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WOMEN LABOR ARBITRATORS: WOMEN MEMBERS OF
THE NATIONAL ACADEMY OF ARBITRATORS
SPEAK ABOUT THE BARRIERS OF ENTRY
INTO THE FIELD

Cynthia Alkon†

Labor arbitration imposes some of the highest barriers of entry in any field of alternative dispute resolution.¹ Parties picking an arbitrator in a

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1. Charles Pou, Jr. considered barriers to entry in the mediation field. See Charles Pou, Jr., *Assuring Excellence, or Merely Reassuring? Policy and Practice in Promoting Mediator Quality*, 2004 J. Disp. Resol. 303. He has created a “Mediator Quality Assurance Grid,” which helps conceptualize the “prototypical” approaches to mediator training and other barriers to entering and staying in the field. *Id.* The five approaches are: (1) No hurdle/No maintenance; (2) High hurdle/Low maintenance; (3) High hurdle/High maintenance; (4) Low hurdle/Low maintenance; and (5) Low hurdle/High maintenance. *Id.* at 325. He explains that a “high hurdle,” or an initial barrier of entry to the field, could include many hours of training, experience, or observation requirements. *Id.* It could also include minimum degree credentials, performance based reviews or tests, moral character reviews, or high application fees. *Id.* “Low hurdles” are designed to allow people with little training and experience to enter the field. *Id.* at 325–26. Maintenance requirements include continuing education, a minimum number of mediations completed since the initial entry into the field, periodic renewal of the mediator’s certification, registration, or roster status, and renewal fees. Labor arbitration under this definition is a “High hurdle/No maintenance” field. The American Arbitration Association (“AAA”) requires a minimum of ten years experience, “significant hands-on knowledge of labor relations,” and training specifically in dispute resolution before they will add an arbitrator to their roster. See Am. Arb. Assn., *Qualification Criteria for Admittance to the AAA Labor Panel*, <http://www.adr.org/sp.asp?id=24295> (accessed Dec. 14, 2006). The AAA also states that “[o]penings on our Regional Roster of Neutrals are extremely limited, based primarily on caseload needs and user preferences. Consequently, even candidates with strong credentials may not be added to our roster.” *Id.* New arbitrators who wish to get on the Federal Mediation and Conciliation Service (“FMCS”) roster must show that they are “experienced, competent and acceptable in decision-making roles in the resolution of labor relations disputes, or [that they have] extensive and recent experience in relevant positions in collective bargaining.” Fed. Mediation & Conciliation Serv., *Policies and Procedures*, <http://www.fmcs.gov/internet/itemDetail.asp?categoryID=197&itemID=16959> (Dec. 27, 2005). The FMCS allows proof of qualifications to be either “five recent arbitration awards prepared by the applicant,” or “the successful completion of the FMCS labor arbitrator training course within the five years immediately preceding the date of application plus two awards . . . and

labor dispute typically know and trust the chosen arbitrator. Arbitrators usually have some prior experience in labor organizations or management before assuming the role of a neutral. This reality makes the field an “insiders club.” A successful labor arbitrator not only has these strong personal and professional connections to the parties, but also experience, knowledge, and impartiality.² This Article explores the barriers that women, in particular, face in entering this profession.

I. INTRODUCTION

By most accounts, women make up less than 15% of the National Academy of Arbitrators (“NAA”).³ To become a member of the NAA, a person must have good moral character and substantial experience as an “impartial arbitrator of labor management disputes.”⁴ The NAA expects a minimum of fifty cases arbitrated over a five-year period before a new member will be admitted.⁵ Admission to this highly selective organization is itself a mark of success.

the submission of information demonstrating extensive and recent experience in collective bargaining . . . ” *Id.* Neither organization requires continuing education. There are no certification or license requirements for labor arbitrators. Due to the barriers to entry in the field, at least one commentator advocated for a licensing requirement to ease entry for new arbitrators. See Nicole Buonocore, *Resurrecting a Dead Horse—Arbitrator Certification as a Means to Achieve Diversity*, 76 U. Det. Mercy L. Rev. 483 (1999).

2. Clara H. Friedman, *Between Management and Labor: Oral Histories of Arbitration 4* (Twayne Publishers 1995) (stating that “[d]esirable qualities include impartiality, evenhandedness, [knowledge], maturity, experience, and civility, along with the ability to comprehend evidence and analyze the record, to conduct a fair and orderly hearing, and to write a reasoned award that makes clear the basis for the decision”).

3. See e.g. Nicole Buonocore, *supra* n. 1, at 483; Mario F. Bognanno & Clifford E. Smith, *The Demographic and Professional Characteristics of Arbitrators in North America*, 41 Natl. Acad. of Arb. Proc. 266, 273-75 (1989); John Smith Herrick, *Profile of a Labor Arbitrator*, 37 Arb. J. 18, 21 (June 1982). A review of the National Academy of Arbitrators (“NAA”) website in 2002 listed fifty-four women, or 8% of its 624 total membership. See Natl. Acad. of Arb., *Membership List*, <http://www.naarb.org/index.html> select Membership List (accessed 2002). In 2006, ninety-six women appeared on the NAA roster of arbitrators. *Id.* (accessed Nov. 17, 2006). Based on these statistics, the number of women arbitrators had increased to 14.28% of the total 672 listed members. See *id.* Not all members agree to be listed on the website, so the NAA membership may include even more women. Although most NAA members refer to the NAA as “the Academy,” this Article uses the initials of the organization.

4. To join the NAA: “(1) The applicant should be of good moral character as demonstrated by adherence to sound ethical standards in professional activities, [and] (2) [t]he applicant should have substantial and current experience as an impartial arbitrator of labor-management disputes, so as to reflect general acceptability by the parties.” Natl. Acad. of Arb., *2006 Membership Guidelines*, www.naarb.org/member_guidelines.html (accessed Nov. 16, 2006).

5. To meet the threshold “requirement for consideration of the application, the applicant must demonstrate at least five years of arbitration experience and a minimum of [fifty] diverse ‘countable’ arbitration cases during that five-year period. Multiple cases

In most other areas of law, women have entered the field in greater numbers. Overall, women comprise 30% of the legal profession.⁶ This Article considers the reasons for the under-representation of women in the arbitration field as compared to their increasing presence in the field of law. This Article seeks to answer the following questions: Do women perceive greater barriers in becoming established labor arbitrators due to their gender? If so, can arbitration organizations, like the NAA, do more to support women who wish to enter the field?

This Article only considers the opinions of women members of the NAA, although male NAA members would undoubtedly have valuable information about the barriers of entry into this field. Given the overall difficulties of conducting a survey of all the NAA members, this Article considers only the survey responses of the listed, women members of the NAA.⁷

The surveys, copies of which appear in Appendices One and Two to this Article,⁸ asked women labor arbitrators whether they perceived that women had more difficulty becoming established labor arbitrators. For those women who thought they faced higher barriers, the survey solicited their suggestions about how the field could better support women. This Article reflects the data collected in the two surveys. The Author first surveyed women NAA members in June 2002,⁹ and conducted the second

before the same parties or in the same industry do not meet the general acceptability criterion." *Id.* The NAA may make an exception to the fifty-cases rule for "recognized, prominent authority on labor-management relations (who may have only limited, current arbitration experience) whose membership, in the opinion of the Membership Committee and the Board of Governors, would be of unusual and outstanding value to the Academy." *Id.* The NAA members continue to debate, as they have for many years, whether the NAA should change this membership criteria, including allowing employment arbitration cases to count.

6. Deborah L. Rhode, ABA Commn. on Women in the Profession, *The Unfinished Agenda: Women and the Legal Profession* 13, <http://www.abanet.org/ftp/pub/women/unfinishedagenda.pdf> (2001); see also ABA Commn. on Women in the Profession, *Charting Our Progress: The Status of Women in the Profession Today* 4, <https://www.abanet.org/women/ChartingOurProgress.pdf> (2006). Of course, labor arbitrators are not required to be lawyers, and many are not lawyers. A 1999 survey of NAA members reported that 39% did not have law degrees. See Michel G. Picher et al., *The Arbitration Profession in Transition: Preliminary Results from a Survey of the National Academy of Arbitrators* 248-49, <http://www.naarb.org/proceedings/pdfs/1999-241.PDF> (accessed Nov. 16, 2006).

7. "Listed members," as used in this Article, are those who agreed to have their names listed publicly on the NAA website. Also, the Author had to make a best guess of who were women based on the names. In 2006, at least one survey was sent in error to a male NAA member who sent back the survey stating that he would not fill it out as it was clearly aimed at women members.

8. *Infra* apps. 1-2.

9. The survey results appeared in a paper the Author wrote to satisfy a requirement of the L.L.M. program in Dispute Resolution at the University of Missouri-Columbia. Cynthia Alkon, *Women Labor Arbitrators: Results of a Survey of Women Members of the National*

survey in September 2006.¹⁰ Accordingly, the data reflects how perceptions have changed over a four-year period.

II. THIS ARTICLE

This Article first explains the methodology of the survey. It next explains the survey results for both 2002 and 2006. A majority of survey respondents agreed that women have a harder time establishing themselves as labor arbitrators, although the respondents in 2006 were less overwhelming in this conclusion. In 2002 and 2006, women members agreed that the NAA could take steps to address the problem. The Article concludes that women members, based on the 2006 survey results, now perceive the field as more open to them.

III. METHODOLOGY

The Author surveyed women NAA members twice by a questionnaire distributed by e-mail and surface mail. In June 2002, the Author surveyed fifty-four, then-listed, women members of the NAA. Four years later, in September 2006, the Author surveyed ninety-six, listed, women members of the NAA. In 2002, the Author could not reach by e-mail seventeen of the fifty-four women. These women received the questionnaire by surface mail, and of those, one survey came back as undeliverable. Accordingly, to calculate the return rate on the first survey, the Author used fifty-three as the total number of surveys distributed. In 2002, 28% of the surveyed women responded.¹¹

In 2006, the Author sent the second survey, both via e-mail and surface mail, to all the listed, women NAA members. Of those surveys sent via surface mail, the postal service returned three surveys as undeliverable, and two e-mails “bounced back” as undeliverable. The undelivered e-mail and surface mail surveys did not go to the same members. Accordingly, to calculate the return rate, the Author assumed that each listed member received the survey in one format or the other.¹² Over 36% of the surveyed women returned responses.¹³ The 2006 survey reached several

Academy of Arbitrators (unpublished LL.M. paper, U. of Missouri-Columbia July 8, 2002) (copy on file with Author).

10. Copies of the 2006 survey results are on file with Author.

11. The returned surveys were roughly, evenly divided between those who received the survey through e-mail, and those who received it through surface mail.

12. In addition, two people responded, but refused to answer, the survey questions. One stated that, in her view, this survey needed “prior approval” by the NAA, and until she was told it had such approval, she would not respond to any questions. Since they did not respond to the survey itself, they were not counted toward the final “response rate.”

13. A return rate of 28%, or even 36%, is not high and does lead to problems of bias. It is possible that those who returned the survey both in 2002 and 2006 had a particular interest in the topic, and that interest may skew the results. As in 2002, a roughly equal number of the 2006 responses were returned electronically or via surface mail.

members for the first time because six of the thirty-four respondents, which is just over 17.6%, became NAA members in 2002 or later.

In 2002 and 2006, the instructions to the survey assured the respondents that their answers would remain anonymous. The mostly open-ended questions asked the respondent to explain her answers in more detail. In answering the survey questions, some respondents gave answers within certain ranges, such as "15 to 20 cases" or "8 or 9 years." The analysis in this Article uses the lower number in all calculations.

In 2006, the survey asked three questions not asked in 2002.¹⁴ Two questions inquired whether the Federal Mediation and Conciliation Service ("FMCS") or the American Arbitration Association ("AAA") could do more to assist women starting out as labor arbitrators.¹⁵ Again, no clear consensus existed among the surveyed women about what these organizations could do to add diversity to the field. The respondents, however, offered many suggestions for women starting labor arbitration careers. This Article summarizes those suggestions in Section IV(J) below.

The 2006 survey also added the questions: "Do you think there has been any change in the last few years for women arbitrators?"¹⁶ "If yes, what has changed?"¹⁷ "What do you attribute that change to?"¹⁸ These survey questions sought an explanation for the increase in the raw number of women who had joined the NAA in the four-year period studied. The data showed an increase from 8% to nearly 15% of the total NAA membership.¹⁹ The Author wondered whether the women NAA members knew of the increase, and if so, understood why the numbers had increased so dramatically.²⁰ Not a single respondent answered the questions in a way that reflected an awareness of the increased women membership. Many of the respondents may have viewed the vaguely worded questions as asking about an increase in membership over a much longer time frame.²¹

IV. SURVEY RESULTS²²

A. *Time Between Entry into the Field and Admission to the NAA*

The 2002 survey respondents reported, on average, 19.1 years of experience as arbitrators. The 2006 respondents reported more experi-

14. See *infra* apps. 1-2.

15. *Id.* at app. 2.

16. *Id.*

17. *Id.*

18. *Id.*

19. See Natl. Acad. of Arb., *supra* n. 3 and accompanying text.

20. See *id.*

21. See *infra* pt. IV(I).

22. All statistical and quoted information used throughout this Section is taken directly from the responses to the 2002 and 2006 surveys. Due to the confidential nature of the responses, they are not being published herewith; however, copies are on file with the

ence, with an average of 24.17 years as arbitrators.²³ In 2002, they reported 9.2 years, on average, from the date they began arbitrating to the date of admission to the NAA. This time increased only slightly, to 9.64 years, in the 2006 survey responses. The range of responses to this question²⁴ fell between a low of five years and a high of twenty years. One 2002 respondent and five 2006 respondents reported only five years between entry into the field and admission to the NAA. Two 2002 respondents reported that it took fifteen years to become NAA members. One 2006 respondent, who joined the NAA after 2002, reported that it took twenty years to become a NAA member. Forty-six percent of the 2002 respondents took ten or more years to gain admission to the NAA. In 2006, a slightly higher number of women members, 47%, took ten or more years to gain admission to the NAA. In 2002, one respondent reported admission to the NAA as early as 1977. The survey responses also reported the latest admission date as 2000. In the 2006 survey, members again reported the earliest admission date as 1977, and the most recent admission date as 2005.

B. *Relationships with Established Arbitrators*

Twenty-six percent of the 2002 respondents reported being related to established arbitrators. In 2002, half of the respondents related to arbitrators had married arbitrators, and the other half reported that their fathers were arbitrators. This number decreased in the 2006 survey, with 22.8% of the respondents reporting that they were related to arbitrators, including one highly experienced respondent who reported that her husband just recently became an arbitrator. Four members reported their husbands were arbitrators, one stated that her ex-husband was an arbitrator, and another reported that her cousin was an arbitrator. Two members reported that their fathers were arbitrators.²⁵

C. *Case Load and Income*

Oddly enough, in both 2002 and 2006, the respondents arbitrated, on average, fifty-three cases per year. In 2002, the number of cases arbitrated ranged from a low of eight cases per year to a high of one hundred and

Author. Thus, citations in this Section have not been included, except to reference the year of a survey response where the date has not been provided in the text.

23. For purposes of comparison, according to a 1999 survey, the average member of the NAA had twenty-six years of experience. See Michel G. Picher et al., *supra* n. 6, at 247.

24. This is Question 2 in both the 2002 and 2006 questionnaires. *Infra* apps. 1-2.

25. One respondent to the 2006 survey objected to this question stating: "If this survey went to men, I don't believe you would suspect—therefore suggest—that nepotism may have played a part in their having become established as arbitrators." If resources had allowed for a survey of all NAA members, this question would certainly have been included.

twenty cases per year. In 2006, the reported number of cases arbitrated ranged from a low of fourteen cases per year to a high of two hundred cases per year. Many cases settle before the scheduled hearing. Accordingly, in 2002, many respondents commented that the survey would have better measured their caseloads by asking for the number of cases in which parties had selected the member as the arbitrator. In 2006, none of the respondents suggested this distinction.

TABLE 1: SUMMARY OF BASIC STATISTICS FROM RESPONDENTS

	2002 Respondents	2006 Respondents
Average years of experience	19.1	24.17
Average years of membership in the NAA	9.2	9.64
Percentage who took ten years or more to gain NAA membership	46%	47%
Average number of cases per year	53	53
Average percentage of income from arbitration	75%	86%
Percentage reporting arbitration as their sole source of income	39%	50%
Average years until arbitration was 100% of income	6	8.13

In 2002, respondents relied on arbitration for an average of 75% of their income, with 39% of respondents reporting that arbitration was their sole source of income.²⁶ In 2006, both numbers increased, with respondents relying on arbitration for 86% of their income, and 50% of respondents reporting that arbitration was their sole source of income.

Respondents to the 2002 survey who reported arbitration as their sole source of income took, on average, six years to reach this point. Respondents to the 2006 survey who reported arbitration as their sole source of income took, on average, eight years to reach this point — an increase of two years. The quickest time to reach this point was five years in 2002, and three years in 2006. The longest time periods reported for arbitration to become the sole source of income was nine years in 2002, and twenty-seven years in 2006. In both 2002 and 2006, most of those respondents who did not earn all of their income from arbitration reported that they earned income from teaching, training, and acting as neutrals in other settings, including mediation. In 2006, one respondent relied solely on her husband's income. In 2006, five respondents also relied on retirement income or investments.

26. For purposes of comparison, NAA members overall earned 76% of their income from arbitration between 1996 and 1998. See Michel G. Picher et al., *supra* n. 6, at 246.

D. *Residency of Members and the Location of Arbitration Hearings*

In 2002, the fifty-four, listed, women members of the NAA resided in twenty states. By 2006, the ninety-six, listed, women NAA members resided in twenty-seven states and Ontario, Canada. In 2002, over half the women members resided in just three states: California, New York, and Pennsylvania. By 2006, that number decreased to 39%. In 2002, 25% of women members lived in just one state: New York. By 2006, the percentage of New York residents decreased to just over 19%.²⁷ In response to the question about where they arbitrate cases,²⁸ the respondents listed forty states in 2002 and forty-six states in 2006. In both surveys, respondents also listed Washington D.C. and parts of Canada. The 2002 survey also included one respondent who arbitrated in the U.S. Virgin Islands.

E. *Gender as a Barrier of Entry into the Field*

In 2002, 85% of the respondents felt that gender affected their ability to become established as arbitrators. In 2006, just over 70% of the respondents — a decrease of 15% — had the same perception. In 2002, 21% of respondents thought gender “significantly” affected their ability to become established arbitrators, and by 2006, this number decreased to 17%. In 2002, one respondent, who said that gender did not affect her ability to become an established arbitrator, commented that she worked entirely in the public sector. She thought this work environment explained why gender had not affected her success.²⁹ In 2006, one respondent was “unsure” whether gender had affected her career. Another 2006 respondent found these questions “offensive, individually[,] and especially collectively,” and went on to state: “I have not found that my gender either enhanced or diminished my credibility as I built my arbitration practice. Rather, it was the quality of my work that seemed to count.”³⁰

After asking the specific question about the respondents’ experiences in the field and whether gender played a role in their success, the survey then asked, in general, whether the respondent felt that being a woman made it more difficult to establish a career as an arbitrator.³¹ In 2002, 80% of respondents felt that being a woman affected the ability of an arbitrator to get established, and in 2006, that number dropped considerably with only 29% answering with an unequivocal “yes.”

27. Some NAA members listed multiple addresses. For purposes of this survey, the Author counted the first addresses listed, not the alternative addresses.

28. This is Question 9 in both the 2002 and 2006 questionnaires. *Infra* apps. 1-2.

29. See *infra* pt. IV(E), at ¶ 8.

30. The 2002 survey did not elicit such critical comments or questions. In contrast, a few of the 2006 respondents expressed criticism of the questions asked, and the underlying assumption of the survey that it is more difficult for women to establish careers as labor arbitrators.

31. This is Question 11. *Infra* apps. 1-2.

In the 2006 survey, one respondent stated that “arbitral colleagues are very threatened by women arbitrators,” and “[t]he NAA in particular is [a] big and . . . very conservative old boys club.” Another respondent stated: “[W]e are not as readily accepted by advocates and risk being regarded as ‘pushy’ or overly friendly where a man’s activity would be seen as appropriate.” More of the respondents in the 2006 survey made a distinction between the present and the past. Twenty-nine percent of the 2006 respondents stated that women “now” have easier times establishing careers as arbitrators. As one 2006 respondent wrote:

For the first [ten] years of my practice[,] . . . being a woman made it more difficult to get established. Most lawyers and people in a position to select arbitrators were men. [A] significant percentage of them did not embrace the concept of women arbitrators, particularly in traditionally male industries and other workplaces. A woman could make it, but [she] didn’t get cut any slack. As society changed in the 1990s[,] more women graduated from law school, and more women went into all aspects of labor relations and gained experience and visibility. . . . Now, I don’t think gender is a significant element in getting established.

Furthermore, one 2006 respondent stated that “parties frequently seem to prefer a woman, especially when the grievant is a woman.” Another 2006 respondent stated that “getting established is difficult today for both men and women, although women are no longer a novelty.” She added that “African-American women may have more difficulty.”³²

TABLE 2: SUMMARY OF RESPONSES TO SPECIFIC QUESTIONS REGARDING GENDER

	2002 Respondents	2006 Respondents
Percent responding that gender affected their ability to become established arbitrators	85%	70.58%
Percent responding without reservation that being a woman makes it more difficult to become established as an arbitrator	80%	29%

Most 2002 and 2006 respondents agreed that it is easier now for women to enter the field than it has been in the past. As one 2002 respondent said:

32. A 1999 survey of NAA membership reported that only 2.5% of its members were African-American. See Stephen Crow & Sandra Hartman, *The National Academy of Arbitrators: Decline and Fall or Renewal?* 212, <http://www.naarb.org/proceedings/pdfs/2002-206.PDF> (Nat'l. Acad. of Arb. 2002); see also Michel G. Picher et al., *supra* n. 6, at 247 (stating that 6% of NAA members are “nonwhite”).

It[']s better today than [fifteen] years ago, but openness to new arbitrators of any gender varies from region to region. I think certain clients and certain advocates believe that it would be better to have a man on certain kinds of cases, but I have been place[d] on several permanent panels where the workforce is predominately female (flight attendants, nurses), in part because of my gender.

A 2006 respondent said that, when she started as an arbitrator, it was more difficult for her to establish a reputation in the field. She commented:

There were very few women attorneys in labor relations, and even fewer arbitrators. There was some thinking that female arbitrators could not understand what went on in predominately male, unionized workplaces. Additionally, I think advocates like to pick arbitrators they feel comfortable with and can talk to[,] and many women seem [like] foreign creatures who [they] could not talk sports with or hang out with on breaks. On the other hand[,] being a woman helped me get cases in areas that were predominately female (education and healthcare) or where the workforce was highly educated (entertainment).

In 2002, many of the respondents observed that it took longer for women arbitrators to get established. One respondent stated: "It's been my experience[,] and also that of my male mentor, that of the dozen or so people he mentored, given roughly equal ability, the women took approximately three times as long to get established." In contrast, in 2006, not a single respondent discussed this issue.

Many of the respondents in both 2002 and 2006 suggested why women experience additional barriers in starting their careers. The explanations focused on the male-dominated culture in which labor arbitration often operates. For example, one respondent stated: "[L]egal counsel for the companies and unions are predominantly male (as are union officers and corporate executives)[,] and as decision-makers in the labor arbitration process[,] they are more likely to select male arbitrators, perhaps feeling more comfortable appearing before a male fact-finder."³³ One respondent drew a distinction between the public and private sectors stating:

In the private sector[,] where the advocates and clients are more likely [to be] male, it may be a matter of a comfort level [in] dealing with male arbitrators. In the public sector[,] where women are a higher proportion of the work

33. This is a 2002 response.

force and often are advocates/client[s], female arbitrators find greater acceptance.³⁴

Many of the respondents discussed regional differences. In 2002 and 2006, respondents from California and New York believed that women living in these states had an easier time starting their arbitration careers. One 2006 respondent gave the following example:

In my earlier days, it was very hard to get acceptability. A group of us in the San Francisco Bay Area responded by forming an ad hoc organization to promote one another's practices. One thing we did, for example, was [to] have a list of women arbitrators we could send out to advocates who [had] said something along the lines of "I'd like to use a woman arbitrator, but I don't know who they are." It seemed to work. We were also assisted by very active and supportive female advocates . . . and some male advocates as well.

In contrast, one 2006 respondent stated:

Ohio is a very conservative state. . . . [T]here are not that many women arbitrators in Ohio. It is a rust belt state[,] and before the public sector was highly unionized[,] it was very difficult to break into the private sector manufacturing business. I had better luck with the public sector in which more women are employed.

In 2002 and 2006, a number of respondents noted that today anyone would have more difficulty breaking into labor arbitration. One respondent felt that women in labor arbitration faced the same barriers women in other professions faced, stating:

[A]s in every other profession[,] . . . a woman arbitrator has to be more talented and hardworking to accomplish the same degree of success as a male counterpart[.] [A]lso[,] the glass ceiling is very apparent in arbitration. Women simply do not get the top chairmanship appointments, which carry lucrative retainers, no matter how accepted and experienced they are in the particular relationship.³⁵

One 2006 respondent, in a cover letter, stated: "Youth-ism still affects development of arbitration careers. . . . I think sometimes we confuse it with sexism." Another 2006 respondent commented on the combined effect of lack of experience and gender, stating:

34. This is a 2002 response.

35. This is a 2002 response.

Yes, [it is more difficult to establish an arbitration career] owing to two factors. One is the need for an arbitrator to have significant experience in labor-management relations or labor law, which in the past have been traditionally male-dominated fields. Then, assuming a woman has broken through that stereotype and acquired sufficient experience, the reluctance to entrust a major dispute to a “new” arbitrator is sometimes compounded by a reluctance [to use a] female. In [California], both of these factors have significantly diminished since I began arbitrating in the late 1970s.

Two 2002 respondents stated that gender had not affected their career development, but conceded that gender played a role in the selection of specific arbitrators in specific cases. For example, one respondent said: “[M]any unions and employers prefer women for hospital and school board arbitrations.” Another respondent stated: “I have also gotten some work because I am a woman[,] [and] there are many female dominated professions that show [a] preference [for] female arbitrators.” Both answers seem to suggest that gender matters in the selection process, albeit in a positive way. One 2006 respondent stated:

[W]omen have made huge advances in labor arbitration. I am sure that some silly stereotypes remain. Certainly each of us sees manifestations of sexism from time to time within the course of a hearing, but these are minor things and I think sexism no longer affects career development. Perhaps I am being Pollyanna about this, but there have been such significant advances [since] I started practicing law in (the early 1980s).

In 2002 and 2006, other respondents called attention to the lack of diversity in the field based on race or ethnicity. As one respondent stated: “If there was to be a push for helping [to] get new arbitrators in place, the area of focus should be for minorities, as the women seem to be coming into the field with about the same ease as men, although at different stage[s] of their careers.”³⁶

F. *Role of the NAA in Supporting More Gender Diversity in the Labor Arbitrator Pool*

In 2002, the majority of respondents, 53%, believed that the NAA could do more to help new women arbitrators, while only one respondent thought that the NAA could not assist new women arbitrators. That respondent felt that the focus should be on diversity of race or ethnic backgrounds instead. In 2006, those numbers changed significantly. Thirty-

36. This is a 2002 response.

eight percent, exactly thirteen respondents, believed that the NAA had no role to play in increasing gender diversity in the field, with one respondent stating that the “NAA is doing [okay] now.” Another 2006 respondent stated: “There is not enough work to go around to the arbitrators [who] are working now. Training new arbitrators, men or women, seems pointless. It would be most disappointing to be trained for a profession that is shrinking.” Also, one 2006 respondent wrote that the NAA has “showcased women for years and [has] steadily increased the proportion of women members.” Another 2006 respondent said: “[T]he [NAA] works with new arbitrators on a regional and national level[.] I don’t see why we should differentiate by race, gender[,] or any other criterion.”

Of those who thought that the NAA could, or should, help diversify the field, several suggested a training and mentoring role. One respondent suggested that the NAA’s “standing committee that liaises with [the] AAA and FMCS could brainstorm on methods . . . to increase exposure of existing female arbitrators, [and] encourage experienced arbitrator mentoring of new people and other activities.”

G. *The NAA Leadership and an “Old Boys Club” Atmosphere*

Many of the 2002 respondents specifically criticized the NAA for its lack of women in leadership positions, although not a single response to the 2006 survey included this criticism. Currently, a woman holds the position of President-Elect of the NAA, and two of the four Vice-Presidents are women.³⁷ Many women also hold committee chair positions. The fact that not a single 2006 respondent commented on these issues indicates that the NAA has addressed these concerns. Thus, the concerns are no longer of uppermost importance to women NAA members.³⁸

In contrast, in 2002, many of the respondents suggested that women should take on greater leadership roles within the NAA. As one respondent commented: “The NAA *needs* to promote females in real leadership positions (especially president). [Two] in [its] history! None in [twenty] years! Women do a huge proportion of the committee work, but at the highest levels, white male follows white male.”³⁹ Another respondent stated:

The NAA should break through the glass ceiling in terms of [the] *frequent* election of females to the President’s position. Parties notice this sort of thing[,] [a]nd they no doubt

37. See Natl. Acad. of Arb, *Officials, Committee Chairs, and Staff*, <http://www.naarb.org/officials.html> (accessed Nov. 16, 2006) (listing the 2006–2007 NAA Officers).

38. It is also possible that those who were the most frustrated chose not to respond to this survey.

39. The emphasis is in the original response.

notice when we dip lower and lower to find a male President once a year[,] while bypassing females at least as worthy.⁴⁰

Some of the responses strongly criticized the NAA's treatment of women. For instance, a 2002 respondent stated:

The NAA is the most overtly sexist professional organization [that] I have ever experienced. Too many of our members simply *still* do not get it. They treat and speak to and about women members in condescending and/or demeaning ways. Our nominating committees still practice tokenism for positions at the higher levels (a female President every few decades is still okay? Never mind that our numbers in the NAA have swelled, and that the lion's share of the grunt committee work is performed by women year after year. How about a female President every [two] or [three] years? We would have to dip *no lower* in the talent pool [than] we do for male presidents!).⁴¹

Although the 2006 respondents did not express concerns about the leadership of the NAA or its members' treatment of women, responses in 2002 criticized the general atmosphere in the NAA. As one respondent observed:

The women in the NAA are very helpful and welcoming to new women arbitrators[,] and a few of the long-time established male arbitrators are also helpful. The bulk of the long-established male members have not even slightly extended themselves to me as a new female member; they appear to be basically only interested in each other.

Also, a number of the 2006 responses referred to the "old boys network" of the NAA, but in contrast to the 2002 survey, far fewer respondents criticized the NAA. Not a single 2006 response strongly criticized male NAA members or complained about the treatment of women by male members. Instead, the 2006 responses tended to focus on the general "old boys" atmosphere.

H. *Role of the AAA or the FMCS in Supporting More Gender Diversity in the Labor Arbitrator Pool*

Although the 2006 survey included two new questions about the possible role of the AAA or FMCS in encouraging diversity in the field, the answers did not significantly differ from the answers relating to the NAA's role in increasing diversity. Many of the respondents simply wrote "See above" in answering the questions relating to the FMCS and NAA, and

40. The emphasis is in the original response.

41. The emphasis is in the original response.

referenced an answer regarding the AAA. A number of the respondents recognized the limits of each organization. For instance, one respondent said that the AAA could “probably” do something, “but [it] no longer ha[s] the staff or resources.”

A few respondents specifically addressed the role of the AAA and FMCS in bringing more women into the field. Two respondents suggested that the AAA send out selection lists with a certain number of women on each list; however, several other respondents objected to gender playing any role in the lists sent to the parties. Some of the respondents suggested that the lists should include newer arbitrators, without regard to gender. As one respondent reported: “[I]n California, all state panels include at least one new arbitrator.” Alternatively, one of the responses, specifically relating to the role of the AAA in California, stated:

I am not aware of . . . efforts by the AAA in California to introduce any new arbitrators to the advocates, say nothing of encouraging selection of arbitrators who are not white, male[,] and over [fifty,] or at least already well-established. At one time[,] the California State Mediation and Conciliation Service had a practice of putting the names of one or two “new” arbitrators on each list that went out so that advocates became familiar with new peoples’ names[,] and after a time, [were] inclined to “give them a try.”

I. *Acknowledgment of Changes in the Last Few Years*

As stated above, none of the respondents specifically addressed the increase in the number of women members of the NAA in the last four years. One respondent’s answer may indicate that the wording of the question created some confusion. As she wrote:

If by “the last few years” you mean [ten] or so, there has been little change. If you mean [thirty years] or more, the willingness of parties to select women arbitrators has steadily increased. I attribute that to a change in attitudes of people in general in our country[,] and to the fine work that women have done that has increased their acceptability.

The respondents uniformly agreed that the situation has improved and that more women arbitrators exist. Many respondents made statements such as “women are readily accepted now,” and one respondent stated: “There are many more women arbitrators and they are becoming more visible in leadership roles in organizations such as the NAA. The competence of these women can’t help but be recognized by those in the field.” Another respondent stated that, “in traditionally male occupations where women are now used, [for example] airline pilots, baseball[,] and hockey salary

arbitration[s], it is now a non-issue.” Moreover, another respondent commented:

I think it has become more acceptable for advocates to select women [because] there [are] more of us with lots of experience. The question is no longer [whether to pick] a woman[,] but “which qualified woman shall I pick?” [The change reflects] changes in the [gender of] advocates (perhaps this is one area [in which] getting more lawyers involved has been beneficial, because there are more female lawyers who are willing to select fellow females). [In addition, the change reflects] . . . greater unionization in the public sector, where there are more women union members and managers, hence less resistance to a female decision-maker.

J. *Specific Suggestions*

Respondents offered a number of ideas about what the NAA, AAA, or FMCS could do to assist new women arbitrators.⁴² However, as noted above, 38% of the 2006 respondents did not think that anything needed to be done, nor should be done.

1. Better Mentoring

Mentoring featured strongly in most of the responses in both 2002 and 2006. As one 2006 respondent put it: “[T]his is a field in which one-on-one mentoring is essential.” Also, a 2006 respondent stated that “unfortunately[,] the best way [to become established as an arbitrator] is still to be ‘attached’ to a successful male arbitrator.” Some of the respondents felt that the NAA could do a better job of formalizing mentoring relationships to help new arbitrators in general, and specifically to help women. Particularly, one 2002 respondent recommended that the NAA:

reinstate an active intern program at annual meetings, [provide] more regional arbitrator development programs[,] . . . formalize . . . mentoring, [and engage in] more active recruitment . . . of promising advocates. . . I was mentored by a man who went out of his way to have female interns.

No uniform opinion existed on whether these organizations should adopt a more formalized mentoring program. Some respondents thought it would be difficult to do so; however, some thought that women should

42. As noted earlier, very few of the 2006 responses differentiated between the NAA, AAA, and FMCS. When the respondents made specific suggestions for a particular organization, this was noted. Where there is no specific notation, the suggestion was for more than one organization.

make a commitment to helping other women who want to enter the profession. One 2006 respondent stated: “[W]omen tend to help each other, so I guess formal mentoring programs help,” and a 2002 respondent thought: “[I]t’s possible that women need practical advice on developing their practice[s,] and that a women’s caucus . . . of established women arbitrators could provide that assistance.” Additionally, a 2006 respondent suggested that “a women-only session at the [NAA] annual meeting, or a breakfast, could [provide] good support.” Another 2006 respondent recommended that the NAA “develop a ‘Womentor’ program[,] whereby new women are mentored by established women [NAA] members (all voluntary, of course).”

Moreover, some of the respondents went into detail about what it means to mentor a new arbitrator, with a particular 2002 respondent stating:

I mean more [than] behind-the-scenes advice. My mentor took me to hearings with him, introduced me to the parties, and urged them to use my services. If they needed a quick hearing date, he said he had none (which was usually true) [and] . . . he suggested [that] they select me. If they were hesitant, he offered to review and co-sign my decisions . . . [W]hen he was asked to speak on programs, he suggested me instead.

The same respondent also commented on the financial realities of starting an arbitration career, stating:

My mentor also paid me to write the first draft of his decisions, which allowed me to stay in the game long enough to develop acceptability among the parties. [H]e made sure that the rates he was paying [me] were adequate. It is unfortunately true that some of our colleagues take advantage of newbies by asking them to draft [decisions] for virtually nothing in order to get the experience and advice they need. I don’t think this problem is limited to women newbies, but it accentuates the difficulty [of] becoming established.

2. Training Programs

Many respondents suggested additional training programs. Although, one 2002 respondent reported: “I think they are doing a great job. In Region [Two] (NY Metro region), [the] NAA has training courses to help both [male and female] arbitrators. They do not differentiate.” Some of the respondents questioned the value of conducting training programs in a field they see as declining, as one 2006 respondent stated:

“[D]ecline in unions and arbitration cases makes general training programs less productive . . .”

3. Speaking at Conferences and Seminars

Some respondents suggested that more women speak at conferences and seminars, and a 2002 respondent suggested that NAA members should recommend women members for speaking engagements. Many of the respondents, in both 2002 and 2006, suggested that women speakers at these events contributed significantly to building a reputation in the field, and they increased the recognition of new arbitrators.

4. The NAA Should Conduct Further Studies

Some of the respondents suggested that the NAA conduct studies to better understand the factors influencing the parties' arbitrator selection processes. As one 2002 respondent thought:

The NAA should conduct a study of the parties on the question[s] of how arbitrators are selected, [and] what factors are important. [T]he survey should specifically address the issue of whether being a woman makes it more difficult to get established as an arbitrator. The study should also get at what are the advantages and disadvantage[s] . . . [of] appointing a female arbitrator as perceived by the parties.

5. Changing the NAA Membership Criteria

A 2002 respondent believed that the NAA's membership criteria held women back. She stated that many women arbitrators in her part of the country worked part-time while raising children, and that they could not easily satisfy the NAA criterion requiring a minimum number of labor arbitrations within a five-year period. This respondent recommended that the NAA open its membership by either reducing the number of labor arbitrations required, or including employment arbitration cases in calculating whether the applicant has met this criterion. Further, the respondent stated that “recognition by the NAA that these women are highly qualified[,] even though they don't exactly fit the mold[,] would help tremendously. NAA membership gives arbitrators credibility. For a woman, that is important.” Alternatively, no respondent in the 2006 survey suggested this change.⁴³

43. The Author chose not to ask this question in the 2006 survey. This is an ongoing discussion in the NAA and there was one membership survey in 1999 that looked at this issue. See Michel G. Picher et al., *supra* n. 6.

K. Common Problems Faced by Professional Women

Many survey respondents acknowledged problems also identified in the 2001 report of the American Bar Association's ("ABA") Commission on Women in the Profession.⁴⁴ First, women in law "often do not receive the same presumption of competence as their male counterparts."⁴⁵ Many of the survey respondents also identified this presumption as a problem for women arbitrators. Second, the ABA report discussed the "persistent problem [of] inadequate access to informal networks of mentoring, contact[,] and client development" for women in law.⁴⁶ Nearly every survey respondent mentioned arbitration mentoring in some way, and most seemed to agree that developing a practice as a labor arbitrator required having an actively involved mentor. Many of the survey respondents also discussed other types of networking opportunities, including speaking at conferences, and becoming known by the advocates' communities. Furthermore, a 2002 survey respondent mirrored the concerns expressed in the ABA report by noting that women arbitrators have limited time for networking because of family commitments.

V. CONCLUSION

The survey results indicate that women members of the NAA believe that women have more difficulty establishing labor arbitration careers. Yet, fewer women members hold this opinion today as compared to the women members surveyed in 2002. A clear consensus now exists that women have more opportunities in the field. The attitudes of women members toward the NAA provided perhaps the most striking change in the survey results. In 2002, the respondents expressed considerable criticism and concern about the lack of women in leadership roles. They also expressed concern about the attitudes and behaviors of male NAA members toward women NAA members. In 2006, respondents simply criticized the NAA as an "old boys network," but not a single voice complained about the lack of women in leadership positions. The increasing role of women in the NAA leadership may explain this change in attitude.

Respondents from both years of the survey suggested a number of ways to assist women entering the field. Respondents urged the NAA and its members to raise the profile of women by recommending women members for speaking engagements. They also suggested better networking and mentoring opportunities. The responses made clear that mentors were instrumental in helping many, if not all, of these women establish their careers. Many of the respondents named their mentors with obvious

44. See Rhode, *supra* n. 6.

45. *Id.* at 6.

46. *Id.*

pride, and many also described close and important relationships with their mentors. Some respondents provided detailed descriptions of the type of mentoring required.

Overall, the survey results indicate improvements for women labor arbitrators. In the last four years, surveyed members show a significant shift in attitudes about the challenges women face in entering this profession.

Appendix 1
Questionnaire from 2002

1. How many years have you been an Arbitrator?
2. How many years did it take from the time you started arbitrating cases, until you were admitted to the National Academy of Arbitrators?
3. On average, how many cases do you arbitrate each year?
4. What year were you admitted to the National Academy of Arbitrators?
5. Are you related to any arbitrators? If yes, please state the relation (i.e., sister, husband, etc.).
6. Approximately what percentage of your income is from arbitration?
7. If you rely on arbitration for 100% of your income, how many years did it take until it was your sole income source?
8. If you do not rely on arbitration for 100% of your income, please generally state your other sources (i.e., academic positions, other employment, etc.).
9. In what state or states do you conduct arbitration hearings?
10. To what extent has your gender affected your ability to become established as an arbitrator? Please underline, circle, or place in bold your choice.
 Not at All Somewhat Significantly
11. In general, do you think being a woman makes it more difficult to get established as an arbitrator? Please explain.
12. Do you think that the National Academy of Arbitrators could do more to assist new women arbitrators? If yes, what specifically do you recommend?
13. Do you have any other suggestions of what could be done to make it easier for women to become established arbitrators?

Thank you for taking the time to fill out this questionnaire.
Please return by June 28, 2002.

Appendix 2
Questionnaire from 2006

1. How many years have you been an Arbitrator?
2. How many years did it take from the time you started arbitrating cases, until you were admitted to the National Academy of Arbitrators?
3. On average, how many cases do you arbitrate each year?
4. What year were you admitted to the National Academy of Arbitrators?
5. Are you related to any arbitrators? If yes, please state the relation (i.e., sister, husband, etc.).
6. Approximately what percentage of your income is from arbitration?
7. If you rely on arbitration for 100% of your income, how many years did it take until it was your sole income source?
8. If you do not rely on arbitration for 100% of your income, please generally state your other sources (i.e., academic positions, other employment, etc.).
9. In what state or states do you conduct arbitration hearings?
10. To what extent has your gender affected your ability to become established as an arbitrator? Please underline, circle, or place in bold your choice.
 Not at All Somewhat Significantly
11. In general, do you think being a woman makes it more difficult to get established as an arbitrator? Please explain.
12. Do you think that the American Arbitration Association could do more to assist new women arbitrators? If yes, what specifically do you recommend?
13. Do you think the Federal Mediation and Conciliation Service could do more to assist new women arbitrators? If yes, what specifically do you recommend?
14. Do you think that the National Academy of Arbitrators could do more to assist new women arbitrators? If yes, what specifically do you recommend?

15. Do you think there has been any change in the last few years for women arbitrators? If yes, what has changed? What do you attribute that change to?
16. Do you have any other suggestions of what could be done to make it easier for women to become established arbitrators?

**Thank you for taking the time to fill out this questionnaire.
Please return by October 2, 2006.**

