

With regard to the cost of arbitration or mediation, both are costly. There are two ways to deal with the problem. The Ford Foundation and the Rockefeller Foundation have provided money to handle these costs on an experimental basis during the two years of our operation to prove the viability of the concept on a national basis. But as we become more general in application, the cost factors will be more of a problem. We are establishing and using unique approaches in the local centers that we hope will provide for local funding for various categories of disputes so that we will be able to take advantage of arbitration and mediation.

Finally, we are finding, as has been the case in commercial arbitrations and negligence-case arbitrations, that there are many types of situations where we can find arbitrators or mediators who will serve without fee. I recognize that those of you in the labor arbitration field possibly are not accustomed to serving too often without fee, but we are going to ask you, in cases involving public matters, not to insist upon your handsome fees, because we are talking about resolving conflict that may very well affect us all seriously—you can't arbitrate a dispute concerning a building that has been burnt down.

II. INDUSTRIAL JURISPRUDENCE AND THE CAMPUS

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In requesting me to speak on this topic, the managers of the conference appear to be assuming that arbitration experience provides useful training for handling student unrest.

It is not difficult to understand why the proposition might appear plausible. A good case in point is the distinguished President Emeritus of the Academy, Dr. Robben W. Fleming, who now serves as the chief executive officer at The University of Michigan. Dr. Fleming was planning to be with us at the Broadmoor today, but has been deterred by a series of recent developments. These include a budget recommendation even more inadequate than usual, requiring an urgent summit meeting with Governor Milli-

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ken; a threat of coercive tactics by student radicals who oppose language requirements for the B.A. degree; a rent strike in Ann Arbor being conducted by another student group; a presentation of Greek tragedy performed by a New York theatre company, including two scenes played entirely in the nude; and a resolution by the state senate to investigate what is going on at college and university campuses. Individually these developments are not too alarming, but collectively they inflated the presidential workload to such an extent that Dr. Fleming asked me to convey his regrets and apologies.

A number of other Academy members have assumed administrative responsibilities in higher education. Arbitrator Archibald Cox, himself abstaining from the fray, has authoritatively chronicled the trauma on Morningside Heights. Arbitrator Ron Haughton was imported from Detroit to mediate the struggle on the campus of San Francisco State College, where members of the Northern California chapter feared to tread. Arbitrator John McConnell has been president of the University of New Hampshire for the better part of a decade; but his extensive arbitration experience seems to have been wasted, for not a single newsworthy sit-in, strike, seizure, or other confrontation has occurred at that institution.

In some ways the arbitrator's suitability for top positions in higher education is quite evident. His rabbit countenance, furtive expression, and apologetic manner provide ideal camouflage for the commander-in-chief of a complex organization whose warring factions are united only on total rejection of his authority. For the ceremonial dinners that occupy most of his evenings, he has the useful talent of appearing awake while actually asleep, shielding his eyes with his hand as if engaged in profound thought. If he has ever served on a railroad emergency board, he is prepared to survive committee meetings so inordinately protracted, repetitious, and stupifying as to drive any normal man into the waiting arms of a straight jacket. Clearly the arbitrator's background is *relevant*, to use a word itself charged with extraordinary relevance.

Perhaps the case could rest here, but it may be instructive to explore the matter somewhat more deeply. The reason is that, how-

ever good or bad the analogy between labor problems and student problems, a comparative analysis can be helpful in understanding both. I will discuss various aspects of student relations from this standpoint.¹

Workers and Students Compared

To begin with, consider the similarities and dissimilarities between the industrial situation and the campus situation. Although there are some comparable features, the differences are considerably more impressive. The analogy is superficially attractive, but it is apt to be mischievous and misleading if taken too seriously.

The employees of an establishment or industry are a fairly stable group unless the turnover rate is unusually high. Students, in contrast, come and go with bewildering rapidity, except for a few perpetual graduate students, so that a generation of students must be reckoned as three or four years rather than 30 or 40.

Workers grow older, have children, move to the suburbs, and settle deeper into their grooves or ruts. As society grows more affluent, workers have an increasingly conservative posture. Students, on the other hand, come to the university in the most rootless and tumultuous phase of their lives. Typically, they have outgrown the families of their childhood but have not yet established the families of their adulthood. The more promising the student, the more his ideas and values are in ferment. A student body, in consequence, is a self-renewing whirlpool of energy, idealism, confusion, and discontent. If the industrial worker is a blue-collar conservative, the student is a turtle-necked radical.

Labor Issues and Campus Issues

Labor-management problems are generally conventional and predictable, being rooted in identifiable economic interests. The subject matter of student protest, on the other hand, is variable and unpredictable. Some issues are capable of being handled by the university as it is: for example, visitation rules in student

¹The question of student participation in decision-making is obviously related to student unrest. This question is so large and complicated in its own right that it was impractical to deal with it. Suffice it to say that students can participate legitimately and constructively in the government of the academic community.

residences, language requirements in the literary school, courses in African history. Others would require a basic change in the character of the institution: for example, a demand that the university admit black applicants, or devote itself mainly to direct social action in the urban crisis. Still other issues, such as Vietnam or selective service, are entirely beyond the power of the university. Where student protest has become institutionalized as an established part of the scene, it will float from crisis to crisis in a kind of moving disequilibrium.

Most union members are glad to play a passive and acquiescent role if the union leaders deliver sufficient bacon with sufficient frequency. The student activist, on the other hand, demands authentic personal involvement. Direct participation is more important than results. The activist has little patience with organizational discipline; he does not want leaders to fight his battles; his view of conflict is existential rather than instrumental.

Thus there is no vested student leadership with whom university administrators can deal in the way that employers deal with established union officials. On an activist campus, one sees a fleeting progression of evanescent societies, committees, councils, and "movements," with a rapidly changing cast of characters. The existence of a few aging veterans in the national SDS, such as Mark Rudd and Tom Hayden, does not change this situation in any significant way. Under these circumstances, student relations do not lend themselves to the stable, oligarchical, and bureaucratic equilibrium which is characteristic of so-called "mature" labor-management relations.

Finally, there are crucial differences in the structure of disputes in industry and on the campus. Normally, the industrial dispute has two parties—an employer and a union. This structural simplicity, combined with familiar business motives and predictable reactions, accounts for the fact that most labor contracts are negotiated without strikes and most strikes lead to a well-defined settlement.

There are exceptional cases, it is true, where the bargaining situation is more complicated. Perhaps the union is unable to control the rank-and-file membership, so that there are three "parties" rather than two; perhaps there are factional rivalries inside the

same union, or between unions in the same industry; perhaps various industry groups in a multi-employer situation have conflicting interests. It is significant that in all these cases, settlements are more difficult to make and more unstable once achieved.

As a contrast with the simple structure of most industrial disputes, let us examine the anatomy of the so-called Free Speech controversy at Berkeley during 1964-65. I select this one to illustrate a campus-wide issue of crisis proportions for the reason that I know it best, having been chairman of the Berkeley faculty's Emergency Executive Committee.

Directly involved were four sets of participants—the administration, the regents, the faculty, and the students, each with important subgroups. There were severe problems of jurisdiction and communication between campus and state-wide levels of administration. The regents were badly split on the basis of political party as well as geographical region, age, and ideology. The Berkeley faculty, in its natural state, was greatly fragmented, as is generally the case in large universities; but the faculty was able to achieve substantial unity for the better part of a year. As for the students, I can describe them best as a family of concentric circles. The outer ring consisted of apathetic or unsympathetic students. Next came the sympathizers, a large group indeed when the Free Speech Movement was in its heyday. They did not belong to organizations and participated only at the huge mass meetings, but they could feel identification, excitement, and vicarious purpose. Closer in was a more active element with civil rights experience in San Francisco, Oakland, or the Deep South; and even closer were the members of political or social-action groups ranging from Young Republicans to the DuBois Club, but heavily weighted on the left. At the center, of course, was the FSM Steering Committee, headed by Savio and other leading figures, but even this was hardly a unified command. For if they could trust no one over thirty, neither could they trust anyone under thirty—not even each other.

The strategic possibilities and limitations in this situation seemed quite evident. First, it was important to have discussions with the protest leaders, but impractical to negotiate in the formal sense. Second, it was essential to establish defensible policies on "free speech" and student political activity, but unlikely that the

Savio group would be satisfied, since they had embraced protest as a way of life. Third, the real negotiations must be centered on the regents, the purposes being to establish conditions under which academic order could be restored. The faculty and most students must feel that acceptable policies had been adopted, and the destructive group must be isolated. The strategy was successful enough, and the Free Speech crisis simmered down in the spring of 1965. But almost immediately came a sharp escalation of the Vietnam War, so that the calm between storms was short-lived indeed.

Does One "Bargain" With Students?

Next, are the concepts and procedures of collective bargaining applicable in relations between a university and its students? Is there anything analogous to a bargaining relationship as we know the term in its industrial context?

Workers are represented by bargaining agents, who enjoy the right of exclusive representation for any bargaining unit on the basis of majority rule. Who bargains for the students on a campus? It might be supposed that the official student body organization, for example, the Student Government Council at The University of Michigan, could serve as exclusive representative, but this is most unlikely. The concerns of activist students are too diverse, and their desire for direct involvement too powerful. At a reasonably active campus today, you will find perhaps half a dozen protest issues being pushed by an equal number of student organizations. They will profess to represent students in general, but their actual constituencies are vague and ill-defined. The black students may constitute an exception, as a well-defined subgroup having a common outlook and internal discipline and claiming to represent themselves rather than students as a whole.

In labor relations, the process of negotiation results in a collective bargaining agreement. The essence of the bargaining agreement is its bilateral character. While the employer guarantees stipulated conditions of work for a specified period, the union underwrites that the employees will accept these conditions. As a result of this bilateral commitment, it is assumed that industrial relations will be stabilized, and industrial peace maintained, for the duration of the contract.

Academic administrators obviously do make "agreements" in the sense of promising to follow a certain course of action or policy, and of course they ought to keep their promises. Missing, however, is the bilateralism of the collective bargaining agreement. Student protesters, even the officers of recognized student organizations, are not in a position to commit other students, other organizations, or students and organizations yet to come. This is the reason why written agreements are not of much significance. Suppose the students sign an agreement. Nothing prevents other students from brushing it aside on the grounds that the signatures were not really representative.

Some of the undertakings between a university and the official student government do have a contractual character, permitting them to be set forth as bilateral agreements. The same is true of relations with student newspapers and other continuing entities with definable rights and interests. The more difficult issues of student protest, however, fall outside these orbits.

If collective agreements are not directly transferable to the campus, how about grievance procedures? Reading the history of American education, one is impressed by the extent of paternalism, absolutism, and capriciousness in the treatment of students. The current emphasis on fairness, respect, and consideration is well-nigh revolutionary. Today the attitudes of professors and administrators tend to be somewhat polarized at both extremes, for if some remain authoritarian, others have become apologetic, over-indulgent, and sentimental toward those whom they call "the kids"—and even 26-year-old graduate students with wives and beards are called "the kids."

Undoubtedly most students, professors, and administrators have a balanced view, recognizing that rights go along with responsibilities and that if much is given, much should be expected. Still, so many decisions affecting individual students have to be made on a large campus that inevitably some of them are going to be unfair. This is doubly certain when computers are linked with humans in the decision process. If you have fought your unequal struggle with computers of telephone companies, department stores, and book clubs, you will understand why students are apprehensive about the wondrous possibilities of "management science."

Individual students, therefore, should have avenues of complaint and appeal. Academic grievance procedures do not have to be as elaborate and complicated as those to which we are accustomed in industry, however. Difficult questions of contractual interpretation are not involved. The student thinks he is being treated arbitrarily and that the result does not make sense. What he wants most of all is that somebody look sympathetically at his individual problem and that corrective action be possible if the complaint does have merit.

Under the present circumstances, therefore, one level of appeal should suffice, and procedures can be informal and flexible. Probably it does not matter too much if the *ombudsman* is a senior faculty member, an assistant dean, a mature graduate student, or some combination of these elements. The important thing is that the student be recognized as an individual and that his complaint be dealt with.

It can be expected that the faculty, who make most of the decisions that affect students directly, will resist any review of their actions much as policemen resist a police review board of civilians. A faculty member is entitled to a presumption of regularity, because it is difficult for a third party to review an academic decision on its results. In a reviewing capacity, I would want to satisfy myself that the decision was made carefully, rationally, and fairly-mindedly. If these requirements were satisfied, it would be difficult and perhaps unsound to make an exhaustive review of the merits.

I turn now to rules of student conduct and disciplinary procedures, concerning which there has been great controversy in recent years. Actually there are several disciplinary systems on a large campus. Violations of dormitory rules are handled by the housing group, cases of cheating are dealt with by the faculty, and other individual offenses such as stealing, intoxication, etc., by the deans. These traditional behavior problems are not too difficult so long as the institution moves quickly enough to shed itself of the *in loco parentis* function where it is no longer tenable.

Violations of law should be dealt with by the civil authorities. Clearly, the university campus is not a privileged sanctuary where laws can be violated with immunity.

The bulk of the controversy over student conduct has centered on deliberate challenges to administrative authority and on coercive or disruptive tactics. There have been numerous attempts to negotiate detailed rules and regulations in this area, and on the whole they have not been very successful. If activist students themselves are pulled into the negotiations, the rule-making process itself can become a dangerous area of conflict. If students are represented by so-called moderates, the activists will disown them and endeavor to undercut them. Anyhow, in today's atmosphere there is virtually no likelihood that students can be persuaded to join with their elders in writing effective rules to restrain the behavior of other students.

Despite all the talk about student-faculty groups writing the rules, or student judicial bodies enforcing the rules, the truth is that in this truly controversial area of discipline, administrators often have to proceed without much direct assistance. To have the support of the academic community is essential, but to expect students and faculty members to do the work may not be practical.

Is it desirable to have an elaborate set of rules governing protest activity? This can lead to endless disputation over trivial details and imaginative attempts to test the rules at their margins. In the field of industrial discipline, we have seen that a simple "just cause" approach is a satisfactory basis for the regulation of conduct. Likewise, where student protest activity is concerned, perhaps it will suffice to characterize the central purposes of the university, describe the kind of environment which is essential, list the principal activities and functions which carry out the institutional purposes, and make it plain that substantial interference or disruption will not be tolerated.

When severe disciplinary penalties such as expulsion are being considered, students are entitled to receive due process, and the law will protect that right. It is not necessary to simulate the courts of criminal justice, but a student should have notice of the charges, should be confronted with the evidence against him, and should have an opportunity to defend himself.

There are many ways in which the judicial function can be performed. It can be assigned to a student judiciary, to student-faculty courts, to a faculty committee, or to the deans and faculties

of the major academic units on the campus. Faculty hearing officers can be used, and their findings and recommendations can be reviewed by administrative officers. As already noted, however, it is unlikely that students will be willing to judge other students. Extremely controversial cases can cause deep splits in the faculty, and faculty members will not devote a great deal of time to this kind of service. Moreover, a series of deliberate confrontations, marked by coercive and disruptive tactics, may lead to a crisis of such proportions that it can be handled only by the top administrators of the institution in consultation with the governing board.

If it is difficult to generalize concerning judicial procedures, it is quite impossible to make categorical statements about the ultimate sanction of calling in the police. To determine whether this dreadful expedient must be employed is the most exacting test of administrative judgment.

Dealing With Student Protest

While the formal concepts and procedures of industrial relations have only limited validity on the campus, this is only part of the story. Some of the insights which are developed in the study and practice of industrial relations are quite indispensable in handling student conflict. Obviously, arbitrators and mediators do not have a monopoly of these insights, since the great majority of successful university administrators do their work without benefit of industrial disputes experience. There are interesting elements in common, however.

I can make this point by describing some of the tactical and philosophical requisites for dealing with the type of student protest which most seriously threatens the stability of the university campus today.

1. As I have noted, many students are in a period of rapid personal change, as they experiment with various styles of life. It is important that they have a chance to find themselves before it is taken for granted that they are hard-core anarchists. This calls for unusual patience and a willingness to let issues remain unresolved so long as the campus environment remains viable. It is like dealing with the inexperienced leadership of a newly organized union.

To insist that they be reasonable and businesslike is to rob them of important learning experiences.

2. Student protesters are inclined to talk big, make reckless threats, and paint themselves into a corner. They frequently need help of the type which mediators provide in labor disputes. They may need to know how the university will react if the threats are carried out, and how the scenario will unfold from one scene to another. They may need to be shown how to crawl off the limb if they desire. Perhaps the students will not listen, or will be completely rigid, but this should not be taken for granted in advance. If employers and labor leaders often need to be protected against their own awkward strategies, how much more is this true of students who wish to be regarded as adults but are not yet very mature?

3. A prime requisite is not to be afraid of students, no matter how menacing their vocabulary, no matter how curious their decor. Many academic dignitaries have lived their lives amidst exaggerated politeness and deference. In the face of hostility and disrespect, they splutter impotently, lose their capacity to think, and are apt to commit the most egregious mistakes. Student protesters should know that the administrators are not frightened, are willing to talk with them, and are capable of outwitting them if necessary. If you have dealt with the International Brotherhood of Teamsters, for example, or the Seafarers International Union, you are not likely to be overawed by the SDS crowd or the Black Students Union on your campus.

4. The kind of skeptical detachment which develops in arbitration practice is also most helpful to the university administrator. The faculty must be accorded full respect without going overboard for the "community of scholars" mystique. The whole enterprise centers on the intellectual life of the faculty, yet they are entirely capable of narrow and conservative professionalism. If it is essential not to regard students as alien enemies because they infuriate alumni and legislators, it is equally essential not to grovel before students on the ground that they are "telling it like it is" and exposing the corruption of society.

5. Despite the importance of tactical sophistication, university administrators must try to do the right thing. This is not as silly

as it sounds because even if one knows what is right, there is always the danger of getting boxed in so that the right thing cannot be done without losing face or yielding to force. This poses the familiar requirement of keeping one's options open and retaining fluidity of action.

6. Even when administrators do the right thing, there may well be a small but resourceful group of hostile, destructive students (or students plus nonstudents) to cope with. In this situation, there are two absolute necessities. The first is to have the support of most faculty members. The second is to isolate the hard-core group from the rest of the students to the maximum extent. This is why instant police action and mass expulsion of disrupters is not so practical as it often appears to editorial writers and politicians.

Of course there are circumstances when the police must be called, and of course the university must be prepared to expel incorrigible students. But these measures will not really succeed unless the academic community as a whole is willing to accept them. This means that if a campus is badly split and has a weak sense of community, the administration may find it difficult or impossible to restore academic order when challenged by destructive forces. The tragic situation at San Francisco State is a case in point.

7. It would be easy for university administrators to yield to outside pressures, particularly when some of the complaints have merit, but what does this accomplish if it merely alienates the internal community? Likewise, it is easy to let the level of conflict on a campus escalate, but extremely difficult to de-escalate. Institutionalized conflict provides an environment in which the most obsessed and self-centered of the students, faculty members, politicians, and editorial writers come together at the front of the stage. Although they fight each other, they are really kindred spirits, like the generals of opposing armies. Together they can initiate a long night of tiresomeness for everyone else.

Thus the crucial task of the academic administrator is to maintain a strong sense of community while cultivating mutual understanding between the university and its outside constituencies. There is nothing so fragile as the sense of community; nothing so difficult to repair once it is shattered; but nothing so indispensable to the educational process.