



# The Chronicle

Spring 2020

## 2020 Annual Meeting & Education Conference (Rescheduled)

October 9-11, 2020  
Golden Nugget  
Atlantic City, NJ

October 9-11, 2020  
Golden Nugget  
Atlantic City

**SAVE THE DATE**

National Academy of Arbitrators  
Annual Meeting & Education Conference  
www.naarb.org

## MARK YOUR CALENDARS

### 2021 Annual Meeting & Education Conference

April 21 - 24, 2021  
Marina del Rey Marriott  
Marina del Rey, CA

### 2022 Annual Meeting & Education Conference

May 11 - 14, 2022  
Fairmont Royal York  
Toronto, ON

## ON THE INSIDE

### Features:

Arnold Zack .....	1
REF .....	15
Life After Arbitration .....	22

### Columns:

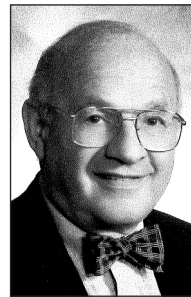
Remembrances .....	19
25 & 40 Year Members .....	24
Slate Bios .....	25

## PRESIDENT'S CORNER

— BACK COVER

## The Legend of Arnold Zack

How do we honor a legend? Arnold has done so much for us as colleagues, friends and workers around the globe, that the best we can do is simply set forth many of ways in



Arnold Zack

which he has helped to promote equitable working conditions, whether it is through arbitrating union/management disputes, through mediating between employers and unions or teaching the applicable principles of fair employment practices to those who participate in these activities. This may be a simple refresher course for those of us who have known Arnold for decades, but there are many in the Academy who do not know Arnold or the full extent of his accomplishments. Arnold has been a consistent participant in the NAA's activities to such an extent that we overlook or are simply unaware of his extensive activities outside the auspices of the NAA. This article is for them to learn and the next time they see him at an NAA meeting, approach him and shake the hand of someone who has done so many amazing things around the world for enhancing the legitimate and fair rights of employees while pro-

tecting the productivity of employers. In a word, he is a capitalist with a compassion for employee fairness.

Arnold, at 88, remains a powerhouse of energy with unbounded enthusiasm for promoting the work he has done for over sixty years. We should create a 60 year pin, just in his honor. First, I urge you to read the brief excerpt of Jim Oldham's Presidential Interview of Arnold. This interview amounted to no heavy lifting for Jim, instead it is a quintessential Arnold monologue. The rest of my role here is to present in succinct form as possible the contents of Arnold's self-published memoir, "Arnold Zack from A to Z" [Lulu, 2007] (available from Amazon, used for \$4.99), and to update this two decade old tale.


I have also gathered tales from two of Arnold's mentees, NAA members John Van Dorr, III and Bruce Fraser; these follow the Presidential interview. Following those tributes, I have attached NAA member Jeff Tener's brief recounting of the start of his road to the NAA by way of the Peace Corp in Ethiopia working with Arnold, followed by Michael Stutz's memories of Arnold on Martha's Vineyard with an Ethiopian connection to boot. Professor Tom Kochan, an early convert to Arnold's pitch for worker inclusivity (and Bob McKersie's – see Arnold's review of Bob's recent book, A Field in Flux in the previous issue of The Chronicle) included his tribute to Arnold's efforts at attempting to garner worker participation. I have NAA member Marcia Greenbaum's take on what happened when she took Arnold's place in former NAA President Saul Wallen's arbitration practice.

*(Continued on Page 3)*

## EDITOR'S NOTE

By James S. Cooper, Managing Editor

As I hustled to get all the articles for the spring edition of the Chronicle written, edited and submitted so that this edition could be printed and delivered well before the Denver conference, the corona virus hit and put an end to the Annual Meeting. We slammed on the brakes and quickly revamped the issue so that our new reality could be recognized. It was then that I realized, once again, how important The Chronicle is for our organization. Without the Annual Meeting and with the Fall Education Conference abandoned, there are precious few ways for our members to connect with each other. Surely the unofficial mail list overseen by the web guru Doug Collins is an important mechanism (ask John Sands about how many well wishes he received before and after undergoing recent surgery), but the email list can be hit or miss and if you do not get in at the beginning of a discussion, forget it, it will take you quite a while to ante up.

On the other hand The Chronicle should present you with the current goings on in the Academy and provide educational content on the programs presented and some entertaining and interesting articles about members. For many years when I served as a stringer, I assumed no one read the damn thing, but I was wrong. Plenty of people read it cover to cover since it is particularly appropriate for bathroom reading where very important things are always read. Now, more than ever, The Chronicle is the only instrument (other than Walt's dictatorial bulletins) sent to all members. My point is that we need active participation to keep The Chronicle alive, well and worthwhile. If you want to participate, please send me an idea or an article or something worth sharing. I will edit it and publish it. Please include pictures. I love pictures. Jim 

## 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](mailto: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](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. 

# The Chronicle

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# THE LEGEND OF ARNOLD ZACK *(Continued from Page 1)*

NAA member Chris Albertyn provides a thumbnail description of Arnold's work in South Africa and his brave commitment to the Coalition of South African Trade Unions as well as recommending lifelong changes for Chris and his family. Next, Brian Bloch describes Arnold's creation of the Hare Krishna conflict resolution policy and its effect on the world-wide religion. I have a brief story from Justice Yuji Iwasawa of the International Court of Justice who served as a judge with Arnold for nine years on the Administrative Tribunal of the Asian Development bank. Last but not least, I have included the inimical comedian and magician, NAA Member Richard Bloch's letter to his co-conspirator and inspirational friend. This article barely skims the surface of what can only be characterized as Arnold's whirlwind approach to life and work.

Arnold's career stems in large part from the work his father performed as a young attorney. His father died at a very young age and Arnold has lived a life committed to fulfilling his father's goals as one of the drafters of the Wagner-Connery Act, familiarly known to us as the National Labor Relations Act. I do not have to recount Arnold's youth; he has already done that in the Presidential Interview. (I should extend a word of

thanks to the NAA History Committee – namely Nancy Kauffman- who arranges for each NAA President to engage in an exit interview which is kept on line and is always available to all.)

Arnold graduated from Tufts while working selling shoes in downtown Boston. He did well enough not to sell shoes but to get into Yale Law School where he came under tutelage of Dean Harry Shulman who was then the permanent umpire for Ford Motor Company and the United Auto Workers and a member of the NAA. Arnold gravitated to arbitration very early primarily because he considered the shortcomings of spending a life representing either unions or management, but admired the process of resolving differences and doing so in way which protected workers. Arnold worked as a research assistant for Dean Shulman whose Holmes Speech at Harvard Law School "Reason, Contract and Law in Labor Arbitration" was later turned into a seminal Harvard Law Review. After Dean Shulman's unfortunate death in 1955, Arnold organized a memorial conference to honor him the following year.

While Harry Shulman enticed Arnold into the field of arbitration, Saul Wallen adopted him and taught him how to make a living (not that Saul actually paid



**With Beyene Soloman, President of Ethiopian Trade Union Congress (on left) and Dr. Seyum Gebrezabier, President of Ethiopian Federation of Employers.**

Arnold very much) in an industry where concepts of fairness and contractual rights and responsibilities take precedent. Wallen assigned Arnold to sit in on the course on arbitration Saul was teaching at the Trade Union Program at Harvard. After Wallen, the course was taught by late NAA member James Healy who eventually turned the course over to Arnold. Arnold has taught it for the last 35 years and the course is now part of the Labor and Worklife Program at Harvard Law School.

Saul Wallen also taught Arnold to ignore the criticism of those who would fire you for disagreeing with them and just be true to yourself. Saul provided a platform for Arnold and more importantly helped (at least Arnold believes that to be true) him get on to the AAA's arbitration panel when such was considered the exclusive club of War Labor Board fraternity. Saul introduced Arnold to the NAA who admitted him at age 30, an unheard of accomplishment in 1962. Saul encouraged Arnold to attend the World Youth Festival in Vienna in the summer of 1959 and this led Arnold to an almost incredible career working for the CIA, first without realizing it and eventually to work for the agency as it developed pro-Western (read it as anti-communist) labor union training programs throughout Africa.



**Arnold building house on Martha's Vineyard**

*(Continued on Page 4)*

# THE LEGEND OF ARNOLD ZACK *(Continued from Page 3)*

Arnold was in the Congo the day the Congo became an independent country and his stories of what happened are harrowing, including his being drafted by the UNICEF Director Maurice Pate to set up a food distribution network in the Congo interior. Arnold was also present on the day Kenya declared independence. Arnold's story is less harrowing, but just as fascinating, If you read Arnold's A to Z you better have a map of Africa nearby. But this early career service set Arnold up for years later work in South Africa spending 20 years commuting there on programs of USASID, State Department, Ford Foundation and employers eager to replicate our labor management arbitration system.

Interspersed with teaching labor relations, mediation and arbitration in Africa, and getting an MPA at what became the Kennedy School of Government, Arnold followed President John F. Kennedy's call in December 1960 to come help establish the Peace Corp. Arnold ended up as Special Assistant to Sergeant Shriver in Washington, D.C. trying in 1961 (as George Nicolau did later) to recruit building trades workers to join the Peace Corp. Jeff Tener explains more in his article about his service as a Peace Corps Volunteer.

Arnold returned to work with Saul Wallen only to find that Marcia Greenbaum had taken his place and her fond memory of Arnold's travel routine is set forth in her tribute to Arnold. When Saul moved on to head the Urban Coalition in New York City, he urged his clients, including the B.F. Goodrich Tire Company and the United Rubber Workers Union to use Arnold as their umpire.

Arnold met Norma when he was late in his thirties and she sort of slowed him down and brought some domesticity to his career. His capturing Norma was due in large measure, he admits, to his having built a house on Martha's Vineyard (on land found by Saul Wallen). Arnold has retreated to his Martha's Vineyard enclave every summer since 1964, a trait he also inherited from Saul Wallen. Mike Stutz gives you a small slice of the picture of what Arnold did on the Vineyard but you have to read Arnold's career as a gardener (he won the Mildred Spaulding Award for best jams in Dukes County with an Oak Leaf Cluster for pickled vegetables) in A to Z to see how much Arnold has enjoyed the challenges there as well as his artistic talents painting bucolic scenes on the island some of which adorn the hearing rooms at the AAA offices in Boston.

Arnold's work for the NAA has also been unceasing and up until the recent Philadelphia meeting (he got stranded due to weather), he has made every single annual meeting since 1957, including flying in from Addis Ababa and Capetown. Arnold served as the editor of predecessor to the NAA's Chronicle when it was run off on mimeo sheets. He was head of the education committee which ended up being institutionalized as the Fall Education Conference until its demise this



**NAA's South African mission: Left to right Nick Zumas, Arnold Zack, Roberta Golick, Calvin Sharpe, George Nicolau, Susan Brown, Jim Harkless, Reginal Alleyne**

year. Arnold has served in so many capacities for the NAA, including President, Chairs of the Education Committee, Program Committee, New Members Committee (before it was born as such and in fact it was created through his efforts), Editor of The Chronicle (as mentioned above, he mimeographed the early editions... largely on Harvard's mimeograph machines). He served as one of the liaisons with the AAA and FMCS in creating the Joint Rules of Ethics applicable to our profession. Arnold foresaw the dangerous rise of employer imposed arbitration practices and screamed his opposition so loud and clear that I believe his draft of the Protocols for arbitrating under an employer's unilaterally imposed grievance arbitration were accepted by the AAA and FMCS just to shut Arnold up. That was a first class coup de grace.

Post the completion of A to Z, Arnold turned his sights on the Asian continent. The late NAA member Nick Zumas (pictured in the last edition of the Chronicle dancing with Helen Witt) recommended Arnold to the International Monetary Fund where he chaired a committee creating the International Monetary Fund's Dispute Resolution System. This led to Arnold's service as the Western Hemisphere as a Judge (and later as Tribunal President) for the Asian Development Bank rendering final and binding decisions affecting the Bank's 3500 staff members. Arnold's colleague on the Asian Development Bank Tribunal, Yuji Iwasawa, recounts his time on the tribunal with Arnold.

Enough of my rendition of this legend. Please read the comments of all those who participated in this exercise to honor a singularly remarkable man and career. 🗡️

*James S. Cooper*

REFLECTIONS OF  
*Arnold Zack*

# Arnold Zack

## REFLECTIONS

By Bruce Fraser

In the Winter of 1979, Arnold and I patrolled the streets of the South End as a part of the neighborhood watch. One evening a week I heard about the field of Labor Arbitration and he heard about Linguistics. When he asked if I would be willing to address the National Academy of Arbitrators the following June on the topic of The Role of Language in Arbitration, I agreed. I then spent the next few months reading about arbitration and attending a few hearings.

At the presentation in L.A., members came up to me asking how my arbitration career was going. I replied, "As well as I could expect," not acknowledging that this was not an anticipated move on my part. When we came back to Boston, I asked Arnold whether I could become an arbitrator. He replied yes, and offered to take me on as an apprentice.

Thus began a now 40 year association with one of the finest teachers I have ever experienced. Arnold would give me articles to read, and then ask me about the details in a conversation, but at times with a thoroughness that took his time and encouraged me to

read more carefully the next article. I went to a dozen or so hearings with Arnold, taking detailed notes, but always sitting to the side, and never interrupting. Then to home where I would take the notes and draft an award.

Some days later, after I had submitted the draft to Arnold, he would critique it. It was always much too long, too detailed where the facts were irrelevant, and not direct enough at the critical points, and too much of my personal opinion. Back to the drawing board. After I submitted a new draft, we usually talked about his Award, comparing the ways we were different or the same. I found this incredibly useful. I don't recall ever convincing him that my way was preferable. I always remember what I took to be his manta: Be Brief.

After several months of going with Arnold to hearings, and a couple of law school courses, I emerged as a fledging arbitrator, writing up each award, then giving it to Arnold to read and to comment on, which he did each time. When we met, he usually didn't say something was incorrect or misplaced,

but would ask whether this or that might be better stated. He just asked, never insisted. And he was always patient.

Each award was my responsibility; he was a critic, not a co-author. As I progressed, Arnold would mention a conference or suggest to the organizers that I might be a relevant speaker. When other arbitrators came to town, he would invite me over. At meetings, I was always welcome to go with him to meet and listen to other arbitrators. There was no sense of a caste system. One arbitrator who Arnold introduced me to was Marcia Greenbaum, who also became a teacher to me.

Over the years Arnold and I have kept in close contact, although living 25 miles away now has made personal contact problematic. Yet each time I called him about some point I didn't understand, an idea I didn't feel comfortable with, or some disagreement between the parties that I had to resolve, Arnold was always there. Never impatient, and he would spend as much time as the issue required.

**MORE REFLECTIONS** on Page 6



With Ethiopian Emperor Haile Selassie



With Rich Bloch writing their book

# Arnold Zack ■ R E F L E C T I O N S

By Chris Albertyn

My first meeting with Arnold was in 1987.

On the initiative of the USAID, the first group of labour-management arbitrators in South Africa was superbly trained by Rich Bloch in 1986. I was in that group. It inspired us all to want to become arbitrators. At the time, like many of those who attended the training, I was a union-side lawyer, representing the Coalition of South African Unions (“COSATU”).

Soon afterwards, I was invited to the US under USAID’s International Visitors’ Program. It was a marvellous opportunity. I asked to accompany a US arbitrator to get some sense of the world of arbitration in practice. Arnold was giving a training course in New Orleans. I flew down from Washington upon my arrival in the US and attended Arnold’s course. Then he was arbitrating in Boston. I went to his hearing. We spoke, also of my plans for the future. He had some ideas for me back in South Africa and we arranged to meet to discuss them. I spent much of my last week with Arnold in Martha’s Vineyard formulating a funding proposal for an initiative in South Africa.

The proposal we conjured was of a centre to jointly train union and management representatives in dispute

resolution, particularly arbitration; to host an annual labour law conference; and to have monthly confidential union-management discussions on issues of pressing importance. I took the proposal to NY where I met with the Ford Foundation. On the strength of the proposal, at that brief meeting, the Ford Foundation agreed to contribute \$2m to the project, a lot of money then, particularly when converted to South African Rands, sufficient to sustain the centre for 3 years.

My trajectory in life changed fundamentally from this meeting with Arnold. Instead of continuing as a union lawyer with a slowly expanding arbitration practice, I returned to South Africa to discuss with my law partners my leaving the practice, at least for a time to get the initiative going.

I approached the Law School at Natal University in Durban and persuaded them to adopt the Centre. Arnold became one of the Centre’s trustees. After negotiating a sabbatical from my law firm, I became the first Director of the Centre for Socio-Legal Studies. All of Arnold’s and my plans were implemented. The Labour Law conference continues to this day, now hosted by the South African Society of Labour Lawyers (SASLAW), an annual meeting of Labour Court

judges, CCMA Commissioners, labour lawyers, union and management representatives and academics. The confidential monthly meetings were highly successful, enabling key union and employer leaders in Durban to meet and discuss issues confidentially, without encumbrances, during a time of very great industrial and political conflict. These discussions created the conditions for cooperation that had been lacking. The training also worked well.

Arnold was the brains and originator of the ideas of the centre. It was a wonderful bi-partite initiative that I believe was much appreciated by the leading trade unionists and employers in Durban, and across South Africa.

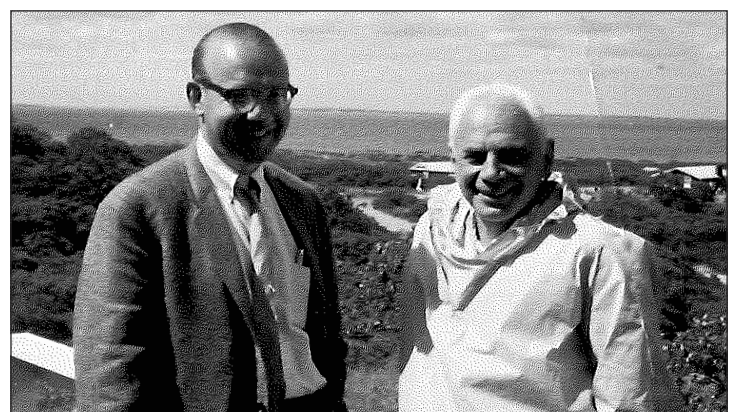
I stayed with the Centre for two years before going back into practice, though then no longer as a labour lawyer, but as a full-time arbitrator.

In 1988 Arnold was asked by the US government to investigate whether Mangosuthu Buthelezi’s Inkatha movement was a group worth backing. Although Buthelezi’s movement was ostensibly opposed to the apartheid government, it was also in conflict at the time with the COSATU unions, which were associated with

**MORE REFLECTIONS** on Next Page



Norma and Arnold with President Obama on Martha’s Vineyard, 2016



With Saul Wallen on Martha’s Vineyard

**CHRIS ALBERTYN** CONTINUED

the socialist opposition to the government. During the Cold War, and particularly under the Reagan administration, the US was generally reluctant to back socialist opposition movements and sought more to promote a tamer middle group, which is what Buthelezi's Inkatha movement represented. The local US consulate had become cozy with Buthelezi and they had been suggesting that he should be supported as the liberation alternative to the ANC and the socialists within South Africa. Arnold came out and we spoke at length of these issues. I put him in touch with a number of the COSATU union leaders so that he could get their perspective.

Arnold concluded in his report that it would be an error for the US government to back Buthelezi and Inkatha. This was an important conclusion because it meant that the US government ceased to promote Inkatha because, as Arnold had explained, it had little support among the workers and was seen as allied with the SA government. As a result of Arnold's report, the US government

became more amenable to working with COSATU and recognizing that COSATU and the UDF (the political movement within South Africa closely allied with COSATU) and with the exiled ANC (then an unlawful organization) had the principal role to play in representing the masses in South Africa. Arnold's report was important in opening the US government's thinking to the idea that the apparently pro-US grouping, Buthelezi's Inkatha party, should not be supported and that rather the apparently socialist movement should not be opposed, but should be treated with respect and dealt with. This represented an important shift in typical US foreign policy at that time. It also later made possible easier relations with Nelson Mandela and the ANC when they came to power.

During that investigative visit to Durban, Arnold met my spouse, Debra, and our family. Debra shared with Arnold her desire to emigrate to Canada because of the violence that had become so prevalent, of her anxiety living in such uncertainty, particu-

larly after the murder, in an attempted robbery, of our next-door neighbour. I was wholly against emigrating, feeling part of many progressive initiatives, among them, work at the Centre. Arnold gave me some sage advice to think carefully about what Debra was saying. It took me several more years to appreciate that advice and to eventually consent to making the effort to emigrate.

Once that decision was made, many years later, on arrival in Canada I turned to Arnold to give me what assistance he could in my settling into Toronto. He wrote to the NAA members he knew well working from Toronto. They were almost without exception so graciously kind to me in letting me to learn about arbitration in Ontario, and in guiding me as I found my feet in Canada.

So, it's fair to say that Arnold has had a very profound influence on my life and my trajectories. I am most indebted to him and greatly appreciate the kindness he has shown me.

**MORE REFLECTIONS** on Page 8



General Dynamics Exhibit

By Jeff Tener

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## My Friend and Mentor

Arnold has been a hugely significant influence on my life and I am forever grateful. We met in Ethiopia in 1963 when I was a new Peace Corps Volunteer (PCV) and Arnold was a Visiting Fulbright Professor at Haile Selassie University in Addis Ababa.

We were introduced at an introductory event for people who were assigned to work at the University which was just then opening its law school and business school. I had been assigned with two other PCVs to Harrar, a city in the east of Ethiopia to set up a university extension division of Haile Selassie University for the benefit of the military officers. It was slow in getting off the ground so I came back to Addis. I ran into Arnold who was just starting to work on a high-level manpower survey for Ethiopia in accordance with International Labor Organization standards. He asked me if I would be interested in working on this with him. It was to involve traveling around the Empire and interviewing people in the cities and determining the number of people working in various professional capacities and trying to project the needs for professional employees to fulfill the country's development plans in the years ahead.

I was interested not only in the project but I had been impressed by Arnold on first meeting him and wanted to work with him so I jumped at the opportunity and Arnold arranged for my transfer to the University in Addis from Harrar which was not easy to do, but Arnold, in his usual "Zackian" way, made it happen.

Arnold and I worked together the rest of the year. He arranged for me to get business cards which announced me as the Executive Secretary of the High-Level Manpower Survey. He, of course, was the Director. We traveled around the country and wrote a report. However, it

was buried because it revealed an embarrassingly low number of high-level professionals in the country. Nevertheless, I spent a large amount of time with Arnold which made it well worth the effort to me.

There was one incident which is only funny in hindsight Arnold came over to the house where I was living one evening before leaving for a trip to consult in Europe with an international agency and then to come to the US to attend the annual NAA meeting that year. As he approached our house, our small dog, a mutt, "attacked" him and not only tore his pants but broke the skin on his leg. We did not know if the dog was rabid and it would take time to get him tested so we communicated with Arnold in Paris that he would need to undergo the lengthy and painful series of rabies shots in the stomach. [Arnold was at banquet in New York City listening to a speech by Under Secretary of Labor W. Willard Wirtz when someone passed Wirtz a note and he announced before 1000 attendees: "Would 'Arnold Zack please report to the house physician immediately!" That was when he learned Jeff's dog was rabid. The physician examined the leg and told him it did not look like the dog teeth broke any skin. On that basis, Arnold declined the painful stomach injections.]

During that year, Arnold also broke his leg. Don't ask. The good news for me was that he had a car - something forbidden for PCVs - and he could not drive so I commandeered his car for the period of his incapacity. I am not sure Arnold knew I was not supposed to have a car [at least at the beginning].

Ethiopia was highly regarded in Africa at this time because it had avoided colonialism. Many countries were gaining their independence. Ethiopia had built a grand facility called Africa Hall that hosted a number of trans-African meet-

ings including those involving trade unions. Arnold knew all the trade union leaders in Africa from an earlier project for which he traveled around the continent and met with trade union leaders, the ostensible purpose of which was to write a book on training needs for workers in Africa. I was able to attend those meetings at Africa Hall and meet those trade union leaders.

What was most important for me, however, was the opportunity to hear Arnold talk about arbitration. As a history major from a family that was not sympathetic to the union movement in the US, I had never heard of labor arbitration. Arnold was in his very early 30's at the time and was in Ethiopia, in part, to age a bit — he was already bald — and to increase his credibility as a decision-maker. He was working as an apprentice arbitrator with Saul Wallen at this time. Saul, of course, was a founder and Past President of the NAA and one of the early full-time labor arbitrators and a true legend.

The more I learned about arbitration, the more appealing it sounded and I decided that was what I wanted to do. Arnold directed me to a labor relations program at the University of Wisconsin. Arnold was helpful not only in getting me admitted but, more importantly, on a visit with my family when I was still in Ethiopia, in getting my father to accept that this was a reasonable decision. My father had assumed, as had I growing up, that I would go to law school after college.

I did become an arbitrator after 11 years with the New Jersey Public Employment Relations Commission and had a career on which I look back with extreme satisfaction and fulfillment and an insurmountable debt of gratitude to Arnold. Thank you, Arnie.

**MORE REFLECTIONS** on Next Page



By *John Van Dorr, III*

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### **Mentor and Activist**

I first met Arnold in the summer of 1978, and have since counted him as a friend. On that occasion, he was factfinder for a school district contract. Management's attorney, a friend with whom I discussed where to focus my law practice, urged me to attend. I would, he said, see a master in action.

The union representative challenged my presence in management caucuses, so Arnold suggested I sit with him and organize exhibits. That was acceptable. Memories of that day include a school board member's vehement testimony that teachers supervise extra-curricular activities only increase earnings. Extra compensation was unjustified—it's part of normal teacher duties. My family roots in education are deep, and the depth of feeling struck me. The role of the hearing's process was obvious. Later, after too much lunch, we returned to face the impact of overburdened stomachs. Another early lesson.

The coincidence of Arnold's then extensive work in New England and of his view that neutral practitioners benefit by knowing the ethos of the early masters under whose tutelage he worked, opened the possibility of my interning with him, which I did. The ground rules were simple: I'd take notes and write mock decisions for his review; active cases would not be discussed until he completed his decision and mailed it; I would not work for him. The parties chose him, trusted his ethics, understanding, reasoning and writing, and that trust could never be violated.

We travelled New England in succeeding months, discussing issues, hypotheticals, arbitration history, the joys of working with dedicated and extraordinary colleagues (advocates and neutrals), and the Academy's role. Once, after an all-night mediation in southern Vermont

(settled as we walked out the door so Arnold could make a flight from Logan) he somehow kept us on an icy mountain road after a 360 degree spin—we both woke up.

There is little place for fragile egos in our business. During a mediation I observed after a year attending many hearings and mediations, Arnold received a union advocate's verbal assault, before his full team, such as I have never seen. I was stunned. After we left to convey "rejection" of management's proposal he said to me, "that was a good show, wasn't it!"

For over two decades Arnold frequently mediated a state's successive multi-unit contracts. In one such mediation he delivered and discussed a management proposal, received a reply, then for well over an hour disappeared—each side believed that he was with the other. At about 1:30 AM, as one advocate surfed the television, the closed circuit channel revealed Arnold doing laps in the hotel pool. The advocates got together, tracked Arnold down, had a good laugh, and progress resumed. The stories are legion. His durable acceptability speaks for itself.

But most important for me as an Arbitrator is Arnold's commitment to ethics and quality in our profession. I was fortunate to be introduced to our work and organization at a time when he and several of the Academy's preeminent and very active members were creating training materials and conducting training programs for Academy members. These covered substantive, procedural, ethical and writing skill issues, and practice challenges. With Arnold's encouragement, the Academy agreed that interns could attend members-only training sessions and, eventually, to share the materials more broadly. At members-only training sessions at Academy meetings, eminent arbitrators reached very different conclu-

sions on procedural questions, facts and issues, revealing the intellectual depth of our organization and demonstrating that our profession is not straightforward. The parties know whom they are choosing, and why. It's their process. At many very well attended AAA and Labor Relations professional conferences those materials strongly engaged participants. They debated, challenged different rationales for possible results, and felt the energy and momentum of their calling.

Among life's pleasures is the opportunity to see the impact of individuals' and groups' efforts on our world. Arnold's deep appreciation of the importance of perceived justice, and of how voluntary dispute resolution helps meet that need, has been broadly felt. His enthusiastic work across the globe—including in South Africa as it struggled to exit apartheid, Thailand, China, USSR transitioning to Russia, ILO projects, Bermuda—also led to opportunities for many of our members, including me, to share our passion and commitment to our process. In my efforts, his advice and facilitation of contacts with fellow Academy members who donated time and knowledge made a significant difference to a receptive and interested audience.

The Academy is a deep source of friendship, collegiality, and inspiration for Arnold—a vehicle for expressing, developing, and implementing its founders' vision and adapting them to the evolving national culture. He's devoted untold hours to ensuring its vitality and standards, and still does. Those efforts, with those of colleagues whom he's inspired and of so many others, reinforce the foundation of our individual commitments to our world. He continues to help build an organization that champions the values on which our reputations rest.

**MORE REFLECTIONS** on Page 10

By Michael Stutz

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## Arnold and my Dad, Bob Stutz

### Growing Up with “Uncle” Arnold

I want to share a couple vignettes from the lifelong friendship between my dad, Robert L Stutz, and Arnold Zack. They shared professional and personal lives, as arbitrator colleague and neighbors on Martha’s Vineyard, who both lived in Ethiopia. For decades they discussed resolution of an Indian land claim that threatened titles to their land, and remains in litigation today.

They met through Saul Wallen, with whom Arnold apprenticed. Saul had recently bought land on the Vineyard, and introduced them both to the tiny Wampanoag Indian community at the western tip of the Vineyard, then called Gay Head. They each bought land and built their summer paradises with ocean views, private beaches, a tennis court, boats for the kids, and natural beauty in all directions, as well as fishing, diving, windsurfing and flying airplanes.

Apparently I first met Arnold as an infant, but my own first memories were around 1960, when I was 8 years old, collecting driftwood on the beach we met up with Arnold and his Peace Corps friend Jeff Tener. Arnold was like an uncle to me, younger than my father, and infinitely more cool to my teenage eyes, a world traveler who drove an early SUV on the vineyard and a Fiat sports car in Boston, which he ultimately sold me when he married Norma.

Our families frequented the

beach in the mornings, with the adults in a big circle, conversing on all topics, with great hilarity and laughter. Arnold shared with me many exciting travel stories, especially tales of Ethiopia, where he served a Fulbright scholarship. Arnold arranged for my Dad to work with the U.S. government in Addis Ababa, where we moved for 18 months in 1966-1967, and where I spent half of 8th grade and my entire 9th grade year, going to an American school run by the U.S. military, which was active in Ethiopia, while Russia was in Somalia.

Looking back on decades of discussions between Arnold and my father about local, national and international politics, and arbitration, sitting in their beach chairs, beneath their multi-colored umbrellas, I am struck by the extent to which they agreed on most issues, including the value of succinct arbitration opinions. Their world views made them seek peace in a contentious world.

### The Land Claim

Around 1974, as I headed to law school, our indigenous friends and neighbors formed a tribal entity and brought an Indian land claim that could potentially cost us our houses. My dad and Arnold organized the high-powered community of summer residents to intervene in the land claim to defend their titles. Dad and Arnold saw an obvious quid pro quo solution to the land claim: land, money and tribal recognition for the tribe, in return for clear titles to our land, the beaches to remain with the town, and a tribal promise not to

pursue a casino in the tiny town. The town was to receive federal reimbursement for educational and other expenses of the federal trust land.

Although the contours of the settlement were easily identified, internal tribal divisions and then state and federal implementing legislation delayed the final settlement for years. Reimbursement of the town was removed during the legislative process, so the tiny town now pays the federal expenses on federal trust property without significant repayment. As a result, taxes have been spiraling upwards in an unsustainable way. The Tribe broke its promise not to pursue a casino when off-island tribal members voted to pursue a casino in the town, something that few town tribal members appreciated or supported. After appeal to the U.S. Supreme Court, the Tribe broke ground on a Class II slot parlor casino in Aquinnah, but construction has been halted pending litigation over applicability of the State building code.

### Influence on My Career and Life

When my time arrived to apprentice as an arbitrator, my template was a life-long observation of my Dad and Arnold and how they navigated the profession, the world and the land dispute in their tiny town on Martha’s Vineyard. Arnold’s stories and world travel convinced me to be unafraid of making difficult decisions and to take risks by traveling around the world and enjoying life.

**MORE REFLECTIONS** on Next Page

*By Brian Bloch*

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**Arnold Zack and ISKCON\***

I met Arnold in 2002 through a mutual friend. I was a newbie to the field of conflict resolution, and I asked him if he was interested in setting up a conflict management system for a global faith-based organization ... the Hare Krishna community. He agreed and that was the start of a 10-year journey that brought Arnold to many Krishna temples around the world, including three trips to India.

Arnold became my mentor and did everything he could to help the project. He worked on the meta level, setting up global systems (\*officially, "ISKCON," The International Society for Krishna Consciousness). He wrote legisla-

tion that was approved by the governing board that established "ISKCONResolve" and its components including ombudsmen and mediation. He guided our mediation training program that later blossomed into training over 850 Krishna-devotee mediators in more than forty countries. We shared thousands of e-mails as we worked together to develop this worldwide program.

His work has had a lasting effect. ISKCONResolve is an established program within ISKCON. There are ombudsmen and mediators working over one-hundred countries where ISKCON operates. More important than those numbers, however, is the ethos

that Arnold helped ISKCON establish.. "Mediation," "win/win," "ombuds" are words one hears regularly at a temple now. Bickering and one-upmanship now often take a back seat to collaboration and cooperation. All due to Arnold's work.

Arnold was generous with his time; his sense of humor kept me going many times when I was getting discouraged. He personally guided me in this field saying it was a better gig than selling books in an airport. By his encouragement I am now working as the lead ombudsman at the U.S. Department of the Interior. I am forever indebted to him for his help and friendship.

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*Letter from Rich Bloch*

Dear Arnold:

Having a friend like you is like wearing a multicolor wool sweater without an undershirt: The experience is iridescent, warm and prickly and the garment is one of those treasures in life one should never be without.

You and I met almost 50 years ago at the Kansas City meeting: I was sitting at the edge of the hotel lobby fountain, hoping desperately to meet a real arbitrator. Instead, I met Zack, who, yes, managed to arbitrate from time to time, but who spent the better part of his days and nights thinking about family, friends, colleagues and, rising to that same level of caring, the Academy. You nurtured the Chronical even before it became the New York Times, served on every Committee ever invented and, when things were dull, invented a few of your own. You've made it a personal, persistent, pervasive, passionate cause to extend and enhance the loving work of Aaron, Garrett, Seward and the other pioneer giants of this Academy, and you have done so.

Over the years, we've laughed, cried, quarreled and written together, often all at the same time. Thank you for all of that: I've loved you since the day we met.

Rich Bloch

By Tom Kochan

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## Renaissance Man

For nearly fifty years Arnold has been my fellow traveler, co-conspirator, mentor, and dear friend. We traveled together to China for about five years until the Chinese security authorities shut down our efforts to create a workplace dispute resolution center and a professional community of neutrals akin to ours in the U.S. We taught classes together, argued with each other to the delight and amazement of students, and worked diligently to build a new institution but lo and behold the government felt otherwise. This was Arnold at his

finest; young people were in awe of him and his wisdom and so was I.

As far back as the Dunlop Commission in 1994, Arnold and I co-conspired by having him draft what was to become the Due Process Protocols for employment arbitration because we knew only he could convince John Dunlop that this was the way to address this controversial issue. John trusted and respected Arnold and it worked. Since then, I've "assigned" a number of such tasks to him when help like this was needed. He always comes through as a true professional.

Whenever I get stuck in an arbitra-

tion or mediation, who do I call? Arnold. As I write this I'm dealing with a messy "super-mediation" of a nurses-hospital dispute and putting to work a suggestion Arnold made when I described a thorny multi-party problem I'm encountering.

Finally, and most importantly, Arnold and Norma are Kathy and my dear friends. They have been with us through good and difficult moments and we cherish our times together.

In short, Arnold Zack is the renaissance man of our generation of dispute resolution professionals.

By Marcia Greenbaum

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## My Friend and Colleague

I owe a lot to Arnold Zack. First, I thank him for his motto: "Have grip, will travel!" had he not gone off to Haile Selassie University in Addis Ababa, I would not have had a job as an intern to Arbitrator/Mediator Saul Wallen in Boston. When he went to Africa, I became the new Arnold Zack. Second, when Arnold returned from Africa and Saul went to New York City to head the Urban Coalition, Arnold and I shared offices in Boston. Third, some years later, when I applied to the arbitration panel of the American Arbitration Association, it was Arnold who recommended me. Thank you Arnold. Your help remains much appreciated.

As a graduate of Tufts University, Yale Law School and the Harvard University Graduate School of Public Administration, now the Kennedy School, Arnold has shared

his knowledge and expertise with many, many others around the world. He has been on the faculty of the Harvard Trade Union Program since 1985. He brought arbitration and mediation to countries from Cambodia to China to South Africa. He has been mediator to the world.

In between, Arnold maintained a busy arbitration and mediation practice for more than sixty years with utmost distinction. He handled more than 5,000 cases. He served on five presidential boards, including one under President Obama. He authored a dozen books on dispute resolution.

In 1980, Arnold received the Whitney North Seymour medal for meritorious contributions to arbitration. In 1986, he was the recipient of the Cushing Gavin Award for outstanding service to the labor/management community in

Boston. He was given several recognitions thereafter, including that of Werthkim Fellow of Harvard University in 1996-1997.

In his early days, before his marriage to his wife, Norma, he had no time to do his laundry. He would unpack his suitcase and throw the dirty clothes in the office closet. Later when packing to go abroad again, he would realize he had no clean clothes. Off he would go to Filene's Basement to buy underwear and shirts. Then he would pack that grip and travel. Then upon his return, it would repeat.

From the time in 1961, when he worked to help create the Peace Corps, he has made the world a better and more peaceful place.

**[Editor's Note: Marcia never opened that closet!]**

**MORE REFLECTIONS** on Next Page

By Iwasawa Yuji, Judge, International Court of Justice

### Memories of Time with Arnold

From 2004 to 2013, I served as a judge of the Administrative Tribunal of the Asian Development Bank in Manila. As my term precisely overlapped with Arnold's, we spent nine years together as fellow judges on the Tribunal. During our last three years on the Tribunal, Arnold served as its President, while I was its Vice-President. It was an honor and pleasure to serve and support him as his deputy. We had an excellent relationship and a happy nine years on the Tribunal. As Arnold was an experienced arbitrator, it was fascinating and rewarding to work with him, and I learned a great deal from his example.

I recall many joyful memories of these years with Arnold. During the Tribunal's first session, we visited a local museum on Philippine history. In addition, Arnold and I often dined together,

in particular sharing lively and engaging breakfasts at our hotel. On one occasion, we sat next to each other on a return flight from Manila to Tokyo. For the duration of the flight, we chatted, often laughing due to Arnold's good humor. On leaving the aircraft, even the cabin attendant marveled at how close we seemed.

In 2005, when the Tribunal held hearings in Tokyo, I invited Arnold to a dinner at our home. It was an honor to have him as a guest. I also was a guest at his home twice. In 2007, I became a member of the UN Human Rights Committee and the first session was held at the UN Headquarters in New York. After the session, my family and I visited him in Boston. Several years later, I visited him again with my son. On these occasions, we thoroughly enjoyed Arnold and his wife's warm hos-

pitality and had a wonderful time in Boston.

During our visit to his home, we noticed several beautiful paintings displayed on the walls. They were marvelous, and I was surprised to learn that, in fact, Arnold painted them. As he explained to me his difficulty in deciding which career to pursue, either law or art, I realized that he had extraordinary talent not only as a lawyer but also as an artist. I deeply admire his talent in both fields.

I remember with much fondness the time Arnold and I spent together, and miss it very much. I hope the future will provide occasion for us to share similar experiences. Arnold is a remarkable person, much deserving of the honor of a special article in this distinguished magazine. 📌

## EXCERPTS FROM NATIONAL ACADEMY OF ARBITRATORS HISTORY COMMITTEE INTERVIEW

### Arnold Zack Interviewed by Jim Oldham

**AZ:** I was born October 7, 1931, Lynn, Massachusetts.

My father was a lawyer who was an orphan who had gone through law school working as a shoe salesman. My mother was a daughter of what he considered a very wealthy family in Salem which actually owned its own home. She worked as my father's secretary. My father's family came to Lynn, Massachusetts from Kiev in what is now the Ukraine in the late 1800s. My father was born in the United States in 1901. My mother's father came from Lithuania in the early 1890s and then sent for his wife and children. My mother was born in Lithuania but came to Salem, Massachusetts when she was 6 months old.



**AZ:** My father had been orphaned after his father died when he was 1. His mother died when he was 12. My grandfather on my father's side had been a scavenger in the brick yards and in finding in trash area finding pieces of metal to resell, not a very extravagantly wealthy background. But on my mother's side my grandfather who died at 96 was a peddler

and owned a couple of tenement buildings. That was upper middle class in Jewish immigrant society in that era. My mother went to high school, my father, as I say was an orphan and sold shoes and got enough money to commute 20 miles a night to Suffolk Law School in the days when you didn't need a college degree to go to law school. He went to work for a lawyer who had been Mayor of Boston, by the name of Mansfield, as a clerk in 1928 or 1929. My parents married when he got that first job. I am spending a little bit of time on this because it is relevant to how I got into this business. My father was brought up largely by a neighboring family by the name of Connery and my father's best friends were the children Larry and Billy Connery who also lived in what was called the brick yard area of Lynn, Massachusetts. Their father was a politician and ultimately became mayor of Lynn, Larry went to Congress as a Democrat when Roosevelt came in. Since he was one of the few Democrats in the that era, he became the chairman of the House Labor Committee despite his juniority. And when he had that job he said to my father, who was suffering, because his law practice was not doing very

well in the depression and my father really had nothing, why don't you come down and I'll give you a job in Washington. So my dad went down to Washington and in 1932 with me, his six-month old child in tow and went to work for Larry in the administration of the NIRA and of course when that was declared unconstitutional in the Schechter decision, my father was again out of a job. Larry said well let's take section 7A of the NIRA and ultimately what came out of that was the National Labor Relations Act, of which my father had been a draftsman. And as you will recall the name of the statute was the Wagner-Connery Act, named after Larry who was then the chairman of the House Labor Committee. So my dad was with the very early National Labor Relations Board and was sent out to set up the regional offices. The first regional office was to be in Philadelphia. So in 1937 or so we moved from Washington to Philadelphia where I lived about 3 or 4 years and then in 1941 my father had a heart attack when he was 39. We then moved to Boston where he became the Chief Law Officer of the New England region of the Labor Board. 📌

# Ethics Primer Part II\*

By Joyce Klein

Moderator James Cooper (NAA Boston) and his panelists, Sarah Kerr Garrity (NAA Concord, MA), Christine Schmidt (NAA Toronto, ON) and Andrew Strongin (NAA Takoma Park, MD) continued the ethics primer begun in August in the Fall of 2018. The robust discussion at the Austin FEC led the first ethics primer panel to discuss only four of the eleven scenarios. So, this panel was reprised for an encore presentation in Savannah.

Well aware that the panel was not likely to get through all of the remaining seven scenarios, moderator James Cooper sent an email to those who signed up for the session asking everyone to prioritize our preferred scenarios. Only Bieber Helburn (NAA Austin, TX) responded, so the panel began with his chosen scenarios.

**Case No. 9.** You are hearing a discharge case where the allegation is that the Grievor/Grievant committed a serious sexual assault on a bargaining unit member and subsequently threatened several potential witnesses. The advocates for both sides convene a conference call with you to determine “security” issues for the hearing and to determine the arrangements for before, during and after the hearing. The Employer counsel makes it clear that no one is willing to testify unless they can be protected from the Grievor/Grievant. The Employer wants security personnel present in the hearing room, special arrangements made to ensure that the Grievor/Grievant is never in contact with witnesses and to have the Grievor/Grievant excluded from the hearing during the complainant’s testimony. Union counsel expresses concern that the request for such drastic arrangements will irreparably prejudice you.

### **What should you do?**

All three panelists would try to discern whether the employer was trying to influence the arbitrator or whether the witness(es) were genuinely fearful. If the latter, Christine Schmidt suggested using a video arrangement to allow the Grievor/Grievant to view the proceeding while addressing the concerns of witnesses. Sarah Kerr Garrity suggested sequestration, but was leery of excluding the Grievor/Grievant from the hearing room. Andrew Strongin emphasized that the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes requires a fair hearing and that arbitration is a civil rather than a criminal matter. On balance, he would prefer the witnesses in the room and the Grievor/Grievant be present via video conference.

This scenario engendered conversation about both whether the arbitrator has been told too much and Section 2a of the Code, which requires recognition of “special features of a particular arbitration arrangement . . .with respect to procedural matters” . . .[that] may influence other aspects of the arbitration process.” Some audience members suggested ruling on the procedural issues and then withdrawing to leave the merits of the dispute to another arbitrator or allowing the parties to determine whether the hearing can be completed effectively by the arbitrator knowing about the security concerns. In response Christine Schmidt suggested urging settlement, but did not think recusal was necessary.

**Case No. 10:** You are sitting in a hearing room chit chatting with the parties before the start of the hearing. Both counsel are in the room and they are waiting for one of the clients to appear. You tell them that you are going to the major league baseball game that night with your family but that your child wants to bring a guest and you need one more ticket.

One of the clients, whom you have known for many years, pipes up that he has an extra ticket. You say great and you purchase the ticket at face value. Both counsel are in the room during this entire exchange. The case does not finish and you schedule a second day some months into the future.

At the second day of the hearing, counsel for one party asks to speak to you in the hallway with the other side’s attorney. You go out into the hallway and the attorney says, I am going to ask you to recuse yourself from further hearing of this case because of your action of purchasing that baseball ticket at the prior hearing. **What do you do?**

Once again, the panelists concur that it would have been better not to buy the ticket in the first place because it created an appearance of impropriety. The panelists also agree that in this situation recusal is warranted.

**Case No. 7:** You are hearing a job posting grievance. The clause reads, “where skill, ability and experience are relatively equal, seniority shall govern.” The Grievor/Grievant was the senior candidate, but was not considered to be as skilled or capable of the work as the incumbent. At the hearing, the Union wants to put in evidence of a series of harassment grievances filed by the Grievor/Grievant against his supervisor over the past 5 years to bolster the argument that there was “bad faith” by management in the evaluation of the Grievor/Grievant’s capacity to do the job. The Employer objects, arguing that the harassment grievances were all settled on a “without prejudice” basis and that delving into the past history will convert the job posting grievance into a complex, long and inappropriate line of inquiry. **What should you do?**

Sarah Kerr Garrity would allow evidence that the harassment grievances happened, but would not allow evidence of the actual grievances or their settlements into the record because this would achieve the purpose of allowing consideration of the allegation of “bad faith” without need to consider the settlements. Andrew Strongin again cited the fair hearing requirement in the Code of Professional Responsibility. He would allow both parties to make a case but he is mindful that the previous grievances were resolved and the Grievor/Grievant can’t re-litigate them.

The session ran out of time with a few more case studies left, perhaps for another day. 🚪

*\*From the FEC, Savannah, 2019 but missed last edition due to Jersey Shore Storm’s flooding of Joyce’s office.*

**NAA Research  
and Education  
Foundation**

*Celebrating*

**35**

*Years*

## *Message from REF President*

**RICHARD FINCHER**

Welcome to this special article of the **NAA Research and Education Foundation**. This year, we are celebrating our 35<sup>th</sup> Anniversary: a significant milestone. There has never been a more urgent need to research and understand the changing nature of work and dispute resolution.

Founded in 1985 under the NAA Presidency of Jack Dunsford, the REF was established to foster educational and training programs related to the resolution of workplace disputes. As a non-profit organization, it is legally separate from the NAA. The BOG loaned \$5000 to the REF to start the funding process, and was repaid. According to the REF founding minutes, the original intent was to fund regional programs, support special events, fund the training of new arbitrators, and fund expenses of conference speakers. We have two core constituents: those academics and practitioners (including NAA members) who submit requests for funding, and NAA donors whose contributions fund the grants.

Since 1986, the REF has funded 45 grants. The grants fall into four categories: a) rigorous academic research (mainly labor arbitration), b) educational events, c) training materials such as books/movies, and d) surveys of NAA members concerning the scope of their practices and background.

The first REF President was Alex Elson. Since then, over these 35 years, numerous individuals have worked towards the goals of advancing research, education and training. Today, we have fifteen hard working Board members comprising very diverse backgrounds.

In 2020, the Board is evaluating our mission and considering new ideas for funding grants. For example, we have offered to fund certain activity of regional programs and arbitrator development (outreach). In addition, we have created several notices of funding opportunity (NOFOs) to specifically encourage grant proposals. Most recently, we have funded proposals related to international ADR, including travel scholarships for foreign arbitrators to attend the Annual Conference.

### **2020 REF Officers**

Richard D. Fincher, *President*  
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## **REF Donations – John Alfano, REF Treasurer**

The REF has funded over 60 research and education projects that have contributed to our continuing education. The REF is always searching for research proposals and projects that address the evolving nature of the labor arbitration profession. If you have any ideas about potential projects, please feel free to contact us.

The REF thanks all members who have contributed and especially those members whose lifetime contributions now qualify them for one of four distinguished levels of donors: Life Member (\$1000-\$2499); Patron (\$2500-\$4999); Governor's Circle (\$5000-\$9,999); and President's Circle (over \$10,000).

Your continued financial support is important to the mission of the REF. Make a donation in your own name or in honor of a current or deceased member so that we can continue to find and fund research, projects, and programs for the next 35 years.



## EXAMPLES OF PAST REF PROJECTS

### ***The Art and Science of Arbitration***

*College of Labor and Employment Lawyers, Inc. - Video History Project*

A unique, historical 50-minute documentary made by two-time Emmy winner Carol M. Rosenbaum. The video focussed on arbitration and featured the insight, knowledge, anecdotes and advice of distinguished arbitrators including George Nicolau, Sec. George Shultz, Arvid Anderson, James Harkless, Theodore Kheel, Frances Bairstow, Hon. Harry Edwards, Arnold Zack, Theodore St. Antoine, and Edgar A. (Ted) Jones, Jr.

### ***Arbitrationinfo.com***

A website that is a source of reliable and user-friendly arbitration-related information accessible to the public.

### ***Arbitration Council Foundation***

Scholarship at the 2020 & 2021 Annual NAA Education Conference, with international experts and arbitrators speaking on issues related to global workplace dispute resolutions.

### ***A Labor Arbitration Case Study: The Suspension of Nurse Kevin***

Paul Clark and Amy Dietz, Pennsylvania State University  
A 60-minute instructional film on arbitration that portrays an arbitration hearing and back story with timely narrative breaks to explain the proceeding to the viewer. The film provides the viewer a real life demonstration of the arbitration process and is accompanied by a comprehensive teaching guide.

### ***Pocket Guide to Just Cause: Discipline and Discharge Arbitration***

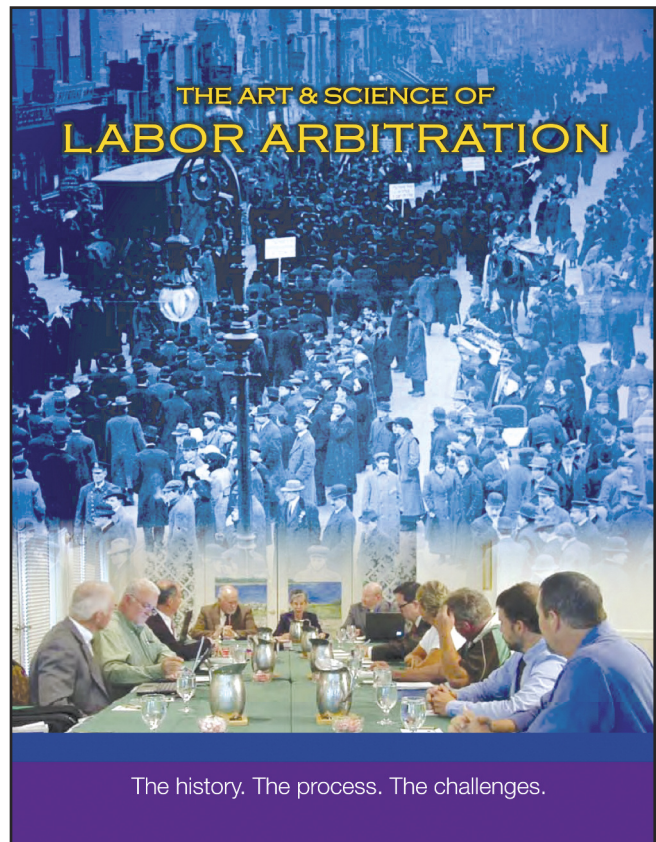
Bonnie G. Bogue and Katherine J. Thomson, California Public Employee Relations Program

A portable handbook published in 2010 by the University of California, Berkeley for use by labor relations representatives, union representatives, and lawyers, the guide provides a breadth and depth of coverage not available elsewhere at an affordable price.

### ***Study of the Extent and Causes of Delay in Labor Arbitration***

*Kevin Banks and Richard Chaykowsi, Queen's University and George Slotsve, Northern Illinois University*

This research examined trends over several time periods and focussed on whether the mid-1990 expansion of the jurisdictional mandate of arbitrators to consider external statutes is a factor in delay. We expect the study to make a substantial contribution to our understanding of why delay occurs during the various stages of the arbitration process. This important topic has been of interest to arbitrators and the parties for decades, particularly because delay appears to be increasing for reasons that are not well understood.



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Richard Fincher	Lisa Kohn
Catherine Harris	Mark Thompson
Betsy Wesman	Sara Adler
Allen Ponak	Arnold Zack
Chris Knowlton	Alex Elson
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(\* List is incomplete)

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## Remembrance of Ruth Ben-Israel

*By Alvin Goldman*



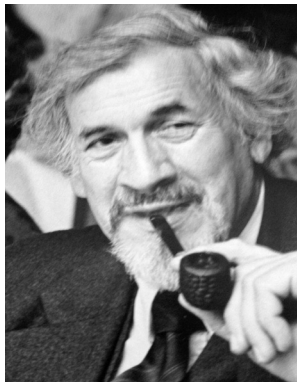
A former NAA Overseas Correspondent and a friend of many Academy members, Ruth Ben-Israel, died February 2, 2020 in Tel Aviv. Ruth, an emeritus professor of Labor law at Tel Aviv University, received the Israel Prize for legal research in 2001.

Ruth was born in 1931 in Port Said, Egypt and was fluent in Arabic, although after age 3, her parents moved to Palestine and she was raised in Tel Aviv, a city founded by her grandparents. At age 18, Ruth joined the Israel Defense Force where she rose in rank to become the Deputy Commander of the Stella Maris Naval base in Haifa. Upon her discharge in 1951, Ruth studied at the School for Applied Arts at the Sorbonne. She began an Israeli carpet company but when her husband, Gideon Ben-Israel, was elected to the Knesset, she studied law at the Hebrew University of Jerusalem in order to carry on his practice as a union lawyer. Ruth obtained an LL.B. and LL.M. (magnum cum laude) and a Ph.D. Shortly thereafter she accepted an invitation to join the law department at Tel Aviv University. She became a prolific scholar in the area of labor and employment law, social security and social equality, publishing more than 15 books in Israel and abroad. She helped draft Israel's Minimum Wage Law and Equal Opportunities Law. In 1983 she was a visiting professor at the New York University law school.

Upon her retirement in 2000, scholars from many nations (including NAA members) contributed essays to a book published in her honor. Ruth's retirement did not last long, however. She soon returned to the arts by taking up and promoting modern dance for mature women.

## Remembrance of George Nicolau

*By Matthew Finkin*



For one who knew George only slightly or not at all a sense of his work can be gleaned from his 2003 Coffee Lounge Chat with Arnold Zack and from his 2006 NAA History Committee interview with Michel Picher. A shorter glimpse emerges from his many obituaries which, however, tend to advert to his historic role as a baseball arbitrator to the exclusion of all else. A snapshot of his career is posted as well by the Greater New York Chapter of the Association for Conflict Resolution for 2017, from which I learned that Mayor Michael Bloomberg declared April 4, 2012, to be "George Nicolau Day" in New York City. All these are on the public record. What follows is not.

I met George and Siobhan – it was always to be both – for the first time at a labor law conference in Buenos Aires more than twenty years ago. I had done little arbitration and had no idea at all who George was. I found him wry, wise, omnivorously observant and inquisitive; a good listener and an engaging raconteur. Siobhan was wildly witty, worldly, and debonair; possessed of a bear-trap mind without scruple to give it expression. In a word: they were incredible fun to be with! And as my wife and I got to know them better over the years we agreed that we'd never seen a couple so drenched in one another, so much in love.

As we left Buenos Aires George said he looked forward to seeing me at the next Academy meeting. Academy meeting? What Academy? After a pause, "Send in your papers. We'll get you in." I did; so did he.

*(Continued on Page 20)*

## REMEMBERING... GEORGE NICOLAU (Continued from Page 19)

We met a year later at a labor conference in Paris. The dinner speaker was the Canadian ambassador, to something. A big, bluff man full of bonhomie and himself, given to quick throwaway lines one of which was casually sexist. Siobhan bristled, if ever so slightly. When the speech was over she arose and strolled toward the dias. George nudged my shoulder: "Watch this." We could hear nothing of the conversation; all we could observe was body language. As Siobhan spoke, her gestures measured and gentle, we watched an ambassador slowly deflate, as if the air was leaking from a life-sized balloon of a man. George nudged me again: "See?"

In his Coffee Lounge chat with Arnie, George recounted the horrific bombing mission that had taken him over the Eiffel Tower, twice. This explained why, even as we so agreeably strolled the streets of Paris, George avoided looking at it. He was also queasy about our hotel which, he said, had housed the headquarters of the Luftwaffe-West, the people who had tried to kill him. I told him that, actually, the hotel's reputation was far more odious: it served as the headquarters of the Sicherheitsdienst, the security service of the SS. His queasiness visibly abated.

George's archived conversation with Michel touched on his and Siobhan's second home, in Ireland. A word more. As they told me the story, they thought to have a foreign retreat and tested the waters. They rented a villa in Crete for a summer. No go. Then one in Tuscany, with a resident chef. Also no go. Then one in County Cork, which clicked. Siobhan was incredulous, "I thought the Greek needed sunlight!" They bought Clonmeen Lodge, an historic Georgian mansion. When we visited George was in his element as lord of a manor, outbuildings and stables. (Siobhan told us she'd come down for breakfast one morning and found a horse standing in the kitchen.) We eagerly awaited their annual tongue-in-cheek New Year's card from Ireland. As I write, one is before me: George's photo is interpositioned amidst the Obama family over the caption, "Obama Considers Greek for Irish Ambassadorship."

Only once did we talk shop. George had dealt with the merging of the seniority of pilots resulting from an airline merger. After sorting it out, George met with the pilots to explain his decision. A first officer who, as a result of George's decision was unlikely ever to be promoted to captain, spoke up: "I haven't felt this bad since I was shot down over Vietnam." No doubt due to his own war experience George was moved, but there was nothing for it even as the remark continued to resonate with him, for years.

One gets a sense of George as an arbitrator in an episode shared with me by Beth Margolis, a prominent union lawyer in New York City. She represented a union in an interest arbitration with the City Transit Authority over which George presided. The TA claimed inability to pay. Beth asked the Finance Director to calculate the cost. Beth writes:

The finance director glared at me and said "I'm not going to sit here and do calculations for you." George tossed him a pocket calculator and in his quiet, calm way, looked him straight in the eye and said: "I'm asking you to do it."

The City's cost problem arose out of a complicated network of debt burdens the City had assumed, enormously lucrative for the banks, reciprocally burdensome for the City. George asked the Finance Director why he'd not sought to renegotiate, to which he, a Finance Director, expressed surprise that such a thought could possibly be entertained. The New York Times recounted George's reply, "Such renegotiations may not be successful, but it is more than difficult to understand why the authority is of the opinion that it should not even try."

George's sense of self was invariably deprecating. He started his legal career with a firm in New York that represented Actors' Equity. The union's executive committee, chaired by Raymond Massey, then at the height of his fame, was to meet and needed counsel present. George was seconded to the task over his strenuous misgivings that he could possibly hold his own in such company, but attend he did. He found the actors all, Massey in particular, incoherent, nearly incapable of expressing a thought without a script. At that moment he said to himself, "I can do this."

*(Continued on Next Page)*

Once he accompanied Siobhan to a tribal feast in a remote location of the Pacific Northwest; one needed a bush pilot to get near the place. Siobhan had given the tribe some Ford Foundation money to rebuild its lodge. There was tribal music and dance, a bonfire, clouds of home-grown marijuana, and copious quantities of food. George was seated beside the Chief. A trencher of grilled meal was placed before him. George inquired of the Chief what it was. "Seal," said the Chief. Then, George said, as he put it, thoughtlessly, "What's it taste like?" The Chief responded kindly, "Not as greasy as walrus."

Michel writes of his and Pam's memories of George's visit with them at their house on the Gatineau River near Ottawa:

When I suggested we go for a ride in our boat, he eagerly accepted. I vividly remember drifting across the river where he seemed so at home as we watched the local passenger train roll along the riverside, tooting its whistle.

I never saw him more relaxed than he was in our boat. I sensed his love of adventure and got a glimpse of his true soul. Arbitration was never in our conversation in the Gatineau but his love of life certainly was.

When Siobhan died so very suddenly my wife and I were concerned for how George was bearing up; I reached out to him straightaway. I found him to be soldiering on, perhaps the war metaphor was apt, seemingly of good cheer and with a heavy agenda of cases. In a spirit of solicitude I volunteered to take some of his cases on, to relieve his burden. He declined.

As I was to be in New York last summer I called George to see if we could get together. That's when I learned he'd been hospitalized and was convalescing at home, though still working. Alas, our reunion fell through, but we agreed to keep the possibility open, apropos of which George wrote me this fall: "I sure hope you come back, pal. Keep in touch." I wish I could. 🖊️

## IN MEMORIAM

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

**James R. Beilstein**

*NAA Member since 1979*

**John J. Flagler**

*NAA Member 1978*

**Donald P. Goodman**

*NAA Member 1977*

**David L. Gregory**

*NAA Member since 2004*

**Richard R. Kasher**

*NAA Member since 1983*

**Donald G. Russell**

*NAA Member since 2004*

**J.F.W. Weatherill**

*NAA Member 1967*

**Robert G. Williams**

*NAA Member since 1985*

*A Remembrance will appear in a future Chronicle.*

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# Life After Arbitration

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**Editor's Note:** Jeff Tener has written an article describing how he came to retire and what he has been doing in retirement. He asked several other retired or retiring arbitrators to share a bit of their lives in retirement.

## JEFF TENER

I, too, thought I would be among the many arbitrators who worked until death or disability intervened. Like all arbitrators I know, I loved being an arbitrator. I need not tell readers of the Chronicle why arbitration is such a satisfying and compelling occupation.



I stopped arbitrating about two years ago. As many of you know, my wife was diagnosed with what turned out to be an aggressive form of dementia. We moved to a nearby continuing care retirement community (CCRC) as soon as I could make the arrangements. We lived in a cottage in independent living for one year before she moved into the memory unit. She died about nine months later. I continued working during this time but I discovered my priority was not my work but my desire to make Gloria's life as good as it could be.

When she died, I realized that not only was she gone but arbitration was no longer the compelling attraction it always had been. My focus on arbitration had been so total that I largely had ignored community and civic activities. My wife and my work, including professional activities such as the Academy, were my life and it was a happy one. I have no regrets. I understood, however, that when Gloria died I needed something to fill that huge void. At the same time, as I said, arbitration no longer seemed necessary. Thus, I plunged into life at the CCRC.

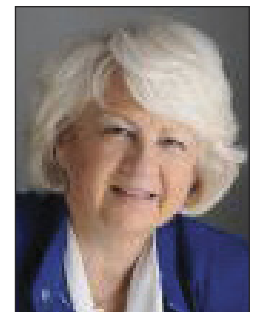
I got involved in the activities, governance and committees of the CCRC almost from the beginning because I realized – I did not know how quickly – I would need to function without the ease and convenience of a built-in companion for dinner and other activities. I work out regularly at the fitness center and started playing pickleball. I am a member of an unofficial “brainstorming” group that looks at a range of issues relating to all aspects of life at the CCRC including skilled nursing, assisted living and the memory unit as well as independent living. I make it a point to learn names and get to know a wide variety of people and to join in various activities. I am a member of several social and educational groups. I go on day trips sponsored by the community. Dinners are a social highlight and I virtually always

arrange to have dinner with several or, more often, five people, something that generally takes about one and one-half hours. Somehow, the days, weeks and months fly by.

I have continued to travel abroad. In the summers, I have spent several weeks at Chautauqua and also have gone to the Stratford Festival in Ontario. I have joined an organization in Princeton that sponsors weekly lectures on the Princeton University campus. I continue to attend cultural events in Princeton and, much less often now, in New York City. There is a movie theater less than two miles away. I have read for pleasure a great deal more than I used to.

In short, I have found this to be a busy and very satisfying existence but the real key is the people and the social involvement that is such an important part of this CCRC and a fulfilling life.

## ELIZABETH MACPHERSON



I keep trying to retire, but then someone calls with a really interesting matter, so I give in and take it on. I think it is the “its nice to be wanted” syndrome.

I am trying hard not to work more than one week a month, but sometimes that just isn't possible. So let's just say I am easing into retirement gradually. I've joined a local duplicate bridge club and play 3 times a week when I'm not travelling for the arbitration work. I am also on the Board of Directors of my local hospital, so that takes up a few evenings a month.

I have a great circle of friends in our small community; we get together for dinner at least once a month. I recently joined a book club, which forces me to read for pleasure (instead of work) more often. And of course there is the dog (a Golden Retriever) to be walked. I'm looking forward to winter so I can hitch up my horse and go sleigh riding (yes, with a one horse open sleigh and jingle bells) and cross-country skiing. So there is never a dull moment.

Not sure what more I can tell you that would be of interest, but you can definitely put me in the YES column if the question is whether there is life after arbitration – you just have to make time for it!

*(Continued on Next Page)*

## JOE LOEWENBERG

How delightful to hear from you. Even better, it is nice to learn that life is good for you. One of the pitfalls of retirement for arbitrators is that they tend to have little contact with former colleagues; at least that has been true for me.



Now as to your question as to how I spend my time these days. I think it would make for rather pedestrian reading for active arbitrators. Like most retired people I am constantly busy but cannot account for the time. I sometimes take on-line courses in history or music, enjoy gardening, have upgraded my cooking and baking skills, enjoy theater and concerts, and travel. Recently Ann and I were 12 days in Provence where we rented a small farmhouse outside St. Remy. I work weekly in a local food pantry and participate in a monthly meals-for-the-needy program at our synagogue. If this sounds like a quiet, contented life, it is.

## SUSAN MEREDITH

Well, this is embarrassing! I made a speech at a meeting about the pleasures of being entirely retired, and now I'm back at work. So how did I get from there to here, and what do I have to share about the journey?



I retired in the summer of 2015, when I had just become involved in a big project for my religious congregation and had three baby grandchildren. Those activities filled my life for about a year, then I began to wonder what was next. Two more grandchildren arrived, and some of them moved near me. I started to hang out with grandchildren one day a week. It was all fun and satisfying.

But I began to realize that I really missed my work. I missed the hearings, the people I worked with, the stories I heard. I even sometimes missed having something important to write. So at the beginning of 2017, I began to take cases again. Somewhat to my surprise, I hadn't been entirely forgotten, and the cases began to come in. I had pretty strict rules about how many hearings I would do in a month, and it was relatively easy to get up to that number. Then, of course, I took on too much in some months. I'm still struggling with that one and probably always will.

I said a lot when I talked about this issue before about retirement being a stage of life I didn't want to skip. I still think that's true, but I'm liking easing into it more gradually. What I'm doing now feels different from working full time, very different. I feel much more able to turn down work, to stick to the schedule I want. As a result, I'm enjoying the work enormously.

And I know I'll get to the fully retired stage again, when I don't want to keep driving to hearings on icy roads or whatever the next trigger is. But for now, I'm learning how to retire a little at a time. I'm pretty much retired on Wednesdays and Thursdays. Except when there's an award due or a particularly alluring case to schedule. I love the flexibility I have right now, the days I have free to do what I want, the time with grandchildren. And I'm sure that if someone asks me to talk about retirement in three more years, the story will be different.

## BARBARA ZAUSNER

Like many NAA friends and acquaintances, I loved being an arbitrator and being part of the Academy. In 1999 I moved into our Woodstock, N.Y. home on a full-time basis, giving up my convenient condo in northern N.J. My husband Clem and I travelled extensively, sometimes with other friends and relatives. We had an active social life, mostly because Clem was a fabulous cook who enjoyed having people over for dinner. He often travelled with me when hearings or meetings were within driving distance.



As of the autumn of 2013 (and excepting illnesses) I had given very little thought to retiring from my arbitration practice. Clem died that year so continuing to work was a solace. Retirement was discussed at a few NAA meetings and gatherings. Hearing others' ideas about retirement helped crystallize my thinking. I began to see it as a desirable goal and phased out my arbitration caseload. I'm very much enjoying the freedom I now have. I've got a couple of volunteer jobs and am part of a reading group. I meet monthly with a group of women who are active in political and social causes. Last minute activities arise often enough and it's nice to have the freedom to join. There's a lot to do in Woodstock. I still enjoy travelling, especially with my daughter, Erica Tener, and especially to places I haven't seen before. I held my last hearing a few years ago. Now I'm a very happy retiree. 🍷

# 25 & 40 Year Members Recognized

The following members were admitted to the National Academy of Arbitrators in 1995 & 1980 and will be recognized at the Business Meeting on October 11, 2020 at the Golden Nugget in Atlantic City.

## 25 Year Members

Edwin H. Benn  
*Glencoe, IL*

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*Boynton Beach, FL*

Richard G. Boulanger  
*Grafton, MA*

James C. Oakley  
*St. John's, NL*

Linda S. Byars  
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Douglas E. Ray  
*Fort Mill, SC*

Ann R. Gosline  
*Litchfield, ME*

Alan A. Symonette  
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## 40 Year Members

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*Denver, CO*

Alvin L. Goldman  
*Denver, CO*

Lewis R. Amis  
*Charleston, SC*

Amedeo Greco  
*Madison, WI*

James B. Atleson  
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# SLATE OF OFFICERS AND GOVERNORS 2020-2021

## PRESIDENT-ELECT

### SUSAN L. STEWART

*Toronto, ON*



Susan is a graduate of Queen's University Law School and was called to the bar of Ontario in 1981. After articling at the Ontario Labour Relations Board and practicing law in Toronto, she commenced her adjudication practice as a Vice Chair of the Workers' Compensation Appeals Tribunal, in 1986. Her labour arbitration and mediation practice commenced in 1988. In 1989, she was appointed as a Vice Chair of the Ontario Grievance Settlement Board and in 2001, she was appointed as the Chair of this Board, where she continues to serve. Susan's arbitration practice encompasses all sectors under both provincial and federal jurisdictions. She has served as Chair of the Labour/Management section of the Ontario Bar Association.

Susan has also served as a member of the Board of Governors of the National Academy of Arbitrators, as a Vice President, a member of its Executive Committee on two occasions, and is a Director of its Research and Education Foundation. She is currently Chair of the Academy's Committee on Professional Responsibility and Grievances. Susan is also a member of the Law Society of Ontario, the Advisory Committee of the Queen's University Centre for Law in the Contemporary Workplace and is the President of the Ontario Labour-Management Arbitrators' Association.

Susan and her husband, Ken, are the parents of two adult children. They are avid cyclists and are part of a cycling group of arbitrators, "The Shifty Neutrals", that participates in fundraising events in support of cancer treatment and research. In recent years, Susan has been involved in culinary training and is studying to become a certified fromager.

## VICE PRESIDENTS

**Second One-Year Terms**

### PAULA KNOFF

*Toronto, ON*

### HOMER C. LA RUE

*Columbia, MD*

## VICE PRESIDENTS

**First One-Year Terms**

### AMEDEO GRECO

*Madison, WI*



I decided in 1967 when I was a law student at the University of Wisconsin law School to become an arbitrator and to seek future membership in the Academy when I took an arbitration course given by Professor Robben Fleming who was then Academy President. I earlier had decided to go into labor law when I took a labor law course given by Professor Nathan Feinsinger who Sylvester Garrett said was the greatest labor mediator in the 20th century.

After law school I served as a legal advisor to NLRB Chair Frank McCulloch who was the finest person I have ever known. There, I served as President of the NLRB Professional Association for the NLRB's Washington, D.C. attorneys and helped negotiate its first real collective bargaining agreement. After then serving as a NLRB trial attorney, I joined the WERC where I served as an arbitrator, mediator, and hearing examiner. Long-time WERC Chair Morris Slavney gave staff great gifts by allowing us to fail as we learned our craft; by giving us great independence; and by setting the highest profession standards possible.

I became an Academy member in 1980 thereby fulfilling my 1967 goal of joining the Academy.

I have been active on various committees including the CPRG. I was the Program Chair for the Austin, Texas Fall Election Conference and I recently served on the Nominating Committee.

I wrote an article for Elkouri entitled "Retaining Limited Jurisdiction to Resolve Remedial Issues."

### JOSHUA JAVITS

*Washington, DC*



I came to labor arbitration by way of labor economics, writing my undergraduate thesis on "Industrial Democracy." I've been pipe-dreaming ever since.

After college, I spent three "lost" years as a New York taxi driver, actor, and pizza maker, as well as an economics graduate student. Finally, I defaulted to law school.

*(Continued on Page 26)*

## VICE PRESIDENTS *(Continued from Page 25)*

At Georgetown Law School I had the good fortune of taking Jim Oldham's labor law course and became his graduate assistant. I updated his labor law "Gilberts" adding a short section on the Railway Labor Act (RLA), little knowing that the law would define the rest of my career.

From law school I went to the NLRB in sunny Los Angeles for 4 years, perfecting my tennis forehand, holding elections, and appearing in court and before ALJs in over 30 trials.

I then returned to DC to join a union side law firm, Mulholland & Hickey, which represented firefighters, the transportation trades department of the AFL-CIO, and railroad employees (RLA, thank you Jim).

The Reagan administration at the end of its second term had run out of donors to reward and was looking for someone to fill the non-Republican seat on the National Mediation Board (NMB), so I raised my hand. During a tumultuous six years at the NMB, just after deregulation, Pan Am, TWA, and Eastern Airlines folded and a highly contentious railroad Presidential

Emergency Board (PEB) process addressed the elimination of the brakeman position.

Following the NMB, I became a partner at a management law firm, FordHarrison (the actor backwards), where I spent 9 years negotiating labor agreements on behalf of airlines and represented the major publicly owned and operated commuter railroads (Amtrak, LIRR, SEPTA, etc.).

Having been on all sides of the table but one, I decided to try my hand at arbitration. After a period of sanitization from my management work, my practice became centered on the airline industry (thanks again RLA). I served on four PEBs, taught as an adjunct at Georgetown Law, and spent five years as Chairman of the Grievance Committee of the International Monetary Fund.

I have been an NAA member since 2005, sat on the EC and BOG, was the Designating Agency Liaison Coordinator for several terms, and have moderated airline panels at the annual meetings. My wife Sabina and far flung children, Emma (LA) and Benjamin (Florida) make life worth living.

## BOARD OF GOVERNORS

*Three Year Terms*

### CHRISTOPHER J. ALBERTYN

*Toronto, ON*

Chris Albertyn's high schools were St. John's College in Johannesburg, South Africa and St. Mark's School in Southborough, Mass. He completed a B.A. (Honours) at the University of the Witwatersrand in Johannesburg, a B. Proc. at the University of South Africa, and an LL.B. at the University of Natal in Durban, KwaZulu-Natal.



He was a trade union organizer for the National Union of Textile Workers (now the South African Clothing and Textile Workers Union, SACTWU) after his undergraduate degree and was then banned for 5 years by the South African government in 1976. During the time of the banning order, he worked in a law firm, under various restrictions by the government. He was admitted as an Attorney in South Africa in 1979. The banning order was lifted after 5 years, in 1981, and he established his own law firm, Chennells Albertyn, with Roger Chennells.

Chris practised labour and human rights law in the period 1981 to 1985. That year the first group of labour arbitrators were trained by Rich Bloch sent to South Africa by the US government. Chris was part of that group. His practice then shifted

from representation work to neutral work as a mediator and arbitrator.

In 1987 Chris was invited to the US under the US government's International Visitors' Program. With Arnold Zack, a proposal was developed for the establishment of a labour-management training centre at the University of KwaZulu-Natal in Durban, the Centre for Socio-Legal Studies. Funding was secured through the Ford Foundation. Chris became the Centre's first Director in 1988. The Centre provided joint union-management training in grievance disputes; it arranged an annual national labour law conference and a regular labour law seminar for judges; and it provided a confidential forum for senior union and employer representatives to meet and discuss the political challenges facing South Africa in the late 1980s.

In 1990 Chris returned to full-time practice as a neutral in labour-management dispute resolution. He was an Executive member of the Independent Mediation Service of South Africa (IMSSA), the Acting President of the Transkei Industrial Court, an Assessor of the Labour Appeal Court, and a member of the Standing Committee on Labour Law of the Association of Law Societies of South Africa.

In 1992 Chris was a delegate to the Convention for a Dem-

*(Continued on Next Page)*

## BOARD OF GOVERNORS *(Continued from Page 26)*

ocratic South Africa (CODESA), part of the Congress Alliance, on the Constitutional committee. CODESA ended in deadlock, as a result of impasse on the constitutional committee. A period of political uncertainty followed. During that period, for family reasons, Chris emigrated to Toronto, Canada, landing in July 1993.

In Canada, Chris was appointed a Vice-Chair of the Ontario Labour Relations Board (1994 to 2017), a Vice-Chair and Arbitrator-Mediator of the Ontario Grievance Settlement Board (2008 to date), the Chair of the Ontario Education Relations Commission (1997 to 2003), and he has practised as a mediator and arbitrator. He was admitted into the Academy in 2004. He has served as the Chair of the International Studies Committee since 2016. In this position he is a Co-Chair of the Workplace Dispute Resolution Study Group of the International Labour and Employment Relations Association (ILERA). He was President of the Ontario Labour-Management Arbitrators' Association (2017-2019). He is active on behalf the South African Society of Labour Lawyers (SASLAW)'s Pro-Bono Project.

### **RUBEN R. ARMENDARIZ**

*San Antonio, TX*

My family and I live in San Antonio, TX but I grew up in El Paso, Texas. I attended and graduated from the University of Texas at El Paso and in San Antonio I pursued and earned graduate MBA degree from St. Mary's University.

After graduation, my first job was with the Ford Motor Company and this is where I had my first actual involvement with Labor Relations. A UAW union member filed a 1-hour grievance for performing bargaining unit work. My interest peaked in Labor Relations and I was successful in obtaining employment with the National Labor Relations Board (NLRB) in Kansas City, Ks. My position required extensive traveling and investigating unfair labor practices against certain high-profile Employers and Labor Organizations as well as conducting several high-profile union representation elections. My career with the NLRB was very satisfying and fulfilling and was promoted to Resident Officer of the San Antonio Resident Office – Region 16. This experience was valuable and provided me the opportunity to gain an extensive knowledge of Labor Law.

The experience and knowledge I received from the NLRB, I would not have attained with any other industrial or educational organization but provided me the tools and skills to pursue a career as a Labor Management Arbitrator. This new experience has been very beneficial and provided me a very



successful arbitration practice. I am on several federal and private panels. This experience aspired me to achieve status as a member of the National Academy of Arbitrators. I was introduced to several key Academy members at the Southwest Conferences to include Beber Helburn, Bill McKee, Dan Jennings, Don Goodman and Milton Fox. All of them guided me to obtain membership into the Academy. In 2008 I was admitted and inducted into the Academy in Seattle, Washington. Since then I have conducted presentations with the National Academy in Chicago, IL and was also the Host for the San Antonio National Conference. My responsibilities also included being selected twice for the National Academy Membership Committee and this is where I had the distinctive privilege and honor to work with several distinguished Academy Members.

Currently I am the Registrar for the Southwest Rockies Conferences and Vice Chair for the Region. In May 2021, I will have the honor to assume the duties of "Chair" for the Southwest Rockies Region. I now look forward to my 3-year term with the Board of Governors for the National Academy of Arbitrators and any other office they may deem a need for my services. Lastly, I could not have accomplished any of these accomplishments without the love and support of my daughter Lisa and lovely spouse, Rachel Armendariz of 47 years.

### **MELISSA H. BIREN**

*Maplewood, NJ*

Melissa Biren, a Brooklyn native, was introduced to the world of labor unions at an early age and by law school, with John Sands and Norm Brand as her professors, her path was set. Melissa became an associate at a NYC law firm beginning her career as a labor and employment attorney. She then moved "in-house" working with large international corporations as chief labor and employment counsel, gaining extensive experience in all aspects of labor-management relations, employment law and benefits in the US, Canada and around the world. Ultimately, she assumed the position of General Counsel.



In 2002, Melissa decided to explore a full time return to the labor-management relations field as a neutral. Her practice includes both labor-management and employment arbitration, focused primarily in the New York/New Jersey/Pennsylvania areas. She serves on numerous permanent panels in the public and private sectors, is a named arbitrator in various collective bargaining agreements and is on the rosters of AAA (Labor and Employment), FMCS and several state and local panels.

*(Continued on Page 28)*

## BOARD OF GOVERNORS *(Continued from Page 27)*

Melissa became a member of the NAA in 2009. She served as Regional Chair of NAA Region 2 (NY/NJ Metropolitan area) for two years, and Vice-Chair for three years prior. She has also served on the CPRG and Program committees. Melissa is a member of the Executive Committee for the NJSBA Labor and Employment Section and is a former chair of NJ LERA. Along with Norm Brand, she is Editor-in-Chief of Discipline and Discharge in Arbitration, Second and Third Editions (BNA, 2008 and 2015). Melissa speaks frequently at professional meetings and particularly enjoys opportunities to train new arbitrators and advocates.

Melissa is a graduate of SUNY Binghamton – Harpur College and of Albany Law School where she graduated magna cum laude and was on the Law Review. She is admitted to practice law in New York, New Jersey and Connecticut. Melissa lives in NJ with her husband, Rob Agree, and has three adult children. Her favorite past-time — visiting with family and friends at their home on Lake George in the NY Adirondacks.

### PLAN TO ATTEND 2021 Annual Meeting & Education Conference April 21 — 24, 2021



**Marina del Rey Marriott  
Marina del Rey, CA**

## JULES B. BLOCH

*Toronto, ON*

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



## REGION ACTIVITIES AS OF 4/1/20

Western PA - Gibsonia PA 6/5 noon Treesdale Golf Club

So Cal - Anaheim 7/8 half day program (SC LERA) (Secrets of Effective Arb.) Sheraton Park Resort then quarterly dinner meeting

Ohio-Kentucky - Columbus 9/24 10 am Region meeting and lunch

- Columbus 1 pm 9/24 to 9/25 (FMCS, LERA)

So Cal - Culver City 10/20 quarterly dinner meeting Truxtons

New England - Newport 11/13 (Univ of RI Labor Arb. Conf)

So Cal - 1/7/21 quarterly dinner meeting

## *A Message from President Winograd and President-Elect Nielsen*

### **Dear Academy Colleagues:**

It is an understatement to say that this is a very difficult period for Academy members. We are hunkered down, trying to stay safe and healthy in the face of the Covid-19 pandemic. We are concerned for families, friends, and colleagues. And we are wondering when our professional practices will be restored and we can earn a living.

In these uncertain times, although we cannot answer some of the broader questions, we can share how the Academy remains engaged. The annual meeting in Denver has been canceled, but the Executive Committee has continued to “meet” electronically to plan for the days and months ahead. Here are some of the things that are happening:

1. The National Office staff is working remotely, and keeping up with inquiries and communications. Please be patient as the staff adjusts. We expect an issue of *The Chronicle* to be published in April. Other announcements will follow.

2. Many of you are aware from recent notices that a Video Task Force has been assembled. The VTF was initiated by Dan Nielsen and is chaired by Jeanne Charles and co-chaired by Homer LaRue and Joan Dolan. Invitations have been sent for a webinar to be co-hosted with the FMCS on April 2. Over the next several months, the VTF also plans to develop a protocol for video hearings.

3. Steps are being taken to ensure a continuity in the Academy’s governance in a manner consistent with our Constitution and By-Laws. Dan Nielsen will take over as our president on May 9, as he would have done if the meeting in Denver took place. We also are planning for a transition in May for the Vice-Presidents and members of our Board of Governors.

4. Please save dates for a fall meeting that is tentatively planned for the weekend of October 9-11 in Atlantic City. We are working on finalizing hotel arrangements. The meeting will resemble an FEC, but will include an Annual Business Meeting. It will take place after an annual FMCS conference that draws hundreds of advocates and neutrals from the eastern half of the U.S. Dan Zeiser, who was the Denver program chair, will continue in that role. One session already confirmed is the Fireside Chat with Bill Holley and John Kagel. Another is a “how to” workshop on video hearings. This will be an updated reprise of the jam-packed video session at the Savannah FEC in September 2019.

5. The membership committee continues to consider applications. It will be applying the revised membership standards proposed by a special NAA committee after two years of study, and approved by the EC and the Board of Governors. These changes were distributed to the membership several weeks ago. The changes drew favorable responses from dozens of Academy members, and no objections.

6. The CPRG has developed an advisory opinion on whether an arbitrator should order a video hearing sought by one party, but opposed by the other. As the CPRG moves forward, members will benefit from its guidance.

7. Program and host planning is continuing for the annual meeting at the Marriott Marina del Rey in Los Angeles on April 21-24, 2021. Paul Roose is the Program Chair, and Sara Adler is Chair of the Host Committee. We expect this will be a terrific gathering drawing several hundred members and guests. Please place those dates in your calendar now.

8. Looking ahead, the Academy has negotiated a new agreement with the Grand Hyatt in Denver for the annual meeting in 2023. Although we were forced by the current crisis to cancel our meeting at the hotel this year, the Grand Hyatt welcomes our return in 2023 and Walt DeTreuX, our executive secretary-treasurer, has negotiated very favorable terms.

We wish all our members and their families the best of health in the period ahead. 🇺🇸

**Barry Winograd**  
*NAA President*

**Dan Nielsen**  
*NAA President-Elect*

# Membership Standards Revision

Dear Academy Members:

We are writing to report on a planned change in the standards for measuring countable cases for membership purposes. This change does not involve a change to the By-Laws or the Constitution and is not subject to a vote at the Annual Meeting. It has been unanimously approved by the Membership Standards Committee, the Executive Committee, and the Board of Governors. That being said, we have placed it on the agenda at the Annual Meeting as a discussion item, and it can be amended by the Board if amendments are warranted by the comments and suggestions received from the membership.

The standard under which all of us were admitted to membership is "substantial and current experience as an impartial neutral arbitrator of labor-management disputes so as to reflect general acceptability to the parties." How this standard is measured has changed from time to time over the years. For decades, there was no numerical standard. Admission was based on reputation and the recommendations of current members.

In the 1970's, a numerical threshold was established. When the 50 cases in five years minimum was set, it was based on anecdotal evidence that 50 fully reasoned awards was the average yearly output of an Academy member. Even under the 50 case threshold, the administration of the standard was varied. Twenty five years ago, it was not uncommon for an applicant with 75 or even 100 countable cases to be deferred. In recent years, meeting the threshold, and the standards of diversity of practice, integrity and professionalism has generally meant admission. The same has held true since the change to the 60 in six threshold in 2008.

Most of us recognize, in our own practices and in the broader field of labor-management relations, that the world has changed. The continuing decline in the number and scope of bargaining relationships, and the strains on union resources, has reduced the number of cases available to arbitrators and increased the rate of cancellations of scheduled hearings. This affects all of us, but it particularly affects aspiring members, who seek admission to the Academy based on a set number of decisions within a limited period of time.

The question, then, is what it means to achieve and demonstrate "general acceptability" in today's environment. That question was raised several years ago by prominent members, and in response then-President Ed Krinsky appointed a Membership Standards Committee.

## The Background:

The Membership Standards Committee was composed of a several former chairs of the Membership Committee and other experienced Academy colleagues. The MSC was chaired the first year by Bill Marcotte, and, the next year, by Sarah Garraty. Over that period, in addition to the chairs, members of the MSC included Susan Meredith, Margie Brogan, Howell Lankford, Jackie Drucker, Jules Bloch and Mark Irvings.

An initial MSC report was submitted to the Board in Philadelphia in June 2019, addressing regional standouts under the alternate admissions standard. The Board approved that change and asked the MSC to continue its work. The adjustments reported in this

message are the result of a second year of analysis, discussion and revisions. The Committee has done an outstanding job, and has produced a thoughtful and balanced proposal, which is fully consistent with the purposes and the traditions of the Academy.

## The Membership Standards Adjustments - A Summary:

The adjustments in admission standards retain the model requiring applicants to submit evidence of 60 countable cases in six years, in place since the By-Laws were changed at the Ottawa meeting in 2008. The revised standards continue to include two "buckets" ("A" and "B") for analysis. In bucket "A," dealing with traditional labor-management disputes, the total requirement of at least 40 countable cases remains, including a minimum of 25 final and binding decisions. In the "B" bucket, up to 20 other workplace cases can be counted, of which at least 15 must be actual decisions. Consistent with the Ottawa change, no more than 10 of the decisions in the "B" bucket can be in non-union employment arbitration cases. As in the past, an applicant may satisfy the 60-case admission standard by relying exclusively on labor-management decisions.

For both "buckets," the new standards permit use of two ratios as a proxies for cases to be counted above the 40 decision threshold. One is to use a ratio of 5:1 for mutual selections by parties that do not go to hearing due to withdrawal of a case or cancellation of a hearing. A second adjustment is to use a ratio of 2:1 for mutual selections that lead to actual arbitrator involvement in mediation or other settlement activity. We believe it is appropriate to use these ratios for cases submitted by applicants since, in each instance, an applicant has been deemed acceptable by the parties, and, but for a resolution prior to or at a hearing, the applicant would have had an opportunity to render a formal award.


Virtually all applicants, and many of our members, understand how hearing cancellations add to the difficulty of building the numbers necessary for admission, despite ample evidence of acceptability to the parties. And many of our members, and applicants, also are frequently involved in settlement and mediation activity as an expected and customary facet of their practice. The revised standards draw upon these realities to utilize case-counting ratios to reach the total of 60, while also maintaining a core of 40 written decisions.

In terms of implementation guidelines, the Membership Committee will develop specific evidence requirements for applications. These will include standards of proof for appointments and settlements, and safeguards for the confidentiality of the content of mediation sessions.

Beyond this Bulletin advising of the admission adjustments, Academy colleagues are invited to offer any comments by sending an email to us directly, and also by offering your observations at the Denver business meeting, where this report will be open to discussion and input.

All our best,

Barry Winograd  
President, NAA  
winmedarb@aol.com

Dan Nielsen  
President-Elect, NAA  
dan.nielsen.arb@gmail.com 

## *Dan Nielsen Begins His Presidential Term*

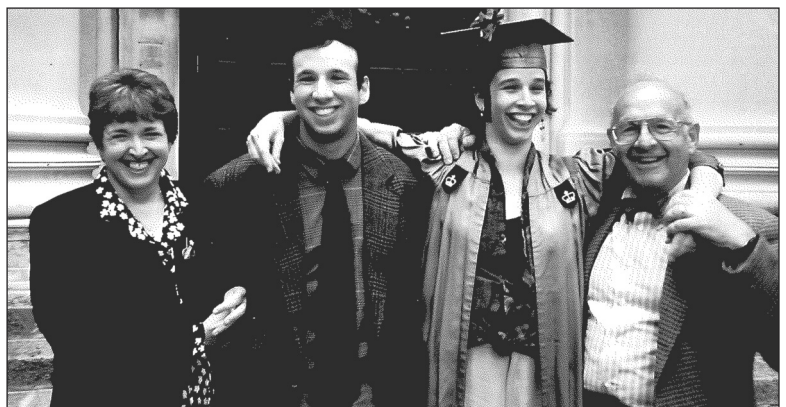
Had the Annual Meeting in Denver not been cancelled due to the pandemic, the gavel would have passed from President Barry Winograd to President-Elect Dan Nielsen at the May 9, 2020 membership meeting. Instead, the BOG held a Zoom meeting on May 9 to conduct its regular business. After a full meeting of the BOG, President Winograd and those Vice-Presidents and Governors whose terms were expiring stepped down from their positions. President-Elect Nielsen assumed the duties of the President. As his first act, he appointed to their respective positions the Executive Secretary-Treasurer, Vice-Presidents, and Governors who had been nominated at the 2019 Savannah FEC. Their formal election to office will occur at the rescheduled membership business meeting in Atlantic City on Saturday, October 10, 2020. 🗡️

## **The 2020 Annual Meeting and Education Conference Rescheduled**

The 2020 Annual Meeting and Education Conference, originally scheduled for May 6-9, 2020 in Denver but cancelled due to the pandemic, has been rescheduled for October 9-11, 2020 to coincide with the BOG Fall Meeting at the Golden Nugget Casino in Atlantic City. The 1-1/2 day program will begin with the President's Reception on Friday evening. A full day program will run on Saturday, followed by a membership business meeting on Sunday morning. In addition, FMCS, Philadelphia LERA and five Regions of the NAA are co-sponsoring an Arbitration Symposium on Friday October 9. Registration information for the Annual Meeting and Education Conference will be available in the next several weeks. 🗡️



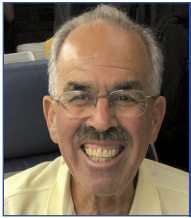
Arnold Zack with John Dunlop



Norma, Jonathan, Rachel and Arnold Zack at Clark University



Arnold with Father Mortimer Gavin (far left) at the Cushing Awards Dinner, December 1986



## THE PRESIDENT'S CORNER

*By Barry Winograd*

This is my third President's Corner, the last of my term. Had life been "normal," my year in office would have ended at the annual meeting planned for May in Denver. But, of course, that meeting has been canceled due to the Covid-19 virus that is spreading throughout the U.S. and Canada, and around the globe.

With the Denver cancellation, the first in 73 years, it would have been easy for the Academy to fold up shop until public health improved. We chose not to do so, however. We have arranged for our yearly leadership transition with Dan Nielsen taking the presidential helm on schedule in May, along with changes for our vice-presidents and governors. Our leadership movements with email meetings.

Turning to our arbitration practices, immediate plans have been made by the Academy to support the use of video hearings, a prospect that increased along with spread of the pandemic. Plans were made for "how to" training on conducting video hearings. Almost 500 arbitrators, Academy members and others, attended an online webinar in early April co-sponsored by the Academy and the Federal Mediation and Conciliation Service. The program was developed by members of the newly created Video Task Force, an initiative begun by president-elect Nielson, chaired by Jeanne Charles, and co-chaired by Homer LaRue and Joan Dolan. A dozen members are working hard on the VTF. Program materials from the webinar, including an extensive power point instructional compilation and an informative set of frequently-asked-questions, will be posted on the Academy's website as a public service. Future VTF sessions will assist arbitrators and advocates who are developing deeper expertise with the video alternative.

And what about resolving conflicts between parties over whether a video hearing should be held? On what basis can an arbitrator decide that the usual presumption in favor of mutual consent for scheduling practices be set aside? The CPRG under chair Susan Stewart has weighed in with a careful analysis of case-related factors, social limitations, and health constraints that will support findings of exceptional circumstances and a compelling need to justify a video hearing over an objection. This opinion should provide important guidance for arbitrators and advocates in the months ahead.

In addition, as I am writing, we finalized arrangements for a weekend conference in Atlantic City from October 9 to 11. This fall meeting, which follows an annual mid-Atlantic conference of the FMCS in that city, offers members a long-awaited chance to see each other again. In Atlantic City, we can share some of the programming that had been slated for Denver, including the Fireside Chat with Bill Holley, who will be interviewed by John Kagel. We also will have a belated presidential luncheon, and outstanding panel sessions. More will be written about these developments in the months ahead. Although the Covid-19 crisis has overshadowed our lives for many months, I appreciate, for now, having a chance to reflect on our accomplishments for the year that has passed.

My term has been marked by rewarding initiatives and actions. I am proud that the Academy is launching a major effort to enhance the diversity and inclusiveness of our dispute resolution profession, focusing on improving participation by minorities and women. It is called the "Ray Corollary Initiative," named after Charlotte Ray, an 1872 graduate of Howard University and a pioneering African-American attorney. The RCI is co-chaired by Homer La Rue and Alan Symonette. They are assembling an organizing committee to work with parties and agencies to form a task force to promote actual selections. This effort could take several years, but the chairs already have inspired positive responses.

Internally, a series of reforms will make the Academy stronger than ever. One is a set of revised standards for admission to the organization. While the revisions adhere to our core principles requiring applicants to demonstrate general acceptability to the parties along with a substantial and current caseload, the new standards also recognize that the profession has been undergoing profound changes in recent decades. The new standards are a balanced approach that will allow more arbitrators to apply without sacrificing the high quality parties expect of our members. The new standards preserve a decision-based review of applications, but also give formal weight to hearing cancellations and to participation in settlement efforts after a selection. Initially, the revisions were recommended by a Membership Standards committee composed in significant measure by former chairs of our Membership Committee. The Executive Committee and the Board approved the revisions unanimously. (Elsewhere in this issue, the reader will find a letter that I wrote with president-elect Nielsen that summarizes in greater detail the changes that have been approved.)

Another important development in the past year is a proposal for an internal grievance procedure for discrimination and harassment claims that one member may have about another. This new procedure fills a gap in our organization's policies, and is the product of two years of deliberation by a blue-ribbon Academy committee chaired by Besty Wesman. While instances of discrimination and harassment are rare, we want to be confident that all members know there is a remedy when a problem arises.

In implementing the structural changes approved a year ago that led to the FEC in Savannah being our last official fall meeting, it became apparent that our governing structure also needed to be streamlined. As a result, at the business meeting planned for Atlantic City, we will consider a motion to amend our constitution and by-laws to modestly reduce the size of our governing board. This will save funds in bringing together officers and members of the board, and the smaller size should make it easier for members to volunteer to participate in the Academy's leadership.

In closing, let me express my thanks to our leadership on the Board of Governors, to the Executive Committee (past president Ed Krinsky, president-elect Nielsen, Bill McKee, Paula Knopf, and Walt De Treux, our executive secretary-treasurer), and to the committee chairs and members who, together, volunteer many hours of hard work to make the Academy a great organization. Through it all, it has been a pleasure to work with our dedicated staff in the national office: Suzanne Kelley, Katie Griffin, and Melissa Kelley. My deep appreciation to all. 🖊️