National Academy of Arbitrators

The Chronicle

Winter 2019

MARK YOUR CALENDARS

PLAN TO ATTEND...

2019 Annual Meeting
May 29 - June 1, 2019
Loews Philadelphia Hotel
Philadelphia, PA

2019 Fall Education Conference
September 20 - 22, 2019
Savannah Marriott Riverfront
Savannah, GA

2020 Annual Meeting
May 6 - 9, 2020
Grand Hyatt Denver
Denver, CO

ON THE INSIDE

FEATURES:

COLUMNS:

PRESIDENT'S CORNER
BACK COVER

WRESTLING WITH CHANGE:
THE FUTURE OF WORK AND WORKPLACE DISPUTE RESOLUTION

By William McKee and Maretta Comfort Toedt, Program Co-Chairs

A sweeping technological revolution is underway in the workplace - one that some say will rival or surpass the Industrial Revolution of the 19th century. As labor arbitrators we have long been distinguished by our specialized familiarity with the workplace, but we no longer can count on the future to resemble the past. What will work look like in the years immediately ahead, and what possible role is there for labor arbitrators in the face of anticipated workplace changes?

Around the globe, governments, non-governmental agencies, and research universities and institutions have been monitoring advances in artificial intelligence, robotics, and associated technological innovations as they unfold. These groups are now rushing to get a look at how this will play out in the future marketplace for labor. Recently, the World Bank, the International Labor Organization (ILO), and the AFL-CIO, along with major research universities and numerous independent think-tanks, have announced the creation of study groups to gauge the revolution's impact. Some are primarily interested in identifying winners and losers. Other researchers are taking a more nuanced look at how work will be done and how leaders can optimize labor market outcomes through advanced planning and preparations for the far-reaching changes that lie ahead. Many studies will be completed in the months leading up to our May 2019 Annual Meeting, and we will be among the first to consider their findings.

Academy colleague Tom Kochan, the *George Maverick Bunker Professor of Management* and the Co-Director of the Sloan Institute for Work and Employment Research at MIT, will lead the way for us. Tom will kick off the Meeting with a provocative examination of the radical changes ahead in the marketplace of work. Tom is an advisor to the AFL-CIO's study group on the Future of Work and is a member of the study team at MIT.

At a later point in the program there will be a separate, nationally-distin-

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Letter from the Editor

After a bump in the road, this is now my last issue as Managing Editor of *The Chronicle*. I want to say so long and thank you. I truly enjoyed my tenure as Managing Editor, but it is time to move on. With Jim Cooper taking the helm, the publication is in good hands. Thanks to everyone who has taken the time to read *The Chronicle*, and thanks to all those who have contributed to it, especially those who report at the meetings. I could not have done it without you. Most of all, thanks to two special people. Ben Kerner served me so very well as Assistant Managing Editor. I could not have done this job without him. And Katie Griffin at the Operations Center has been indispensable. She is more responsible for *The Chronicle* than anyone who has not been Managing Editor realizes. Katie has been a godsend. Thank you all and happy reading!

Dan Zeiser

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 James S. Cooper, Managing Editor, at *jcooper@jcooperlaw.com* or contact the feature author directly.

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

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

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

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

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

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

guished panel moderated by Margie Brogan that will sort out the direct implications of these changes for management, labor, and dispute resolution professionals. Will the sky be falling, or is it possible that the right institutions and practices will be in place for workers, employers, and, perhaps, even arbitrators to succeed in a dramatically changing economy? What kind of preparations will be necessary? What are some employers and unions doing already to meet these changing conditions?

Consistent with the conference theme, NAA members will encounter new challenges and opportunities in their own practices. The program will feature coverage of several timely topics, including:

• **The Living Wage Movement and the Problem of Economic Inequality:** Many metropolitan areas have enacted, or are considering, living wage laws, especially in high-cost-of-living areas. Existing laws treat wages set through collective bargaining in various ways. A panel will discuss the impact of this trend, with colleague David Vaughn sharing his experience as the national neutral umpire for SkyChefs and UNITE HERE. Those parties have already agreed through bargaining that they will submit unresolved local wage disputes to the neutral umpire.

• **Red light / Green light on Sex in the Workplace:** We all know that sexual harassment is prohibited by law, but when does humor, innuendos, double entendres, and the like cross the line from bad taste to bad press? What better way to discuss the complexities and confusion of what's appropriate to say and do in the workplace in the #MeToo culture than in a red light/green light panel discussion. U.S. and Canadian advocates, working through various scenarios, will offer their take on what conduct might, or might not, cross the line.

• **Janus v. AFSCME a Year Later:** As anticipated, the Supreme Court issued its decision last summer in the Janus case, deciding that non-union, public sector employees may not be required to pay agency fees. How have unions and employers adjusted in the months following the decision, and has the decision significantly impacted the ability of public sector unions to effectively represent employees at the state and local levels?

• **Federal Sector Arbitration Challenges:** Whether you regularly practice in this area or simply want to learn more, this panel will alert you to current issues and strategies unique to federal sector arbitration, including executive order changes from the current administration. Federal sector cases tend to take longer and involve complicated statutory as well as collective bargaining issues. This panel of Academy members and advocates will share their expertise and experience in identifying the shifting grounds in the nation's capital and unraveling some of the complexities of federal sector arbitration practice.

• **The Science of Settlement:** Susan Grody Ruben will resurrect (from the cancelled Miami FEC) this stellar panel that includes Barry Goldman, author of *The Science of Settlement*. Negotiation will be at the centerpiece of crucial discussions about the organized workplace of the future, and the panel is prepared to extract the best ideas from Barry and his book.

• **Arbitration of Labor Disputes in the Pending U.S.-Mexico-Canada Trade Agreement:** High-level international trade negotiators from Canada and the U.S. will address the history of international labor disputes, problems in enforcement of awards, and the possibility of labor arbitrators like us becoming eligible for the Agreement's panel of arbitrators.

We also will have the customary sessions that include a distinguished speaker; a Fireside Chat with a luminary from the arbitration profession; panels exploring the hottest arbitration topics in the airline, railroad, postal service, and other industries; and poster presentations.

Want more time for informal social interaction and discussion? Changes are on-board that flow from the recently completed report of the Bloch Implementation Committee.

A challenging future lies ahead, and it seems most fitting that we should contemplate it in Philadelphia, a city of revolutionary beginnings. Make plans now, for you can't afford to miss this conference!

Ralph Colflesh, Esq./ NAA Region 3 Chair

The Region has appointed a Host Committee with the purpose of recommending restaurants, concert events, sites to visit, museums, sporting events, and other activities or places of interest in the Philadelphia area during the 2019 Annual Meeting of the Academy. The Region is also planning a spring event in conjunction with the Philadelphia office of the American Arbitration Association to host advocates who practice or have an interest in practicing workplace arbitration. Stay tuned for more details and check *www.naameetings.org* for more information.

TREASURES FOR A CAUSE:

WHAT'S IN YOUR CLOSET?

The Auction Subcommittee of the Research and Education Foundation has already received some wonderful donations from members and regions for our 2019 Silent Auction at the NAA Annual Meeting in Philadelphia. Among the items pledged so far are a vacation condo stay in Colorado, handcrafted jewelry, an Arizona jeep tour, a special home-cooked dinner by an NAA member, and a Fall, Winter or Summer stay at a lakeside cabin in Maine.

We are hoping that many of you – members and regions – will follow the lead of these donors. Items that have been successful in attracting generous bids during our previous silent auctions were sports memorabilia, rare quality wine and whisky, historic items from the labor movement, and painted and photographic art work. This is your opportunity to clear closets and attics of surplus cherished items, knowing they will be treasured anew by a successful bidder, while helping to increase the number of worthy projects REF grants can support in the coming years.

For those of you whose closets, shelves and attics have already been de-cluttered, creative items like a home-cooked dinner by an NAA member, are loved items. Feel free to be creative in your chosen donation.

The donation form may be found on the NAA Web Site under the REF link. The form may be sent to the NAA Operations Center or emailed to any of the members of the auction committee. If you have questions about the auction, or about items to donate, please contact any member of the committee:

Sheila Mayberry: adr@maine.rr.com;
Maryann Schick: schickarb@comcast.net;
Sharon Henderson Ellis: sharonhendersonellis@rcn.com;
John Alfano: ArbitratorAlfano@gmail.com;
Andrew Strongin: astrongin@adrmail.com.

PLEASE HELP US MAKE THIS AUCTION

A REAL SUCCESS!

EXECUTIVE SECRETARY-TREASURER REPORT

By Walt De Treux

I am happy to report that the 2018 Austin FEC was a success. The program was well-received with 118 members attending, along with 7 non-member arbitrators and 47 spouses/guests. We also inducted 10 new members, and the Membership Committee approved 5 applicants who will be welcomed into the Academy in Philadelphia.

As part of the restructuring of some Academy operations and as proposed by the Bloch Report, the Academy enlisted the services of professional meeting planners to assist in identifying and securing a site for the 2020 Annual Meeting. Utilizing the services of ABALeverage, a complimentary program of the American Bar Association, we received bids from 13 hotels in 4 cities. Working with the meeting planners, we narrowed the list to 4 hotels in Denver and Kansas City. ABALeverage negotiated on our behalf based on our needs and demands with those hotels. I am happy to report that the Executive Committee and Board of Governors approved a contract with the Grand Hyatt in Denver for the 2020 Annual Meeting to be held from May 6-9, 2020.

ABALeverage performs its services at no cost to the Academy. We benefit from the considerable bargaining power it has with hotels and hotel chains through its booking of hundreds of meetings per year. Our focus for 2020 was to reduce our meeting space to accommodate the more streamlined meeting anticipated in the Bloch Report and, most importantly, to reduce our financial commitment to the hotel. Past contracts typically included a food & beverage guarantee of about $125,000 depending on the location. For the Denver meeting, our food & beverage guarantee is $60,000. This significant reduction in costs will hopefully allow us to avoid any financial losses and to build up the program and the social events consistent with the Bloch Report and Bloch Report Implementation Committee recommendations.

I reported to the BOG that we were extremely pleased with the quality, responsiveness, and effectiveness of the ABALeverage program, and the BOG endorsed continued use of its services as we look to 2021 and beyond.

At the Austin FEC, the BOG approved the 2019 budget shown below. As you can see, we have reduced some governance expenses, largely through reduction in health insurance costs and postage, i.e., greater reliance on electronic communication. We also expect a modest increase in meeting registration fees that have held constant for about a decade. Finally, we expect a significant reduction in our dependence on any transfer from our investment accounts, as we progress toward reaching our goal of "meetings pay for meetings, and dues pays for the rest." At the time the proposed budget was prepared, we had not yet known that half our members would opt to receive *The Chronicle* online (beginning with this issue). That change will represent further savings. A committee has recently been appointed to examine the best and most cost-effective way to produce, publish, and distribute the Proceedings. Our current contract with BNA runs through 2021, so any savings from the current publication and distribution method will not be realized until 2022.

If you have any questions about the budget or any operational function of the Academy, please feel free to contact me at *naa.est1@gmail.com* or 215-470-8071.

	2019 Proposed	2018 Proposed
Income		
Dues	$309,075	$311,350
Application Fees	2,600	2,600
Royalties	4,600	4,600
Meeting Registration	188,500	168,765
2019 Annual Meeting	($144,500)	($130,375)
2019 FEC	($ 44,000)	($ 38,390)
Miscellaneous	500	500
Investment Gain/Transfer	37,145	112,901
TOTAL INCOME:	**$ 542,420**	**$600,176**
Expenses		
Meetings	$188,500	$216,665
2019 Annual Meeting	($144,500)	($130,375 + $47,900 dues offset)
2019 FEC	($44,000)	($38,390)
Chronicle	21,000	23,700
Proceedings	38,000	45,600
Professional Services	4,500	4,500
Contingency		
Governance	290,420	309,711
TOTAL EXPENSES:	**$ 542,420**	**$600,176**

OUTREACH COMMITTEE

By Margie Brogan, Chair Outreach Committee

When I walked into my very first arbitration hearing, I noticed that half of the room consisted of empty chairs. No Employer. I set a second date, and had AAA send a notice to the missing party, with the proper admonishments that the sky would fall if they failed to attend. Next hearing, you guessed it, no show. Yes, indeed, my first case was ex parte. This could have been my first and last case, but I was very lucky to have some colleagues, both experienced and newer arbitrators, who helped me pick my way through the landmines.

The joys and challenges of assisting newer arbitrators are at the heart of the Academy's Outreach Committee. Our initiative's mission is to identify mentoring and training models for newer arbitrators, and help Regions implement these models to assist promising newer arbitrators, with a goal of increasing diversity in our ranks. A crucial component is connecting the dots between the newer arbitrators who are benefiting from these efforts, and the advocates who may select them.

Our committee is comprised of some terrific members who are not only helping us brainstorm new ideas, but are committed to doing this work on a Regional level. For instance, Doug Collins has been assisting an individual who recently was appointed to Executive Director of the LA City Employee Relations Board, where Doug is the Chairman. The Executive Director job was most recently held by our member Bob Bergeson for eighteen years, and before that Doug, himself. Similarly, Alan Symonette reports that he is working with someone he met through the ABA Labor and Employment Section, another good avenue to help newer arbitrators connect with advocates. Luella Nelson has been working with a promising newer arbitrator in Oakland.

Dick Adelman reminds us that we all can mentor newer arbitrators in even small ways. Invite them to your hearings (where sometimes the parties behave better)! Invite them to email or call you with their tough questions. Invite them to local NAA meetings. The Code of Professional Responsibility, in Section 1(C)4 states, "An experienced arbitrator should cooperate in the training of new arbitrators."

As to other outreach models, in a recent article I reported on the Newer Arbitrator Salon, which consists of 8 newer arbitrators from the Mid-Atlantic and D.C. Regions. The current model is the brainchild of Homer La Rue. Walt De Treux, Sean Rogers, and I have joined together with Homer as the "conveners." Our efforts are intended to guide and train newer arbitrators in an ongoing and relaxed way, and to help them intersect with advocates and appointing agencies. Our first meeting took place in my living room, and was a great success. Our second meeting will be held at the end of the month at Howard University School of Law. Professor La Rue's invite to all of us is indeed inviting:

A meeting of the NAA Mid-Atlantic and D.C./Maryland Regions Newer Arbitrator Salon, held at Howard University Law School.

> We are delighted to be holding our second meeting of the Salon. The historical Howard University School of Law welcomes you to the Law School. What we are doing in terms of diversity and inclusion through the Outreach Committee efforts is very much in keeping with the long standing tradition of Howard Law School in paving the way for social justice. In 2019, the Law School will celebrate its ***Sesquicentennial Anniversary*** (150 years). It is fitting that the Newer Arbitrator Salon can be celebrated as a part of the Howard Law social justice mission.

Also in the D.C. Region, Andrew Strongin reported on a terrific "Meet the Arbitrators" program that he coordinated last month, with the assistance of Keith Greenberg, a member of our salon who will be admitted to the NAA in Philadelphia. A special treat was the honoring of Andrew's dad, the great Sy Strongin. Andrew reports as follows:

> The D.C. Region, along with its co-host D.C. Bar Labor & Employment Law Community, held a Meet the Arbitrator event on October 18, 2018, at the Headquarters of the District of Columbia Bar. We solicited further co-sponsors including the FLRA, FMCS, SFLRP, D.C. LERA, and AAA, who helped to advertise the event through their email lists. Attendance exceeded expectations, with approximately 70 advance registrants and 60 attendees. We deemed

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this an excellent opportunity to feature the Mid-Atlantic/Salon participants, and all but one of them were able to attend, and each was introduced to the audience in the hopes that it would help them attract attention. And, in the grand spirit of "in with the new, out with the old," I had the personal privilege of announcing to the audience that my father, Sy, recently decided to retire after 55 years of practice, which begat a nice round of applause and much attention from those wishing to share memories and/or offer congratulations. The D.C. Region is bullish on the event and seems poised to repeat it at some opportune time, with the hope—as always—of eliciting greater turnout among the advocate set. A special thanks is owed to Keith Greenberg, to be admitted to membership in Philadelphia, for facilitating the involvement of the D.C. Bar, who provided a fantastic space, copious amounts of food, and hopefully will have us back in the future.

The Southwest/Rockies Region continues its remarkable model of assistance to newer arbitrators. Beber Helburn gave us the following report.

> At the Austin FEC Debra Neveu and Pilar Vaile went through New Member Orientation and are now among the newest Academy members and the two newest in the Southwest-Rockies Region. They are not the products of a formal mentoring program, but a number of us in the region have helped/encouraged them over the years and the region is delighted with the outcome. There were several non-members at the Austin FEC whom we encouraged to attend. Otherwise, we continue to keep a regional eye out for promising newer arbitrators who we can help and encourage.

Beber reminds all that at the next Southwest/Rockies Region meeting, February 28-March 2, 2019, they will continue to have their arbitrator training session, which will include a union and management attorney speaking on what arbitrators should/should not do, along with Ernie DuBester from the FLRA speaking on ways, if there are any, to better bullet-proof awards in case exceptions are filed in federal cases. I have been to their arbitrator training session, and I highly recommend it, along with their entire conference.

Paula Knopf reports on her efforts to the North:

> The Ontario Labour-Management Arbitration Association and the Ontario Ministry of Labour co-sponsored an Interest Arbitration Skills Enhancement Program in April of this year. The Co-Chairs of the Program were an experienced arbitrator and two leading advocates who represent the main users of interest arbitration in the province. Although the Program was open to all arbitrators, one of our principle goals was to encourage new arbitrators and those with little experience in this area to take on this work and to have them meet the parties who are required to resolve their disputes through interest arbitration.
>
> The result has been a positive response from many arbitrators who are now more willing to take on this work. There has also been greater acceptance of newer arbitrators for appointment to these cases. We have also been told that the program gave the parties a better understanding of who we are and what we can do in the process.

I think many of us know that helping newer arbitrators is terrifically rewarding. If our organization is to continue, we need to seek out and assist new arbitrators, our future leaders. If anyone would like to join our initiative on a Regional level, please let me know.

REGIONAL ROUNDUP

Reported by Kathy L. Eisenmenger
National Coordinator of Regional Activities

The Regions pulled out the stops and energized their unique locales with a wide variety of events and activities. The Regions bear witness to us arbitrators' and mediators' veneration of employers and labor organizations and the institution of collective bargaining.

CANADA
The Canada Region held a fruitful and educational conference of labour relations professionals in lovely Québec City, Québec, Canada, on August 2-5, 2018.

Region Chairs are Randi Abramsky – *rabramsky@rogers.com* and Andre Rousseau – *rousseau-arbitre@qc.aira.com*

CENTRAL MIDWEST
The Region plans to host NAA President Edward B. Krinsky and NAA Member Martin Malin at their meeting in March 2019. The Central Midwest and Michigan Regions have discussed the possibility of having a joint session.

The Chair is Jacalyn J. Zimmerman – *jacalynzimmerman@gmail.com*

METROPOLITAN D.C.
The D.C. Region holds *ad hoc* Sunday Morning breakfast meetings about every two months at Jake's American Grille, Connecticut and Nebraska Avenues, NW, Washington, D.C.

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

MICHIGAN
The Region held its Fall Meeting on October 3, 2018 at the Courthouse Grille in Plymouth, Michigan. Mark Cousens, a prominent union side Michigan labor lawyer and general counsel to AFT Michigan gave an engaging and thought-provoking assessment of labor organization response to the *Janus* decision. Rather than dwell on the impact the decision may have on membership numbers, Mark opined that the economic impact will challenge labor organizations to do a better job of serving their membership, and give more thoughtful analysis about what cases to arbitrate. Mark shared his views about how labor organizations determine whether to arbitrate a given case. Michigan NAA members agreed that Mark's presentation was a thought-provoking talk and a candid assessment on a subject that deserves more attention.

Michigan NAA members George Roumell, Jr., Kathryn Van Dagens and Charles Ammeson presented at the Labor Arbitration Institute in Southfield Michigan on August 2, 2018. Michigan NAA member Joe Girolamo was inducted to the College of Labor and Employment on November 10, 2018. NAA member John Obee co-authored *Mississippi's Exiled Daughter,* released for publication by NewSouth Books this past Spring 2018, retelling the story of a 16-year old sharecropper's daughter who dared challenge segregation in small-town Mississippi in 1961. The book speaks to her courage that inspired her lifetime commitment to educating youth of today to confront and overcome the obstacles before them.

Keep a watch on the "Regional Activities" drop-down menu in the NAA's website under "Regional Activities."

The Region Chair is Charles Ammeson – *cammeson@tpalaw.com*
The Region Co-Chairs are John Obee – *obeearb@outlook.com* and Betty Widgeon – *bwidgeon@gmail.com*

MID-ATLANTIC
The Region 3 annual fall dinner at Maggiano's was held on November 1 with 24 members in attendance. The group was addressed by our member Joel M. Weisblatt, the Director of the New Jersey Public Employment Relations Commission.

The Region has appointed a Host Committee with the purpose of recommending restaurants, concert events, sites to visit, museums, sporting events, and other activities or places of interest in the Philadelphia area during the 2019 Annual Meeting of the Academy. The Region is also planning a spring event in conjunction with the Philadelphia office of the American Arbitration Association to host advocates who practice or have an interest in practicing workplace arbitration.

The Region Chair is Ralph Colflesh – *rafearb@comcast.net*

MISSOURI VALLEY
The Missouri Valley Region meets monthly from September through May for a luncheon/speaker meeting open to all members as well as attorneys, management and union personnel.

The Region Chair is George Fitzsimmons – *georgefitzsimmonsllc@hotmail.com*

NEW ENGLAND
The New England Chapter was delighted to host NAA President Kathy Miller as our guest at the spring meeting held on April 9, 2018. We enjoyed hearing about her travels around the regions and her thoughts on bringing new arbitrators into the field. At our fall meeting on October 3, 2018, we were excited to have the first woman elected as the Massachusetts Senate President, Karen Spilka, as our speaker. Senator Spilka worked as a labor and employment attorney on behalf of employees, unions and

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the Commonwealth of Massachusetts and then became a Labor and Employment Arbitrator and Mediator prior to starting her political journey. She was mentored by four NAA New England Region Arbitrators – Susan Brown, Joan Dolan, Mark Irving and the late Lawrence Katz, as a Fallon Fellow. The fellowship was created in the memory of Arbitrator William Fallon who mentored many up and coming arbitrators. Senator Spilka spoke how her arbitration and mediation background helped in her journey in politics and the changes that she is seeking to effect while she is Senate President.

Finally, the University of Rhode Island Schmidt Labor Research Center held its annual conference (the 18th) under the direction of New England Arbitrator Marc Grossman, who is also a professor at URI's Labor Research Center. Arbitrator Grossman asked the Chapter if we would be interested in taking over the programing of the conference while URI staff coordinated the logistics. The Region accepted the offer as a perfect opportunity to extend our exposure and introduce young people into the labor-management relations field. To this end, the NAA New England Region and the URI sponsored the 19th Annual meeting on November 2, 2018, at the Newport Marriot Hotel in Newport, RI. The conference was sold out and a great success according to the participants. We look forward to continuing our partnership with URI in the future. A special thank you goes out to former Regional Co-Chair Mary Ellen Shea and current Co-Chair Sheila Mayberry for coordinating and administrating the program portion of the conference with URI Staff. Also, we want to thank all our members who either moderated or participated on a panel, which contributed to the success of the conference.

The Region's Co-Chairs are Shelia Mayberry – *adr@maine.rr.com* and Bonnie McSpiritt – *bjmcspiritt@comcast.net*

NEW YORK/NEW JERSEY METROPOLITAN REGION

The NY/NJ Metro Region kicked off its fall meeting on September 26 with a panel discussion on the recent developments after the *Janus v. AFSCME* decision. Participating in the panel was John Wirenius, Director of the New York Public Employment Relations Board (PERB), Robin Roach, General Counsel, District Council 37 (DC 37), David Grandwetter, General Counsel, Council of School Supervisors and Administrators (CSA), and Deena Kolker, Special Counsel, Strook, Strook & Lavan. The panel included a lively discussion on the preparations made by City Unions and the State in anticipation of the Supreme Court's ruling, as well feedback on what has happened since the decision and the anticipated landscape going forward. The Region held a holiday party in December and plans a meeting in the Spring.

The Region's Chair is Deborah M. Gaines – *dgaines.nyc@gmail.com*

NORTHERN CALIFORNIA

The Region's Chair is Nancy Hutt – *nancyhutt@naarb.org*

OHIO-KENTUCKY

The Region Chair is Colman R. Lalka – *clalka@roadrunner.com*

PACIFIC NORTHWEST

The Region Chair is Elizabeth Wesman – *ecwesman@gmail.com*

SOUTHEAST

The Region held its traditional labor-management and employment conference in the lovely, secluded Jekyll Island, Georgia**.**

The Region Chair is Phil LaPorte – *plaporte@gsu.edu*

SOUTHERN CALIFORNIA

The Region participated in a full-day conference in conjunction with the Orange County Labor & Employment Relations Association and the FMCS held at the Southwestern Law School, in Los Angeles, CA on June 7, 2018. Region Chair Robert Bergeson and Vice Dean of the Law School, Chris Cameron, welcomed the attendees. The conference organized the day's activities upon an ambitious Red Light/Green Light exploration of three to four cases. NAA Member Kathy Fragnoli moderated a plenary panel with NAA Members Robert Steinberg and Lou Zigman on the topic, "Anatomy of a Hearing: How Not to Screw Up Your Case." The arbitrators' introductory elucidations preceded a small group table discussion facilitated with NAA Members Sara Adler, Mark Burstein and Michael Prihar and guest arbitrators Paul Crost, Jill Klein, Michael Leb, Sylvia Marks-Barnett, Guy Prihar and Dan Saling. Arbitrator Christopher David Ruiz Cameron moderated the second scenario, "The Cannabis Conundrum: Recreational Marijuana and Other Controlled Substances in the Workplace," with Arbitrators Juan Carlos Gonzalez and Anthony Miller, followed with the small group table discussions. After a buffet lunch, NAA Member Fred Horowitz moderated the panel with NAA Members Stephen Hayford and Jan Stiglitz on the third scenario, "Past Practice, Past Schmactice: Common Issues in Contract Interpretation," followed with the group table discussions. Last but not least, Arbitrator Dave Beauvais moderated the panel for the fourth scenario, "All About #MeToo: Sexual Harassment Cases and How to Handle Them," with NAA Member Jonathan Monat and Arbitrator Sheri Ross. The conference concluded with a reception for the attendees.

The Region's Chair is Robert Bergeson – *robertbergeson@earthlink.net*

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South African Pro Bono Project

By Susan L. Stewart

NAA members in Ontario joined with members of the labour relations community in Toronto on November 13, 2018 to welcome visiting South African lawyers and to celebrate the successful establishment of a pro bono labour law project. This project, at its first stage, will send law students to South Africa to assist the South African Society for Labour Law (SASLAW) in representing individuals before the South African Labour Court.

SASLAW is a not-for-profit organization of over 1,300 members, including judges, union and management counsel, and government officials. The pro bono project assists unrepresented and indigent individuals and, in the last six years, almost 300 lawyers from over 170 union and management law firms in South Africa have provided legal services on a pro bono basis.

Initiated by Christopher Albertyn, formerly of South Africa, the project was developed with the assistance of NAA members, Jasbir Parmar and Susan Stewart, in partnership with the University of Toronto Law School's International Human Rights Program. A number of our members served on the tripartite Steering Committee and many contributed financially to the project.

As a result of its success, 9 law students will be sent to South Africa over the next 3 summers. The project will support and strengthen the services structure of SASLAW, through a direct payment associated with the supervision of each student. In addition to enhancing the ability of SASLAW to provide critical legal services, this project will allow students to obtain practical experience and advocacy skills, while gaining knowledge of a different system of labour law.

In addition, this project provides opportunities for labour and employment practitioners and arbitrators to connect with each other at a global level and to learn from each other through professional development and networking opportunities.

REGIONAL ROUNDUP *(Continued from Page 9)*

SOUTHWEST

The Region will host its 44th Annual Labor-Management Conference in Houston, Texas on February 28 through March 2, 2019. The conference returns to the hospitality of the DoubleTree by Hilton Houston Hobby Airport hotel. The Region's members honor our deceased colleague, NAA Arbitrator Mark Sherman. Invited luminaries include our NAA President Ed Krinsky, Federal Labor Relations Authority Member Ernest DuBester and Director of Arbitration for the Federal Mediation and Conciliation Service Arthur Pearlstein. Keeping with tradition, the conference hosts full-day but separate sessions for arbitrators and for arbitration advocates. The Friday session shall present a chock-full agenda of thought-provoking sessions with a Red Light/Green Light panel, developments in federal sector agency-labor issues, acclimation to the workplace to the #MeToo, Black Lives Matter, LGBTQ, #ThatsHarassment movements. More information will be posted in December 2018 on the Region's website at swrnaarb.org and the NAA website under Regional Activities.

The Chair is Kathy Eisenmenger – *kleisenmenger@gmail.com*

UPSTATE NEW YORK

The Region Chair is Douglas J. Bantle – *bantle@rochester.com*

WESTERN PENNSYLVANIA

The Region plans to hold a meeting with the Southwestern Pennsylvania Chapter of the Labor and Employment Association in 2019.

The Region Chair is Michelle Miller-Kotula – *millerkotula@comcast.net*

Best Practices

By Jerry B. Sellman

Arbitrators conduct the arbitration process in a variety of acceptable ways, but what are some of the best practices that National Academy Members follow? NAA members Jeffrey B. Tener, Jacquelin F. Drucker, Barry Winograd, Christopher Albertyn, and Moderator Amedeo Greco shared some of their insights.

Jeffrey Tener identified three areas in which arbitrators can remain or become better arbitrators: (1) that part of the process over which the arbitrator has complete control; (2) that part of the process over which the arbitrator has a lot of control, but not complete control; and (3) that part of the process over which the arbitrator may have to work a little bit more.

Of those areas where the arbitrator has complete control, he recommended that:

- Make sure your biographical data in agency rosters are up-to-date and accurate;
- Close any conflicts or appearances of conflicts as soon as possible;
- Clearly state your fees to avoid a fee dispute later; charge reasonably, especially for travel and study time; do not nickel and dime the parties;
- Contact the parties promptly after your appointment and schedule a hearing date as promptly as possible;
- Arrive at the hearing on time, but not too early – avoid *ex parte* conversations as much as possible;
- Be civil to everyone and treat everyone equally (e.g. do not use first names for some and not everyone);
- Get mutual agreement on a statement of the issue(s) or an agreement that you may craft a statement of the issue;
- Get as much mutual agreement as possible on conducting the hearing process: dates and places of hearing, ending time, if a second day is necessary, briefs, etc.;
- Issue timely decisions.

Of those areas where you have a lot of control, but not complete control:

- Conduct a fair hearing where both sides leave the proceeding feeling that they have had the opportunity to present their case;
- Prevent the presentation of cumulative evidence;
- Talk privately with counsel or representatives if there are issues such as leading the witnesses; you do not want to embarrass representatives in front of their clients;
- Give definitive rulings on motions; Be and appear to be neutral so neither party leaves with a feeling of bias;

Amedeo Greco, Barry Winograd, Jacquelin F. Drucker, Jeffrey B. Tener, and Christopher Albertyn

- Write clearly so your decision is understood.

The final group is the most difficult, but the most important.

- Do not say more than is necessary in your decision;
- Do not decide the case on arguments not advanced by the parties;
- Decide the case (do not try to make both parties happy);
- Try to explain to the losing party why it did not prevail; Reach the right result;
- Integrity in the process is the most important thing.

Jacquelin Drucker gave her perspective on Best Practices by discussing her experience in conducting arbitration cases in this new enlightened era and the changes she recognized in her practice as she transitioned from a new or emerging arbitrator to a seasoned arbitrator.

As a new arbitrator, her perceived obstacles were her age and the need to project a certain persona in the hearing. She learned that you need to be yourself and forget acting like someone else. She also used to write her decisions in the third person, e.g., "the arbitrator finds," which she now finds unnecessary and too formalistic. She has, and still does, use formality in the hearing, always addressing a witness as Mr. or Ms.

There are times, however, when dispensing with formality may be appropriate. As an example, if the gender of a party or witness is unknown, you may want to call the person by first name only to avoid misidentification. She suggests that the arbitrator may want to add a category of Mr., Mrs., or Ms. on an appearance sheet so the individual may choose one with which they are comfortable.

In writing an Award, she has dispensed with the categories

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Hearing Matters – Questions of Style and Substance

By Lise Gelernter

In the plenary session on "Hearing Matters," panelists Margie Brogan, Dick Adelman, Kathy Eisenmenger and David Vaughn provided advice and shared their experiences concerning knotty and novel procedural hearing issues in arbitration. They also provided living examples of how each arbitrator can exploit his or her own style of arbitrating to best serve the parties and the arbitration process.

Michelle Miller-Kotula, the moderator, posed a series of questions for the panelists to discuss. On the issue of pre-hearing matters, David Vaughn has found that he has increasingly used pre-hearing discussions to eliminate as many hearing surprises as possible and make the hearing process go more smoothly. He discusses both the mundane questions of time constraints and a lunch break for the hearing day as well as the more substantive questions about joint exhibits and the issue for the arbitrator to decide. Parties are given a chance to raise and resolve any evidentiary disputes, special problems with witnesses or anything else that could or should be resolved before the hearing starts. With more pre-hearing preparation, parties are more comfortable and the hearing time is used efficiently.

Margie Brogan, who has a bi-coastal practice, explained that there are notable cultural differences concerning pre-hearing activities between the West and East Coasts and that all arbitrators should be ready to roll with the geographical or industry-specific cultures they will encounter. In contrast to the West Coast stereotype of a laid-back approach to any process, Margie has experienced that Northern California labor advocates engage in quite a bit of pre-hearing debate over the arbitrator's jurisdiction, and get involved in pre-hearing discussions about all aspects of the hearing. In contrast, the Philadelphia-area labor professionals tend to use short pre-hearing

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Best Practices *(Continued from Page 11)*

"Position of the Parties" and avoids a recitation of all the testimony under the category "Statement of the Facts." In the "Positions of the Parties," she incorporates the positions in the context of the Decision necessary to support the Award. Under a "Statement of the Facts," she gives a summary of what happened and not a credit to all who have testified. She does keep certain boilerplate provisions, such as "in reaching my Decision I have given consideration to all the evidence."

Barry Winograd made reference to materials on the topics of "Advocates and Arbitrator Issues" and "How to Make an Arbitration Hearing More Efficient," which he presented as part of the proceedings, and gave additional insights on Best Practices at the arbitration hearing.

- Relax and do not take over the case;
- Don't be a bump on the log; if you need to be active, go ahead;
- Explain your rulings;
- Use time limits; parties will appreciate an efficient hearing that will get a cost-effective result.

Christopher Albertyn discussed how to deal with other panel members in the executive sessions of an interest arbitration in Canada. He recommends that, after the arbitration is completed, you should prepare a set of notes of your impression of the identification of the issues, the position of the parties, and what likely compromises might be achieved. He prepares two sets of notes, one to give to the other panel members and one that he keeps with his thoughts as to how the issues should be resolved.

Once a meeting is set up with the other two panel members, try to get them to discuss the issues that are most critical to them and use your mediation skills to seek a mutual ground. Since the executive session(s) is an extension of the bargaining process, be prepared to facilitate the process of reaching the final Award in the proceeding.

Expect the panel members to take the positions discussed in the executive session(s) back to lead counsel for further negotiating. Try to prevent the executive sessions from being an extension of advocacy from the hearing, but instead solicit additional input for a resolution of the issues to be resolved.

It is also helpful to do a costing of each issue to assist in fashioning a realistic resolution. Do your best to work out an agreement that, in the end, proposes a solution upon which both parties can afford and agree. To that end, reopen the executive sessions as needed to get mutual acceptance on as many issues as possible.

In concluding the panel discussion, several additional Best Practices were suggested:

- The most important attributes an arbitrator can have is to listen to people and respect people;
- After the hearing, shake everyone's hand;
- At the hearing, get stipulated and disputed facts;
- Obtain the names of all the witnesses and about what they intend to testify;
- If you need to catch a plane, let the parties know ahead of time;
- Ask about taking a lunch break; there may be someone in the hearing that needs to eat for health reasons.

Hearing Matters – Questions of Style and Substance *(Continued from Page 12)*

Michelle Miller-Kutola, M. David Vaughn, Richard Adelman, Margie Brogan, and Kathy Eisenmenger

processes involving the marking of joint exhibits, and identifying the issue for the arbitrator to decide. Whereas the West Coast representatives often use court reporters during the hearing and submit post-hearing briefs, the Philadelphia labor representatives will often provide oral closing statements and don't use court reporters.

Michelle asked the panelists how they dealt with parties asking for unusual hearing processes given the NAA Code of Professional Responsibility (Part 5) requirement that arbitrators allow the parties a "sufficient opportunity" to present their evidence. Although the panelists agreed they would not issue bench decisions in disciplinary cases, Dick Adelman said he had no problem issuing a bench decision in a contract dispute, if the parties asked for it. Kathy has issued bench decisions only on procedural matters, such as timeliness. On the issue of parties filing pre-hearing motions, Kathy said she tried to avoid unnecessary motion practice with a particularly litigious party by talking things over in a telephone conference, but it did not work with that particular party. David found that he could sometimes de-incentivize parties from unnecessary motion practice by talking to them, but he also acknowledged that the process ultimately belongs to the parties.

On the issue of the arbitrator asking questions during a hearing or otherwise participating in the hearing, Dick Adelman said that he had no problem asking questions to fill the gaps in the information he had so that he could decide the case, and inquiring about the parties' inclination to settle. Seeing it as a question of style to some extent, he thought that arbitrators should use a style that suits them. The variety of possible approaches was embodied in the panel, with David waiting to ask questions until after the parties are done questioning a witness, Kathy refraining from asking questions because she believed the parties would not want her to interfere with the case they chose to present, and Margie saying that experience taught her to be careful about asking too many questions when a relatively inexperienced advocate is involved so that it does not appear she is helping one party over the over.

We have all had hearings where one or both parties object too often. What to do? Margie commended everyone to read George Nicolau's 1989 essay on the "Escalation of Pain." The steps she takes are: 1) telling the representative that there's no need to make the same objection twice; 2) if the representative nonetheless makes the same objection again, she has a discussion in the hallway with the representatives; and then 3) if the representative persists, she then just says something like "Stop. I'm not finding this persuasive." Dick's reprimand style is to tell the over-objecting representative to save the argument for the bargaining table, but he may intervene if there's a particularly rough cross-examination. Kathy reminded everyone to make sure to take command and watch the parties' behavior carefully. David concurred and said sometimes the arbitrator's role is to defuse a situation and say something like "Don't make me use my arbitrator voice."

The problem of the employer calling the grievant (particularly in a disciplinary case) as a witness arises periodically. David does not allow the employer to call the grievant as the first witness due to his view that the employer needs to be able to make his or her case with the evidence in the employer's control. Dick said he used the same approach, but if the union does not call the grievant as a witness, he will allow the employer to call the grievant at that time. Although Margie agreed with that general approach, she added that if the employer has not met its burden of proof in its direct case, then she

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REMEDIES AND RETENTION OF JURISDICTION

Panel composed of George R. Fleischli, Edward B. Krinsky and Jeanne M. Vonhof

By Benjamin A. Kerner

This session, chaired by Stephen Hayford, explored a number of examples, problems, and results along the way to "make whole" remedies primarily in discharge cases. George Fleischli introduced the topic by noting that the courts have condoned the exercise, by arbitrators, of remedial authority in cases where it is shown that the Employer violated some aspect of the parties' agreement.

Arbitrators, according to George Fleischli, have historically been reluctant to retain jurisdiction for three reasons: legal concerns (lack of authority); ethical concerns (improperly seeking work); and conflict with the voluntariness of the process (the parties should be able to chose another arbitrator, or no arbitrator, if they wish). Gradually, the shortcomings of courts' handling of remedy issues became apparent. "When the parties resorted to the court, the results were sometimes literal and arbitrary— like backpay with no right to offsets — unless the court referred the issue back to the arbitrator for clarification," writes George Fleischli in a related paper.

The impetus to retain jurisdiction arises out of the intent to see the dispute through to its end point, and not leave either of the parties hanging with unfinished business from the grievance we are commissioned to resolve. As a factual matter, argues George Fleischli, more and more arbitrators are finding that the legal and ethical concerns and conflict with voluntariness just do not hold water. And, further evidence of the acceptability of the practice of retaining jurisdiction is the section of the Code added in 2007:

> Unless otherwise prohibited by agreement of the parties or applicable law, an arbitrator may retain remedial jurisdiction without seeking the parties' agreement. If the parties disagree over whether remedial jurisdiction should be retained, an arbitrator may retain such jurisdiction in the award over the objection of a party and subsequently address any remedial issues that may arise.
>
> [Code of Professional Responsibility, 6.E.1.a]

Of course, having the authority is one thing. Knowing how and when to use the authority to retain remedial jurisdiction is another. The cases reviewed in this session give some hint of the appropriate and useful ways in which to reserve jurisdiction.

Scenario 4. A route salesman with 44 years of seniority is discharged for violation of a Company rule against theft of any kind. The Grievant is alleged to have stolen $11 worth of ice cream off his truck. The Grievant acknowledges the theft when he is confronted. And says he brought the ice cream home for his granddaughter's birthday party.

All members of the Panel would have reinstated this employee, but with some penalty (backpay forfeited) for the theft.

Scenario 2. This case was stated by George Fleischli in the program materials as follows:

The Grievant, an Apprentice Machinist, is one of 12 Journeymen and Apprentices working in a small machine shop that fabricates parts for local businesses. They are supervised by "Pops," a Master Machinist who is considered indispensable

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HEARING MATTERS *(Continued from Page 13)*

won't allow the employer to call the grievant later on. Illustrating that reasonable arbitrators can disagree about the right way to do things, Dick said he did not agree with Margie, and that he would allow the employer to call the grievant as a witness because there is no hard and fast rule requiring the employer to meet its burden of proof without questioning the grievant.

When the grievant does not appear at his or her own hearing or when witnesses are not available for a hearing, Margie and Dick agreed that, although an arbitrator should try to accommodate schedules and give the grievant or a witness a chance to participate, at some point, the hearing has to go forward.

Audience members also had questions and tips. Laura Cooper asked how the panel would handle a party's witness greeting her like an old friend because they had known each other a long time. David pointed out that the representatives at the hearing would not be bothered, but that it might be worth explaining to a grievant or other participant how arbitrators get to know many labor professionals. When Alan Symonette asked the panelists how they handled having children testify at a hearing, David and Margie both said they made an extra effort to make the witness comfortable, with Margie specifically mentioning that she allows the witness' parents to be in the room.

Although the panelists disagreed on the finer points of some issues, they concurred on the overall question of how best to conduct a hearing: to use a style that is true to the individual arbitrator's personality. Arbitrators can be themselves at a hearing – many parties pick arbitrators just because of who they are!

REMEDIES AND RETENSION *(Continued from Page 14)*

because of his skill in training Apprentices and fabricating parts that meet the strict specifications of the Employer's customer base.

One weekend, Grievant was visiting another community, ran a stop sign, and caused a collision. Grievant was injured and the other driver was killed. Grievant recovered from his injuries and wants to return to work. There is only one problem. The man who was killed happened to be Pops' son. Grievant has tried apologizing to Pops, but Pops cannot bring himself to even talk to Grievant. Pops has made it clear that he will quit his job if Grievant is allowed to return to work. The Employer terminated Grievant and the Union filed a grievance.

Despite the hard facts, the Panel concurred in reinstating the Grievant. Panelist Jeanne Vonhof emphasized that there was no nexus between the Grievant's conduct in the accident and the workplace.

Scenario 8. This case involved the effect of lengthy arbitral proceedings on the backpay remedy. The discharge of Grievant occurred on October 1, 2016. The parties contacted the arbitrator on June 27, 2017. The first available date for the arbitrator and both parties and their counsel was October 15, 2017. The parties had a hearing on October 15, 2017, but did not complete their hearing; in fact the Employer did not complete its case in chief.

The Employer alerted the arbitrator, for the first time at the end of the October 15, 2017, hearing day that the CBA in an expedited case, such as this one, called for the case to be conducted on consecutive dates until completed. Neither the Union nor the Arbitrator was available the following day. The Employer presented the view that, since the Union was not available on the following day, the backpay period should be immediately tolled. The arbitrator deferred ruling. Next the Union offered to arbitrate on a Saturday, and the Arbitrator also said she could make herself available on two specific Saturdays. The Employer stated that it "should not have to be available" on a Saturday. The next weekday available for all concerned was December 21, 2017. Finally, the arbitrator requested an extension of the parties' 7-day schedule for awards in expedited cases, and in fact filed her award on January 15, 2018, reinstating the Grievant with full backpay.

Stephen Hayford, George R. Fleischli, Edward B. Krinsky, and Jeanne M. Vonhof

Aside from the Employer's demand to have the backpay period tolled on October 15, 2017, there are other remedy issues here: Grievant had interim earnings for approximately half the back pay period of 16 months. He earned more at his replacement job than he did at the Employer's. The Employer argued that the Grievant is not eligible at all for backpay during the weeks when he earned more in interim earnings than he did at his regular job. In addition, the Employer argued that backpay should be reduced because of the poor attendance record of the Grievant, i.e., he would not have been available for a full schedule. Further, there is the issue of pay for overtime work. The Union argued he should be compensated for overtime work based on his overtime hours the preceding year. The Employer argued that overtime can be granted only for the time the Grievant's replacement worked overtime during the backpay period. Finally, the parties did not agree on whether interest should be credited to Grievant during this 16-month backpay period.

The arbitrators on the Panel did not agree on several elements presented above. Ed Krinsky would have tolled the running of the backpay period on the basis that the Union knew what was in the collective bargaining agreement. Furthermore, Ed Krinsky would have found that interim earnings were not an offset to the backpay award on the basis that mitigation does not extend to the situation where an employer has wronged an employee. But the Panel agreed that the backpay amount may not be reduced during the period of possible or supposed illness. Other remedies were featured by different individuals in a quest to provide a "make whole" remedy to this Grievant. These differences illustrate, as George Fleischli intimated in his introduction, that arbitrators must remain flexible in fashioning remedies; and, furthermore, the courts do recognize this inherent flexibility.


SIXTH STRING

Scene in Austin

The 2018 Fall Education Conference, held from October 26 – 28, 2018 at the Sheraton Austin Hotel at the Capitol was another successful FEC, with 118 members, 7 interns, and 47 spouse/companion/-partners. Amedeo Greco was Program Chair and Beber Helburn chaired the Host Committee.

More Scenes in Austin on Next Page

2019-2020 SLATE ANNOUNCED

President-Elect

One year term	**Daniel J. Nielsen** (Lake Bluff, IL)

Vice Presidents

Second one year terms	**William McKee** (Denton, TX) **Alan A. Symonette** (Philadelphia, PA)
First one year terms	**Paula Knopf** (Toronto, ON) **Homer C. La Rue** (Columbia, MD)

Board of Governors

Three year terms	**Sarah Kerr Garraty** (Concord, MA) **Gordon Luborsky** (Markham, ON) **Andrew M. Strongin** (Takoma Park, MD) **Jeanne Charles Wood** (Pembroke Pines, FL)

Each of the above candidates has agreed to serve if elected at the 2019 Annual Business Meeting. Under Article VII, Section 2 of the Academy By-Laws:

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

Thank you to the members of the 2019-2020 Nominating Committee:
Richard Adelman - *Chair*, Margaret R. Brogan, Linda S. Byars, George R. Fleischli, Kathleen Miller, John F. Sass, and David R. Williamson.

Panel Discussion - The Arbitrator's Role

By Linda Byars

A panel of Academy "shining lights" shared their expertise and opinions about the role of the arbitrator. The discussion included the history of the arbitrator's role and current and future trends. Kathryn VanDagens moderated the panel that included Sara Adler, Josh Javits and Arnie Zack.

Arnie began with a history of the changing role of the arbitrator since the beginning of labor arbitration. At inception, arbitrators were academics, and problem-solving was the preferred approach. During World War II, war-labor boards recruited from law schools and the problem-solving approach continued. Later the American Arbitration Association became the organization of choice for selection of arbitrators and the litigation (judicial) framework became the model. The advent of public bargaining in the 1960s diluted the ability of arbitrators to resolve disputes around the table. The increasing role of attorneys, first by employers and then by unions, has also made the process more legalistic. The consequence, at least in Arnie's practice, is that he rarely sees cases less than discharge. The parties no longer have the resources for the lesser discipline cases. Also, the impact on him is that the parties are no longer as amenable to resolving the dispute in the hall as they were in the past.

Describing his approach as a "joint collaborative effort," Arnie distinguishes his approach from mediation and "med-arb" and calls it "arb-med." With "arb-med," he offers the parties the opportunity at the end of the hearing for him to write his decision, put it in his pocket, and then let the parties try to resolve again by mediation. He uses this approach both in interest and rights arbitration. If the parties are willing to spend a few hours at the end of the hearing, they save writing briefs and the time and expense of a written decision. Clients continue to select him based on that approach, so he believes this is the approach he is "stuck with."

Kathryn VanDagens, Sara Adler, Joshua Javits, and Arnold M. Zack

Agreeing with Arnie that the informal approach is best, Josh points out that, over the years, the parties' expectations have changed to a more formal approach. However, in recent years, Josh is beginning to see a return to a more problem-solving approach and a variety of innovative approaches. Because Josh does a significant amount of his work in the airline industry, he has had the opportunity to use an innovative approach developed by the National Mediation Board. Josh was brought in to make an advisory decision, which he had to make within three days. The parties negotiated something close to his advisory decision with the involvement of the mediator. Josh thinks it was successful enough that there is talk of using the approach again. Josh described another example of an innovative approach where outside market influences caused a small airline's inability to attract enough pilots with their negotiated wage structure. ALPA objected to any disparity, so the parties used med-arb to come up with an innovative approach for obtaining pilots. The parties resolved over 30 grievances, and Josh thinks everybody was "pretty happy."

Sara is largely in favor of the legislative approach. As for writing awards, Sara says she usually writes less than eight pages, the minimum needed to answer the question. Most of Sara's work is with clients with a mature relationship, and they don't need the education needed earlier in her career. Sara thinks that arbitrators are generally in agreement that we should not tell our clients how to run their business. She points out that, in the past, where there was a conflict between law and contract, a party would go to court to have an arbitrator's decision vacated. In more recent years, where the law is incorporated in the contract, this type of conflict is less likely to occur.

Sara described her "judge Judy" case, where a union was in trusteeship and the company going through new ownership. She agreed to an expedited process (win, lose or draw) in order to help the parties get through a backload. Once it became clear the parties needed more, she decided to give a couple of sentences in order to explain some of the common issues.

The panelist also provided some insight for the future. Sara foresees the possibility of publicly-paid arbitrators like the British system. She also predicts an increasing need to be more aware in our decision writing, looking for language that can be misinterpreted, especially through the lens of the Me-too movement. As Coordinator of the Legal Representation Committee, Sara warned that we should resist attempts at humor in our decisions. Josh thinks that we should be open to different forms of dispute resolution and to helping shape dispute resolution in the evolving free-lance world. Arnie predicts that because of political and legal pressures we will be deprived of doing what parties want us to do, help resolve disputes, and there may be more pressure to issue bench decisions. The Supreme Court's opinion in *Janus v. AFSCME* means there will be an effort by parties to develop expedited and less expensive procedures and that unions will have more discretion in taking cases to arbitration.

WHAT TO DO WHEN: AN ETHICS PRIMER

By William A. Marcotte

James Cooper (NAA, Boston) chaired a lively session between the audience and the three panelists: Sarah Kerr Garraty (NAA, Concord, MA), Jasbir Parmar (NAA, Toronto, ON), and Andrew Strongin (Takoma Park, MD). Four of 11 case scenarios were dealt with:

Case No. 1 – You sit on a ballet's Board of Governors where you declined to become a member of the Board's Human Resources Sub-Committee and to not directly participate in human resources issues. However, any recommendations regarding personnel issues such as hiring and firing are brought to the full Board for discussion, and you fully participate in those discussions.

1. Does this constitute advocacy?

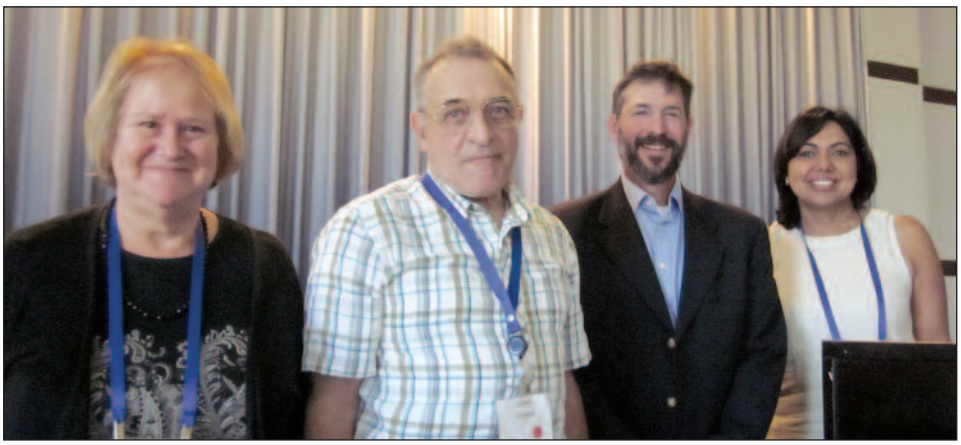
2. Would your answer depend upon whether you are being paid for your activities?

3. Are you required to disclose these activities in all or some of your arbitration cases?

4. Can you serve as an arbitrator in arbitration cases involving other arts organizations?

Jasbir Parmar did not see the matter as constituting advocacy. Sarah Kerr Garraty felt one ought to not get involved in these kinds of organizations since it would be difficult not to deal with personnel matters. Andrew Strongin opined this circumstance may not be advocacy under the Code of Ethics, but was concerned that human resources issues would inevitably come before the Board. Whether or not one was being paid as a member of the Board was not relevant for the panelists. All 3 panelists would disclose their participation on the Board as a matter of course. Moreover, they did not view their involvement as inhibiting acting as an arbitrator in cases involving other arts organizations.

Arnold Zack noted the real issue was whether or not this participation would be viewed by other parties as a Code violation. Ed Krinsky believed it sufficient that one recused oneself when the Board was dealing with personnel issues, especially if staff were unionized.



Sarah Kerr Garraty, James Cooper, Andrew Strongin, and Jasbir Parmar

Barry Goldman echoed Arnold's sentiment that one must look to the perception held by other parties and would disclose such Board participation to avoid future issues. Beber Helburn said, "When in doubt, disclose." Barry Winogard would also disclose his involvement and would not participate in personnel matters – "What if you're called as a witness" in a proceeding where a Board employee challenged a Board decision relating to his or her employment.

Case No. 2 - One advocate tells you outside the hearing room that he will be asking for an adjournment because he is not prepared, has failed to arrange appropriate witnesses and would be embarrassed to proceed. He tells you that if forced to proceed, they will spin the day out so that no damage will be done to the client and that nothing will be accomplished. In the hearing itself, the advocate says that the adjournment is needed because a crucial witness is unavailable and he needs further production of documents. Opposing advocate objects saying that productions could have been requested earlier and that the absence of the witness should not result in the loss of the day. What should you do?

Sarah Kerr Garraty noted that section 2 of the Code includes that an arbitrator is required to "refuse to lend approval or consent to any collusive attempt by the parties to use arbitration for an improper purpose." In this circumstance, she would talk to both counsel off the record and attempt to resolve the matter but if it was collusive, she would not hear the case. If one representative wished to proceed to hearing she would do exactly in the hearing what she would have done had she not heard the remarks. Jasbir Parmar read the question differently and viewed the communication made to her as *ex parte*. Similar to Sarah's approach, she would attempt to resolve the matter in the hallway with both representatives. If the hearing proceeded, she would try to make use of the day and decide the issue based on relevancy if the relevant facts did not warrant an adjournment. She also noted that it is not infrequent for counsel to "spin out the day" in the normal course. Andrew Strongin would tell the representative to stop and get the other representative immediately involved, believing if he did not tell the other side, "That's collusion." Homer La Rue agreed with Andrew's approach but did not see it as collusion. If there was a request for adjournment, that party would pay for the day. If he could not work it out in the hall, he would deal with the matter within the boundaries of appropriate decision-making. Rob Herman noted that Jasbir's approach reflects that Canadian arbitrators routinely ignore these sorts of remarks and decide the issue on what is heard in the hearing room. Arnold Zack commented he would disclose

(Continued on Next Page)

RED LIGHT/GREEN LIGHT

By James Cooper

With all due respect to Peter Dahlen and his Labor Arbitration Institute, the NAA does not need red lights or green lights to illustrate differences of opinion among labor arbitrators. This is especially true when you have an experienced moderator, Amedeo Greco, feeding difficult situations to the likes of Ted St. Antoine, Lise Gelernter and Dennis Nolan. Differences of opinion abound and each one made a very compelling rationale for their differing opinions or, more often, their shades of differences even if they came up with the same result. To me, the most interesting exchange took place over the application of external law wherein Ted gave a succinct summary of the dispute between Bernard Meltzer *Ruminations About Ideology, Law and Arbitration,* 20 NAA Proceedings 1 (1967) and Bob Howlett, *The Arbitrator, The NLRB and The Courts,* 20 NAA Proceedings 67 (1967). Of course Ted did not intimidate Lise or Dennis in the least as they gave cogent views on this subject with Dennis and Lise following the law (after all they are Professors of LAW). Nor was the audience cowed in any way whatsoever as Arnold Zack pitched in that, because he is uncertain how "the law" is interpreted, and he lets the courts do their work (in his awards he sometimes adds "I think the law is contrary to this, but the parties need to apply the law, not me.")

This same scenario was repeated many times during the session involving cases of mandatory overtime, ambiguous language, no fault absenteeism and finally a debate over the question "has the application of the just cause standard changed over time?" In all of these issues the learned trio cited to historical articles from Harry Shulman, Carlton Snow, Dick Mittenthall, David Feller and of course those most learned articles by Ted St. Antoine and Dennis Nolan.

Lise Gelernter, Theodore J. St. Antoine, Amedeo Greco, and Dennis R. Nolan

The fact is that this type of session may be sorely missed when the Academy jettisons the Fall Education Conference in 2020. What will be lost is the open and frank discussion between those willing to put themselves on the line before an audience unafraid to speak up. Perhaps it is time to reintroduce the traveling road show in which this type of program will resurface at the regional level, a practice which preceded and ultimately lead to the creation of the Fall Education Conference. In addition, the whole idea of teleconferencing so that multiple regions could tune in could be used to enhance and widen the scope of programs presented at the regional level. These are my ideas and not necessarily those of the editor.

ETHICS PRIMER *(Continued from Page 20)*

the remarks to the other party. Beber Helburn would proceed with the hearing noting that in the hearing, "I might hear a different story." Jim Hayes remarked that while years ago, *ex parte* communication was completely inappropriate, the current presumption in Canada is that the matter will be mediated.

Case No. 3 - In a discharge case, as you are walking to the hearing room with the experienced Union and Employer counsel, when the Union lawyer turns to you and says, "You should know that no one wants this jerk of a grievor/grievant back in the workplace. We are just going through the motions today to avoid a DFR complaint. So just put yourself on autopilot and we'll get ourselves out of here before 3 o'clock." What should you do?

Andrew Strongin would hold the hearing and decide the case on the record, as would Jasbir Parmar. Sarah Kerr Garraty was not sure if she would hold a hearing but probably not. "It would certainly create bias for me." Homer La Rue agreed and would not hold a hearing. Howard Foster would also not hold a hearing because, "I can't trust what I'd be getting." A member of the audience commented that the employer bore the onus in that case and if the Union did not do its job, it is the Union's problem, not his. James Cooper wondered that if the hearing was not held, it may feel as though the arbitrator was punishing the grievant/grievor. Jules Bloch noted that the Canadian jurisprudence takes into account whether or not the grievor gets along with fellow employees and supervisors in considering reinstatement of a grievor.

Case No. 4 - Imagine the same facts as set forth in Case No. 2, however, you soon begin to suspect that there is a racial antagonism toward the grievor/grievant that might support a case of discrimination, although that word has not been uttered at the hearing. What should you do?

Sarah Kerr Garraty would "walk away" from the case as would Andrew Strongin. Jasbir Parmar, assuming she could not mediate a settlement, would weigh the evidence and if there were discrimination, would weave it into her credibility decisions. Unfortunately, a more complete discussion was precluded by time limits.

After *Janus*: The NAA's Public Sector Initiative

By Lise Gelernter

Anticipating the Supreme Court's June, 2018 *Janus* v. *AFSCME* decision, NAA President Ed Krinsky and President-elect Barry Winograd created the NAA's Public Sector Initiative to address the short and long-term fallout from the case. In the *Janus* decision, the Supreme Court had overturned the 40-year-old precedent established in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977) and ruled that public employees could not be required to pay agency or "fair-share" union fees if they chose not to be members of the union representing their bargaining unit.

At the 2018 FEC meeting, Dan Nielsen, Chair of the special committee in charge of the initiative, and committee members Marty Malin, George Fleischli and Kathy VanDagens reported on the committee's progress. (Doug Collins, Liz MacPherson and Deborah Gaines are also members of the committee). Over the summer, the committee had created and then circulated a short survey to all NAA members to assess the amount of public sector arbitration work they did and they also studied post-*Janus* developments in various states.

The committee submitted its preliminary report in October and Dan discussed the need for further study on private arbitration panels as well as the second phase of the initiative: figuring out whether there is some positive action the NAA can take to help with conflict resolution short of arbitration in order to lower party expenses. Examples are expedited arbitration, or neutrals serving in a civil service system that resolves employee disputes.

As of October, Dan said, there was no obvious *Janus* effect on union participation in the arbitration process

Dan Nielsen

because many unions had made proactive membership drives in anticipation of the Supreme Court's decision. On the legislative front, Marty reported that the Massachusetts legislature was considering a proposal that would condition a union's representation of non-members in arbitration on the non-member's paying for the cost of arbitration representation and fees associated with the proceedings. New York's approved legislation changes the nature of a union's duty of fair representation by providing that a union does not have to represent non-members in arbitration proceedings, but that the non-member can proceed on his or her own or with a representative he or she chooses, *paying all costs and fees associated with representation in the arbitration process*.

Several states had enacted legislation that allows unions to have access to all new hires soon after they come on board and provides them with new hire contact information (California, Maryland, New Jersey, New York and Washington). A few states have limited time periods for employees to opt-out of union dues (California, Delaware, Hawaii, New Jersey, New York).

The Freedom Foundation is raising a great deal of money to end public employee unions altogether, Marty commented, and is mounting efforts to reach out to public employees and urge them not to pay agency fees and also to spearhead litigation on multiple fronts, costing the public sector unions a great deal of money. Kathy VanDagens noted that there is current litigation in Michigan and elsewhere seeking to have courts order refunds of agency fees retroactively. Marty and others were dubious about the legal basis of the retroactivity initiative, but as Marty said, "who knows?" It is difficult to predict Supreme Court outcomes on this issue since in the *Janus* case the Court made the until-recently-uncharacteristic move to reverse long-standing precedent on an issue because of one or more justices' sense that it was time to change the law rather than because a change in law or circumstances required a reassessment of past precedent.

George reminded everyone that *Janus* may not just affect unions. Questions have been raised about other types of state-mandated membership or fee payment regimes for regulated individuals or entities. One example is the "integrated bar" in which lawyers who wish to be licensed to practice law in a state are required to join the state bar association, which also serves a regulatory role.

Overall, Dan was optimistic that the union-management relationship in the public sector would be maintained, especially if the unions continued their efforts at internal organization of their members. The labor movement could even be strengthened by those efforts, he added. In any case, the committee's work will continue and they will report on their future progress to the NAA.

UPDATE YOUR TECHNOLOGY SKILLS

By M. Zane Lumbley

As I listened to Moderator Kathryn VanDagens and Panelists Mark Lurie and Will Hartsfield discuss this subject, I immediately found myself thinking, "I don't do 10% of this." From my discussions with many other members, it appears I'm in good company. While we're used to conducting hearings and writing opinions, it seems many of us are light years behind technologically speaking and I'm not surprised since, at first blush, this looks like complicated stuff. Indeed, I don't intend to try to detail most of what was addressed in this brief article because I would only add to the confusion. Rather, I encourage all of you who wish to advance beyond pen and pencil record-keeping to something more quickly accessible and reproducible, especially when you're away from your office, to study carefully the plethora of links already detailed by our panelists on the NAA website. The good news is that one can adopt all or only part of the approaches taken by our panelists depending on our perceived individual needs.

For example, I have no doubt that we all employ one level or another of security on our office computers, laptops and smart phones. One only needs to have his or her identity stolen to appreciate the importance of cybersecurity. Although I've not suffered such a crisis, I have spoken to friends who have and who tell me it can take years to recover. And those are folks who lost only personal information, not the sort of information belonging to other parties that we arbitrators store on our devices. Thus, as the panelists stressed, it is important both to protect active files and to erase old ones. While I personally tire of McAfee constantly telling me that the hotel or coffeehouse connection I'm using just to order a latte or check out of my room is not secure, it does accomplish the goal of reminding me that I tote around loads of private data.

Mark Lurie, Kathryn VanDagens, and Will Hartsfield

What it is likely many of us do to a much lesser degree than Panelists Lurie and Hartsfield is employ the numerous administrative and record-keeping tools available to us. In fact, I find the sheer scope of those tools mind-boggling. Just look at the resource lists they compiled in the link to the 2018 FEC program materials contained on the NAA website! It includes suggestions for accessing everything from document templates and dictation tools to word search, hot key and file sharing apps available to us. And the spreadsheets demonstrated by Mark during his presentation used for tracking everything from appointment documents, acceptance letters, and advocate contacts to travel arrangements and expenditures, brief and opinion due dates and billing matters made my eyes glaze over initially. Fortunately, after playing with a few of the suggested apps back in the office, I quickly came to recognize that by taking just a few baby steps into the 21st century I may eventually be able to assure myself, a lifelong pen and paper devotee, that I'll never again be in the lurch I was in after losing my spiral travel calendar on a flight earlier this year, a loss that took countless hours to overcome.

Two last tips offered by both Mark and Will that I wish to stress for readers unable to attend the 2018 FEC relate to the greater use of court reporter tools and transitioning from hard to electronic document retention for tax and other purposes. As both panelists noted, it is helpful to request reporters to scan exhibits if they will do so at little or no charge and provide links to those documents using the names we neutrals give them to make them easier to examine later, an approach for "connected" arbitrators that will prove a time saver over constantly shuffling papers when writing opinions. Similarly, the panelists argue that scanning travel receipts and entering them in our electronic record-keeping system ultimately will save us valuable time once we learn to do it efficiently and could prove helpful in the event, heaven forbid, we are ever audited.

NAVIGATING THE FEDERAL SECTOR PAY SYSTEM

By James Cooper

Scary, frightening, nay, downright terrifying…that's what I would say about this session. Led by four fear-invoking folks, with Phil LaPorte as leader, but encouraged by a posse of Alan Symonette, Jack Clarke, and that ever so engaging Arthur Pearlstein, this session was clearly meant for those of us who do very few, if any, federal cases every year. Together they made it clear that if you want to get PAID for doing your work, you had better pay attention to what this session was all about. The most important piece of advice I heard was that the federal labor relations folks have no idea about what you have to do to get PAID. For that you are on your own. So the first thing you have to do, even before you offer anyone dates or other words…is find out who is going to pay you and what hoops you have to jump through… if you want to get PAID.

Alan Symonette put together an excellent PowerPoint presentation (in the course materials), which summarized (1) what you need to do to register and get PAID from the U.S. government (different agencies have different protocols); (2) how to register; (3) steps to take before and immediately after the hearing to get PAID promptly. Arthur Pearlstein filled in the fourth item: (4) what to expect from FMCS if you do not get PAID.

You must register with SAM (System for Award Management), for which you will need a DUNS (Data Universal Numbering System) number and an NAICS (North American Information Code System) number: Alan suggested either: 54110 or 54119; Dennis Nolan piped in that those are for "legal services," and that the better NAICS number is 54199, "professional services." SAM registration is required every year which, in turn, requires proof it is really you filling in the information via swearing before a notary. Did I mention that you must change your passcode every six months (good luck!). Of course, during the registration process the government asks you to confirm that you have read, fully understand, and agree to abide by 20 pages of small print and dense federal regulations, for which the universal advice was hit "I agree" and take your chances.

Arthur Pearlstein, Philip LaPorte, Jack Clarke, and Alan Symonette

Other pieces of advice: (1) always get an agency-generated purchase order before you do anything; (2) when listing a limit to the amount of your invoice, never halve the bill (some contracts have "loser pays" provisions) and always add plenty of cushion since you have no idea how many days of hearing or how much time it will take for you to render an award (the highly experienced David Vaughn raised the point that you do not want to go back to amend a purchase order by adding a greater financial obligation on the government…because this will take a very long time and it might not happen); (3) carefully review the "period of performance" because this, too, is something you have no control over — so add an extra year or two; (4) have an actual conversation with the person who is approving payment — because that individual has no relationship to the agency labor relations or human resources personnel and generally could care less if you do not get PAID.

The final advice came from the ever energetic Arthur Pearlstein, who advised that, if all else fails to get you PAID, call his office and speak to Shakima Wright, who will threaten to cut the agency off from using FMCS's arbitration services, something he does not want to happen, but his threats bring results. My take on this session: I will approach any federal case with great trepidation, always fearful that the government will not PAY me. This panel gave me a good fright.

NEW MEMBERS WELCOMED IN AUSTIN

DAVID V. BREEN

Pittsburgh, PA

After serving in the Navy and graduating from college, David V. Breen began his career as a Labor Contract Administrator in the steel industry. He attended law school at night, obtained his law degree and served as in-house counsel with a focus on labor arbitrations and relations, negotiations, and employment. David tried hundreds of labor arbitrations and served as spokesperson in labor negotiations.

Later, David started his own practice with the goal of becoming a neutral. His law practice focused on family conflict and criminal defense while gaining acceptability as a neutral. David was appointed to the American Arbitration Association's commercial, employment, and labor panels. David steadily increased his acceptability as a labor arbitrator following his admission to the Federal Mediation and Conciliation Service labor arbitration panel. He now serves on numerous labor arbitration panels. He also has an active practice of mediating employment disputes, grievances, and family conflict.

David is an active member of the local LERA Chapters and his County Bar Association Alternative Dispute Committee as a member and former chair. And, most importantly, David is quite honored and proud to be admitted to the prestigious National Academy of Arbitrators.

CHRISTOPHER DAVID RUIZ CAMERON

Los Angeles, CA

Christopher David Ruiz Cameron, the Justice Marshall F. McComb Professor of Law at Southwestern Law School in Los Angeles, has over 30 years of experience in labor relations and over 20 years of experience as a labor arbitrator in Southern California. He recently completed his term as Secretary of the ABA's Section of Labor and Employment Law.

Professor Cameron serves as a Commissioner of the Los Angeles County Employee Relations Commission (ERCOM), the agency responsible for regulating labor relations between management and nearly 100,000 employees working in over 50 separate bargaining units in one of the nation's largest municipal governments.

Professor Cameron is the author or co-author of 28 law review articles and two books published by West Academic Publishing: *Labor Law in the Contemporary Workplace* (3rd ed. 2019) (forthcoming) and *Labor-Management Relations: Strikes, Lockouts and Boycotts* (2018-19 ed.). He is an Elected Member of the American Law Institute, the College of Labor and Employment Lawyers, and The Labor Law Group.

After graduating from UCLA and Harvard Law School, where he was an editor of the *Harvard Law Review*, Professor Cameron served as law clerk to the late Judge Harry Pregerson of the United States Court of Appeals for the Ninth Circuit. Before becoming a neutral, he spent six years in private practice representing labor organizations and employee benefit funds.

JAMES HAYES

Toronto, ON

Jim Hayes was a founding partner of union-side Cavalluzzo Hayes LLP in 1983. He became a full-time arbitrator in 2012 following a year at the Ontario Labour Relations Board. Jim is a past Chair of the Labour Law Section of the Canadian Bar Association (Ontario) and was peer-ranked in legal publications such as the *Lexpert/American Guide to the Leading 500 Lawyers in Canada* for many years. He has since been named in numerous collective bargaining agreements and joined the Player Agent Arbitration Panel of the Major League Baseball Players' Association in 2016. Jim is also a fellow of the College of Labor and Employment Lawyers.

M. SCOTT MILINSKI

Pompano Beach, FL

Scott Milinski began his career as a Labor Arbitrator and a Special Magistrate with the State of Florida Public Employees Relations Commission (PERC) in 2006. He has over 25 years of experience as a labor relations advocate in Ohio and Florida, in the public and private sectors. As an advocate,

(Continued on Page 26)

NEW MEMBERS *(Continued from Page 25)*

Scott was nationally recognized as a speaker and publisher on labor/management relations. He served as a program panel member at the National Academy's Annual Meeting in 2003. Scott also worked with the Ford Foundation's State and Local Government Labor Management Committee.

He served as President of the National Public Employer Labor Relations Association (NPELRA) and the Florida Public Employer Labor Relations Association (FPELRA), and as Board Member and Program Chair for the Florida Labor Management Committee. He is the recipient of the NEPLRA Pacesetter award for innovation in labor relations and the FPELRA Award of Excellence in labor relations.

Scott received his bachelor's degree from Miami University of Ohio, and a master's degree in Public Administration from the University of Dayton. He also served as an adjunct instructor for both universities. Scott and his wife reside in Pompano Beach, Florida.

DEBRA SIMMONS NEVEU

New Orleans, LA

Debra Simmons Neveu, Esq. has over 10 years' experience as a labor and employment arbitrator and mediator. She a member of the American Arbitration Association, Dallas Area Rapid Transit (DART) Trial Board, the United States Postal Service- American Postal Workers Union and the United States Postal Service -National Postal Mail Handlers Union panels of arbitrators. Debra is listed on the Federal Mediation and Conciliation Service and the National Mediation Board arbitration rosters.

Debra is a former General Counsel and Vice President for Legal Affairs of Dillard University in New Orleans, Louisiana and Senior Counsel for the Regional Transit Authority in New Orleans, Louisiana. She has served as a Commissioner on the New Orleans Civil Service Commission.

A native of Detroit, Michigan, Debra has lived in New Orleans, Louisiana for 34 years. She completed her undergraduate education at the University of Michigan, Ann Arbor, with a bachelor's degree in Economics and Political Science. She also received a Juris Doctor degree from the University of Michigan Law School and an LL.M. from Tulane Law School in New Orleans, Louisiana.

DANIEL R. SALING

Dana Point, CA

Dan has been a labor arbitrator and mediator since 2001. He has arbitrated hundreds of grievance arbitration cases between numerous labor organizations and private, public and federal employers. Dan is a labor arbitrator with FMCS, AAA and CSMCS and serves as a factfinder, mediator, administrative law judge, hearing officer and hearing examiner for numerous governmental agencies. He served as an arbitrator and mediator with the Orange County and Los Angeles County Superior Courts and the California State Court of Appeals. He served as an adjunct professor at California State University Fullerton in labor-management relations. Dan is a member of the CBA, CBA Labor Law Section, Southern California Mediation Association and Orange County and San Diego County LERA chapters.

Dan received a BA in History and Social Science in 1966 from California State University Fresno; MA in 1973 in Management and Supervision from the University of Redlands; JD in 1978 from Western State School of Law; and a MS in 1999 from Pepperdine University in Organization Development.

Dan worked as an advocate/legal counsel for more than 30 years in labor-management relations. He has represented parties in all aspects of labor-management relations, including contract negotiations, grievance arbitrations, and unfair labor practice proceedings.

KATHLEEN JONES SPILKER

Camp Hill, PA

Kathleen Jones Spilker has served as a full-time arbitrator since 1980. She has arbitrated numerous public and private sector labor and employment cases by appointment through the FMCS, AAA, and state panels, as well as *ad hoc* appointments. She has served on a number of permanent panels, including Pennsylvania State Police and Pennsylvania State Troopers Association, U.S. Postal Service, United Mine Workers of America, and the U.S. Department of Labor. She is on the rosters of the AAA, FMCS, NMB, NJ PERB, FINRA, NFA, and AHLA. She is a member of LERA and the American Bar Association.

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NEW MEMBERS *(Continued from Page 26)*

Kathleen was an Instructor at Central Pennsylvania College, where she taught labor and employment relations and collective bargaining. She also served as Labor Relations Staff Representative at Westinghouse Corp., where she helped negotiate the IBEW local agreement when building the Atlantic City casinos.

Kathleen received her undergraduate degree from the University of Notre Dame in 1975, graduating *summa cum laude,* and was elected to Phi Beta Kappa. A Pittsburgh native, she earned her JD with a concentration in labor and employment law from the University of Pittsburgh in 1978. Kathleen was admitted to the Pennsylvania bar in 1979, and served as Director of the Lawyer Dispute Resolution Program sponsored by the Pennsylvania Bar Association.

Kathleen maintains her office in Camp Hill, Pennsylvania. She and her husband, Lawrence (Spike), also an arbitrator, have been married for 35 years and are the parents of three wonderful children.

PILAR VAILE

Yuma, CO

Pilar Vaile grew up in southwest Louisiana, mostly itinerant until her family settled in Lafayette, where she spent the remainder of her youth riding horses (Dressage, CT, and Eventing), hauling feed and hay, mucking stalls, weather proofing, etc. for the family business. She then spent six years in the military (three years active, three years in the Louisiana National Guard) and worked at Sam's Club, a medical emergency answering service, and a stable, en route to a law degree from New Mexico School of Law. As a lawyer, Pilar first worked in plaintiff class actions (anti-trust, consumer protection, and wage-hour collective actions), then at the NM Public Employee Labor Relations Board, until she opened her private neutral practice in 2010. In the early years, she spent many hours working as a mediator, land-use facilitator, Guardian ad Litem, etc. She now arbitrates full-time and lives in Yuma, Colorado, where her retired husband's family homesteaded over 100 years ago and continues to farm. In between, Pilar travels from one exciting or bucolic locale to another to hear disputes, writes decisions, helps raise their 13 and 11 year-old sons, works on their fixer-upper house, tends a flock of laying hens, and rides herd on 4-H projects.

DAVID A. WEINBERG

Mill Valley, CA

David A. Weinberg is an arbitrator, mediator, fact finder, and conflict resolution specialist. Prior to opening his private practice in alternative dispute resolution (ADR) in 2013, he was a Commissioner with the Federal Mediation and Conciliation Service for 17 years. He also trained labor and management advocates in collective bargaining, arbitration, and all forms of ADR. He served as the Director of Arbitration Services for FMCS, and was the Chair of the Arbitration Review Board for over 10 years. Prior to his appointment as a Commissioner in 1995, Mr. Weinberg was Director of Labor and Employment Services for the American Arbitration Association, and co-authored the first AAA employment arbitration rules. In 1998, he spent several months in Panama training the first members of the Panamanian Mediation Service, who help resolve labor disputes in Panama. He also mediated labor disputes in Ireland for 3 weeks, while an Irish mediator took his place in the United States. For over 12 years, he led the training of hundreds of new arbitrators to be placed on the panel of arbitrators for FMCS. Prior to his professional career in dispute resolution he spent over 15 years working as a cook, waiter, maintenance mechanic, sheet metal worker, forklift driver, and hospital billing clerk.

BETTY R. WIDGEON

Ann Arbor, MI

Betty R. Widgeon, MAEd., J.D. is a retired judge who currently serves as an arbitrator, fact-finder, mediator, Michigan JTC special master, and a principal at Widgeon Dispute Resolution, PLC. She has issued hundreds of decisions and opinions – including many involving labor, employment, EEOC, and consumer cases. She has over 30 years of experience resolving civil and criminal disputes, and extensive training in alternative dispute resolution. She practices in 41 cities in 22 states and covers a wide variety of issues in 16 industries. She is on several rosters and panels, including the Fact Finding and Arbitration Panels for the Michigan Employment Relations Commission (MERC); the Fact-Finding Panel for the Ohio State Employment Relations Bureau (SERB); the American Arbitration Association's (AAA) Labor, Commercial, Employment Arbitration, and Mediation Panels; the Federal Mediation and Conciliation Service (FMCS) Labor Panel; the USPS & APWU (AFL-CIO) roster; and the USPS & NALC (AFL-CIO) roster.

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OFF-DUTY CONDUCT

By Barry Goldman

Those of you who subscribe to the mail-list know that Doug Collins likes to brag about his baking skill, particularly his pies. He posts pictures of them from time to time. Off-Duty Conduct has been trying for several years to get an invitation to actually EAT one of these pies, but for reasons that were never made quite clear, it has not been "convenient." We persisted. He succumbed. The deed has been done. This is the story.

Collins lives with his wife Sue and his Rhodesian Ridgeback/Labrador Retriever mix Cody a few short blocks from the ocean in Hermosa Beach, CA. Your reporter was greeted at the door with a friendly, "What do you want?" and ushered inside. The home is beautifully appointed and, as befits Collins' certifiable obsessive compulsive disorder, utterly immaculate. The large kitchen appears to contain every possible cooking utensil and food preparation device meticulously arranged in gleaming profusion. The house is also reputed to contain close to 1,200 cookbooks.

There were few preliminaries. Collins began immediately by weighing the required amount of flour. Then he added sugar and salt and a 50/50 mixture of butter and Crisco cut in small cubes. He cut in the fat with a pastry knife and added ice water. When the dough was ready he formed it into two balls and put them in a shining bowl and put the bowl in the freezer.

The apples were prepared with the aid of a device that looks like a scaled down version of a machine used to extract confessions from heretics during the Inquisition. When an apple is inserted and fixed in place with small prongs, turning the handle on the device causes the apple to be cored, peeled, and sliced. Collins examined the result and carefully removed any remnants of peel or core that remained on the slices and placed them in another shiny bowl. He added sugar, flour, cinnamon, and lemon juice and stirred.

A pastry cloth was placed on the counter and dusted with flour. A large rolling pin was produced wearing a matching pastry cloth cover.

Collins rolled out the first ball of dough and deftly flipped it into a ceramic pie dish. He molded the bottom crust into the dish and trimmed off the excess with a kitchen shears. The apple mixture went in, and the top crust was rolled out. An egg wash was prepared and brushed onto the edge to seal the top to the bottom. Then the two crusts were joined along the edge, the excess trimmed, and the egg wash was brushed over the top. Vents were added so steam could be released. Everything was perfect.

But when it was time to crimp the edges, Collins didn't do what one might expect. He just mooshed them together. The idea, he said, was that you didn't want the pie to look *too* perfect. It has to look homemade.

He put the pie in the oven at 425. After 30 minutes he turned the temperature down to 350 for another 40 minutes. Then he took it out and put it on a rack to cool, and we took Cody for a walk.

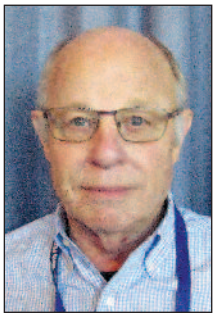
We walked down to the strand and along the shore. We walked up one of the streets lined with shops and restaurants and back along a wooded path reclaimed from an abandoned railroad right of way. Cody did what dogs do. Collins and I did what labor arbitrators do. And by the time we got back the pie had cooled off just to the point where I could have a slice of warm apple pie. The experience was transcendent.

Collins has been baking pies since he was a small child. He learned the craft from his mother and has been experimenting all his life. I am delighted to report he has achieved the numinous.

NEW MEMBERS *(Continued from Page 27)*

RICHARD D ZAIGER

Wellesley, MA



Richard Zaiger has been a career neutral in labor relations for over 40 years. He graduated from the University of Massachusetts in Amherst and Boston College Law School. After being discharged from the Army, he worked for the National Labor Relations Board for 11 years in Washington, D.C. and Boston. For the next 29 years, he worked for the Federal Labor Relations Authority. He was the Boston Region's first Regional Attorney and became the Regional Director in January 2001. Richard retired from federal service in January 2008 and opened an arbitration practice. Throughout his professional career, Richard has taught labor relations courses at a number of universities in the greater Boston area. He taught a course entitled "Industrial Relations" for almost 20 years in the graduate school of business at Babson College, and a practical skills course entitled "Labor and Employment Arbitration" at New England School of Law. He has been a member of the adjunct staff at the Woods School of Continuing Education at Boston College since 1984 where he teaches a course entitled "Employment and Labor Law" to select undergraduates and graduate students seeking certification in specialized areas such as human resources and administration. Richard resides in Wellesley, Massachusetts with his wife, Joanne.

REMEMBERING...

Remembering Paul Dorr

1925-2018

By James Cooper

Paul Dorr was eighteen years old when he landed in the second wave at Normandy Beach on June 6, 1944. He served the remainder of the war in northern France as a surgical technician for the U.S. Army Medical Corp. In 2004, the French government invited Paul to return to Normandy and awarded him a Tresors de France medal. After the war, like so many of our Greatest Generation, Paul returned home to Boston and completed his college years at Boston College, where he earned a Bachelor of Science in Economics. (Paul was accepted by MIT as a physics major in 1946, but, when MIT refused to count his credits at Boston College from before the war, he told them to "forget it" and returned to Boston College.)

You had to know Paul pretty well to get even that much information out of him. After graduating from BC, he worked for the Brown Shoe Company in Worcester as an on-the-line foreman where he mingled with unionized shoe workers who gave him his first lessons in labor relations, a job he loved. Paul was so good at dealing with unionized employees that he moved up quickly, becoming Industrial Relations Director (or whatever title they gave for that work) at AMF Corp., Northrop Corporation, and, ultimately, EG&G Corporation. While at EG&G in 1969, Paul began teaching labor relations at the Boston College Evening School, a position he held until 1983 when the newest member of the NAA, Dick Zaiger, took over for him.

It was while he was teaching that Paul ran into his Boston College high school (Paul was what Bostonians call "a double eagle") Greek teacher, Edward Sullivan — then Deputy Mayor to Mayor Kevin White — who recruited Paul to serve as a neutral fact finder at Boston City Hospital. This job turned into a long-term gig as an arbitrator serving the City of Boston and its myriad unions, including SEIU and AFSCME, among many others. Paul's career took off after that and he became a full-fledged and full-time arbitrator of wide, local renown. He was admitted to the Academy in 1979 and helped organize the local chapter meetings that he attended without fail for many, many years. Paul also attended many NAA annual meetings along with his longtime NAA arbitrator friend, Ted Role.

At home, Paul was a savvy botanist and outstanding cabinetmaker, and built many a garden and cabinet for his wife of 67 years, Therese, who survives him. Paul and Therese (known familiarly as Terri) had three children, all of whom are accomplished professionals with their own families and many children. His son, Laurence, is an internationally acclaimed botanist who serves as Chair of the Botany Department at the National Museum of Natural History of the Smithsonian Institution; daughter Michelle is a service operations manager for Jacobs Technology in Virginia; and daughter Patricia is a widely acclaimed oil paint artist with a studio in Easthampton, Massachusetts (*patriciadorrparker.com*).

The NAA has lost one terrific member.

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Remembering Ellsworth Steele

By William H. Holley, Jr.

Ellsworth Steele passed away on September 21, 2018, at the age of 100. In June of 2018, over 100 friends joined Ellsworth to celebrate his 100th birthday. He was preceded in death by his wife of 59 years and love of his life, Lilah, who he met at the University of Nebraska.

Ellsworth earned his bachelor's in economics in 1940 and master's in 1941 at the University of Nebraska and his doctorate in economics at the Ohio State University in 1947. During World War II, Ellsworth worked for the War Labor Board. After a short stint teaching at the University of Toledo, he moved to Auburn University (then Alabama Polytechnic Institute) as a research professor in economics. During his 33-year career, he served as research professor, the acting dean of a new School of Business and associate dean until his retirement in 1982.

Throughout his career, Ellsworth was highly respected as a labor arbitrator throughout the southern states. While at Auburn, he served as a part-time labor arbitrator. After his retirement, he served as a full-time arbitrator. Ellsworth and Lilah traveled many states in his arbitration practice.

Ellsworth was a long-time member of the National Academy of Arbitrators and attended regional and national meetings frequently.

Ellsworth contributed significantly to the Auburn community. He was active in the Auburn Methodist church, the PTA, Red Cross, East Alabama Food Bank, Auburn Public Library, Boy Scouts of America, and Rotary Club. He earned the Silver Beaver Award from the Boy Scouts for his 25 years of leadership to the organization.

Ellsworth is survived by three children, Karen, Eric, and Lauren, four grandchildren, one step-grandchild, five great grandchildren, and two step-great grandchildren.

(On a personal note, his friendship with Dr. Langston Hawley, a long-time member of the National Academy of Arbitrators and my major professor at the University of Alabama, provided an opportunity for Betty and myself to gain employment on the faculty at Auburn University. We will be forever thankful to Ellsworth and Dr. Hawley.)

Remembering Donald Sugerman

Donald Sugerman died September 8, 2018. Michigan lost a great person and terrific arbitrator. At his memorial service, his family told wonderful stories about Donald the father and grandfather. Donald was an inveterate practical joker who loved to tweak his friends, who too often fell for some of the most outrageous schemes. Many involved the sending of letters postmarked from strange cities and telephone calls with voices disguised. His

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REMEMBERING...Donald Sugerman (Continued from Page 30)

family understandably knew him best as a person. But the Michigan labor community knew him in his other role, as a professional.

Donald is perhaps the only pure Union side Michigan attorney who ever tried to make a direct transition from practice of law to neutral. A few others tried without success for reasons which seem obvious. But Donald was respected as more than a straight shooter. He was known to be thoughtful and not ideological. Michigan Governor James Blanchard appointed him to the Michigan Teacher Tenure Commission where he helped that Commission to understand that it was possible to impose a sanction less than discharge.

It took a while, but Donald became a very well respected arbitrator until his health required that he retire. Over some 25 years, he continually showed why parties trusted him. His 69 published opinions together with his unpublished work show the extent of his dedication to the process. It's a pleasure to read his awards as they are so well written, clear and precise. And he was not afraid to take a chance.

In 2009 Donald considered the discharge of a grievant who was often absent and when at work was confrontational and abusive. She had been diagnosed as severely depressed and ultimately as bipolar. There was reason to think that the future would be better than the past. The grievance was granted and the employee reinstated. However, this was risky. And some time later Donald asked whether the employee's future was indeed better than the past.

The world needs arbitrators like Donald — people who decide a case on its merits and spend no time worrying about whether they will or will not be picked again by either party; who are not concerned about having their award castigated in the newspapers. Donald will be sorely missed by his family and friends. But his colleagues will miss him as the talented professional he was.

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dards, or changes in the way that the current standards are evaluated and implemented by the Membership Committee. That committee met during the Austin meeting and will continue its work in the coming months.

There is another area of on-going concern for the Academy and its members, namely the dearth of accurate reporting in the newspapers and the media about our processes. As you know the Academy and the University of Missouri created the website *arbitrationinfo.com* to be a source of accurate and objective reporting about arbitration. I urge you, whenever opportunities arise, to make reporters, advocates and members of the public aware of the *arbitrationinfo.com* website.

For the older arbitrators among us, a new standard has been set. I recently read the obit in the New York Times noting the passing of our long-standing member Arthur Jacobs at age 106. It noted that he retired from arbitration at age 96, and he claimed to be the oldest active arbitrator in the country. So, men and women of the Academy, if you are still arbitrating at age 97 please let us know it.

Lastly, I would like to take note of the fact that this edition of the Chronicle is the last one put together by Managing Editor Dan Zeiser. Thank you for the fine job that you have done over the past several years, Dan.

THE PRESIDENT'S CORNER

By Ed Krinsky

Many thanks go to Amedeo Greco and his Program Committee, for putting together a very fine program in Austin, and to Beber and Judith Helburn and the Host Committee for making the arrangements for a very successful meeting. Efforts like theirs make the job of President easy and pleasurable.

Thanks go also to Walt De Treux for his continuing masterful job of administering the Academy's financial and business affairs, and to Suzanne and Melissa Kelley, and Katie Griffin for their work behind the scenes to make sure that all of the members who attended the meeting had what they needed.

At the Austin meeting we admitted 10 new members. Welcome all, and we look forward to your contributions to the Academy for many years to come. At the recommendation of the Membership Committee, the BOG approved the admission of five additional members to be inducted in Philadelphia next May.

Many thanks go also to Paula Knopf, as Chair, and the others on the Bloch Report Implementation Committee. Their comprehensive report was approved by the BOG in Austin. This followed the work of the Bloch Committee, appointed by Kathy Miller, which under the leadership of Rich Bloch recommended the changes which are now being implemented. We are indebted to all of these members for their efforts in coming to grips with the changes needed to assure the well-being of the Academy for years to come. Among the immediate benefits flowing from the reports are the substantial savings to the Academy in hotel costs for our Spring 2020 meeting in Denver resulting from our use of a hotel planning organization, and a greatly modified and improved meeting format being planned for the Philadelphia meeting by program co-chairs Bill McKee and Maretta Toedt. Please plan to attend the Philadelphia meeting.

One of the important and enjoyable tasks of the President is to attend Regional meetings, as well as meetings of other agencies of importance to us. I attended the joint meeting of the Pacific Northwest Region and the Montana Labor Relations Agency in Butte, the FMCS Arbitrator Conference sponsored by Kent Law School in Chicago, and the joint meeting of the LERA Atlanta Chapter and the Southeast Region. Aside from all the good fellowship, there were serious issues discussed which were of concern to our members and to arbitrators who aspire to become members.

At every meeting there was concern about decreasing arbitration opportunities brought about by declining union membership resulting from globalization, right-to-work laws, the *Janus* decision, and changes in various state laws adversely affecting unions and collective bargaining. It should be clear to all of us that the continuation of collective bargaining and arbitration depends on union organizing, union-friendly enabling legislation, and the financial health of unions, since it is unions who negotiate and invoke arbitration provisions. We as Academy members cannot do anything to reverse this situation. Changes if they occur will depend on the extent to which workers organize and contribute to union financial health, and on decisions of their political representatives. We can only do our jobs in the best way possible, as neutral arbitrators, so that advocates will continue to respect us and the arbitration process.

Another important issue discussed at these meetings was the continuing need to bring about more diversity in our membership. The Outreach Committee is continuing its work with the Regions to create programs and opportunities for newer arbitrators, and especially female arbitrators, younger arbitrators and male and female arbitrators of color. I encourage any Regions which are not now involved with outreach to contact Margie Brogan about how to get started with implementation of such programs.

In the face of declining opportunities, President-Elect Winograd and I agreed to create the Public Sector Initiative Committee. Under the leadership of Dan Nielsen and George Fleischli it is exploring the effects on our members of the *Janus* decision. It will endeavor to identify other dispute settlement opportunities for our members at the state and local level.

Given the increasing difficulty of would be members to meet our current admission requirements, I appointed a committee of current and past membership Chairs to discuss whether there should be any change in membership stan-

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