National Academy of Arbitrators

The Chronicle

FALL 2009

MARK YOUR CALENDARS

PLAN TO ATTEND...

2009 Fall Education Conference
October 2 – 4, 2009
The Hilton Palacio del Rio
San Antonio, TX

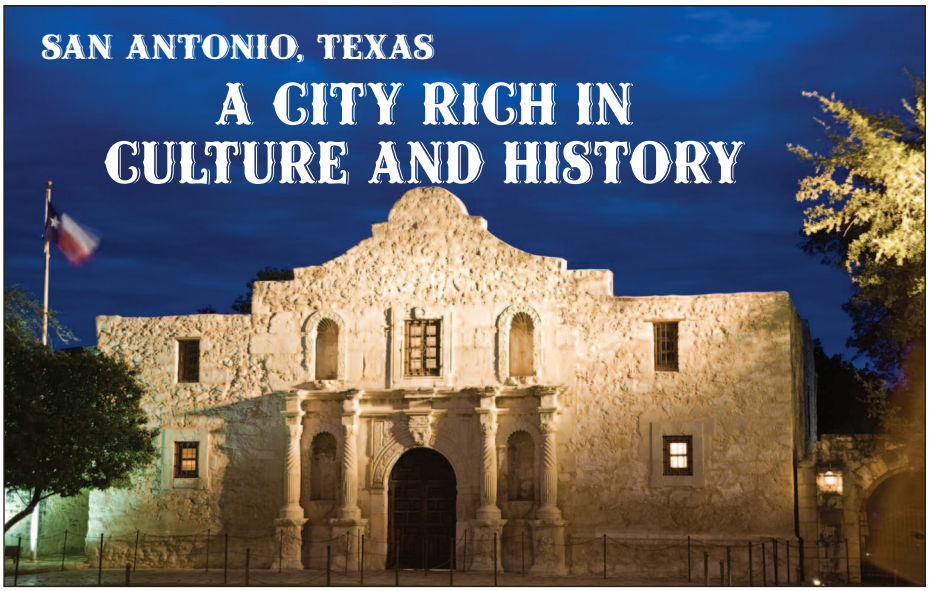
2010 Annual Meeting
May 26 – 29, 2010
Loews Philadelphia Hotel
Philadelphia, PA

2010 Fall Education Conference
October 22 – 24, 2010
Cleveland Marriott Downtown
at Key Center
Cleveland, OH

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

2011 Fall Education Conference
September 30 – October 2, 2011
Four Seasons Miami
Miami, FL

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



Alamo at Dusk
Photo courtesy of the San Antonio Covention & Visitor Bureau/Richard Nowitz

ON THE INSIDE

FEATURES

COLUMNS

By Ruben R. Armendariz, Host Committee Chair
2009 Fall Education Conference

San Antonio, Texas – A unique city, rich in culture and history. ***The Alamo*** was already a hundred years old at the time of the 1836 siege and battle. Founded in 1718 as a Spanish mission, its mission was to Christianize the Indians indigenous to the area. Today, San Antonio is a prosperous city with several U.S. Air Force Bases – Randolph, Lackland, Brooks and the former Kelly Air Force Base, now an industrial park, and Ft. Sam Houston. It is also the home of the Spurs basketball team, four-time NBA Champions.

This year, San Antonio has the exclusive honor to host the Fall Educational Conference of the National Academy of Arbitrators to be held on October 2, 3, and 4, 2009 at the Hilton Palacio del Rio Hotel located on the River Walk. The weather will be at its best in October with an average low of 59.0° F and a high of 82.0° F.

San Antonio is famous for its events and festivals. Every summer from May 15 through August 8, the city celebrates "Fiesta Noche del Rio" which features songs and dances of Mexico, Spain, Argentina and Texas on Friday and Saturday evenings at the River Walk's historic "Arneson Theatre" located next door to the Hotel. On October 2nd and 3rd the city will be

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FROM THE EDITOR:

As we hope you noticed in the Spring 2009 issue of *The Chronicle*, we are now printing the publication in a manner that allows the use of color for photos and graphics. We think it gives a greater vibrancy to *The Chronicle*, and we hope you agree. In addition, it speeds up the time from which we can layout the magazine until it lands in your mailbox. The editors and committee will be evaluating in the near future whether we should make the delivery dates earlier for each issue; in so doing, the news will be more timely. Finally, the change in the printing process actually resulted in a decrease of printing costs! The Committee thanks Katie Kelley of the NAA Operations Center for all her work in the transition.

WALT De TREUX
Managing Editor

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 Walt De Treux, Managing Editor, at *detreuxarb@comcast.net* or contact the feature author directly.

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

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

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

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

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

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

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

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

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 Walt De Treux, Managing Editor, and the NAA Operations Center. For submission instructions, contact NAA Operations Center at (607) 756-8363 or email, *naa@naarb.org*

A CITY RICH IN CULTURE AND HISTORY *(Continued from Page 1)*

celebrating the ultimate German festival, **"Oktoberfest San Antonio"** at the Beethoven Halle and Garten located within the King William historic district. Music, food and dancing plus German specialties like bratwurst, reubens, and beer will be available to put you in the spirit. *www.beethovenmaennerchor.com*.

San Antonio is known for its art scene - from the Blue Star Art Space to ArtPace. Modern art and Latin culture fuse in the Southtown neighborhood, where you can take part in First Friday gallery walks. The Southwest School of Art and Crafts, one of the nation's largest art schools, has ongoing exhibitions and lectures by internationally known artists; most are free. Explore some of Texas' best art museums, housing both contemporary works and old masters: The McNay, Museo Alameda, and the San Antonio Museum of Art. The new public art corridor on the Museum Reach of the River Walk features outdoor installations by local, national and international artists. San Antonio welcomes you to enjoy the River Walk, the Tower of Americas *www.toweroftheamericas.com*, Sea World *www.seaworld.com*, the Aztec Theater *www.aztecontheriver.com*, Buckhorn Saloon *www.buckhornmuseum.com*, The Witte Museum *www.wittemuseum.com*, Institute of Texan Cultures *www.texancultures.com*, and the San Antonio Zoo *www.sa-zoo.org*. The Dine-Around has become an institution and a committee host person will be available to assist you in making arrangements. Restaurants along the river include: the Paloma Riverwalk *www.palomariverwalk.com*, the Iron Cactus *www.ironcactus.com*, Boudros *www.boudros.com*, Fig Tree *www.figtreerestaurant.com*, Biga *www.biga.com*, Paesanos *www.paesanosriverwalk.com*, La Posada Del Rey *www.laposadadelrey.com*, Jim Cullum's Landing *www.landing.com*, Landry's Seafood House *www.landrysseafoodhouse.com*, The County Line *www.countyline.com*, Zuni Grill *www.zunigrill.com*, Hard Rock Café, The Little Rhein Steak House, and Dick's Last Resort *www.dickslastresort.com*. A list of restaurants will be at the registration area when you arrive. New members are encouraged to dine with their new colleagues.

San Antonio River Walk
Photo courtesy of the San Antonio Covention & Visitor Bureau

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New FMCS Director George Cohen to Speak at San Antonio FEC

By Elizabeth Neumeier
Chair, Continuing Education Committee

The Fall Education Conference will be held on October 2-4, 2009 at the Hilton Palacio del Rio in San Antonio, Texas, and the program will be informative and exciting. We are delighted that newly-appointed FMCS Director George Cohen will be with us as our luncheon speaker on Saturday. Cohen has previously addressed the NAA, and we know him to be both witty and capable. Many NAA members know George Cohen from his years as a senior partner at Bredhoff & Kaiser, where he represented private and public sector labor organizations in collective bargaining involving a wide variety of industries and government entities. Prior to entering into private practice, Cohen served as an appellate court attorney with the National Labor Relations Board. In the past three years, he has been engaged in a solo practice as a mediator. He is a member of the prestigious Mediation Panel of the U.S. Circuit Court of Appeals for the D.C. Circuit and has successfully mediated numerous complex, high-profile disputes. The FMCS looks to have a big role in administering the Employee Free Choice Act (EFCA), should it pass. Either way, Cohen will have many insights to share.

After one year off, the Skills Enhancement Workshop returns this year. The focus will be on Border Control and Customs Issues. As with the airline industry session two years ago, we will hear directly from the parties. Please note that there is a separate registration fee for this workshop.

The 2009 Fall Education Conference will open with a law update plenary session presented by Susan Grody Ruben. The session on interest arbitration will remain in flux until we see what happens with EFCA. If it does pass with an arbitration provision, we

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FMCS Director to Speak at San Antonio FEC *(Continued from Page 3)*

will focus on that. If not, we will focus on the standards applied in the public and private sectors.

During the Employment Arbitration concurrent session, panelists Ted St. Antoine, Gil Vernon, Michel Picher and Sharon Henderson Ellis will focus on the Arbitration Fairness Act and potential changes in the Federal Arbitration Act, and what the NAA's policy, if any, should be.

The session "From the perspective of new members" will be replaced by a session on ethics, helpful to those who need CLE credits from this meeting. We are grateful, once again, to Claude Ames for bringing us up to date about bankruptcy, an unfortunate area of the law we wish we could avoid. Josh Javits and David Vaughn will be delving deeply into the special issues in the Federal sector.

After lunch, Bill McKee will join Paula Knopf and Gil Vernon to talk about the business side of arbitration with Margery Gootnik. For members who find business after lunch not their thing, three choices remain. Spouses are welcome at the two-part session based on the film "American Dream." Faculty members interested in using labor films in their courses might be particularly interested in attending. The two case scenario sessions are your chance to explore issues in public safety or those dicey "just where do you draw the line" cases.

We are grateful, as always to representatives of the AAA, FMCS and NMB for traveling to our meeting to update us on the U.S. appointing agencies. The Canadians, under the leadership of Regional Chair Allen Ponak, will also meet late Saturday afternoon.

Sunday morning will lead off with another *Pearls of Wisdom* session. It was so highly rated last year we decided to do it again as a plenary session. And, since you have told us repeatedly how much you like to talk, we will close with an interactive plenary lead by incoming FEC Chair Rex Wiant.

Torch of Friendship and Tower of Americas
Photo courtesy of the San Antonio Covention & Visitor Bureau/Stuart Dee

A City Rich In Culture And History *(Continued from Page 3)*

The NAA host committee planners have joined with San Antonio Tours, a division of Alcatraz Media, to provide our group with exclusive tours to showcase San Antonio, a vibrant city, rich in history. To sign up for a tour, go online to www.managemyconvention.com and click the National Academy of Arbitrators 2009 Fall Education Conference link. These tours are scheduled for Friday, October 2 and Saturday, October 3, 2009 and are designed especially for our members and families. They feature San Antonio and Texas history, architecture, culture, cuisine, natural beauty, and intrigue. ***Friday - October 2nd - San Antonio City Highlights Tour with Lunch***. A driving tour of the city, featuring admission to the Towers of America Observation Deck and River Cruise! ***Saturday - October 3rd - Missions Tour with Lunch***, where we will get an up close and personal look at three Missions, including the most famous landmark in Texas, the Alamo! See the NAA website for additional information on the tours.

Sunset Station Depot
Photo courtesy of the San Antonio Covention & Visitor Bureau/SACVB

Transportation from the San Antonio International Airport to the Hilton Palacio del Rio is very easy. Taxis are readily available and fares are about $30.00 from the Airport. Shuttle Service is provided by **SATRANS,** which has one-way fares ($18.00) and round-trip fares ($32.00). info@sacitytours.net

If you have any questions about the city and want advice on things to do or to make arrangements on any of the above activities, contact Ruben Armendariz at arbruben@gmail.com.

See you in San Antonio!!

MILESTONES

Edited by Michael P. Long

NOTEWORTHY HONORS & PROFESSIONAL ACTIVITIES

Harold E. Moore - was recognized and designated Executive Professor for Business Week - 2009 by the faculty of the College of Business of the University of Texas at Arlington. Business Week provides for community leaders and executives to meet with and lecture to the students and faculty. Harold made presentations in labor arbitration and conflict management. He said that he came away from the meetings having learned from his interactions with the students many fresh ideas of what to expect from future business leaders.

■■■

Frank Quinn - was the keynoter at the 20th Annual Academy of Rail Labor Attorneys convention. His talk entitled, *Arbitration under the new Rail Safety Improvement Act*, was well received by the assemblage.

■■■

Alan Miles Ruben - Emeritus Professor, Cleveland-Marshall College of Law, and Advisory Professor of Law, Fu Dan University, Shanghai, PRC, presented a paper on "Why Traditional Contract Law Does Not Matter in Adjudicating Collective Bargaining Agreement Disputes" at the Annual Meeting of the Ohio State Bar Association held in Cleveland, Ohio late this spring.

On June 30, 2009, he spoke on "Labor Arbitration in a Recessionary Environment" at the Officers and Business Agents Conference of Teamsters Joint Council 41, at Huron, Ohio.

■■■

Calvin Sharpe - has been appointed the newest member of the *United Automobile, Aerospace, and Agricultural Implement Workers of America - Public Review Board* following in the footsteps of such Academy luminaries as Ben Aaron, Jim Jones, Jean McKelvey, and Ted St. Antoine.

■■■

Mark Thompson - who just retired from teaching industrial relations at the University of British Columbia in 2002, has been awarded a Doctorate of Social Sciences, *honoris causa*, by Laval University in Quebec City for his contributions to the study and practice of industrial relations in Canada.

PUBLICATIONS & PRESENTATIONS

Laura J. Cooper and **Stephen F. Befort** - professors at the University of Minnesota Law School, have been selected as the new co-editors of *The Labor Lawyer*, the journal of the American Bar Association, Labor and Employment Law Section. This journal, with a circulation of 27,000, publishes articles in all areas of labor and employment law. Laura and Stephen specifically invite members of the Academy to submit articles on workplace dispute resolution for possible publication in *The Labor Lawyer*.

■■■

Martin H. Malin - has been busy, as usual, researching and sharing the knowledge. His casebook, Labor Law in the Contemporary Workplace, coauthored with Kenneth Dau-Schmidt, Roberto Corrada, Christopher Cameron and Catherine Fisk, has been published by West.

On April 3, 2009, Marty spoke at St. Louis University Law School on, "The Canadian Auto Workers – Magna International Framework of Fairness Agreement: A U.S. Perspective," as a symposium on Competition in the Global Marketplace: The Role of Law in Economic Markets.

On April 15, 2009, Marty presented the Third Annual William Stewart Lecture in Labor and Employment Law at Indiana University, Bloomington. His talk was entitled, "The Paradox in Public Sector Labor Law."

On June 19, 2009, Marty spoke on "The Paradox in Public Sector Labor Law," at the annual Carl A. Warns Institute of Labor and Employment Law at the University of Louisville Law School.

■■■

Allen Ponak - has been appointed editor of the second series of *Labour Arbitration Yearbook.* Published by Lancaster House in Toronto the *Yearbook* accepts academic and practitioner articles on labour arbitration and related topics. Allen reminds us that American submissions are welcome.

■■■

Walt Gershenfeld - has contributed to the public forum. He has contributed more than fifty Letters to the Editor in the last two years on everything from sports to international affairs. They have been published in the Philadelphia Inquirer, Philadelphia Daily News and the New York Times. Walt declares that some of them have even produced "useful results."

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MILESTONES *(Continued from Page 5)*

Maretta Comfort Toedt, **Daniel Jennings** and **William McKee** - joined together to lead a workshop at the Texas Labor Management Conference in San Antonio, June 2-4, 2009. The title of the workshop was "Arbitration – Grievance Evaluation and Interactive Case Discussions."

■■■

Patricia Bittel - and her husband, Tim, are finishing their Caribbean sailing voyage. They made a stop-over and visited with **Margery Gootnick** over breakfast at the Rochester Yacht Club on their way back to Cleveland for the last leg of their two year trip on their 44 foot sailing vessel, the SS Tevai. They have lived aboard ship for two years and were headed back to Cleveland through the Welland Canal and Lake Erie. The boat looked beautiful with the pennants from all of the ports they visited displayed on the stays. Patti will be resuming her arbitration practice in the near future.

■■■

Bonnie Bogue - returned in June to Ski Town USA, aka Steamboat Springs, Colorado, for her 50th high school reunion. Bonnie a skier? Not really, but she was the drum majorette for the high school marching band that marched on skis, including doing maneuvers that required synchronized kick turns while playing instruments. Among the minute class of 43 graduates were two Olympic skiers, a real western horseman who now operates the "outfitters" where the class gathered (Bonnie says "Think Festus on Gunsmoke"), a professor of agricultural economics, an official in the Dept. of Energy who monitors nuclear weapons labs, an engineer involved in dismantling weapons of mass destruction, a former state-champion wrestler who turned to designing jewelry for Tiffany's, and, of course, a labor arbitrator who plays the bassoon. The reunion, by the way, was front page news in the local paper.

■■■

Matt Franckiewicz - has taken a big step. On July 11 he and Deborah Moncrieff became husband and wife. Debbie is a PhD neuroscientist who teaches in the Department of Communications Science and Disorders at the University of Pittsburgh. Matt, who is 62 years old, has not been married before. He states that his bride classifies him as an "outlier." We knew that!

■■■

Dennis Nolan - along with wife, Fran, are going natural. They recently completed a 12-day training program through Clemson University and have been certified as *Master Naturalists*.

■■■

Bill Richard - might be able to help you become a star. On June 7, Bill's step daughter, Alice Ripley, won a Tony Award in the category "Best performance by a Leading Actress in a Musical," for her role as "Dianna," in the Broadway Musical "Next to Normal." This was her second nomination for the Award in this category. (Her first was for her role as Violet Hilton in "Side Show" in 1997-98).

Continuing Call for MILESTONES

Honors? Publications?
Exceptional activities - professional or otherwise?

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

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

Professor Michael P. Long
Chair, Department of Human Resource Development
495-A Pawley Hall
Oakland University, Rochester, MI 48309.
Phone/fax (248) 375-9918

Mark Your Calendar

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

REGIONAL ROUNDUP

Reported by Dennis E. Minni
National Coordinator of Regional Activities

Last issue explored ways to develop successful seminars or meetings. This time I am compelled to note the significance of providing Continuing Legal Education ("CLE") credits for attorneys needing to obtain and report them to their respective licensing states. It's true that not all states predicate continued admission to practice upon meeting CLE requirements or that not all arbitrators are lawyers but a substantial number of both are, and it is this "draw" which can be used to conduct well-attended programs.

There's an additional wrinkle in the CLE regimen in that many states with reporting requirements also specify a certain number of CLE units shall be earned in the areas of ethics, professionalism and understanding substance abuse issue or some combination of these.

Thus, there may be a secondary requirement beyond basic legal practice topics when it is necessary to also meet specific credits from among these additional subjects in a given reporting period.

This can be an added inducement for arbitrator or advocate lawyers needing to meet CLE and ethics and other requirements but interested in enhancing arbitration or collective bargaining skills.

Some Regions may encompass more than one state so qualifying CLE credits might be more onerous a task. So how can NAA regions qualify their program offerings for CLE credits and provide added reason for members, guests or others to attend? Certainly there is no "one size fits all" application for CLE approval in all the respective jurisdictions, but thanks to the persistence and willingness to undertake the creation of a guidebook by NAA member Fred Dichter and his wife Barbara, Regional Chairs or others having seminar planning responsibilities now have a comprehensive handbook detailing the A to Zs of CLE approval in all jurisdictions requiring same.

This handbook gives examples, displays forms, and lists the addresses of state agencies holding oversight authority over CLE matters.

Barbara Dichter, a law librarian for a Milwaukee law firm, generously gave of her own time this past May in Chicago to address CLE issues with Regional Chairs at our meeting. Then she and Fred finalized the Handbook which has been sent to current Chairs.

It is expected that the spiral bound hard copies of this handbook will become Regional resources for the various Chairs and program planners in the future. Not having to reinvent the wheel with each successive change in who is at the helm of a Region should be a positive step to presenting more successfully attended programs.

(Several former NLRB employees are interested in meeting informally at NAA events. No officers, by-laws, dues, speeches or titles intended; but, "C" and "R" case war stories, etc., allowed. If you are an ex-NLRB type and would want to hang out with other graduates of the "world's largest graduate school of labor relations", contact Ruben Armendariz *arbruben@gmail.com* or me at: *deminniarb@roadrunner.com*)

CANADA

The Canadian region has made arrangements for a regional meeting March 6 - 9, 2010 in Scottsdale, Arizona. A block of rooms has been reserved at the Hilton Doubletree Paradise Valley Resort (site of an NAA Fall meeting some years ago). The planning committee is composed of Serge Brault, Pamela Chapman, Paula Knopf, David McPhillips, and Allen Ponak. Program details will be available in the Fall.

In June, the Canadian region made a submission to Labour Canada with respect to proposed amendments to Part III of the Canada Labour Code, which deals with employment standards for federally regulated industries (e.g. banks, television, airlines, trucking). Under Part III, non-union employees have the right to challenge dismissal in front of neutral arbitrators and many of our members have heard such cases. The proposed amendments would replace independent arbitrators with a permanent tribunal, the need for which the region questioned. Our submission was handled by Randi Abramsky, Serge Brault, Stan Lanyon, John Moreau, and Allen Ponak. Anyone interested in this submission and our original brief to the Arthurs Commission can email Allen Ponak.

Regional Chair is Allen Ponak – *allenponak@shaw.ca*

CENTRAL MIDWEST

The Central Midwest Region met on Saturday morning, November 8th, at the Chicago Yacht Club for a yearly meeting. Speaker Brian Clauss, Arbitrator and Mediator, spoke about Employees Called to Duty: National Guard and Reserved Activation and Return – the Current Issues in Arbitration. This was a timely topic since Illinois is currently in the process of deploying the largest brigade combat team since World War II to Afghanistan.

Dr. Michael Jay Jedel, Academy Member and Dean at DePaul University, and Helen LeVan, Ph.D., a Professor of Management at DePaul University, spoke about their research on "Why Courts Vacate Arbitration Awards". Their research revealed that approximately 30% of arbitra-

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REGIONAL ROUNDUP *(Continued from Page 7)*

tion awards that are appealed are vacated by the Courts. While the Courts cite various reasons for vacating Awards, they concluded that it often appears that the Courts decide to substitute its judgment for the Arbitrator, then work backward to support its finding(s).

The Central Midwest Region was also honored to have in attendance Jan Holdinski, American Arbitration Association Vice President of the North Central District, and Charlene Chase, Labor Supervisor. They spoke about the new direction AAA has taken with its labor initiatives and invited suggestions from the Arbitrators.

The NAA Central Midwest is planning a second Advocate Training Session in Madison, Wisconsin on May 6, 2010.

Regional Chair is Vicki Peterson Cohen – *vpcohen@laborarbitrator.net*

METROPOLITAN DC

On April 19, 2009, the DC Region met at the home of Ira Jaffe to hear Willis Goldsmith give a presentation on *Pyett*, the Arbitration Fairness Act and other pending legislation affecting arbitrators. Willis was recently named the Managing Partner for Jones Day in New York City, having previously served for many years as national chair of the labor/employment section of that firm. Willis was candid in his observations about the state of labor and employment arbitration, and the discussion was lively. We hope to have a similar (but updated) discussion in the fall with a representative from labor.

Regional Chair is Mike Wolf – *Wolfdc@erols.com*

METROPOLITAN NEW YORK

The New York Metropolitan Region and the American Arbitration Association held an informal gathering on June 17, 2009, at the AAA's corporate offices in New York City. NAA members had the opportunity to chat with the Case Managers and other AAA officials. Jeffrey Zaino, Vice President for Labor, Employment, and Elections, made a presentation regarding new developments at the AAA. Earlier in the day, the Case Managers and members of AAA's legal staff attended a Region-sponsored screening of the video of Past President Michel Picher's argument before the Supreme Court of Canada in *Minister of Labour for Ontario v. Canadian Union of Public Employees, et al.* The AAA team reported that they found the argument educational and inspirational; and they share the pride that the NAA takes in Michel's argument and in the Court's recognition of the importance of our work and the concept of acceptability. Future dinner meetings will be held on the following dates: October 13, 2009; February 1, 2010; and April 8, 2010. A business meeting will be conducted by teleconference in mid September 2009.

Regional Chair is Jacquelin F. Drucker – *jdrucker@druckerarbitration.com*

MICHIGAN

Regional Chair is Ben Kerner – *benkerner@aol.com*

MID-ATLANTIC

On May 12, 2009, the Mid-Atlantic Region, in keeping with a long standing tradition, joined with the Philadelphia Chapter of LERA in co-sponsoring the last meeting of the season. The title of the program, "Is The Supreme Court Really Supreme?", focused on the recent cases decided by the Court; namely, The Lilly M. Ledbetter Fair Pay Act and the 2008 Amendments to the American with Disabilities Act of 1990. We were privileged to have as speakers, Judith Harris, Esq., Partner, Morgan, Lewis Bockius and Linda Martin, Esq. Partner, Willig, Williams & Davidson. It was a most interesting presentation which was followed by an animated discussion. Most importantly, many colleagues came and it gave us an opportunity to catch up with people we don't often get to see.

The Region is also pleased to announce that we've increased our number by two. Lawrence Coburn and William Lowe were inducted into membership at the Chicago Meeting and we welcome them.

Regional Chair is Joan Ilivicky – *JILIVICKY@aol.com*

MISSOURI VALLEY

The St. Louis Region welcomes Ed Harrick, a recently-inducted NAA member, as the new Region Chair, and it thanks Gerry Fowler for three years of dedicated service as Chair.

Regional Chair is Ed Harrick – *eharrick@sieu.edu*

NEW ENGLAND

Regional Chair is Tim Buckalew – *timothy.buckalew@verizon.net*

NORTHERN CALIFORNIA

The Northern California Region will conduct its Second Annual "Meet The Labor Arbitrator Program" on September 25th in Oakland with assistance from participating neutral agencies: California State Mediation and Conciliation Service, Federal Mediation and Conciliation Service, and SF Bay Area IRRA. NoCal's Andria Knapp is expected to pull off another winner with her exceptional

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REGIONAL ROUNDUP *(Continued from Page 8)*

organizational skills and support of NoCal members. A wine and cheese reception will follow with an opportunity to "meet and greet." Program participants are also able to use NoCal's own Tax ID number thanks to the diligent work of our Treasurer Jerilou Cossack.

Tom Angelo sends his best regards and looks forward to a speedy recovery.

Regional Chair is Claude D. Ames – *claudeames@aol.com*

OHIO-KENTUCKY

Planning is underway for the April 2010 Regional Annual Meeting, and OH-KY members are looking forward to hosting the 2010 Fall Education Conference in Cleveland. In that regard, the current Chair gives a special thank you to President Elect Gil Vernon for his role in selecting Cleveland as the site for the Conference, and also to Susan Grody Ruben for her efforts on our behalf in agreeing to handle the logistics.

SERB conducted a Fact Finders Conference on August 28, and it was well attended by OH-KY members on the Fact Finder Roster. By all accounts, the Conference was up to SERB's high standards for excellence.

Regional Chair is Colman Lalka – *clalka@roadrunner.com*

PACIFIC NORTHWEST

A committee of the Pacific Northwest Region chaired by Joe Duffy is working with the Continuing Legal Education Program at Seattle University Law School and the Washington State Bar to organize the second annual conference for experienced labor arbitrators who serve as neutrals under labor-management agreements throughout the Pacific Northwest (Alaska, Washington, Oregon, Idaho & Montana) in both the public and private sectors. The conference will be held on a date to be determined in April 2010, adjacent to the annual two-day LERA Collective Bargaining Conference for labor and management representatives in Seattle. The conference will include intermediate to advanced level lectures, panel presentations and workshops devoted to current issues in labor arbitration theory and practice. Conference sessions will be led by experienced arbitrators and labor-management advocates. A panel of representatives from appointing agencies (Federal Mediation & Conciliation Service, American Arbitration Association, Oregon ERB and Washington PERC) will be invited to discuss issues and developments in labor arbitration. The committee plans to repeat last year's opportunity to mingle informally with the local labor and employment bar and with Seattle University Law School students and faculty. For more information, contact immediate past Regional Chair Joe Duffy.

Other ongoing Regional activities include periodic breakfast meetings in the Seattle area, and very occasional lunches or similar gatherings in the Portland area. To date, we have not organized any meetings in the more far-flung states in our Region, Alaska, Idaho and Montana. Our sole Alaska member, Bob Landau, took his eyes off Russia long enough to scout out possible meeting locations in the great frozen north – some rustic, some not so much. Current Regional Chair Luella Nelson continues to ponder whether we could have a meeting in the summer of 2010 that would be open to members from other regions. For a list and description of possible Alaska venues, or to offer thoughts on feasibility of a 2010 all-comers meeting, contact Luella.

Regional Chair is Luella Nelson – *Luella.nelson@naarb.org*

SOUTHEAST

Planning for the Southeast Region's Annual meeting is underway. Our dates for 2010 revert to the traditional last weekend in February – Friday the 26th and Saturday the 27th. We will be meeting at the Intercontinental Hotel in Buckhead, Georgia (just outside of Atlanta). We chose this facility because it is ideal for our meeting needs, a four star hotel, and easier for most travelers to get to, rather than meeting in downtown Atlanta. For those driving in, it avoids Atlanta's famous traffic. For those flying in, the cab fare is reasonable, and they can also take MARTA to a station directly across the street from the hotel. Again, Helms-Briscoe have negotiated us a good rate — $119 per night (rack rate is $350+). We are pleased to have the support of Georgia State University through Professor Phil LaPorte.

The program will offer an advocates training session on Friday, a welcoming dinner Friday night and plenary sessions all day on Saturday. Phil LaPorte will be leading the training session, and the remaining sessions will be led by various members of the NAA Southeast region.

Regional Chair is Betsy Wesman – *ecwesman@aol.com*

SOUTHERN CALIFORNIA

Southern Calif. region keeps rolling along with bi-monthly meetings in several locations. We average now about 25 neutrals, 1/3 Academy members and 2/3 active arbitrators, institutional neutrals, 'wannabes', etc. – a good crowd of varied interests. At our last meeting in May, we used the short cases from the Chicago national meeting and enjoyed that along with discussion about the *Pyett* decision, led by George Marshall, Jr. We are planning a MEMBERS ONLY meeting in August to discuss possible Meet The Arbitrator

(Continued on Page 10)

• SHORT REPORTS ON COMMITTEE NEWS & ACTIVITIES

COMMITTEES @ WORK

Betsy Wesman, Committee Chair reports that the Advocates' Continuing Education (ACE) Committee is getting organized for another successful session at the 2010 NAA Annual Meeting in Philadelphia. Similar to this past Annual Meeting, the Advocates Continuing Ed session will take place the Wednesday afternoon (noon to 5:00) before the main meeting (i.e., May 26, 2010). In addition, the theme of the ACE session will be in keeping with the focus of the main meeting – "50 years after The Steelworkers' Trilogy". The Committee will meet in San Antonio to allocate scenarios and discuss recruitment of additional NAA coaches for the session.

The Chronicle Committee is please to announce that beginning with the Spring 2009 issue, the publication is now being printed in a manner that allows for the use of color for photos and graphics, adding greater vibrancy to *The Chronicle*. In addition, it speeds up the time from which layout of the magazine can be completed until it lands in members' mailboxes. The editors and committee will be evaluating in the near future whether delivery dates for each issue should occur earlier; in so doing, the news will be more timely. Finally, the change in the printing process actually resulted in a decrease of printing costs! The Committee thanks Katie Kelley of the NAA Operations Center for all her work in the transition.

REGIONAL ROUNDUP *(Continued from Page 11)*

sessions, a possible return to an occasional weekend fellowship/educational gathering for Members, and other items. Looking forward to a Fall meeting with advocate speakers coming to challenge us.

Regional Chair is Phil Tamoush – *Philip@tamoush.com*

SOUTHWEST

The Southwest Region's report on its recent activities is included in a separate article in this issue of *The Chronicle.*

Regional Chair is Don E. Williams – *arbmedlaw@aol.com*

UPSTATE NEW YORK

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

WESTERN PENNSYLVANIA

The most recent quarterly meeting of the NAA Western Pennsylvania Region was a luncheon held at the Pittsburgh Athletic Association on Monday, June 8, 2009. A good turnout of 23 attendees included Academy members, non-member Arbitrators, and Mediators. Vella Traynham, FMCS Director of Arbitration & Notice Processing Services, was our speaker and gave an interesting talk on the Arbitration side of her Washington, DC operation and graciously answered questions both during and after her presentation. Following the meeting, Vella was also able to visit the FMCS Pittsburgh Office before returning to the airport for her flight home. The next regional meeting will be held on Monday, September 14, 2009.

Regional Chair is Patrick J. Duff – *Arb.Duff@comcast.net*

GOOD NEWS FROM THE LRF

By Sara Adler, LRF Coordinator

Before we get to the good news, I want to remind everyone that it's really important to call the LRF Coordinator FIRST if you are named in a lawsuit or notified of your deposition being contemplated or noticed or if you receive a request for documents. Most of these can be informally resolved, or resolved at little or no cost (if they do not originate with a pro se). For the 2009-10 NAA year, I remain the Coordinator and can be reached at 310-474-5170 or emailed at *sadlerarb@earthlink.net* (please remember that I'm in California). If I'm not available within a day or two, please call or e-mail Dan Brent in New Jersey or Luella Nelson in Oregon.

Now for the good news. At its meeting in Chicago the BOG voted to increase the LRF reimbursement rate from $2,500 (where it was for donkey's years) to $3,000. This will not likely result in an assessment in your lifetime, absent some extraordinary legal expense to the NAA. This reimbursement amount is still well below what some cases require in legal fees, but hopefully you've got insurance!

On that issue, Lloyd's of London, our insurance carrier, has agreed to a new $3,000 deductible for a slightly lower premium. As always, if your practice is entirely labor-management it makes sense to opt for the $3,000 deductible that will almost certainly be covered by the LRF. If you do other neutral work you'll have to decide what's best for you. My informal survey suggests that we have many more legal issues in labor-management than any other kind of neutral work. Please remember too that the basic policy covers only claims for damages and other coverage is by way of a rider. The most common riders carried by our members are coverage when you need legal services as a third party (such as being deposed in a case between a grievant and the employer or a DRF case) and for ERISA work. All details of cost and coverage can best be explored with our insurance broker, Betsy Thomas who is most easily reached by email at *bthomas@cemins.com*, but I'm always happy to talk to you about your questions and concerns.

Also good news is that the two matters that have come up in recent months have been easily resolved without cost to the LRF. One was resolved by sending what amounts to our "standard letter" which acknowledges that the Arbitrator has been named in a law suit but that, as no damages were being sought (essentially a jurisdictional filing), the member would not be making any appearances. The second was a proposal to depose the arbitrator. That attorney seems to have backed off after I had an extended discussion with him about what kinds of questions would, or would not, be answered by our member. If informal resolution is at hand, there is no need to contact the insurance carrier representative (Locke Lord in Chicago). Every notification is treated as an "occurrence" that ultimately, may end up costing us in increased premiums. As a final note, please remember that when you're discussing premium and legal costs at our meetings, the fellow member may be in a different geographical area with differing costs for both.

In Chicago the BOG agreed to amend the Legal Representation Program and Fund by Increasing from $2,500 to $3,000 the normal maximum level of reimbursement for costs of legal assistance when a member becomes involved in a leagal matter as a result of arbitration activity in a labor-management dispute.

Mark Your Calendar:

2010 FALL EDUCATION CONFERENCE

October 22 – 24, 2010

Cleveland Marriott Downtown at Key Center
Cleveland, OH

TECHNOLOGY CORNER

This feature is devoted to the use of technology in an arbitration practice. Regular columnists Ken Swan and Lisa Kohn will alternate, with occasional contributions from others.

THE ARBITRATOR AS SOCIAL NETWORKER

By Kenneth P. Swan

When I asked the other members of the Technology Committee in Chicago for ideas for this edition of Technology Corner, they quickly suggested that I write about the social networking websites, MySpace, Facebook, Twitter and their many competitors for the attention of those eager to communicate with the world, or at least some subset of the world.

Social networking sites (SNS) have been around for a while, but there appears to have been an explosion in their popularity recently, possibly related to their stunning success as a fundraising and recruiting tool in the 2008 U.S. Presidential election. Similarly, in the recent Iranian Presidential election, the importance of these sites as back channels for communication by activists was underscored by reports that the U.S. State Department prevailed on Twitter to postpone upgrades to the site that would have put it out of service at a critical juncture in the campaign.

What does this have to do with arbitration? As it happens, quite a bit; but first, a little about the technology. In general, SNS have a similar structure, but that is the end of the similarity. There are over 150 sites listed in the *Wikipedia* list of active SNS, and that list changes all the time. The list ranges, both alphabetically and in scope, from the self-explanatory *AdultFriendFinder.com* (the emphasis is on "adult") to *Zoo.gr*, which is described as a "Greek web meeting place". I will concentrate on the three most popular free sites in North America, Facebook and MySpace, with hundreds of millions of registered users each, and the much-hyped Twitter, behind in numbers but apparently closing rapidly. Things develop very quickly in this business; at the time of submission of this piece in early July 2009 there are suggestions in the press that MySpace, once hugely popular in the U.S., is closing offices and laying off staff, while Facebook is making changes to its security controls to enhance its ability to attract advertisers. All that could change many times over by the time you read this.

These sites are "external" sites; they are not limited to a particular organization or interest, but are generally accessible to anyone who wishes to join. The typical components of a user's "page" on Facebook or MySpace are a profile, where the user posts information such as name (not necessarily real or the user's own), photos, romantic status, location, and preferences in music, films or television; a "blog", short for weblog, where the user can post thoughts on any subject of interest, including diary-style entries; and a "wall" where other users who have access to the page can post responses or messages to the page owner. Access is established by security settings which permit users to control who can have access to material they post; the announced Facebook changes will provide control on an entry-by-entry basis. For example, a user might wish to limit parts of a page to "friends" (people who are identified by both the user and themselves as approved for access), to "friends of friends", or to members of a school or university or workplace community. And of course, for those with less restraint, postings may be made available to "everyone".

Twitter is a little different. Postings are text only, and are limited to 140 characters, a limitation that comes from the site's origin as a cellphone text messaging service. Cellphones and smartphones are still the major input devices, contributing to the instant nature of communication on the site. These mini-blogs are called "Tweets", and are supposed to answer the question: "what are you doing?". In practice, they can be about anything, from politics to sex, or both. Playful users have pushed the limits of what can be condensed into a Tweet: recipes, resumés, poems, and recently "Twitterature", in which Shakespeare is reduced to 140 character summaries – see *http://www.twitterature.us/*.

Maybe somewhere there is an "Arbitweeter" working on a 140 character opinion? (For assistance, this paragraph would neatly fill one Tweet.)

Twitter users may restrict access to their Tweets to those "followers" they approve, but the default is to the entire universe. Followers may choose whom to follow, subject to such restrictions; but once registered as a follower, every Tweet by the followed user is received in real time until the relationship is terminated. Twitter has occasionally been plagued by faked accounts and security failures, but its instant response to emergencies, politics, demonstrations

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TECHNOLOGY CORNER *(Continued from Page 12)*

and disasters has characterized it as an important primary source of news and opinion.

More recently, since cellphones can take photos and videos, facilities have been added to permit users to post such images on related sites, such as Twitpic. During the Xinjiang riots in China in July 2009, much of the early press coverage came from such posted images; not surprisingly, authorities moved quickly to curtail internet and cellphone service.

Obviously, an SNS can contain enormous amounts of information, textual or pictorial, the publication of which may not have been judicious, or even done in a state of sobriety. While pages can be altered by the user the morning after, if they have been seen they can have been recorded, copied or forwarded to others. The disgruntled employee who takes a shot at the company, the party-goer who is photographed in compromising circumstances, or the person who insists on listing all of the interests and activities which might be better left unknown, all take a serious chance that the information may boomerang on some future occasion, such as disciplinary proceedings, impending matrimony, or application for a security-sensitive job. The recent embarrassment and possible security risk caused to the incoming head of MI6, the British intelligence agency, by information posted on his wife's Facebook page with virtually no privacy controls, is the most high profile example of the need for discretion.

While many employers, including the Government of Ontario, have banned access to the sites from work computers, many employers also use the sites to collect information. The high-water mark, so far, of employer e-snoopiness was achieved in the town of Bozeman, Montana which revealed in June 2009 that applicants for municipal employment had to provide a statement of all the SNS to which they belonged, along with account information and passwords, to permit their character to be assessed based on what they had posted. The town stated that it had been doing this "for years". The policy lasted only a few days longer, just long enough for the uproar on what is known as "the blogosphere" to convince the town's elected officials that they just didn't need that much information, or attention: *http://www.bozemandaily chronicle.com/articles/2009/06/19/news/10socialnetworking.txt* and *http://www.bozemandailychronicle.com/articles/2009/06/30/news/05city.txt*

There is also the problem that false information can be posted. It is easy to impersonate someone else on these sites, sometimes with tragic results. A recent racially-charged homicide trial in New York reportedly resulted from a false MySpace page that attributed statements to a youth that led other youths to attempt retribution, which ultimately resulted in a fatal shooting: *http://www.newyorker.com/reporting/2008/03/03/080303fa_fact_trillin*

There have been many cases of SNS postings leading to legal consequences, and I asked colleagues to tell me of arbitration cases in which the sites had been involved in some way. I collected many stories to add to my own single experience of a complainant in a sexual harassment case who was asked on cross-examination to produce anything she had posted about her allegations on her Facebook page (the matter settled before I had to rule on the point).

Many of the stories dealt with discipline imposed for the content of postings, usually for critical comment on the employer or individual supervisors. I learned of the practice of what I now call the "pre-emptive Google", when a company searches its own name using a search engine on a regular basis to see what is being said about it on the internet. When it is posted by employees, and is less than complimentary, discipline "up to and including discharge" may follow. One of the cases reported to me involved a dispute about the actual ownership of the relevant page, which purported to belong to the grievant/grievor, which he denied while suggesting that he might be able to find out to whom it did belong.

And not only critical comment may lead to discipline. Teachers, child care workers and health care employees have been disciplined for posting photographs or comments that cast doubt on their reliability as persons in a relationship of trust with vulnerable clients. In another case, an employee claiming a disability had posted photos on his page showing him engaging in activities that were extremely inconsistent with his claimed physical limitations. Off-duty conduct, it seems, has an internet dimension.

Search engines can also be used to learn what witnesses may have posted about the issue on which they testify, for purposes of cross-examination. In one case, such a search yielded a treasure trove of interesting material, not related to the grievance but to the activities of the witness, which put the character and credibility of the witness in issue. One way or another, we can all expect to hear more in our arbitration practices about the uses and abuses of social networking.

For the record, I created a Facebook page as a research tool for this article, but so far it remains empty. Much of my knowledge of the actual mechanics of social networking comes courtesy of the semi-resident 20-somethings in my household, whose assistance and protective security advice ("You used your real name??") I gratefully acknowledge. That is really the best way to understand the social networking phenomenon: either ask someone to show you around, or take the plunge and start your own tasteful and restrained page. I would be delighted to be your "friend".

FOR MORE INFORMATION:

http://en.wikipedia.org/wiki/Social_network_service

OFF-DUTY CONDUCT

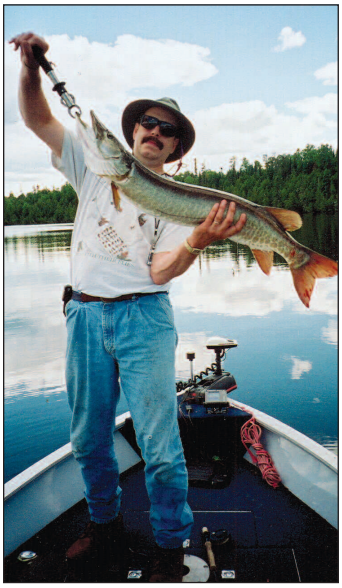
by Barry Goldman

From motorcycles to dictionaries to paintings to fencing, this captivating column highlights the esoteric passions that members pursue in their time away from the hearing room or office, just as it demonstrates what an interesting bunch makes up the Academy. To help sustain this delightful series, please alert us to members (including yourself!) whose off-duty conduct treads on the unconventional. Suggestions may be e-mailed to Barry Goldman at bagman@ameritech.net.

Gil Vernon

Eau Claire, WI

Academy Member since 1986



Gil Vernon got his deep love of the woods from his mother. Every weekend in the spring she would take Gil and his brother hunting for morel mushrooms in northern Michigan. They would pick bushels of them. It was also his mother who taught the boys to fish. She learned both fishing and foraging for wild food from her father, a conductor on the New York Central, famous for his ability to live off the land. From his father, the owner of a small construction company, Gil inherited a "building instinct" and a respect for craftsmanship. He gets poetic when he talks about the smell of sawdust and freshly milled lumber.

So in 1978 when Gil bought 80 acres of woods in western Wisconsin, he built a cabin. He felled the trees to clear a spot and had the logs hauled to a local sawmill to be milled into the necessary lumber. Years later, when he built "contemplation cabins" for each of his three children, he milled the lumber himself on a mill he built. He says it was "the next logical step."

Gil remains a serious fisherman. He has held records for small mouth bass and pike and may still hold the line class record for catch and release muskie caught on a fly rod. He has been on dozens of fly-in fishing trips in Canada and has written articles on fishing for several publications. He is a former field editor for Muskie Magazine.

He has also learned to hunt. Gil and his brother grew up with firearms and competed in shooting tournaments as kids. But he didn't hunt until Academy member Dana Eischen taught him to hunt turkeys. He subsequently taught himself to hunt deer and bear. Consistent with his fishing for muskie with a fly rod, he shot his first bear with a musket. Another bear he took weighed 525 pounds. Gil says his dog, Harper, taught him to hunt birds. Harper turns up frequently in conversations with Gil. He says his goal in life is to be as good a person as Harper is.

Gil's 50th birthday present to himself was a moose hunting trip in Alaska. He and his guide lived in a tent and hunted from horseback for 15 days and watched the northern lights at night.

Gil has strongly held opinions about hunting and fishing. He doesn't fish for trout, for instance. He says he doesn't have the patience, and he doesn't like the elitist trout fishing culture. And he won't ice fish. A summer fishing buddy of his has been after him for years to come ice fishing, but Gil refuses. Finally he agreed he would go ice fishing if his friend would come duck hunting. The catch was they had to hunt the ducks Gil's way. Okay, his friend said, what's your way?

You bring your shotgun over to my house. We're going to lie down in the fireplace and look up the chimney, and when a duck goes by we'll shoot it.

In the summer Gil gathers berries and bakes pies. In the winter he collects sap and makes maple syrup. The ratio is 40 to 1. This year he tapped 165 trees and collected 1,200 gallons of sap. His neighbor tapped enough trees for 5,400 gallons of sap. Then they gathered up the necessary firewood and boiled it down in an evaporator. It took 9 straight days of boiling. Gil wound up with 30 gallons of syrup, but he says he and his neighbor would have made more money if they had sold the firewood than they would by selling the syrup. It's a moot point. They don't sell it, they give it away.

Lately he has been cataloguing the wild flowers that grow on his land. So far he has identified 28 different kinds.

PHILADELPHIA

Looking Forward to the 2010 Annual Meeting

By Bonnie Bogue, Program Chair And Walt De Treux, Host Chair

"Looking Back and Looking Forward on the 50th Anniversary of the Trilogy" is the theme that sets the stage for three days of great speakers and thought-provoking subjects planned for the 2010 Annual Meeting to be held May 27-29 at the Loew's Hotel in Philadelphia. Distinguished speakers will look at labor relations in a new era under the Obama Administration – legislative changes, the NLRB in a new day, new directions from the Department of Labor, the FLRA, and much more**.** The meeting will feature the following sessions and topics:

Session: "**The *Trilogy* at 50 – Foundation for the 21st Century**" – William Gould is invited, together with a panel of outstanding responders, to address how labor arbitration has advanced in these 50 years and what the future portends.

The "looking forward" session will challenge custom and tradition: **"The Search for the Truth: Arbitral Initiatives for the 21st Century"** will explore how arbitrators can reshape the U.S. and Canadian arbitration process with pre-hearing, hearing and post-hearing innovations.

"The Hearing from Hell – Who said this would be easy?" Lest we get too involved with shaping the future, this "how to" session will focus on effective techniques to maintain hearing control when things get hot. Our speaker, who presents training programs for judges, will use film clips and interactive methods to involve advocates and arbitrators.

"Ethical Dilemmas of Disclosure and Withdrawal" – The enthusiastic response to the session at the Seattle Fall Meeting prompted this interactive session on real issues brought by advocates. What are advocates' expectations? How can or should arbitrators respond under the Code? Designed to inform advocates and give arbitrators new tools.

"Philadelphia Labor History – 1776 to 2010" – a guided tour of where our labor traditions began.

"Battle of Expert Witnesses" – how effective is expert testimony? What advocates expect and what arbitrators in fact do when the experts disagree.

"Speak No Evil – Language Process Defenses in Discipline Cases" - illiteracy, dyslexia, English proficiency, hearing acuity in the workplace.

An extraordinary treat is promised by **Dennis Nolan**, who is gathering autobiographies of our great arbitrators for an entertaining and enlightening session.

Ted St. Antoine's Fireside Chat is moved to Friday so nobody will miss it. Rich and Susan Bloch promise to prompt Ted's famous sense of humor while revealing an inspiring life history.

These are just few examples of what promises to be a memorable conference in a historic and beautiful city. Philadelphia offers a world of arts, culture, entertainment, and fine dining for our members and guests to enjoy.

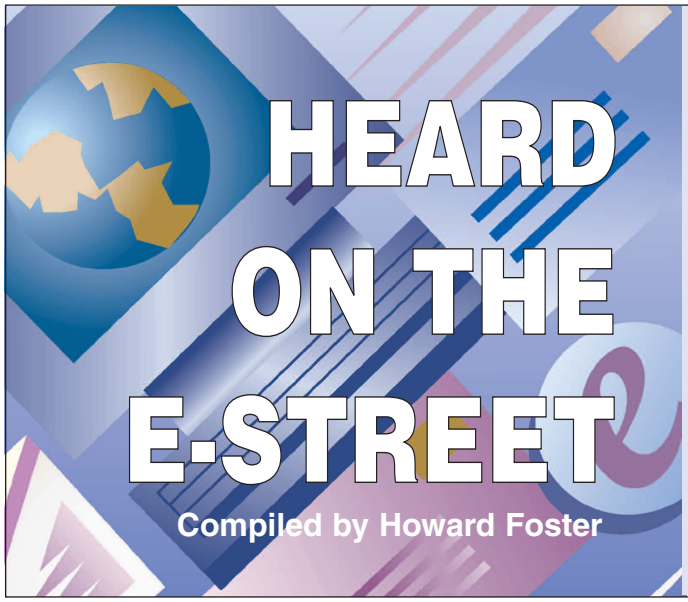
Take a walk down the Benjamin Franklin Parkway. Designed in 1917 to emulate the Champs-Elysses in Paris, the Parkway runs through the cultural heart of Philadelphia, featuring the Rodin Museum, the Basilica of Sts. Peter and Paul, the Free Library of Philadelphia, the Frankin Institute, and more. The Parkway ends at the world-renowned Philadelphia Museum of Art. Venture beyond the Art Museum and walk or run along the Schuylkill River with its natural beauty, lush gardens, and the recognizable Boathouse Row.

Just a few short blocks from the hotel, visit the Avenue of the Arts, which hosts the Academy of Music, the Wilma Theater, the Kimmel Center, and some of the finest restaurants on the East Coast. The Reading Terminal Market, a downtown farmers market opened in 1893, is only a block from the hotel, and it offers an amazing selection of food and restaurants for breakfast, lunch, and dinner and small shops to purchase jewelry, books, and more.

No visit to Philadelphia will be complete without stops at the many historic sites – Independence Hall, the Liberty Bell, Ben Franklin's house, Betsy Ross' house, Carpenter's Hall. History comes alive in Philadelphia, and it is literally brought to life at the National Constitution Center, where Signers' Hall boasts life-size figures of our nation's founders.

And if their schedule accommodates our meeting, don't miss a chance to see the 2008 World Champion Philadelphia Phillies at beautiful Citizens Bank Park. If the Phillies are out of town, minor league baseball is a short drive away in Camden, Trenton, and Wilmington.

Join us in Philadelphia from May 26-29, 2010 for an excellent program and an exciting visit.



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

Predictably, the Supreme Court's* Pyett *decision on April Fool's Day triggered an avalanche of commentary from Academy members, much of it skeptical as to either the wisdom of the outcome or the practical scope of its application. The discussion took an interesting turn as it morphed into the implications of* Pyett *on first-contract interest arbitration, as proposed in the Employee Free Choice Act. The thread then moved into a broader consideration of the challenges of interest arbitration.

Pyett will certainly provide much needed full employment for union lawyers, as they stave off wave after wave of DFR cases. Then again, maybe this decision was the Roberts court's unconscious support for the Freedom of Choice Act because now all manner of "discrimination" cases can be bundled and parlayed in the grievance procedure, saving employers tons of money otherwise spent on real litigation. So does *Pyett* mean that collective bargaining might appear more favorable to management because it enables employers to get out of federal court and into the world of the Trilogy? But we also have to ask: Will statutory claims shunted into labor agreements for disposition have the same standards for decision as if the case were brought in court under the statute, or will claims of discrimination be interpreted as the arbitrators see fit, with no discovery and limited relief? Finally, lest any of us begin to chortle over what we have to gain from *Pyett* , there are rumblings that judicial review of arbitration awards interpreting statutory rights will be greater than in the past. ***Harvey Nathan***

Harvey's fears are overblown. Since a union can waive an employee's right to litigate only by negotiating an unmistakable contract provision doing just that, there won't be many cases for arbitrators, let alone union DFR lawyers. Unions have no discernible interest in agreeing to such clauses, and a *Pyett* clause isn't likely to be worth enough to employers for them to entice the unions with other concessions. I've seen hundreds of CBA arbitration provisions covering discrimination issues, but none that expressly waives an individual's right to sue. In fact, the *Pyett* contract is the only one I've even heard of. The risk might even be lower now than before, because the Court didn't adopt the much looser 4th Circuit standard that seemed to state that a standard CBA arbitration clause barred an individual suit. ***Dennis Nolan***

The most significant part of Thomas' opinion may be his dicta that subjecting statutory claims to the grievance/arbitration procedure is a mandatory subject of bargaining. Now, employers may insist on such a provision to the point of impasse. We may see more of these provisions as the effect of the Thomas dicta takes hold. ***Marty Malin***

Justice Thomas did not offer any explanation as to why such a clause should be a mandatory subject of bargaining. This strict constructionist was content to simply declare this rule of law without consulting the statutory language or scheme. Is the waiver of the statutory procedure for resolving a statutory claim of discrimination a condition of employment? It is one thing for the parties to negotiate how rights established by the CBA shall be resolved, but when a right already exists as a matter of statute, it is not a negotiable condition of employment. Hence, the method of enforcing the right is not a condition of employment; rather, it is a method of ensuring the guaranties of equal justice. Not only does the decision reflect a lack of understanding of the NLRA's scheme of collective representation and the underlying justification for allowing parties to privately select their contract reader, the Court also fails to appreciate that allowing the employer and union to select the method and representative to adjudicate an individual claim for statutory relief violates the constitutionally guaranteed right to counsel. ***Alvin Goldman***

For all of you anguishing over the *Pyett* decision, may I recall one of the wisest (and most reassuring) observations I have

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HEARD ON THE E-STREET *(Continued from Page 16)*

ever heard about the legal process: "There are few if any knockout punches in the law." I speak from happy/unhappy experience. In commenting on a case I had lost before the US Supreme Court, Justice Goldberg (who ought to have known) said from the bench: "This is the worst defeat for the American labor movement since the passage of the Wagner Act." How many of you have ever heard the *Pennington* labor/antitrust case mentioned as a cause of organized labor's current woes? ***Ted St. Antoine***

But what happens when* Pyett *meets EFCA, asks Mike Wolf. "Suppose under EFCA the parties bargain to impasse over a first contract and a Pyett-like arbitration clause is one of the items at impasse. What is the interest arbitrator supposed to do?"

If EFCA were to pass in its current form, the compulsory-arbitration clause would likely be found unconstitutional because it contains absolutely no standards. Simply turning everything over to the FMCS probably wouldn't save it. Moreover, even if the law were valid, I doubt if many employers would seek such a clause. Not many employers really want difficult statutory questions to go to labor arbitrators, few of whom keep up with employment discrimination law. (Harry Edwards did a wonderful survey many years ago that revealed that few labor arbitrators read the relevant cases and fewer still could even define the standard terms used in Title VII cases, but that almost all of them were eager to hear such cases.) Finally, if Congress does add some standards, they would give the arbitrator some guidance. Presumably those standards, like the ones in public-sector interest arbitration laws, would make comparability the main standard. If so, the EFCA arbitrator would likely reject the *Pyett* proposal because comparable contracts don't contain one. ***Dennis Nolan***

So what about those standards for interest arbitrators? Not so simple, it appears.

The various state public-sector statutes would be a useful source for standards for interest arbitration decisions (*e.g.*, ability to pay, etc.). Some statutes, such as New York's Taylor Law, which provides for interest arbitration for police and fire, existed for a number of years without statutory standards and without constitutional challenge. The parties and the legislature eventually agreed that standards, which had been articulated in state-court decisions, might be more uniformly applied if codified into law. I think that this has proven to have been a wise decision, but I am not certain if all states authorizing interest arbitration have done so. ***Homer La Rue***

A major argument that opponents of EFCA have raised is that interest arbitration works in the public sector because the information one needs to make it work is generally publicly available. It is very common for comparability to be the most weighty factor that drives an interest arbitration award, and the information needed to define comparable communities and what those communities are paying in terms of wages, benefits, and other terms of employment are publicly available. Not so with private companies. Nevertheless, interest arbitration can work in the private sector. Personally, I have presided over numerous interest arbitrations in the public sector but only one in the private sector, involving a private bus company that was the contractor for a school district. In that case, most of the comparability data were publicly available. ***Marty Malin***

Interest criteria are an area where economics training and experience are valuable. The basic wage criteria are ability to pay, cost of living, productivity and comparable wages. The trick is that different times call for different criteria emphases. Also, it's important to understand application of the criteria. For example, many wage and salary surveys are poorly done. I was involved in such surveys, and we learned to strive for accuracy. Illustratively, the title Secretary is meaningless since it includes everyone from a stenotypist to an executive secretary. We, the Academy, should consider reintroducing training sessions for interest arbitration cases. ***Walt Gershenfeld***

Beyond selecting the appropriate criteria, another critical element is establishing the appropriate comparators, something the parties often fail to do properly. I had a case in Reno several years ago with the Washoe County Sheriff. The union's comparisons were to LAPD, NYPD, Chicago PD, and Clark County (Vegas). The employer, OTOH, cited the 13 counties in Nevada – except Clark. Guess who prevailed? Recently I have done a series of interest cases in the health-care industry, both Boards of Inquiry and out-and-out interest arbitration. The union continues to insist that the appropriate comparators are *only* the SoCal facilities where it has contracts, whereas the employer is looking at all hospitals in the area. Major difference, critical to the outcome. There's also the problem of knowing what to do with the data. Simply pegging the salary increase to the mean or median of the comparators is not necessarily reasonable, especially if the employer in question has always been above or below market for some reason. It's not rocket science, but it is very different from the typical grievance arbitration we all know and love/hate. I agree that providing training of neutrals and parties for interest arbitration should be a priority for the Academy. ***Doug Collins***

One of the reasons that commercial surveys, even very expensive ones, are so undependable is that they do a strikingly bad job of drawing together truly comparable posi-

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tions. In their defense, that's almost an impossible task when all you have to work with are written position descriptions composed in different formats, in different managerial traditions, and the work has to be done on a wholesale basis by semi-skilled "analysts." Over the years I've seen two major employer side surveys in the Northwest go through periods when their results were offered *only* by the union side: management did not offer them because the errors were so glaring, but the union could offer them (whenever they favored the union) as products the employer had participated in and semi-sponsored. ***Howell Lankford***

The inclusion of standards will likely increase the scope of review of interest arbitration awards by adding another basis for judicial review. As a practical matter, however, I doubt that there would be much dispute over a set of standards (at least with respect to economic items). The real question is one of the weight to be accorded each of those factors. In the context of ongoing relationships, where interest arbitrators are addressing successor agreements, there is usually a prior history of agreements in which the parties have addressed the question of weight. There often is evidence of tandem pay relationships and the like. These can be used as a guide since they represent the parties' views of what is material. The number of issues will also usually be far less than what will probably be in dispute in a first-contract situation. There, it is conceivable that there will be very little to draw on in terms of various proposals in non-economic areas (certainly the introduction of "standards" is unlikely to assist in any way) and there is often a balance between concessions on economic and non-economic items. The entire situation is far too fluid to be solved easily, in my view, with the introduction of general standards. It is likely that in a non-union operation, there may not even be regular pay scales/formal job classification systems. Not all of the units will be large. We will likely be exposed to various situations that historically have not commonly been the subject of interest arbitrations. ***Ira Jaffe***

Past President Zack has laid out a series of standards in: *http://lerablog.org/2009/03/15/first-contract-arbitration-issues-and-design/* I understand those who think that standards are not the greatest idea, but I don't see how the bill, in trouble as it is, could pass without them. ***George Nicolau***

Earlier on, Steve Befort started an interesting thread with a question about the use of interpreters in arbitration hearings.

I have a case in which the union is requesting that the employer share the cost of an interpreter to translate for a grievant for whom English is not his first language. The employer objects that the grievant really does not need an interpreter and, in any event, it is the union's responsibility to pay for the cost of the interpreter. The CBA does not address this issue. The parties also disagree as to the selection of the interpreter. The employer insists that the interpreter must be a "professional." The union is fine with choosing a "professional interpreter" if the parties split the costs, but takes the position that it can chose whomever it wants if it pays the full bill. Does anyone have experience with similar interpreter issues?
Steve Befort

I had a case in which several of the witnesses spoke only Spanish. The parties had agreed on having an "interpreter" to help out. There were people with both parties (the City and the Police Union) who spoke Spanish. There were two main problems. First, the "interpreter" was only that. After a witness would speak for about a minute with several sentences, the "interpreter" would say, "She said yes." I had to constantly remind the interpreter that I would prefer a translation of the exact words as much as possible. The second problem was that the interpreter learned her Spanish in college, but the Spanish spoken on the border is not the same as that taught in most colleges. The parties often argued over the translation of certain words which meant one thing in Spanish and another in "Tex-Mex". ***Elvis Stephens***

There's another interpreter issue we should keep in mind. If the Grievant is hearing-impaired and requires a sign-language interpreter to participate meaningfully in the hearing, the ADA requires the arbitrator to accommodate that disability by providing them. I say "them" because you actually need two, since they get tired after an hour or so of work. There are some hearing-impaired folks for whom a court reporter doing "real time" could work, but that doesn't work for those who are primarily fluent in American Sign Language. (Much like the Mexican vs Salvadorean vs college-Spanish problem, ASL has different syntax, etc., from spoken English.) The only time I had to worry about this was in a court-annexed mediation, and the court had certified ASL interpreters available. That would be where I would call to get suggestions for certified interpreters of any stripe. ***Luella Nelson***

I take a pragmatic approach. When this issue has arisen, I've had a conference call with counsel and asked (a) whom the union proposes to use as a non-professional interpreter (b) whether the employer has among its supervisory or management personnel someone fluent in the same language, and (c) whether they can live with person (a) providing the initial translation and person (b) serving as the "truth squad" to make sure person (a) is credibly translating what's going on. It's important to instruct both translators about their job: just to translate exactly what's spoken and not to engage in colloquy with the witness. This has typically arisen with Hispanic witnesses so there's been no problem finding people to serve both roles. In Minnesota I imagine Norwegian would pose no problems either, but Lao or Finnish might. What's

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ALONGSIDE EVERY GOOD ARBITRATOR

By Linda Byars

A column featuring the volunteer accomplishments of our partners

Barbara Gaba is the wife of a relatively new NAA member, Richard Gaba. Barbara and Richard have been married for 53 years and have two children and four grandchildren. They lived in New York City until recently and now reside in Anancramdale, New York.

Barbara received her bachelor's degree from Barnard College and worked for *Forbes* magazine right out of college, assisting the Director of Advertising. After marriage and children, Barbara decided to go back to school, and in 1977 she received a law degree from Hofstra University. Both Richard and Barbara are attorneys, and Barbara practiced law in Nassau County for twenty-five years specializing in trusts and estates. Now that Barbara is retired, she and Richard have more time for some of their favorite sports – skiing, golfing, tennis, and biking. Barbara continues her volunteer work in the legal field.

For the last six years, Barbara has volunteered with Sanctuary for Families Center for Battered Women's Legal Services (CBWLS) in New York City. Sanctuary for Families is the largest organization in New York State dedicated exclusively to serving the multiple needs of victims of domestic violence and their children. Sanctuary offers legal, clinical, shelter, children's and economic empowerment services and works to end domestic violence and its far-reaching impact through outreach, education, and advocacy. Sanctuary's CBWLS is one of the largest domestic violence law centers in the country, handling thousands of cases every year. It depends on the work of pro bono attorneys to assist its legal staff in meeting the complex needs of its clients. Sanctuary's staff attorneys and hundreds of volunteer lawyers handle cases ranging from divorce and custody to immigration and asylum matters. CBWLS also maintains shelters for victims of domestic abuse in the New York area.

Barbara began her work with Sanctuary when a friend, who had been the president of its Board of Directors, invited her to join its Legal Advisory Council. Barbara's experience in matrimonial law helped to fill one of Sanctuary's greatest needs. Barbara lends her expertise and diligence to pro bono assignments including co-counseling with staff attorneys on difficult and time-consuming cases.

The cultural and language issues involved with immigrant clients require additional investments of time, and Barbara takes the time to "dig deeper" when necessary. One memorable case involved a bitterly contested divorce of a couple who had been married only a few weeks. There were issues of abuse, distribution of money and property, and negotiations spread out over many months and several court appearances. The negotiations continued much longer than the actual marriage, but the end result was an equitable distribution of property.

As an example of the variety of language and cultural differences among the clients, Barbara also remembers a case involving a Chinese couple where the wife was seeking a divorce and a judgment preventing the husband from taking their young child to China for a visit. Although the husband had a degree in music from an American university, he spoke only Mandarin during his court appearances. There were custody issues, jurisdictional issues and international issues that involved many court appearances and months of negotiations. Barbara was able to resolve the case with the mother gaining custody of the child.

The volunteer work provided for Sanctuary not only benefits the families but allows Barbara and other volunteers the opportunity to keep their skills honed, to obtain excellent training and courtroom experience, and to make a contribution to their community. Sanctuary continues to need attorneys in the New York City area. If you are interested, go to *www.sanctuaryforfamilies.org* to volunteer or assist financially or contact Barbara directly at *Bkgaba1@gmail.com*.

HEARD ON THE E-STREET *(Continued from Page 18)*

critical to me is to avoid having the issue descend into a morass of litigation. ***John Sands***

Why get involved? My policy is that if someone wants an interpreter, they can have one as long as the person doing the translation is agreeable to the other side or, in my opinion, qualified, and as long as the party making the request pays any associated costs, just as they would for their own attorney or expert witness. Disputes between the parties over whether a particular witness really needs an interpreter are neither productive nor of interest to me. ***Doug Collins***

The dispute is necessary to resolve. I'm not persuaded a party should be stuck with the costs of making the record understandable for the arbitrator. Unlike an attorney or expert witness, the interpreter is designed to help both sides and the arbitrator. In the example given, the Employer is using cost as a reason to avoid the interpreter based on the belief the witness does not need the help. If that concern is avoided by making it an "expense" of the arbitrator, why not settle it and go forward without the risk that the record would be harmed by not having the interpreter? ***Tom Angelo***

ARBITRATION

OUTSIDE THE CBA

By Catherine Harris and John E. Sands

SHOULD YOU TAKE THE CASE?

A Checklist for Employment Arbitrators

When selected to provide labor arbitration services, an arbitrator will typically initiate communication with the parties regarding available dates for hearing. The focus at the time of selection is on coordinating the schedules of parties, witnesses, counsel, and the arbitrator to allow the case to go forward without delay. Little, if any, attention is paid to the issue of whether or not to accept the assignment. In contrast, an employment arbitrator, *before agreeing to serve*, must affirmatively evaluate whether to accept or decline the appointment. This column is designed to provide a checklist of issues and concerns for any arbitrator who has just been notified of his/her selection as an employment arbitrator.

An employment arbitrator has the obligation to ensure a fair forum for resolution of the dispute and to protect the integrity of workplace arbitration. To this end, a thorough examination of each of the following items will assist the arbitrator in making a reasoned assessment about whether to accept or decline an appointment.

Appropriate Disclosures

As a threshold matter, employment arbitrators have an ethical obligation to disclose matters that may affect the arbitrator's actual or perceived impartiality. California Code of Civil Procedure §§ 1281.9 to 1281.95 contain a comprehensive list of potential disclosures which non-California arbitrators may find helpful in identifying matters to be disclosed before accepting an employment case. Depending on the nature of the disclosure, an employment arbitrator may elect to withdraw from the case or the parties may choose to disqualify the arbitrator.

In making disclosures, an arbitrator may wish to invite parties to request clarification of the arbitrator's disclosures, or to ask questions regarding matters beyond the scope of the disclosures. In weighing what to disclose or not to disclose, the recommended practice is to err in the direction of over-disclosure. (Or, as the AAA puts it, "When in doubt, disclose.") An employment arbitrator should also keep in mind that the obligation to disclose is continuing so that previously undisclosed or new facts may require disclosure during the pendency of an employment arbitration should they become relevant.

***Pro Se* Claimants**

An arbitrator should weigh the pros and cons of managing a case in which the employer is represented by litigation counsel and the *pro se* claimant is unrepresented. Some employment arbitrators refuse to accept employment arbitration cases unless both the claimant and the respondent are represented. Other employment arbitrators take the position that *pro se* claimants should not be denied access to an experienced and knowledgeable arbitrator for the sole reason of their *pro se* status. Employment cases involving *pro se* claimants require an arbitrator to walk a virtual tightrope between keeping the playing field level while, at the same time, refraining from acting as the *pro se* claimant's lawyer. This is a difficult balancing act that requires skill and patience on the part of the arbitrator. An arbitrator who is not prepared to undertake this added responsibility should decline to serve in *pro se* cases.

Request for Documents by the Arbitrator

An arbitrator should request copies of the employment agreement, any agreement to arbitrate, any applicable arbitration policies or rules, and any pleadings and court orders (if the case was referred to arbitration by a court). These documents may reveal how the arbitrator was selected, the extent of the arbitrator's power and jurisdiction, and any limits on discovery or remedial authority. If the arbitrator was *not* mutually selected by both parties as a result of a fair process, the arbitrator should consider whether

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accepting the case would be appropriate. Similarly, where the arbitrator's authority to provide adequate discovery or remedies is so limited that it violates minimum standards of due process, the arbitrator should decline to serve. The arbitrator should also examine employment and/or arbitration agreements for any restrictions on class or group actions that might make it more difficult for individual claimants to pursue their claims, especially claims of small monetary value. The arbitrator should consider whether these restrictions diminish the integrity of workplace arbitration to such a degree that acceptance of the case would be inappropriate.

An employment arbitrator should have the same authority as a judge to decide statutory and common law issues. If arbitral authority has been limited by contract or stipulation and the parties are unwilling to confer appropriate authority on the arbitrator to fairly decide the case, the arbitrator should seriously question the propriety of accepting the appointment.

Pre-Hearing Issues

An employment arbitrator must be prepared to manage a variety of discovery and other pre-hearing issues. A familiarity with state and federal discovery rules, while not mandatory, is helpful in understanding the various forms of discovery that parties may seek to use in arbitration. An arbitrator who cannot provide continuing availability to decide discovery motions and other pre-hearing issues in a timely manner should not undertake the arbitration of employment matters. Employment arbitrators must be prepared to read and study court opinions, to review voluminous documents and transcripts, and to take an active role in managing the pre-hearing phase of the arbitration. An employment arbitration case should not be accepted unless the arbitrator is prepared to engage in this level of participation.

Other Fairness Issues

Another issue that may bear on an arbitrator's willingness to serve is the issue of his/her compensation arrangements. An arbitrator should consider whether fairness demands that the claimant-employee's share of arbitrator expenses not exceed filing fees which would have been paid in a court of law. Likewise, an arbitrator should ensure that applicable agreements, rules or policies do not preclude hearing arrangements that are fair to all parties, i.e., that the hearing dates not be so soon as to prevent adequate preparation or so delayed as to preclude a timely remedy. Balancing the need for preparation against the need for timeliness is one of the greatest challenges facing employment arbitrators. Additionally, the hearing should be located so as to limit inconvenience and hardship to all parties. To the extent that the arbitrator will be unable to ensure the fairness of all of these arrangements, the arbitrator should consider refusing to accept the appointment.

Malpractice Insurance

Employment arbitrators act at their peril when they accept appointments without appropriate malpractice insurance coverage. A disgruntled claimant or respondent may decide that the only way to address an unfavorable result in arbitration is to sue the arbitrator, to subpoena the arbitrator's notes, or to seek to compel the arbitrator's testimony. Such matters should be handled by insurance defense counsel, and not by the arbitrator. An arbitrator who does not have appropriate malpractice insurance should decline to accept employment arbitration cases.

Fee Agreements

An acknowledgment of the employment arbitrator's authority to apply statutory and common law, including appropriate remedies, is a proper subject of the arbitrator's fee agreement. The employment arbitrator's fee agreement may also recapitulate traditional notions of arbitral immunity and the inviolability of the arbitrator's notes and thought processes. An arbitrator may, of course, decline an appointment if the parties are unwilling to accept the terms of his/her agreement for arbitration services.

Conclusion

In sum, an employment arbitrator has a small window of time in which to assess whether or not to accept the case. This window opens when the arbitrator receives notice of selection and closes at or around the expiration of the period for disqualification. During this relatively brief period of time (measured in weeks and not months), the arbitrator must actively consider whether to accept or decline the appointment. The employment arbitrator must be satisfied, prior to accepting the case, that a fundamentally fair process can be provided. If not completely satisfied, the arbitrator should decline the appointment.

Authors' Note: We wish to acknowledge the work of the Employment Disputes Committee's Drafting Subcommittee (comprising Norman Brand, Sharon Henderson Ellis, and John Sands), who wrote what became the new Section II (Pre-Hearing Considerations) of the Academy's Guidelines for Employment Arbitration. Their work was the inspiration for this column.

Personal Reflections: Academy Members from

"The Greatest Generation"

Share Their Memories from World War II

Complied by Barry Goldman, Susan Grody Ruben, and Allen Pool

Inspired by a note from President-elect Bill Holley, the Chronicle staff posted this notice on the Bulletin Board addressed to our World War II veteran colleagues: "From your service in WWII, is there a place, a person, an event, a remembrance, a personal story you would like the rest of your Academy colleagues to know about?" The response was overwhelming. Part 1 appeared in the Spring 2009 issue. The following responses conclude this series.

Modest and soft-spoken as always, former NAA President and Secretary-Treasurer Dallas ("Whitey") Jones is quick to emphasize in recounting his World War II experiences: "Well, I wasn't in the Normandy landings on D-Day [June 6, 1944]. I went ashore the next morning."

June 6 holds another special meaning for Dallas. Exactly two years before D-Day, he and Irene were married, and they have just celebrated their 67th wedding anniversary.

Dallas was part of the 127th Combat Maintenance Group. He says his unit repaired every type of land weapon except tanks. BLR automatic weapons and M-1 rifles were a specialty. The men could take them apart and reassemble them in a matter of seconds. But at the start of the Normandy invasion there was no need for repairs. Dallas tells how one could simply gather up the rifles of dead soldiers. American casualties for D-Day have been estimated at about 6,000.

When Dallas landed on Omaha Beach on June 7, 1944, he says the sands were covered with bodies and the sea was filled with them. Many men attempting to reach shore from landing craft were caught by barbed wire entanglements that the Germans had strung beneath the surface of the water. Soldiers also drowned because they were dropped off too far from shore and they were loaded down with rifles and 60 pounds or more of food and supplies. At the same time they were raked by well-placed German machine-gun fire. The salvation of the Allied forces on D-Day, as Eisenhower had assured them, was Allied command of the skies.

According to Dallas, nearly every piece of German weaponry was superior to its American counterpart. The one exception was the famous old M-1 rifle.

Troops from Omaha Beach reached St. Lo in about 30 days. Near there Dallas survived an almost-fatal moment. A bullet hit his helmet and knocked him unconscious. When he revived, a Medic informed him brusquely: "You'll have a bad headache for several days but you're going to be o.k. Report back to your unit for duty."

Dallas is convinced that, although it is not mentioned in any histories he has seen, American forces were the victims of what he calls "misnamed 'friendly' fire" as they began the breakthrough to the East from St. Lo. There was a wind blowing northward that obscured the city by covering it with smoke. American bombers hit American troops in the city. Eventually Dallas's unit was part of a contingent that bypassed Paris and moved North to the Maginot Line. These forces captured Cologne and crossed the Rhine on flat boats. Dallas had reached the Oder River when the Germans surrendered. The famed First Division (The Big Red One) was on his flank. There he saw several truckloads of inmates who had been rescued from concentration camps. He said their appearance was "indescribable – more than the mind can bear."

One of Dallas's strongest memories of combat is the ear-piercing sound of what he calls German "screaming meemies," bombs that emitted an extremely loud, screeching noise as they neared their target. Dallas had nightmares about them for years.

Before going to Europe, Dallas trained at a boot camp in his native Texas. Initially, he had tried to enlist right after Pearl Harbor but was rejected because of a supposed heart murmur. A year later he was drafted. Following V-E Day, he briefly did occupation duty in Europe. He was next scheduled for a short leave home and after that shipment to the Far East to join in the invasion of Japan. He says he was "d—— glad" Truman decided to drop the A-bomb. As Dallas looked at it, "It was them or us."

Dallas was a Private First Class when he first saw action and a Staff Sergeant by the end of the war. Only four men survived out of the couple dozen or so in his platoon. The four vowed to stay in touch and did so for about a year. But Dallas says they were all trying to forget the war. It was a

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"lonely experience." He regards writers Andy Rooney and Ernie Pyle and cartoonist Bill Mauldin as the "most realistic" in portraying the foot soldier in combat. He finds it interesting that Navy and Air Force veterans seem to get together more regularly than Army veterans.

Dallas wishes that Memorial Day would not be celebrated by "parades and a lot of noise" but by "a moment of silence." He also feels that women should be honored more for the role they played in World War II. In order to meet the needs of the military, as well as those at home, women stepped in and did the work that had to be done to win the war. Dallas says the small plaque in the World War II Memorial in Washington, D.C. does not do justice to their cause. He adds, "I will never forget how my wife Irene, through her letters, helped sustain me through that terrible time."

— Dallas Jones, interviewed and reported by Ted St. Antoine

Drafted in February, 1943, I remember well the stereotypical Staff Sergeant who lined up recruits at Fort Dix (NJ) military classification center and snarled: "Youse guys wit college degrees, one pace forward! Okay you college guys clean up de cigarette butts. Youse guys wit no college degrees, watch and loin how it's done."

Although commissioned as an aerial navigator, some pre-military experience in the OSS (now CIA) led me into the "Enemy Objectives Unit" (EOU), a joint British-American staff group — with London offices at 40 Berkeley Square — assigned to determine how our heavy bombers could inflict maximum economic bottlenecks on Enemy Europe. I was directed to specialize on the enemy's output of aviation gasoline, most of which was produced from coal at huge synthetic oil plants. In June 1944, these plants were given top priority among our strategic bombing targets.

I became the secretary for EOU's new "Joint Oil Target Committee" (JOTC) which met weekly in my office to review developments and update priorities, thus providing guideposts for our bomber commands. I received daily stereo photos of every bombed plant with a technical analysis of what these photos disclosed. I would then update the priority list and use my "scrambler" telephone to notify the air force commands. We never wasted bombs on a bombed-out facility until it was ready to operate.

By September 1944 there was ample evidence that our bombings of gasoline output had been highly effective. My duties, as described here, continued until Germany surrendered on May 7, 1945.

— Mark Kahn

As a youthful 18-year old in 1943, George Nicolau was one of the youngest officers in the United States Army Air Corps…[He] trained to be a navigator…then guided B-17 bombers to destinations in occupied France and Germany…he became the navigator for a crew of the famed B-17 "Flying Fortress", an aircraft best known for daylight strategic bombing of German industrial targets. Flight Officer Nicolau flew only four combat missions. The first was almost misleadingly uneventful. The second and third were "memorable". The fourth he barely survived.

On August 16, 1944…[i]n the air over Goethe, a small town in Germany, the navigator had just finished checking off a check point on his map. He recorded the time, 10:31 a.m. As he lifted his head, a burst of flak broke through the nose of the plane, tore through his knee, cut his microphone cord and threw him against the plane's bulkhead. Though the bomber had not reached its target, the young navigator's wounds were so obviously life-threatening that the pilot requested permission to return home before reaching the target. "Permission denied," was the response. So the mission continued for five more hours. The target was reached and bombed, and through it all the navigator lay on his back, drifting in and out of consciousness, his life saved by the bombardier's injection of morphine and the application of a tourniquet.

"We have to amputate your leg, Nicolau; we can't possibly save it." The Air Corps surgeon, Dr. James, was speaking to the bed-ridden 19-year-old the next day…A 1963 Peace Corps assignment was almost two decades away. He would not become head of New York City's anti-poverty program until 1965. He had nearly two years of hospitalization and rehabilitation to complete. Ahead was more surgery, required to accommodate the growth of his youthful bone structure.

At that time he could hardly have envisioned his coming career as a famed arbitrator in high-profile disputes…[or] a future long-term marriage to a beautiful and talented Siobhan Nicolau.

— Excerpted from an article by Reginald Alleyne in the 2000-01 Winter issue of The Chronicle

RESOLUTION CONSENSUS OMNIUM

WHEREAS, on September 2, 1945 Japan unconditionally surrendered to the United States on the Battleship Missouri in Tokyo Bay, and

WHEREAS, Ensign Eric Schmertz witnessed the surrender, and

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RESOLUTION CONSENSUS OMNIUM

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WHEREAS, after the surrender Ensign Eric Schmertz was assigned to pilot the Admiral's Chris-Craft in and about the harbor until the mother ship came to pick it up, and

WHEREAS, Ensign Eric Schmertz took it upon himself to pilot said Chris-Craft in circular and figure 8 patterns in and about the Pacific Fleet, and

WHEREAS, Ensign Eric Schmertz ran over a reef tearing the bottom out of the Chris-Craft, ejecting himself into the water and sinking the boat, to the great amusement of the entire Pacific Fleet, and

WHEREAS, Ensign Eric Schmertz had to be rescued from the water having tread water until his rescuers arrived ; and

WHEREAS, Ensign Eric Schmertz, now retired, has not engaged in any similar *ridicule activity*, for the last 50 years, and

WHEREAS, the Admiral whose boat it was that Ensign Eric Schmertz sunk, on inquiry to Ensign Eric Schmertz determined that Ensign Eric Schmertz thankfully was not a graduate of the Naval Academy,

NOW, THEREFORE, by virtue of the powers assumed by the undersigned, as a result of the *consensus omnium*,

1) Be it resolved that Ensign Eric Schmertz be currently and forever hereafter forbidden to pilot any vessels which form part of the Pacific Fleet, or any other fleet of the United States Navy, and

2) Be it resolved that Ensign Eric Schmertz be recognized for his euphoric and exuberant patriotism on the occasion of the Japanese surrender but be cautioned about his lack of judgment which was overcome by his patriotism and

3) Be it resolved that Ensign Eric Schmertz be recognized for the entertainment provided to the Pacific Fleet on the occasion of his sinking of the Admiral's Chris-Craft, and

4) Be it resolved that Ensign Eric Schmertz will be awarded the attached Chris-Craft model as a perpetual reminder of his *ex proprio motu* activities, and

5) Be it finally resolved that should Ensign Eric Schmertz violate these resolutions, he will be considered to be acting in *flagrante delicto* and will be prosecuted to the full extent of the Naval Code.

Unanimously approved with the abstention of Fleet Admiral Chester Nimitz, deceased, and Admiral William F. Halsey, Commander of the 3rd Fleet, deceased, this 16th day of December, 2008.

Signatures:

Admiral Emeritus of the 3rd Fleet

Commander Emeritus of the Surviving Witnesses of the Tokyo Harbor Incident

– Eric Schmertz

Mark Your Calendar:

2011 Fall Education Conference

September 30 – October 2, 2011

Four Seasons Miami
Miami, FL

Please Join Us:

2009 Fall Education Conference

October 3 – 4, 2009

Hilton Palacio del Rio
San Antonio, TX

Plan To Attend:

2011 Annual Meeting

May 25 – 28, 2011

San Diego Marriott Hotel & Marina
San Diego, CA

NAA RESEARCH & EDUCATION FOUNDATION

By Joseph Sharnoff

The NAA's Research & Education Foundation, is a Section 501(c)(3) tax exempt organization which encourages NAA members to make contributions to help support the Foundation's educational and scholarly research goals. The REF's Officers and Directors are concerned about the effect on our funding of the country's continuing economic difficulties. We appreciate that it is not easy to maintain prior levels of charitable giving, but we ask for your support. The REF is dependent upon your generosity to continue to pursue the goals of granting funds for valuable research projects. During the past year, the REF received several requests for funds. Of these, one project has been granted, a request by the California Public Employee Relations for assistance in publishing a booklet, "The Pocket Guide to Just Cause Arbitration." This is one of a series of pocket guides designed as a reference for labor relations, human resources and union representatives, and labor and employment attorneys. This Guide has chapters on just cause-the tests, the hearing, remedies and evidentiary and remedial issues for selected types of misconduct.

Two other pending grant applications remain under review. The REF recently was informed about a grant request for another project which, potentially, may involve considerable funding, It is our understanding that an application is being prepared and soon will be submitted for review during the REF's October meeting. Consequently, after a relatively quiet period with few grant requests, this recent surge of request activity may place a strain on our recession-reduced funds. Since voluntary contributions from our members have been our major source of funding over the years, we need your help now, particularly from those Academy members who have not yet made a donation. There is no finer way to remember one of our senior NAA members, all too many of whom have passed away in the last few years, than to make a memorial contribution in honor of a friend or mentor.

The REF wants to thank those Academy members who have contributed to the Fund this year or in the past. Contributions are deductible under Section 170(c)(2) of the IRS Code. The REF has three levels of giving over the years: Life Fellows ($1,000), Fellows ($500 to $1,000) and Supporters (less than $500). These categories are intended to denote milestones of giving, but continued contributions, even from "Life Fellows," are encouraged and will be greatly appreciated. We also encourage Academy members to consider making arrangements for contributions by testamentary bequest.

OHIO-KENTUCKY REGION ANNUAL MEETING

By Mollie Bowers

The Ohio-Kentucky Region of the Academy held its annual meeting on April 18, 2009, at the Marriott Columbus Airport. Sixteen members were present, as well as two people who have applied or are about to apply to the Academy for admission.

The Regional program began with a session on "Police Grievance Arbitration: A Tale of Two Cities". Those cities were Cincinnati, Ohio and Louisville, Kentucky. For over a year, Chief Thomas Streicher, in Cincinnati, and others have been working hard to get rid of grievance arbitration for police. Chief Streicher was asked to attend, but very belatedly, declined and his office did not offer another designee. Present on behalf of Cincinnati were Special Officer Kathy Harrel, President of the FOP, and Stephen Lazarus, attorney for the FOP and many other public sector unions in Ohio and Kentucky. Cincinnati has binding grievance arbitration. On behalf of Louisville were Lt. Col. Vince Robison, who represents the LMPD in all negotiations and grievance proceedings, and Sgt. John McGuire, President of the FOP. Louisville has advisory grievance arbitration.

At lunch, Jim Noll, Vice President from the American Arbitration Association (AAA) in Cincinnati, updated Regional members on the AAA's plans to get more involved in the labor relations area, and provided information on the reported developments regarding improvements in the Michigan regional office. He also talked about upcoming AAA educational conferences.

After lunch, Arbitrator David Stanton moderated a panel provided by Arbitrators Paul Gerhart and Frank Keenan on Remedies involving cases where violence is alleged. Specifically, the subject matter concerned what to do when you think that the employer has failed to make its case that a grievant should be discharged, but you think that some other remedial action should be taken. Last chance agreements and attendance at EAP were discussed. Especially interesting was the question of awarding a remedy that could include a psychological examination – not typically included in a return to work fitness examination.

A Look Back In Academy History

PETER SEITZ – *"a giant of our profession and one of a kind"*

John Sands recently posted to the mailist a remembrance to Peter Seitz, "a giant of our profession and one of a kind". Sands secured a copy of Seitz' "auto-eulogy" which was delivered at Seitz' memorial service by his son in 1983. Although the eulogy is too lengthy for this publication, the following excerpts reveal the reaction of those attending the service. As Sands recalls, "we laughed out loud with tears streaming down our faces".

I am writing this at the age of 78. I cannot know whether it will be next week, next month or, providentially, two decades hence when life will be snatched from me. When this occurs (if past is prologue) my loved ones and friends will gather in sorrow at a funeral chapel and someone will be designated to tell them what they know or think that they know about Peter Seitz. I have attended a number of such events and listened with astonishment to extravagant eulogies of the deceased, exaggerating their achievements to make them appear like Wagnerian heroes qualified to ascend to Valhalla. I found these performances unpleasant, untruthful, and an injustice to the dead. I resolved that I should write my own last words. If my loved ones desire eulogists to recount my virtues and to ignore my sins of commission and omission, so be it. If these remarks are also given I shall have ensured for myself the privileges of equal time. It almost goes without saying that I lament not having the opportunity to deliver these remarks to you in person…

To my friends and colleagues, I leave this parting word. Next to love, honor and justice I have always treasured friendship. You kept me afloat in turbulent seas and strengthened me in periods of anxiety and despondence. Many of you helped me in my career. You who are my dearest friends know who you are without being named. I leave you with sorrow but gratitude.

My Mother, Father and Grandfather Moses were the strongest influences in my life…My Grandfather was a passionate advocate of personal and social justice and honor. When I was a little boy he told me that it was his dearest ambition for me to become a judge. I never made it; but I rest assured that he would have been pleased to know that his first grandson had become an arbitrator…

I had been programmed to have an ardent interest in fairness, justice and truth. I spent a lifetime pursuing these nebulous and undefinable concepts, always imagining that I was about to grasp the hem of their elusive garments; but always (or at least frequently) failing. However, being an arbitrator, I was afforded the opportunity to make that pursuit, not the sport of a dilettante, but a vocational duty. How often I had been right or wrong in my decisions only a Deity could know. There were occasions when I may have been the unwitting instrument of injustice. I pray forgiveness for this. Would that I had been wiser and more courageous! Would that my predilections and inability to restrain impatience had permitted me to be a better arbitrator! Performance cannot exceed nor rise above capacity. I tried. Being my father's son, I never ceased to try to do my best…

Any proper balance sheet in respect of Peter Seitz should reflect for the consideration of the Divine Author (as though he were not already in full possession of the facts!) certain failings of character. After achieving a state of conviction, I was not always tolerant of the expression of contrary views. A touch of humility and a bit of restraint might have made me more endearing. I found it hard to bear real or imaginary slights or humiliation and what I thought might be acts of injustice to others. A tendency to over-aggressiveness was hidden behind my equable quasi-judicial mien.

From time to time I was crusty and irascible. On the whole, however, I easily fell into a state of affection for men and women of various ages and background. As I grew older, I did not suffer fools gladly; but I do not lament this because it is a prerogative of those who have intimations that the end of life is not far distant. Mostly I had a lively interest in my fellow-man. (I shall not make the feminists happy by referring to fellow-persons!) I think it can be said of me that, by instinct, I was a lover.

I am afraid that I grow verbose. This is the privilege of eulogists; not of the dead. I shall close with three observations:

1. From all of you, and particularly from my amore Carla, I depart forever in sorrow. All of you (and particularly Carla) have enriched my life in one way or another; and as I write this I am deeply grateful. I pray that all of you will have long and fulfilling lives with at least as much felicity as has been granted to me. I hope that those lives will be lived in peace, with love and compassion for others and a never ceasing pursuit of justice and honor.

2. Mankind must always strive to achieve the ideal good, however unattainable it may appear to be. If the effort is not made, life becomes mean, paltry and banal. However, excessive zealotry and fanaticism in the pursuit of what is perceived to be a good, will always be self-defeating. Perfection in the realization of our dreams may be unattainable; but the best part of living is in the striving.

3. Death, I believe, is oblivion; but in a way of thinking, it is the price to be paid, ultimately, for the joy of living. I am grateful, if not happy that I can pay that price for the good life I lived with Carla…

Farewell my dearest Carla, my loved ones and all of my friends.

TALES FROM THE HEARING ROOM

(A new forum for members to relate funny, unusual, or interesting stories arising during the course of an arbitration hearing.)

For three hours I listened to testimony and saw pictures of a prison riot at the facility where I was hearing a case. I could not believe one human being could do such things to another human being. As it approached lunch time I asked where I could eat lunch. Someone suggested the cafeteria. I asked for directions and was told to follow a specific sidewalk. The parties disappeared in all directions. I went into the cafeteria, picked up a serving tray and that was when I noticed that I was the only one wearing a coat and tie. The rest of the occupants were either wearing cook's whites or blue prisoner uniforms. I gulped down my food and returned to the hearing room.

When I reconvened the arbitration hearing I asked where all of the bad people were that I had been hearing about all morning. I was told that I was eating in the trustee cafeteria. The bad guys were on the other side of the cafeteria wall. I asked what keeps the two groups apart. I was told two guards with machine guns.

The next time I heard a case at that facility I brought my lunch.

— Harold E. Moore

At the conclusion of three days of hearing inside a Federal Penitentiary, the parties jointly requested that I make a site visit to a currently vacant cell block which was the scene of the incident which is the subject of the arbitration.

On our return from the cell block to the prison hearing room, all hell broke loose. There was an alarm. The attorney for the prison, the grievant (no longer an employee), and several off duty personnel and yours truly were quickly shunted to a side corridor while the incident was dealt with.

Some custodial trusties were moved into another cell block for their safe keeping. It was like being on a reality TV show.

When there is an alarm, EVERYONE comes running: tall people, short people, thin people, fat people, men, women, office staff, correctional officers, secretaries, young people, old people. All are trained to deal with the unknown crisis and everyone goes to the scene because no one knows how much help is needed.

As described to me after the incident, and after watching two bloodied inmates escorted past us to medical facilities, what occurred was "three inmates were beating the 'snot' out of another inmate."

The Union President, who was presenting the arbitration case, took off running as soon as the alarm sounded. As he told me later, "you hear the alarm, your training kicks in, and you run." He said he pulled one inmate off of another, put him to the ground and cuffed him. "I'm getting a little too old for this", he said, "I'm 51." After he and everyone else calmed down, we returned to the hearing room and finished the case.

— Ed Krinsky

The San Francisco Bay Area boasts a population of over 7 million folks. Yet somehow, I keep stumbling over a grievant that I know personally.

There was the grievant fired for sexual harassment. At the hearing, one issue was whether his loyal and dutiful wife could sit in on the hearing (for all the obvious reasons). After due deliberation, I allowed her presence. When she walked in, I recognized her as a violinist in my orchestra. (BTW, we both still play in the same orchestra some 20 years later; she is still happily married to the grievant who attends every concert.)

Then there was the long and anguishing arbitration over whether the grievant, who had some sort of psychological collapse, should be fired or granted a medical separation. I ordered the latter. A few years later my son began telling me the sad story of his best friend's father. Guess who!

The clincher: the grievant who turned out to be the woman with whom my husband had an affair. Fortunately, I figured it out *before* she walked into the hearing.

— Bonnie Bogue

The hearing began at 9:00 AM in the ball room of a 4 star hotel in Corpus Christi, TX. Around 10:00 AM the loud band music from a revival meeting began coming through the sliding partition wall. I halted the hearing and requested the hotel manager to move us to another room. The manager said we could use the "lounge", but we had to be out of there by 5:00 PM

Fine! We set up in a balcony room of what appeared to be a night club. Around 4:30 PM I noticed that the lights in the rest of the club were turned on. Shortly thereafter provocative music could be heard. Then this young lady came on the stage and began disrobing. When she began climbing up and sliding down the brass pole, no one was interested in what the witness was saying. I adjourned the hearing. We did not know that we were in the hotel's topless bar.

— Harold E. Moore

FOCUS ON

The Membership Committee

By Margaret Brogan, Chair

I am pleased to report that the change in the membership standards, as enacted in Ottawa, has resulted in the admission of talented labor-management neutral arbitrators with diverse practices, who may not have met our threshold for consideration of their application in the past.

By vote of the NAA Membership in May, 2008, the threshold was changed to now require an applicant to demonstrate sixty awards in the most recent six years from the filing of the application. Basically, there are two "buckets" of countable cases. At least forty must be in the traditional final and binding labor arbitration awards bucket; twenty may be in the "workplace dispute" bucket, which includes advisory arbitrations and fact-finding, as well as work obtained through state and provincial labor-management boards. Ten of the "workplace dispute" awards may be employment cases.

It is noted that a good number of the successful candidates have surpassed the threshold through the strength of labor-management "workplace dispute" cases. Few have needed employment cases to do so; though those that did possess a strong labor-management background and caseload. It should be remembered that meeting the threshold is not an automatic guarantee for admission. Rather, applicants needs to demonstrate, upon a review of their work as whole, that they meet the general standards for admission which includes a demonstration that "the applicant should have substantial and current experience as an impartial arbitrator of labor-management disputes, so as to reflect general acceptability by the parties."

The task of the membership committee has been a daunting one in the past year, and the committee members have taken on the challenge of interpreting the new standard with great energy and seriousness. Since the change, twenty-four new applications have been reviewed. Our goal has been to ensure that the cases counted reflect the overriding membership standard of substantial and current experience as an impartial arbitrator of labor-management disputes, so as to reflect party acceptability. In terms of workplace dispute board work, this has required individual committee persons to investigate the manner in which an arbitrator is selected for such cases, and whether there is any imposed limitation on the length of the award or the rationale employed. In essence, our quest has been to discover whether the awards and their underlying procedure reflect general acceptability of the parties and work experience as a labor-man-

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Tribunal Appeals Committee

By George R. Fleischli, Chair

The Tribunal Appeals Committee is a permanent committee, established under the Constitution and By-Laws. Its existence is unknown to many members of the Academy, partly because it is not among the standing committees listed in Section 1 of Article IV of the By-Laws. But the real reason its existence is unknown to so many members is because it has a limited function, and it is not often called upon to perform that function.

The Tribunal Appeals Committee is established by Article IV, Section 2(f) of the By-Laws. It states that in the event an appeal is taken from the decision of a Hearing Officer appointed by the Chair of the CPRG, it "shall be directed to a Tribunal of three (3) Academy members appointed by the President of the Academy with the consent of the Board of Governors." Subsection (f) goes on to state:

> "…The original members of the Tribunal shall be appointed for staggered terms of two (2), three (3) and four (4) years and thereafter for three year terms. An alternate member of the Tribunal may be designated by the President of the Academy in the event of a conflict of interest or the unavailability of a member of the Tribunal for a particular appeal."

Currently, there are four members on the Committee. I serve as chair. Walter Gershenfeld and Ted St. Antoine serve as regular members. Barbara Zausner is the newest and alternate member. Others who have served on the committee since I began service as an alternate member in 2006 include Ben Aaron, Jim Harkless and Rolf Valtin.

Upon receipt of a written complaint from an affected person, the Chair of the CPRG makes a determination as to whether the complaint raises an issue under the Code. If one or more provisions of the Code are implicated by the complaint, the Chair, or a member of the CPRG designated by the Chair, conducts a preliminary investigation.

The investigator is authorized to use a conciliatory approach and complaints can be resolved informally, either by a voluntary withdrawal of the complaint or a finding that the charge has merit, accompanied when appropriate by imposition of a sanction deemed acceptable to all. (A charged member has the right at any time to terminate proceedings under Article IV, Section 2 by resigning.)

If the complaint is not resolved informally, and the Chair of the CPRG finds, after consulting with two other members of the CPRG, that there is probable cause to proceed further, the case is assigned to a Hearing Officer. After affording the parties a hearing consistent with the nature of the dispute, the Hearing Officer issues a decision that is final unless appealed. Both the

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Membership Committee *(Continued from Page 28)*

agement arbitrator. With respect to employment cases, we investigate and ensure that the procedures utilized are in line with the Due Process Protocol and the NAA Policy Statement on Employment Arbitration, and are full awards with rationale. Our committee requires applicants to support their application with all necessary documentation, and we request supplementation when necessary.

We have updated the Membership Application and website to reflect the new membership standards. In revising the website, the application was removed, and potential applicants are now informed on the website that they are to contact the Chair to obtain an application. This has proved successful, as the committee is now aware of the potential applicants, so they may be informed of deadlines for submission of the application and given other information. In addition, it affords the potential applicant the opportunity to have communication with the Chair prior to submitting the application, to ensure that the individual has some understanding of our membership standards.

Our committee has also moved into the cyber era. We created a dedicated Gmail account, *naamemberchair@gmail.com*, where all correspondence relating to applicant files are directed, including letters of reference and member comments. Potential applicants are advised on the website that they are to direct their inquiries there. One month prior to our meeting in Chicago, the Gmail account was opened up to all committee members, to allow them to see the correspondence relating to the applicant files, and to afford transparency of the process. In this world of email correspondence, we have found that individuals solicited for references respond more quickly by email. But to ensure that all references are contacted, follow-up is by hard copy when a reference does not initially respond. We thank those of you who comment upon an applicant you know based upon the bios sent to all; that information is extremely helpful to our committee in its deliberations.

It may make your head spin, but the folks of the Membership committee had yet another job in the last year, that of reworking the Veterans' process, which had been recently suspended due to some problems in its administration. After deliberation, we decided to reinstate the process in a more informal manner. We concluded that the process would work better if the committee was consulted first through an inquiry by the Regional Chairs, prior to an application being filed. It is our thought that this process should be limited to those individuals of lengthy arbitration tenure in our communities who would be a "slam-dunk" to meet our standards, but who for one reason or another have not gotten around to filling out that dastardly application. Our organization has been enhanced and rewarded by those extremely talented individuals who have come in under our Veterans' process, as exampled by many of our Canadian colleagues, and we would like that to continue. If any person has questions about the Veterans' process, please contact me at our email address at *naamemberchair@gmail.com*.

Finally, applications considered at our committee meeting in Philadelphia and going forward, will be able to cite some railroad work in meeting the threshold for consideration. Due to the efforts of Barry Simon and a special committee of the NAA, certain railroad cases will be counted in the twenty case bucket of "workplace disputes." Each certificate of appointment to a Section 3 tribunal (NRAB, SBA, or PLB) under the Railway Labor Act issued by the National Mediation Board (indicating it was based on a selection by the parties or "partisan members") accompanied by one issued and adopted award will be considered as one countable "workplace dispute" case. The website and membership application will again be revised after our San Antonio meeting to reflect this change. This compromise is a recognition of this often complex work, and the importance to our organization of the railroad industry, its parties and its arbitrators.

It has been an honor being a small part of the implementation of the historic membership standards changes and working with an enormously hard-working and dedicated committee.

Tribunal Appeals Committee *(Continued from Page 28)*

complaining party and the member have the right to file an appeal with the Tribunal Appeals Committee, if they are dissatisfied with the decision of the Hearing Officer.

There has only been one appeal from a Hearing Officer's decision in the three years since I began service on the Tribunal Appeals Committee as an alternate member. The details of that case are described by Shyam Das in his last report to the Board of Governors.

Hearings are conducted by a Tribunal, consisting of three members of the Tribunal Appeals Committee. The hearing is strictly appellate in nature. Subsection (f) provides as follows:

> "The Tribunal shall review all material pertinent to the charge and decide whether to uphold the dismissal or discipline imposed based on the appellate record and not on a de novo proceeding. The Hearing Officer's findings of fact shall be deemed final if supported by substantial evidence. The determination of a violation of the Code, or Article VI, Section 6 hereof, shall be based on clear and convincing evidence."

The Tribunal can decide the appeal on the basis of the written record, including the appeal and response. Written arguments may be permitted or required, in the discretion of the Tribunal. The same is true in the case of oral arguments. The decision of the Tribunal is final and serves to conclude the proceedings. The Board of Governors does not get involved in the consideration of individual cases. See Article IV, Section 2(e)(iii) of the By-Laws.

A Study in Patience:

Collecting Fees from a Bankrupt Party

By Eric Lawson

Usually but sometimes with a bit of prodding, I've collected my arbitration fees quite easily. But there have been a few exceptions, one in particular where the employer declared bankruptcy both before and after my award had been issued.

While not quite at the level of pain found in a Dickens novel, there were times during the seven years it has taken to conclude my collection efforts for this case that I believed I was the object of abuse. What follows is a capsulated reiteration of my experience.

I was appointed to hear a discharge case on June 21, 2001. Following numerous written and telephonic contacts with the parties by the AAA administrator, an *ex parte* hearing was held on September 28, 2001. It was determined that the employer had declared bankruptcy, but that pursuant to options available under Chapter 11, a new corporation had been formed. The newly-formed entity purchased the assets of the old corporation, retained its employees including the grievant, and entered into a successor agreement to the contract in effect with the bankrupt business.

Based on the "successors and assigns" clause in the successor contract and being satisfied that authorized parties were aware of the pendency of the arbitration proceeding, I held in an October 30, 2001 decision that I had jurisdiction over the discharge case.

On November 16, 2001, after concluding that adequate notice had been given, an *ex parte* hearing into the substantive issues took place. The record was left open for two weeks following the hearing to allow the employer to appear, and it was sent a letter which provided a description of evidence received at the November hearing. The employer did not appear; and on January 1, 2002 I rendered a decision sustaining the grievance. I submitted my statement to the parties.

The Union promptly paid its portion of the fee; the employer did not.

On April 24, 2002 I obtained an e-mail from Anna DuVal Smith which summarized information she had received from Matt Franckiewicz advising, in essence, that a bankrupt employer could not unilaterally reject a collective bargaining agreement and that only a bankruptcy court, upon specific application to do so, had that authority. The deciding case on this point involved an action brought by pilots at Continental Airlines when it first entered bankruptcy.

Monthly statements were sent to the employer during 2002, and in January 2003 I advised that I would litigate the claim if not paid. In July 2003, I received a judgment from a city court following my appearance in what was

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Do No Harm:

A Note On What Not To Write

By Amedeo Greco

A footnote written by Peter Seitz, one of my favorite arbitrators, addresses the importance of not writing anything that can be harmful to those appearing before us.

His case centered upon what the parties' negotiators discussed in negotiations, with each negotiator giving sharply different accounts about what happened. [1]

> Seitz wrote in note 4:
>
> Although the transcript of proceedings in this case runs to only 790 pages, the conflict of testimony as to meetings, events and telephone conversations is unusually deep and sharp. A choice of one version of facts and a rejection of another could have consequences much more damaging in this dispute, than is usually the case. What is perhaps at stake here, is not only the grievant's employment and the employment of perhaps, many similarly situated, but also, the future careers of the two principal negotiators for the parties and the future relationship of these parties. These circumstances place a heavy burden of restraint on the opinion-writer, which, I hope, is exercised responsibly. The office of an arbitrator, in deciding a dispute is, hopefully to improve and enhance the relationship of the parties, not to exacerbate it. If the arbitrator unnecessarily adds to the injury which the parties have inflicted upon themselves, arbitration fails one of its major objectives.

■ ■ ■

This cautionary note is the equivalent to an arbitrator's Hippocratic Oath to "Do no harm."

Our words, after all, can cut up someone much like a scalpel, and they can leave scars which are more damaging and hurtful than some surgery scars.

Professor Nathan Feinsinger, my labor law teacher at the University of Wisconsin Law School, once said: "There is nothing more permanent than the written word." That is particularly true in the age of word processors when we type something on a screen and then often transmit it without waiting to determine whether we really

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COLLECTING FEES FROM A BANKRUPT PARTY *(Continued from Page 30)*

yet another *ex parte* proceeding. The court denied my application to be paid for the cost of representation but otherwise awarded my fee. To prepare for this case, I was compelled to obtain a lengthy affidavit from the union counsel appearing in the original case.

Thereafter, an overture was made to me from the company advising that bankruptcy was again being considered and asking me for the amount I was owed; however, no payment was made.

In May 2004, without receiving any notice from the bankruptcy court, I learned from an anonymous source at the company that bankruptcy had been filed. Upon inquiring of the court, I was supplied with papers showing that a Chapter 11 filing had been made in September 2003, but I was told that I was probably out of time to file my claim.

After traveling to the court in Poughkeepsie, New York, I filed my claim which I described as a "priority" based on Continental Airlines. I was contacted by an attorney for the bankrupt company who said that he wished to settle my claim but who also said that it had been filed out of time. I reminded him that my late filing was caused by lack of notice, a direct consequence of the debtor's failure to list me as a creditor. I averred that this was a serious oversight, particularly since I had filed the small claims judgment. I told counsel that I thought the court might wish to know about these developments.

Although debtor's counsel never carried out his promise of payment, I was subsequently notified that objection to my "late" filing had been withdrawn.

Numerous notices were received from the court regarding efforts of the bankrupt company to reorganize. At one point, the bankruptcy judge held a telephone conference with several creditors including me. At that time, the court took notice of my Continental Airlines based claim and urged bankruptcy counsel to settle my claim.

More time passed before an administrator was appointed to oversee the marshalling of assets and the payment to creditors. Despite never receiving a decision of the court saying so, my priority argument had apparently been heard because I obtained a preference among creditors. Following several conversations with the administrator, I agreed to accept payment at 50 cents on the dollar and was finally paid.

On December 1, 2008 the court granted an order dismissing this bankruptcy.

Throughout this sorry tale, I represented myself; and, even so, when my expenses are considered, I ended with a positive return on my claim of only several hundred dollars.

You may draw your own conclusions from this story, but one which I have drawn is that it is not even remotely worth the possibility of eventually being paid to take on an assignment where one of the parties teeters on the brink of bankruptcy.

Ed note: A concurrent session on bankruptcy will be held at the upcoming Fall Education Conference in San Antonio.

A NOTE ON WHAT NOT TO WRITE *(Continued from Page 30)*

want to make our words that permanent.

Our written words thus may be remembered by the parties long after we write them and long after we have forgotten that case.

That may be particularly true of credibility determinations.

We must make credibility findings because they often are the keys to determining what factually happened. But we can do that without labeling someone as a liar and by normally crediting one person's testimony and explaining why we are doing so without impugning someone else's truthfulness.

Seitz thus credited the union's witnesses and referred to the company's witnesses by stating "(whose veracity I do not presume to impugn, thereby)." [2]

It also is often possible to sidestep some credibility issues entirely when their resolution is not essential to our ultimate rulings.

As for other matters, arbitration proceedings often are filled with many "truths" - i.e. what actually happened and why.

Since parties expend considerable time and resources litigating those "truths," and since they often want us to label their side as the good folks and the other side as the bad folks, it is easy to fall into the finger-pointing game, particularly when one side has properly conducted itself and the other side has not. But that may needlessly inflict further injury on the parties.

And then there is the need for doubt. A degree of doubt about our certitudes may help us avoid writing needless, personal pronouncements about individuals (who usually are total strangers we really do not know except for the brief time they appear before us), thereby causing great harm.

We spend considerable time and care in drafting our awards to make sure that our words and grammar are perfect; that our awards lay out the essentials of a case in a fair manner; that our thoughts and reasoning are properly expressed; that our judgment is sound; etc. We thus spend almost all of our time focusing on what we have written.

Seitz's note reminds us that is not enough because it also is necessary to think about what not to write – which is just as important as what we do write - least we add to the "injury which the parties have inflicted upon themselves . . ."

[1] American Airlines, Inc., 48 LA 705, 706-707, (1967).

[2] Id. at 708.

Southwest Region's Annual Labor-Management Conference

By Kathy Eisenmenger

The NAA Southwest Region conducted its 32nd Annual Labor Management Conference in Houston, Texas, March 26-28, 2009. The three-day extravaganza began with three well-attended full-day sessions on March 26, 2009. The Region's 7th Annual Advocate Training Program offered arbitration advocates the choice of either a session on *Grievance Evaluation and Processing: An Interactive Program for Advocates Who Handle Grievances*, or *Advanced Advocacy: An Interactive Program for Advocates Ready for Advanced Topics*. The third session consisted of the Region's *10th Annual Arbitrators' Seminar: An Interactive Program for Experienced and Newly-Established Arbitrators*.

In the grievance handling session, labor and management participants learned how to effectively evaluate, process, and settle grievances within the perspectives of the arbitrators who may review those grievances. NAA Arbitra-tors John Barnard, Esq., LeRoy Bartman, Ed.D., Ray Britton, Esq., Dan Jennings, Ph.D., Harold Moore, Esq., James O'Grady, Ph.D., John Sass, Esq., Mark Sherman, LLM, Ph.D., and Maretta Comfort Toedt, Esq. presented their unique views to help the parties objectively assess their respective cases. Thirty-five (35) attendees participated in the session.

The Advanced Advocacy course examined critical topics. NAA Arbitrator Don E. Williams, Esq., the Southwest Region's incoming Chair and Conference program chair, moderated the session. NAA Arbitrators presented the session's topics: Paul Barron, Esq. – *Drafting the CBA*; Ruben Armendariz – *Arbitration and the NLRB*; Kathy Eisenmenger, Esq. – *External Law*; Thomas A. Cipolla, Esq. – *Assessing the Success of the Case*; Norman Bennett, Esq. – *Preventing Harm to the Parties, Doing as Little Damage as Possible in the*

Conference Chair Bill McKee addresses the Friday morning session.

Arbitration Hearing; Francis X. Quinn, Ph.D. – *Ethics Code of the AAA and the FMCS*; and, T. Zane Reeves, Ph.D. – *Researching the Arbitrator*. Arbitrator Armendariz introduced Sharon Steckler, Supervisory Attorney for Region 16, Fort Worth, Texas, NLRB. Steckler shared valuable information pertaining to the Board's internal processes and considerations when deferring investigation of an unfair labor practice to arbitration. Forty (40) representatives from unions and employers and attorneys who practice in labor law attended the session.

The Arbitrator's Seminar provided training to thirty-one (31) experienced and new arbitrators. NAA Arbitrator I. B. Helburn, Ph.D. presented the session. The seminar covered techniques for writing an arbitration award, discussions of the problems and difficult issues that arise during the hearing, and a presentation of ethical considerations. All three training sessions on the first day of the conference ended with a meeting attended by the participants, Michel Picher, NAA President, Vella Traynham from the FMCS, Molly Bargenquest from the Dallas AAA office, and Andrew Barton from the Houston AAA office.

The Houston Chapter of the Labor Employment Relations Association (LERA) hosted a social and dinner meeting in conjunction with the conference with Leo W. Gerard, International President of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, as the featured speaker. Gerard, visiting us from his native Canada, treated the evening's diners with a stirring description of the Union's initiatives pertaining to the Employee Free Choice Act and other concerns the Union has proposed for action before the Obama Administration. The social event was well attended by arbitrators and union and employer representatives.

The March 27, 2009 program contained considerable variety for labor-management and employment practitioners. Then Chair of the NAA Southwest Region, William McKee, Ph.D., opened the morning's plenary session. NAA Arbitrator Helburn moderated the morning's program with presenters Eric H. Nelson, Esq. and A. Martin Wickliff, Jr., Esq., both from Houston, Texas. Discussion ensued about the use of prior arbitration awards as an aid in selecting arbitrators, brief-writing concerns, and the arbitra-

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ANNUAL LABOR-MANAGEMENT CONFERENCE *(Continued from Page 32)*

tors' deliberation processes.

The Friday session offered eight (8) diverse programs for the conference's attendees. NAA Arbitrator Don E. Williams moderated *How to Make a Federal Case Out of It*. The panelists represented federal agencies and

Frank Quinn leads a discussion on ethical issues.

union officials: Keith Blackstone from the Veterans Administration in Oklahoma City, Oklahoma; Robert Humphries, Esq., from the U.S. Department of the Treasury; Ron Kisslinger from the American Federation of Government Employees from El Paso, Texas; and, Gretchen Paulig, Esq., from the National Treasury Employees Union from Austin, Texas. The panelists discussed various critical court and adjudicating bodies' decisions, including *Cornelious v. Nutt*, to be considered by the parties when

T. Zane Reeves instructs conference attendees on how to research the arbitrator

presenting an arbitration case in the federal sector. NAA Arbitrator Norman Bennett hosted *Post-Award Issues, Immunity, Discovery & the Press* with panelists Hershell L. Barnes, Jr., Esq. of Barnes and Harrington, Dallas, Texas, and G. William Baab, Esq., of Baab & Denison, LLP, Dallas, Texas. The panel elaborated on such matters as appealing an arbitration award and other challenges, the discovery of the arbitrator's record, malpractice insurance, and press coverage. NAA Arbitrator Ruben Armendariz moderated *Liars and Limine: Strategic Use of Pre-emptive Motions, Polygraph Exams & Other Lessons from the Texas Local Government Code, Chapter 143*. Ms. Terry Hickey, Esq., of the Texas Municipal Police Association from Fort Worth, Texas, and Richard Navarro, Esq., of Denton, Navarro, Rocha & Bernal, from Harlingen, Texas provided dialogue concerning the use of motions, briefs and polygraph examinations in arbitration. NAA Arbitrator Kathy Eisenmenger, Esq., convened the Postal Arbitration discussion with

Luncheon speaker Michel Picher draws a laugh from the audience and his wife and fellow arbitrator, Pam Picher.

panelists Roberta Albright, Senior Labor Relations Specialist, U.S. Postal Service (USPS), Southeast Area; James Oliver, Senior Labor Relations Specialist, USPS, Southwest Area; Gene Goodwin, National Business Agent, National Association of Letter Carriers (NALC); and, Sam Lisenbe, National Business Agent, Dallas Region, Southern Region, American Postal Workers Union (AFGE). NAA Arbitrator Francis X. Quinn moderated *Ethics of Arbitral Discretion* with panelists Patrick M. Flynn, Esq. of Houston, Texas, and Danielle L. Hargrove, Esq., of San Antonio, Texas. The session highlighted a number of emerging ethical issues that arise in labor and employment arbitrations. NAA Arbitrator Ray Britton hosted an examination of the similarities and differences between Labor and Employment Arbitration processes. Panelists Mike McReynolds of Fort Worth, Texas and Lynne Gomez, Esq., of Houston, Texas joined Arbitrator Britton in the session. Arbitrator Carl Bosland, Esq., presented an in-depth review of the new developments pertaining to the Family Medical Leave Act (FMLA) and claims made in arbitration.

NAA President Michel Picher joined the conference attendees for lunch and regaled us with entertaining stories and informative insights. Hosting our Canadian guests, Messrs. Picher and Gerard, was truly a pleasure and contributed to the breadth and perspective for us in the Southwest.

The conference ended with the Region's traditional open mike session on Saturday morning with a lively discussion between NALC, APWU and USPS representatives and arbitrators.

Attendees of the conference expressed several positive comments. The attendees enjoyed the question and answer format used in several of the interactive programs. A number of the attendees expressed their appreciation for the opportunity to speak to arbitrators one-on-one. Our favorite but anonymous participant wrote, "Overall, the conference was probably the best I have attended in 10 years or more." In sum, the Southwest Region's 32nd Annual Labor Management Conference was a delightful success.

NEW MEMBERS WELCOMED IN CHICAGO

JULES B. BLOCH

Toronto, Ontario

Jules B. Bloch is an experienced, bilingual mediator, arbitrator, facilitator, fact-finder, lecturer and trainer. Bloch graduated from University of Toronto with his B.A. (Honours) in Political Economy in 1980. Bloch received his L.L.B. from the University of Windsor in 1984 and was called to the Bar in 1986. In 1994, he earned a certificate of Alternative Dispute Resolution from the University of Windsor Faculty of Law. After his call, he practiced law primarily in the field of labour and employment law. In 1990 he was appointed full time Vice-Chair of the Criminal Injuries Compensation Board (CICB). The following year he was appointed full time Vice-Chair of the Ontario Labour Relations Board (OLRB), and in that capacity, as a Vice-Chair on the Construction Panel (November 7, 1991 to September 1, 1999). He has been a Vice-Chair of the Grievance Settlement Board. Since January 1994, he has accepted work as a facilitator, mediator and arbitrator on a consensual basis. Between 1999 and 2004, Bloch participated in the Ontario Mandatory Mediation Program Toronto/Ottawa. Bloch has lectured extensively and acted as a trainer in the fields of labour and employment law and alternate dispute resolution. Bloch is a co-author of *Canadian Construction Labour and Employment Law* (Butterworths: 1996).

FELICITY BRIGGS

Toronto, Ontario

After six years of working as a Registered Nurse, Felicity spent twelve years working for the Ontario Nurses' Association in various capacities, ultimately managing the Arbitration Department. She was added to the Minister of Labour's list of Arbitrators in 1991. Since that time Felicity has acted as Chair of both Rights and Interest Boards of Arbitration. She has also had extensive experience in mediation and med/arb. She has held the position of Vice-Chair of the Grievance Settlement Board of Ontario since 1993.

LAWRENCE S. COBURN

Ardmore, Pennsylvania

Lawrie Coburn has been an arbitrator and mediator since 1999. He also mediates unfair practice disputes pending before the Pennsylvania Labor Relations Board and employment discrimination disputes pursuant to a contract with the EEOC in Philadelphia, Baltimore and Washington, D.C.

Before becoming an arbitrator and mediator, Lawrie practiced labor and employment law at a Philadelphia firm for 25 years. He took a leave in 1973-74 in an unsuccessful attempt to form a professional European men's tennis league. Also unsuccessful was his earlier career as an English teacher in Tunisia and Massachusetts, which prompted him to try an easier profession – law – for which he prepared at the University of Michigan Law School. His worst grade was in a labor law class, taught by the Hon. Harry T. Edwards, who thankfully inspired Lawrie to try a career in labor law.

Lawrie enjoys coaching his seven-year-old son's soccer team, keeping track of his three older children and two grandchildren from afar, playing tennis badly, and exchanging stories with his wife Amy, a college professor, about the wonders of arbitration and the wacky world of academia. Lawrie is thankful for the longstanding support of several NAA members and is grateful to have the opportunity to become a NAA member.

EDWARD J. HARRICK

Glen Carbon, Illinois

Ed Harrick has served as an arbitrator since 1988. He is a member of FMCS and AAA and has been appointed to a number of arbitration panels.

Professor Harrick spent nearly 36 years in higher education, retiring as professor emeritus at Southern Illinois University Edwardsville. He taught human resource management courses and was director of its Labor and Management Programs.

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L to R Top Row:
Christopher Sullivan, Thomas Hartigan, Felicity Briggs, Edward Harrick, Gordon Luborsky, Jules Bloch

L to R Bottom Row:
Stephen Raymond, Marilyn Nairn, Hezekiah Brown, William W. Lowe, Lawrence Coburn

NEW MEMBERS *(Continued from Page 34)*

Harrick also lectured at universities in France and Mexico on labor and management issues. He received his Ph.D. from Saint Louis University and studied arbitration under Fr. Leo Brown and Dr. Gladys Gruenberg.

Harrick was recognized by FMCS for his "contributions to the improvement of labor-management relations in the United States." He is the recipient of awards from both SHRM and IRRA and is a past president of LERA in St. Louis. He helped start a popular arbitration seminar for the LERA Gateway Chapter entitled *Arbitration: the Good, Bad and Ugly*. It is offered bi-annually, and he has coordinated the program since the early 1990's.

Ed enjoys woodworking and has been involved in a number of volunteer activities. He is married to Karen; they have three children. Ed extends his appreciation to Jim O'Grady for his encouragement and support.

THOMAS D. HARTIGAN

Hamilton, New Jersey

Born and raised in Philadelphia, PA, Tom Hartigan graduated from La Salle College in 1971 with a BA in Business and then received his MA in Labor Studies from the University of Massachusetts. After working three years for the New York State Nurses Association as an organizer and negotiator, he took a position as a Staff Mediator for the New Jersey Public Employment Relations Commission. He remained with the Commission for twenty-seven years before retiring in 2003 as Director of Conciliation. During this time, he mediated hundreds of cases involving all types of governmental agencies, employees and their unions. Additionally, at the request of the parties, he handled Fact Finding, Arbitration, and Interest Arbitration disputes as well.

Having started to arbitrate on a part time basis for the New York Office of Collective Bargaining in 2000, Tom began his full time arbitration practice in July 2003. As well as joining the NJ PERC and NJ State Board of Mediation's arbitration panels, he is a panel member with AAA, NY PERB, Pennsylvania Board of Mediation, and the NY-NJ Port Authority. In 2004 he was admitted to the Special Panel of Interest Arbitrators at NJ PERC. Tom continues to serve as a mediator and fact finder, adding over a hundred and fifty such selections since his retirement.

WILLIAM W. LOWE

Red Lion, Pennsylvania

Bill has been involved in labor relations for nearly 40 years. A 1967 graduate of Dickinson College and 1980 graduate of George Washington University, MSA (Personnel and Labor Relations), Bill served as a management advocate in his role as a Labor Relations Specialist for the Army's Aberdeen Proving Ground before eventually becoming its HR Director serving a workforce of nearly 10,000 civilian employees with five national unions and thirteen separate bargaining units.

In 1979, Bill served as an apprentice arbitrator under the auspices of former NAA member Robert J. Ables. In 1980, Bill began serving as an arbitrator on the Expedited Steel panel in Eastern Pennsylvania. Shortly thereafter, he gained entrance on the American Arbitration Association's labor panel and Pennsylvania's Labor Relations Board and Bureau of Mediation panels. He also served in the mid-1980s as a commercial arbitrator for Chrysler's Customer Arbitration Board.

Upon his retirement in 2002 from the Aberdeen Proving Ground, Bill began full time service as a labor arbitrator and mediator. In addition to his service for the AAA and Pennsylvania's PLRB and Bureau of Mediation, he also began serving on the DEL PERB, NJ PERC, NJ State Board of Mediation, and the FMCS panel. Bill also serves as a commercial arbitrator on the FINRA securities arbitration panel.

Bill currently serves as a permanent arbitrator for the following: (1) PA State Police and PA State Troopers Association; (2) Commonwealth of PA & AFSCME (Classification Panel); (3) United Mine Workers & Reading Anthracite Co.; (4) Social Security Administration and AFGE; (5) Ft. Bragg & AFGE and (6) United Mine Workers and the Bituminous Coal Operator's Association, District 2 Panel.

Bill is also a member of LERA (Philadelphia, PA; Baltimore, MD and Harrisburg, PA chapters) and is an Advanced Practitioner with the Association for Conflict Resolution. He has served as an adjunct instructor in Personnel Management and Labor Relations at the York College of Pennsylvania. In addition to his arbitration work, he also serves the PLRB as a fact finder and as a mediator for several state agencies. Bill and his wife, Anne, have four grown sons.

GORDON F. LUBORSKY

Markham, Ontario

Gordon Luborsky holds a Master's Degree from the University of Toronto and received his Law Degree (LL.B.) from Osgoode Hall Law School in 1982. After his call to the Ontario (Canada) bar in 1984, Luborsky practiced law as an associate and partner of the firm Hicks Morley Hamilton Stewart Storie until 1994, thereafter serving as Senior Vice President and General Counsel of Premier Salons International (of Markham, Ontario and Minneapolis, Minnesota) and as Co-Chair, Employment and Labour Law Group of the national law firm Lang Michener based in Toronto. Appointed in 1999 to the Ontario Ministry of Labour's list of approved arbitrators under the Ontario Labour Relations Act, and in 2002 to the list of adjudicators for hearing disputes under the Canada Labour Code, Luborsky has acted as mediator and/or arbitrator in employment and labour disputes over the past 10 years covering both Ontario provincial and Canadian federal jurisdictions. He has also taught Business Negotiations and Dispute Resolution courses at the University of Toronto and co-authored a number of publications on select topics in labour and employment law for Carswell's "CLV Special Reports".

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NEW MEMBERS *(Continued from Page 35)*

PATRICK A. McDONALD

Brighton, Michigan

Patrick A. McDonald graduated *magna cum laude* from University of Detroit Mercy Law School in 1961, and received a Masters of Law degree from Georgetown University Law Center in 1962. He joined the firm of Monaghan, McCrone, Campbell & Crawmer in 1965, after serving three years as a Captain in the U. S. Air Force as a Staff Judge Advocate in France (1962 to 1965). Pat became a shareholder and served as president of the law firm until January 1, 2006, when he formed his own law firm in Brighton, Michigan.

McDonald serves as an arbitrator and is a member of the National Labor Panel, American Arbitration Association, and Federal Mediation and Conciliation Service, as well as the Fact Finders Panel of the Michigan Employment Relations Commission for the State of Michigan. His other primary areas of practice include estate planning and education law. He was an Adjunct Professor of Law at University of Detroit Mercy Law School for 37 years until 2003, when he became an Adjunct Professor at Ave Maria Law School in Ann Arbor, Michigan.

McDonald is a member of the American, Michigan, and Federal Bar Associations; past commissioner, State Bar of Michigan; and past president and member of the Detroit Board of Education (1966-1976). McDonald developed and championed the concept plan of Magnet Schools. This plan was not only adopted by the Federal District Courts, but by thousands of school districts throughout the United States.

He has authored numerous articles for publication. He was ordained a Permanent Deacon in the Roman Catholic Church in 1972. He actively serves at St. Patrick's Parish in Brighton, Michigan as a deacon.

MARILYN A. NAIRN

Toronto, Ontario

Originally from Winnipeg, Manitoba, Marilyn Nairn is a graduate of the University of Winnipeg and the University of Ottawa Law School, following which she was called to the Ontario bar in 1982. She practiced labour law in Toronto until 1987, when she 'moved to the middle' as counsel to the Ontario Labour Relations Board. Marilyn was subsequently appointed a Vice-Chair of the OLRB, serving three terms adjudicating disputes in both its industrial and construction industry divisions as well as adjudicating employment standards and health and safety appeals. She began her private labour arbitration practice in 1992, which, since leaving the OLRB, has grown to encompass arbitration and mediation work in a wide range of workplaces in both the private and public sectors.

Marilyn is listed on the Ontario Ministry of Labour arbitrator roster and is currently a named arbitrator in collective agreements covering employees working in film production, universities, regional and municipal government, nuclear energy, and territorial education. She holds a part-time Vice-Chair appointment to the Grievance Settlement Board (Ontario public service) and was appointed as Chair to the Sixth and Seventh Triennial Provincial Judges Remuneration Commissions as well as Chair to the Fifth Triennial Justices of the Peace Remuneration Commission. Marilyn is a member of the Ontario Labour-Management Arbitrators' Association and the Canadian Bar Association and has served in various executive positions for the Labour Section of the Ontario Bar Association. Marilyn has lectured at various universities and appeared as a speaker on numerous panels and at conferences dealing with labour relations and human rights issues.

When not dealing with workplace issues, Marilyn may be found wandering with her cameras, living vicariously off her family's musical careers, or volunteering with her two favourite arts organizations.

STEPHEN RAYMOND

Toronto, Ontario

Stephen Raymond is a full-time arbitrator and mediator. He is a graduate of the University of Western Ontario holding a B.A. (Political Science, 1986) and a LL.B. (1989). After his call to the Bar in 1991, he practiced law primarily in the fields of labour and employment law with Ontario's largest management side employment and labour law firm – Hicks Morley Hamilton Stewart Storie. In 2000, he was appointed as a Vice Chair of the Ontario Labour Relations Board. Since 2003, he has worked as a labour mediator/arbitrator and civil litigation mediator. His practice covers all types of disputes, including rights and interest, in both the public and private sector. He is a former executive of the Ontario Bar Association Labour Law Section and is a member of that section, the ADR section and the Ontario Labour Management Arbitrators Association.

Stephen lives in Toronto, near the Beach with his lovely wife, Natasha and his two children.

CHRISTOPHER SULLIVAN

Vancouver, British Columbia

Christopher Sullivan established his private arbitration/mediation practice in 2000.

Based in Vancouver, British Columbia, Canada, Sullivan has acted as a third party neutral (arbitrator, mediator, troubleshooter, umpire, investigator, referee) in a broad range of industries including mining, railway, forestry, newspaper publishing, television, retail foods, construction, trucking, motion picture, hospitality, elementary and post-secondary education, firefighting, health care, community services, workers' compensation, municipalities and emergency services. He has dealt with a vast array of disputed issues relating to contract interpretation, discipline/discharge, human rights, classification, harassment, privacy and other labour relations matters.

Prior to establishing his dispute resolution practice, Sullivan worked as a lawyer, negotiator and labour relations consultant. He graduated from Queen's Law School in 1985.

Sullivan has acted as guest instructor/speaker/panelist at various conferences, seminars and workshops for unions, employers and educational institutions. He is also a member of the Arbitrators' Association of British Columbia and is on the British Columbia Labour Relations Board Registrar of Arbitrators.

REMEMBERING...

REMEMBERING BILL DOLSON

By David L. Beckman

"Professor Dolson" is how I first knew of Bill Dolson – he taught me Property Law at the University of Louisville Law School in 1959. We were both new to the law school in the early 1960s – I was a new student and he was a new professor. I dare say that neither of us knew how much we would share in common years later. As it turned out, Professor Dolson spent his entire career in Louisville.

Professor Dolson was not only a dedicated and effective teacher, but he also became a successful arbitrator. Arbitration was one of the endeavors we shared, and it accounted for the many times our paths crossed in the future. He undertook the early responsibility for planning some of the early meetings of what has come to be known as the annual Carl A. Warns Labor Law Seminar. And he was successful in getting me to publish an article for one of the sessions. Arbitrator Dolson was a long-time member of the ABA Committee on the Law of Collective Bargaining and Labor Arbitration. We had many fun times at the mid-winter meetings playing tennis with other members, as well as each other. Our wives shared in some of the social activities of the committee, and we enjoyed each other's company.

Not only did we each become arbitrators, but each of us had sons who went to Harvard and decided to study law. Later, our two sons practiced in the same law firm; and on one memorable occasion, our family enjoyed Thanksgiving dinner with Bill's son. The tragedy is that Bill was taken from us much too soon. He had much to offer, and he was a positive influence in my life. I will miss him.

REMEMBERING DANIEL JACOBOWSKI

By Jeffrey Jacobs

It is with great sadness that we report that National Academy member Arbitrator Dan Jacobowski passed away in June 2009. Mr. Jacobowski graduated from William Mitchell College of Law in St. Paul and practiced law in the area for many years. He became a labor arbitrator in 1969. Dan was without doubt one of the most colorful people working in this profession, as his bright bow ties and sport coats showed. Sometimes a bit eccentric but always exceedingly thoughtful and thorough in his analysis of the facts and contract language of any case, Dan was a pleasure to work with and was one of our most respected and revered arbitrators. Dan called them as he saw them, and he always gave you his very best. Those of us in the Minneapolis/St. Paul area who worked with Dan or who ever presented a case to him and who knew him will miss him dearly.

REMEMBERING MARTIN WAGNER

By Peter Feuille, George Fleischli, and Jeff Winton

Martin Wagner passed away on June 15, 2009 at the age of 97 after a long illness. He is survived by daughter Martha Wagner Weinberg, son John Wagner, and two grandchildren. Martin led an exceptionally accomplished life.

He was born and grew up in Newport, KY, across the Ohio River from Cincinnati. He earned bachelor's and master's degrees in economics in 1933 and 1935, respectively, from the University of Michigan. He then went to Oxford University as a Rhodes Scholar, where he earned a BA in politics and economics.

He began his labor relations career in 1937 as a field examiner with the National Labor Relations Board. He moved up the NLRB ranks and served as regional director in San Francisco (1943-44) and then Cincinnati (1944-47). In 1948 he became the founding executive director of the Louisville Labor-Management Committee, believed to be the first area labor-management committee in the country. He held that post for ten years, and during that period he began his career as an arbitrator. His success as an arbitrator enabled him to become a member of the NAA in 1959. The Academy recognized him for his 50 years of membership and contributions at the 2009 Annual Meeting in Chicago.

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In 1958, he came to the University of Illinois as Director of the Institute of Labor and Industrial Relations (now the School of Labor and Employment Relations), where he oversaw the construction of the building in which the School has been housed since 1962. His public service on behalf of the State of Illinois was legion. For many years, he served as Chairman of the Civil Service Board in Springfield. At the request of Governor Otto Kerner, he served as chairman of the Governor's Advisory Commission on Labor-Management Policy for Public Employees. The Commission was comprised of some of the most prominent and knowledgeable labor and management practitioners, lawyers, and academics in the country. It took 15 years, but the ideas embodied in their 1967 Report and Recommendations served as the foundation for adoption of public sector labor laws in Illinois. In 1984, he was appointed by Governor James Thompson as the founding chairman of the Illinois Educational Labor Relations Board.

In 1968 Martin stepped down from this administrative position and served as a professor until his retirement from the University in 1982 (mandatory retirement still existed then). Over the preceding 20 years, he had informed and inspired hundreds of students. At least four of them – George Fleischli, Jeff Winton, Ron Hoh, and the late Neil Gundermann – became NAA members.

George had the good fortune to serve as Martin's Research Assistant as well as his student. Martin supervised his writing of a tutorial paper on the conspiracy cases and had a profound influence on his understanding of the collective bargaining process and public sector bargaining in particular. Martin gave generously of his time, interrupting his engrained routine of reading in his office until midnight to counsel George on the dilemma he faced regarding military service in 1967. George will be forever grateful for the sound career advice he received from Martin in 1970: "Go north (and work for the Wisconsin Employment Relations Commission) young man."

Jeff will always remember a "ride along" trip he took with Martin to Springfield. Jeff was writing his thesis on public sector bargaining. He learned more during that trip than he had in a semester of classes. Jeff especially appreciated the open and friendly student-teacher environment that Martin had managed to create at the Institute.

Peter was privileged to know Martin as a University faculty colleague and friend. Peter began his arbitration career in the late 1970s, and Martin was extremely helpful with his advice and insights about the duties and responsibilities of arbitrators. Martin also was an invaluable source of information about effective methods of teaching workplace dispute resolution to our students.

Martin touched hundreds of people in a very positive manner. He was "a gentleman to the nth degree" (quoting another Academy member), unfailingly gracious to all, delighted to listen to different views and engage in lively debate, highly articulate, and possessed of an ever-present sense of humor (his imitations of W.C. Fields were a work of art). He went out of his way to provide advice, counsel, and assistance to others, and he was extremely generous to many organizations and causes.

Martin was passionate about many things, including his family, the University of Illinois, educating his students, the profession and practice of arbitration, and the opera. He was a member of many organizations. Among these, he cherished his membership in the Academy above all others, and he treasured the friendships he formed with many Academy members. We are the poorer for his passing.

by Paul Gerhart

Martin Wagner is among the finest men I have ever known. His ethical code and principles set the standard for the rest of us; his thoughtful and caring concern for others was extraordinary; and his self-effacing attitude and good humor reflected his humanity.

Martin was my mentor from 1969-1977 as I began both my academic and arbitration careers in the Labor Institute at Illinois. Though I will never measure up to his optimistic expectations, his counsel and, more importantly, his example, have had a more profound influence on me than anyone save possibly my parents. Undoubtedly my most intense learning period occurred during our weekly commutes from Champaign to Milwaukee in the spring of 1972 as Martin conducted the first hearing under the 1971 revisions to the Wisconsin Employment Relations Act which provided for compulsory binding arbitration of police interest impasses. That four-hour ride never seemed that long.

Martin Wagner was the personification of ethics in the labor arbitration profession. His neutrality, drive for fair-

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ness, and intense desire to "do the right thing" could not be exceeded. In his mind, every dispute he arbitrated was worthy of his intense scrutiny and careful consideration. It was not only on the big issues that this trait manifested itself. Even on such minute matters as his meticulous record keeping for his tax accountant, his rigid self-imposed obligation to do the right thing was evident.

Martin lived by his principles. This is perhaps best illustrated by his resignation as Regional Director for the NLRB following passage of the Taft-Hartley Act over Harry Truman's veto. He believed that the Act was not fairly balanced and would not be a party to enforcing it.

The Milwaukee Police arbitration assignment of 1972 illustrates another element of Martin's reputation. Upon his appointment by the Wisconsin Employment Relations Commission, Chairman Morris Slavney assured Martin that the Commission knew the job would be tough and challenging, but they had confidence in Martin's capabilities as a neutral to undertake the novel and to deal with the strong personalities involved with fairness and balance. For me, the first of the 30 plus days of hearing in that matter was a day I shall never forget as I watched Wagner deftly mediate his way through one procedural issue after another including the number of union representatives allowed at the table. All the while he shared with me his thinking and strategies as we shuttled between caucuses. What a priceless education.

Coupled with these super human qualities, Martin had two other traits that those who knew him only casually would have easily recognized. Martin was a humble man, completely free of pretension. No task was too unimportant for him. On numerous occasions, I arrived at the Institute self-service coffee bar to find Martin fully engaged in giving it a thorough cleaning. He was motivated by a desire to make the most of the resources he had and a sloppy coffee bar was simply not in the cards.

Martin had a profound concern for his fellow human beings as well. In part, it is my opinion that this feeling was heightened by first hand exposure to the rise of the Nazis during a brief visit to Germany while he was studying at Oxford as a Rhodes Scholar. On the few occasions when he spoke of this experience, his abhorrence of what he saw, from the militarism to the glorification of the "German myth," was clear. I am certain that he had a sense of the horror it would produce well before it came to reality. This experience no doubt had a lasting influence as evidenced by Martin's orientation toward Mozart and away from Wagner in his extensive music library.

Finally, this remembrance would not be complete without at least an allusion to Martin's sense of humor and appreciation of a good joke. During the period when I worked with Martin, there was an extended revival of W. C. Fields movies on one of the local TV channels. Martin regularly quoted many of Field's one-liners. So much so, that at one of the Academy meetings during this period, several of his Academy colleagues presented him with a three-foot paper mache statue of Fields which Martin kept in his office for a number of years.

Of course, Martin will be missed, but he nevertheless endures. There will never come a time when I do not rely on his seemingly infinite wisdom, not only about labor matters or how to deal with students, but in matters of how to live. I cannot express in words the enormous debt that I owe him.

REMEMBERING THOMAS J. STALEY

By Susan E. Halperin

Our dear colleague and friend, Tom Staley, left his calling as an earthly arbitrator at 76 years young on April 25, 2009. No article remembering him can possibly honor his accomplishments as a professional, a friend, a human being or as the consummate family man.

He would have been the first to tell you he was no saint in his early years, but his later life truly reflected the full measure of his journey.

His childhood sweetheart and best friend, Barbara, who traveled with him on that journey, joined him a few weeks later. I sincerely believe that Tom died of a broken heart because he found out in March that Barbara was ill. They resided in Cheshire, Connecticut for 52 years and enjoyed the joys and sorrow of family life with their children and their children's children.

Tom was admitted to the National Academy in Miami in 2007, although his arbitration practice spanned

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REMEMBERING THOMAS J. STALEY (Continued from Page 39)

more than thirty years. I recall standing and applauding him when he stood at the podium indicating his acceptance of the honor. I later learned from those who questioned my glee in his participation in the Academy that he had turned the seminar he attended in the morning upside down by voicing his opinions, as only Tom could.

Second to his family was his golf game. Stories abound about his golf course executive sessions!

He was a member of the first graduating class of Notre Dame in West Haven, Connecticut and a graduate of Fairfield University and the University of Connecticut School Of Law. In 1965, he was a founding partner of the Law Firm of Barberio, Staley and Pearson (formerly Barberio, Staley and Moquet) in New Haven, Connecticut.

Tom became an alternate member of the Connecticut State Board of Mediation and Arbitration in 1977 and was its Deputy Chair and permanent Board member from 2004 until his death. The Board Members, Director, and staff speak of him often and honor him as a person who evidenced "sincere concern and respect for people in all walks of life". They consider themselves "lucky" to have known, worked and learned from him in his many years with the Board.

He was an active Justice of the Peace; and a member of numerous labor panels including the American Arbitration Labor Panel; the MERA First and Second Arbitration Panel; the State Board of Education Arbitration Panel, and the Employee Review Board. Active in Town and State politics for years, serving the town of Cheshire from 1960-1975 as a member of the Board of Selectman, the Town Council, and numerous Boards and Commissions.

I did not know Arbitrator Rehmus until I read Beber Helburn's memoriam in *The Chronicle*'s Spring 2009 issue but his description of Arbitrator Rehmus—"a loving, generous, funny, supportive, inquisitive, and yes, at times, impatient and cranky" person—resonates many of the attributes that Tom's union-side colleague used to describe him—"As a person, Tom was a delight, gruff, humorous and always with a hand out to those in need. If anyone ever needed help or a hand, Tom was the first person there."

A close colleague on the management side of the aisle wrote to Barbara and their family after Tom's passing—"Tom was all about making sense out of things. That is why for so many years and so many cases he had to decide, he maintained widespread acceptability as a neutral arbitrator. People knew he was absolutely honorable and would make his best effort to make sense out of whatever crazy case came before him. He didn't always get it right, but his efforts were always exhaustive and sincere."

One of the many stories that are telling about Tom concerned a case shared by our own Susan Meredith. A police union went to arbitration over trying to get the city to pay for a flashlight an officer broke or lost on duty. The flashlight was worth about $2, but the union argued that there was an important issue at stake. Tom listened impatiently for a while then pulled $2 out of his wallet, placed it on the table, and walked out. No one ever stayed angry at Tom; his apologies were as quick and as sincere as his explosions.

His wake and funeral, as noted by the large numbers in attendance, were a celebration of his life by the labor/management community, the people he served throughout his public and private career, and the many people who he helped along the way. I am certain that he is an active participant in "arbitrator heaven".

REMEMBERING BILL RENTFRO

By John Sass

Bill Rentfro passed away on June 21 (Father's Day) at age 87. He was admitted to the Academy in 1972 and quickly gained the respect and affection of other members. At the 2004 annual meeting in Las Vegas, that respect and affection was clearly demonstrated when he was made an Honorary Life Member. For those interested in recalling highlights from Bill's career, see page 33 of the Fall 2004 issue of *The Chronicle,* which can be easily viewed on the member's part of the Academy's website.

Bill was like a father to me, and to many others who were his students. He was my law professor at the University of Colorado and, during one vacation break, he took me to one of his arbitration hearings. Afterwards, he asked me to do some research for him on the case. I was hooked. I told him I wanted to be a labor arbitrator, just like him, and asked what I had to do to become one. He patiently explained that I would need to get some real world experience in labor relations and labor law before any parties would even consider hiring me to

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REMEMBERING BILL RENTFRO (Continued from Page 40)

arbitrate their cases. He then helped me get that experience, first by hiring me as his Teaching and Research Assistant, then by taking me with him to IRRA meetings and introducing me to people who worked in the field, and finally by helping me land a job with a Denver labor law firm.

All the while, I kept talking to Bill about becoming an arbitrator, and he mentored and encouraged me every step of the way. As busy as he was, he always had time to talk with me. And I was not the only one. Bill was equally generous with his time and advice with others as well. Many of his former students practice labor law at firms around the country, thanks to Bill. And quite a number of Academy members owe him a large debt of gratitude for the encouragement, advice, and help he gave them along the way.

In addition to his teaching duties, Bill also directed the minority student program at the Law School for many years. Since his own college days, he had a special passion for civil rights work, and he was particularly interested in encouraging women and minorities to attend law school and become lawyers, or even arbitrators. Over the years, he and his wife (Maxine) opened their hearts and home to scores of minority students. Maxine fed them and fussed over them while Bill helped them work through whatever problems they might be having so that they could stay in school and eventually graduate. He helped them not only to survive, but to thrive. Today, many of those students are tops in their fields and eternally grateful to Bill for what he did for them. After he retired from teaching, Bill and Maxine established a scholarship fund at the Law School to assist students from economically disadvantaged backgrounds, regardless of their race, creed, or color.

Bill was a lifelong C.U. Buffaloes football fan and had multiple season tickets so that he could take friends to the games. He always invited Carol and me to join him for one or two games each season. We weren't diehard fans, but it was always fun just being there with Bill. He and Maxine were known for their wonderful dinner parties. They loved to entertain diverse groups of interesting people. After a few beers, cocktails, or glasses of wine, the conversations got pretty lively. Favorite topics for discussion were law, politics, and religion. There was absolutely nothing better than one of those parties and, when you got an invitation, you went. There was just no way that you would ever want to miss it. Carol and I would love to be able to carry on that tradition, but we have a long way to go before we can ever match the magic of Bill and Maxine's dinner parties.

Bill was one of a kind. I was honored to have him as my mentor and good friend. His passing leaves a hole that can only be partly filled with all the great memories. Adios, Bill.

REMEMBERING ALAN WALT

By Benjamin A. Kerner

Alan Walt passed away on March 21, 2009 in Sarasota, Florida, where he had made a part-time home for many years. He died of a stroke, related to underlying myelodysplasia. He was a faithful member of the Academy, attending most meetings.

Alan was born in Detroit on June 13, 1928. He grew up in Detroit and attended Central High School. He went to college at Wayne State University, and then graduated from Wayne State University Law School in 1952.

After a stint in the Army (at Fort Leonard Wood and the Pentagon), he joined Ellmann & Ellmann in Detroit, Michigan, where he met Lou Crane and got the arbitration bug.

After Ellmann & Ellmann, he worked as city attorney for the City of Livonia. Then he practiced law as a solo practitioner and began to arbitrate in 1960. His practice was centered in Michigan, where he served for many years as umpire for Detroit Edison and Consumers Energy; his practice included cases in Illinois, Ohio, Kentucky, Minnesota and other states. He continued arbitrating until October 2008, taking him into his 80th year.

His colleagues remember Alan as a warm and effervescent man. He had broad interests, including classical music, opera, and local theatre (in Sarasota and Detroit). He patronized these performing arts. He will be missed for his easy manner, genuine interest in the career growth of other arbitrators, and ample fund of stories. He is survived by his wife Arlene Walt and two children, Adrienne Walt and Robert Walt.

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THE PRESIDENT'S CORNER

By William Holley

For years, I have been impressed with the wisdom of our Founders in creating the NAA constitution back in 1947. Over 62 years, there has been a need for only a few amendments. In the last 21 months, I have been the beneficiary of Article V which established the succession of officers.

After getting over the shock that I had been nominated, I then began thinking about how to convince certain members to accept positions on committees and determining what the Academy needs to do. I recall that in 1997 Siobhan Nicolau asked George Nicolau: "What does the Academy do that's important?" His and my thought at the time was that we did plenty and we told her so. However, I also knew that a majority of the arbitration advocates, especially the newer ones and those in certain parts of the United States, are not familiar with the National Academy of Arbitrators. At the mid-year meeting of the Executive Committee in February 2009, I recommended that we create a Special Committee of Academy Visibility and allow this committee to begin its work. Fortunately, the Executive Committee agreed. I asked David Vaughn to chair the committee, and he graciously accepted. This committee will address two questions: Does the Academy want to be more visible? If so, what can the Academy do to become more visible? Since the results of this committee's work will benefit every member. I request that you send your suggestions to David at *vaughnarbr@aol.com*.

On another front, every member has observed that there is a wide variety in room rates, air fares, rental rates, insurance, etc. With the economy in recession and companies offering incentives to attract business, I thought the Academy ought to determine whether our members have advantages of purchasing power. I realize that the Academy is not the AARP or AAA (American Automobile Assn.), but our members probably spend up to 30,000 nights in hotels per year, take numerous flights, rent cars, etc. I recommended to the Executive Committee that we create a Special Committee on Member Benefits to determine whether our members have purchasing power for which they can derive benefits. I learned long ago that, "if you don't ask, they won't offer." I asked Amedeo Greco to chair this committee, and he graciously accepted. Once again, this is a membership effort and every member potentially could share any benefits obtained. I request that you send your ideas to Amedeo at *agreco1492@sbcglobal.net*.

At the Board of Governors meeting in Chicago, there was a discussion on meeting attendance, especially among guests of the Academy. The discussion led to the logical conclusion that a special committee was needed to spend time to deliberate on this subject and to make specific recommendations on courses of actions. I observed that Dan Nielsen had the most creative ideas during the discussions, so I asked Dan if he would chair this committee. Dan graciously accepted. If you have any ideas on how to attract guests to Academy programs, please send your ideas to Dan at *nielsen@naarb.org*.

At the mid-year Executive Committee meeting, the Arbitration Fairness Act (AFA), Senate Bill 931 was discussed. Gil Vernon, president-elect, agreed to follow the developments in this legislation. At the Board of Governors meeting in Chicago, a consensus was reached that the Academy would respond to the content of AFA if invited. Through Gil's efforts, Senator Feingold has written and expressed his interests in the Academy's views on the Arbitration Fairness Act. After the Chicago meeting, Sharon Henderson Ellis wrote and encouraged the Executive Committee to address the Arbitration Fairness Act. I reviewed the BOG Policy Handbook and found that back in 1955, the Board of Governors adopted the following policy: "The Academy will not take an official position as to whether there should be statutory regulation, state or federal, regarding voluntary labor dispute arbitration, but still may indicate its judgment regarding the desirable content of regulatory statutes." The Executive Committee decided that there should be a Joint Effort between the Committee on Issues in Employment Related Dispute Resolution and the Executive Committee (Michel Picher and Gil Vernon as representatives) to develop the Academy's position on the content of the Arbitration Fairness Act. Ted St. Antoine has agreed to serve as the chair this effort.

The Academy also has direct interest in one component of the Employee Free Choice Act, e.g. First Contract Arbitration. At the request of members of the FMCS and DOL Transition Teams, Arnold Zack developed a model First Contract Arbitration (*www.LERA.org/blog*) which has been vetted by several management attorneys and the AFL-CIO and CTW. He is scheduled to testify on his proposal before the Senate Labor Committee. The Executive Committee will keep up with developments on this proposed legislation and will determine whether any Academy action is warranted.

As all NAA presidents have learned, a 12-month term is short. Hopefully, it will be productive.