

CHAPTER 1

THE PRESIDENTIAL ADDRESS: ADVOCATES I HAVE KNOWN

THOMAS T. ROBERTS*

It is strange how forces we do not understand assert subtle influences upon our lives and at times bring us to moments of personal fulfillment. My daughter, who is sensitive to such things, would ascribe this phenomenon to the gentle hand of God, while my son, the attorney, might declare that upon reflection and analysis a more secular explanation is to be found. For myself, I join with my wife Kathy in accepting, with such grace as we are able to muster, the turns and twists that inevitably intrude upon both the personal and professional life of every arbitrator.

These philosophical thoughts are generated by the extraordinary coincidence that some time ago the Board of Governors of the Academy selected Chicago as the location for our 42nd Annual Meeting, and about two years later I was honored by being asked to serve as President of the Academy during the year we were in Chicago.

Let me tell you something of the reach of that coincidence. To begin at the beginning, I was born in the old St. Luke's Hospital, then located about six blocks from where I am standing at this very moment. We lived, during the depths of the Depression, in Highland Park, a city a few miles north of downtown Chicago. At the age of 10, I sold magazines in the adjoining Chicago-Northwestern and North Shore Electric Line railroad stations. It was our joke in the family that the soles of our shoes were worn so thin that, if we happened to step on a coin, we could tell if it was heads or tails.

Following the death of my father in 1934, my mother took my sister and me to the Los Angeles area to be near a family member who was employed. To this day my family and I continue to

*President, 1988–89, National Academy of Arbitrators.

reside in Southern California. Yet the fortunes of war, both between nations and between industrial combatants, have brought me regularly back to this vibrant city on the shores of Lake Michigan—and always with genuine pleasure.

But enough of these sentimental musings. I turn now to my remarks, remarks to which I have assigned the title “Advocates I Have Known.” The anecdotes I am about to relate are factual; only the identity of those proponents of justice and equity who have appeared before me over the years has been shielded. I have, of course, in particular deleted any reference to all individuals present at this luncheon, except perhaps some of those I spotted leaving early.

Advocates are sometimes lawyers and sometimes not. We are all aware that the skill and force of an arbitral presentation does not necessarily turn on the possession of a legal credential. In the General Motors-UAW umpire system, for example, nonlawyers present all of the cases in a very effective and forceful manner. They like it that way and their process has met the test of time.

Perhaps the view of at least one former resident of our host state introduces a valuable perspective regarding lawyer versus nonlawyer advocacy. I refer to a story told of U.S. President Ulysses S. Grant, a man who took no apparent care of his appearance. It seems, the story goes, that on a particularly stormy winter night Grant sought the comfort and warmth of an inn located in Galena, Illinois, a town in the northwest corner of this state and, again by coincidence, the birthplace of my paternal grandparents.

Grant entered the inn that cold and stormy night and took a table next to a group of lawyers who were in town for a session of court and who happened to be clustered around the fire for warmth. One of the attorneys spotted Grant dressed in his normally unkempt attire and made even more disheveled by the storm. The lawyer, having some sport with Grant, loudly declared to his colleagues, “Gentlemen, by the looks of this stranger he’s traveled through Hell itself to get here.” Grant, responding to the challenge, rather cheerfully said, “You are right, I have!” The lawyer thereupon asked, “And how did you find things down there?” Grant replied, “Just as they are here. The lawyers are all placed closest to the fire.”

Now for a few recollections of advocates I have known. At the very dawn of my career as an arbitrator, I was invited to sit as chairman of a board of arbitration convened to consider the

merits of the discharge of a bus driver employed by a transit district serving one of the major suburbs of Los Angeles. The unhappy coach operator had been terminated upon a charge that he had pocketed a portion of the fares paid by three of his passengers.

When I convened the hearing, the advocate for the transit district noted that the charge against the grievant involved moral turpitude, and he suggested that I should therefore begin the proceedings with a call upon the Almighty to provide me with the necessary perception and wisdom to do justice. You can see what confidence he had in me! I have not since been asked to seek divine guidance at the arbitration table, although many of you for whom I have worked may feel I could use any form of help, be it divine or otherwise. In any event, this good and sincere advocate concluded his pious request with this entreaty, "Please lead us in a few words of silent prayer."

The advocate then stated that the testimony of his first and only witness, the security agent-spotter who claimed to have observed the grievant, would necessarily have to be in the form of a written statement because, if the spotter were to take the witness stand, his identity would be revealed and his cover blown. The union objected, complaining that such procedure would not permit an opportunity for cross-examination. I sustained the objection. My friend, the transit district advocate, thereupon walked to the door of the hearing room and ushered in the spotter-witness, who was wearing a paper bag over his head. The bag had two holes for eyes, much in the fashion of New Orleans Saints fans of a few years ago. It was the intent of counsel to have the agent testify and submit to cross-examination from behind the shield of this mask. The union representative immediately protested and stated to me, "You can't permit ghosts to testify!" I asked, "You don't believe in ghosts?" The union advocate replied, somewhat hesitantly, "No, I don't believe in ghosts, but nevertheless I'm afraid of them."

On another occasion an innovative advocate came before me representing a baggage handler who had been terminated by an international air carrier. The grievant he represented was accused of stealing an African gray talking parrot named Harvey from the aft cargo compartment of a Boeing 747 being loaded at the San Francisco International Airport. The parrot had been reported missing upon the arrival of the plane in London. The African gray parrot is a particularly rare and

valuable breed, and the theft therefore generated the interest of Interpol. Some six months after its disappearance, the FBI managed to track the errant creature to Atlanta, Georgia, where it was found in the home of the grievant's ex-wife. The parrot was then reunited with its owner in London. Presumably each had much to relate to the other!

At the arbitration hearing, the grievant's representative argued that no proof of his client's guilt existed because the parrot had not been produced to be identified by its owner. To this the lawyer representing the airline replied, "We can't interfere with the lives of our passengers by asking them to return to the United States with their parrots." The grievant's representative rather indignantly responded, "Why not, this is the greatest country in America." He then added, "If the parrot won't talk, neither will my client." Faced with that procedural impasse, I ruled that the parrot and its owner could remain in London, but the grievant was entitled to a presumption that the testimony of the missing bird would in all probability not fly.

I will never forget the oppressive heat that settled over an arbitration I once convened in the middle of the summer in the historic mining town of Globe, Arizona. The proceedings took place in a room rented for that purpose at the local YMCA, a building of considerable antiquity erected long before the availability of air conditioning. In a word, it was just plain hot, and all of us were demonstrating our individual discomfort in a variety of ways.

One of the potential witnesses removed his shirt, while another wore a dampened bandana about his forehead. We were all squirming in discomfort. Finally, in midafternoon the grievant, who had been discharged for purportedly stealing a drill bit, was called to the stand to give his version of what had actually occurred. He accepted the customary arbitral oath dressed in a starched white shirt and tie, with his pants recently pressed. The grievant thereupon proceeded to recount the events of the day of his termination in exquisite detail and with great precision. Beyond that, he fielded each and every one of the questions prepared by his union representative with calm self-assurance. It was a truly remarkable performance carried out in the face of trying environmental circumstances.

Finally, the grievant-witness was turned over to the company advocate for cross-examination. The exchange that followed began with the following sally (and I quote from the transcript):

The advocate for the employer: "Under all of the circumstances—the heat and the fact that your job is at stake—you seem remarkably cool on the witness stand." Without a pause, the grievant replied, "Thank you. You don't look so hot yourself."

In another case an airport policeman at the Los Angeles International Airport was placed on disciplinary suspension after being discovered asleep in his black-and-white cruiser while on duty. This dereliction was compounded by the fact that, at the time he was found asleep, he was stationed alongside an active runway with specific orders to guard a DC-10 that was the subject of a bomb threat. The aircraft was in danger of being blown to smithereens and yet the good officer assigned to keep the area secure had fallen asleep at his post!

At arbitration the officer denied being asleep and added, "I have nothing further to say, and I'll only say it once." There followed an extensive evidentiary presentation placed in the record by the Deputy County Counsel assigned to represent the Department of Airports at the hearing. She produced a number of witnesses, all of whom testified to the somnolent appearance of the grievant on the afternoon in question, even in the presence of emergency vehicles with their sirens blaring. At the close of her case, the Deputy County Counsel suddenly announced, "There is so much paperwork in my file I overlooked a document I wish to introduce in evidence." With that, and in the nature of a reflex reaction, the grievant-sleeper blurted out, "You have to stay alert!"

An off-duty airline mechanic was walking about the terminal at Kennedy Airport when he came upon an attractive young lady I shall call Shirley. Shirley was seated on a bench crying her eyes out. She had been deposited there by a disenchanted suitor who had left her with nothing more than a broken heart and a return ticket to her home in New Orleans. The grievant-mechanic engaged her in conversation and offered his sympathy for her predicament. Soon they found themselves in a nearby tavern. After Shirley had consumed—in only one hour—and I quote from the transcript, "five scotch and sodas chased by three martinis," the two adventurers returned to the terminal parking lot in the automobile of the grievant. To put it in his words, "One thing led to another and we had sexual intercourse." Almost immediately thereafter, however, Shirley bolted from the automobile shouting that she had been raped. The police were summoned; the grievant was placed in custody and thereafter

arraigned on a felony count of forcible rape. To add to these difficulties, he was forthwith summarily terminated by his employer.

When the matter of the propriety of the discharge came before the system board of adjustment, counsel for the carrier argued that the grievant had engaged in conduct unbecoming an employee of the airline and thus had been properly discharged. In his summary on behalf of the grievant, the advocate for the union declared, "The conduct of which the grievant stands accused took place away from the premises of the company and while he was off the clock. You cannot attach guilt to that for which he was not being paid. Nor can you sustain the discharge of an otherwise satisfactory employee who engaged in but a single indiscretion, permitting the girl in question to mix her brand of drinks."

Advocates are no different from the rest of us in that they sometimes garble a phrase or reverse a sentence while in the forensic heat of their presentation. Things of this sort seem particularly common in the world of Major League Baseball. To set the background, permit me first to recall two such slips of the tongue perpetrated, not by the much-maligned Yogi Berra, but by Tex Richards, the former public address announcer for the Dodgers—Brooklyn, that is, not Los Angeles. Richards once proclaimed over the public address system with great solemnity, "A little boy has been found lost." On another occasion when the fans sitting in the left field bleacher seats had draped jackets and other articles over the railing he called out, "Would the fans along the outfield rail please remove their clothes?"

Well, enough of that. Let us turn now to some encounters of my own with advocates representing either clubs or players in that unique form of interest arbitration known as baseball salary arbitration. I begin with an encounter I had several years ago with an agent who elected to represent his player-client in a dispute with the club-employer over the salary to be paid during the forthcoming season. The player in question was a left-handed pitcher, and the agent was attempting to inflate his worth by arguing that he was the most versatile player in the game since he could serve the club as both a starting pitcher and a relief pitcher. As the agent put it, "The club can have confidence in the abilities of my man both when he is a member of the starting rotation and when he is throwing up in the bullpen."

In compiling the statistical data to support the foregoing contention, the agent proffered an exhibit that mistakenly listed the player he represented as having started on the mound and having been called from the bullpen in the same game. When the advocate for the club recognized this anomaly, he interrupted and asked, "Are you saying he relieved himself on the mound?"

If you have concluded from my remarks that baseball salary arbitrations involve a great deal of statistical evidence and comparisons, you are absolutely correct. Each side has one hour to present its case, followed by only one-half hour for rebuttal and summation. There is a great deal of money at stake. This factor, coupled with the tight time constraints, sometimes causes the advocates to mix metaphors or otherwise trip over syntax. Consider, for example, the agent for an American League outfielder who submitted in evidence a detailed set of data in support of his salary request. Hurrying to complete his presentation, the agent stated, "I have arranged for purposes of comparison all comparable players aligned by salary paid alphabetically." The advocate for the club rapidly glanced over the assembled performance figures and solemnly remarked, "Their similarities are different." The agent replied, "Well, the club may have overpaid him this year but he is worth every penny of it."

One final baseball story. I will always remember the lawyer who represented the New York Mets and on one occasion reacted in astonishment to the exaggerated claims of a player representative engaging in a considerable degree of puffery on behalf of his client. This particular presentation began with questionable statistical comparisons and gradually but steadily built to an emotional climax, in which the agent compared the talents of his player with those of a number of the revered Mets heroes of the past. With the calling out of the name of each such retired Met star, the lawyer became increasingly discomfited, if not distraught. Finally, he could contain himself no longer and he shouted, "If Casey Stengel were alive today to listen to this nonsense, he would be spinning in his grave."

It is time now to leave baseball and briefly recall some other advocates I remember, in some instances with admiration, in others with affection and, in a few situations, with total astonishment. All have appeared before me; some have even survived pretty much in one piece! They include:

- The movie and television actress-advocate who later rose to the high office of president of an international union.
- The advocate who led me in prayer, expressed in the rhymes of ancient yet new Hebrew, when the two of us flew in a light plane through a midnight blizzard between Fairbanks and Anchorage during the period of the construction of the Alaska pipeline.
- The advocate-to-be who worked on high voltage utility lines during the day and went to law school at night in order to sharpen his representational skills. He is now a member of the California Bar and a very effective union officer.
- The advocate who brought two City of Memphis police officers to the hearing room to arrest and drag off to jail a grievant he had accused of stealing company property.
- The advocate who went on to become the Attorney General of the United States.
- The advocate who is now in jail.
- The advocate who is in training to become a Major League Baseball announcer.
- The advocate who responded in kind to a rhetorical question posed by opposing counsel. He was asked, "What will you tolerate the least—ignorance or indifference?" He answered, "I don't know and I don't care!"
- And dearest to my arbitrator's heart, the three advocates I have earlier encountered in hearings, all of whom have since become neutrals and, beyond that, distinguished members of the National Academy of Arbitrators, as well as a fourth former advocate who now works with me as an arbitrator and who is teaching me a great deal in the process.

Finally, I wish to pay my respects to the one advocate I have most admired over the years. In doing so, I will in this one instance identify the individual by name. I speak of the late Juan Chacon.

Juan Chacon was the son of Indian-Mexican parents who resided in the Southwest. As Juan entered his teen years, he went to work in an open pit copper mine at Santa Rita, New Mexico. In the crucible of that physically demanding job, performed in the searing heat of the high desert summers and the bone deep chill of winter storms, Juan matured into an adult with a commanding presence, reflecting leadership qualities enhanced by a

staunch personal integrity. He was not a large man, but he was all man!

At an early point in his tenure in the mines, Juan became active in the conduct of the affairs of his local of the Mine, Mill and Smelter Workers Union, a labor organization now succeeded by the United Steelworkers of America. The personal-human characteristics reflected in his understanding of the needs of his constituency soon caused Juan to become something of a legend among the workers and their families, all of whom lived in and around the company town situated between Hurley and Silver City, New Mexico.

Juan rose rapidly through the various levels of responsibility within the local union, and ultimately he was elected its president. At about this same time he met and fell in love with an attractive young woman, the daughter of a fellow mine worker. Following an appropriate period of courtship, Juan and Lupe were married, and they took residence in a small wooden bungalow owned by the company. The bride and groom were subsequently blessed with two children. There was, however, a dark cloud of labor-management unrest on the horizon.

When the collective bargaining agreement at the mine expired by its terms, the parties were unable to reach agreement on the provisions of a successor contract. This caused Juan ultimately to lead the members of the local out of the pit and smelter to protest in the streets of their tiny town. Tragically, strife followed, marked by violent clashes between the miners and company-employed guards. The homes of the miners came under siege, and in some instances they were burned to the ground. Casualties were suffered by both sides. Many of the partisans were injured and regrettably others were killed, some might say murdered. Juan and his supporters nevertheless stood their ground throughout this travail, and ultimately they were rewarded by the granting of a few pennies in increased wages and some improved fringe benefits.

After the men went back to work, the price they paid in lost wages (to say nothing of injured or dead brothers and fathers) came to the attention of socially conscious observers across the land. One such "seed" of interest germinated within a group of motion picture writers, directors, and producers who were at the time themselves the victims of the economic and political havoc wrought by the spectre of McCarthyism then so prevalent, not

just in Hollywood but across the land. The motion picture studios were terrified of becoming identified with this group of artists. Yet, although blacklisted as “commies” or worse, they somehow managed to produce a documentary black and white film. It told the story of the tragedy and triumph of the strike as experienced by Juan Chacon and his friends. Indeed, although a professional actress played the part of Mrs. Chacon, Juan and most of the others played themselves!

Somehow, the strength and principles of this remarkable man were captured for the screen. The film was at once both beautiful and gut wrenching. The message it represents has stayed with me to this day. It was an extraordinary performance by a man who consented to assume the unfamiliar role of film actor only after he was convinced that others might gain through the telling of his story. With the same talents he had employed as an advocate at the arbitration table, Juan projected on film the dignity and strength of his cultural, religious, and earth-oriented heritage. He was, in a word, magnificent!

The film of which I speak was entitled, “Salt of the Earth.” Unhappily, most movie theaters refused to exhibit “Salt of the Earth” out of fear of being tarred by the black brush of anti-communism. Through a happy fortuity, however, the operator of a small theater in Hollywood chose not to be intimidated and the film was shown. I was at the time “courting” my wife Kathy, and on one of our dates I took her to see “Salt of the Earth.” We were both touched by the story—a real life story—of Juan Chacon, his family, and his friends. This emotion remained in our hearts even after our picture was snapped by a government surveillance team as we left the theater, presumably to assist in any future inquiry into the purity of our political affiliations. The lesson of the misplaced suspicions of the inquisitorial climate of those times remains with me even today. I learned that it is wrong and evil to permit yourself to judge someone simply on the basis of innuendo, transitory public hysteria or, the worst of all, group association.

If you happen to find yourself in the vicinity of Hurley, New Mexico, I recommend a visit to the old Mine, Mill and Smelter Workers hall located on a two-lane highway at the edge of town. There you will find on all four walls of the meeting room a mural painted by an extraordinarily talented local artist. The mural depicts the history of the people of the area as their lives have been affected by the presence of the Santa Rita mine. You will, of

course, find Juan Chacon, his family, his priest, his friends, and fellow workers in much of the story. The presence of Juan Chacon and his remarkable accomplishments continue to be a force in that otherwise modest union hall.

I think of Juan Chacon often. He brought to the arbitration hearing room in a most compelling manner the truth that every man and woman who works for a living is entitled to respect and dignity no matter how humble their origins or how routine their employment function. Juan Chacon taught me this long ago, and it is appropriate from time to time to restate the lesson, particularly in this city of my own origins. Thank you for permitting me this opportunity to do so.