

CHAPTER VII
THE NEXT DECADE

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Ten years is a long time in the life of a man; though some of us are reaching the age where the decades do not stretch out into the long, endless, inviting vistas that we knew in our youth. They begin to go by pretty rapidly and get sort of crowded together these days.

Ten years is a very short time in the life of an organization such as the National Academy of Arbitrators. During these first ten years, I think it is fair to say, we have been shaking down. We have been finding out who we are and what we are as an organization, what we can hope to do and what we cannot hope to do. We have, in a sense, met the issue of the kind of an organization we are in pretty fundamental terms in defining and discussing our membership policy; for one of the keys to the character of an organization is the basis upon which people join it, and are admitted to it. Whom are we looking for, whom will we accept? We all remember the early disputes and arguments and discussions as to whether or not we should try to make ourselves a closely knit group of self-considered elite; or, on the other hand, whether we should open our doors to anybody who ever saw a grievance hearing, and make ourselves primarily an educational organization for people who want to arbitrate.

I think that the manner in which those issues have been resolved—following, in a sense, the approach of which arbitrators are sometimes accused of compromise and cutting the baby in half—has been sound.

I think we do feel and can rightly feel that there is represented in our membership as good or possibly the best that our profession has to offer. And I think that we can also be proud that our membership

¹ EDITOR'S NOTE: Mr. Seward was the first President of the Academy. This address was given at the Tenth Anniversary Luncheon, following the talk of the incumbent President, Mr. John Larkin, which serves as the introduction to this volume.

has not only been opened to and has welcomed, but has aided the young blood that is coming into the profession, and that the profession so greatly needs.

With the splendid cooperation of the American Arbitration Association we worked out the basic framework, the basic ground rules of a Code of Ethics.

And I think that we have come to realize that one of our functions in life—and a very necessary function—is that of sheer companionship and friendship. We are one of the lonely professions. Some of our contacts at work involve close and rewarding friendships. Some involve situations in which we must follow the course of Caesar's wife and be above suspicion, alone and aloof from the parties. And when we get down to brass tacks in deciding cases, then, Brother, we are alone!

It is good to get together; it is good to know other people in the same boat. I think that the feelings that some of us sometimes have about ourselves as arbitrators was expressed at a hearing in Lackawanna sometime ago, at a Bethlehem Steel Plant there. It was a merit increase case, and an employee was trying to explain, in the first place, why he deserved a merit increase, and in the second place, why he had not gotten one. He finally turned to me and said, "Mr. Umpire, this is how it is. I have got two bosses. One of them hates me, and the other one doesn't like me at all."

I say, it is good to get together with our friends in the profession. And if the Academy never did anything else, I think that the strength and backing, the emotional release and security that we find with one another, is a contribution to the arbitration process in the United States, as well as to our individual lives and happiness.

Well, we have shaken down. Where do we go from here?

I hope that, in part, the answer to that question will be: more of the same. Because I think that our discussions, our papers, our Regional Meetings (though there ought to be more of them), our consideration of the problems of our profession at these meetings, have been valuable, enriching and rewarding. I hope we keep on doing that sort of thing, studying procedure, how we can improve the arbitration process, how we can learn more about the substantive problems that we face.

I am wondering, though, whether we are doing as much as we can to help one another; whether we are making available to one another,

as we might, our experience; whether we are doing what we can to learn from one another.

In a sense, our function as an organization, is to improve the arbitration process, and to help management and labor, in so far as we can. But, basically, you do not improve the arbitration process, except in terms of framework and so forth, by rules, by techniques. Basically, you improve the arbitration process by improving arbitrators, by learning, by growing in the profession.

Of course, in regard to this matter of helping one another, and educating one another, it occurred to me on the train yesterday that possibly the course of instruction in which arbitrators might be most interested would be a course in: "How to Get Hired as an Arbitrator." It occurred to me, also, that possibly such a course might be given by one or another of the young ladies of the country who are so adept at the delicate art of pursuing while still appearing to be pursued. Some might phrase it, thinking of arbitrators: "The Delicate Art of Chasing While Still Appearing to Be Chaste."

But, beyond that, there is gathered in this room, I think, a unique set of experiences.

Bill Simkin, Saul Wallen, Bob Feinberg, Allen Dash, Lew Gill, have sat through a wide variety of humdrum cases, of crises, of disputes of all kinds. Each of them has his unique techniques. Each of them has different ways of meeting problems. We all write our opinions differently. We conduct our hearings differently. We meet crises differently. And all of us run into situations, I am sure, when something happens at a hearing and you know you have to make a decision in five minutes, and you think, "My God, what on earth do I do at this point?" I think some means by which we could make our professional experience, our personal professional experience, more available to one another—some means of sitting at Dave Cole's feet, or John Larkin's or Gabe Alexander's, or Aaron Horvitz's, or Jake Blair's or Bert Luskin's and learning for a couple of days something of their experiences and how they have handled cases—would be a wonderful thing.

I can remember, from the early days, one of the first cases I ever handled for the War Labor Board out in Chicago. The parties came in—it was a discipline case—lined up on each side of the table, greeted me cordially, and we sat down, and that was it. Dead silence.

I said, "Well, gentlemen, who is going to begin?"

The union said, "We think the company should begin."

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I said, "Well, what have you done in the past?"

"Well, this is our first arbitration case. We haven't done anything in the past."

The company said, "We feel very strongly about this. We think the union should begin. The union is bringing the grievance on behalf of the discharged employee. It ought to present its case."

The union said, "Oh, no, the burden of proof, of making a case against this discharged employee, of proving his guilt, should be on the company. They ought to start off, and our man should not be considered to be guilty until he has been proven so. He shouldn't have to reply to a case which has not yet been made, and Mr. Arbitrator, unless the company goes first, we will walk out of the hearing."

The company said, "Mr. Arbitrator, that goes both ways. Unless the union goes first, we will walk out of the hearing."

At this point I would have loved to have known what in the world some of you would have done. The only thing I could think of to do was to go first myself!

But I do think we are not taking the advantage we could of the opportunity to learn from one another. I suggest, as one thing that we might consider, some way of making available to all of us the individual experience which each of us has, so that we can, not only learn from the process, but contribute what we have learned.

I think that we also have a responsibility—which we have discussed but have not done much about—in regard to this matter of new arbitrators. More arbitrators are needed, more good arbitrators are needed, than there are. People are coming into the profession, and should. What can we do to help them? What can we do to help the men who have not yet had the experience to gain general acceptance, or to qualify for membership in the Academy? What can we do? I believe it is part of our responsibility to the country to make our experience—for what it is worth—available, not only to one another, but to those who really need it, the men who are coming in and who have to learn.

Ultimately we know that we learn our job only by doing it, or primarily by doing it—by trial and error. But learning by making mistakes means that we are learning completely at the expense of management

and labor. I do think that we might possibly help management and labor by making our experience available in some way—and I am talking vaguely, because I am trying to think this thing out—in some way to the new men who are arbitrating, not just students in college who are interested in labor relations, but the men who actually need the experience and are starting to get it.

We are not an educational institution ourselves, in the sense of being set up to conduct courses, but I am not sure that there would not be in Chicago, in Cornell, in Berkeley or in various of the other educational institutions, an interest in courses in arbitration for practicing arbitrators, which we might help to organize and with which we might cooperate.

I know the Practicing Law Institute is doing that sort of thing for the benefit of practitioners before arbitrators, and the experience, so far, I think, indicates that it is a rewarding effort.

Finally—and now I am going to get awfully vague and awfully tentative—I am wondering whether we are fulfilling our functions as an organization, when we confine ourselves, as so far we have, merely to the examination of our own professional problems.

We have no right, of course, to claim that we have ultimate wisdom in the field of labor-management relations. It is obvious that with regard to any specific situation, the companies and the unions know more about their problems than we ever will, and they know more about their processes and objectives than we ever will, and any effort by this Academy to set itself up as an instructor of management and labor would, obviously, be laughable.

Yet, in this room, we do have experience which neither management nor labor has. We have among ourselves, for what it is worth, the unique experience of having sat through thousands of cases from the impartial point of view, of having seen both management's side and labor's side, and of having watched in hundreds of different situations the successes which management and labor have achieved, their failures, and their problems.

We have a perspective and a point of view which, for what it is worth, is different, is unique, and I think may be of value.

Are we making our experience as arbitrators available, as we should, to the country, to management, and to labor?

Are we formally called on, as an organization, for our advice or comments on problems touching management-labor relations—touching the very problems which we spend days examining in their most specific details?

Were we called upon, as a matter of fact, when something so vital to the process as the Uniform Arbitration Act was initiated and discussed in its early stages? Did anybody think it natural to turn to the National Academy of Arbitrators at that point for our views and comments?

Do we know, have we studied, and have we cared as an organization, what effect our activities, the endless arbitration of grievances, are having on the collective bargaining process in this country?

Have we fulfilled our responsibility as an organization if we neglect consideration of that effect?

Is our objective merely to decide cases, to be available to help in the decision of cases? Or must we not pay attention in our thinking and discussion to the larger picture?

Do we mean what we say so often, that the objective of an arbitrator should be to put himself out of a job ultimately, to aid the parties, as best we can, to cease using us as a crutch, and to measure up to the responsibility of solving their problems themselves, as they ought to be solved?

Arbitration is an important part of the democratic process, and we are uniquely privileged in functioning professionally in that area, but the democratic process itself, ultimately, in its highest form, is not running to a judge, nor running to somebody else to decide your problems for you. It is the much harder thing of hammering out agreements, of measuring up to the difficult job of relating a contract to life yourselves.

Are we doing anything about the situations—and there are so many of them—where there are endless grievances, case dockets with 500, 1000, 1500 cases awaiting arbitration, because arbitration has become routine, and it is so much easier to come to us than to take the heat yourself, as a union leader or a company representative, of stepping in and solving those questions?

Are we just swimming with the current, or are we doing what we can to foster the process of agreement as opposed to the process of deciding?

Now, in so far as we raise our sights, we run into dangerous territory. We have been cautious—and I think that looking carefully at the problem is wise—cautious as an organization in taking positions on public issues involving management and labor.

It is not only a matter, I hope, of personal protection. The usefulness of arbitrators can be prejudiced if they take too clear positions on certain issues. But have we been too cautious? Have we been too afraid? Have we been too willing just to drift and get the jobs and decide the cases and not make our experience and our points of view—our varied points of view—on the questions facing management and labor in this country available to management and labor and the country?

I suggest that, in thinking of this sort of thing, we look before we leap, but I suggest also, that an organization which merely sits forever examining its own navel will sooner or later shrivel up; that the only way an organization can grow is always to look beyond what it is doing now; and that the real measure of an organization is not only its past accomplishments and its present activities, but its aspirations.
