

## MARK YOUR CALENDARS

### PLAN TO ATTEND...

#### **2018 Annual Meeting**

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

#### **2018 Fall Education Conference**

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

#### **2019 Annual Meeting**

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

#### **2019 Fall Education Conference**

September 20 – 22, 2019  
Savannah Marriott Riverfront  
Savannah, GA

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## PRESIDENT’S CORNER BACK COVER



*By Elizabeth Wesman, Program Chair*

Make plans to attend what is promising to be an informative and thought-provoking program in Vancouver, BC this spring. The 2018 Spring Meeting Program Committee has been incredibly productive, and I am beyond grateful for their efforts. Topics covered at the Vancouver meeting will highlight current challenges in Canadian and US arbitration. Experts from both sides of the border will deal with such issues as the awarding of damages in Canadian and United States arbitration decisions, challenges in dealing with labor relations in the new economy, and an innovative approach to what we usually think of when considering factors that constitute “worker impairment.”

We will offer two outstanding sessions on arbitration in sports, one dealing with amateur sports and one with professional sports. As might be expected, there are similarities in both arenas, but also some stark differences. Our traditional “industry” sessions will prove anything but traditional; airline, railroad, and postal advocates should find much of interest, some familiar and some controversial – and we anticipate considerable discussion in all three sessions. Lancaster House of Canada will be running the pre-meeting advocacy training

program, and their reputation clearly bodes well for the participants.

In addition to sessions in relatively familiar formats, for the first time at a national meeting, we are offering a poster session. This format has been tremendously successful in the Southwest Regional NAA meetings and may well prove a “repeat” feature at future NAA annual meetings. The format allows attendees to rotate among four different topics, or to stay with a topic in which they are particularly interested. Emphasis in all poster sessions will be on debate and discussion, not simply on a one-way information flow.

Finally, President Kathy Miller is delighted that the Honourable Sheila Greckol, currently serving as a judge on the Alberta Court of Appeal, has agreed to be our luncheon Distinguished Speaker. As many of you know, she previously served more than 25 years as a successful labour arbitrator, so she will bring a rich and unique perspective to our Distinguished Speaker luncheon. President Miller also is delighted that past NAA president Allen Ponak has agreed to introduce Madam Justice Greckol. 🗑️

*Vancouver is a wonderful city!  
Don’t miss the 2018 Meeting!*

# Submissions

*The Chronicle* runs several features and columns highlighting the lives, stories, and work of the members of the Academy. We are always in need of new subjects for the articles and new story ideas. If you have any suggestions, want to write, or would like to see someone profiled in one of these columns, please contact Daniel Zeiser, Managing Editor, at [danzeiser@aol.com](mailto:danzeiser@aol.com) or contact the feature author directly.

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

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

*Off Duty Conduct*, written by Barry Goldman ([bagman@ameritech.net](mailto: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. 🏠

## Mark Your Calendar 2018 Fall Education Conference October 26-28, 2018



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

## The Chronicle

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### 2017-2018 NAA OFFICERS

Kathleen Miller, *President*

Laura J. Cooper, *Vice President*

William A. Marcotte, *Vice President*

James J. Odom, Jr., *Vice President*

Elizabeth C. Wesman, *Vice President*

Walt De Treux, *Executive Secretary-Treasurer*

David A. Petersen, *President-Elect*

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**Production Manager**

Kathleen E. Griffin



# Welcome To Vancouver

*By Randi H. Abramsky, Host Chair*

Welcome to one of the world's most beautiful and livable cities! This is not just my assessment, but that of those "in the know." In just 2017 alone, Vancouver has been given the following accolades:

- U.S. News and World Report (June 2017) – Best Family Vacation Destination in Canada;
- Travel Press Agency's Choice Awards (June 2017) – Favourite Canadian City;
- TravelAge West Wave Awards (June 2017) – Destination with Highest Client Satisfaction;
- Trip Advisor 2017 Travelers' Choice Awards (March 2017)
- Top Destination in Canada;
- Forbes (January 2017) – Vancouver is a Top 2017 Travel Destination.

The NAA Annual Meeting runs from Wednesday, May 23 to Saturday, May 26, 2018 at the beautiful Fairmont Hotel, 900 West Georgia Street, in Vancouver, British Columbia. Come early to the annual meeting and join your colleagues for a round of golf on one of the lush courses on Wednesday afternoon, May 23, 2018. Email Chris Sullivan for more information ([csullivan@arboffice.ca](mailto:csullivan@arboffice.ca)). For those who prefer tennis, courts have been reserved in Stanley Park for Wednesday and Thursday afternoon, May 23 and May 24. Email Chris Albertyn for more information ([chrisalbertyn@icloud.com](mailto:chrisalbertyn@icloud.com))



voted "Best Upscale Restaurant" in Vancouver for four years straight.

On Friday night, we will enjoy an evening of "Magic and Music." Our very own past NAA President, Rich Bloch, will perform some of his magic for us, followed by a live jazz band performance.

Please also come to the Presidential Dinner at Hawksworth Restaurant on May 22. Operated by renowned Chef David Hawksworth, this restaurant serves contemporary cuisine and has been

There will be several top restaurants for the "dine-around," including the Grouse Grind (a 2.9 kilometer hike up the face of Grouse Mountain), led by Sylvia Skratek's husband Peter Sziklai, followed by dinner at Altitudes Bistro, which has a lovely view of Mount Baker to the southeast and Vancouver Island to the west. For those of you who would just like to go to dinner at Altitudes Bistro, there will be a group that can take the tram up the mountain with Sylvia.

There are so many wonderful places to visit and see while you and your guests are here. Some possibilities include:

Vancouver Foodie Tours – Granville Island Market Tour (recurring weekly Thursday – Sunday) – two hours of "a perfectly crafted culinary journey through the world-famous Granville Island Public Market" including exclusive tastings. This was the #1 rated tour on TripAdvisor. Also highly rated is the Gastronomic Gastown Tour (Wednesday through Sunday).



**Vancouver Art Gallery**

The Vancouver Art Gallery, which is right across the street from the hotel (and has a wonderful restaurant).

Arts Club – Mamma Mia – at the Stanley Industrial Alliance Stage.

Rookie Night – Vancouver TheaterSports League – up and coming improvisers.

Talaysay Tours – 90-minute tours of Stanley Park, led by a First Nations' descendent.



**Talaysay Tours – "Talking Trees"**

*(Continued on Page 4)*



# Vancouver... from page 3

With its beautiful mountains and lovely waterside, vibrant cultural and food scene, Vancouver is truly a wonderful venue for our 2018 annual meeting. All it needs to make it perfect is you.

**Bicycle Tours** – Vancouver is a bike rider's dream, with specially designated lanes. Check out Cycle City Tours and Bike Rentals; Stanley Park Bike Tours; and Vancouver City Highlights Bike Tour. For those of you who could use some help, there is also Vancouver E-Bike Tours.



**Vancouver Water Adventure** – a fast paced water tour of Vancouver and vicinity.



**Forbidden Vancouver Walking Tours**

hours in length and cover around 2 km (about a mile) of walking.

There are, of course, lovely spas to relax in, including the one at the Fairmont Hotel.

**Walking Tours** – including Forbidden Vancouver Walking Tours and Walking Brewery Tours of Vancouver.

**Labour History Walking Tours** – the B.C. Labour Heritage Centre offers two guided walking tours, which are about two

Vancouver is also a gateway to Whistler, the Canadian Rockies, Victoria, Vancouver Island, the Gulf Islands, and the Okanagan Wine Valley, so there are many reasons to come early and stay late. Consider the Rocky Mountaineer Train excursion from Vancouver to Jasper or Banff, with absolutely spectacular scenery. Vancouver is also the home port for Alaska cruises from May through October.



**Rocky Mountaineer Train excursion**

Matt Franckiewicz advises that he has signed up for a Roads Scholar tour of Vancouver, which begins on Sunday May 27. This is a small group tour for six days, led by professors and other experts, for a “mature” and discerning clientele – which describes many of us. 🛠️



# MILESTONES

Edited by Michael P. Long

## NOTEWORTHY HONORS & PROFESSIONAL ACTIVITIES

**William B. Gould IV** – our distinguished member of the Boston Red Sox Hall of Fame Committee, received the President's Distinguished Achievement Award by the University of Rhode Island in October, and then in November spoke on *Emerging Labor Trends in the Gig Economy* to the San Francisco Global Chamber in Palo Alto, California.



**Josh Javits and Barry Simon** – have both been elected as Fellows of the College of Labor and Employment Lawyers in recognition of their exemplary service in the field. The College of Labor & Employment Lawyers is a non-profit professional association honoring the leading lawyers nationwide in the practice of Labor and Employment Law. Fellows are recognized as distinguished members of the labor and employment community who promote achievement, advancement, and excellence in the practice by setting standards of professionalism and civility, by sharing their experience and knowledge, and by acting as a resource for academia, the government, the judiciary, and the community at large.



Josh Javits

Barry Simon



## Speaking of the College . . .

**Norman Brand** – recently issued an award unlike any he has ever issued before. On Saturday, November 11, Norm, as President of the College of Labor and Employment Lawyers, presented an award to Justice Ruth Bader Ginsburg.



## PUBLICATIONS & PRESENTATIONS

**Brian Clauss** – has been very busy. He was featured in a U.S. State Department-sponsored program that sent him to S.E. Asia for cultural and educational activities. Brian spoke in Malaysia, Indonesia, and Singapore. His formal presentations were: “*If Not Me, Then Who and If Not Now, Then When: Why Pro Bono?*” at Sumpah Permuda School of Law, Palembang, Indonesia and “*Comparative Approaches to A.D.R. – Avoiding Cultural Assumptions*” at UiTM School of Law, Shah Alam, Malaysia. Brian also attended the 6th annual Asia Pro Bono Conference in Kuala Lumpur and participated in a discussion on trauma-informed design and interviewing with some great pro bono advocates and clinical educators.



On the way back to the States, Brian spent a week in Germany. In Berlin, he had the opportunity to give his first presentation in German, entitled: *Vertrauen und Trauma: Eine Beziehung Aufbauen* (Trust and Trauma in Relationship Building). The discussion was about establishing a trusting advocate-client relationship with those who have suffered trauma. Brian states: “It was a terrific opportunity for me and was well-received by the German attorneys and law students. I was a bit nervous at my first foray speaking to a group of Germans in their language.”

A few days prior to departure on this big adventure, Brian completed year two of a three year series on PTSD for the National Association of Railroad Referees Annual Conference. This year, in his talk entitled: *P.T.S.D. in the Rail Industry – Treatment Approaches*, Brian discussed treatment approaches to PTSD with two of the Midwest's leading experts. Brian explains that there are a fair number of fatalities in rail operations in North America and the effects of these traumas can be far-reaching.

Finally, also shortly prior to departure, Brian sent off the latest edition of his Lexis Nexis book: *Servicemembers and Veterans Rights*. Brian is the co-general editor with his friend, Stacey Rae Simcox, and also co-wrote the chapter on Employment and Reemployment Rights.

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# MILESTONES *(Continued from Page 5)*



**Rosemary Townley** – addressed the various, specialized arbitration procedures used for sports-related disputes at the 2017 Annual Meeting of the College of Commercial Arbitrators in Minneapolis in October. In the panel forum entitled “*Sports and Arbitration: Ultimate Arbitrators*,” Rosemary discussed her experience as a non-injury grievance arbitrator pursuant to the collective bargaining agreement between the NFL and the NFL Players Association. The other panelists included the for-

mer Chief Legal Officer of the National Basketball Association, the General Counsel of the U.S. Doping Agency, and a member of the Court for Arbitration of Sports who deals with international Olympic disputes.



**Elizabeth C. Wesman** – spoke about cultural issues and arbitration at the Pacific NW Region Arbitrators’ Day in September. She led a roundtable discussion presenting updates from pertinent arbitration agencies such as the FMCS, AAA, Oregon ERB, and Washington PERC. **Luella Nelson** chaired the planning committee and presented the grand finale, a primer on Ethics in Labor Arbitration. 

## *Continuing Call for* **MILESTONES**

### **Honors? Publications? Exceptional activities - professional or otherwise?**

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

Please send your news to Mike Long by e-mail at [mlong@oakland.edu](mailto:mlong@oakland.edu) (preferred way). If you’re not on line, just mail it to:

Professor Michael P. Long  
Department of Organizational Leadership  
495-A Pawley Hall  
Oakland University, Rochester, MI 48309.  
Phone: (248) 375-9918

#### **PRESIDENT-ELECT**

One year term

**Edward B. Krinsky** (Madison, WI)

#### **VICE PRESIDENTS**

Second one year terms

**William A. Marcotte** (Toronto, ON)

**Elizabeth C. Wesman** (Camas, WA)

First one year terms

**William McKee** (Denton, TX)

**Alan A. Symonette** (Philadelphia, PA)

#### **BOARD OF GOVERNORS**

Three year terms

**Kathy L. Eisenmenger** (Denver, CO)

**Philip A. LaPorte** (Atlanta, GA)

**Randi E. Lowitt** (Far Hills, NJ)

**Daniel G. Zeiser** (Cleveland, OH)

## **2018-2019 SLATE ANNOUNCED**

Each of the candidates on left has agreed to serve if elected at the 2018 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 2018-2019 Nominating Committee: Ruben Armendariz, Amedeo Greco, Catherine Harris, Allen Ponak, Kathryn A. VanDagens, and Jeffrey B. Tener, Chair. Margaret R. Brogan, who was also appointed as a member of the Nominating Committee by President Miller as one of the two immediate past Presidents (in accordance with the 1991 Governance Report), recused herself from all Nominating Committee deliberations.

# UPDATE

*By Catherine Harris, REF President*

Epic hurricanes in the Caribbean may have caused cancellation of the Miami meeting, but these historic storms did not prevent the important work of the REF from going forward. As a result of an extremely well-attended telephonic board meeting, two new projects have been approved for funding.

The REF is very pleased to announce that it is providing financial support to researchers at Wayne State University to create and distribute two instructional videos as well as a companion study guide. One of the videos will portray an employment arbitration and the other video will portray an employment mediation. Both videos will be based on the same factual scenario. This project includes an aggressive marketing plan designed to make these materials available to a wide variety of professional advocates, university students, and members of the business community. All of the materials will acknowledge the contribution of the NAA Research and Education Fund.

Additionally, the REF directors have also approved a proposal by Daphne Taras, Piers Steel, and Allen Ponak to assess the work habits of arbitrators and their propensity to procrastinate. This research is being conducted using research assistants from the University of Toronto with administrative and technical support from the University of Saskatchewan. We look forward to a presentation of the results of this research at the 2018 annual meeting in Vancouver.

In other exciting news, the REF has launched an external marketing campaign chaired by Vice President Richard Fincher for the purpose of attracting more proposals. To that end, the external marketing committee, consisting of Sheila Mayberry, Susan Stewart, Mariann Schick, Linda Byars, and Jeanne Vohnhof, have created a list of targeted organizations and assigned an REF director to personally contact key individuals at each organization. In this way, we hope to be able to ensure effective circulation of our Notice of Funding Availability (NOFA). You may obtain a copy of the NOFA by printing a copy at the REF tab of the NAA website. The external marketing committee is also working on two other initiatives: encouraging student engagement through writing and advocacy competitions, and expanding our support for the development of labor arbitration across the globe, e.g., the REF-funded publication of a case digest for the Arbitration Council of Cambodia in 2016.

None of these efforts would be possible without the generosity of our donors. A traditional source of financial support for the REF is the ever-popular Silent Auction. Preparations are already underway for the next Silent Auction to be held at

the 2019 annual meeting in Philadelphia. As you are cleaning out your closets or downsizing, please keep in mind that one arbitrator's trash is another arbitrator's treasure. Before parting with any jewelry, art, or any other reasonably portable items of value, consider contacting members of the Silent Auction Committee (Sheila Mayberry, Mariann Schick and Linda Byars) to donate the item to the Silent Auction. In reflecting on what you may be able to contribute to this very enjoyable and worthwhile event, consider that the Silent Auction, together with regular giving by NAA members, is the lifeblood of the REF. Without your donations, we are unable to continue contributing to the study of labor and employment disputes and the training of persons engaged in dispute resolution. 🗑️

## NATIONAL LABOR CONFERENCE ON MARCH 8 AND 9, 2018

**The American Arbitration Association is sponsoring a National Labor Conference on March 8 and 9, 2018, in San Diego. Several members of the NAA are on the Planning Committee, and other NAA members are presenting during the conference. The final agenda has been established and is in circulation. Registration is now open. For more information, see [www.aaaau.org](http://www.aaaau.org) or contact John English of AAA at 619-239-3051.**

## Plan to Attend 2019 Annual Meeting May 29 – June 1, 2019



**Loews Philadelphia Hotel  
Philadelphia, PA**



# REGIONAL ROUNDUP

Reported by Kathy L. Eisenmenger  
National Coordinator of Regional Activities

The summer and fall of 2017 saw the Regions hold a bounty of conferences and get-togethers. Once again, each Region either hosted or participated in presentations to labor-management practitioners' annual social events. The Regions look forward to more professional happenings sure to break any cabin fever itches.

## CANADA REGION

The Canadian Region is planning a conference in Quebec City Between Thursday, August 2, 2018 through Sunday, August 5, 2018. NAA Members Randi Abramsky and Andre Rousseau will co-chair the meeting. We invite our American friends to consider joining the festivities. To complement all the learning, we promise amazing conviviality and a weekend away from your news cycle.

Regional Chair is Jules Bloch - [jbloch@simpatico.ca](mailto:jbloch@simpatico.ca)

## CENTRAL MIDWEST

Regional Chair is Jacalyn Zimmerman - [JacalynZimmerman@gmail.com](mailto:JacalynZimmerman@gmail.com)

## METROPOLITAN D.C.

The DC Region holds *ad hoc* Sunday morning breakfast meetings about every 2 months at Jake's American Grille, Connecticut and Nebraska Avenues, NW, Washington, DC.

Regional Chair is Sean Rogers - [rogerssj@erols.com](mailto:rogerssj@erols.com)

## METROPOLITAN NEW YORK

The Region has new officers: NAA Members Deborah Gaines, Chair; Robert Simmelkjaer, Vice Chair; and Ruth Moscovitch, Treasurer. This is the first new Treasurer the Region has had in almost 20 years. NAA Member Rose Jacobs recently stepped down from this role after more than 20 years of inspired service. The Region has had an outpouring of gratitude toward Rose Jacobs and hopes to honor her at its Spring Meeting.

Regional Chair is Debbie Gaines - [dgaines.nyc@gmail.com](mailto:dgaines.nyc@gmail.com)

## MICHIGAN

The Michigan Region held its Fall meeting at The Courthouse Grille, 41661 Plymouth Road, Plymouth, MI 48170 on Tuesday, October 10, 2017. John Runyon, Managing Partner at Sach Waldman in Detroit and Professor at Wayne State Law School was the featured speaker.

NAA Member and Regional Chair Charles Ammeson pub-

lished an article entitled "Arbitration Awards and the Public Policy Exception" for the NAA sponsored website. George Roumell received the Michigan Bar Association, ADR Section Distinguished Service Award at its October 13, 2017 meeting.

Regional Chair is Charles Ammeson - [cammeson@tplaw.com](mailto:cammeson@tplaw.com)

## MID-ATLANTIC

The Region held a meeting on October 2017 with NAA President Kathleen Miller as the Region's honored guest-speaker.

Regional Chair is Ralph Colflesh - [rafearb@comcast.net](mailto:rafearb@comcast.net)

## MISSOURI VALLEY

Regional Chair is George Fitzsimmons - [georgefitzsimmonsllc@hotmail.com](mailto:georgefitzsimmonsllc@hotmail.com)

## NEW ENGLAND

Regional Chair is Mary Ellen Shea - [arbitratormeshea@gmail.com](mailto:arbitratormeshea@gmail.com)

## NORTHERN CALIFORNIA

Regional Chair is Nancy Hutt - [nancyhutt@naarb.com](mailto:nancyhutt@naarb.com)

## OHIO-KENTUCKY

The Ohio-Kentucky Region will hold its regional conference jointly sponsored by the Region, the FMCS, and the Central Ohio LERA on Thursday, April 26 and Friday, April 27, 2018 at the Crowne Plaza Columbus North hotel. Members are welcome.

Regional Chair is Charles (Chip) Kohler - [kohlerlaw@aol.com](mailto:kohlerlaw@aol.com)

## PACIFIC NORTHWEST

Region 17 held its annual Arbitrators Day CLE Conference in Portland, OR on September 11, 2017, preceded by the Portland (Oregon) LERA's annual conference. NAA Member Luella Nelson chaired the events for the Region's Conference in beautiful Portland at that fantastic time of the year.

Regional Chair is David Gaba - [davegaba@compasslegal.com](mailto:davegaba@compasslegal.com)

## SOUTHEAST

The NAA Southeast Region's annual regional meeting will be held in Atlanta, Georgia, on February 23 and 24, 2018. Stay tuned for more information about the agenda coming shortly.

Regional Chair is Phil LaPorte - [plaporte@gsu.edu](mailto:plaporte@gsu.edu)

## SOUTHERN CALIFORNIA

Regional Chair is Robert Bergeson - [robertbergeson@earthlink.net](mailto:robertbergeson@earthlink.net)

(Continued on Next Page)



# L R F

## A CAUTIONARY TALE AND IMPORTANT INFORMATION

*By Sara Adler*

As LRF Coordinator, I recently received a telephone call from a member telling me that very soon after her Award issued the Grievant called and left a message that he wanted her entire copy of the record and her notes. Being a smart and ethical person, she knew that after that phone call she should not destroy anything. I advised that she make no response and wait to see if a proper subpoena would be forthcoming. In due course it was and in this conversation I advised her to notify her insurance carrier and get an attorney. The most concerning part of the subpoena was for her notes and I assume that the judge quashed at least that request, but there are judges out there who are not friendly to arbitration and/or are skeptical of arbitrator immunity. LRF reimbursement has been approved, but wouldn't it be nice to be able to truthfully say that you have nothing in your file.

When I asked why she still had the record and notes, she said that it had always been her practice to keep the file complete until she got paid. I suspect this is a common (but, in my view, deplorable!) practice. By all means keep a copy of your billing, but properly dispose of everything else the minute the Award is sent to avoid just this problem. Even if you have retained jurisdiction over the remedy, there is absolutely nothing to be gained from keeping the record. At the rare very worst, the parties can be asked to reconstruct evidence related to the remedy – and usually such evidence is not part of the record on the merits.

### REMEMBER

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


The Coordinators for 2017-18 are:

Sara Adler, Coordinator • 310-474-5170; [sadlerarb@earthlink.net](mailto:sadlerarb@earthlink.net)

Luella Nelson, Assistant Coordinator • 503-281-8343; [luella.nelson@SBCGlobal.net](mailto:luella.nelson@SBCGlobal.net)

Barbara Deinhardt, Assistant Coordinator • 718-237-8693; [bdeinhardt@aol.com](mailto:bdeinhardt@aol.com)

The LRF is not insurance. It is a fund for the protection of labor-management neutral work, including arbitration, mediation and fact-finding, designed to help with legal fees. The insurance many of our (most prudent) members carry covers a range of neutral activity, but not all unless you also purchase additional riders or endorsements, such as ERISA. To get the most complete information contact our broker, Complete Equity Markets, Inc. Our main contact person is Kaitlyn Hassall, who can be most efficiently reached at [khassall@cemins.com](mailto:khassall@cemins.com) or 847-777-7416. Neutral's insurance is also available from other companies.

Please note, the maximum reimbursement from the LRF is \$4,000 and most members carry a policy with a \$4,000 deductible. If you choose, you can get a higher deductible with a somewhat lower premium, but the extra deductible will not be reimbursed by the LRF. The CEM insurance covers non-union related neutral work, but LRF does not. 

## REGIONAL ROUNDUP *(Continued from Page 8)*

### **SOUTHWEST ROCKIES**

The Region will hold its 41st Annual Labor-Management Conference on February 15-17, 2018 at the Double Tree Hotel, Houston Hobby Airport (HOU), Houston, TX. The Region will hold its traditional, separate all-day sessions for experienced and new arbitrators and training for arbitration advocates. The 2018 conference is dedicated to our beloved long-term NAA Member and Past Chair, Raymond Britton, who actively served in the NAA for 50+ years. The Region promises a stellar variety of topics primarily focusing on current

developments in collective bargaining. More information may be obtained in the future on the Region's website at [www.naaswr.org](http://www.naaswr.org).

Regional Chair is Kathy Eisenmenger -  
[kleisenmenger@gmail.com](mailto:kleisenmenger@gmail.com)

### **WESTERN PENNSYLVANIA**

Regional Chair is Michelle Miller-Kotula -  
[millerkotula@comcast.net](mailto:millerkotula@comcast.net) 

# The Bloch Committee

*By Richard Bloch*

My choice for this committee's name would have been "The Seward Committee," after Ralph Seward, one of the Academy's founders, its first – and only two term – President, and a thoughtful, brilliant man who would have been deeply concerned by a certain lethargy that lately characterizes our semiannual meetings. Ralph Seward would have lamented the drop in participation by the member and guest contingents that have, for the life of this Academy, been so central to its existence.

As originally conceived, and as represented in its "credo," the Academy was formed to further the goals of dispute resolution in the labor-management relations arena. To this end, annual meetings were planned with the intended goal of sharing the best thinking available on this unique, private dispute settlement mechanism, one premised on the remarkable notion of adversaries litigating in their own private forum with the understanding that (unlike most courtroom contexts) the ultimate goal is to resolve their issues in order to maintain a continuing relationship. Moreover, their chosen neutrals were people regarded by the parties as sufficiently versed in industrial practices to render binding decisions on a given question. This was heady and important stuff and, in the early decades of the Academy's existence, it provided material for thinking, writing, and speaking about the form and substance of arbitration as a profession. The Academy welcomed its guests as an integral part of the learning process for both groups.


Annual meetings, in the early years, were heavily attended by members and guests, including a wide variety of companies and unions. Panels composed of a mixture of advocates and neutrals would ponder then new questions such as the contractual implications of Past Practice or the Impact of Public Law on Private Contract. These and many other topics desperately needed careful scrutiny to construct a literature of the craft and guide practitioners to a shared understanding of common precepts.

Many things have changed, as is often the case, the lessons, however profound, have been learned. Arbitration as a tool and, indeed, as a profession, is now well accepted. Now, program committees engage in feverish head-scratching as to

how, precisely, to tell the folks something they don't already know. Union and corporate budgets can less frequently justify trips to the Annual Meeting, not solely due to travel costs, but also because the breadth and depth of arbitration as a practice and an institution is pretty well understood by all.

The predictable result of this trend is an increasing reluctance on the part of all concerned to make the type of monetary and time commitments that were, years ago, readily accepted. The attendance records bear witness to this. In preparing this column, I chose 1973 – the year I joined – to compare figures against this past year's Annual Meeting. In 1973, there were 171 members and 622 guests. In Chicago this year, the member attendance was surprisingly strong and, indeed, remarkably similar – 171. But there were only 67 guests. Moreover, our Members-only FEC that was scheduled but canceled due to the hurricane would have lost money because we could not have met our minimum hotel commitment.

Our Committee needs your input and your thoughts. The charter of the Bloch Committee is to suggest available options and, in so doing, help our Board of Governors to chart a course that is both responsive to the needs of the membership and to the profession. Without attempting to over-dramatize the matter, this is an urgent endeavor. Even with plans in hand, the nature of future arrangements and commitments will forestall many potential changes until 2020. Our goal is to issue our report to the Board, consisting of a submission and analysis of various options, at the Vancouver meeting in May 2018. Members have already been in contact with us, and we welcome any and all suggestions. Additionally, during December, we will be sending out a survey aimed at soliciting your reactions to various aspects of Academy functions and operations. For many of us, the NAA has served as an important adjunct of both our professional and personal lives. Please give some serious thought to the survey. Please return it to us to enable this Committee to review and construct meaningful and viable paths toward ensuring this Academy's continuing vitality.

**[Editor's note:** *The survey was sent out on December 15th and should be returned by January 15th. If you have not already completed and returned it, please do so.*] 

## IN MEMORIAM

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

**William M. Weinberg**  
NAA Member since 1979

A Remembrance will appear  
in a future *Chronicle*.




interest the increasing attention to underlying fundamentals that have been percolating in full view since the 1980s; that such behavior is an expression of power rather than sexual attraction; and that delayed reporting often is attributable to the involved power imbalance. I am pensive as I anticipate the kinds of cases and issues that may start trickling down into arbitration sooner rather than later.

Even more noteworthy, in my book, is the fundamental transformation in the way a substantial segment of our culture now processes information. Critical thinking seems to have gone missing, and with it sound judgments. Creeping anti-intellectualism has served to turn many of our historical norms on their heads. Respect for knowledge, articulate expression, and thoughtfulness has been sacrificed to unabashed fervor for “telling it like it is” — regardless of what “it” happens to be. Disregard of facts morphed into

disdain for facts, and now here we sit facing somewhat widespread denial that facts even exist. I have tried to imagine a long-term healthy future for our culture in the absence of the common acknowledgement of the inherent differences between fact, opinion, and emotion, and that is beyond me.

The good news for me, however, is that none of these developments has shaken my abiding faith in our process in the event we begin to encounter some of the extreme behaviors described above in arbitration. Clearly, the number of people who are willing to degrade the way we process information has had a dramatic effect in the public square. But I have worked as a labor arbitrator for long enough to have confidence that the vast majority of my fellow participants come from the sunny side of the divide. This includes the women and men who comprise the many workforces I have come to know so well, and it includes the parties and

their representatives and advocates. Those colleagues are adept at arguing an evidentiary record to their own advantage, but they also know how to engage in zealous advocacy with professionalism and intellectual honesty. That means in accordance with established substantive and procedural standards, as well as accepted standards of civility. And it means without blurring the distinctions between fact, opinion, and emotion.

In short, I expect that, as usual, at least some of what has reared its head out there will trickle down into our arbitration practices, including a possible uptick in cases involving unusual or extreme facts. Until our broader culture regains its bearings, though, I fully expect that the principles and values that have defined our process for so long will serve as the port in the storm. At least that is the way it looks from this Corner. 

## WHAT WOULD YOU DO?

*By James S. Cooper*

This is a two part article about an incident that has followed me (and troubled me) for many years. In this part I will explain what happened and in the next article I will report on the results, which will include your feedback as to what you would have done. Your only obligation is explain what you would have done in an e-mail to the address listed below.

The case was straight forward, as follows: I showed up at the hearing for a case involving the Utility Workers (Workers) and an Electric Power Company (Company). When I arrived, everyone was seated at a long narrow table with the respective parties on each side. I took my seat at the head of the table and the case began without much ado. The Company has a number of small substations on Cape Cod, all consisting of an enclosed small building for transformers, surrounded by a chain link fence and a small plot of grass. During the immediately prior summer months, the Company's managers hired their kids to mow the lawn in these substations. The Union grieved claiming that mowing was bargaining unit work. These were the facts and nothing more.

I went home and started to write the opinion and noticed that the grievance and arbitration clause of the Agreement specified a tripartite panel, but there was no mention of any union or management panel members during the hearing. I assumed that the parties must have agreed that, given the nature of the case, one was not necessary and therefore mutually waived this provision. I issued an award to the par-

ties sustaining the grievance as a violation of the Agreement's recognition clause for contracting out bargaining unit work. No sooner was the ink dry than I got a telephone call from the Company that the decision required a second vote on a tripartite panel. I explained that there was never any indication that the parties appointed other members of the panel. The Company and the Union agreed that a tripartite panel was necessary and that I should meet with the parties again.

I showed up and the Company's attorney and one long-time manager and the Union's attorney and long-time business agent were simply sitting around a table chitchatting about how this was a “chicken shit grievance” and that they had hired some of the union members' kids to mow, too. And so the banter went on for a short while when the Union's business agent told the Union's attorney, “Just give it to them. We don't need this work.” So the Union attorney told me, “Look we want this case to be for the Company.” I responded that was fine with me, withdraw the grievance and I will take my award home and shred it. “No,” the Union attorney said, “we want an award.” I said that's fine, I will dissent and the other two members of the panel, whoever they are, can deny the grievance. The Union said “No, we want you to write a majority opinion denying the grievance and the Union member of the panel will dissent.”

What would you do?

James S. Cooper

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# THE PRESIDENT'S CORNER



*By Kathleen Miller*

The cancellation of the 2017 FEC in Miami was unavoidable, but there were many reasons for regret. For me, a primary one was that the fruits of months of dedicated efforts by Barry Winograd and the Program Committee, and Bob Moberly and the Host Committee would not be enjoyed in Miami. Every single committee member made a significant contribution, and I thank them all: Program — Barry Winograd, Claude Dawson Ames, Jules Bloch, Jack Clarke, Lise Gelernter, Ed Harrick, Ira Lobel, Bill McKee, Dennis Nolan, Susan Grody Ruben, Harold Smith, and Jeanne Charles Wood; Host — Bob Moberly, Linda Byars, Fred Dichter, Paula Knopf, Mark Lurie, Bill McKee, Marty Soll, Jeanne Charles Wood, and Walt De Treux and David Petersen *Ex Officio*.

I hope to see many of you in Vancouver, where we all will reap the benefits of the hard work and creativity of Program Chair Betsy Wesman and Host Chair Randi Abramsky and their committees. I also am excited to announce that this year the Advocates Training occurring the day before our meeting begins will be presented by Lancaster House, a training powerhouse throughout Canada. The NAA is very grateful to Susan Stewart, who arranged and is managing this partnership, which includes a commitment by Lancaster House to include publicity about our annual meeting in Vancouver in its promotional materials for its many other training programs. Thanks also is due to our Chair of the Advocacy Continuing Education Sub-Committee of the Program Committee, Michelle Miller-Kotula, who has agreed to assist Susan in any way she can.



“May you live in interesting times.” The irony of this blessing, of course, is the implication that “interesting” connotes disorder and conflict rather than anything blessed like peace or tranquility. To comment on all the reasons why the current historical moment is “interesting” would violate the unspoken understanding that we do not discuss politics in the Academy. So, although I do have “trickle down” on my mind, it is not of that old, familiar, illusory sort. It is the kind that occurs because the workplace is a microcosm of the broader culture. As events unfold and developments gain prominence in the culture at large, a multitude of associated issues inevitably trickles down into the cases we hear and decide in arbitration.

I am sure we all recall the periods when the numbers of cases involving drugs, harassment, and violence proliferated rapidly as a result of high-profile related events in the culture

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at large. Parties struggled to develop responsive policies and programs, often ultimately agreeing to disagree. We, in turn, struggled to fashion standards that would accord with developing judicial law and, in time, would establish the relevant law of the shop. We have applied every iteration of evolving drug standards: under the influence, impairment, and system presence. We have addressed the “I was only joking” defense numerous times on our way to establishing the objective standard, as applied from the vantage point of the person on the receiving end of a racist, sexist, or threatening comment. And how many “Zero Tolerance” policies have we interpreted and applied on the way to establishing that the just cause analysis will survive unless and until parties remove the just cause provision from their contract?

Then along came social media, a virtual explosion into every nook and cranny of our culture, including the workplace. Thus far, it has been nearly impossible for judicial law — and the law of the shop — to keep pace with the ramifications involving both on-duty and off-duty misconduct. Brand new facts and issues continue to sprout like weeds from lightning-quick technological advancement. The only constant is the backdrop — old-fashioned human complexity.

Most striking to me, though, are recent cultural transformations that are so dramatic as to have landed me in the unprecedented position of feeling like a stranger in a strange land. Traditionally respected behaviors like restraint and civility have been vilified through their rebranding as “political correctness” or elitism. Despite substantial resistance, this transformation has served to unleash a range of behaviors that for many years had been confined primarily to the shadows. Beyond merely boorish behavior, emboldened voices increasingly are filling the public square with racist, misogynistic, homophobic, Islamophobic, and xenophobic speech. On top of that, the current daily news brings a tsunami of sexual harassment reports coming straight from the workplace. Beyond the sheer numbers, I have noted with

*(Continued on Page 11)*