NAA Corner, NAA CORNER—NAA President discusses AI, attack on federal collective bargaining in address at annual meeting, (Jun. 2, 2026)

NAA Corner

By Joshua M. Javits, NAA President

National Academy of Arbitrators President Joshua M. Javits gave the Presidential Address at a luncheon at the NAA Annual Meeting and Education Conference on May 22, 2026, in Chicago, Illinois; his remarks have been lightly edited for publication.

Thank you to my wife Sabina. Unlike some people in the contentious labor relations business, Sabina and I are still speaking to each other after 41 years. Actually, Sabina was the inspiration behind one of my most successful mediations when I was a member of the National Mediation Board.

A pilots' union at a major airline had been bargaining for more than three years. The parties were hauled into the NMB's Washington office for what everyone called the *final* last-ditch bargaining session before the Union and the Company were released for a legal strike or lockout. By then, both sides were operating on equal parts caffeine, threats, and contempt.

We negotiated through Friday night. Then Saturday night. 48 hours straight. Offers. Counteroffers. Posturing. Outrage. Recycled outrage.

Meanwhile, every few hours I was on the phone with Sabina — not discussing a strike deadline but counting down to our daughter Emma's fourth birthday party, scheduled for noon on Sunday.

Finally, sometime Sunday morning, the company put its truly final final offer on the table. The union rejected it immediately. So I looked at my choices. On the one hand: a nationwide airline shutdown. On the other hand: a four-year-old girl, a birthday cake, twenty tiny guests, and one very disappointed wife explaining why Daddy missed the party.

To me, the strategic choice was obvious. I gave both parties my home address, told them where to find me if civilization collapsed, and raced home.

And I still remember the look on their faces. Total shock. Because I left them there — separated from each other, in different caucus rooms, exhausted, furious, and without me in the room to perform the ancient mediator ritual of carrying messages back and forth with appropriate commentary. They had reached the point where agreeing face-to-face would have been too humiliating for either side.

About an hour later, there was a knock on my front door at home. It was the entire union negotiating committee. They were ready to sign the company's final final offer. Every one of them signed. I tracked down the company. They signed too.

Birthday gambit. The shutdown was avoided. My marriage survived. Emma got her birthday party. And I became convinced that if I had instead stayed at the NMB offices that morning, I would have lost both the airline, my job and the marriage. So I consider that my modest contribution to collective bargaining dispute resolution: call it the Birthday gambit. So, thank you Sabina, for your faith in me. And to you parties out there, don't worry if you select me: Emma is now 36 years old.

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Mediator's Prayer. It is really only appropriate to begin this address with the Mediator's Prayer, written by the late Monsignor James A. Healy, an NAA member from Buffalo, N.Y.: "Lord, let there be strife amongst thy people lest thy humble servants perish."

Current strife. We certainly have no shortage of strife today; the only issue is: will we be the humble servants to handle it? Or will it be a souped-up artificial intelligence version of R2D2 that hears our cases? The two biggest causes of the current strife are, first, the current Administration's attempt to virtually eliminate union representation in the federal sector and second, the potential for artificial intelligence (AI) to replace arbitrators with advanced technology.

These two developments could bring substantial changes in our work. We should continue to recognize the reality of these changes, to influence them, while maintaining neutrality, and to move them in the direction of fair, just, and principled dispute resolution.

I am proud that the Academy has not only led in adapting to technological and professional changes but also has influenced developments over the years, including the use of computers, the advent of ADR and hybrid mediation-arbitration processes, and the shift to virtual hearings during and after the pandemic. In all of these, we have played a vital leadership role. And I am confident we will continue to do so in dealing with the political, economic, and technological challenges affecting our profession.

Dismantling Federal Agencies and Departments

First, regarding the tumult in labor relations in the federal sector, the Administration's attack on federal collective bargaining undermines an essentially non-partisan civil service. While surface legal protections may be in place against corruption and partisanship, federal employees have lost effective recourse through union representation against illegal and unjust treatment. Combined with the undercutting of inspectors' general independence and the administration's unapologetic, publicly announced political personnel decisions based on "loyalty" to the president, federal employees are vulnerable to adverse actions for doing their jobs without adequate safeguards.

Why should this matter to us? As noted by former NAA President George Nicolau, "Our history is characterized by the unceasing promotion of professionalism and constant protection of the arbitration process." As Sarah Adler noted in her 2013 Presidential Address, "Everyone who gives it a moment's thought knows that the NAA supports collective bargaining—we wouldn't exist without it."

The virtual elimination of arbitration by executive order, for over half of the civilian federal workforce or over a million employees, 48 years after that right was established by law, constitutes an attack on the institution of arbitration. The highlights of the administration's actions illustrate the impact on federal employees. In early 2025 the Administration set to work attempting to dismantle or significantly shrink numerous federal agencies, using a variety of strategies. These included DOGE, the so-called Department of Government Efficiency, which was allegedly created to root out waste and abuse, as well as federal implementation of a series of buyouts, furloughs, reductions in force, and outright terminations of federal civil servants.

This effort led to the separation of about 300,000 employees out of a federal civilian workforce of 2 million. The approach brought about chaos, fear, and disruption and much of it was unauthorized by law.

Dismantling the Federal Mediation and Conciliation Service

The NAA acted quickly to address the Administration's attempt to dismantle the FMCS. The Administration laid off most of the FMCS staff and restricted the agency to performing the minimum functions required by law. Before

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Congress and the courts intervened, the agency’s workforce was diminished from about 200 to only about 15 employees including the loss of virtually all its skilled and experienced mediators. The Administration’s proposed budget would have essentially zeroed out the agency.

The Academy at the time released a statement from President Alan Symonette that said: “The FMCS punches well above its weight. With a tiny $55 million budget it delivers extraordinary outsized economic benefits, minimizing labor strife and encouraging industrial peace at a value that exceeds $500 million a year.”

While Congress ultimately restored most of the FMCS’s budget, the agency lost more than half of its mediator complement. The agency, which has been an effective neutral in resolving important national disputes in vital industries, has been rendered far less effective.

The State of New Arbitrator Training

The FMCS has traditionally trained new neutrals for years as part of its education and training functions. NAA arbitrators have long taught an FMCS-organized course titled “Becoming a Labor Arbitrator” (BALA). Based on the course, along with other training, being discontinued by the FMCS, the Academy decided to provide the BALA course for applicants who are serious about becoming labor arbitrators. Taking the course when the FMCS administered it entitled new arbitrators to use shadowing opportunities with Academy arbitrators as a substitute for cases required to become a member of the FMCS roster of arbitrators. We are urging that this protocol continue under the NAA’s administration of BALA.

Our quick action to fill the void left by the FMCS is in fulfillment of a core purpose of the Academy: namely the training and education of arbitrators, especially newer arbitrators who will replenish our ranks. Our mentorship and salon programs in the regions are dedicated to this goal.

Arthur Pearlstein, who was FMCS Director of Arbitration and involved in all BALA training, is now a member of the NAA and has helped us develop and offer the BALA course under NAA auspices. The program is an example of the nonprofit sector – the Academy – successfully picking up a formerly public-sector function to help fulfill our mission to train and renew our ranks.

Attacking Federal Government Collective Bargaining

The administration’s initiatives have also involved an attack on federal government employees’ rights to collective bargaining. Executive Order 14215, issued March 27, 2025, would virtually eliminate union representation, collective bargaining, and grievance arbitration for over half of federal employees if fully implemented. The executive order declared that the listed entities, including non-security-related entities such as the Department of State, the Department of the Treasury, the Federal Emergency Management Agency (FEMA), the Department of Veteran Affairs (VA), and the Internal Revenue Service (IRS) have as their “primary function … intelligence, counterintelligence, investigative, or national security work.”

The NAA responded by filing an amicus brief to the Ninth Circuit Court of Appeals in the case of *AFGE et al. v. Trump et al.*, supporting the injunctive relief ordered by the District Court in Northern California regarding the President’s Executive Order (EO) 14251. Although the Ninth Circuit blocked the District Court’s injunction on the merits, the legality of the executive order has not been finally decided. If the EO is ultimately upheld, unions and employees no longer will have statutory rights that have been in effect for nearly 50 years, under a statute that declared federal employee collective bargaining to be “in the public interest.”

The authors of the amicus are Academy members Matthew Finkin and Barry Winograd, assisted by Lise Gelernter,

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the committee's chair, and Doug Bonney. The NAA's amicus brief concludes as follows: " *From the sweeping nature of the President's EO and related government announcements, the administration appears to believe that Congress erred in 1978 by allowing federal employees to bargain collectively and to arbitrate their grievances. Yet the administration has not urged Congress to repeal the law. Instead, the administration has seized on an overly broad interpretation of national security to swallow almost the whole of the statute, including grievance arbitration procedures that resolve disputes of an everyday nature."*

Federal employees have limited collective bargaining rights. There is no right to strike and only limited scope for collective bargaining. Management rights are set forth in the law and are broad. I learned this lesson personally, when as president of Local 31 of NLRB Region 31, I spent nearly 100 percent of my efforts on employee parking issues! No doubt a vital issue of national security.

While the courts and the Federal Labor Relations Authority have recognized that the President of the United States has considerable discretion when making national security determinations, enormous overreach by the Administration is apparent here, with only a pretext of national security justification. Congressional grants of discretion to the president assume some reasonable basis, and we can only hope that the Supreme Court is willing to set some limits to the administration's discretion.

Meanwhile a House-passed bill would restore bargaining rights for affected federal workers. I am proud that, as an organization, the NAA pushed back on this unjustified attempt to eliminate collective bargaining rights for the tens of thousands of federal employees who are affected by the executive order.

Terminating or Withdrawing from Grievance Arbitration at Agencies and Departments Subject to the EO

The Administration has followed up the EO with several measures which have created barriers to federal labor management arbitration prior to a final adjudication of the EO's validity. Currently, many arbitrators are facing administrative obstacles in handling cases they have been assigned involving federal agencies or departments and federal unions that are subject to the EO. The agencies and departments have informed the arbitrators and their unions that they will not go forward based on the EO, either because they are unilaterally "terminating" their collective bargaining agreements or simply unilaterally "withdrawing" from the cases based on the EO.

In response, many unions are asking the arbitrators to hold hearings, even if the hearings may be held *ex parte*. In many of these cases, the grievance was filed and the matter assigned to the arbitrator prior to the date of the EO (March 27, 2025). Sometimes these cases were even scheduled for specific hearing dates. In other cases, unions argued that the EO was contrary to law and was being litigated. Some unions have asked for the arbitrators to retain jurisdiction of the case but for the hearing date to be postponed. The arbitrators are often left in a difficult position as to what to do. Some are holding the cases in abeyance pending the litigation, others are going forward *ex parte*, some have set hearings to address the jurisdictional issues, and still others have issued decisions on jurisdiction and even on the merits. Numerous issues have arisen, including whether a case should be heard when the arbitrator is informed that one party, the agency, will neither appear nor pay the arbitrator's fee. These are ethical, due process, and relationship issues that go to the core of federal labor-management relations.

Then, just a few weeks ago, FMCS announced it is refusing to provide arbitrator panels to unions requesting them for cases involving agencies subject to the EO. Under the regulations pursuant to the statute establishing the FMCS, the agency is supposed to provide panels to any party requesting one without judging the issue of arbitrability. On May 15, four unions representing federal workers filed a complaint for injunctive and declaratory relief against FMCS.

There appears to be a concerted effort by the administration to simply eliminate federal grievance arbitration in the agencies and departments covered by the EO. We have both fought this effort and helped arbitrators to navigate

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these treacherous waters and will continue to do so.

THE RISE OF ARTIFICIAL INTELLIGENCE

Next let me turn to the rise of artificial intelligence and its impact on labor management arbitration. On the technology front, artificial intelligence represents an existential threat with the development of agentic decision-making. Agentic AI means that decisions are made largely independently of human control by AI. At the same time, AI tools can afford us an opportunity to enhance our work and efficiency.

While AI could offer useful enhancements, it's worth stating the heart of our concern about AI. The central defect of AI for use in labor arbitration is that it cannot replicate human judgment as informed by experience, something much deeper than the learning at which AI excels. Judgement involves intuition, ethics, managing complexity and uncertainty, and lived experience, all of which we apply every day and to every case.

Some commentators have noted that these questions of judgment cannot be automated anytime soon. We use our knowledge and experience to arbitrate among competing values and differences of opinion, to weigh considerations that matter independently but cannot be satisfied all at once, to consider several paths of action, and to choose the right or the best one. Judgment is the faculty we rely on when trade-offs are unavoidable.

The right answer is not waiting to be computed; arriving at the right answer is a uniquely human skill. The incentive for providers and consumers of arbitration services to use AI includes both cost and risk reduction. For example, AI can be used in mock or simulated arbitration by entering anticipated exhibits and testimony into a record which AI quickly digests and then spits out a decision.

As advocates, how do you create an adequate record for an AI decision-maker? Back in my days as a management advocate, I handled a case involving a pilot on a layover accused of trashing his hotel room and writing obscenities in the hotel Bible. The carrier was concerned about the pilot's mental state. The pilot denied everything. I had only a day and a half to investigate before the hearing.

I obtained a handwriting exemplar of the pilot and tracked down a handwriting analyst in a tiny Pennsylvania town near the hearing site. At about 9 p.m., on a very dark night, I arrived at her house with the Bible and the handwriting exemplar in hand. I asked, “Can you determine who wrote these obscenities in the Bible?” She looked at both documents carefully and replied: “The devil.”

At that point, I began to suspect she might not be the ideal expert witness. So I changed the question: “Does the writing in the Bible come from the same hand as the exemplar?” “Yes,” she said. Whew.

The next day, she testified flawlessly. The union immediately requested a two-week recess to find its own handwriting expert. Two weeks later, much to the union's credit, the grievance was withdrawn. Sometimes the key to a case is not the witness' answer but just asking the right question.

Developing an acceptable record in labor arbitration for the purpose of submitting it to an AI decisionmaker would be far more arduous than simply holding a hearing. It would also be a huge change in practice for clients and advocates alike.

Just as the use of computers and email gradually became accepted beginning in the 1980s and 90s, AI may also turn out to be an extremely helpful tool for arbitrators and parties. The key factors are the pace of AI's development, its reliability, and its acceptability by the parties.

Many of our own members as well as others in the labor management community believe that as it develops in its

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capacity and potential, AI may well replace us as arbitrators. It's easy to see AI as a Pac-Man ravenously eating everything in its path. Key questions are these: Will AI independently perform the dispute resolution functions we perform? Or will we use AI to make us more efficient and even better at our tasks? While the sophistication and subtlety of AI will no doubt increase, will it be relied upon for consequential judgments? Will we need human neutrals to at least verify its results? Is a holistic understanding of conflict situations within the capacity of the software? A lot of uncertainty exists.

Thus far we have avoided technology taking over our business. There is no doubt that AI is a transformative technology. The extent of its impact on employment and society is not fully known and its impact on workplace dispute resolution has yet to be determined.

Survey. In March the NAA, along with the Scheinman Center for Dispute Resolution at Cornell University's School of Industrial and Labor Relations, conducted a second annual survey of our members to determine neutrals' current and future anticipated use of AI. The survey findings can be summarized as follows:

FIRST…adoption [among NAA arbitrators] of AI is still quite low at 25 percent. However, this represents a 92 percent increase relative to 2024 adoption rates, so AI adoption has nearly doubled in a mere year and a half.

SECOND…the results suggest that less experienced, presumably younger and more technology savvy neutrals are substantially more likely to adopt AI, while adoption declines sharply with experience.

THIRD…AI users rely on AI for tasks such as summarizing documents, review of cited cases, and editing text, while avoiding core adjudication functions like drafting decisions.

FINALLY, the findings underscore the profession's continued and growing caution on the use of AI and an emphasis on ethical integrity, trust, and accuracy in the dispute resolution process.

Established neutral provider organizations like the American Arbitration Association (AAA) and JAMS, as well as new entrepreneurs, will likely try to seize opportunities to offer AI-generated decision-making in all fields. Right now, AAA is offering an AI program for decision-making in the construction industry. Next up for AAA is the use of these programs for its commercial and consumer panels.

Will AI catch on in the labor-management field? Our field is nuanced, complex, experiential, and personal, perhaps making it less susceptible to AI's algorithms and large language models. But we can't be full of hubris. After all, AI has already produced some remarkable achievements that had been thought to be uniquely human, such as writing credible Shakespearean quality sonnets and high-level classical music and is working on cures for deadly diseases.

Impact of AI and Other Technologies on Jobs, Wages, and the Economy Generally

What is the larger impact of AI and other technologies such as robotics and implementing software, since they are expected to radically change jobs, wages, and the economy?

At the very least we can anticipate enormous disruption and displacement to the labor force and economy. The job displacement and transition to such a new economy will itself warrant close monitoring and potential intervention. Arbitrators can expect a growing need to deal with issues such as job displacement, use of AI for surveillance and monitoring in the workplace, or for such tasks as evaluating employee performance and vetting job candidates.

There may be a saving grace and that is the pace of AI implementation. As MIT Labor Economics Professor Daron Acemoglu noted, you cannot automate everything tomorrow if only because we don't have enough computing power to do it. It happens incrementally. So even with a very powerful system, competing priorities for finite computing power

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may slow down the displacement of any category of work. Meanwhile new jobs and businesses may arise as a result of AI.

But ultimately, if we achieve an economy where highly capable AI systems can perform nearly any work task, then the key constraint on economic growth may no longer be human labor but computing power—namely, the hardware and software required to run those systems. About 50 percent of current work activities are thought to be replaceable. Amazon recently cut 30,000 jobs due primarily to AI, with more cuts to come. There's a lot of hysteria about the coming job apocalypse!

But there is some reason to believe an alternative scenario may eventuate. Computers led to the massive loss of secretarial jobs but enormous overall job growth, not job declines. The first on-line spread sheets in 1979 led not to the demise of the accounting profession but to a huge increase in accountants. The ATM machine led not to the disappearance of bank tellers but to an increase in tellers along with their related customer relations functions. The advent of home coffee makers like Nespresso led not to the demise of coffee shops but instead to their proliferation. Maybe people crave the human interaction. The same could hold true for AI.

Nonetheless, we have the real experience of enormous job losses due to technology advances as well as off shoring of work in the 1970s, through the early 2000s. That history led to the anger, resentment, and division that is with us today. The losses of that generation and the failure of society to address them adequately could well be replicated in the wake of the enormous changes that AI and robotics may bring.

Society should move aggressively to provide a soft landing both to the employees and the communities adversely affected. Government should take on this responsibility, as should the businesses that reap the rewards of artificial intelligence and its increased productivity and profit.

AI and Labor Arbitration

Returning to the application of AI, someone still must decide whether an AI analysis is trustworthy, what implications it carries, and whether accepting the analysis would be wise.

For me, as I am reviewing the hearing record and drafting a decision, the central ideas and analysis for resolution are generated. It is part of my thinking process and is a personal and human approach.

But the use of AI as a tool rather than a crutch can enhance both analysis and judgment. Once familiarity with a record is in hand, interactions with AI through prompts can be helpful and efficient. But what if the next prompt you throw at AI is "what are my options for decision?" Isn't the human arbitrator still choosing the best one? What if the next prompt is: "AI: can you rank the decision options in order of acceptability?" What if the arbitrator accepts AI's suggested decision 95 percent of the time? Are we on a slippery slope as to whether the human or machine is making the decision?

However, aside from the decision-making function, would AI ever have come up with Dick Mittenthal's past practice analysis, Ted St. Antoine's model termination of employment act, or Arnie Zack's due process protocols? These are seminal accomplishments to address complex arbitration issues. Could AI ever have led the labor-management community to embrace the virtual hearing alternative during the COVID pandemic through the development of arbitrator and advocate education and working guidelines?

The answer is most likely not. These ideas, writings, and practices are the product of original and creative thinking in response to real-life concerns. These examples of progress that we have brought to labor relations are intrinsically human creations. So we must stay in front of the development and implementation of AI and stay involved in its

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applications to maintain the importance of human thinking over coded algorithms.

NAA Actions Related to AI

Finally, how is the Academy responding to the AI phenomenon? The Academy has taken several steps in the last year.

First, the AI Study Group Committee has been working diligently on AI issues as they affect the Academy. We sent out the Committee's annual report as an e-blast in light of AI's rapid proliferation, use and development. The committee is our point of knowledge about activities in the AI labor-management dispute resolution area. The NAA is increasingly accepted by the labor management community as an important player in any potential AI development efforts.

The committee chairs, former NAA President Bill McKee, emeritus MIT Professor Tom Kochan, and I met with Bridget McCormick, the current president of the American Arbitration Association (AAA). During the conversation, President McCormick agreed to be in monthly contact with NAA to share information and to involve the Academy in any development of AI services related to labor and employment. She also told us that while AAA may expand its offerings on the commercial and consumer side, they have no immediate intention to focus on the labor and employment side.

Second, as an adjunct to our AI Study Group Committee, which includes Christine Newhall from AAA, we established a labor-management advisory group composed of labor and management advocates. This group has been involved at the outset in any AI initiatives in the labor and employment area. Our advocate advisor group gives our interactions with service providers enhanced influence.

Since arbitration is a user-driven business, it is important to let labor and management and their advocates take the lead in dealing with service providers about issues related to AI decision-making and the role of human decision-making.

Nonetheless, this does not in any way preclude our involvement in the design and application of AI to the profession. As Prime Minister of Canada Mark Carney recently noted in a different context, “if we are not at the table, we are on the menu.” After all, we are the experts in labor-management dispute resolution. It is our product over the last 78 years that has given the large language models the content they are using to automate arbitration work into the future, including tens of thousands of our decisions and influential articles.

Fourth, we have taken action on the ethical use of AI. As most of you know, the Committee on Professional Responsibility and Grievances (CPRG) is the Academy's ethics and discipline body. Its core function is to enforce the code of professional responsibility for labor-management arbitrators; this code was jointly written and then adopted by the NAA, AAA, and FMCS. So we have taken action to develop an advisory opinion on how AI might impact ethical issues.

CPRG Advisory Opinion Number 28 emphasizes the importance of keeping an up-to-date understanding of AI and discusses issues such as breaches in confidentiality, the exercise of decision-making functions by AI, algorithm bias, and fraudulent evidence. The advisory opinion should help our members and the advocates to spot issues and establish ethical guardrails for the use of AI.

Hats off to Walt De Treux, CPRG chair and my successor as president of the Academy, as well as to those who worked so hard on the advisory opinion, including CPRG Subcommittee Members Lise Gelertner, Lisa Kohn, and Susan Meredith and AI Study Group Subcommittee Members Bill McKee, Tom Kochan, Jeanne Charles, and Keith

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Greenberg.

CONCLUSIONS

A few conclusions on the administration's attack on the federal civil service: The Administration has succeeded in virtually eliminating probationary employees and a huge swath of senior federal government employees, and it has gutted or refused to fund numerous public-sector programs. Moreover, the administration is succeeding in eliminating the independence of various agencies contrary to established law and practice. This is a real blow to the federal sector and will take time to overcome and remedy.

On artificial intelligence, I am neither an "AI optimist" nor an "AI pessimist." The impact of AI is just too speculative. I am cautiously optimistic that AI may lead to a better society. But the next 10 years will most likely be quite turbulent, with significant disruptions to work as we humans have known it.

Despite the acute mistrust in institutions today, the parties entrust us with enormously important decisions in their lives and futures. That is largely due, in no small part, to the reputation and high standards of the NAA.

The shrinkage and changes in the federal civil service and AI's rapid development come together in two ways. First, the potential danger of AI misuse by the military in triggering wars, and for population surveillance and control, will take smart trusted government legislation and action. Second, in emergencies, such as the recent Ebola outbreak in Africa, the gutting of USAID and the change from science-based decision making at the CDC will not help us address the dangers. A strong, objective, independent and protected civil service is what overcame Ebola's prior outbreaks and is needed now.

One thing is clear for us: the speed and complexity of both the federal employee changes as well as AI demonstrate the priority that ongoing education and training should be given for our members and the labor management community generally.

But our fundamental values and purpose are relevant and vital. We bring to the parties civility, due process, effective dispute resolution processes, expertise, integrity, independence and, most importantly, the judgement and sometimes the wisdom that derives from knowledge and experience. Yet, at the same time, we must adapt to changes or become irrelevant. Monsignor Healy might say that unless we do so, strife will increase exponentially with no one left qualified to resolve it.

In closing, thank you for giving me the opportunity to be your president in these turbulent and challenging but also promising times.

About the author. Joshua M. Javits is a neutral arbitrator and mediator who resides in the Washington, D.C. area. He was Chairman and Member of the National Mediation Board from 1988 to 1993 and Grievance Chair for the International Monetary Fund from 2007 to 2011. He has also been appointed by presidents from both parties to serve on Presidential Emergency Boards. He had represented labor unions and management in the past at different times.

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