

CHAPTER I

THE PRESIDENTIAL ADDRESS: JOYS OF BEING AN ARBITRATOR

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Twenty-six years ago, on a bright Sunday afternoon, my wife and I were wed in Detroit. The wedding dinner was held in the old Sheraton Cadillac Hotel. Upon arriving there, I stopped and purchased the Sunday *New York Times*, as had been my habit. I placed the paper beneath the banquet table. When the moment came to leave the party, I completely forgot my cherished *Times*. Not until I reached the elevator did I remember. I rushed back to the banquet room, retrieved the *Times*, and left with the paper under my arm. I was puzzled by the laughter I had apparently provoked. My father, I later learned, had the presence of mind to sum up the situation. He noted my odd behavior, walked over to my mother-in-law, and said, "Don't worry, he's a fast reader." I want to reassure you that I am still "a fast reader." I will not keep you long.

My remarks concern no current arbitration issue, no substantive principles, no court rulings, no crises. Rather, I thought you might enjoy a respite from the seriousness of our scholarly papers and unrelenting relevance. My purpose today is simply to share with you some of the pleasures I have experienced from my life as an arbitrator.

Our role, narrowly viewed, is not at all dramatic. We decide disputes between employers and unions based largely upon evidence introduced at a hearing, arguments made by the parties, and language found in a collective bargaining contract. We deal with discipline, wages, seniority, contracting out, and many other subjects covered by the contract. That is what arbitrators are employed to do. This task is so much a part of our lives that it is easy to overlook what lies beyond decision-making. The glory of our world is the challenge of new experiences, the

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exposure to a bewildering variety of people, the opportunity to learn each day, the chance to grow, the discovery of one's own voice.

Consider the education an arbitrator receives as he wanders across the face of America. He learns the methods by which goods are manufactured and services rendered. He discovers the role played by technology and organization in transforming raw materials into an endless array of products. I have seen how ore is mined, how steel is made, how pieces are cast, how parts are machined, how vehicles are assembled. This drama is played out before us in countless mines, factories, and offices. We have been given a panoramic view of the production process.

Goods and services can be delivered only through work. The arbitrator is surrounded by the reality of other peoples' jobs. He hears them describe their work; he sometimes watches them at their work place; he listens to their many work-related complaints. He has a front row seat for one of the great spectacles—how men work. I have come to understand something of the tedium of the assembly line, the challenge of troubleshooting, the precision of the skilled machinist, the dangers of police work. I have learned what it is to be a musician or a millwright, a brewer or a boilermaker, a pilot or a pipefitter, a teacher or a trucker. And I have come to appreciate that work, for vast numbers of people, is not satisfying.

However, the arbitrator's real concern is neither the production process nor the nature of work. His focus is the relationship between employer and union as expressed in their contract. No arbitrator can deal with these organizations on a daily basis without discovering many truths about organizational life. I have witnessed peer group loyalty among employees and among supervisors. I have been dismayed that this loyalty is often much stronger than any commitment to justice and fair play. I have noted the friendships born of cooperation, the petty tyrannies spawned by a table of organization, and the inevitable rivalries for position and power. I have seen how the employer's largely authoritarian character can produce rigidity, just as the union's largely democratic spirit can produce confusion. Thus, our experience offers us real insights into the life of these institutions.

But the arbitrator's world is much more than a continuing education. It is also a perpetual challenge. Almost every case puts us in the center of a storm of conflicting claims and argu-

ments, sometimes even conflicting values. The essential ingredients in this stew are fact, contract, and equity—a sense of justice, if you will. Each points in its own direction. When they join in a common current, the answer is obvious. When they conflict, the arbitrator is put to the test. The facts may call for one result, contract language another. Equity may suggest still another path. Any attempt to harmonize these competing considerations is complicated by other realities familiar to all of us. Facts are often obscured by vague and contradictory testimony; contract terms are often ambiguous and prolix; equity claims are often exaggerated by self-interest.

All of this uncertainty serves to provide the arbitrator with an extraordinary amount of discretion. His decisions range from the instinctual to the intellectual, from credibility findings to complex contractual analysis. He is both judge and jury. He is a “court” of first and last resort. He is bound by the contract, but he cannot ignore the impact of his award upon the operation of an enterprise and the security of its workers. He must be both a pragmatist and a theoretician.

This is a formidable task. We must understand what we have heard, analyze its meaning, draw the correct conclusions, put our impulses into words, and keep a critical eye on what we have written. The tensions should be apparent. We must stretch our minds, but always within the limitations placed on our authority. We must follow our intuitions, but always with a sense of our fallibility and a decent self-restraint. The responsibility is ours and ours alone. There is no one with whom to share it—no committee, no consultant, no colleague with the time and patience to hear us out. We must persuade through words alone. We work without the benefit of the institutional trappings which surround the judge, without the benefit of a raised bench, a bailiff, a gavel, and black robes. Yet, unlike a judge, our decisions are for all practical purposes final and binding. We are the sole arbiter. Care is imperative because our errors cannot ordinarily be reversed through an appeal to the courts. We are asked, in other words, to exercise the highest kind of responsibility. That has, I think, enriched each of us in untold ways.

Everyone reacts differently to responsibility. Let me tell you something of my own experience. At age 27, when I began this work, I had a sense of awe at the power strangers placed in my hands. I labored long over my decisions, seek-

ing to avoid the possibility of error which seemed to lurk behind every finding. My signature on awards reflected that awe. It was miniscule. Looking back, I suspect that was an unconscious attempt on my part to evade being held accountable for what I was doing. If the parties couldn't read my name, they could hardly blame me for the award. As the years passed, my signature has fortunately grown larger, as has my appetite for responsibility. I remember a conversation some time ago at an industrial relations meeting. I was chatting about arbitration with a priest, and I expressed my need to be involved in ever more complicated matters. I went further and told him, in a flight of fancy, "I want to arbitrate the ultimate question." The priest looked at me quizzically and replied, "Ah, but that's not arbitrable."

The truth is that we all hanker for a change. When arbitrators are handling easy cases, we long for challenge and complexity. When we are enmeshed in a truly difficult problem, we crave a grievance that can be answered simply and quickly. But the beauty of our job is that whatever the nature of the case, it is rarely repetitious. Each dispute has its own distinct texture; each dispute places its own unique demands on our ability to understand and persuade.

Arbitration leaves its own mark on us as well. Men become what they have to be in order to succeed at what they do. None of us is born with a judicial temperament. We develop it because it is essential to effective performance of our job. In much the same way, we develop our powers of observation, our capacity to think, our instinct for what is reasonable, and our commitment to suspended judgment. These qualities are the essence of our daily work lives. They have a profound civilizing impact on each of us.

I am sure that this conditioning carries over into all aspects of our lives. My reflexes are those of an arbitrator, whether I am with the parties in a hearing room or with friends in a living room. The analytic habit is hard to shake. We learn to appreciate the many sides to every issue. We realize decisions must often be made on insufficient evidence. We become less argumentative, more circumspect. We develop a healthy caution. Indeed, I find myself thinking like an arbitrator in situations which plainly call for a different response. Many years ago I had dinner with an attractive young lady, a court reporter, in a distant city. To my great surprise, she asked me whether I would like to share

her bed that night. Consistent with good arbitral practice, the first words to come to my mind were, "I'll let you have my answer in 30 days."

There is good reason for our deliberative ways. Consider what we face: endless pages of transcript, a sea of exhibits, ambiguous contract language, contradictory assertions of fact, twists and turns of claim and counterclaim. To shape this formless material into two decisions a week, week after week, year after year, and to do so with care, style, and swiftness is a feat. It demands concentration, an iron will, a kind of dedication that is hard to express. The result is the development of an incredible self-discipline which, I suspect, would serve us well in anything we might do.

There are more tangible satisfactions. We all have a sense of usefulness, a recognition of the high purpose of arbitration. We deal with real and immediate problems, some involving the job security of a single person, but others involving crucial matters with respect to the very life of an enterprise and the future of its workers. We try to demonstrate through our awards that rational answers to these problems are possible. We are an essential part of a structure that facilitates the prompt resolution of disputes. We hope to convince employees and managers alike that reason is preferable to force. We even experience those rare moments when we find a new synthesis—a solution that translates an intractable issue into manageable terms, a solution that turns seemingly unrelated tangents into an organic whole, a solution that transforms a bog of confusion into crystal clarity.

A sense of usefulness may be somewhat abstract. But there is nothing abstract about the pleasure one gets from being asked to serve as an arbitrator, particularly when the request is personalized. Our gratification is even greater when the parties ask us to return to hear another of their cases, when they tell us in effect that we have performed our job with competence. Applause is uncommon. We may occasionally hear words of approval from the winning party. But the real delight comes from words of approval from the loser. Only then can one be certain of the genuineness of the sentiment. To feel wanted is one of life's more satisfying experiences. That feeling is commonplace for arbitrators.

We also enjoy an enormous amount of freedom and independence. No one supervises us. No one tells us when to work or how to do our job. The arbitrator's award is his alone. He is

subject to no time constraints other than the customary request that the award be issued within 30 or 60 days. He can work out of a business office or out of his home. He can arrange his weekly or monthly schedule to suit his particular needs. He can begin his study day at 8 A.M. or 8 P.M. He can work sitting, standing, or, as in my case, lying down. He can take breaks whenever he wants, a morning jog, or an afternoon set of tennis. He is free, in other words, to do as he wishes. It is a splendid life style. Indeed, if he has a busy practice, he can pick and choose the cases he wishes to hear and the parties for whom he wishes to toil.

These observations suggest that our work lives are isolated. That is true of study time. But we also spend a great many hours with labor and management representatives in hearings, at meals, and in cars and planes. We often work with the same representatives for years. This relationship, at its best, is one of mutual trust and respect. Add to that some sharing of personal lives and one has made a friend. Those friendships are all the richer because of the unusually diverse backgrounds of the people an arbitrator encounters in his work. None of this is essential to the performance of the arbitral function. But it is one of the happy by-products of our profession, a form of social compensation for all those quiet hours we spend by ourselves.

The closest bonds, however, are with other arbitrators. Perhaps because this is such a lonely calling, we enjoy seeing one another all the more. The Academy brings us together once each year, a remarkable collection of minds and personalities from every region of the country. The pleasure comes from the sharing of common experience, the reinforcement of one's peers, and the sense of fraternity that pervades these annual meetings. Out of all this mixing and chatter, warm and abiding friendships have sprung.

Let me digress for a moment and tell you about two arbitrators who have had a special significance in my life. One of them is Harry Platt, my mentor. He brought me to Detroit in the summer of 1954 to assist him with his arbitration practice. Were it not for my apprenticeship with Harry, the opportunity and education he provided, I would not be here today. His remarkable skills and enthusiasm were the models I sought to follow. I know of no way to acknowledge my debt other than to say, "Thank you, Harry." The other person was Dave Miller, a

friend. He taught me something far more intangible. He showed me, by example and in his own quiet way, the importance of not just caring about one's work but, more important, caring about one's friends, the Academy, and the arbitration process itself. His influence was felt by all who knew him.

Beyond all of these qualities that make the arbitrator's world so satisfying, we also feel we are part of a continuum. Our decisions are reported, bound, and placed on bookshelves. Our decisions are cited as precedent by labor and management and by arbitrators as well. Our decisions become part of the collective bargaining contract just as if they'd been written into the contract by the parties themselves. It is gratifying to feel a sense of permanence about one's work. I suspect, however, that this is all an illusion and that most of what we have written will be forgotten after not too many years. How often do any of you see citations from the early volumes of *Labor Arbitration Reports*? The truth is that what we have said will be repeated over and over again by future generations of arbitrators. No one bothers to look for the original source document. Perhaps the illusion can best be illustrated by a dream I once had about my own obituary headline. It read: "Arbitrator seeks immortality, grievance denied."

The reality for us is our cases, the constant problem-solving. Our title may simply be "arbitrator." But our job description encompasses a great variety of disciplines—engineering, economics, psychology, law, logic, and English. All of these skills are employed to a single purpose, a sensible answer to a labor-management dispute. Some years ago Judge Learned Hand eloquently described the joys of judging. His words were meant for judges, but they apply with equal force to arbitrators:

"A judge's life, like every other, has in it much of drudgery, senseless bickerings, stupid obstinacies, captious pettifogging, all disguising and obstructing the only sane purpose which can justify the whole endeavor. These take an inordinate part of his time; they harass and befog the unhappy wretch, and at times almost drive him from that bench where like any other workman he must do his work. If that were all, his life would be mere misery, and he a distracted arbiter between irreconcilable extremes. But there is something else that makes it—anyway to those curious creatures who persist in it—a delectable calling. For when the case is all in, and the turmoil stops, and after he is left alone, things begin to take form. From his pen or in his head, slowly or swiftly as his capacities admit, out of the murk the pattern emerges, his pattern, the expression of what he has

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seen and what he has therefor made, the impress of his self upon the not-self, upon the hitherto formless material of which he was once but a part and over which he has now become the master. That is a pleasure which nobody who has felt it will be likely to underrate.”¹

¹*The Preservation of Personality*, VII Bryn Mawr Alumnae Bulletin No. 7 (October 1927), pp. 7-14. Reprinted in *The Spirit of Liberty* (New York: Alfred A. Knopf, Inc., 1959), p. 33.