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FOR MEDIATORS / FACT FINDERS

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HAROLD NEWMAN'S CLOUDY CRYSTAL BALL. "The late great philosopher, George Santayana, suggested that 'scepticism is the chastity of the intellect'. If that be so, I yearn for the surrender of some of our active advocates to the seduction of their minds. There are two lawyers who represent unions and employers respectively who on almost every occasion that I have appointed a mediator or fact-finder to an impasse in which either is involved will hasten to telephone me. I should like to share with you a typical dialogue.

Advocate - 'Harold, you have appointed _____ in that matter in _____.'

Newman - 'Yes, what do you have against him?'

Advocate - 'Nothing. That's the problem. I have nothing for him or against him. I never heard of him. This case needs a professional. I can't have someone who doesn't know what he's doing.'

Newman - 'If you never heard of him, he is not a professional?'

Advocate - 'Look, maybe he's done some work in the field. But who is he? I need a pro.'

Newman - 'He has been a mediator and arbitrator for twenty years.'

Advocate - 'Where?' 'This case is very important to my clients and there is a lot at stake here. I'll bet this guy is a clergyman or a college professor.'

Newman - 'Clergymen and college professors are never labor relations professionals? Anyway, he is neither. He is a lawyer just like yourself.'

Advocate - 'But, I never heard of him.'

Newman - 'Is the sine qua non of someone's professionalism as a mediator whether you've heard of him?'

Advocate - 'Yes, I've been around a long time. I know the pros.'

Newman - 'Look, last year you objected when I appointed _____ even though he is a nationally known conciliator who has served on _____ national emergency boards and helped found the National Academy of Arbitrators.'

Advocate - 'I had him as an arbitrator in a discipline case in 1958 and his award was ridiculous.'

Newman - 'Last year you also objected to _____ and _____ when I appointed them in cases in which you were involved. You had not heard of them. Yet, in both cases you admitted that they had performed brilliantly. PERB's panel is made up of highly qualified professionals. You'll just have to take whom I assign.'

Advocate - 'Maybe I can talk to _____ who is representing the other side. Maybe we can agree on somebody so that we can make a joint request. You always say that in the event of a joint request, you'll always appoint that person.'

Newman - 'Why didn't you do that before I appointed in this case?'

Advocate - 'Well, I trusted you. You always send me pros. But now....'

Newman - (Various medieval obscenities are uttered.)

Advocate - 'Harold, take it easy. I always liked you. The job is getting you down. Be calm. Don't get excited. Be calm....'

Curtain

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"Reported below is a section of a narrative report by Phil Ross on a recent mediation performed by him in a school district in the western part of the State. We think that Phil's comments could well apply to many of the cases with which panel and staff are presently involved. Incidentally, I would like to remind you that the bills should always be accompanied by summaries like that of Professor Ross. Even if you do not bring the parties to settlement in mediation, we would appreciate a narrative. We also would like to have such reports accompany bills after fact-finding. Dr. Helsby considers this to be a very valuable procedure and I find it most useful in keeping track of our impasses.

'Dear Harold:

I have terminated mediation in _____ (Case No. _____) for reasons which warrant some comment. Despite the parties' self-consciousness, there is nothing particularly unusual about the bargaining relationship. A smallish faculty made up of about 140 teachers is faced with a business minded, tax conscious school board which accurately reflects its rural and conservative constituency. And as would be expected, notwithstanding rhetoric on each side, the real differences are money.

In a way, both again share some pride in the notoriety acquired by the District by virtue of its recently announced personnel cuts which has even reached some tenured faculty. The NYSTA weekly devoted a full page to the developing epoch-making struggle and leading Association figures have visited _____ and have made other gestures of unflinching support. Less publicized but equally evident are expressions of School Board solidarity throughout the area for their embattled champion of fiscal soundness and managerial prerogatives.