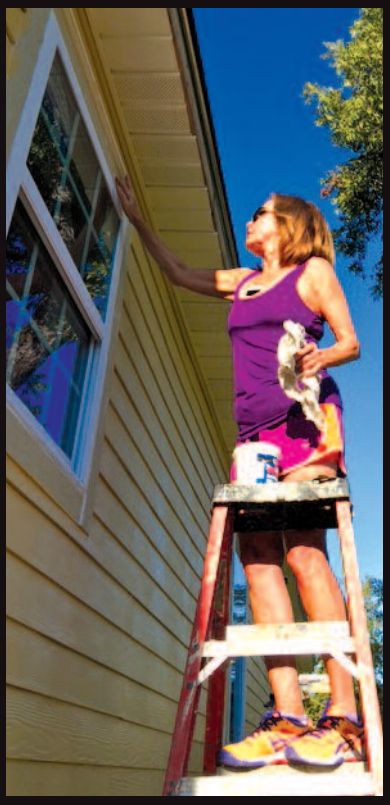
The Academy sponsored build brought in over $3000 from our members for New Orleans Habitat for Humanity. Many of us also worked on the Habitat project in New Orleans after Katrina in 2006.

We were a small group this time but remarkably able considering we are ten years older. Most of the work was finishing (outside caulking and painting) and on ladders all day — without injury!

Elizabeth Wesman, Linda Byars, Sharon Henderson Ellis, Syiesha Wilkins (homeowner), Barb Dichter, Fred Dichter and Jim Cooper (in foreground)

Fred Dichter, Barb Dichter, Elizabeth Wesman

Erica (habitat volunteer), Gil Vernon, Syiesha Wilkins (homeowner), and Elizabeth Wesman



Linda Byars

SEW

"Working Effectively in the Federal Sector"

SEW Panelists Debbie Shrager, Ernie DuBester, NAA Member Jeanne Charles Wood, Tabitha Macko, and NAA Member David Vaughn.

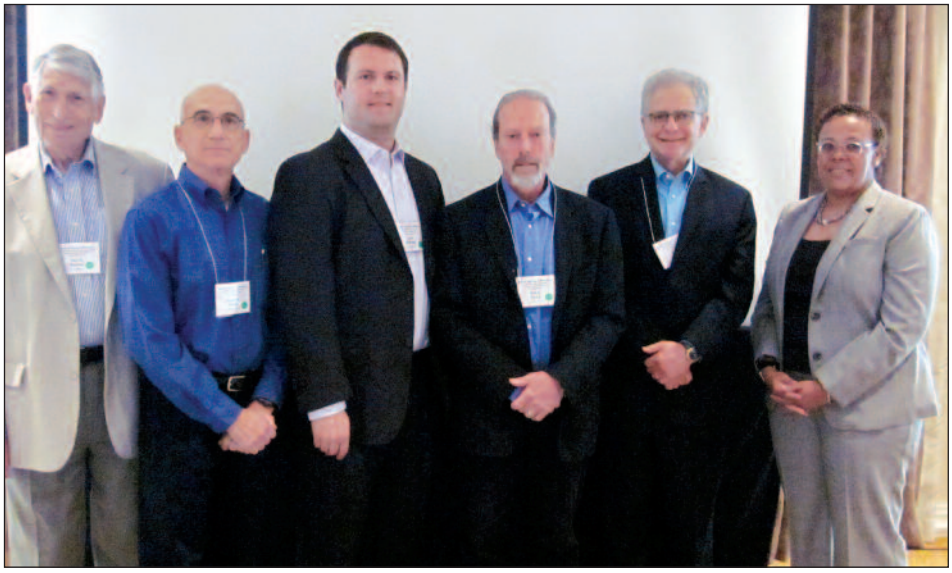
New Orleans 2016 New Member Orientation

Reported by James Cooper

We did not realize that Donald Trump was among our new members during the Thursday new member orientation session. But, lo and behold! He appeared unannounced and in the flesh the next morning during the new member self-introductions. Of course, he never properly introduced himself as Bob Hirsch from San Francisco, but if you attended the Saturday introductions, you would agree with me that he could make a killing over the next few weeks as a stand in for the real thing. It was truly a remarkable and brave performance that took all of us by surprise.

The New Member Orientation Session, as run by chair Dick Adelman, was efficient and thoroughly educational, but, as always, fun. Besides Bob Hirsch, we also indoctrinated Aaron Shriftman (New York City), Elliot Shaller (Washington, D.C.), Noel Berman (Texas and New York), Haydee Rosario (New York City), and Arnold Zudick (New Jersey). Their pictures and bios are found elsewhere in this edition of *The Chronicle*. With the exception of Aaron (who made his sixty cases in exceptionally record time!), all of the new members had gray hair along with many, many years of solid experience. The Membership Committee should be proud of getting so many qualified people into the Academy, since we are losing three for every one we take in, but who is macabre enough to count.

The current New Member Committee members, including Kathy Eisenmenger, Dan Jennings, Howell Lankford, and Jules Bloch, continued their service by recounting current issues raised on the e-mail sounding board as to order of closings, briefs versus non-briefs, and the controversy over imposing one's theories of the case on the parties. Needless to say, there was never any consensus on any issue; but how could the NAA exist if unanimous agreement were the order of the day. (The only notable exception was, as CPRG Chair Dan Nielsen opined, "NO tardy awards.") Dick Adelman has one more batch of newbies to lead into pasture and then he turns the whole kit and caboodle over to Jules Bloch, who I am sure will have that somber, Canadian, statutory approach to bringing people aboard. Join this committee and you will discover Jules in his full glory.



Left to Right: Noel B. Berman, Arnold H. Zudick, Aaron A. Shriftman, Robert M. Hirsch, Elliot H. Shaller and Haydeé Rosario.

Plan to Attend

2018 Annual Meeting
May 23 – 26, 2018

The Fairmont Hotel Vancouver
Vancouver, BC

NEW MEMBERS WELCOMED IN DENVER

NOEL B. BERMAN

New York, NY

Noel is a New Yorker, born and raised in Brooklyn (around the corner from Ebbetts Field). He attended City College, served two years in the Army, then entered Columbia Law School. Following graduation, he married Claire Berman (nee Gallant), a Brooklyn girl who has her own career as an author, with whom he raised three sons on the Upper West Side, where they still live.

After serving as law clerk in the U.S. District Court, Eastern District of New York, he became a labor lawyer, first as an associate in a law firm, then to ABC and CBS, then as a VP of Industrial Relations and, finally, VP of Business Affairs, CBS Sports. He arbitrated before Academy luminaries, including four presidents. At the end of his time at CBS, he was responsible for negotiating rights agreements with the NFL and NBA.

Always an avid sports watcher, Noel was an indifferent tennis player, still plays social bridge, and suffers from that poker player's dreaded malady: optimism. His kids gave him singing lessons for his 65th birthday, but he still cannot carry a tune.

Following retirement from CBS, he embarked on a career as an arbitrator. That was almost twenty years ago. He finds his talents and temperament well suited to this work. Establishing credentials as a neutral was not easy, but admission to the Academy affirms that he did it. Thank you, Academy.

ROBERT M. HIRSCH

San Francisco, CA

Originally from New York City, Bob has practiced law in San Francisco for 38 years. For the past 11 years, he has been a full time neutral, arbitrating and mediating throughout the United States. He is a graduate of Washington University in St. Louis and the UC-Davis School of Law.

Bob has an active practice in the private and public sector labor-management field covering many industries, in addition to handling securities, commercial, employment, and EEO matters. He serves on many permanent panels, and is a panel member for the AAA, the FMCS, the California State Mediation & Conciliation Service, the U.S. District Court (Northern District of California), California State Courts, and the EEOC. Bob has been a guest lecturer at several Bay Area schools including Stanford University, Hastings College of the Law, and New College Law School. He is admitted to practice law before the United States Supreme Court and federal and state courts in California.

Before becoming a neutral, Bob worked for 14 years at a prominent Union side law firm in San Francisco, and spent almost 12 years as the General Counsel of a San Francisco based investment firm, which managed over $27 billion in Taft-Hartley funds.

Bob is proud to join the NAA and hopes to make a contribution to the organization. He is married with two children, and is a jazz guitarist and painter.

HAYDEÉ ROSARIO

Bronx, NY

Haydeé, an attorney with a practice based in New York City, is a full-time Arbitrator and Mediator with over 20 years of experience in labor-management relations. She is experienced in both the private and public sectors with issues related to contract interpretation, discharge and disciplinary actions, competency, and discrimination.

She is a member of the American Arbitration Association, Labor and Employment Panels of Arbitrators and AAA Mediation Panel; Federal Mediation and Conciliation Service; NYC Department of Education and UFT, Tenured Teachers Disciplinary Panel; NYC Office of Collective Bargaining; NYS Public Employment Relations Board ("PERB"); U.S. Virgin Islands PERB; the State of New York and the Public Employees Federation, Professional Scientific and Technical Services Unit, Disciplinary Arbitration Panel; Local 342, UFCW and Various Employers; and TWU, Local 100 and NYC Bike Share. She is also a contract mediator for the EEOC.

Before establishing her practice, she worked as an attorney at the NLRB and the NYC Department of Education,

(Continued on Page 30)

NEW MEMBERS *(Continued from Page 29)*

Office of Labor Relations where she represented the agency in labor relations matters.

Haydeé was born and raised in Puerto Rico. She was admitted to the New York Bar in 1991. She holds a BA in Cultural Anthropology from the University of Connecticut and J.D. from Queens College, CUNY Law School. As a bilingual attorney, she has extensive experience with the needs of a diverse clientele.

ELLIOT H. SHALLER

Potomac, MD

Elliot Shaller has been a full-time neutral since 2005 and has served in both the public and private sectors in labor, employment, and employee benefit cases. He is on the arbitration rosters of the Federal Mediation and Conciliation Service, the American Arbitration Association, and multiple state labor and employment relations boards as well as permanent arbitration panels. He has served as mediator in numerous cases for the U.S. District Court, the U.S. Office of Compliance, the Equal Employment Opportunity Commission, the Nuclear Regulator Commission, and private parties.

In 2009, Mr. Shaller was appointed by the Secretary of State to be a member of the Foreign Service Grievance Board and, since 2011, has continued to serve as both a member and Deputy Chair of that Board.

Mr. Shaller was an Adjunct Professor at the George Washington University Law School from 2007-2010. Prior to becoming an arbitrator and mediator, he worked for 25 years as a labor and employment attorney for several law firms.

Mr. Shaller hails from Brooklyn, N.Y. and is a graduate of Brooklyn College and the George Washington University Law School, where he earned both a J.D. and an L.L.M. in Labor Law.

AARON A. SHRIFTMAN

Sunnyside, NY

Aaron A. Shriftman has been a full-time labor arbitrator, mediator, and fact finder since 2010. He proudly follows in the footsteps of his father, Elliott D. Shriftman, a fellow member of the National Academy of Arbitrators. A 2004 graduate of Cornell University's New York School of Industrial and Labor Relations and a 2009 graduate of New York Law School, his practice keeps him primarily in the New York City metropolitan area. Aaron began his career after spending two years apprenticing with his father during and after law school. Prior thereto, he worked for the National Football League's Management Council.

Aaron is a member of various labor arbitration panels, including the American Arbitration Association, Federal Mediation and Conciliation Service, New York City Office of Collective Bargaining, and New Jersey State Board of Mediation. He is a permanent member of several public and private sector panels, including two with Transit Workers Union, Local 100 and the New York City Transit Authority. When Aaron is not serving in some capacity as a neutral, he enjoys cooking for his family, parenting his three-year old daughter, and rooting for the New York Giants.

ARNOLD H. ZUDICK

Morrisville, PA

Arnold H. Zudick has been a full time labor arbitrator since late 2010 and has been a neutral in labor-management relations his entire career. Upon graduating from law school in the mid 1970s, Arnie worked at the National Labor Relations Board, Office of Appeals, in Washington, D.C. for almost three years managing unfair labor practice cases before returning to his home state of New Jersey where he began a 34 year career with the New Jersey Public Employment Relations Commission (PERC).

He served as a Hearing Examiner/Administrative Law Judge for most of his PERC career conducting interim relief, unfair practice, and representation hearings in the public sector. During that time, he also served as a Mediator for PERC helping parties reach new collective bargaining agreements. Arnie completed the last seven years of his PERC career as the Agency's Director of Unfair Practices and Representation

At the beginning of December 2010, Arnie began his arbitration practice resolving labor-management disputes in both the public and private sector. He is a AAA panel member and on several New Jersey and Pennsylvania arbitration, mediation, and fact-finding panels, including the New Jersey/CWA Major Disciplinary Panel. He also serves as a Hearing Officer for the New York/New Jersey Port Authority Employment Relations Panel.

Arnie received his BA from Hofstra University and his JD from the University of Mississippi.

REMEMBERING...

Remembering Mei Liang Bickner

By Chris Knowlton

Mei Liang Bickner, a woman of joy, determination, and integrity, passed away on September 1, 2016. Her daughter, Su-Yin, survives her.

Mei grew up in Jakarta, Indonesia and immigrated to the United States in 1958 to study sociology at UCLA. She earned her bachelor's degree there in 1962 and continued in the university's graduate school of management to earn an MBA and a doctorate in industrial relations, with an emphasis on labor-management relations. Mei taught in UC Irvine's graduate school of management until 1968, when she joined California State University at Fullerton as a professor of management.

She was an exceptional teacher. Her collective bargaining simulation class at CSUF was legendary for bringing students together with federal mediators, union leaders, HR representatives, and labor attorneys. Her work at the University influenced many students to choose a labor relations career. Mei also regularly appeared on NAA programs as a panel speaker or workshop leader. She particularly enjoyed teaching skills sessions for advocates and designing hypotheticals highlighting cutting-edge arbitration challenges.

Mei worked at the highest level of the arbitration profession, and was sought for the most complex and industry-defining cases. In her last days, advocates expressed to her their admiration, affection, and respect. One wrote, describing her as having a "brilliant mind, kind spirit, constant humility, ability to listen for and discern truth, and a presence that instills great confidence in everyone in the room." He said working with her made him a better advocate and a better person.

Mei embodied the enjoyment of shared work and collegiality that is the heart of the Academy. She was a devoted member who regularly attending meetings with her daughter Su-Yin and her husband Robert, who pre-deceased her in 2015. She led and contributed to numerous committees, and served on the Board of Governors. She will be remembered for her love of dancing the night away at our annual Dinner Dance, her photographs capturing our times together, her friendship, and her many kindnesses.

Remembrance of Gladys Gershenfeld

By Gladys Gruenberg

I would be remiss not to remind our members of the longstanding relationship between the two Gladyses, which was begun early in our arbitration careers and continued for more than 30 years. After joining the Academy, we discovered that our professional as well as our personal experiences paralleled each other. Although Gladys Gershenfeld was admitted to the Academy before I was, we found that the paths we had used to get there were much the same (teaching first, then arbitration, several years of both while raising children, retirement from teaching, and finally retirement from arbitration.) We both thought that women arbitrators had had a harder time convincing the industrial relations community (as had women judges) that they were as capable as men to decide workplace issues.

Gladys and Walter Gershenfeld were the Academy's first husband-wife team, she being admitted in 1980 at age 55. She would not have admitted it, but, in accordance with the cultural climate of the time, she deferred to Walter in many situations; and Walter was probably better known to most Academy members than she was. She was, however, a Vice-President at one time; and was active as a board member of the REF. But among the women members, Gladys was hailed as a leader for women's causes, especially in receiving more recognition from the Academy. Although Gladys never became President, she helped other women members achieve that goal. She also backed Walter for that office and later was jointly named with him as an Honorary Member.

On a personal level, Gladys Gershenfeld made it her goal to welcome every new member, especially new women members, and to guide them into the Academy's special culture. In fact, when she served as Chair of a Committee or a member of the Board of Governors, she regularly suggested that more women members be elected to office and be appointed to chair committees. But in her usual unobtrusive manner, she made it a habit not to offend any male candidate. She supported anti-discrimination in other ways, especially by proposing and later chairing a committee to make

(Continued on Page 32)

all Academy documents (Constitution and Bylaws, Ethics Opinions, Proceedings, all publications) gender neutral. In her Committee's Report to the Board of Governors on July 12, 1991, she listed the following guidelines, which deserve repeating even today:

1. Use the plural where appropriate.

2. Eliminate the pronoun, especially he/she.

3. Use a different construction where possible.

4. Repeat the noun if necessary.

5. Substitute the word "one" if the singular is required.

(See fn. 245, Chap. 6, "NAA: Fifty Years in the World of Work", p. 303.)

After Gladys Gershenfeld's failing health prevented her from attending Academy meetings, I kept in touch with her by sending her a copy of my monthly "hi-everybody" letter (which for more than ten years I've sent to relatives and special friends), although for almost five years she did not acknowledge them, until September 3, 2015, when I received a letter from her caregiver at Haverford, PA, where she was living at the time. Janice Duffin, RN, wrote:

> I am writing to you on behalf of your friend, Gladys Gershenfeld. As you know, Gladys moved into an assisted living facility and I have been helping the family with her care. I wanted you to know that I read your letter to Gladys and she was very happy to hear from you, but at this time she is unable to write back to you. Please continue to send updates on how you are doing and I will share your letters with her.

So I did just that and am happy that I did. She died on August 25, 2016 at age 91. She was survived by 3 sons and their spouses — Joel and Susan; Neil and Laura; Alan and Madhavi — and 6 grandchildren — Gabriel, Aaron, Grace, Eli, Ethan, and Kiran. I know all Academy members share my feeling of loss at hearing about Gladys's death and extend our condolences to her family. She was a grand lady and a good friend as well as an accomplished arbitrator. May she rest in peace!

Remembrance of Martin Teplitsky Q.C.

(July 7, 1941 – July 14, 2016)

By John Stout

On July 14, 2016, the legal and labour relations communities lost a giant. After a long and courageous battle with cancer, my colleague, mentor, and friend, Martin Teplitsky Q.C., O. Ont., LSM passed away.

Marty graduated from the Faculty of Law at the University of Toronto in 1964. Marty was a law professor who authored books and articles on civil procedure, labour law, tort law, arbitration, and mediation. Marty was also a highly respected litigator and a founding partner of the boutique litigation law firm Teplitsky Colson LLP.

Marty was one of Canada's most respected mediator-arbitrators, settling countless labour disputes. Marty was a pioneer of expedited med-arb and helped reduce and eliminate countless backlogs of grievances in numerous workplaces. He had an uncanny ability to quickly craft resolutions that met the parties' needs.

I first met Marty when I was a young lawyer representing trade unions. Marty already had a reputation as being an efficient arbitrator. One of the most often told stories was of an overtime grievance worth $20.00. As the story goes, after hearing opening statements, Marty turned to the grievor, pulled out $20.00, and gave it to him. Later, Marty sent the parties his account and added $10.00 to each account.

I never had the courage to ask Marty if the story was true. But one thing was true, Marty did not like to waste time on trivial matters and he had no time for foolish arguments.

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REMEMBERING... Martin Teplitsky Q.C. (Continued from Page 32)

As a young lawyer, I was lucky enough to appear before Marty on numerous occasions, none lasting more than an hour. Marty had the gift of identifying the essential issue and finding an appropriate remedy at lightening speed, all the while charming all of us with his insight and wit.

Marty was driven by his passion for the law. It would not be unusual for Marty to hear and determine a number of grievances before heading off to argue a civil case on behalf of a client. I recall one day in particular when I was counsel on a termination grievance that was scheduled for a 12:30 p.m. start. Marty arrived right on time, still in his robes as he apparently was on a break from arguing an appeal at the Ontario Court of Appeal. We were done by 1:00 pm, with the grievor being reinstated on a last chance agreement. Marty immediately returned to the Court of Appeal to complete his argument.

After I met my wife, I came to know Marty as a family friend. Marty was a friend of my wife's family and he was extremely generous with his time and wisdom. Marty met with me and provided support when I decided to pursue a new career as a mediator-arbitrator.

The last time I saw Marty was at a breakfast meeting, while he was in remission. When I arrived, I noticed that his once curly hair had grown in strait. I joked with Marty saying, "It looks like cancer scared your hair strait!" Marty laughed and then we enjoyed an extremely long breakfast, discussing life, family, the law, and Marty's battle with cancer. During our discussion, Marty mentioned to me that he was particularly concerned about a Federal Court of Appeal decision, which found that federally regulated employees could be dismissed without cause. It is ironic that the Supreme Court of Canada quashed the Federal Court of Appeal's decision; releasing their judgment on the very day Marty left us.

Marty was a kind and generous person. Most notably, he founded the Lawyers Feed the Hungry Program in 1998. In the beginning, Marty would buy the food himself and insist that the needy were to be fed with dignity at a table. Today, the program serves more than 1,000 needy people with meals three days a week.

Marty was the recipient of many honours, including the Law Society Medal, the Order of Ontario, the Bora Laskin Award, the Law Foundation's Gutherie Award, the Award of Distinction from the Toronto Lawyers' Association, two honorary doctorates, and the ORT Toronto Hero Award. He was also a member of the National Academy of Arbitrators.

Marty's funeral brought together the who's who of the legal and labour relations communities — representatives of management and labour, lawyers, and Judges, including some Supreme Court of Canada Justices. A retired Chief Justice of the Ontario Court of Appeal, the Honourable Warren Winkler, was a pallbearer. Many stories were told of Marty's keen intellect and endless generosity.

I was most touched by the comments of Marty's grandchildren, who spoke of him as their loving Zaidy. They are left with the warm memories of a kind and loving man who instilled values in them and loved them deeply.

Marty was larger than life and he left the world a better place. I will miss him dearly, but I am thankful for the time we spent together and I will cherish that time.

IN MEMORIAM

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

Rodney E. Dennis
NAA Member since 1978

Nicholas Duda
NAA Member since 1988

BOOK REVIEW

Opinions: Essays on Lawyering, Litigation and Arbitration, The Placebo Effect, *Chutzpah*, and Related Matters

By Stuart M. Israel and Barry Goldman

Review by Christopher Albertyn

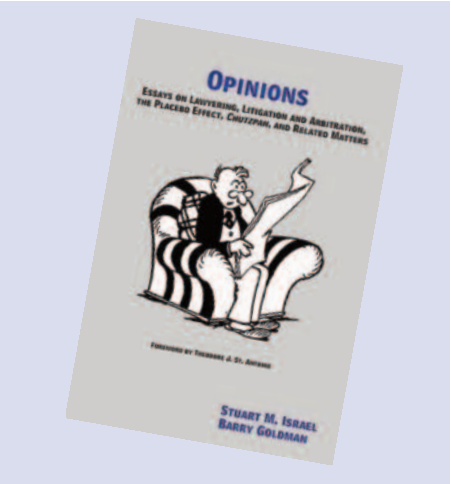
This is a magnificent book, very much fun to read. The difficulty in writing a review of it is that the Foreword to the book, by eminent NAA arbitrator and labour law professor Ted St. Antoine, gives such a rich description of what is to come, that one feels the reviewer's effort is mere repetition.

Nonetheless, I try to give a sense of the scope and pleasure of reading this splendid work. My delight reminds me of my feelings for Theodore Adorno's "Minima Moralia," John Fowles's "The Aristos," and Nassim Nicholas Taleb's "The Bed of Procrustes." Like those, "Opinions" is a profound work, written in short topics, with lots of insight one might enjoy again. Just as one might like having those books beside one's bed to read relaxed at bedtime, "Opinions" lends itself to the same joy of taking in the wisdom of a brief topic, to make one a better person; like prayer and reflection for the secular among us.

The book is first a guide to lawyers and practitioners: how to present a decent case and a persuasive argument. The sound advice given by the two authors – Stuart Israel a practitioner, Barry Goldman an arbitrator – applies to legal practice generally, though the book's focus is on labor arbitration, the field of private adjudicative dispute resolution between unions and employers under collective agreements. While all practising lawyers and law students will benefit from the advice, those in labor law will find it particularly engaging and enriching. There is some good advice for students and young lawyers, including on how to prepare an effective résumé.

A guide to practitioners seems a dry subject, suitable for a learned tome, but the authors have managed to make this delightful reading. They do so by interspersing their topics in short, accessible pieces across the 19 chapters of the book. Their wit camouflages the practical and scholarly insights that abound throughout.

Among the chapters and topics covered are Advocacy, Legal Education, the Rule of Law, On Being a Lawyer, preparing and examining Witnesses, evaluating Evidence,



raising Objections, Mediation & Arbitration, Decisions and Decision-Makers and their neutrality, Language and Writing, the Arbitration Process, and Arbitral Remedies. The last chapter, "The Wider World," gives the authors, particularly Goldman, the chance to share their wisdom on more general subjects. It has profound observations, reminiscent of Adorno's "Minima Moralia." Goldman is interested in the new science of behavioral economics and in social psychology, of how unconscious biases and embodied cognition influence our motivations and decisions. He brings the lessons from those disciplines to negotiation and litigation, explaining how mediators might use behavioral science to nudge parties to reach agreements.

In the advice to practitioners, the authors explain that the advocates' roles are to make the arbitrator want to adopt their brief as their award and to provide a clear, chronological statement of the facts of the case, without embellishment. Advocates should cull their arguments, presenting only the best, for too many arguments dilute the impact. Insult and invective are seldom effective, while civil, clear submissions are nearly always better in persuading the decision-maker. Do not re-examine witnesses unnecessarily. Be polite when cross-examining a witness. Charm and pitiless patience are more effective than bluster and theatrics. Impugning the motives of the opponents is seldom warranted, and is nearly always ineffective. As Judge Kethledge said, quoted by the authors, "that two persons disagree does not mean that one of them has bad motives." The lawyer's job is to persuade the arbitrator that the lawyer's view of the case is the sensible one, the only one the arbitrator should adopt.

An evasive witness will often respond to a question with the reply that they cannot remember or do not know. Israel offers a penetrating line of questions to challenge and clarify an inability to recall, helping to distinguish the genuinely forgetful witness from the one whose forgetfulness is really just a means to avoid being caught out. Israel gives most useful advice on how to impeach such a lying witness.

Israel gives 162 essential rules for deponents; rules the lawyer representing the deponents should explain to them before they testify. The rules are excellent. They include practical advice, like, "Don't chew gum while testifying. Be on your best behaviour. Speak up. Sit up straight," as well as tactical advice, "Beware of questions that purport to summarize your earlier testimony," and so on. Israel explains the important, though subtle, difference between coaching and legitimately precognizing or preparing one's witness for a hearing. He gives a witty, tongue-in-cheek suggestion of behavioral modification of one's witness to ensure they do not start bonding with the opposing counsel during their cross-examination, by sitting them in a room with a large picture of the opposing lawyer, with the music of Elvis repeatedly singing, "You look like an angel, walk like an angel, talk like an angel, but I got wise. You're the devil in disguise." Israel ends by saying, after the deposition, one's witness will say, when leaving the building, "in the King's immortal words, 'Thank you, thank you very much.'"

Israel provides a fascinating explanation of the relationship between memory and truth, of how the two may deviate, and of how memory fills gaps with inferences. He explains how memory malfunctions through transience (loss of accuracy over time), mis-

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attribution (assigning the memory to an incorrect source), suggestibility and bias (the powerful influence of our current knowledge and belief on what we recall).

Later in the book there is a chapter on evidence, and on the value of circumstantial evidence.

"Opinions" has much on the rules of negotiation and mediation, on the distinction between lying and exaggerating in bargaining and mediation. Goldman explains that there is much more training of mediators than there is actual mediation being done. Of the mediation there is, he explores the differences in the styles and techniques of mediators: facilitative mediation is contrasted with more evaluative, directive mediation. He talks of the prejudices in the field, how facilitative mediation is seen as too touchy-feely, while directive mediation, the judicial settlement conference model, is seen as too imposing and uncompromising. Goldman analyses the pros and cons of each method. Even though there is insufficient scientific investigation of what works best and why, he explains that all can be successful; the art is knowing when to use what method.

The authors have advice too for decision-makers, judges, and arbitrators. Intuition often produces mistaken results; decisions should be made on deliberative reason, not intuition. As Socrates said, "four things belong to a judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially." At times, though, a decision is not really what the parties want; a settlement is better for both. The challenge is to persuade them of this. The arbitrator can help them by planting doubt, by indicating the uncertainty of the result, as it were, drooling from both sides of the mouth. There is a chapter on neutrality, on the importance of the appearance of neutrality in the arbitrator, and of the modest role decision-makers should play, doing the least harm to the parties' collective agreement and to their relationship.

Israel and Goldman engage in a dialogue in one piece, on the relationship between parties and the arbitrator, addressing several thorny issues that arise in arbitrations, from the perspective of the litigant and of the arbitrator. There is a section on the form a good arbitration award should take. In the chapter on remedies, there is a useful discussion of the contentious remedy of reinstating a worker without backpay, i.e., without full retroactive compensation.

Goldman explains the role played by the Kleenex arbitrator, selected to decide a contentious case so that the parties' regular arbitrator is not burnt by having to decide a political case. He also speculates on a different seating configuration for an arbitration so that the witness more directly faces the lawyers. This is an instance of the many innovative and pleasing ideas that pop up in this splendid book.

There is a chapter on language and writing. There is a humorous discussion of Yiddish and Latin words in legal parlance and useful tips on good writing, and on brevity in legal pleadings. The chapter has a number of useful suggestions. One concerns the practice of putting numerals-and-words in legal documents. This is a peeve of my own and it is nicely taken up by Israel. He thinks of possible explanations for the phenomenon and he urges that it cease. I agree wholeheartedly. His speculation, which I support, is that, in the days before typewriting, individual handwriting was often so illegible that some numerals could not be distinguished from others. This led to conflict, which was avoided by having both numbers and letters written out. Now that we have printed agreements, where the numbers are clear, there is no need to have words, too.

There is a nice synopsis of Goldman's "The Science of Settlement" by Israel, of the endowment effect (overvaluing one's own powers and possessions), the framing effect (the influence of the manner in which an issue is explained or framed), and other gut reactions that distort bargaining and settlement negotiations.

The last chapter is a set of free flowing opinions on a variety of issues of topical interest. All provide insight into thorny social and political issues: the right to work; the contradiction between the essential role of government regulation and the public contempt for government; the "sphexishness" of much popular political discourse; the Mississippization of Michigan; the absurdity of much of the post 9/11 security overreach; and much more. Goldman has a wonderful piece entitled "Babushka" describing the Babushka test. The piece tells of years ago when old Polish ladies paid their Detroit city taxes by cash. Goldman worked for the City then and was planning to spend City money to attend a conference. The then City Treasurer explained to him the Babushka test to decide whether his claim on the City's resources was justifiable: if he could look the old lady babushka in the eye and tell her what he was going to spend her taxes on, then it was a legitimate expense. The test applies equally in the private sector. Are parties wasting their money on particular cases? Goldman suggests there ought to be someone on each side who is thinking strategically about whether each particular case is worth the time, cost, and effort; someone able to focus on the proportionality of the litigation.

Other sections of the book have opinions on contemporary issues, like the brilliant critique by Israel of the questionable benefits of continuing legal education, an example of a burden on the legal profession without measurable returns.

"Opinions" has a good index and interesting footnotes throughout. For the quote, "I went to the bookstore and asked the saleswoman, 'Where's the self-help section?' She said if she told me it would defeat the purpose," the footnote reads, "If you want to find the source for this quote, look it up yourself." There is a poem of an arbitrator's lament, and some fine legal haikus, like:

> Don't ask the witness,
> If you don't know the answer.
> Unless you don't care.

An epic poem entitled "On the Other Hand" by Goldman details the life of an arbitrator. It captures the vicissitudes of an arbitrator's practice, the joys and the fears. It ends, "People will hold the door for you and laugh at your jokes. But you will eat your lunch alone."

Reading through this review of the book, what's missing is the deftness of touch, the jokes and the fun, so replete in "Opinions." On every page there is humor combined with insight, making for a most pleasurable and enlightening read. You'll enjoy this book.

THE PRESIDENT'S CORNER

By Margie Brogan

I am writing this column a few days after November 8, 2016. I won't try to guess what the landscape will look like by the time this *Chronicle* hits your mailboxes, but our world has certainly been rocked. The very troubling discourse that has plagued the U.S. election is difficult to reconcile with our cherished ideals of inclusiveness, neutrality, and nondiscrimination. One of my children asked me in a somber late night call, as he examined his young life devoted to social justice—how do we move on from here?

It is a humbling honor to be a woman president of the National Academy of Arbitrators. I am working closely and with enthusiasm with our next president, Kathleen Miller. The fact that our organization, in what traditionally has been a male-dominated field, has chosen women to lead says something about who we are, and what we do for a living. It is no coincidence that we have all spent our work life determining, to the best of our abilities, what is fair and just — to put ourselves in the shoes of people who may be different than us, to find the right result.

I spoke in my last column about our Outreach Initiative – our efforts to coordinate and improve mentoring and training models around the country, find ways to get advocates and appointing agencies to buy into our efforts, and help those newer arbitrators we believe could be successful. This work will continue to take place on the Regional level, and we will share techniques and learn from each other. Chair Walt De Treux has enlisted committee members from throughout the country and Canada, who are in the process of sharing their mentoring and training ideas. We will move to the next phase, helping the Regions coordinate with advocates and appointing agencies. It is no surprise to me that most of us revel in mentoring and training others, but sometimes we are frustrated that our talented mentees cannot break into the profession. It is an exciting initiative and, as I begin my Regional visits, I hear much enthusiasm for this project.

We are all aware that work is diminishing, and that spiral may worsen if our U.S. labor laws and worker rights are scaled back. But I am convinced that dispute resolution work will survive and, at this time in our history, there is an even greater need to embrace and improve diversity, of all types, in our ranks. The parties, the process, and our organization can only benefit by the inclusion of individuals of different backgrounds and life experiences. I look forward to meeting with folks on the Regional level to discuss this topic and to see how collectively we can make a difference — and indeed move on from here.

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Another aspect of this disturbing electoral campaign has been the failure in the media to properly fact-check, and report, what is true. We, as arbitrators, have experienced this first-hand. There have been inaccurate and negative media narratives about arbitration and arbitrators, failures to differentiate between labor and other types of arbitration, and refusals, at times, by reporters to listen to members of our Academy seeking to set the record straight. I am pleased to say that ArbitrationInfo.com, the neutral Web site which is a partnership between the NAA and the University of Missouri School of Law, is making inroads in easing this problem. The Web site provides a terrific source of information for journalists and the public about arbitration, and is being improved every day. Editors Rafael Gely from Missouri and our own Betsy Wesman, along with the NAA staff, have worked tirelessly to keep the Web site current. You can find postings of breaking news regarding case law and current events, and helpful resource materials.

We have linked up other NAA committees to provide content related to their jurisdiction. Proactively, Rafael is reaching out to all journalists who report in this field, and following up with those who write articles on arbitration. He points out inaccuracies, compliments those reporters who largely get it right, and directs them to the Web site for additional content. We had a recent success, where we received an inquiry from a U.S. News and World Report reporter who was about to write a negative piece on labor arbitration in public safety. We directed the reporter to a Web site article on the common misconceptions about our field, which cited the excellent study of Laura Cooper, Steve Befort, and Mario Bognanno. The reporter was appreciative of the information and wrote a balanced piece citing the study. I encourage all of you to go to the ArbitrationInfo.com site, check it out, and become a subscriber to receive email updates on a regular basis. In addition, our editors are always looking for contributors, so I encourage volunteers. Brush off that press pass and jump in.

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As I travel around the country I have also been speaking on the changes in our work economy. Who is an employee? How do we square the laws protecting worker rights, largely created under the traditional view of an employer-employee relationship, with the proliferation of gig economy service-providers, casual workers, subcontractors, franchisees, and temps? What impact will this have on arbitration? Chair Liz Neumeier is putting together an exciting program for our Annual Meeting in Chicago, May 23-27, 2017 addressing this and other hot topics. Our distinguished speaker, Dr. David Weil, current head of the DOL's Wage and Hour Division and Boston University professor, will be our distinguished speaker. Dr. Weil is an expert on the changes in the labor market. He will be discussing his excellent and timely book, "The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It." I encourage all to come to Chicago, take in a game of the World Series Champion Cubs and other delights planned by Host Chair Margo Newman, and enjoy our excellent program. Most important, let's revel in the warmth of our collegiality. It's a time to be with friends.