

CHAPTER 1

THE PRESIDENTIAL ADDRESS: THE ROLE OF
HUMOR IN ARBITRATION

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Thank you for the wonderful reception which I so richly deserve and so seldom get. It's especially nice to hear kind words while I'm still alive. I much prefer the taffy to the epitaphy.

I'm determined not to prove that the jawbone of an ass is just as dangerous today as it was in Samson's time. I intend to be brief, unlike Lew Gill.

Ten years ago, Ben Aaron was introduced to this organization by Rolf Valtin and made the point that too often the introduction to a speech is better than the speech that follows, and he said, "Whatever my address lacks in profundity, I shall try to make up in brevity."

Same here.

I have no profound arbitral thesis to expound, but I would like to make a few points today and they focus on *humor*, its use and abuse. Lew Gill's remarks will suffice to demonstrate the abuse phase of my subject. The *use* of humor can, I believe, provide some valuable insights into the sometimes much too solemn line of work we pursue.

The younger members of our profession have a saying I think we can all take to heart. "Lighten up," they say. It's good advice. Lighten up. Our profession is certainly not a frivolous one, but just as certainly it's one that could use a little lightening up. I've come to believe a number of things about arbitration, and one of them is that humor is a great teacher, and another is that humor can lift the weight of a line of work that can otherwise become so burdensome as to be both exhausting and downright coun-

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terproductive, defeating our purpose, which is, after all, to render a fair and honest judgment on the facts before us.

Humor as a teacher? Certainly.

Thirty years ago, bus drivers in Massachusetts carried out a year-long transit strike, then the longest transit strike in the country's history. Commuters were compelled to get where they were going any way they could, and often that meant hitchhiking. One college student was trying to pick up a ride at a gas station near Boston when a hearse pulled in for gas. The hearse came complete with coffin and corpse, headed for a nearby funeral home. The driver left the hearse to make a phone call and the student asked the driver's helper if he could catch a ride in to Boston.

"Fine," said the helper, "but you'll have to ride in the back with the casket." "No problem," said the student and climbed in. The driver returned to the hearse, started the engine and headed across the Lynnway, a narrow road with water on both sides. Half way down the road, the driver heard a voice from the vicinity of the casket inquire, "Is it okay if I smoke back here?"

You know what happened. The driver lost control, the hearse went through a guardrail and into four feet of water, but the payoff of the story came when the student, injured when the casket pinned him to the wall of the hearse, filed suit for gross negligence.

Where's the lesson? Damages resulting from work stoppages are often more extensive than expected.

There's a lesson, also, and this one especially for our labor-management friends here today, in the story of Gussy Busch, the beer maker, and his private audience with the Pope. Gussy Busch makes Budweiser beer and the story has it that he said to the Pope, "Your Holiness, I'll pay you \$5,000 a day if you'll change one word in that prayer that's said every day at mass all over the world. Instead of give us this day our daily bread, make it give us this day our daily Bud." The Pope was horrified. "That's not my prayer, Mister Busch, that's the Lord's Prayer. It cannot be changed." "I'll make it ten thousand a day," Gussy Busch replied. The Pope turned to his Cardinal advisor and said, "When does our contract with Wonder Bread expire?"

The lesson? Never accept the first offer of settlement.

I'm not altogether serious about some of these morals, of course, but I am *very* serious about the business of being *too* serious in our profession. Over and over, I've found this to be

true: If we can lighten up, if we can undertake our proceedings with a little more relaxation, a little better sense of humor, a little less solemnity, not only will our work be easier, I think we'll all find our results will be better, better for all concerned, better for ourselves, but more important, better for both sides in every controversy.

Indeed, there's one calculated technique that I offer for your consideration, and let's call it that: the calculated confusion technique. Lew Gill immortalized it at the 1972 meeting in Boston when he talked about the role of the arbitrator's wife and worried about her attendance at a hearing presided over by her husband at a time when her husband has decided on the calculated confusion ploy.

As most of you know, the technique amounts to the arbitrator stating his understanding of the issues involved in a given case, but stating them in such a garbled and inaccurate way that both sides are terrified and immediately plead for a recess to work out a settlement so they will not be left at the mercy of the lunatic preparing to sit in judgment of them. Lew's concern was that if the arbitrator's wife wasn't in on the gag, an ugly domestic scene was inevitable when the wife confronted her seemingly addle-brained husband after the hearing. There could be no way he could persuade her that he'd used the technique to force the settlement that resulted from his misstatement of the facts.

The lesson here is simple: if you're up to an old trick, at least let your toughest critic know about it.

The larger lesson is the one stated at the outset here: lighten up. Maybe the issues are life and death, but that doesn't mean a lighter touch won't do the job that needs to be done.

The name of our game is—make a judgment, a judgment that's fair, honorable, reasonable. The way to get there from here very often is to set a certain tone from the start, a tone and a mood that tells both sides to any dispute that while the matter at issue is certainly serious, the method of resolving it can be relaxed, can be comfortable, can be something a good deal less than gloom and doom.

I don't say the arbitrator's job is to always leave 'em laughin', but I suggest to you that there's no harm in starting 'em off laughing. Here's how that worked in one case I know, a health and safety dispute that focused on asthma and allergies. The case was heavy with medical testimony, replete with learned opinion on both sides—in short, the kind that would give real

competition to Sominex and its ability to put all concerned to sleep.

Instead this story was told, the one about the doctor examining the seventy-five year old man and exclaiming, "You're in excellent health for a man of your age. How old was your father when he died?" "Did I say he was dead?" came the reply. "Sorry," the doctor said, "how old was your grandfather when he died?" "Did I say he was dead?" came the reply. "You mean he's not?" the doctor said in amazement. The patient replied, "My grandfather is 118 years old and what's more, he just got married a month ago." The doctor was stunned. "Why would a man of 118 want to get married?" Came the answer, "Did I say he *wanted* to get married?"

There's a moral there, by the way, one worth remembering: Be wary of medical testimony. The end result is seldom expected.

Humor, a lighter touch, the avoidance of the pitfall we all must face—taking ourselves too seriously—is worth our attention, worth our remembering. Dick Mitterthal reminded us of that in 1979, when, as our thirtieth President, he told us of a dream he'd experienced, the one about seeing the headline on his own obituary. It read: "Arbitrator seeks immortality; grievance denied."

It's well to keep in mind our fallibility, as one of our brothers was gently reminded not too long ago. This colleague of ours was not renowned for the swiftness of his thinking though he was famous for his high opinion of himself. One of the advocates before him on this particular day was weary of the struggle to make the difficult comprehensible when our learned colleague announced that some of the issues were no longer very clear to him. The advocate, whose name was Smith, rose to his feet and went through all the facts and details yet again only to hear the arbitrator declare, "I'm sorry, Mr. Smith, I regret I am none the wiser." "Perhaps," said Smith, "but you are better informed."

Nor should we overlook the gentle wisdom of a man who may have been one of our country's first arbitrators, Abraham Lincoln, who was asked once to rule on an argument that had gone on for hours and centered on the length of a man's legs in proportion to the size of his body. Lincoln, putting on his gravest face, allowed that the issue was surely of the utmost importance, certainly one that would go down the years heavy with significance, and one that he had wrestled with in the deepest of

seriousness in order to conclude that a man's lower limbs should, in order to preserve harmony of proportion, be exactly long enough to reach from his body to the ground.

The lighter touch I speak of is an antidote to the tension, to the hostility, to the distrust that accompanies so much of what we do. What it can do is release that tension, perhaps draw people together, implant the idea that all problems are solvable among people of goodwill, and, not least, break up the sometime overwhelming monotony of each side relentlessly ignoring the other's point of view.

An arbitrator is a kind of shuttle diplomat, moving between two worlds, management and labor, striving for a resolution of what seems to be the irreconcilable. We must be competent, honest, fair minded, objective, courteous, patient and, I suggest, capable of a perspective on the matters before us that permits the leavening of humor, the lighter touch I urge upon you in your work.

How else can we deal with the kind of illogical logic we sometimes confront, the kind of thinking Mark Kahn recalled by quoting Yogi Berra's remark about a restaurant he once enjoyed. "Nobody goes there anymore. It's too crowded." Or Eva Robin's recollection of a case she confronted where she asked one of the grievants, "And you want your job back, of course?" only to receive this reply, "Hell no, I don't want the job back or any back pay. I just want satisfaction."

My message, which is to take the work seriously, but to avoid taking ourselves seriously, is not a new one, but I believe it is one that is in constant need of repetition. Or, as Alan Gold reminded us three years ago, "All this has been said before, but since nobody listened, it must be said again."

And indeed it has been said before, often before this group, and often in this setting. Who can forget Arthur Stark's reminder to us in 1978, relating the dispute between a college and a faculty union centering on whether academic freedom had been curtailed when the college ordered a faculty member to stop conducting his philosophy class in the nude. The course was a workshop in sexism and was described as providing experimental conditions for a personal understanding of and liberation from those aspects of sex role conditioning. Arthur wondered if the arbitrator involved required on-site inspection, sometimes called plant entry, and whether he was required to remove his clothes to get the bare facts.

Mickey McDermott in 1972 recalled the group photo of the 43 arbitrators at the first meeting of the Academy, and the photographer who said, "Smile and say cheese," and was corrected. "No, these are arbitrators; they must smile and say *fees*."

Or Jean McKelvey's reminder in 1971 of the case of a very personal inquiry involving the death of an arbitrator's mother-in-law. When the undertaker asked, "Shall we embalm or cremate?" the arbitrator said, "Both, take no chances."

Bill Murphy knew what I was getting at when he recalled the resolution of a case involving a worker fired for everything from absenteeism and tardiness, to leaving work, low production, all the ills imagineable, and yet demanded a letter of recommendation, and got this one: "To Whom It May Concern: Any company that is able to get this man to work for it will be fortunate indeed."

I leave you with a lesson framed in verse, one that makes my case much better than I have made it myself. It is the work of Peter Seitz and it comes from his presentation to the 20th Annual Meeting of the Academy in 1967.

It seems to me to say it all, to remind us, yes, of the seriousness of our purpose, but, yes, also, the reality of who and what we are, fallible men and women presented with a difficult job and one that is best performed with a clear vision of, yes, our importance, but also, yes, of our place in the order of things. He dresses it in the robe of ancient Latin. "Haec Est Rerum Humanarum Conditio," which he notes literally translates to "Thus is the Human Condition of Things" or a more sensible translation would be "This is How the Cookie Crumbles."

Observe the arbitrator! Grace
 And Majesty are on his face!
 His regal bearing, Haughty glance,
 Bespeak his Pomp and Circumstance!
 His sympathy is hotly wooed;
 The parties pander to his mood;
 Should be essay a feeble jest,
 They roar as though with pain distressed;
 A phrase or word he might emit
 Assumes the weight of Holy Writ;
 They treat each wheeze that he provides
 As though King Solomon presides!
 A frown strikes terror; smiles delight!
 They see, in him, the Prince of Light!
 Their fawning's vulgar and profuse.
 Small wonder that he thinks he's Zeus!

Then, finally, at hearing's close
He seeks familial repose
Within the bosom of his flock.
It's then that he sustains his shock!
How dulled and tarnished, now, his gloss!
What once was golden, now is dross!
His virtues no one can perceive;
His offspring think that Dad's naive
And mushy in the heart and head!
His pearls of wisdom go unsaid;
No interest is shown at all
In his affairs juridical!
In fact it is suspected he
Shows traces of senility.
His stories bore and are ill-paced,
Devoid of cultivated taste;
His tentatively offered word
If uttered, scarcely can be heard.
His family regard the man
A platitudinarian!

The moral of this tale, I fear
Is neither plain nor very clear!
It teaches: those who genuflect
May not extend sincere respect;
And those who love a fellow best
May leave him gloomy and depressed.
Experience instructs and humbles:
But that's the way the cookie crumbles!

Thank you very much.