CHAPTER 7

WILL SUCCESS RUIN THE ARBITRATORS?

BEN RATHBUN*

The members of this Academy have provided this ink-stained wretch with a long-running scholarship. Repeated conversations over the years with Ben Aaron, Dave Cole, John Dunlop, Dave Feller, Syl Garrett, Ted Kheel, Harry Platt, Fred Reel, Ralph Seward, George Shultz, Bill Simkin, Sy Strongin, Rolf Valtin, Saul Wallen, and Bill Wirtz, among others, have helped to keep my confusion at a respectable level. Similar visiting privileges have been accorded by those who arbitrate only occasionally, if at all. These include Fred Bullen, Owen Fairweather, Ben Fischer, Wayne Horvitz, Ida Klaus, and Fred Livingston, to name only a few. All of this has been a delight and an education. Not so incidentally, having mentioned Ben Fischer, I would endorse the broadly held view that Ben, among the nonarbitrators, has done more for your profession than anyone else this side of King Solomon, Justice Douglas, and Joe Murphy.

Another marvelous mentor was one of the most superb human beings I've ever known, Dave Miller. In his elegantly restrained style, Dave had a shining integrity and a quality of caring—oh, how he cared—about the people involved, about the quality of the work, about his colleagues in this Academy, and about the Academy itself. He also was a superb wife chooser and a most congenial companion. I remember his charming recounting of Harry Shulman's way of handling the lunch hour during a hearing. As Dave described it:

> "With Harry, there was no nonsense about *not* fraternizing with the parties. He would lead everybody to a restaurant hard by the hearing room. If things weren't going well, if witnesses had been

* Associate Editor, The Bureau of National Affairs, Inc., Washington, D.C. These comments, at the session at Dorado Beach, P.R., have been revised and extended for the Academy's printed *Proceedings*. His topic was "Will Success Ruin the Arbitrators?" His brief response to the question in the question-and-answer period was: "No, but it might be close."

unresponsive, Harry would order a round of drinks. Then, very quickly, he would order another round for everybody but himself as a way of loosening people up for the afternoon.

"But if the morning had gone well and it appeared to be all down hill for the afternoon, Harry would let the parties handle their own drink orders. Harry himself would have three martinis."

I've also had the privilege of talking regularly over the years with many of your clients. Thus I've had the benefit of a continuing set of private labor and management report cards on your performance.

I must say, with all the emphasis at my command, that you in this Academy are a superb company—literally one of the country's great national assets. For so many of you, I have great respect and affection.

Now, having patted you on the back to find, in Jimmy Walker's words, "a soft spot to stick a knife," let me brandish the knife. I would submit to you that, as far as the state of arbitration and the arbitrators is concerned, this is no time for smugness. Back in the mid-fifties, the great Aaron Horvitz, speaking as your president, said the Academy did not regard itself as a group of "the Elect." But there are manifestations of an Elect mentality. For example, there's the variation on Shintoism in the form of worship of past presidents. I hope some future president will open his address by asserting that he has not reviewed a syllable of the past presidential papers, and that if any of his brilliant remarks happen to coincide with the papers of the past—and many of those were, and are, splendid—so be it. Let's face it, this practice of perusing prior presidential papers more exhaustively than Edmund Wilson researching the Dead Sea Scrolls has been pushed, it says here, a bit far.

I've also heard some sniffy clucking about the *Wall Street Journal* piece about Eric Schmertz. Having looked into this a little, I gather that Eric got something of a bum rap. But this is not to comment on the merits, but to say that these noises about the *Journal* article on Eric suggest a tendency to accept the story unquestioningly, and thereby to condemn your estimable colleague too quickly and far too huffily.

The above are noted as nothing but passing symptoms of a gathering cast of mind. It is much more alarming that the National Academy is *not* taking more note of a formidable rival or-

ganization. The truth is that you have taken the Royal Academy of Arbitrators far too lightly since it was founded in a San Francisco saloon by Sam Kagel and Hubert Wyckoff. The founding session came some years after Clark Kerr had described the new National Academy of Arbitrators to Sam Kagel and asked him to become a member. Sam declined. He told Clark Kerr that "the National Academy sounded too much like a self-goosing organization."

Now Sam Kagel is a Big Man, in the best sense of the term, who is utterly incapable of childish defiance or vainglorious posturing. So it follows that he must have been moved in establishing the Royal Academy by what Justice Holmes called "a felt need."

The Royal Academy's membership rules are classically simple. New members must send Sam Kagel a case of Jack Daniel's Black and a high-proof shipment of pornographic literature. There are no meetings and no papers. The nearest thing to a publication is a proposed new edition of Sam's BNA book, *Anatomy of a Labor Arbitration.*

As befits one who is a *Man for All Seasons* and who is nothing if not scholarly, Sam is insisting that the new edition have a nude on the cover. Reaching into history, he has specified that the nude must be either Emma Goldman or Mother Jones.

It may be that the Royal Academy can be dismissed the way some have dismissed the Irish: as a clan that has a great future and always will have. But with a leader as resourceful, learned, and lively as Sam Kagel, it cannot be written off as a mere minor menace. At a minimum, it should stand as a warning to you *not* to let yourselves get so stuffy that Sam would be moved to offer the National Academy his institutional title for a case of *vin ordinaire.*

Probably the most impressive exhibit in the works of the Royal Academy is Sam's Oral History of Arbitration. It is offered at occasional intervals in several San Francisco watering spots that will never be described as posh. For example, one chapter says a great deal about the recondite art of selecting an arbitrator. I cite it here as a sample of the quality of the literature of this rival Academy.

During the General Strike of 1934 in San Francisco, Sam served as the counsel for the union representing employees of a street railway company. The company had failed during the 1920s but had been reconstituted in the early thirties. It was tottering financially when the strike sent the numerous unresolved issues over a new contract to arbitration. It had a little list of the arbitral types it would not accept. The list included college professors and other teachers, economists, economic consultants, Jews, women, people with PhDs, lawyers and others. The ultimate choice of the parties was a retired rear admiral with an Annapolis education.

As Sam tells the story:

> "With its financial record, the company had a beautiful case based on inability to pay. But the admiral had come up through Annapolis and spent his life in government service. He'd never been out in private industry and had no sense, no feel, and no sympathy for the problems of financing a business. The company's powerful inability-to-pay case left him numb. He not only gave the union a handsome settlement, he also found for the union on some costly work practices."

For the next few years, when Sam entered annual negotiations with the company, he would begin by referring grinningly to the admiral's award. Then he would ask the company negotiator: "What do you want to buy back *this year*?" He also had a summary word about the company's approach to selecting an arbitrator: "You made the mistake," quoth Sam, "of confusing ignorance with impartiality."

This poses a searching question. Does the National Academy produce literature of such a high degree of practicality and quality?

Just one footnote on Sam Kagel and the Academy: Strictly in passing, he mentioned the Academy's permitting "all these organizations to put on cocktail parties [at the Academy's annual meeting]." Sam added this: "I like to get drunk with union people and I like to get drunk with management people, but I like to select my own drinkees."

Now to begin our slow descent toward the coffee break. In the rest of this allotted span, I want to review some developments

that are on the frontier of labor relations, arbitration, and mediation, and which point up—by indirection, if you will—some of the unduly conventional approaches of the arbitrators and/or mediators and of the National Academy. First, a word on the meaning of John Dunlop for arbitration and mediation; second, a note on the masterly strenuosity of Bill Usery at FMCS; and third, a report on the alarmed views of some Very Very Deep Thinkers about the future of private arbitration.

First on John Dunlop:

Because of the necessity of counteracting the fantasy mood of this stunning place, the following parable might help abet a more realistic climate. It involves two of our country's great spiritual leaders, Mr. McGeorge Bundy and Mr. Paul Hall, head of the AFL-CIO Maritime Trades Department.

This little matter has a Caribbean background, but that is strictly incidental. It goes back to the days before the Cuban missile crisis when the leaders of the U.S. maritime unions were working themselves into a "high state of dungeon," as the Wirtzian lingo has it, about the Kennedy Administration's shipments to Cuba. The communiques of Teddy Gleason, Paul Hall, and Joe Curran, normally so exquisitely couched, were becoming so frenetic that Kennedy took the unusual step of arranging a special briefing for Gleason, Hall, and Company on the foreign policy aspects of the dispute. It was held in George Meany's office and was conducted by Mac Bundy, who has been described as having a manner that is abrasive, acerbic, and arrogant, and faintly tinged with contempt. Bundy conducted the briefing in his crisp style with its built-in assumption that there's-no-way-you-jerks-could-have-a-question-after-I've-clarified-everything.

Then Paul Hall got the floor and deposed as follows:

> "Mr. Bundy, I've heard a lot about you. Never having met you, I'm grateful for the opportunity. I'm very impressed with your briefing. I certainly know a lot more than I did about the foreign policy aspects of this matter. I've only one comment to make, Mr. Bundy: I don't like your [expletive deleted] policy."

From John Dunlop's point of view, that story has everything. Apart from serving as the nearest thing to an Instant Course in Labor Relations, it has Cambridge and Washington characters in

tandem; it makes a literary bow to our Anglo-Saxon background; and its point has all the directness of a punch in the nose.

John Dunlop has never been immune from criticism. For example, during his days as Cost of Living Council director, I asked Kenneth Galbraith for his views of his colleague. Answer: "I have great respect for John because every time I've had dealings with him, I've been screwed." Galbraith added: "However, John is very skillful at bargaining so he always gives you a little something to make you happy."

We also get this kind of snotty comment, particularly from some of the macroeconomists: "John is remarkable, but don't inhale his economic stuff because John simply is not a first-rate economist." Mind you, by the same standards, Herb Stein who, as George Meany has noted, "never met a statistic he didn't like," is rated first-class by his fellow economists.

A prime Dunlop sin is being a microeconomist. To Establishment economists, except for a few blue-chip types like Paul Samuelson, Otto Eckstein, Arthur Okun, and Arnold Weber, this means someone with unclean hands who got that way by dealing with real live problems as opposed to big-picture theoretical problems. For years, Dunlop has been down there in the dirty, even bloody, marketplace wrestling with what to do about fertilizer prices; he's been engaged in tough behind-the-scenes infighting with Agriculture Secretary Earl Butz, trying to introduce a pro-consumer voice into farm policy; bringing together the chiefs of the major rubber companies and union leader Pete Bommarito to push for a more effective bargaining approach; and wrestling with the backward labor relations in the cement and construction industries. To the macroeconomists, that's not economics; that's slumming of the worst kind.

Last week the Secretary talked a bit about how his "micro" or "institutional" approach applied to mediation and arbitration. For example, he noted that he and Bill Usery, the FMCS director, have been looking around, thus far without success, for an arbitrator and/or mediator for the cement industry. He added that this and a number of other industries or regional sections of industries offer demanding opportunities to make an important practical contribution by getting extensively involved in the industry in question. As a sample of this sectoral arbitration or mediation, as he called it, Dunlop pointed to the outstanding per-

formance of Wayne Horvitz as the chairman of the new labor-management committee in the food industry. I'm sure that the Secretary feels that Wayne might well have been asked to appear on this program to discuss his important work. Of course, Wayne might be too shy to accept, but that's your problem.

In developing his thoughts on the qualities that might be sought in such special arbitrator-mediators, Dunlop suggested that they should be "more flexible" and "more philosophical" than some of their brethren and sistren. He mentioned that his recent contacts with Sandy Porter in a railway labor dispute indicated that Sandy had the kind of ability, special talents, and "style" that might be useful in such posts.

Dunlop also suggested that similar opportunities are to be found in other regional industry-labor situations. He cited the Chicago hotel industry and regional trucking situations as examples. In such portfolios, the problem agenda, according to Dunlop, might well include the structure of collective bargaining, productivity problems, the relations in a range of issues involving government relations, and manpower policy matters.

Dunlop also agrees that Syl Garrett's recent agreement to handle important cases for the Postal Service and the Postal Service unions is an example of this kind of basically dedicated, problem-solving approach. By all the tests, Syl Garrett is taking on a difficult, vexatious, and important role that is on one of today's real frontiers of bargaining and labor relations. There are few kudos in it for Syl and many migraines, but it does offer the chance to make a considerable contribution.

This whole "micro" thing for arbitration-mediation needs exploration. And, possibly, it's the kind of exploration the Academy might undertake—or might encourage somehow.

Now a word on what Bill Usery has been up to:

To understand Usery's ways, one must first understand the Arthur Goldberg style as Labor Secretary. For example, in their attitude toward their respective jurisdictions, both are aggressive, take-charge guys. If you told either one that there are certain precincts where angels fear to tread, they would say, "You gotta be kidding!"

Fortunately we have Jim Reynolds's account that captures the quintessential Goldberg on the day of his most spectacular foray into an unlikely national emergency: [1]

> "It all started with a phone call to me from Arthur who was down in Texas addressing the United Association of Plumbers' convention on the subject of 'why the federal government should stay out of local labor disputes.' . . . He said, 'I want you to go up to New York and settle that Metropolitan Opera dispute," and naturally I said, 'How's the weather down there—is it very hot?' And he replied, 'What's that got to do with it?' And I said, 'Because I thought perhaps you were off your rocker—Sir!'
>
> "But he said—rather sharply, I thought, 'The President just called and said if we lose a season of opera over a labor dispute, the Communists will seize upon it as a propaganda weapon to claim we are a materialistic, capitalistic, barbarous nation concerned only with our material assets like steel and ships and Elizabeth Taylor and just let our cultural assets go down the drain—so get your fanny up to New York and settle that dispute!' And I said, 'Are you sure it wasn't Jackie who called?' And then I guess that inefficient phone service in Texas must have cut us off because I didn't hear anything but silence, which as you *know* for Arthur was *very* unusual."

Like Goldberg, Usery has been all over the lot, from the problems of the Indian tribes to local teachers and nurses disputes. Since 1971, he and Dunlop have been a remarkable and an unsung dynamic duo with their early approach to many key negotiations. In the 1973-1974 period, they provided one of the most impressive examples under an economic stabilization program of the controller and the labor disputes guy working together to great and good effect. They have continued this quiet but intensive collaboration since the Economic Stabilization Act lapsed in April 1974.

But Usery's boldest moves are his uses of recommendations in disputes. No FMCS director has used them as frequently and widely as Usery. He's been understandably reluctant to diagram his technique for public consumption, but he did consent to my doing a brief elucidation for this Academy meeting. Among other things, I'm assuming that Bill would like to have you, if possible,

---

[1] James J. Reynolds, Jr., was an Assistant Secretary of Labor under Goldberg at the time of this episode. His partly tongue-in-cheek comments were made in an unpublished speech to the National Academy of Arbitrators in 1966. Reynolds later served as Under Secretary of Labor before becoming president of the American Institute of Merchant Shipping in 1969. There are connoisseurs of these affairs who assert that Reynolds's speech to the Academy was one of the best and wittiest ever presented to that body.

as consenting adults to an approach that he and Dunlop regard as useful.

As Dunlop has noted, Usery uses this technique only in "way down the road" situations where the parties appear to have negotiated themselves into near paralysis and are sending out all the signs of welcoming outside aid, even to the point of recommendations. At this point, Usery will enter the talks, exuding the prestige of Constitution Avenue, not to mention the White House, and invoking the national interest and other sacred causes. His first offering by way of written goods is what he calls "a talking paper."

This is a set of recommendations for clearing away a number of issues from the active agenda, including "a lot of the garbage." The paper also may suggest possible approaches to the issues that remain. So the parties go at it again, and in numerous instances —roughly 85 percent of the cases where recommendations are used—they come to what is perceived from the outside as their own settlement. Usery's fingerprints are nowhere to be detected unless the union officials, for example, wish to take themselves off the hook in sticky ratification situations by presenting themselves as unhappy parties reluctantly going along at the crack of Director Usery's whip.

In some difficult cases, Usery may present as many as five sets of various types of recommendations that reflect the changing state of the talks and are aimed at keeping the parties on the tortuous path to a settlement.

Now just a brief spasm of viewing with alarm, and I'll go quietly:

Speakers at these clambakes love titles like "The Lady in the Red Slacks Revisited," "*Lincoln Mills* Revisited," or "Functus Officio Revisited." Incidentally, my personal ambition is to do "Marcia Greenbaum Revisited." Of all your venerable classics, the one currently leading the league in revisitations is "Individual Rights, Due Process, and the Grievance Procedure." Clyde Summers and a fine panel, including the brilliant and much-missed Bernie Dunau, dealt dazzlingly with some of the issues last year at Kansas City. You have your *Gardner-Denver* gumbo on the menu for tomorrow, and your members' meeting yesterday also took on these issues.

I come not to debunk your priorities, but to suggest that even more revisitations are in order. I also would suggest that the nature of the current threat to arbitration in labor-management disputes and to collective bargaining itself has not been posed in sufficiently horrific across-the-board terms.

Unless you're lucky and resourceful, private arbitrators, like the Fitzgerald character in *Gatsby,* may be finding that things in the years ahead savor of anticlimax. For one thing, the bloom—nay the paint—is off *Enterprise Wheel* and the rest of the *Steelworkers* trilogy. This is not to say that the *Enterprise Wheel* will have to be invented again, but at best the trilogy is in for some bumpy days. The judges can be expected to find a growing host of ways of evading its strictures.

The *Spielberg-Collyer* doctrine also could come under the gun, even though it's done pretty well in the courts to date. The growing worry among the Academy's Deep Thinkers is that the U.S. judges will begin asking in petulant tones where the NLRB gets off letting these arbitrators roam around enforcing the Taft-Hartley Act.

The judges don't necessarily agree with Judge Hays that the arbitrators are incompetent to perform their prime function. But neither is that a notion from which they instinctively recoil.

Consider the practical implications for arbitration of society's preoccupation with racial and sex discrimination, with unsafe and unhealthy management practices at the workplace, with inequitable administration and negotiation of pension and health benefit plans, and with broader abuses of the environment. This agenda of special public preoccupations has import for the arbitrators because it is stripping away the prior privacy of the arbitration process. You are at once more visible and more vulnerable. One of the most esteemed Cardinals of this Academy said the other day that "the cozy business we knew in the 1940s and 1950s" is disappearing. He foresees "a helluva lot more public and private kibitzing" over arbitrators' shoulders.

Furthermore, the *Gardner-Denver* decision of the U.S. Supreme Court [2] may have unleashed a countervailing force to the sturdy deferral doctrine espoused in the trilogy. *Gardner-Denver*

[2] 415 U.S. 36, 7 FEP Cases 81 (1974).

makes the competence of the arbitrator subject to tougher judicial standards in race and sex discrimination cases. It also invites more litigiousness among both disappointed grievants and double- and triple-threat grievants. A number of the Academy seers read *Gardner-Denver* as the precursor of a sequence of decisions doing for occupational safety and health, pension plans, and health benefit plans what *Gardner-Denver* has done in the Title VII area. At the very least, *Gardner-Denver* provides a formula for substantial erosion of the trilogy's deferral doctrine. There are powerful contentions on both sides, and I will come later to what this Academy might be doing in the continuing debate over these issues.

There also are other signals indicating that some judges will be quite willing to clobber arbitrators who are insufficiently solicitous of the due process rights of individual grievants. Your Code committee considered the array of cases that might produce bitter judicial fruit if grievants, particularly in discrimination cases, fail to get what the judges regard as due process. For example, take the increasing tendency of grievants, particularly in discrimination cases, to bring their own lawyers.

As a sample of what's happening, there's the report from one of your stars who held successive hearings a few days ago for the same multiplant company at three different locations. In each case, the same international union's contract governed the proceeding. However, a different set of union and management spokesmen appeared at each hearing. At each hearing, a grievant in a disciplinary case was accompanied by his own lawyer.

At the first hearing, the union representative said he would walk out if the grievant's lawyer remained; the company spokesman swiftly associated himself with the union's position. The grievant's lawyer left quietly. In the second case, the union spokesman said he would not object to the lawyer's presence if he kept quiet. The company concurred.

In the third hearing, the grievant's lawyer sat with the union representative and the grievant and conferred frequently with the two of them. The union representative also informed the arbitrator at the outset that the grievant's lawyer might be commenting to the arbitrator during the hearing. Company counsel agreed with this procedure. As for the arbitrator, he said, "I just rolled

with the punch" in each case by accepting the proposed procedure.

There also can be a challenge here to the fourth-step rule that excludes from arbitration all evidence and contentions not raised before the fourth step. Take the discrimination case where the grievant's new lawyer, who got into the act at the fourth step, comes up with new evidence. The arbitrator, doing what comes naturally, might exclude that evidence under the fourth-step rule, but other arbitrators believe that a decent and practical respect for the community's view and for due process considerations dictates the admission of that evidence.

From cases like those cited above could emerge some unfortunate court-made law. Some of the decisions also could set an anti-arbitrator tone for the public debate about arbitrators and their role in discrimination cases. For example, when a grievant's lawyer in a disciplinary proceeding before an arbitrator is denied the opportunity to participate, a collision of two major principles could occur. The first is the principle, unique in this country and in Canada, that the union "owns the grievance" and therefore has the right to concur with the employer that the gripe lacks merit and should be dumped. Under the law, a discharged employee would have to show that the union had failed to provide him with "fair representation" before his suit against the employer and/or the union could go forward. It is widely agreed that an important part of the grievance and arbitration system's practical strength is the limitation on the grievant's right to insist on arbitration. Furthermore, to repudiate this rule is to challenge the fundamental Taft-Hartley principle that the union has the exclusive right to represent each individual in the bargaining unit on wages, hours, and working conditions.

Second, by contrast, is the matter of the due-process rights of the individual employees. Their actual power in the operation of the grievance process can be quite limited as a practical and as a legal matter. The practical reasons for this limitation are not broadly understood, even by the U.S. judges, and it does not take a demagogue to make the rafters ring on the plight of the poor individual grievant.

What troubles some of you is the possibility of judicial challenge, triggered by uninformed, unrealistic, insensitive, or inad-

vertent arbitral failure to be alert to the consequences of rulings these days on due process.

This is not to suggest that an automatic liberalization of the ground rules on the grievant's right to counsel and a concomitant limit on the union's right to handle the grievance for the grievant is indicated. It is to say that times have changed, that business-as-usual practices ought to be studied for their current validity, and that the time may have come, in the phrase of the late Carl Becker, the fine Cornell historian, "to see whether the things that go without saying are still going."

The opinion here is that you face what in part is a public opinion problem. The public and the courts simply don't understand the fundamental theory of this system. And this leaves you in the posture of the Saroyan character whose constant refrain was "No Foundation All the Way Down."

Not only are you threatened by the lack of public and judicial understanding of why this system makes the union the sole proprietor of the grievance, but you face a separate problem: today's rampant suspicion on the part of the public of all Establishments. You not only are an Establishment; you are an Establishment with few identifiable Young Turks. You also are closely linked with those other suspect Establishments, the managers of U.S. industry and the leaders of the U.S. unions, now under heavy fire, jointly and severally.

For the atmospherics of this, let me turn again to the wisdom of Paul Hall.[3] Last February I happened to go into his lanai at the AFL-CIO Executive Council meeting at Bal Harbour, Fla., while Paul was listening to a reading of a searing article about him written by new journalist Phil Tracy in *The Village Voice.*

[3] Just a word on the formidable Paul Hall: He is the president of the Seafarers International Union and the president of the AFL-CIO Maritime Trades Department. It is the testimony of many of the best-informed business, labor, and government officials involved in labor relations that he is one of the ablest and most articulate leaders in the U.S. union movement. Although capable of the salty speech of the ex-sailor, he also can speak at length in the most impeccable and precise English.

After just such an appearance before a blue-chip committee of the American Bar Association on national emergency strikes in transportation, the Los Angeles lawyer George Bodle said to Hall: "Mr. Hall, I'm glad you didn't become a lawyer. You would have been too tough competition for us."

Primarily because of his union's aggressive approach to political action, Hall is a controversial figure, but there's little controversy about his ability and his personal charm.

Paul himself was roaring with genuine mirth at Tracy's thrusts. However, his attractive wife, Rose, was not laughing. She was getting madder by the second. To keep Rose from blowing her stack, Paul said this about Phil Tracy:

> "He's okay, baby. He writes the way he does because he's a real cynic about labor skates, as he properly should be. And he always writes the same way because he always begins with the same question: 'What's the [expletive deleted] fix?' "

I suggest that more and more of your public, particularly the Congress and the federal judges, are going to be putting the same question, in less literate terms, particularly if some individual grievants should be adopted as martyrs by the courts. They might be pictured as victims of a system in which they are but pawns. The same question also will come from the best of the liberals, and from those others who are everywhere on the field except where the ball is being struck and who have been appropriately described by Robert Frost as "liberal sapheads."

What to do about this problem?

Like most pretentious pronouncements, this provides policy advice, the cheapest sort, and almost no tactical advice. But one small bit of counsel is offered with diffidence and deference. For background, let's do a dissolve to 1955-1960 and recall the fortuitous appearance of Harry Shulman's seminal 1955 *Harvard Law Review* article, "Reason, Contract and Law in Labor Relations." Among the voices speaking up about the dangers of undue judicial intervention in the labor-management arbitration process, Dean Shulman's was the most practical, the most scholarly, the most trenchant in its analysis, and the most persuasive. It is undoubtedly true that his article was more influential in conditioning the Supreme Court's thinking in the *Steelworkers* trilogy than Gunnar Myrdal's *American Dilemma* was in *Brown* v. *Board of Education*. What Harry Shulman wrought was a powerful weapon, and in the instance of the trilogy, even a decisive one.

It seems to me that the Academy ought to consider organizing a series of special programs, possibly in Dave Miller's name, that would—among other things—encourage the most authoritative people in this profession and beyond to make the practical case for this system as Harry Shulman did back in 1955.

That was happenstance, and you are lucky to have been the beneficiaries of that article. Without in any way suggesting that this is the beginning and the end of your available options, let me add only this: If you sit back and leave this part of the job to the accidents of scholarship, you may find that you'll be looking instead some years down the road for a guy to write the chapter on arbitration for your Doomsday Book.