

uncle returned to Buffalo, New York, as Major Sherman, while my father returned as a sergeant.

Through those same family gatherings, I learned that after their military duty, they both earned football scholarships at Canisius College. This time, on their winning team, they reversed roles. My uncle was the unheralded lineman, while my father was the star offensive end.

I knew him as the “Big Guy.” I knew he never got angry. I knew he was always mellow, but never, ever average. I knew he was always accurate in his prose, but could never remember the lyrics to any song. This is unfortunate, because he sings every morning.

I have learned that it is difficult to describe any person in a short introduction, but it is immeasurably harder when that person is your father. In retrospect, what I remember most about my dad, as I was growing up, is that he never lost his cool or even raised his voice. I learned the hard way why he never raised his voice. When he lowered it, that was the time that I really needed to listen.

Aside from all the things I had to learn about him, I always knew that he loved his wife, his family, and arbitration (probably in that order). When I agreed, against my better judgment, to introduce him here today, I asked him what he wanted me to tell you about him. He only told me what he did not want. He did not want me to go on for a long time and he did not want me to try to be profound.

I now know something about the Big Guy that I didn’t realize before. He asked me to do this introduction not just so that you would get to know him better, but so that I would get to know him better as well. Ladies and gentlemen, I proudly introduce my father, Jim Sherman, President of the National Academy of Arbitrators.

II. ADDRESS

JAMES J. SHERMAN*

I am glad we chose Pittsburgh for our meeting this year. This town holds fond memories for me, as just down the road is a small

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town named Titusville. To most people, this town is important because it is the site of the world's first oil well and, in case you wondered, the answer is "no," I was not around then. But Titusville is important to me for another reason: My wife, Fritz, was born there.

We were married 46 years ago and spent our wedding night in a small hotel a few blocks from here. Unlike other couples, we were determined not to be identified as newlyweds, and we contrived to escape without the usual tin cans and streamers. (Did my son Mark mention that I was a low-key sort of person? I don't know if that is good or bad—but I would guess it's accurate.)

Our plan included visiting relatives in the Baltimore area, but a record snowfall changed that plan, and we stayed here in Pittsburgh. When we returned to Buffalo to resume our jobs and lives, we received a letter from this small hotel. They wished us luck and a happy life and enclosed something we had left in the room—nothing important—just our marriage license and wedding pictures. Since then we have become more experienced travelers.

As you may have guessed, my remarks today are personal rather than substantive. They are impressionistic rather than chronological. If I were pressed to give you a title, it would be the three "A"s—Arbitration, Arbitrators, and the Academy.

My view of arbitration is that it is life's great drama. From the time you receive notice of the production from the agencies or clients, the excitement *begins*. You will journey to unknown places, meet the new cast of characters, you will hear from the protagonist (who is not always the hero). You will witness the full production, and then you will write the *final act*.

Arbitration is unique in this way. It's a personalized system of justice. The parties have the *privilege* of choosing their own judge. And the whole tenor of the hearing may differ depending on whom they choose.

No two arbitrators conduct a hearing in the same way. Some of us will attempt to mediate. Others will not. Some will actively participate in the hearing, while others will simply sit and listen. Some arbitrators sustain an objection to the admissibility of evidence, while others will accept everything . . . for what it's worth.

Most advocates become aware of these differences and probably select or reject us based, in part, on our judicial style. We can't

complain. It's their proceeding, their process, and clearly their choice. And, let's face it, it's their problem.

Some parties tolerate a variety of judicial styles. But no matter what the style, or any other considerations of selection, all of them insist on one thing: The complaint must find its resolution within the context of their contract.

Our decision should be faithful to the contract, but more than that, it should take into consideration all relevant circumstances. It should be like a well-crafted movie script, but unlike a stage play or a movie, the final act should be predictable.

I suspect we have lost our wonder at the uniqueness of the arbitration process. We take for granted its fairness and its efficiency, but there is a remarkable simplicity about our profession. Nowhere else, and in no other forum, can aggrieved employees have "their day in court," with so much of their consent and so little of their cost.

It goes without saying that arbitrators come in all shapes and sizes. We are a motley crew. We are teachers, lawyers, teamsters, mediators, secretaries, engineers, steelworkers, clergy, union stewards, and managers, to name just a few. We come from all geographic locations and backgrounds. We are the embodiment of "diversity."

Furthermore, each of us has come into the profession on a different path. Very few of us set out to become arbitrators. I wanted to be a doctor. Two events changed my mind. First, there was that unfortunate "D" in biology. And then there was that offer I couldn't refuse, I literally could not refuse. It was a trip to Europe on the *Queen Mary* with all expenses paid by the U.S. government. I was in a two-passenger stateroom, and I thought, "What a great place to be with my girlfriend!" Unfortunately, I had to share this stateroom with 12 guys named Smith and two other guys named Sherman.

When I returned to the States and re-entered college, I thought about law school. I looked at all the great law schools in the country. I rolled them over in my mind, but there was something about the University of Buffalo. I think it was location, location, location: UB was two bus stops from my home.

In law school, I chose an elective, not knowing what to expect. The course was labor law. The professor, our own Clyde Summers. I was an instant convert. The dynamics of labor law, arbitration, and arbitrators won me over immediately. Here was a profession

that would remain ever fresh, with unending drama and infinite variety.

After graduation, I accepted a position in the labor relations department of Bell Aerosystems. When I was an advocate for management, I expected to win every case. Hadn't we gone through the three-step grievance procedure to explore any merit the dispute may have? Wouldn't an arbitration hearing be merely a fourth step in this procedure with the same result?

But then the hearing took on a life of its own. The grievant became much more articulate. The union representative was no longer aggressive and became much less obnoxious. Suddenly, the evidence appeared more evenly balanced. Now there was no predicting how the arbitrator might rule.

After six years with Bell, I left to open my own private practice. I thought about taking a cruise first, but I'd already done that. So I began my private practice, and to my surprise, almost immediately I acquired several major clients. And they looked very familiar. They should have. They were some of the same unions I had opposed at Bell.

People asked me, "What was it like to represent management for 6 years and then suddenly be called on to represent the union?" I'll tell you what it was like—it was great! It gave me a new view of labor-management conflict. In some respects it was like being in a college debate class again. You remember how that went: A professor first assigned you to vigorously defend one side of a controversial topic. You spent hours in the library, and then on the day of the debate the professor said, "Now switch sides."

After a couple of these experiences, I developed a greater awareness of the foolishness of overestimating some positions and underestimating others. I learned to withhold judgment until I was sure I understood all sides of an issue.

A turning point in my life came when I was offered an opportunity to teach an evening class in collective bargaining at the University of Buffalo. It was an offer I couldn't pass up. And, as I might have mentioned, it was just two bus stops from my home. After this experience, I knew exactly how I wanted to spend the rest of my professional life.

When I received my Ph.D., I was asked to head the first industrial relations program in Florida, at the University of South Florida in Tampa. To me this was the beginning of the "perfect career":

teaching, and answering the call when someone wanted an arbitrator.

The appointments came more rapidly than expected, and I had more than enough experience. But I still didn't feel ready for "prime time" and the national scene. I felt a little like the three characters in *The Wizard of Oz*. Well, maybe not so much like the Tin Man. I knew I had a heart. But certainly I felt the nagging doubts of the Scarecrow and the Cowardly Lion. I decided to apply for membership in the National Academy of Arbitrators. I needed this reassurance—that I had a brain and that I had courage! And when I was admitted, 30 years ago today, it changed my life again. It gave me the confidence I needed.

But the biggest bonus was acquiring the greatest friends I have ever known. Let me share some of my feelings about this Academy of ours. It is the reason all of us are here today. We are proud of the Academy, especially its reputation for integrity and leadership.

Recognizing that changes are taking place in the profession, the Academy has expanded its programs to include new issues. Our meetings feature sessions on the rapidly emerging field of employment arbitration. This includes an examination and evaluation of all the recent court decisions and their importance to the process. And this is not the work of ordinary people. These are the recognized legal experts in the field. These are the leading practitioners, all of whom (not coincidentally) are Academy members. Not to be outdone, regional chairs are taking the best that the Academy has to offer and getting local members involved. Sometimes in a members-only setting and often including input from the advocates in the area.

Next, allow me to share some of *my discoveries* this year. Maybe it's just the nature of our calling, but we are all strong individuals who tend to see merit in our own opinions. Perhaps merit is too weak a word—we have unflinching confidence in the correctness of our decisions. We can accept criticism in almost any form. And you may question our memories with impunity, but *never* question our judgment.

Our members are "loners." By that I mean they work alone, they travel alone, and they *decide* alone. Sometimes this isolation reinforces our perception of our own infallibility. And sometimes I think we could rename our organization the "National Academy of Anarchists." If we did this, we would still be the NAA, so we wouldn't even have to buy new T-shirts.

Any arbitrator will tell you that this isolation makes us seek the company of other arbitrators. And most conversations begin with the words, “I have this case. . . .” With these words we solicit comments from our colleagues, hoping to have our opinions reinforced by agreement. This never happens to our complete satisfaction. Another arbitrator always has one more question or perhaps a different “slant” on the evidence—anything to test a colleague’s commitment to his or her opinion. For among arbitrators, agreement is the last thing we should expect.

I cannot end my discussion about the Academy without touching on the program some of you attended on Wednesday. When Mike Prihar, my program chair, first suggested a session on training advocates, everyone agreed it was a fine idea. However, it presented an obvious problem: How on earth could we find four or five busy arbitrators who would give up a day of hearing, pay their own expenses, and prepare their parts on the program—all without any hope of recognition?

Well, we didn’t have four or five volunteers, we had 40. Among the 40, we have many of our most prominent members, including former presidents, former vice presidents, former governors, and a president-elect. I want to thank all of you for answering the call. You have served the Academy well, and I am sure you have contributed to the better representation of both employers and unions. But most of all, your students will have a greater respect for the Academy and the profession.

I will end on this note: When I entered the private practice of law, I represented whoever came through my door. My practice included criminal law, personal injury, contract claims, and yes, even domestic relations. This experience made me appreciate the opportunity to specialize in labor law.

The objectionable courtroom tactics that are common in most areas of the law are rare—almost absent—in a labor relations practice. Labor lawyers appreciate that there must be a measure of restraint. They must not allow unfettered courtroom tactics to destroy a constructive union-management relationship. Unlike the everyday courtroom scene, we find that advocates in arbitration tend to “pull their punches.” They may seek to destroy the credibility of a witness, after all that is their job, but they do not destroy his reputation. They do not make it virtually impossible for him to return to the workplace and rejoin the work group. And unlike a courtroom contest, advocates in arbitration generally

show the utmost respect for the process, for one another, and for the arbitrator.

Clearly, we arbitrators appreciate this. It is ultimately you, the advocates, who make the process work. For my part, I hope that all of us, arbitrators and advocates alike, benefit from this program. We all have a part to play. We are all constantly rehearsing this part, and our dedication and preparation is our contribution to the success of this great drama of life we call arbitration.