



CommonGround
Public Relations

Navigating Media and Public Messaging: Arbitrators' Ethics in Traditional & Social Media



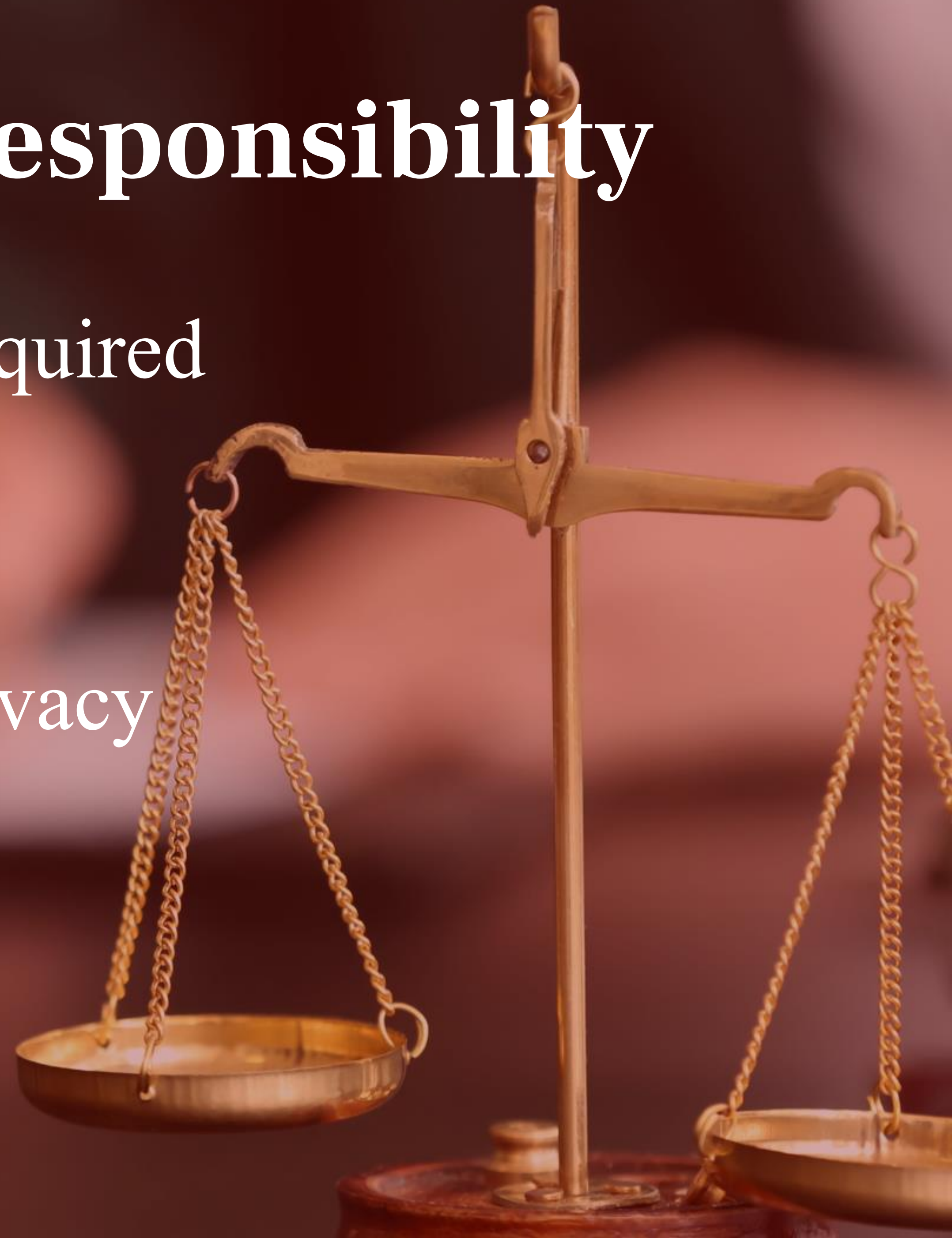
Overview

- Code of Professional Responsibility
- Ethical Considerations
- NAA External Communications Initiative
- Messaging & How to Engage with Media



Code of Professional Responsibility

- Responsibilities to the Parties: Required Disclosures (2.B.)
- Responsibilities to the Parties: Privacy of Arbitration (2.C.)



Public Relations Society of America: Code of Ethics

- Advocacy
- Honesty
- Expertise
- Independence
- Loyalty
- Fairness

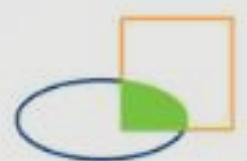


Are social media friends
really our friends?



Ethical Considerations for Social Media

Takeaway: Disclose significant online relationships that resemble substantial in-person connections, rather than just listing all online contacts.



Ethical Considerations for Social Media

1. Arbitrators make a general disclosure that they maintain social media profiles which do not constitute personal relationships.

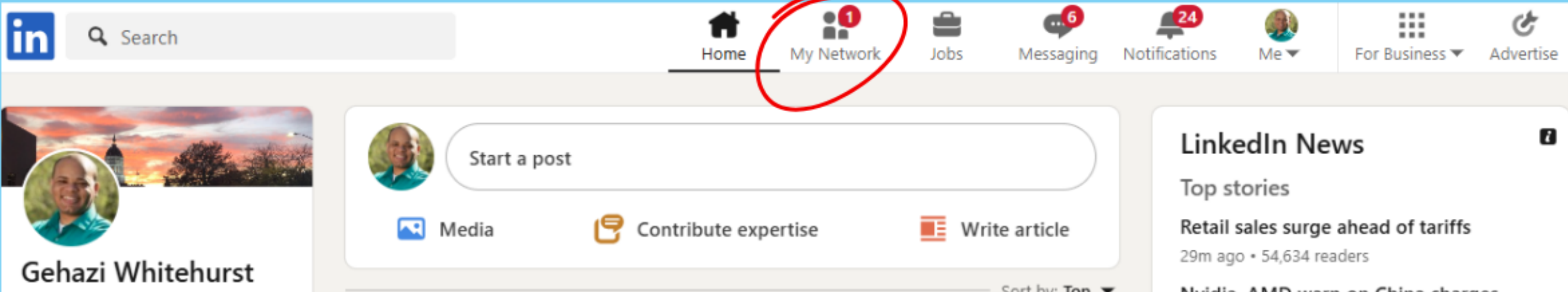
There should be no attempt to be secretive about such friendships or acquaintances, but disclosure is not necessary unless some feature of a particular relationship might reasonably appear to impair impartiality.

Source: American Arbitration Association “Transparent Connections: Arbitrators, Attorneys, Parties and Social Media Disclosures.” July 16, 2024

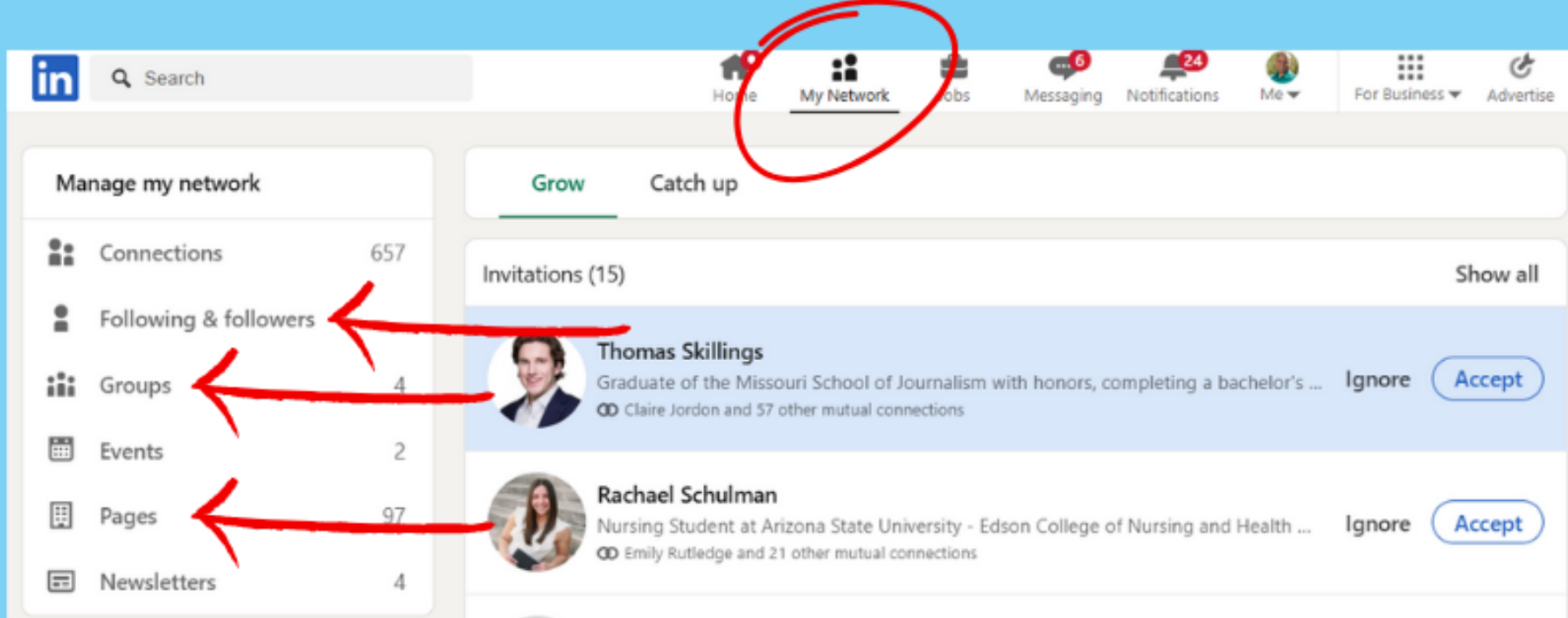
Ethical Considerations for Social Media

2. Arbitrators do not need to disclose passive social media activity—such as likes or comments—unless they took affirmative action to initiate the interaction during the pendency of a case.
3. Arbitrators should not accept or initiate the social media contact until a case is completed.
4. Arbitrators should not use social media messaging to communicate with parties.

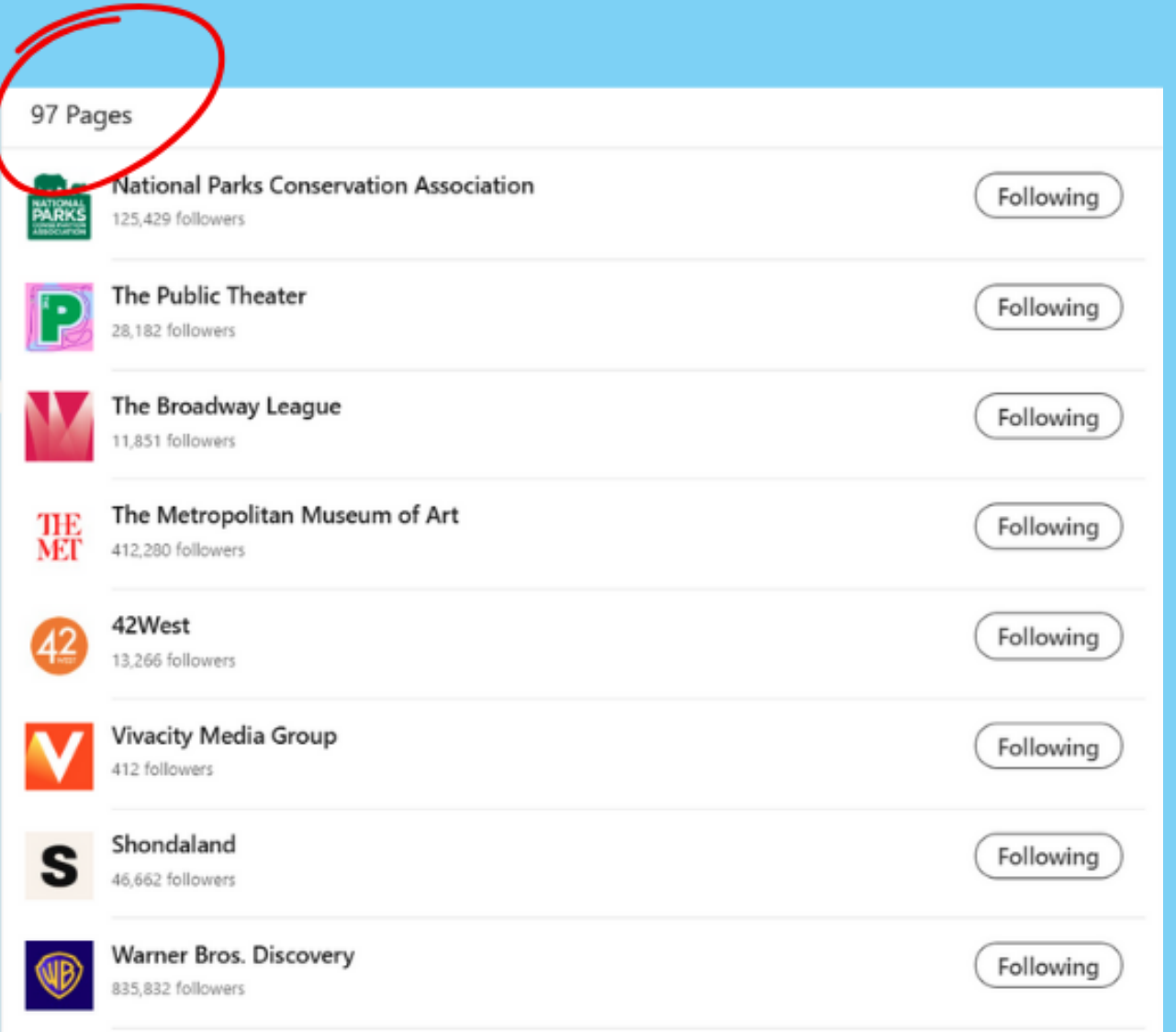
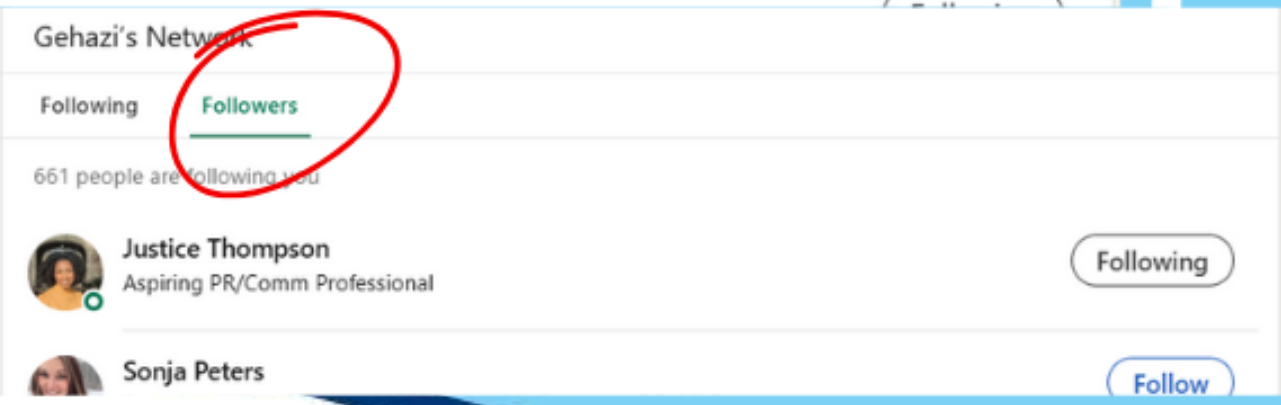
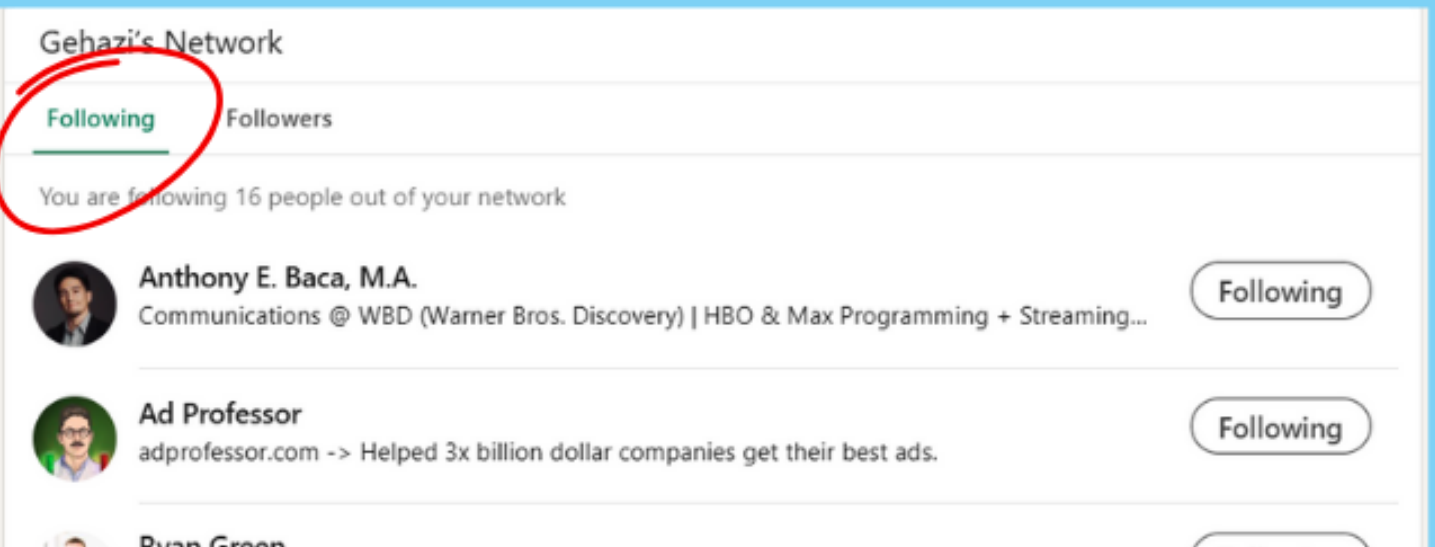
Check Your LinkedIn Followers & Following



1.

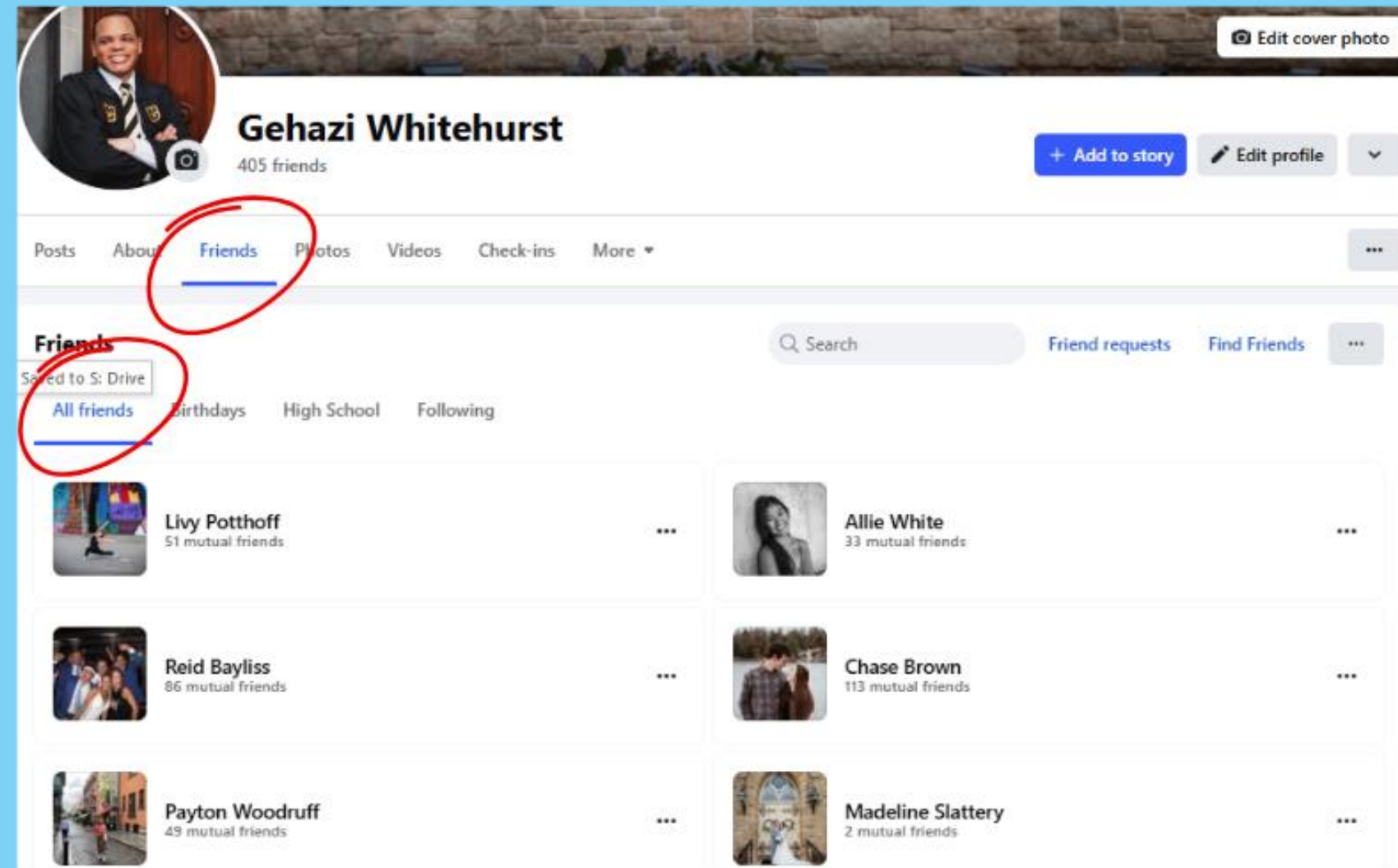


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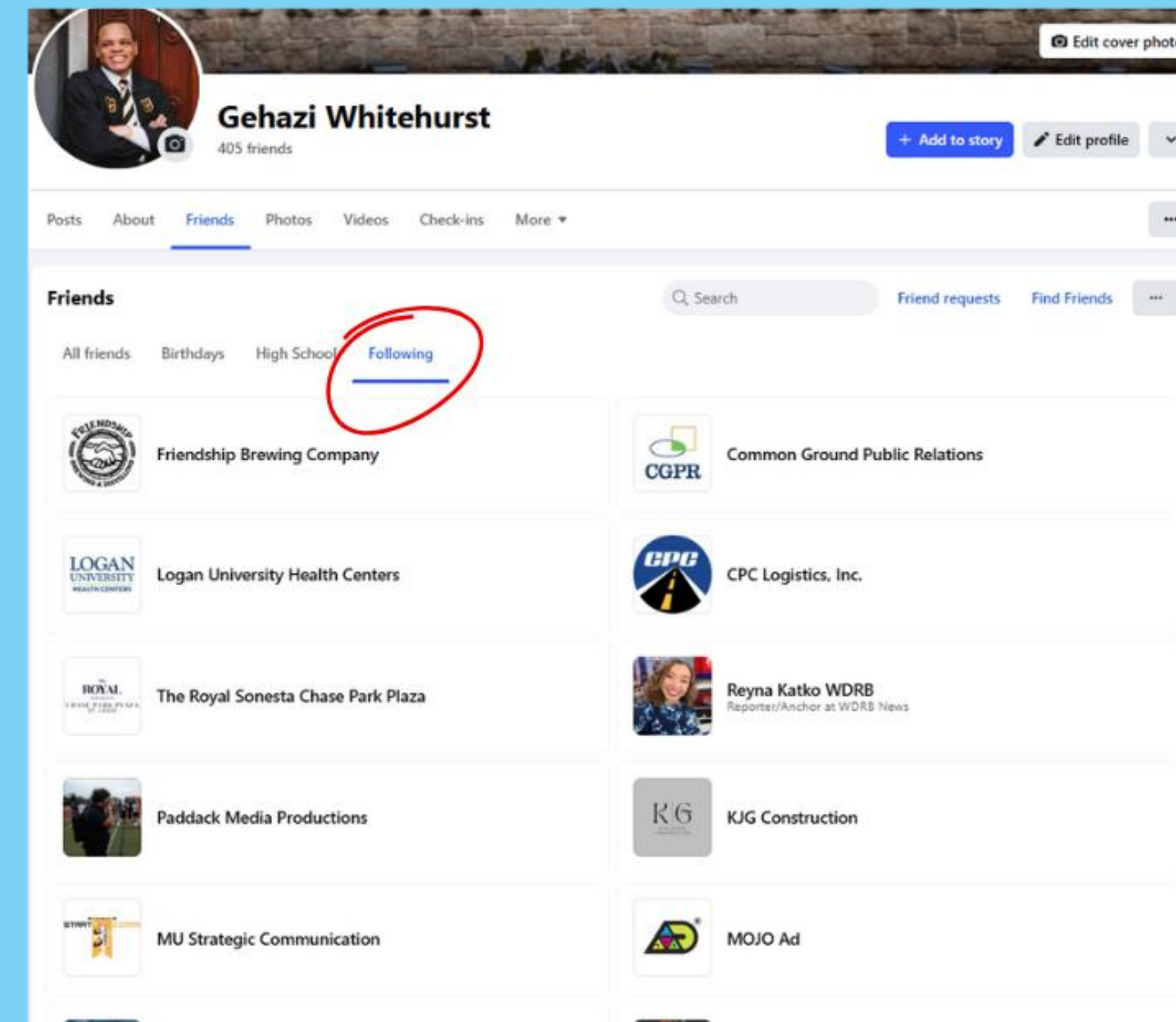


Check Your Facebook Friends & Following

1.



2.



The 2025 Edelman Trust Barometer



40%_(net)

of respondents say they
approve of one or more hostile
actions to bring about change

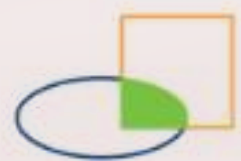
- Attack people online
- Intentionally spread disinformation
- Threaten or commit violence
- Damage public or private property

*Source: Edelman “2025 Edelman Trust Barometer.”
January 19, 2025*



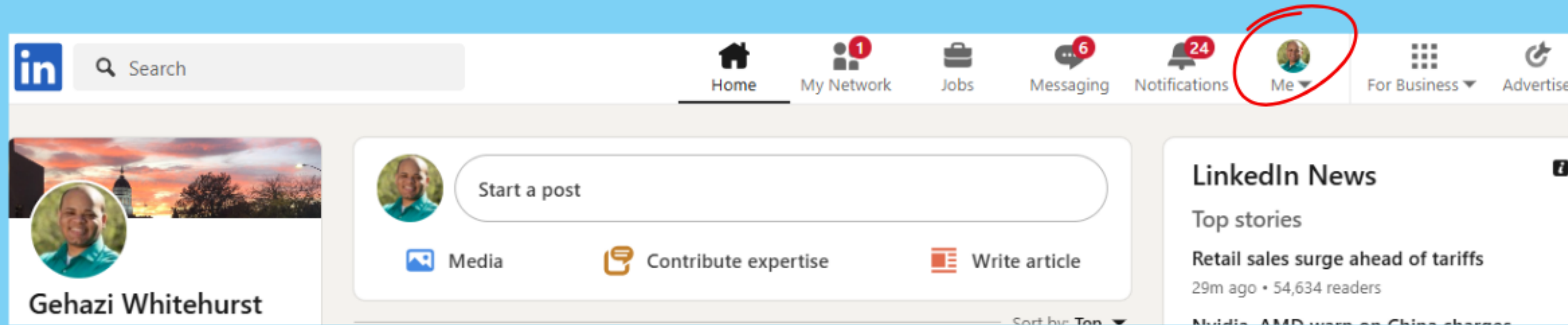
Be Cautious on Social Media

- Ensure transparency and professionalism.
- Avoid controversial statements.
- Avoid sharing addresses, phone numbers, or future locations, and limit personal information sharing.

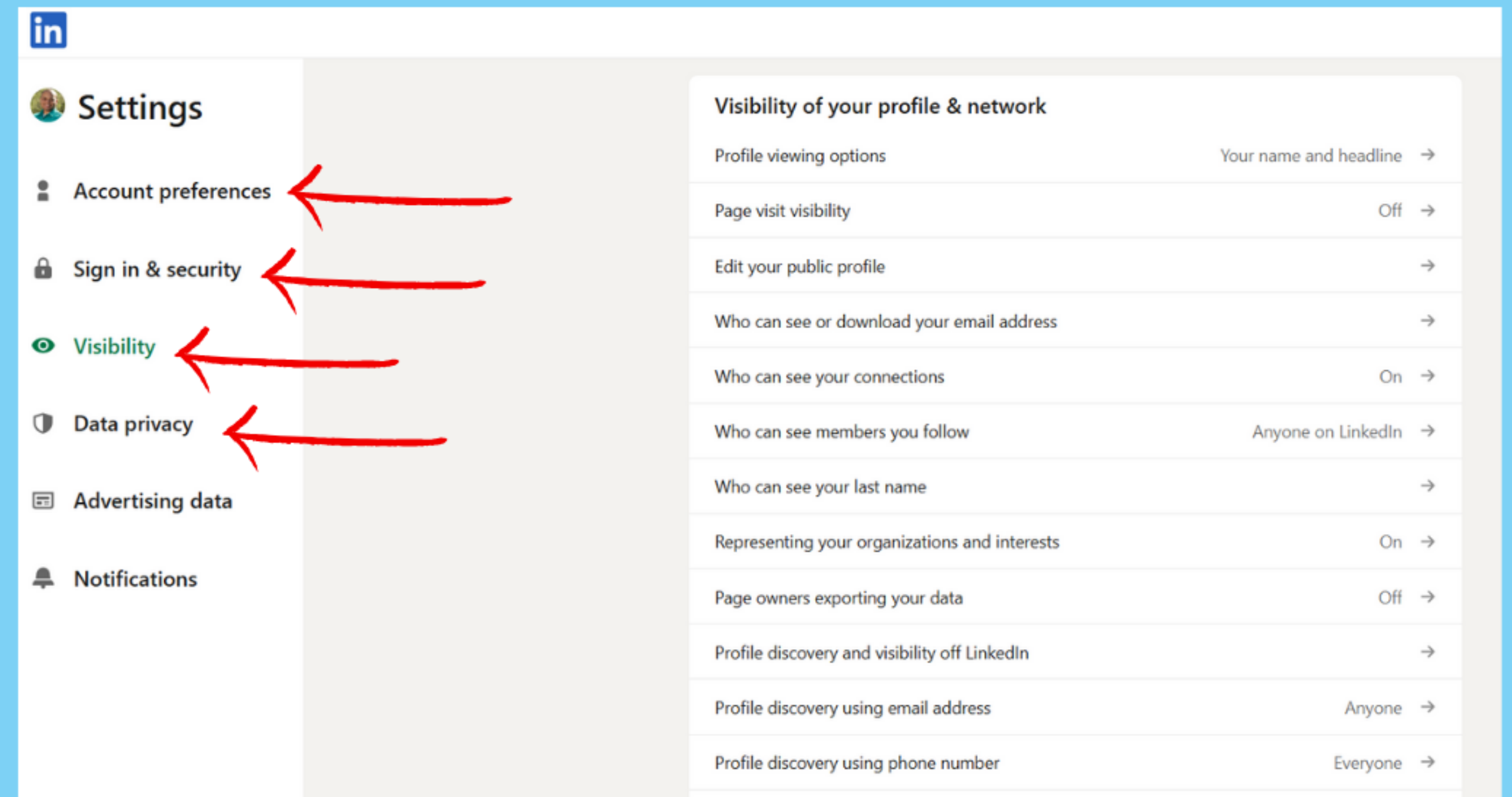
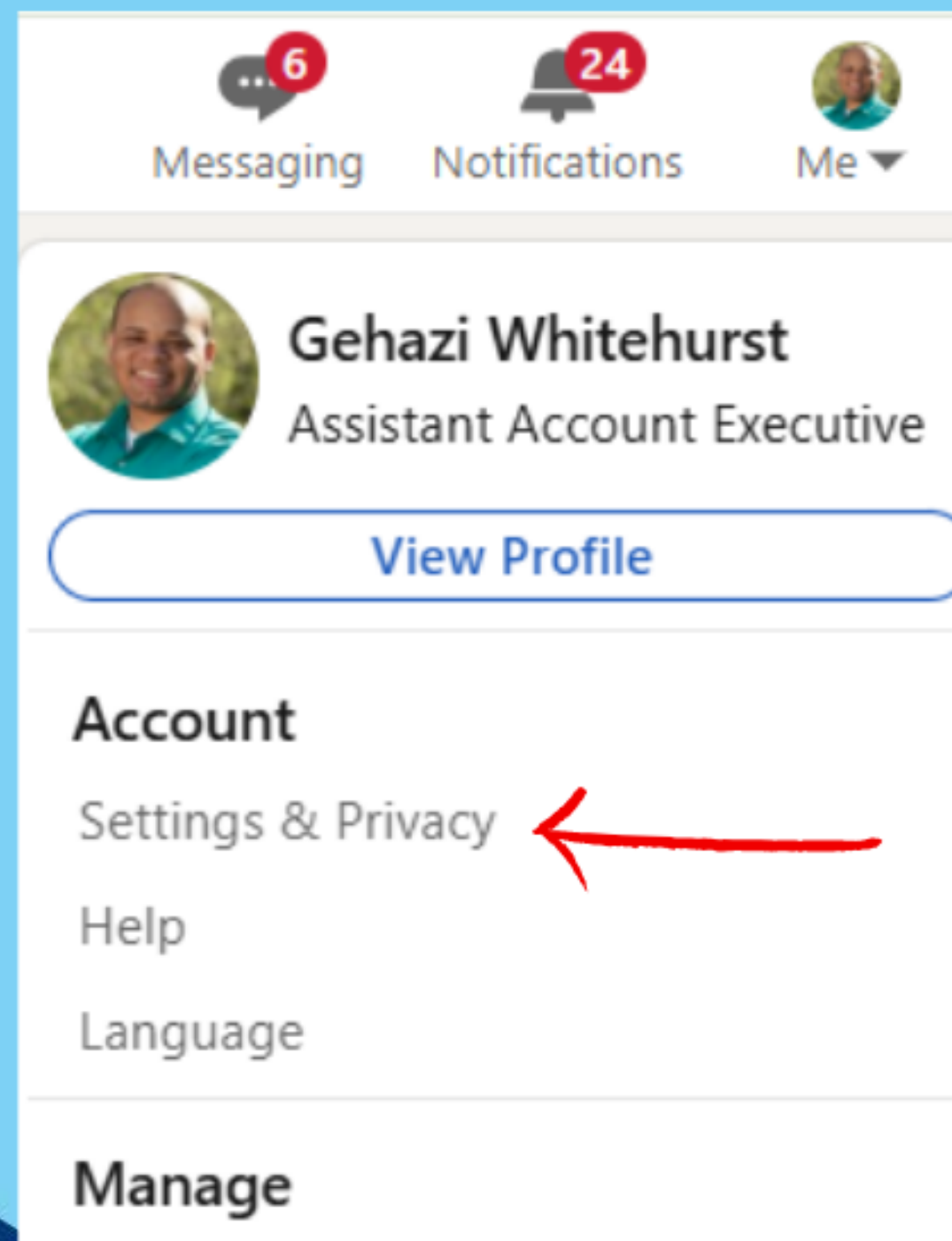


Know Your LinkedIn Privacy Settings

1.

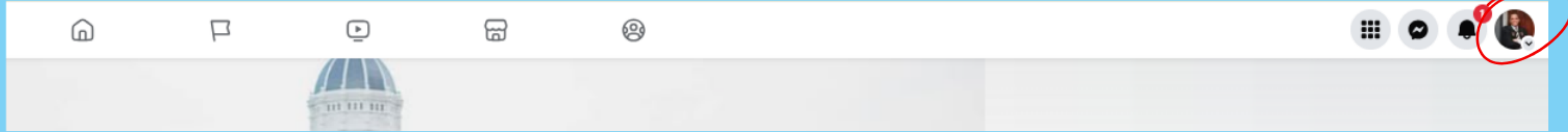


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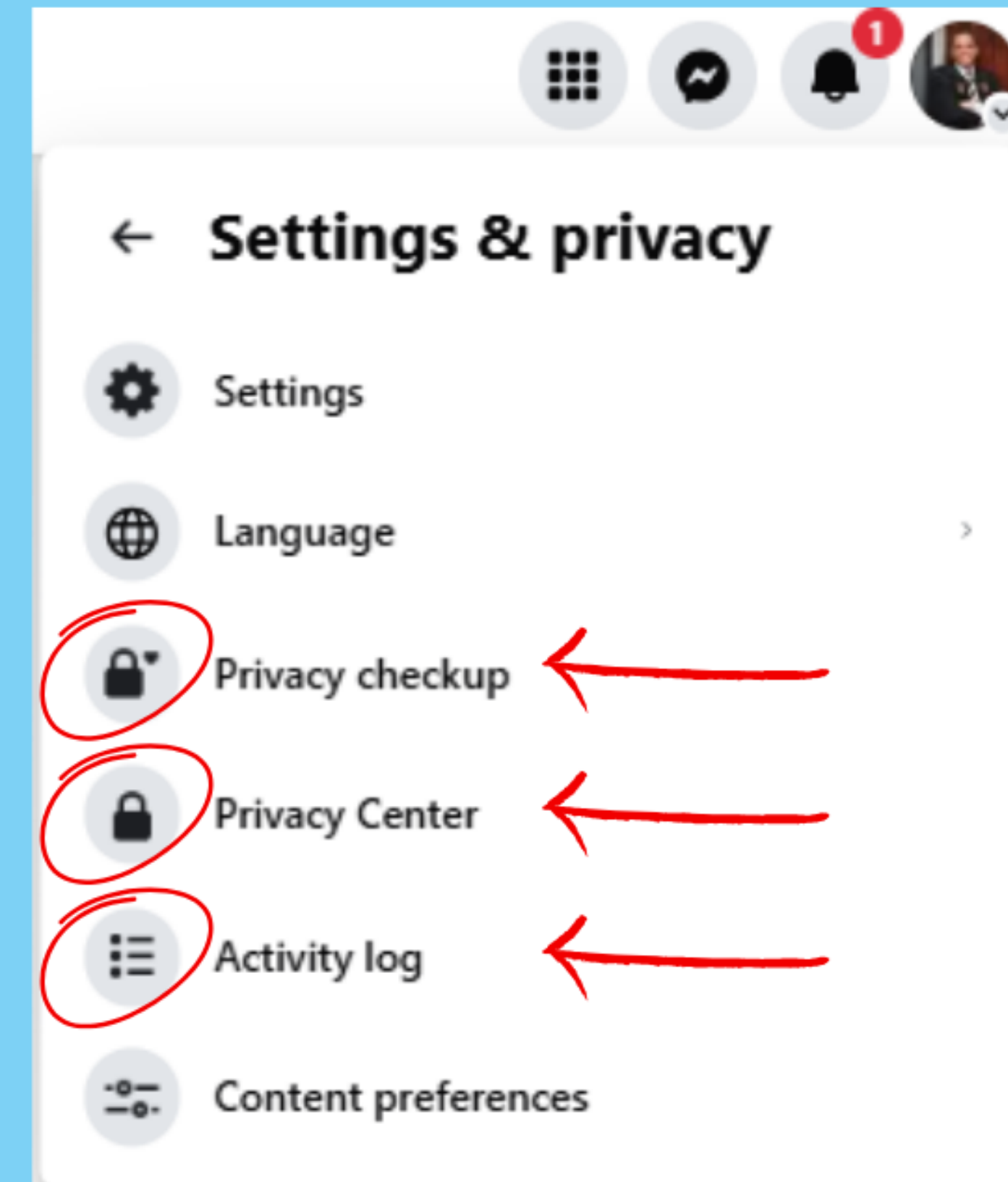
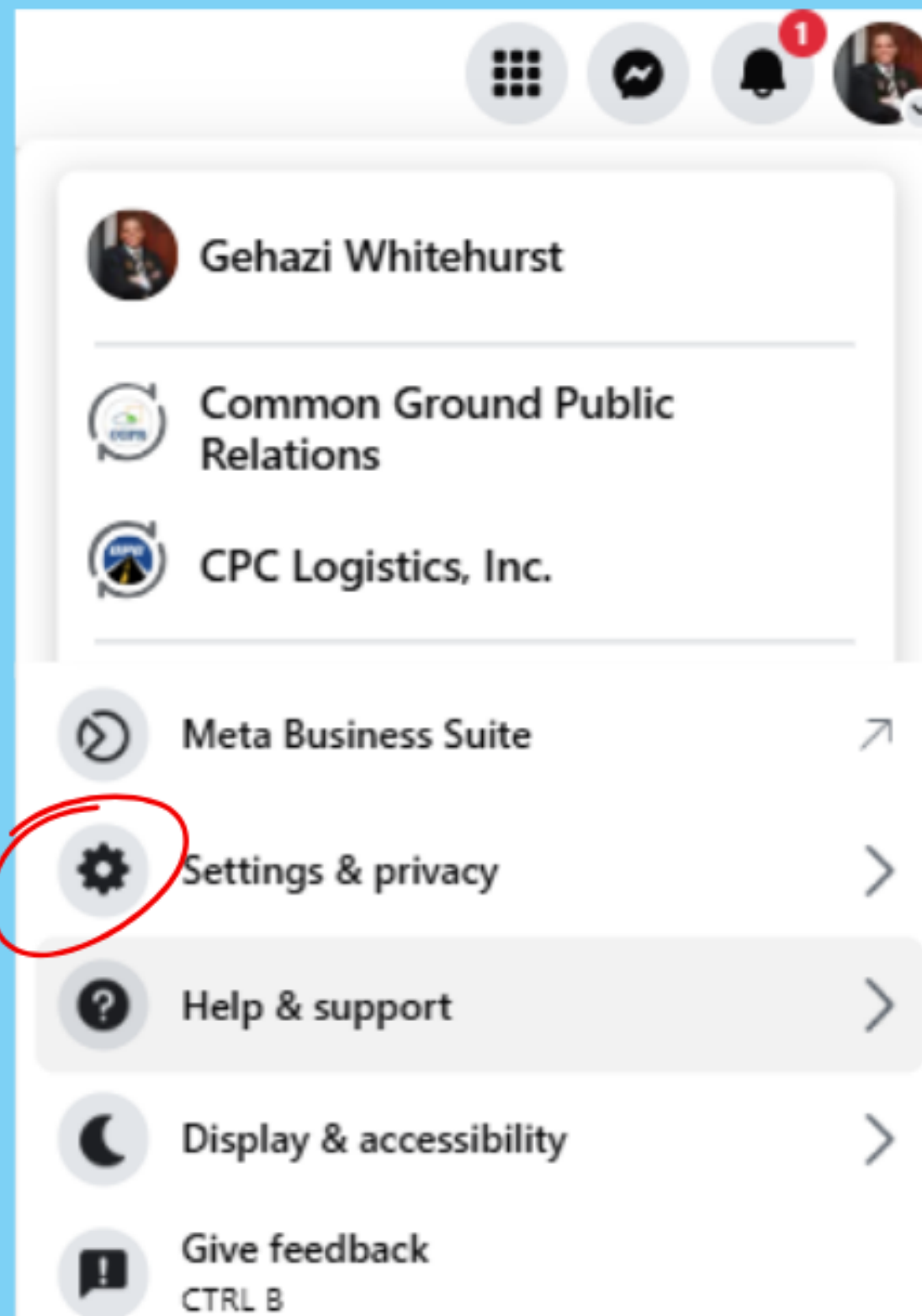


Know Your Facebook Privacy Settings

1.



2.



“Correcting the Record”

Avoid the temptation to speak to a journalist about a newsworthy case of which you have firsthand knowledge.



NAA External Communications Initiative:

- Accurate Media Coverage
 - Journalist education & engagement
 - Informed sources
 - Direct contribution
- Arbitration Information Website
- LinkedIn Amplification



NAA Media Outreach

- Media objectives:
 - Maintain neutrality
 - Address misinformation
- NAA response protocol:
 - We can buffer high-profile scrutiny
 - Offer informed sources



NAA Media Outreach

- Engage with journalism as a profession
- Speaking engagements at conferences



NAA Media Outreach



Arbitration Info

- Source for perspective on news and commentary
- Promote to journalists
- Help ensure accuracy in reporting
- naarb.news@gmail.com



The 2025 Edelman Trust Barometer

Shows a decline in trust:

- 61% of people express moderate to high levels of grievance.
- Trust in business, government, media, and non-government organizations has declined globally.
- **Challenge:** People feel left behind by powerful institutions and elites, contributing to rising societal grievances.

*Source: Edelman “2025 Edelman Trust Barometer.”
January 19, 2025*

Executive Order Effects on FMCS – March 2025

The Guardian US

Doge shutters federal workplace mediator agency after Trump order

Federal Mediation and Conciliation Service, independent labor peacemaker, makes up just 0.0014% of US budget



On March 14, President Trump announced a presidential action directing the Federal Mediation and Conciliation Service (FCMS), and other targeted federal agencies to eliminate “non-statutory components” and to “reduce the performance of their statutory functions and associated personnel to the minimum presence and function required by law.”

News: March 14
Executive Order sparks concerns about the FMCS, workplace peace and economic stability.



Safeguarding Workplace Peace and the Future of the FMCS

In the wake of the March 14 Executive Order, the Federal Mediation and Conciliation (FMCS) said they received "multiple inquiries from both media and clients," and many members of the National Academy of Arbitrators also expressed concern about the executive order's impact on **workplace peace and economic stability**.

What those outside of the labor and employment arena might not understand, is that the work of neutral parties to arbitrate workplace disputes has a direct impact on those two vital outcomes. Effective dispute resolution reduces workplace hostility, prevents strikes, increases productivity and ultimately strengthens economic stability. FMCS mediators have always been available to rapidly intervene in labor disputes to find prompt and just resolutions. Like the fire department, this team of problem solvers should be supported for their service to American industry.

On March 19, 2025, the FMCS assured the labor relations community that the agency remains operational and is continuing to provide its statutorily mandated services. FMCS says they will continue to monitor labor disputes and provide mediation for collective bargaining in the private sector, including the health care industry; for certain disputes in the federal sector, and work with the U.S. Postal Service on supervisory pay disputes. The FMCS said they will still provide arbitration panels in accordance with its mission and the collective bargaining agreements of hundreds of interested parties.

While some concerns are allayed by this statement, the NAA encourages Congress to evaluate the importance of FMCS and reinforces its commitment to federal mediation and conciliation services. The FMCS

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News and Commentary
arbitrationinfo.missouri.edu

Since its inception in 1947 to support the US economy's transition from wartime to peacetime production, FMCS has taken seriously its mandate to provide dispute resolution for the changing workforce. Limitations imposed by the Executive Order inhibit the FMCS's capacity to meet the new

NAA Response:

- Executive Committee collaborated on statement published to site.
- Published statement was then shared on LinkedIn and with members/network.

Federal Agencies Placed on Leave – February 2025

Trump administration adds fine print to 'Fork' resignation offer, deepening confusion

FEBRUARY 4, 2025 · 8:03 AM ET



An

PBS NEWS HOUR

DOGE continues to hollow federal workforce after already firing more than 30,000

Feb 28, 2025 6:35 PM EDT

News: Federal agencies placed employees on administrative leave, terminated or dismissed.

Last month, the Trump Administration [offered](#) about two million federal employees a buyout program. This offer, [titled “Fork in the Road,”](#) came from an email sent by the [Office of Personnel Management](#) (OPM), and would allow federal employees to resign yet be paid their full salary until September 30, 2025.

The initial email sent by OPM [outlined](#) four pillars that redefined employment in the federal government. First, federal employees are no longer [allowed](#) to work remotely. Second, OPM is [changing](#) federal work-performance culture to “insist on excellence at every level,” and will “address” those who do not meet the new standards. Third, there will be large-scale [downsizing](#) of the federal workforce, including by furloughing or reclassifying many employees to at-will status. Finally, OPM is [enforcing](#) enhanced standards of conduct to ensure that employees are “reliable



Can They Do That? A Rough Primer on Federal Civil Service Appeal Procedures

by Martin H. Malin

Historical Background

President Andrew Jackson's election in 1828 ushered in the "spoils system" whereby hiring and retention of government employees was dependent on their loyalty to the President. Support for civil service reform began to build after the Civil War; and in 1881, a disappointed job seeker assassinated President James A. Garfield. This led Congress to enact the Pendleton Act in 1883.

The Pendleton Act established a three-member Civil Service Commission, charged with developing and implementing competitive examinations for filling vacancies in "classified" positions. "Classified positions" are jobs in government agencies that are protected from political influence, and applicants for these roles must pass a competitive examination process to demonstrate their competence and qualifications. The goal was to ensure a professional, efficient, and unbiased government workforce. The Act also prohibited discharging classified employees for refusing to engage in political activity. When the Act was passed, approximately 10% of the federal workforce were classified but by 1919, over 70% of federal government positions were. In 1912, Congress amended the Pendleton Act to require government agencies to have cause "related to the efficiency of the service" to terminate classified employees.

Over time, the Civil Service Commission developed dual functions: it was the primary human resources manager for the federal government, and it was the adjudicator of federal employees' appeals of terminations and other adverse employment actions.

Recognizing the inherent tension in these dual functions, Congress enacted the Civil Service Reform Act of 1978 (CSRA). The CSRA replaced the Civil Service Commission with the Office of Personnel Management (OPM) to serve as the primary HR manager and the Merit Systems Protection Board (MSPB) to adjudicate appeals from adverse employment actions. The CSRA also created the Office of Special Counsel (OSC) within the MSPB to, among other things, investigate and prosecute prohibited personnel practices. In 1989, OSC became a separate independent agency, headed by the Special Counsel who is appointed by the President and confirmed by the Senate.

Current Structure and Administrative Procedures

OPM is headed by a director who is appointed by the President and confirmed by the Senate. The Director is responsible for overseeing traditional human resource management functions, such as hiring, performance management, and separation from employment.

NAA Response:

- Martin Malin wrote paper, “Can They Do That? A Rough Primer on Federal Civil Service Appeal Procedures.”
- Used Martin’s expertise to engage with journalists and media.

Washington State Standard – January 2025



News: Democratic legislative staff in Washington approve first-ever labor contract.

It took Democratic staff in Washington's Legislature a little longer but they have joined their Republican colleagues in approving two-year contracts, concluding the first-ever round of collective bargaining for legislative employees.



Washington Legislative Staff Secure Arbitration in Historic Labor Agreement

Employees of the House and Senate Democratic Caucuses in Washington State have negotiated their first collective bargaining agreement which includes a critical arbitration provision to resolve disputes under the contract. The staffers turned down earlier proposals because they failed to include a grievance procedure with third-party arbitration.

After two months of discussions, the final agreement ensures access to grievance arbitration using the services of the American Arbitration Association, which offers a fair and impartial process for resolving disputes. The employer representatives from the Washington House and Senate had opposed outside involvement, but finally, they agreed to include arbitration, “to ensure that everyone is committed to ensuring fairness, transparency and efficiency in the resolution of disputes” as reported by the *Washington State Standard*.

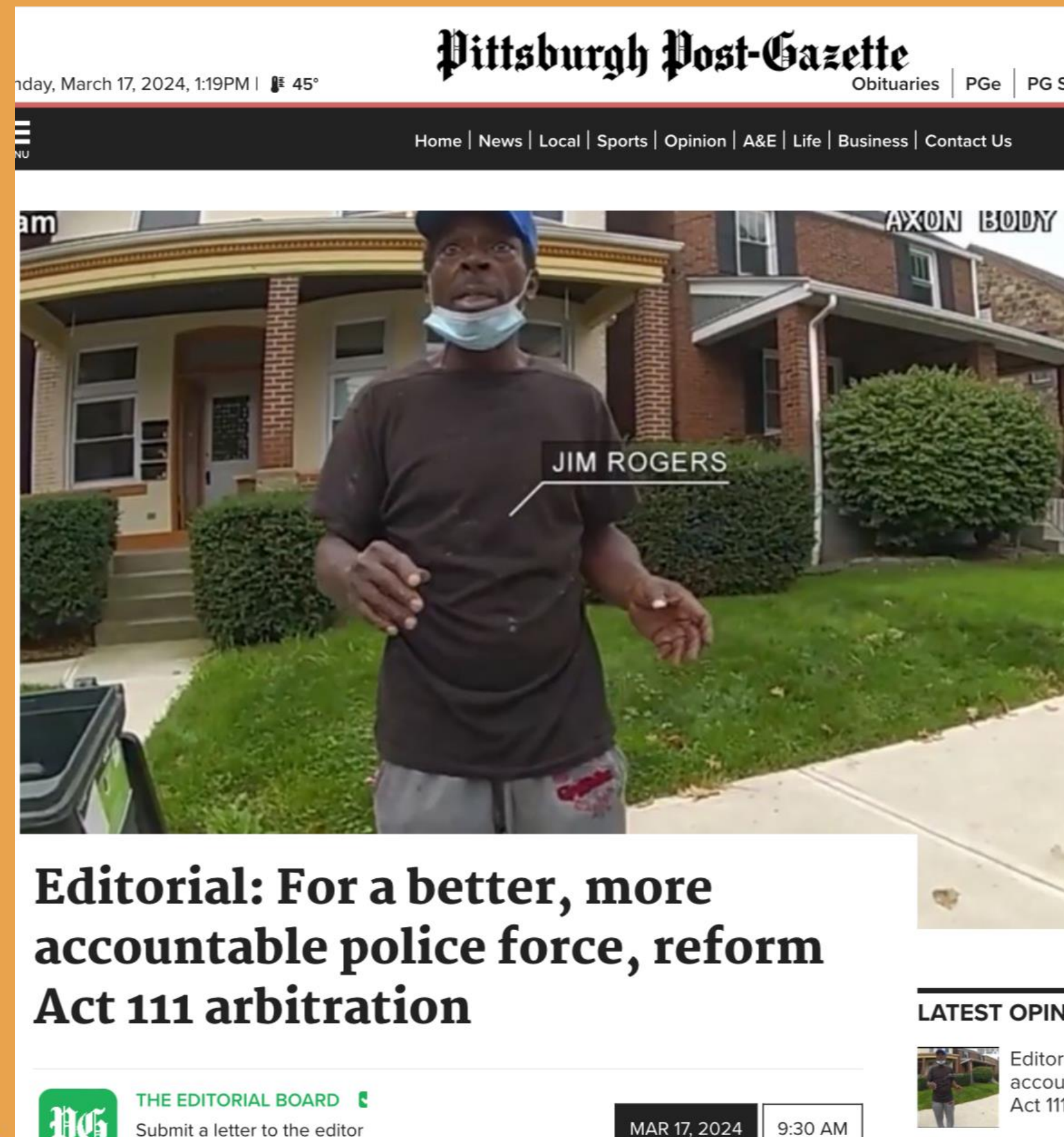
This result emphasizes how arbitration in labor relations builds trust and accountability in newly unionized workplaces. The National Academy of Arbitrators identifies this news as a significant advancement in guaranteeing fair workplace protections and enhancing the role of arbitration as a means of dispute resolution.

Read the article “Democratic legislative staff in Washington approve first-ever labor contract” from the *Washington State Standard* on Jan. 11, 2025.

NAA Response:

- Results emphasize how labor relations arbitration builds trust and accountability in newly unionized workplaces.
- Significant advancement in guaranteeing fair workplace protections and enhancing the role of arbitration.

Pittsburgh Post-Gazette Editorial – March 2024

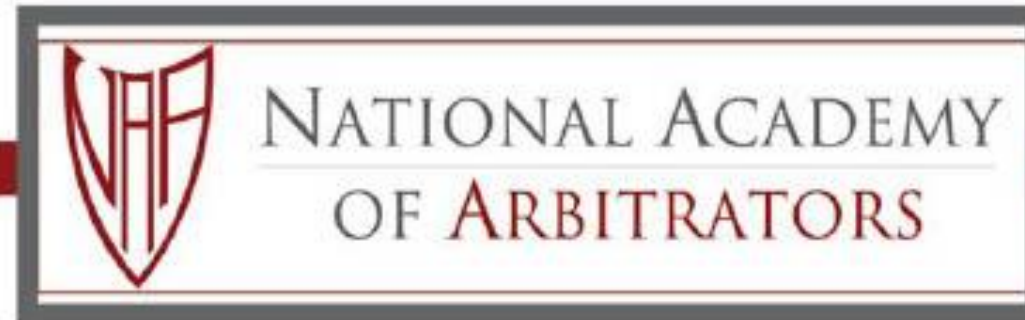


Issue: The editorial suggested arbitration favors police officers and is beyond court jurisdiction.



NAA Response:

- Arbitration is a neutral process designed to uphold due process under existing contracts.
- Response emphasized the importance of collective bargaining agreements and the role of legislative, not mayoral, actions.



April 2, 2024

Dear Pittsburgh Post-Gazette Editorial Board:

I am writing to you as President of the [National Academy of Arbitrators](#), the principal organization for the most experienced and trusted labor arbitrators in the United States and Canada. Many of our members have 40 or more years of experience as an arbitrator, as do I. After reading your editorial titled "[For a better, more accountable police force, reform Act 111 arbitration](#)," I want to reach out and offer the resources of the Academy for future reporting.

While I understand the intent of your piece was to advocate for Public Policy Exceptions, the cases you mention likely would not meet that standard, as indicated in the final paragraph of the editorial. Portraying arbitration as simply beyond the reach of the court also does an injustice to the long-standing value of collective bargaining agreements, which have been shown to protect employees, employers, and the workplace in general for decades in an efficient and appropriate manner. It is also worth noting that this is primarily a legislative matter and not something that could be changed by the mayor, as mentioned in the editorial.

I would like to extend an invitation to discuss the arbitration process further with your editorial or reporting staff. Additionally, we have members in the Pittsburgh area who could provide insights into Article 111 and the complexities surrounding the issue of a Public Policy Exception.

I am eager to engage in helpful dialogue and look forward to hearing from you.

Sincerely,

William McKee, President
National Academy of Arbitrators

Seattle Times Coverage – December 2023

The Seattle Times Law & Justice Log In | Subscribe

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[Law & Justice](#) | [Local News](#) | [Local Politics](#) | [Northwest](#) | [Puget Sound](#)

Seattle cop to get over \$600K after wrongful firing, arbitrator orders

Dec. 8, 2023 at 12:01 pm

Arbitrator's reversal shows need for fix of police discipline

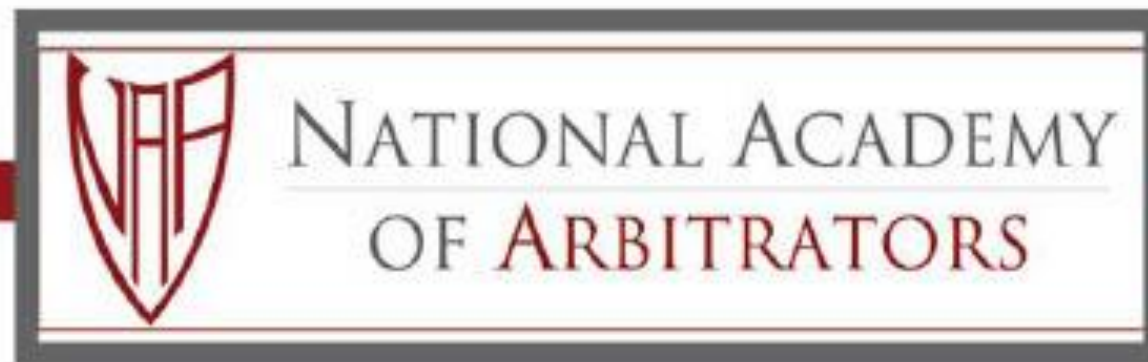
Dec. 17, 2023 at 12:01 pm | Updated Dec. 17, 2023 at 1:01 pm



Issue:

Articles misrepresented arbitration in a police discharge case, including erroneous details on backpay and arbitrator selection.





December 20, 2023

Dear Mr. Carter and The Seattle Times Editorial Board:

I am the President of the National Academy of Arbitrators, the principal organization for labor arbitrators in the United States and Canada. We set the standards of ethical behavior for labor arbitrators. I am writing because your recent reporting on a police discharge arbitration contained several factual errors, which should be corrected.

You state as a fact that the officer was awarded \$600,000 in backpay and benefits. That amount is almost impossible. The arbitrator did not specify an amount – he simply advised the parties how to calculate the amount. In all cases, a discharged employee has a duty to mitigate damages by seeking equivalent employment. Earnings from that employment are deducted from the award. Thus, it is fairly certain that the actual amount involved is substantially lower than \$600,000. I once had a case where the discharged employee earned more after termination than before. She went to arbitration to remove the termination from her work record.

Your reporting also quotes a District Judge for the proposition that arbitrators are likely to be biased because their livelihoods depend on being selected. There are two problems with this, one general and the other specific to Washington. Arbitrators do generally depend upon mutual selections. But the important word is “mutual.” Any arbitrator wanting to curry favor would have to do so with both management and the union. True professionals understand that their reputation for even-handedness and impartiality is the driving force in continued selections.

The more specific problem with your selection argument is that, since the passage of RCW 41.58.070 by the Washington legislature, arbitrators of law enforcement discipline grievances are independent and randomly selected. They are experienced professionals who go through additional vetting by the State in order to be listed on the roster of arbitrators. They then receive case appointments by the Director of the Public Employment Relations Board, using an alphabetical rotation through the panel. The parties have no say about which arbitrator hears a specific case.

I look forward to the misrepresentations being corrected. I would welcome the opportunity to discuss this matter further if you would like more information about the arbitration process.

Sincerely,

William McKee, President


National Academy of Arbitrators

NAA Response:

- Letter correcting inaccuracies.
- Explaining how arbitrators are selected.
- Detailing the legal framework behind damage awards and mitigation.

Marshall Project Article – December 2023

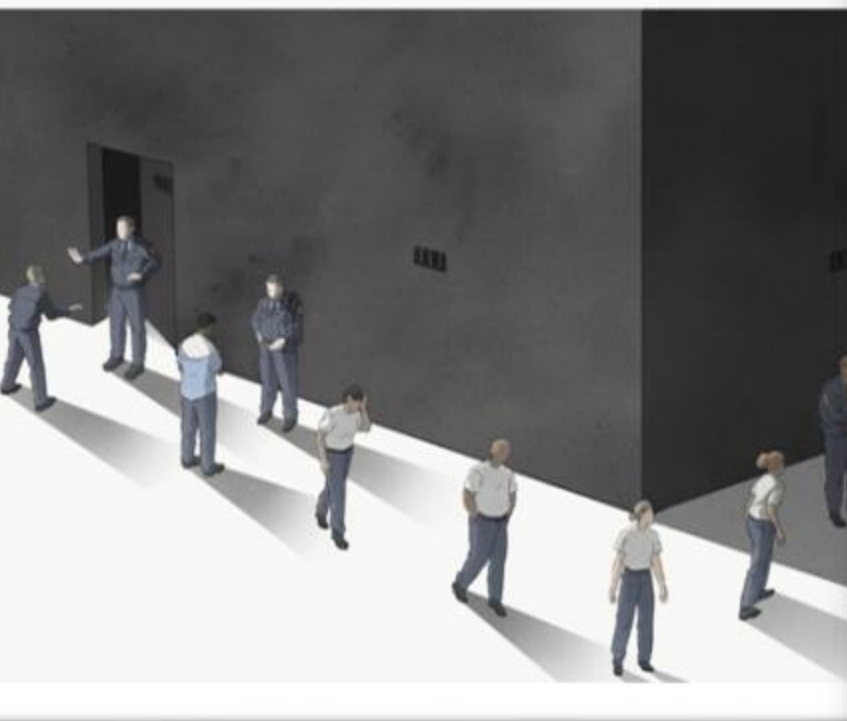
Issue: Bias in the article against arbitration, particularly in law enforcement misconduct cases.

 The Marshall Project DONATE


FEATURE

‘A Crazy System’: How Arbitration Returns Abusive Guards to New York Prisons

Over a 12-year span, three out of every four state correctional officers fired for abuse or covering it up got their jobs back.



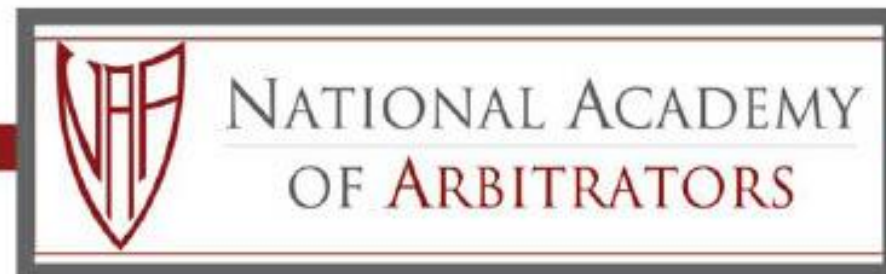
Ginnitti, the retired investigator who was in charge of the Nowicki investigation, said arbitrators have a financial interest that discourages them from firing guards.

An arbitrator “knows darn sure that if he fires too many people, or somebody that the union feels he shouldn’t, he’s never getting picked for arbitration again,” Ginnitti said. 

Each time, New York state officials fired the guards. Each time, they appealed. Each time, private arbitrators gave the officers their jobs back.

Between 2010 and 2022, arbitrators reinstated three out of every four guards fired for abuse or covering it up, according to a review by The Marshall Project of 136 cases. The decisions the outside arbitrators wrote heavily favored prison guards, even in the face of strong evidence against them.





December 20, 2024

Dear Alysia Santo, Joseph Neff and the Marshall Project Editorial Board:

On December 14, the Marshall Project published a piece titled [“A Crazy system: How arbitration returns abusive officers to N.Y. Prisons.”](#) While we appreciated the opportunity given to member Dan Nielsen to serve as a source for the piece, we want to clarify some inaccuracies portrayed in it.

While the article did not directly misrepresent facts, its tone conveyed a bias against arbitration. Despite this, we refrained from submitting a formal response and instead sought to establish a constructive dialogue with the Marshall Project to promote accurate factual reporting in the future. However, we believe it is crucial to share our perspective.

The article raised concerns regarding arbitration practices, particularly in cases involving personnel decisions in correctional facilities and law enforcement agencies. We aimed to address these concerns and provide clarity on the role of arbitrators:

1. On these three points stated in the article:

- Between 2010 and 2022, arbitrators reinstated three out of every four guards fired for abuse or for covering it up, according to a review by The Marshall Project of 136 cases. The decisions the outside arbitrators wrote heavily favored prison guards, even in the face of strong evidence against them.
- In effect, arbitrators — typically private attorneys — can overrule personnel decisions made by the corrections department’s senior leadership, including the commissioner appointed by the governor.
- Arbitrators have ordered police leaders to rehire officers accused of serious misconduct, including unjustified fatal shootings, sexual assault and drug trafficking.

The article highlighted instances where arbitrators reinstated individuals accused of serious misconduct, despite compelling evidence against them. It’s essential to understand that arbitrators are bound by the terms of the agreed-upon contract between officers, the union, and the regulating agency. Even when faced with “strong evidence against them,” if the contract does not cover specific procedures or disciplinary actions, arbitrators cannot consider such evidence. Emotions often cloud these cases, with the public and stakeholders seeing beyond the contract. But arbitrators must strictly adhere to its terms. They’re not arbitrating what’s morally right or just; their ruling centers on the contract that all parties signed.

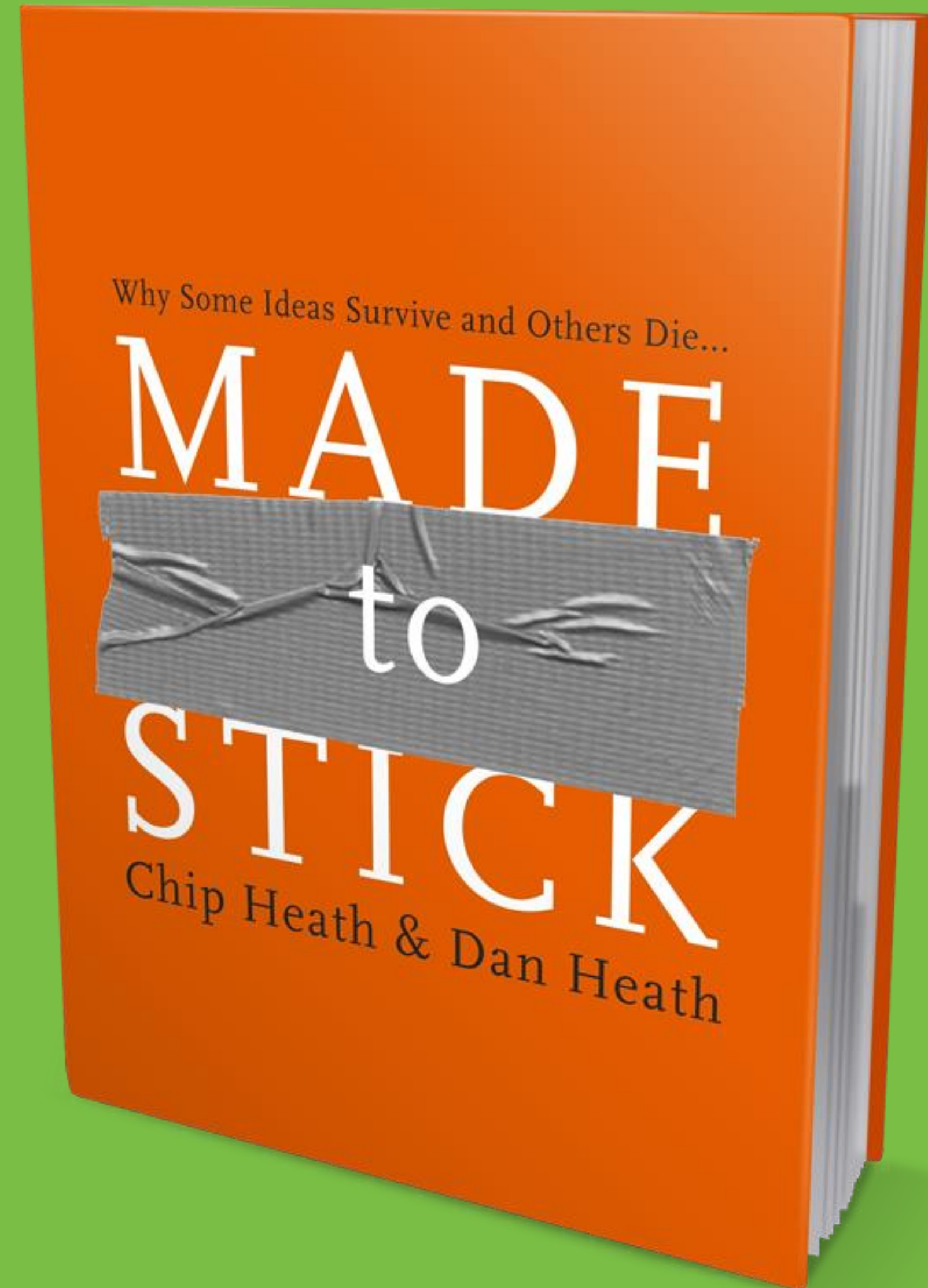
NAA Response:

- Established dialogue with the publication to promote accurate, factual reporting.
- Coordinated interview with Dan Nielsen.
- Arbitrators play a key role in enforcing contract terms and ensuring impartial selection.

How should members talk about arbitration?



Communicating Complicated Information



Radically Recontextualize ...what??



60
MINUTES



“He who has a why
can bear any how.”

-Friedrich Nietzsche



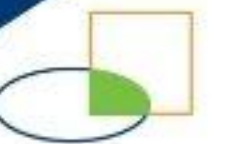
The Message



Why?

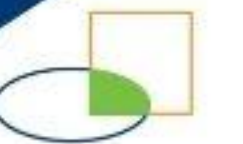
Dispute
resolution is
an established
method for
workplace
success

- Brings unions together with employers = establish mutually agreeable workplace terms
- Sets structure, rules and expectations for workplace
- Historical & modern context = 1935-today
- Mutual interest in organizational success
- Stable workplace = stable industry and community
- Manage costs
- Support long-term planning
- Anticipate known issues
- Creates stability for large groups, majority consensus
- Alternative: Individual agreements with MANY employees = cumbersome & inefficient
- **Railway strikes averted by FMCS**



What?

Arbitration plays an essential role in
supporting the workplace dispute
resolution process by offering an
impartial method for dispute resolution.



Efficiently

- Courts are slow and not specialized in the topic(s)
- Protects the contract with limited disruption
- Arbitration-based dispute resolution keeps workplaces running
- Workplace strikes averted
- **In-game referee, umpire or safety valve**

Fairly

- Independent and randomly or mutually chosen
- Addresses micro and macro issues: shop floor to C-suite
- CONTRACT terms only
- Evidence constraints; decisions based on what is admitted and admissible
- A peaceful way to solve (inevitable) disputes
- Allows contract to endure
- **Ted St. Antoine, et. al**
Comparative Analysis of Employment Arbitration & Employment Litigation

With Accountability

- Binding & final decisions
- Especially with NAA Member Arbitrators
- Ethical standard
- NAA Code of Conduct & Grievance procedure
- NAA professional development

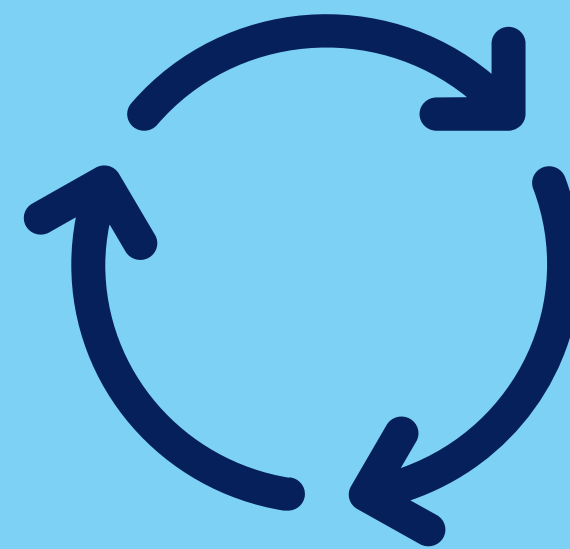
How?

Storytelling

How To's...



ANECDOTES



ANALOGIES



DATA



Storytelling Examples



Anecdotes



Analogies



Data



Arbitration plays an essential role in *supporting* the **workplace dispute resolution process** by offering an *impartial method* for dispute resolution.

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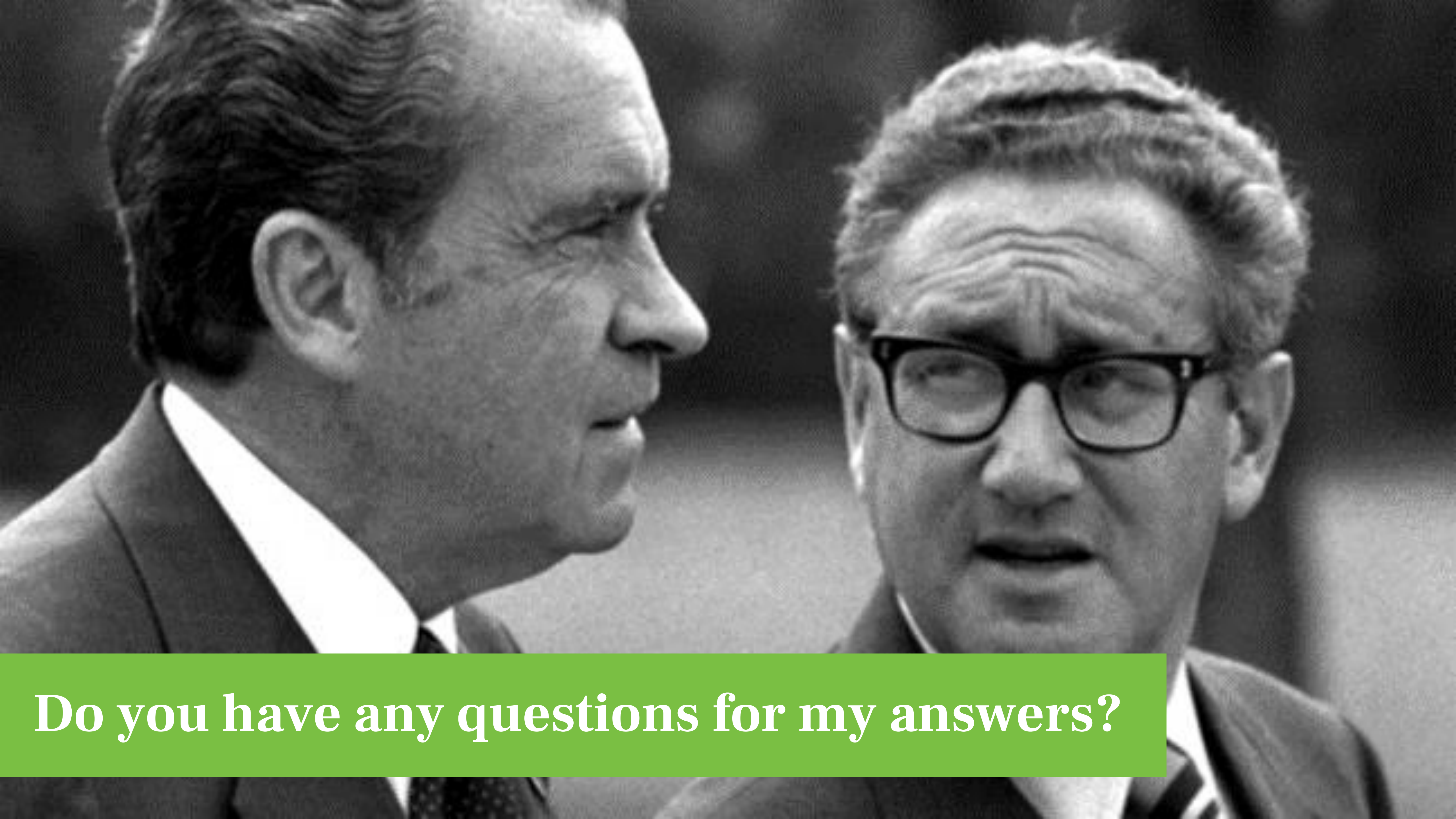
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Dispute resolution is an *established* method for workplace success

- Brings unions together with employers = establish mutually agreeable workplace terms
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Speaking Preparation

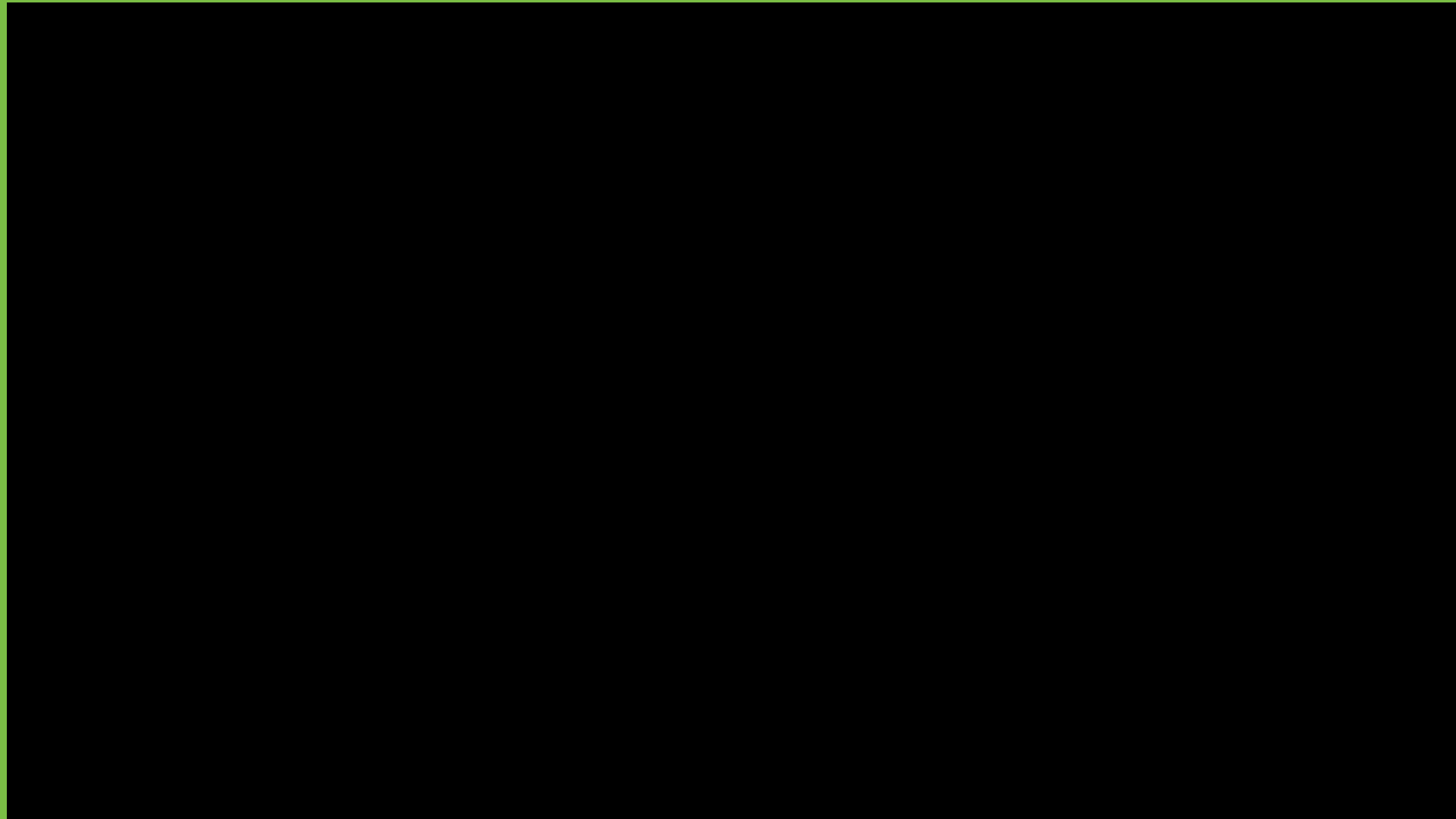




Do you have any questions for my answers?

Spirit Airlines

☑ Prepared and on point.



ABCs:

- ✓ Acknowledge
- ✓ Bridge
- ✓ Control



Tactical Maneuvers

Bridging with Magic Words

- “Actually...”
- “Imagine...”
- “I’d characterize that differently...”
- “Our customers are telling us something different...”
- “You should also know...”
- “Let’s look at the big picture....”
- “I’m not in a position to answer that, but what I CAN tell you is....”



Tactical Maneuvers

Flagging with Signposts



- *“There are two key factors....”*
- *“If you take away ONE thing from this conversation....”*
- *“Today I’m going to cover three things...”*
- *“The most important thing to remember...”*



Bridging Hero



Interview Dos & Don'ts

- *Prepare: even for 5 minutes*
- *Sit up, forward or stand = positive energy*
- *Be responsive, transparent and honest*
- *Never ask to kill or approve a story*
- *Look where you are directed (not at the camera)*



Your Answers

- *Take whatever you are given and create an acceptable answer.*
- *First and Last Questions*
 - *Be ready for the softballs, lobs and wrap-ups*
 - *“So, tell me why you are here...”*
 - *“Is there anything else...?”*



Arbitration plays an essential role in *supporting* the **workplace dispute resolution process** by offering an *impartial method* for dispute resolution.

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- Addresses micro and macro issues: shop floor to C-suite
- CONTRACT terms only
- Evidence constraints; decisions based on what is admitted and admissible
- A peaceful way to solve (inevitable) disputes
- Allows contract to endure
- **Ted St. Antoine, et. al Comparative Analysis of Employment Arbitration & Employment Litigation**

With Accountability

- Binding & final decisions
- Especially with NAA Member Arbitrators
- Ethical standard
- NAA Code of Conduct & Grievance procedure
- NAA professional development

Dispute resolution is an *established* method for workplace success

- Brings unions together with employers = establish mutually agreeable workplace terms
- Sets structure, rules and expectations for workplace
- Historical & modern context = 1935-today
- Mutual interest in organizational success
- Stable workplace = stable industry and community
- Manage costs
- Support long-term planning
- Anticipate known issues
- Creates stability for large groups, majority consensus
- Alternative: Individual agreements with MANY employees = cumbersome & inefficient
- **Railway strikes averted by FMCS**



**If you encounter media coverage that
misrepresents arbitration or reinforces
misconceptions, reach out to**

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