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Arbitration - An Asset to the Lawyer

John T. McGovern

I believe we should and will join the organization. Some months ago the Senate by a vote of eighty-five to five said we would join with the other nations to establish such an organization. Whether it succeeds will depend upon the good faith of the major powers and upon the efforts and earnestness of those who are determined that this time it shall work to bring an end to the era of ruthless force and to bring into being in the affairs of the world a reign of law.

In conclusion I wish to stress a thought I mentioned before, that is, in evaluating the Charter we must do so by consideration of its blueprint, the Dumbarton Oaks Proposals. Mr. Evatt, the Foreign Minister of Australia, was perhaps the most outspoken in criticizing the Dumbarton Oaks Proposals and in endeavoring to make changes in them. In one of the closing debates he stated that he recognized that the instrument, as drafted, was a very great improvement over the Dumbarton Oaks Proposals. We must understand that hundreds of proposals were made, some of them official, many of them the private plans of various individuals and groups. When one was accepted, the proponents of all the others were necessarily disappointed.

The proposals of the American Bar Association were not all accepted, and neither were those of any other person, group or nation. Perhaps it is better so.

For international cooperation must enlist many peoples of widely differing interests. It cannot be dictated by one person or by one nation, and we must all learn to accept the best effort of our common endeavor, just as the ancient Greeks accepted the golden mean as the highest good. We are cooperating toward a goal the most important the world has ever striven to attain, an international order based on law, and when that is attained, one of its fruits will be a just and lasting peace.

ARBITRATION—AN ASSET TO THE LAWYER

By John T. McGovern
Member of the New York Bar

Arbitration is doubtless the oldest form of procedure known to man, established in the effort to secure justice. It antedates formal courts of justice by many centuries. In fact, it preceded the establishment of laws of general application.

The fundamental premise in arbitration is the submission of a dispute by the voluntary act of the disputants to an impartial third party for final settlement.

This establishes a basic limitation which differentiates it from ordinary "due process of law". With minor exceptions—and during such war-created emergencies as lead to the imposition of "compulsory arbitration"—it is impossible to secure arbitration of a dispute except by agreement of the parties.

Not even the most enthusiastic of arbitration advocates believe it to be a panacea—though it is true that some of the outstanding members of the bar generally recommend to their clients that they "settle or arbitrate".

The disappearance of past opposition to arbitration from some members of the legal profession is due to the like disappearance of any fear that its rapid growth would augur a diminishing need for their professional services in the future. Also is disappearing the short-sighted and short-lived early practice of a few trade associations of recommending the exclusion of lawyers from arbitration hearings.

With the advent of the first of the modern arbitration statutes in New York in 1920—an act drawn and sponsored by the most responsible elements of the Bar—and the subsequent inauguration of organized arbitration under the American Arbitration Association the scene completely changed so far as the legal profession is concerned.

The Association welcomed lawyers to its Board (on which 18 sit at present), to its standing committees and to its Panels—which include all of the recent Presidents of the American Bar Association and many of the heads of other Bar associations. The Association's Chairman is an outstanding member of the profession, as are also several of its past Presidents. Lawyers comprise the largest class in its National Panels. The Bar has made many of the most notable contributions to the advancement of arbitration through members in every field of legal activity, from U. S. Supreme Court Chief Justices Hughes and Stone to local practitioners in the smaller towns.

This acceptance of arbitration as an effective tool in the modern lawyer's workshop is a testimonial to the profession's realization that the ancient bogy of economic menace has finally been laid to rest.

In its place there is an ever-widening appreciation that the practice of arbitration is an asset and income producer for the lawyer who "makes it his business" to use it wherever it offers a saving in time, effort and expense for his clients and himself.

One lawyer after his first experience in representing a client in an arbitration proceeding, recently said: "The open-minded lawyer approaches his first arbitration with the attitude: This is something new to me. It must have some merit when ten thousand business and professional men all over the United States offer their services to people in controversy. I intend to give it a fair trial."

To this lawyer, the outstanding impressions of the completed arbitration were: the uniform courtesy extended to litigants and

counsel through three days of taking a vast amount of evidence in a complicated controversy; and the qualifications of the arbitrators in a case in which intricate questions of bookkeeping, cost accounting and manufacturing were involved and their understanding of the technical questions at issue.

To the opposing lawyer in the same proceeding, its most impressive feature was the speed with which it was accomplished—"We tried a complete case in three days, which, in my opinion, would have required at least two weeks to try in a regular court proceeding and possibly longer." Also brought home to him was the realization that the elimination of the delay caused by clogged court calendars and successive pleadings and motions brought him that much nearer to the date for the payment of his final fees.

The lawyer who has given arbitration a "fair hearing" and a careful, honest appraisal, sees in it not a menace to his profession but an asset. He sees in organized tribunals, standard rules of procedure, favorable arbitration laws, available qualified arbitrators and ample hearing-rooms, opportunity for the practice of arbitration which may have as large a place in his scheme of things as has the practice of law.

He knows that arbitration carries with it a real need for a party to be represented by a legal counsel. This need of legal guidance is not caused by any complex technicalities in arbitration, but exists because lawyers through their special training and experience are more skilled in the clear and precise presentation of evidence and the orderly marshalling of facts, to the end that the arbitrator will understand and give due weight to every phase of the controversy which might favor a client.

The development of arbitration in the United States has proven that the bar has no occasion to worry that their services will not be required in the practice of arbitration. They are needed, and they are welcomed. The records of the American Arbitration Association show that in better than 85% of the arbitrations conducted in its tribunals, both parties are represented by lawyers as trial counsel. The remaining 15% of the cases consist of controversies involving such inconsequential amounts that lawyers could not be adequately compensated, even if they were paid the full amount involved in the controversy.

Every lawyer knows that in connection with any controversy he is paid, by and large, on the basis of the amount involved and the result achieved—not on the basis of the time and effort expended on the matter. It has been the experience of one lawyer that a fee every bit as large may be charged and collected at a much earlier date and without question by the lawyer for an arbitration as contrasted with a lawsuit, regardless of the fact that the time and effort expended in an arbitration is only a fraction of that expended on trying the same matter in court.

One lawyer who has represented many clients in arbitration proceedings and has also frequently sat as an arbitrator sums up the advantages of arbitration to lawyers, as follows:

1. The lawyer is retained to represent his client in any worthwhile arbitration.

2. The lawyer is compensated at a much higher rate for time spent in an arbitration than in a court action.

3. The lawyer saves a vast amount of time in handling an arbitration as contrasted with handling a court action.

4. The lawyer's convenience is served in an arbitration proceeding in that his case is set for trial and tried at a time specially reserved for his arbitration.

5. The lawyer may completely dispose of an arbitration in a month or two from the time when he is first retained, whereas a court action may not be disposed of for one or two years, thus assuring the lawyer: (a) that he will collect his fee expeditiously, (b) that the evidence and the witnesses will be available, and (c) that the defendant will not, in the delay of one or two years necessary to obtain a judgment in a court action, be able to dispose of his assets and frustrate collection of the claim.

At this stage of the war, nothing is more precious than time, nothing is more valuable than manpower. A lawyers who can save these for his firm and for his clients by using arbitration whenever it can function effectively, is performing a notable service to both, and to himself as well.—From Arbitration.

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