Chapter 1

PRESIDENTIAL ADDRESS: THE IMPORTANCE OF SERVICE AND NEUTRALITY TO THE PROCESS OF DISPUTE RESOLUTION IN THE WORKPLACE

Gil Vernon*

I thank David Petersen, our estimable Treasurer, for his generous introduction. But as for his mention of my home state of Wisconsin, and hunting and fishing, I wish to make one thing clear: I don't ice fish. I detest ice fishing and in spite of the best efforts of friends I have managed to avoid it. For example, one of my summer fishing partners is an avid ice fisherman. He can afford to take winter vacations anywhere in the world, but takes one week to go ice fishing in Ontario and another in North Dakota.

He was forever bugging me to go with him. I replied: "Dan, I don't understand. In the summer when we fish you have a 200-horsepower boat with two trolling motors so you can zoom from one end of the lake to the other (always on the move to find where the fish are biting). But in the winter you drill a six-inch hole in the ice and sit there all day." When he persisted in his efforts, I finally relented. "Okay, Dan," I said, "I will go ice fishing with you on the condition that you go duck hunting with me and the additional condition you duck hunt 'my way.'"

"Okay," he said, "but what is your way of duck hunting?"

I said: "That's easy. We are going to hunt ducks like you ice fish. Bring your shotgun over to my house. We will lay down in my fireplace, look up the chimney and when a duck flies by we will shoot it." Dan has never asked me to go ice fishing again.

For quite some time I have intended to, and now will, speak (in part) about the importance of service to the process of arbitration. And then there was this wonderful coincidence. My speech was going to roughly coincide with the retirement of Vella Traynham. And I could think of no one who has served the

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process of arbitration with more dedication and resolve. Vella, as most of you know, has been the Director of Arbitration Services for the Federal Mediation and Conciliation Service (FMCS) since 2000. Prior to assuming the directorship, it was easier to say what jobs she hasn't done since joining FMCS in 1994. She served three years as the Deputy Director for National Office Operations, where she managed the daily operations and functions of five National Office departments. She has been Special Assistant to the Director. She held oversight responsibility for the agency's labor-management grants program, human resources and budget and finance departments, administrative services, and information technology. Vella also supervised the work of the agency's Special Projects Office. And, before joining FMCS, she worked in the Carter White House in the Office of Presidential Personnel.

In her role as Director of Arbitration Services she has tirelessly attended dozens of spring, fall and regional meetings of the Academy to report and answer questions about the operation of the FMCS arbitration services unit. By my estimate, she has attended some 44 Academy meetings of various types. She serves all the stakeholders in the process—the parties, the arbitrators, and her own agency, of course. And I speak no truer words—she keeps us all in line. She has the wonderfully refreshing ability to speak directly and forcefully with clarity of message and with complete conviction without offense. She is a rare combination of grace and toughness. She has been vigilant in maintaining the propriety, quality, and neutrality in the operation of the arbitration process. She has been a supporter of the process and the Academy's role in it. She has never been shy about holding the Academy in high regard, and we are in her debt for it.

It was an easy choice to single out Vella for recognition. And she wasn't my choice alone. In an organization of 637 people, all professionally paid for having opinions and being right, we rarely have complete agreement, but in this case the consensus was easy and apparent. Vella: Everyone in the Academy considers your retirement a loss and you will be missed dearly.

So Vella, for all you have done to support the neutral arbitration of labor-management disputes, for all you have done for the National Academy of Arbitrators, we commemorate your service to this process with this plaque and with this token of our appreciation.

And Vella, there is something else. In addition to the individual plaque I have just presented, there is one more element of this honor. Your name, Vella, will be listed as the first recipient of a perpetual plaque that will be awarded annually at the discretion of each president and will be displayed throughout each annual meeting. So besides being an unforgettable person, your name will be institutionalized.

This award has a name. It is being named for someone else who is here today whose service also deserves recognition. Vella, I hope you don't mind sharing the spotlight. This is a complete surprise to everyone but three people in this room, and he is not one of them. He avoids attention and for me to do more than state the facts would embarrass him even more than I have already risked. This penchant for humility may be cultural. You can tell a Scandinavian didn't name Lake Superior, or it would have been named "Oh gosh, Lake Pretty Big." And having him introduce me today may have been the only way we would ever have gotten him up here, front and center.

The simple fact is that David Petersen deserves to have continuing recognition. He has served the Academy in many capacities for many years. And as any NAA President in the last 10 years can attest, David Petersen's service to the Academy as Secretary-Treasurer has been nothing short of awe-inspiring. Our only hope is that he agrees to put up with us for many years to come.

The plaque on which Vella's name will appear as the first recipient is titled the "David A. Petersen NAA Service Award." The inscription at the bottom reads:

> Established to recognize the outstanding dedication and quiet contributions of members and friends of the National Academy of Arbitrators.

David, this award is for our unsung heroes and for the folks whose labors and toils make us all better.

As for the substance of my speech, let me say that giving the presidential speech is daunting for many reasons. When you stand where I am standing now, you realize that many have gone before you: men and women with so much talent, so much experience, so much insight, so much wisdom. It makes a person feel pretty inadequate pretty fast. You also realize there are many who *should have gone before you* but have not. Some were taken from us far too early—Tim Heinz, Carlton Snow, Reg Alleyene, to name a few.

And there are others who should have been standing here but for the fact that the timepieces of their Academy lives never quite synced with their non-Academy lives. And some have not stood here because, in part, we were unkind.

I have learned much from those who have gone before me. I learned from Arnold Zack not to begin your presidential speech by mentioning that you have read all the prior presidential speeches, so I won't mention it.

But if I had reviewed the prior presidential addresses I would have been left with one overwhelming, frightening conclusion: I have little or nothing to add. After some 63 presidential speeches, there are few stones unturned, but let me do my best to polish up a spot or two on some of these prior gems. And I am thrilled to make even a feeble attempt to do that, and am thrilled to be here. Not exclusively, but certainly for the reason that it gives me a chance to introduce my non-arbitration family to my arbitration family: Kim, my daughter; her husband, Rick Lockwood; Justin; his mate, Kathleen Edwards, hailing from Ottawa, Canada; and our youngest son, Nate.

And for my arbitration family, I mean *you*—each and every one of you; not just Academy members but also non-Academy arbitrators and especially advocates. I consider you all members of the arbitration family and part of the extended family of collective bargaining.

For a brief moment let me say what I am not going to talk about. Being from Wisconsin you might expect me to talk about the status of public sector collective bargaining. Indeed, the temptation to make an extensive apolitical, *neutral* defense of collective bargaining is difficult to resist. For my purposes today (and perhaps on any other day) from a neutral's perspective, collective bargaining is simply comprised of several fundamental *cultural* values. Collective bargaining is a value system that allows for:

(1) the human dignity of two people to stand together to ask an employer for consideration in the workplace;
(2) the moral obligation of an employer to give dignified consideration of those requests and, in the end;
(3) the economic freedom for both the employer and the employees to say no to a request or to a response.

It is just a matter of talking and listening. The rest is just details.

These values have been blighted by the political process in Wisconsin and in other places. Where this political and legal odyssey ends will be anyone's guess. But I must believe the citizens of Wisconsin have a basic sense of fairness that will ultimately prevail; witness the following: (1) public opinion predominantly supports collective bargaining rights, (2) dozens of municipal employers have issued resolutions of opposition to Governor Walker's bill, and (3) many of these same employers and unions went to the bargaining table in advance of the scheduled publication of the bargaining law, to extend current labor agreements and, thereby, delay the impact of a law. I believe that these joint efforts have been motivated by a sense of fairness and a belief that solutions, jointly arrived at by the parties, are the best solutions.

Enough about Wisconsin. What I wish to concentrate on today is neutrality. Neutrality is the most unique characteristic of our organization, and the one I am most proud of. Since 1976, it has been a condition of membership that Academy arbitrators cannot serve partisan interests as an advocate or consultant for any union or any employer *or* be associated with a firm that does. In 2008, we extended that prohibition against advocacy to workplace disputes (which mostly involves non–collective bargaining arbitration).

Neutrality is a hallmark of the NAA's brand of industrial justice. There are two senses in which I do *not* use the word "brand." I do *not* use it in the trade sense. We are not a trade "association." We do not generate income for our members or foster lists or arbitration systems that generate income for our members. Our purpose, according to Article II of our constitution, is:

> (1) To establish and foster the highest standards of integrity, competence, honor, and character; (2) to secure the acceptance of and adherence to the Code of Professional Responsibility for Arbitrators of Labor-Management; and, (3) to promote the study and understanding of arbitration.

So when I use the word "brand," I don't refer to economics of arbitration practice. And I don't use the word "brand" as the Supreme Court did in the Steelworkers Trilogy. As the Court said, individual arbitrators don't sit to *dispense* our personal "brand" of industrial justice.

I don't use the word "brand" in the individual sense but in the collective sense. And I include, in this collective, the whole arbitration family: NAA members, non-NAA arbitrators, employer advocates, union advocates, and agencies.

So our "brand" is neutrality. I worry about the future of our brand of workplace justice because I worry about the future of collective bargaining. I may speak for everybody in this room on that point. But I also worry about the future of employment arbitration. Its future, until recently, was predicted to be bright and its growth rapid. However, we can no longer take that for granted. Mandatory employment and consumer arbitration were targeted by the Arbitration Fairness Act (AFA) proposed by former Senator Russ Feingold. While the legislation didn't pass, I expect that it will be reintroduced in the wake of the *AT&T Technologies* case recently decided by the Supreme Court. As it related to employment, the Arbitration Fairness Act would have eliminated the practice of making employees sign arbitration agreements as a condition of employment; such agreements would no longer be enforceable. Arbitration would occur only if the parties agreed to do so post-dispute. In practice, employees would, more often than not, have courts as their only remedy. Ironically, the Arbitration Fairness Act sought to make arbitration more fair by eliminating most of it.

Some of our members think the end of mandatory arbitration is good. Some think it is bad. But we all agree (as it is the official position of the NAA) that, *if* mandatory arbitration remains legal, it should be subject to certain fairness standards. We have gone on record with the Senate and House Judiciary Committees as to what those standards should be. We reiterated those views recently.

One of the fairness standards that we urged be observed, if mandatory arbitration continues to be enforceable, involves neutrality in a decision maker and I will return to that momentarily. But, for the purposes of my remarks, I will assume that no legislative changes will occur in the legal status of employment arbitration within the next three- to five-year period. I think this is the safest bet.

Given this status quo scenario, I am concerned that neutrality, as we preach it and as we practice it, may not have a future; that our brand of workplace justice may not have a future. I am not the only Academy president who has expressed these concerns.

Arnold Zack in his 1995 presidential speech said that our brand was being "hijacked." John Kagel expressed concern that the process of labor-management arbitration was being "swallowed" by sad practices of commercial arbitration. And George Fleschli

expressed concern about maintaining impartiality in the evolving world of workplace dispute resolution.

Here are my operative terms of concern: neutrality in employment arbitration is being ignored on the one hand, and being poached on the other. We have to do something about both.

Let's talk about how neutrality is being ignored.

First, it is no one's particular fault, but there is no code of professional responsibility for employment arbitrators that parallels the code for labor-management arbitrators. The code for labor-management arbitrators in Section 2.B.2 requires disclosure, before the arbitrator accepts a labor-management case, as to whether the arbitrator is concurrently serving or has, in recent years, served as an advocate for or representative of *other* employers or unions—beyond the specific parties. It states:

> *B. Required Disclosures*
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> *2. When an arbitrator is serving concurrently as an advocate for or representative of other companies or unions in labor relations matters, or has done so in recent years, such activities must be disclosed before accepting appointment as an arbitrator.*

Given this code provision, it was not a big leap for the Academy, under the leadership of a committee headed by Rolf Valtin, to make non-advocacy a condition of membership. The Academy, in 1975, decided to take impartiality to another level. We did this on our own motion, not prompted by the parties, but out of a concern for the reproach of the process and the Academy. Since that time, neutrality has been defined not necessarily by the impartiality of the arbitrator but, rather, by her or his professional connections.

For the first 25 years of our existence, this wasn't the case. Members were permitted to act as arbitrators and advocates. Led by Rolf Valtin, a committee was appointed to reexamine a number of membership policy issues. In Rolf's words, prior to that time, we had been "ambivalent" about whether membership should be foreclosed to those arbitrators who also did representational work. One view was that an arbitrator's acceptability to the parties should be the overriding consideration and that, if an arbitrator had gained acceptability in spite of representing labor and/or management, that representational work should not matter to the NAA. For years, the Academy applied a volume test: advocacy was a disqualifying factor if it was "substantial"; if the applicant was "primarily" engaged in representational work.

The opposite view was that the "substantial" test lacked uniformity in application and, without uniformity, the Academy's neutrality could be compromised when one Academy member, representing a partisan interest, might appear before another member, serving as an arbitrator. This was a circumstance allowed for by the Academy at that time.

The latter view won out. For a small, collegial organization for which neutrality was important, it was unacceptable to have one member present a case to another.

It was also not a far leap for the co-signers of the codes of the American Arbitration Association (AAA) and the FMCS to require neutrality for appointments to their labor-management panels. Today, neutrality as a requisite for an arbitrator is so well established that any other arrangement would be virtually unthinkable in the labor-management world. For example, the AAA standard for admission to the labor panel requires "neutrality" when it states that "applicants cannot represent labor or management clients." In this regard, the AAA website states the following (particular attention is directed to Section 2(c)):

Qualification Criteria for Admittance to the AAA Labor Panel

The American Arbitration Association (AAA) is the nation's leading provider of alternative dispute resolution services. Openings on our Roster of Neutrals are based primarily on caseload needs and user preferences. Applications for membership on the AAA National Roster of Arbitrators and Mediators must meet or exceed the following requirements:

1. *QUALIFICATIONS*
   a. *Must have a minimum of 10 years senior-level business or professional experience or legal practice and cannot be an active advocate for labor or management.*
   b. *Must possess significant hands-on knowledge about Labor Relations.*
   c. *Must have a judicial temperament.*
   d. *Must have strong writing skills. The AAA may ask for a writing sample.*
   e. *Educational degree(s) and/or professional license(s) appropriate to your field of expertise.*
   f. *Honors, awards and citations indicating leadership in your field.*
   g. *Training and experience in arbitration and/or other forms of dispute resolution.*

h. Membership in a professional association(s).
i. Other relevant experience or accomplishments (e.g., published articles, part of a mentoring program).

2. *NEUTRALITY*
   a. Freedom from bias and prejudice.
   b. Ability to evaluate and apply legal, business or trade principles.
   c. Applicants cannot represent labor or management clients.
3. *JUDICIAL CAPACITY*
   a. Ability to manage the hearing process.
   b. Thorough and impartial evaluation of testimony and other evidence.
   c. Judicial temperament.
4. *REPUTATION*
   a. Held in the highest regard by peers for integrity, fairness and good judgment.
   b. Dedicated to upholding the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes.
5. *COMMITMENT TO ADR PROCESS*
   a. Willingness to devote time and effort when selected to serve.
   b. Willingness to support efforts of the AAA.
   c. Indicate whether or not you are currently a neutral with any other ADR agencies.

The AAA Oath for Labor Arbitrators requires disclosure of any labor or employer representation activities. The AAA Oath for Labor Arbitrators says, in part:

> *The Code of Professional Responsibility for Arbitrators of Labor-Management Disputes requires certain disclosures so that the parties can have complete confidence in the Arbitrator's impartiality. Therefore, please disclose any current or past managerial, representational or consultative relationship with the employer or labor organization involved in this proceeding, as well as any close personal relationship or other circumstances that might reasonably raise a question as to your impartiality. If you are serving concurrently as an advocate for or representative of parties in labor relations matters, or have done so in recent years, you should also disclose such activities before accepting appointment.*

Yet, the AAA defines neutrality differently in its employment panel admission requirements. The AAA requirements for admission to the employment panels define neutrality, but have no prohibition of representation. Rather, the AAA code generally requires only a "commitment to impartiality and objectivity." The AAA states the following, in relevant part:

QUALIFICATION CRITERIA AND RESPONSIBILITIES FOR MEMBERS OF THE AAA PANEL OF EMPLOYMENT ARBITRATORS

The American Arbitration Association (AAA) is the nation's leading provider of alternative dispute resolution services. The AAA is committed to offering a Panel of Employment Arbitrators in whom parties can have the utmost confidence, comprised of individuals with whom the Association has a strong and positive relationship and is based primarily on caseload needs and user preferences.

QUALIFICATION CRITERIA

Members on the AAA Panel of Employment Arbitrators must meet or exceed the following qualification criteria:

- *Minimum of 10 years experience in employment law with fifty (50) percent of your practice devoted to this field.*
- *Educational degree(s) and/or professional license(s) appropriate to your field of expertise.*
- *Honors, awards and citations indicating leadership in your field.*
- *Training or experience in arbitration and/or other forms of dispute resolution.*
- *Membership in a professional association(s).*
- *Other relevant experience or accomplishments (e.g., published articles).*

RESPONSIBILITIES

Members on the AAA Panel of Employment Arbitrators must understand and support their responsibilities to the Alternative Dispute Resolution ("ADR") process, the parties that they serve, and the AAA. The responsibilities inherent in the role of a Neutral include:

- *Freedom from bias and prejudice.*
- *Commitment to impartiality and objectivity.*
- *Ability to evaluate and apply legal, business or trade principles.*

Similarly, the AAA oath for commercial and employment arbitrators requires disclosure of only past relationships of the arbitrator with the parties in dispute; and the disclosure requirement does not extend to the representation of an employer or employee interest generally, as does the AAA labor-management oath.

The AAA Oath for Commercial Arbitrators says in part:

> *Please disclose any past relationship with the parties or their counsel, direct or indirect, whether financial, professional, social or other kind.*

It says nothing about the representation of employees or employers generally.

Maintaining the importance of neutrality is one of the great challenges for the Academy and for all the members of the arbitration family. The single most important thing we can do to preserve neutrality, as a hallmark of workplace arbitration, is to stress the distinction between impartiality and neutrality.

Any third party who is mutually selected to resolve a dispute is by definition impartial and, one might argue, is "neutral" for that case. This isn't a wrong argument; it is just an incomplete argument. When the question of neutrality is completely considered, can an arbitrator legitimately call him- or herself "neutral" for all potential future cases if, in the intervals between cases, that arbitrator represents employers or employees as an impartial designee, or associates with a firm that does? An arbitrator who represents employee or employer interests is not professionally neutral, as neutrality is a status that either persists or does not persist *between* cases. It cannot be said that an arbitrator *is* neutral on a continuing basis if he or she represents any partisan interest in any related subject matter proceedings.

But to stress this distinction raises this conundrum: How do we balance the need to infuse systemic neutrality into employment arbitrations while respecting the right of the parties to invest impartiality in anyone they choose, on a case-by-case basis? The answer is found in the language that the Academy has adopted to do just that thing, but for other purposes. It was the product of the Academy's aforementioned work on the proposed Arbitration Fairness Act of 2009. An NAA Committee was chaired by Ted St. Antoine, and Michael Picher, Sharon Henderson Ellis, John Sands, Matt Finkin, and I were appointed to the drafting committee. Matt was the scribe, and his drafting was no less than brilliant. From the beginning of our discussions, true neutrality was defined as a standard of fairness that was to be maintained, while respecting the parties' rights to choose whomever they wished as their neutral. We endeavored to make clear that our concern was with the process; that we were not promoting the Academy or its members. The balance we struck was reflected in the relevant portions of our model Arbitration Fairness Act language, and I believe that the employment arbitration system needs to adopt that language:

> *Sect. 402. Validity and enforceability*
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> *(X) An employment arbitration agreement shall be enforceable only if it is adequate to vindicate the purposes of law under which the claim arises.*

(XX) "Adequacy" for the purposes of section (X) includes but is not limited to the following requirements:

(5) (i) Absent a post-dispute agreement of the parties, arbitrators are to be selected from the membership of neutral organizations or from panels that are prepared by agencies of recognized neutrality and that include experienced arbitrators who do not represent employers or employees; and

(ii) if the panels include persons who represent employers or employees, the nature and extent of such representation will be disclosed to the parties prior to selection; and

(iii) in the event the parties are unable to agree on the selection of an arbitrator, the agency preparing the panel will designate as the arbitrator a person who does not represent employees or employers; and

(iv) the arbitrator shall disclose to the parties any conflict of interest of which he or she is aware or becomes aware during the proceedings.

To preserve neutrality in the future, we must not only seize opportunities to help mold the legal and public perceptions of neutrality in arbitration, but also must create those opportunities. If you are a traditional labor-management arbitrator, you might wonder why you should be concerned about employment or consumer arbitration. First, employment and consumers have been linked in the Feingold bill, as both are controlled by the Federal Arbitration Act. Second, even though there is an exception in the AFA for collective bargaining, public—and therefore political—perception of arbitration is based on the most common forms of arbitration, such as consumer arbitration.

Perhaps most damaging to the notion that arbitration, in general, can be fair was the successful litigation by the State of Minnesota against the allegedly impartial National Arbitration Forum (NAF). The National Arbitration Forum was headquartered in Minnesota and handled debt collection and arbitration. It touted itself as neutral and independent. It handled in excess of 200,000 debt collection disputes yearly. The lack of neutrality of this consumer arbitration organization was exposed by the attorney general of Minnesota in a complaint, filed in state court, that challenged the National Arbitration Forum's representations to the public that it was independent, impartial, neutral, and not affiliated with any party. According to the complaint, NAF was

controlled by a hedge fund, and that hedge fund owned one of the largest debt collection agencies in the country. That debt collection agency owned the assets and collection operations of a large law firm that was involved in 60 percent of the cases NAF handled. In substance, the fox owned the hen house. Literally the day after the complaint was filed, the lawsuit was settled. The National Arbitration Forum agreed to cease doing business in the debt collection dispute resolution arena.

Attorney General Swanson's action could have been seen as a victory for neutral and independent arbitration, but it is more likely that the public has been left with a bad impression of arbitration. At best, and in the final analysis, the settlement revealed a vacuum into which our brand of neutrality is being deflated. At the extremes, many observers can define what neutrality is not, but *can* the public, the courts, legislators or agencies say, with precision, *what neutrality is?* It is our job to tell them, and to fill that vacuum. The question needs to be asked of you—asked of all professionals, unions, management, agencies, and arbitrators on our branch of the ADR family tree—have we done enough to *advance our brand of neutrality*?

I believe some of the political actions against labor-management arbitration in the public sector are based on some of these generally negative misperceptions of arbitration by the public. If we wish to fortify labor-management arbitration, we must start by influencing employment arbitration.

I leave it in the good hands of all the members of the Academy to find other ways to advance the cause. Not the cause of advancing the NAA, but of advancing the cause of neutrality for the betterment of the process. We must find ways to encourage the agencies in the employment field to extend the *more stringent* concepts of neutrality to employment panels. And we should consider amending the panel selection provisions of the Due Process Protocol to include a process for selecting a neutral arbitrator or for panels of neutrals, where a specific arbitrator cannot be agreed upon.

We need, as well, to encourage employers with unilaterally promulgated arbitration procedures to adopt these selection procedures as a means of fostering confidence in the arbitration process.

These suggestions will meet resistance, because parties often prefer arbitrators with subject matter knowledge even if those arbitrators represent, or have represented, employers or employees. To this I respond in several ways:

(1) Mutual selection of anybody (including advocates) is not precluded under this approach.
(2) Shouldn't neutrality be an option and would the existence of that option make the process more fair and extend a measure of confidence?
(3) Shouldn't there be one standard and definition of neutrality?
(4) And isn't it about time?

I promised you that nothing I have to say is fundamentally new. In his presidential address in 2004, Walter Gershenfeld made the point that subject matter expertise at some point becomes less important than neutrality:

> The early approach to identifying employment arbitrators taken by appointing agencies works from the assumption that the advocates in the growing employment arbitration profession are the only groups with the numbers and the legal skills presumably needed to hear these cases. There are two rebuttable presumptions here, namely that the cases all involved legalities, and employment advocates were the only ones with the legal background and skills appropriate to hear these cases. I am not going to address the pros and cons of these presumptions; rather, I wish to concentrate on the fact that neutrals, skilled in employment matters, are available and are not being utilized to hear employment cases. I hear regularly from these individuals: Their backgrounds are often fully appropriate for them to serve as employment arbitrators in my judgment, and there is no room for them on employment panels dominated by advocates.
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> …
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> I note that it took us 17 years to step away from advocates as arbitrators in labor cases. We are now 13 years and counting from the more widespread use of employment arbitration. It would seem that the time has come for movement toward the use of neutrals in employment cases.

Agencies should offer a neutrality option when sending lists, and should require the broad disclosure of the representation work of the arbitrators on its panels, if for no other reason than to distinguish them in the marketplace. Many arbitration groups are marketing themselves directly to the parties. Those groups are usually not neutral in our sense of the word. The National Association of Distinguished Neutrals (NADN) is but one example of how our brand of neutrality is being poached.

I used to think that we National Academy arbitrators were pretty cool, and maybe we still are, but evidently we aren't "distinguished." The NADN is a consortium of arbitrators of all kinds

trying to generate direct business without the middleman. Some may be neutral in our sense of neutrality, but other members are clearly not; many of the NADN's members apparently represent arbitration clients. The best defense against the potential identity confusion created by organizations like this is a public discussion of what true neutrality means.

The preservation of neutrality as we know it depends on the service of each and every one of you in the family of arbitrators and, *especially*, on advocates and agencies. If, collectively, you in the greater ADR community don't affirmatively extol the nature and virtue of neutral arbitration, and insist on neutrality in your decision makers, our truly neutral brand of arbitration is doomed to be an esoteric notion held by this small group. And, if employment arbitration, in all of its broader applications, is not viewed as more fair than it is now, the whole of arbitration, including labor-management arbitration, will be at risk. The process needs your vigilance.

Neutrality will benefit all of arbitration and will help to raise it one more degree from reproach.

As for NAA members specifically, the Academy understands that our organization is limited in its resources and its capacity to respond, so it is for you, as just plain citizens, to trumpet neutrality. Academicians, you have a special responsibility.

We arbitrators have known for a long time that we don't *sit* to *dispense* our own brand of workplace justice. But I submit that, collectively, we must *stand* to *disperse* our brand of neutrality.

In the final analysis, it comes down to the same question for each of us, individually, whether advocate, agency, or arbitrator: What do *you* stand for? My friends, what do *you* stand for?