National Academy of Arbitrators

ORAL HISTORY PROJECT

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Interviewed by Francis X. Quinn

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ORAL HISTORY COMMITTEE
NATIONAL ACADEMY OF ARBITRATORS

INTERVIEW WITH SYLVESTER GARRETT
BY FRANCIS X. QUINN
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SYL, CAN WE JUST TALK ABOUT YOUR BACKGROUND. WHAT WAS THE BEST PREPARATION YOU HAD FOR THE WORLD OF ARBITRATION?

Well, there are many things that contributed to whatever fund of knowledge I have at this time and it would be difficult to say just what has been the most valuable part of that background. I would start with work in a steel mill and on the Philadelphia waterfront, in my youth. Legal training was very important, too and work in labor law as a practicing attorney—that was in the 30's. My work with the NLRB also was very useful, followed by the War Labor Board. Having served briefly as Chairman of the NLRB employees Grievance Committee once upon a time in the late 30's was useful. Then three years representing Libby Owens Ford and Pittsburgh Plate Glass as their Coordinator of Labor Relations in bargaining on a national basis with two separate Unions was invaluable. This gave me realistic insight into Management's approach to difficult issues which could have differing cost impact among the various plants involved. It also exposed me, in an intimate way, to problems of incentive administration, job classification, and things of that sort. Finally this work gave me an opportunity to study, at first hand, the operation of a single contractual grievance procedure in a number of major plants of two different companies, and to become aware that the same grievance procedure could function beautifully in some locations and very poorly in others. That experience also drove home the fact that the same contract can be administrated and Interpreted in quite different ways by people who had participated, together, in the negotiations. So that that background of experience, perhaps as much as anything else, enabled me to have, perhaps, a more realistic approach to understanding the basic problems of the parties and their needs in grievance arbitration. I could go on, but I think that that kind of background, plus the accretion of experience, has brought me to where I am today. And I'm not quite sure where that

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WHEN AND HOW DID YOU FIRST MOVE INTO ARBITRATION?

I got started in arbitration in a technical sense in September of 19^2 when I was serving as either a Hearing Officer or Mediator—I have forgotten what the title was—with the War Labor Board and went down to Atlanta, Georgia to hear a dispute involving a Textile Mill and the Textile Workers Union. This primarily involved the manning of new equipment. At the end of about a. day and a half of

listening to the parties and making notes I advised them that the next step would be for me to make a written report to the National War labor Board in Washington, and that they then would have an opportunity to come to Washington to discuss it. That prospect seemed to appall them to such an extent that they took a brief recess and then came to me and said, "Hey, why don't you just let us argue this to you right now and you tell us the answer to this problem" I said, "You mean right away?" They said, "Yes." I said, "Well, I'd like at least thirty minutes to think about it." They said, "That's fine." So they both dutifully argued the case and I deliberated for perhaps fifteen or twenty minutes, wrote out my decision on a scratch pad, and read it to them. They shook hands with each other and with me and then we adjourned to the nearest bar and we entertained each other until I got on my train to go back to Washington. That was my first arbitration experience, and I hasten to emphasize that it was indeed expedited arbitration.

WAS IT A BENCH DECISION TOO?

Right off the top of my head, so to speak but they accepted it happily. I think they both needed to have somebody who could just come in there and say, "OK this is the way it's going to be." And, I think this so often is the case that it's a shame that so many grievances get dragged out for such a long period of time when both parties really have a crying need for a practical, quick answer. But that was my first arbitral exposure. Now, actually, I got started in arbitration in a real way shortly after World War II when I came back to Philadelphia from Washington. I returned to Philadelphia from the National Wage Stabilization Board in March of 19^6 and later that year became Coordinator of Labor Relations for Libby Owens Ford and Pittsburgh Plate. This involved opening my own office in the IBM Building in Philadelphia with Reed Tripp as my Associate. During those years—I stayed with that until late 19^9—I put my name on the American Arbitration Association list in Philadelphia and got a very substantial number of cases; as many as I could handle in the available time. They were all fairly routine cases. I guess I had maybe one job classification case and one incentive case but mostly they were routine problems of seniority, discipline, that kind of stuff. I notice in the questions which Dick Mittenthal prepared that he wanted to have some information about how the parties approached arbitration in those days and whether there were briefs and so forth—what their attitudes and expectations were. Frankly my memory is a little hazy on that. Those cases now have sort of blurred In my memory and I would have to say that, as I try to reconstruct the parties' approach—if you can generalize at all, and I am a little dubious about that—if you could generalize, I would say that the parties then, particularly on the Management side, tended to try to restrict the scope of the arbitration process as narrowly as possible$_0$

Now, if this generalization has any validity at all it would have to be limited, obviously, to ad hoc arbitration because the immediate contrast you will think of would be right there in Philadelphia where you had George Taylor, Bill Simkin, Allan Dash and others who were in the full-fashioned hosiery industry; in men's

clothing, and in ladies garments where the approach to arbitration was almost totally different, as I understand it. I saw a lot of George and Bill Simkin in those days and Allan too because Allan had been one of the Vice Chairmen when I was Chairman of the Regional War Labor Board in Philadelphia. But in any event, in those days, as many people will recall, there was a tendency on the part of Management attorneys to assert that the arbitrator had no jurisdiction, basing that claim on an interpretation of the contract. What they really were saying was: "Look, if you decide this case in this particular way you will either be altering, amending or adding to our agreement and under the arbitration clause it says that you shall have no authority to do so. Therefore, you have no jurisdiction." In other words, the substantive question was case in the light of a jurisdictional contention. That was a rather common kind of occurrence which caused a great degree of frustration on the part of many of the Union lawyers, some of whom made speeches or wrote articles about it which I guess I noted when I gave a talk in Santa Monica before the Academy on, I forgot what the subject was, oh, "Are Lawyers Necessarily an Evil in Grievance Arbitration." This was published in 8 UCLA Law Review 535 (1961) and also appears under the title "The Role of Lawyers in Arbitration" in the NAA Proceedings for 196I. But that kind of attenuated jurisdictional argument more or less went down the drain with the Warrior and Gulf and related decisions in the US Supreme Court Trilogy. Frankly the argument never bothered me. I just was never troubled by it because—as an attorney with substantial familiarity with administrative law and enough exposure to Management problems to know that Management also had to have practical interpretations of contract language—I never hesitated to provide an interpretation which .was not merely a literal reading of something in the contract. In short, I always believed that as an arbitrator I was required to implement the parties' language by giving it a practical meaning even though that precise meaning had not been spelled out in words in the agreement. So I've never really had any problem with that kind of approach but I was exposed to it frequently and I suspect a good many other arbitrators also were, in the period right after World War II.

ARE YOU TALKING ABOUT 19^5, 19^6?

Yes, I would say that this probably ran into the mid-50's. Now, actually—incredible as it may seem—I have encountered exactly the same argument within the last three weeks. Indeed, here's something that this study ought to focus on, or at least recognize. That is, we have new people coming into collective bargaining, into labor law, and into arbitration constantly, and a lot of the things which many people think we all learned—and a lot of issues that seemingly were put to rest sometime ago—actually bob up again as new people come in who rely on some of the current literature, such as the Elkouri book, where they find some general language to quote and all of a sudden you are getting the same kind of an argument that one used to hear back there in 19^7, 19^8, 19^9° There is a constant problem, in other words, of educating and bringing along the new people in this field. I suppose this is true in every field. So you just can't say the situation today is totally different from what it was in the 4 C's and 5 0's„

WAS THE PROCESS OF SELECTING AN ARBITRATOR AS IT IS TODAY? WAS IT IN THE LATE 40'S AND THE EARLY 50'S THE AMERICAN ARBITRATION ASSOCIATION HAD THE SYSTEM IT HAS NOW: A LIST AND THE PARTIES CHOSE?

Yes. I really think that the American Arbitration Association performs an invaluable service in permitting new people an opportunity to get into the field because they do not insist on the same background of actual experience that the FMCS insists on. Surely I never really would have gotten started except in a much more painful way. The Triple A got me started and that is the long and short of it and I—in common with a lot of other people—owe a great debt to them. I should emphasize in that connection, you see, that in 1946 I was primiarily a Management spokesman—known as such. You can imagine today how much more difficult it would be for an individual with that kind of major orientation to get into arbitration as an impartial.

WELL, WAS THE PROCESS PRETTY WELL DEVELOPED THOUGH ABOUT, MEETINGS WERE HELD AT THE AMERICAN ARBITRATION ASSOCIATION, OR IN THE FIELD?

I think almost all of the hearings I had in the early years in Philadelphia were in the Triple A Office; some were In hotels and other offices.

THEN THE PROCESS WAS PRETTY MUCH THE SAME AS IT IS TODAY. DO YOU REMEMBER WHAT THE CHARGE WAS WHEN YOU BEGAN FOR ARBITRATION?

Twenty-five bucks.

TWENTY-FIVE DOLLARS A DAY HUH?

Yep.

THEN, WAS THE EXCHANGE VERY ROUGH AND AGGRESSIVE? WAS IT A TOUGH MEETING OR AGAIN WAS IT PRETTY WELL DEVELOPED?

I would not be able to generalize. I think today we have tough presentations too. Maybe the language is a little different, maybe the theories are a little different but I think there's the same degree of dedication on both the Union and Management side. It is true, I suppose, that there is a greater degree of sophistication and that may mean that things are a little less rough than in past years. It is difficult for me to generalize about this, too, because I have changed and I think the personality of the arbitrator has a great deal to do with how the spokesmen conduct themselves. You know, it is easy to push somebody around If you think you can get away with it. But if the arbitrator makes perfectly plain that he or she is not about to be pushed around and makes this clear at the beginning of the hearing, you have a better performance by the parties. I know this first hand because some of the people who gave some of my associates in the Postal Service a rough time were tabby cats in front of me because I was tough on them. I was in a position to be tough. I had an established reputation; some of these other folks did not. It's a strange thing what a difference this makes in the attitude of the parties' spokesmen. So I guess I'm not a very good

witness now in talking about how the parties' approaches today, in general, may differ from those in earlier times.

YOUR FIRST CASE WAS A BENCH DECISION. DID YOU EVER ATTEMPT MEDIATION?

I have always, frankly, regarded mediation in ad hoc arbitration as a no-no. However, when a case develops in such a way that it seems to me that somebody has overlooked an obvious consideration in bringing the case to arbitration, I may call a recess and informally say: "Hey, in view of what just came out in the hearing wouldn't you like to think about the possibility of reaching an accommodation." This has produced settlements at times, but without any involvement of the arbitrator in the discussions. In ad hoc grievance arbitration, where the arbitrator is more or less a stranger to the parties, it is neither proper nor productive for the arbitrator to think of himself as essentially a mediator rather than what we may loosely describe as a judge.

WHEN YOU DID BEGIN IN THE LATE 40'S, WHAT WERE THE ISSUES THAT PEOPLE WERE ARBITRATING?

Well, you see, my personal experience is too limited, reaching back to that period, to give you a generalization and my memory is too hazy now. I know that I got at least one incentive case from the Budd Company and the UAW. I got a job classification case from the Machinists and some metal fabricating shop but other than that it was just seniority, hours and overtime and other run of the mine stuff.

WERE THERE ANY CONTROVERSIES THEN THAT ARE NO LONGER AROUND OR IS YOUR REFLECTION BASICALLY THAT THE ART WAS PRETTY WELL DEVELOPED AND WE WERE INTERPRETING CONTRACTS?

I really couldn't say. I just can't answer that—just can't give you a useful answer.

IN TALKING ABOUT YOUR THEORY OF ARBITRATION, DO YOU CONSIDER YOURSELF A STRICT CONSTRUCTIONIST? YOU SAID SOMETHING ABOUT...

You are talking to the wrong man when you ask me if I might think I am a strict constructionist. I have been rather close to the eye of the storm on this subject. Way back in 1951 I issued a decision in a U.S. Steel case—perhaps it was my first or second decision after I became Chairman of the Board of Arbitration—in which I found that the Agreement implied an obligation on the part of the Company to refrain from action which would arbitrarily or unreasonably reduce the scope of the bargaining unit, such as by contracting out major work for performance right there in the plant. And that, I think, may have been close to the beginning of the so-called "implied obligations" approach that ultimately developed to the point of wide acceptance in respect to contracting out. But that approach has, you know, generated some adverse comment. In the early 1960's Scotty Crawford gave a paper on contracting out at

a Washington Meeting of the Academy, and he covered the subject brilliantly. In addition, Allan Dash wrote a comprehensive opinion in a Celanese Case in which he analyzed perhaps sixty major contracting out decisions. But I think that it is now commonly recognized that--there are obvious exceptions to this—that it is proper for an arbitrator, just as it is for a judge, to find an implied obligation in a written agreement even though such obligation is not spelled out in precise detail. And again, this cuts both ways. It's a doctrine which is just as useful to management as it is to labor even though a lot of people don't recognize that. A collective bargaining agreement must be given a realistic interpretation. Ever since we had the Warrior and Gulf and related decisions and the courts began applying the Labor-Management Relations Act to force people to arbitrate—even going so far in some cases as to imply a no-strike clause—you know we now are in a situation where it is unthinkable to simply read the literal language of an agreement and say: "Well, it doesn't say in here that the Company can't do this or that the Union must do that and therefore the grievance is denied or the grievance is sustained." That's sort of like reading a timetable and that's not what a collective bargaining agreement is all about. You see this sort of ties back to what I was saying earlier about the common argument in the 40's, when attorneys asserted that the arbitrator had no "jurisdiction" because if he were to embrace a particular argument he would be "adding" to the contract. Now this is a subject that George Taylor gave a lot of thought to. And I notice that Dick Mittenthal, in his suggested questions, picked that up when he spoke of whether the parties regarded the arbitration process as an "extension of collective bargaining" rather than as a "strict quasi-judicial proceeding." I think that was the phrase Dick used. Well, I honestly don't know precisely what either of those terms means. But I would suggest that If they have any meaning at all they are not necessarily mutually exclusive. Again, going back to my 1961 Santa Monica paper, I there was at some pains to point out that in a judicial proceeding—and judicial proceedings cover a wide variety of different kinds of operations—there sometimes can be mediation. This is an accepted part of the judicial process in some situations, so that it may be misleading to talk In terms of these broad concepts, particularly if you assume that they somehow are mutually exclusive. I don't think they are, and believe that it is counterproductive for people to try to put the Interpretive process into some kind of conceptual straight jacket. I don't really care what kind of basic theory of interpretation you evolve. Harry Shulman, in his thoughtful article which has been published and republished—based, I guess, on a talk he gave at Harvard In the 50's--more or less assimilates the grievance arbitration process to the function of courts in interpreting legislation. That's a perfectly valid conceptual approach but I think my own approach is also valid. Thus I apply what has been called the "Objective Theory" of contract interpretation by reading each contract in the context in which it was negotiated. By that I mean that you look at the disputed language and you read It, not as either party says it must be read but as an objective, fair-minded, informed, and independent individual would have understood it in the context in which it was

negotiated," is fundamentally important because a given set of words can mean one thing in one context and something else in another context. So you must read the language that's in dispute, assuming it's ambiguous, in light of the problem the parties were grappling with when they wrote it, and what their earlier efforts to grapple with that problem had been--where they started from in terms of prior agreements and related provisions in the same agreement, and so on. When you do that, it seems to me, you can come up with an objective, practical, and realistic meaning if you have an adequate understanding of the collective bargaining process. I guess I first enunciated this approach in a very plain and direct way at the U.S. Steel Board of Arbitration when I decided Cases G-60 and G-61 and set up for the parties a method of dealing with incentive administration problems which they had been unable to spell out in their collective bargaining agreement. They hadn't been able to agree on any detail with respect to administration of incentives that were installed after April 22, 1947s which was their watershed year in terms of incentive administration. I don't know what would have happened over the long run if I hadn't been able to come up with some kind of realistic interpretation there which certainly "added" to the parties' agreement. But I don't think it changed anything substantive; it simply gave them some essential detail in their agreement where it was needed by both parties.

WERE THERE ANY ARGUMENTS ABOUT THE JURISDICTION OF THE ARBITRATOR IN THE BEGINNING, MORE THEN THAN NOW?

I think so. Yes.

IS THIS IMPLIED OBLIGATION THEORY, IS THIS AN EVOLVING THING OR ARE THOSE IMPLIED OBLIGATIONS STATIC?

Well, actually, this is not something that grows like a snowball. It's simply an approach and I would like to suggest this, Frank: the contrast which people ought to make when they think about the objective theory of contract interpretation is with the kind of thing you used to see said so commonly in the 40's and 50's by many writers and arbitrators In articles, and opinions where they spoke of a "meeting of the minds" as if, in order to have an actual agreement on a specific subject, you had to have a conscious meeting of the minds by the negotiators. Well, if you are familiar with collective bargaining you know that that often is totally impossible. There are many issues where the only thing ycu can do is to find a pleasing, general statement which is sufficiently ambiguous that both parties think that maybe they can live with it. And, if they get the right arbitrator, very probably they can. But this is in the nature of the bargaining process. There cannot be any such thing as a "meeting of the minds" unless you are talking about those things that are so well established, so clear on their face, that no reasonable person would ever entertain any thought other than what seems to be expressed in the language. So that when you get into a genuine interpretive problem, where there is ambiguity or perhaps conflict between one section and another in an

agreement, it isn't helpful to talk about a meeting of the minds. No way. That's just a delusion and that, frankly, was one of the purposes of my paper in Santa Monica—to make clear that it was profitless to talk about a "meeting of the minds" when you interpret a collective bargaining agreement.

WHAT YEAR WAS THE AWARD IN CASES G-60; -61?

I think that had to be about 1956, something like that.

IN THE BEGINNING, WERE THERE WEAKNESSES, OR STRENGTHS IN THE PROCESS THAT YOU RECALL? HOW DID YOU KEEP TRACK OP WHAT OTHER ARBITRATORS WERE DOING?

Let me just give you the limitations on my authenticity as a pundit. I was exclusively ad hoc until I came here to Pittsburgh in July of 1951 and my ad hoc experience was substantially limited because I was really earning my living first as a Management Consultant and then as a Law Professor, and I had a great drain on my time in both of those assignments. So that I just didn't have the kind of experience that Bill Simkin, Allan Dash, Saul Wallen, Dave Cole, Ralph Seward and many others had In the iJO's. I am no authority on the 40's. All I have are some impressions, and since 1951 the great emphasis of my work as an arbitrator has been in established relationships as a Permanent Chairman or whatever you might want to call it. So that I am not really in a very good position to speak of an evolution In ad hoc arbitration. I just am not.

WHEN DID YOU FIRST COME INTO THE NATIONAL ACADEMY AS A MEMBER?

I guess I was admitted to membership in the Academy around 1953•

BEFORE THAT TIME DID YOU HAVE CONTACT WITH ARBITRATORS?

Well, I certainly did. You know, in Philadelphia, George Taylor had a unique role as sort of the presiding genius, inspirational leader for many of us and he had an Industry Council at the Wharton School where a lot of us would go and participate. And when I was working xvith the Glass Companies, George Taylor was a consultant to them. I spent a lot of time with George. I guess his office was right across the street from mine on Fifteenth Street in Philadelphia. I can recall vividly participating in meetings of arbitrators in Philadelphia—at the Bellevue-Stratford Hotel, now the Fairmont, I guess—in which the organization of the National Academy of Arbitrators was under consideration. I did not think I was in any position at that time to join because I was a Management spokesman in those days. It never occurred to me that I should try to join. I did participate in some of their early meetings in Philadelphia, particularly meetings which considered drafts for the first Code of Ethics which I think Dave Cole and Nate Feinsinger had a large hand in drawing up. George had a few things to contribute to that effort. In those days there was the running controversy between Noble Braden of the Triple A and

George Taylor about the nature of grievance arbitration. Braden was insisting that it was strictly a judicial process and, of course, George was enunciating his theory that grievance arbitration was an extension of collective bargaining. I had an opportunity to review with George some of his major papers, particularly the one titled "Profile of a Grievance Arbitration[1]' which I guess he gave at an Academy meeting in Washington either in late '46 or '47. I talked with him about such things frequently and in depth. You see, I was right there in the Glass Industry where he had a vital interest and one of our problems was the malfunctioning of the grievance procedure in some glass plants. So we were working together fairly closely and I got a pretty good exposure to George's thinking and I must say I to this day regard him as a genius in many ways. He really was. And, in those days, although he didn't put it in the same form of words that I now use, he certainly was expressing a thought which was very important: an effective grievance procedure requires more than just an automatic application of written words. The procedure has to be viewed as a realistic, living tool for the parties to use in their day-to-day living under the agreement. George was a pioneer—a great pioneer.

HOW WAS THE GRIEVANCE PROCEDURE MALFUNCTIONING?

You mean in these two Glass Companies? Well, in some plants, I really shouldn't go into detail, but in some plants the grievance procedure was tremendously overloaded and the relationship was hostile, even bitterly hostile. I could tick off several plants, one of which is not more than fifty miles from here where that was true. In other plants, there might have been a situation in which there was too cozy a relationship between a Grievance Committeeman and one of the Superintendents in a department—that sort of thing. In still other plants relations were sound and harmonious, and markedly so.

ON WHAT WERE THE ISSUES THAT THE FIRST CODE OF ETHICS ADDRESSED?

Well frankly I am not enough of a scholar in that area to talk about it. If you were to pick up my little Santa Monica speech, you will see that the one thing that I focused on there was this controversy between Braden and Taylor as to what was the real nature of the arbitration process. And I pointed out that in the original Code of Ethics there was a rather pleasing expression that was embraced because its language was strictly on the ambiguous side and left room for both points of view. That was one basis on which the Code found acceptance. I may not be completely accurate on that but at least that is my impression. And I was sort of on the ground in 1947—not as intimately as many others—but still had some Ideas about what was going on then.

IN GENERAL, WHEN THE PROCESS THAT YOU WERE INTRODUCED TO WHEN YOU BEGAN FUNCTIONING AS AN ARBITRATOR, WAS IT AS FORMAL AS IT IS NOW, IF THAT'S THE WORD? WERE THERE BRIEFS, TRANSCRIPTS?

I frankly, again have to say that my experience is too limited to generalize. I think, if my memory serves me, we did not have posthearing briefs in very many, if any, of those AAA cases in the 40's. On the other hand, in recent years at the Postal Service, for example, there are posthearing briefs in every national level case but no prehearing briefs. On the subject of briefs, I have some feelings, which again I suppose are not truly applicable in all situations, but I think prehearing briefs can be useful. It also can be most helpful for the arbitrator to have an adequate grievance record before getting into the hearing. And these two things are commonly overlooked. People will come to a hearing and the poor arbitrator literally will have to start from scratch and will try to figure out what in the world the essential facts are and what the interpretive problem really is. And if the poor devil is taking notes, without a transcript, it's a little tough—I mean this is heavy duty. And, the way the lawyers and other people who are putting in these cases try to make up for what I think is sloppy procedure in this respect is to put in posthearing briefs. One of the problems with posthearing briefs is that sometimes the arguments don't meet because they aren't fully exposed at any earlier stage and some genius writing his brief, or hers, will come up with an argument or cite some so-called precedent that hadn't been mentioned before and, you know, it's just not terribly efficient. And I do think that posthearing briefs have a way of being extremely time-consuming. The lawyers often will scratch each other's backs by giving whoever wants the most amount of time his or her way, and then almost inevitably somebody's going to want to postpone the filing. And again, you know, there is a certain professional courtesy; you may not get briefs until six months after the hearing. By this time the hapless arbitrator has to start all over. So I'm opposed, frankly and with some exceptions, to the filing of posthearing briefs. I am in favor of filing adequate preliminary papers including, perhaps, prehearing briefs before the arbitrator ever gets to the hearing room. Now, I am speaking here only of cases where there may be a significant interpretive problem. In discipline cases, for example, you don't need much prehearing data. That's one of the virtues of Expedited (Arbitration} which emphasizes that there are some cases where you just don't a full-dress treatment—you don't need all those papers or elaborate, careful research.

WHEN YOU FIRST CAME INTO THE ACADEMY, WERE YOU HERE IN PITTSBURGH?

Yes.

DID YOU HAVE THE EXPERIENCE WITH THE STEEL INDUSTRY AT THAT TIME?

Yes. I got into the Academy about a year after I started here in 1951.

DO YOU HAVE ANY REFLECTIONS ABOUT YOUR FIRST MEETINGS IN THE ACADEMY?

I can remember, I think my first meeting was in New York and I remember at least two people there who spoke—Ralph Seward and Dave Cole. I'm not sure whether George Taylor spoke or not, I guess so.

WERE THE MEETINGS STRUCTURED AS THEY ARE TODAY: YOU'D HAVE PAPERS AND COMMENTS ON THEM?

I am not sure that there were formal papers but there must have been, I just really didn't know. I didn't pay that much attention to that detail.

WAS ATTENDANCE STRICTLY FOR ACADEMY MEMBERS? WAS IT OPEN TO THE PUBLIC?

Well, the only people I remember noticing were Academy members, but there may have been others, I really don't remember.

OTHER ARBITRATORS?

Yes.

DO YOU HAVE ANY REFLECTIONS ABOUT THE PEOPLE, DRAMATIS PERSONAE?

Well you see, what we are talking about here, Frank, are people who were all friends of mine, former associates. To me an Academy meeting was essentially a reunion. It essentially still is although there are so many other people there now. I always look forward to these meetings with a great deal of pleasure and sometimes I go to a session where there should be some really good presentations. I know Saul Wallen gave some excellent presentations in the past; Scotty Crawford did too, John Seybold, Archie Cox, Ralph Seward, Ben Aaron, Harry Piatt, and many others. Well, I don't have to mention them all. There were lot's of them.

THE ACADEMY MEETINGS, THE EXCHANGE THERE WAS, AS YOU SAY, WAS KIND OF A RETURN TO FRIENDSHIP AND MEETING OLD FRIENDS AND TRADING IDEAS AND WAR STORIES. DO YOU THINK THE ACADEMY HAS CHANGED?

Sure.

FOR THE BETTER?

I can't say for better for worse. Change is inevitable. After all, the whole arbitration process is so much more widely accepted today and the old war horses, people who worked together and almost grew up together in the War Labor Board are gradually getting phased out by the passage of time. They will never be replaced in the sense that we will never have another heart group or cadre just like them but who knows, you may have more talent overall just with perhaps a different kind of background. I would be the last person in the world to suggest that there has been any deterioration of quality of the Academy with the enlargement of its membership. It may be that there have been some fringe people creep in but that's true of every organization and I suspect it was true of the Academy in the beginning. You know, there inevitably were some people who were just not of the same caliber as the giants.

SYL, CAN WE TALK ABOUT YOUR INTRODUCTION TO THE STEEL INDUSTRY AND YOUR INTRODUCTION TO THE BOARD OF ARBITRATION THERE?

My introduction to the Steel Industry really goes back to about October or November of 1942 when I was sent by the National War Labor Board in Washington to Philadelphia in order to organize a Regional War Labor Board and the National Board selected an Advisory Council to work with me. On that Advisory Council was a District Director of the Steelworkers Union named Jim Thomas, from District 15, and I think there was at least one individual on there representing the Steel Industry. I don't know whether it was Earl Blank of J&L or not. I think it probably was. We rather quickly became aware that one of our principal concerns in our Region—Philadelphia, Region Three—was with the Steel Industry which was organized by a very powerful Union. The industry was vitally important to the war effort and had a large accumulation of inefficient practices in wage administration, particularly in respect to incentive pay and job classification. The result of that was that we began to be flooded by hundreds, ultimately thousands of so-called disputes which involved claims of wage rate inequities and things like that. The most acute problems were presented by Roebling Steel and Wire in Trenton, N.J. but similar—if less severe—problems existed in most of the other steel plants in the Region. The Steelworkers first responded to the general problem by requesting a meeting to which they brought about 22 of their District Directors seeking to persuade me to urge the National Board to establish a special Steel Industry Panel just to hear Steelworker cases. I recommend against that, however, and the Steelworkers began to pay more attention to our Board then, and to me in particular. They sent in a full-time representative, John Harrington, to sit as a Member of the Regional Board and then they added an Assistant, Steve Levitsky to work full time with Harrington. In the meantime, the Steel Industry also geared up by adding Warren Burchinal from National Tube as a member, and then Bill Trauernicht came in from U.S. Steel, while Earl Blank continued *on* the Board, from J&L. By this time it was rather apparent that our Regional Board was going to be of prime Interest to much of the Steel Industry. Well, as those problems of inequities in wage rates and incentives kept flooding in we decided we had to do something. So one day we called down the parties from Roebling to respond to a show-cause order, demanding to know from them why they shouldn't proceed jointly to develop a job classification program and stop filing those hundreds of dispute cases involving claimed Inequities. The District Director of District 7 of the Steelworkers, Mickey Harris, also was on our Board by this time. Mick came to the hearing and somebody from Roebling and we had a big whing-ding as a result of which we issued an order which put a freeze on the Union and the Company, stating that we would not process their inequity cases until they instituted a satisfactory job classification program. Well, that began to put pressure on people in the steel industry and a little later we had some of the major companies in to a hearing where we wanted to know why we shouldn't require them to arbitrate their grievances instead of bringing them in to the War Labor Board as disputes for the government to settle. I think we may have tried the show cause-procedure on some of the giants, such as U.S. Steel, but that's sort *of* blurred now in my memory. But we definitely were attracting their attention. At one time I remember I met with John Stephens who was Vice-President of U.S. Steel when

it appeared that some of the Industry Members of our Board were behaving in a counterproductive manner by voting to overrule the public members on stabilization questions. One result was that Stephens sent us a full-time representative who then became the watchdog on the Industry side as a counterpart to Steve Levitsky on the Labor side. In any event, I had ample exposure to the Steel Industry and got to know many of the Union and Industry representatives fairly well. Earl Moore who was Vice President of Carnegie-Illinois, as well as Warren Burchinal of National Tube and got to be good friends of mine. On the Union side John Harrington, Steve Levitsky, Freddy Skiles, and Mickey Harris also became good friends. Indeed, I got to know most of the U.S.W. District Directors. By the time World War II came to an end, I was fairly well know in the Steel Industry and to the Steelworkers—apparently not totally unfavorably. So, I was minding my own business in 1950, so to speak, out in California on the faculty of the Stanford Law School when one day I got a call asking if I could hear five cases for U.S. Steel and the Steelworkers on the West Coast because Harry Shulman, who was supposed to hear them, had fallen ill. Now this was at a time when U.S. Steel and the Steelworkers had gone for about 18 months without any Chairman for their Board. They simply couldn't agree on anybody so they used a number of Interim Chairmen and Harry Shulman was one. So they asked me to take these cases in Harry's place and I did. They were tough cases but I was able to issue the decisions in about three weeks. Then I heard nothing for about 3 or 4 months. By this time I was in Washington helping to set up the Wage Stabilization Board for the Korean War.

WHAT YEAR WAS THAT EXPERIENCE AT STANFORD?

November of '50.

THEN YOU WENT TO WASHINGTON?

Yes, and I was suffering down there with the Korean Wage Stabilization Board when I was asked to lunch by Arthur Goldberg and Wib Lohrenz who was then Assistant to John Stephens at U.S. Steel. After a month or so we worked out an arrangement under which I came to Pittsburgh for one year, on an experimental basis. So I took a year's leave of absence from Stanford. Before I came in they assured me there wouldn't be any serious incentive problems because they had set up a special Board to arbitrate their incentive issues and had received an Award on May 7, 1951 which they said would put this problem to rest. But after I'd been on the scene for about six weeks they actually did bring the incentive problem to me because they couldn't agree on how to apply the earlier Award. Each party was claiming that the other was in noncompliance. So that's how I got into the incentive business. In the meantime they had brought me the first big local working conditions case and it became obvious that nobody was going to straighten out their serious interpretive problems in less than five years. So, by December of 1951, when I was considering offers from various Law Schools, we worked out a deal

whereby I agreed to stay for at least five years. Then, after a few years of that we decided on an open-end contract under which I would continue indefinitely until somebody asked me to quit, and if they asked me to quit they would pay me two years' fee. We continued that way until about 1977, when I decided that I'd been on the job long enough and that it was time to pass on the burden to someone else. By this time we were deciding between 500 and 700 cases a year. We finally signed a termination agreement under which I retired as of the first of last year and now serve as a consultant for three years at the discretion of the new Chairman, who is Al Dybeck.

CNA YOU TALK ABOUT SOME MAJOR PROBLEMS WHEN YOU BEGAN? WAS IT THE BACKLOG?

It was many things; there was an immense backlog which had built up over several years. Nobody really could tell me how big it was. There nominally were about 400 cases pending on our docket when I got into Pittsburgh in 1951 but there were literally thousands of cases that had been processed through the Fourth Step and were languishing there by agreement and not yet appealed to arbitration. In any event, the parties agreed to use about fifteen Special Arbitrators to help solve this problem. I was at the same time trying to grapple with the sensitive local working conditions problem and the huge incentive earnings problem, both of which were monumental. I didn't really settle the biggest part of the local working conditions issues until early 1953 when I put out about 30 decisions in one clutch. We let the cases pile up after hearing so I could get an overview before issuing the key decisions. The problem of incentive administration was not straightened out fully until about i960 and required a whole series of decisions on a case-by-case basis. Then in 1962 the parties took the substance of several dozen of my incentive decisions and wrote it into their agreement. That's how we got much of what's in the present Basic Agreement governing how incentives should be administered. So when people talk about an arbitrator not adding to a contract, I have to laugh. I didn't alter their agreement, I didn't change anything in their agreement, but my numerous interpretations certainly added detailed meaning to ther agreement. And they knew it and wanted it that way, if we can judge retrospectively. I have a feeling that that word "add"—which is in the boiler-plate phrase which typically limits the jurisdiction of an arbitrator—is perhaps mischievous. At least it may carry a connotation which is less than helpful. Any meaningful interpretive process—judicial or otherwise—inevitably "adds" something to an agreement in the literal sense of that word.

WERE THE PROBLEMS WHEN YOU LEFT THE BOARD BASICALLY THE SAME, THOUGH?

No. The local working conditions problems were settled. Everybody knows where they stand in that area. And the tough incentive problems are settled. Everybody knows the ground rules there. New problems have surfaced. There recently was a major problem Involving testing in the selection process for Apprentice Training. I had

several cases on that subject and it apparently has at least been clarified. As I understand it, the Company now is not testing for entrance to Apprentice Training, at least temporarily, but does use periodic tests during training to see whether each individual is really meeting objective basic standards.

HOW ABOUT THE PARTIES' ATTITUDE TOWARD THE BOARD. DID YOU NOTICE A CHANGE IN THAT?

There was absolutely a revolutionary change. When I first came in I would have to say that the relationship was at arm's length. But today, I believe, both parties recognize that the Board is an integral and indispensable part of the administration of industrial relations at U.S. Steel. As far back as 1952 I requested and got a clearance system whereby every tentative draft on an interpretive problem was sent to the parties before decision so that we could fully discuss any problems that the opinion might engender unnecessarily. In my judgment this has been of almost inestimable value. First, it helps the arbitrator avoid serious error. Second, it permits the arbitrator to delete from the opinion matter which is offensive, misleading, potentially mischievous, or simply unnecessary. Third, it gives the potentially disappointed party an opportunity to absorb the decision, understand it, and talk about it frankly with the arbitrator. Sometimes people will read a decision initially and hobgoblins will arise in their mind—they may construe it to mean something that's not intended at all. By talking it out this can be made clear and sometimes the opinion can be reshaped in order to eliminate a potential misunderstanding. Finally, this procedure provides an opportunity, very frankly, for the parties to settle cases which, in light of what the arbitrator thinks, might be better settled than embodied in a written decision. There also are times when the parties agree on matters to be included in an Opinion so as to be helpful in dealing with future problems. Now one major exception to our clearance procedure was the discharge case. Even though it may be useful to discuss unique interpretive problems with the parties, before preparing an Opinion in a discharge case, you cannot circulate the actual findings for review because a possibility of collusion might exist or be thought to exist. Since the Union must provide fair representation for all of it's members, it doesn't make sense for the parties to preview findings in discharge cases, where there often are claims of discrimination because of race, creed, color, sex, or even Union politics. It's too risky to circulate tentative findings under such circumstances, too likely to be misunderstood, and potentially subject to abuse. With that kind of exception, the clearance system can be indispensable in developing sound opinions and in nurturing a better understanding by both parties of the role that the ai^bitrator legitimately may play in the development of their relationship. There is perhaps one reservation to this which may seem a little absurd. I have some feeling that when an arbitration system produces almost uniformly good results, in a major bargaining relationship, that there may arise a tendency to rely too heavily on arbitration, so that more cases go through the procedure than really is sound. In short, the parties may get flabby and lose their desire to try to reach an accommodation rather than to arbitrate. My own prejudice is that the parties are well advised to settle everything. I don't believe in grievance arbitration except as a last

resort. Frankly it has troubled me that there has been such a heavy volume of arbitration in recent years. This is a matter of judgment and I confess I don't feel in a position to be dogmatic. I'm only saying that I may be a little old-fashioned in this respect. I grew up in a school of thought which held that the less you had to arbitrate the better off you were.

YOU'VE HEARD PHRASES LIKE THE GOLDEN AGE OF ARBITRATION AND THEN ARGUMENTS THAT THE GOLDEN AGE IS PAST: CAN YOU LOOK INTO THE CRYSTAL BALL AND TALK ABOUT THE STATE OF ARBITRATION AND THE FUTURE OF ARBITRATION?

Well, I heard Dave Feller give his provocative paper saying that our golden age was past, and I've read some of the rejoinders. I guess Harry Edwards gave one. I honestly can't say whether there is substance to Dave's gloomy prediction. Arbitration is expanding today at an amazing rate and I can't believe that it's going to shrivel up and blow away. I have the feeling that it's here for as long as we continue to have a so-called free economy and a free society. It's an institution which—with all of its potential imperfections, particularly with the arbitrators' difficulty in dealing with matters of public law—nonetheless probably will survive in a reasonably healthy condition because it's a useful tool in a free society. But I wouldn't want to get involved In a learned discussion on this subject. I just don't feel qualified.

HOW ABOUT THE FUTURE OF EXPEDITED ARBITRATION?

I think that's here to stay too and I'm very much in favor of it. I think it's a very useful tool and if it's properly used it can relieve a lot of the pressure on established arbitration systems which should be dealing with significant interpretive problems. Believe me, there always are significant interpretive problems coming up. For every one you settle I think there's going to be one more that will arise as time goes by and people get more sophisticated in their aspirations and treat matters In greater detail, as well as getting into new areas, in their collective bargaining agreements.

HOW ABOUT INTEREST ARBITRATION?

That's a subject on which I am no great authority. I can say, however, that there has been a great deal more interest arbitration over the years, than people generally seem to realize—in the printing trades, newspaper publishing, the needle trades, and mass transit, for example. This has been going on for a long time. We speak of ENA in the Steel Industry, I guess, as being a major new development and It surely is. But whether that presages any expansion In this area, I just don't know. In the Steel Industry ENA has served an immensely useful purpose from the viewpoint of both parties up to the present time. I would have to believe that this could continue to be true over future years, but I'm in no position to really evaluate that realistically either from the point of view of Management or Labor.

WELL, YOU'VE HAD SOME EXPERIENCE IN THIS AREA—YOU'VE BEEN APPOINTED TO PRESIDENTIAL BOARDS.

I served on the Chicago and Northwestern so-called featherbedding case as Arbitrator directly appointed by President Kennedy when the Chicago-Northwestern was shut down for thirty days or more by a strike by the Organization of Railroad Telegraphers. George Leighty then was the President of that Union. I served as one of three arbitrators. Ben Heineman, President of the Chicago-Northwestern, was a member and so was Leighty. We had exactly seven days in which to decide that case, including the holding of the hearings. We did it in exactly seven days. But that's really the only time I have ever served as a direct Presidential appointee in arbitrating a major dispute.

BUT YOU HELPED IN ESTABLISHING THE GRIEVANCE PROCEDURE AND THE ARBITRATION PROCEDURE IN THE POSTAL SERVICE.

How in the world did you know that?

I'VE HEARD THAT.

Interesting. I didn't realize that had gotten around. Yes, I had something to do with the grievance procedure in the Postal Service Contract as It now stands. For several years up to 1977 their grievance procedure, first established in 1971, had been functioning very poorly and the total volume of cases appealed to arbitration was staggering—It was well into the thousands for the two major Unions. Everyone at the local level seemed anxious to buck each grievance up to the National level, in Washington, without any real effort to develop the facts or achieve settlement. As early as 1975 I urged the parties in Washington to do something about this problem. This was at a time when Bernie Cushman was spokesman for the four Postal Unions. But because of a series of unrelated developments, Bernie retired from that position and nothing was done. So early in 1977, I recommended to the parties, and they agreed, to establish a Joint Study Committee under my chairmanship to consider how to make the grievance procedure function more effectively. We met off and on over a period of about a year working from drafts which I wrote as a basis for discussion. In the end we had a draft which was generally acceptable to the four Unions and the Postal Service, with a few remaining problems. This, finally, was polished by two attorneys—one for the Postal Service and one representing the Unions. Later it was embodied in their National Agreements. So that's how the USPS parties got their present grievance procedure. I can't tell you how well it's working since I elected to retire from that relationship In order to smooth the way for adoption of the new procedure. The major thrust of the new procedure is to force people at the lower levels to develop all relevant facts—which they had studiously avoided under the old procedure. Cases would come to arbitration at the National level, under the old procedure, without a grievance record that was worth anything. Another key element in the new procedure is that all noninterpretive questions now must be arbitrated at the Regional level

instead of the National level. We also replaced the Impartial Chairman with a panel of three National Level Arbitrators. Even though I cannot say how effectively the new procedure is working, I'm confident that it is a good bit more sound than the old procedure. Of course, only the parties really can make it work and this will not be easy, to say the least. The fact is that the folks in the USPS inherited an immense burden of administrative bureaucracy and archaic procedures from the old Post Office Department. Moreover, there must be close to 700 thousand people in the Postal Worker bargaining units, working in more than 30 thousand postal installations throughout the United States. When you consider the immense difficulty of communicating effectively in that kind of a situation, it is literally a mind-boggling problem for Management. It also is significant that the Unions originally developed in the bureaucratic and governmental environment. They couldn't realistically, accomplish very much through the Post Office Department appeals procedure. Naturally, they developed along lines best suited to that kind of an environment, with a heavy emphasis on lobbying and legislative programs.

DO YOU SEE ANY ROLE, OR AN EXPANDING ROLE, FOR THE GOVERNMENT IN ARBITRATION?

I guess I don't. I really haven't thought much about it, but I don't. I hope the Government stays out of it, frankly. I really do.

HOW ABOUT THE CONCEPT OF HAVING AN ARMED ARBITRATOR-MEDIATOR. LIKE IN COAL, SOMEBODY COMES IN FOR A HEARING AND YOU LET THEM TRY MEDIATION?

Are you speaking now of interest arbitration?

YES, INTEREST ARBITRATION. THEY TRIED SOMETHING LIKE THAT IN RESOLVING A POSTAL DISPUTE TOO, DIDN'T THEY?

Well, you see that was set up against a background provided by the law and Jim Healy performed that function with great distinction in 1978. The Postal Reorganization Act contemplated arbitration in the event of failure to agree and a variation to this was conceived by Wayne Horvitz, the Director of FMCS. This combined a mediation role with the ultimate authority to arbitrate, and that's often a most useful technique. But you must remember that that was done where the governing law required arbitration as the last step. I don't think that the Mediation Service would seek to impose that type of procedure on anybody without statutory authority. The parties can develop such procedures on their own initiative, of course—or at the suggestion of a mediator. Something like that happened some years ago when United Airlines and the Airline Pilots established a study program with a sort of mediation-to-finality kind of last step to deal with a manning dispute on the Boeing 737. Charles Killingsworth, Art Ross and I were on that panel, as a matter of fact. We did not have enough evidence before us to dispose of the matter conclusively, however, and a year or so later they got another panel which did settle the manning problem on that particular aircraft.

LET'S GO BACK TO YOUR EXPERIENCE WITH THE NATIONAL ACADEMY. YOU ARE A PAST PRESIDENT OF THE NATIONAL ACADEMY. WERE THERE ANY OTHER OFFICES YOU HELD IN THE ACADEMY?

I really can't recall. I know I was Chairman for some years of what at the time was known as the Ethics Committee. I also was on the Board of Governors for several years before I became President. I don't think I ever served as a Vice-President. I did handle all of the arrangements for the NAA Annual Meeting here in Pittsburgh, I guess around 1962 along with Jake Blair as Co-Chairman of the Local Arrangements Committee. I really just can't tell you what other committees I may have been en at one time or another. If any.

DO YOU RECALL ANY EXPERIENCES WITH THE ETHICS COMMITTEE? WERE THERE MANY CASES? HARDLY ANY?

We had very few cases as a matter of fact—mostly trivial.

BUT YOU WERE, LATER ON, ON THE COMMITTEE TO STRUCTURE, RESTRUCTURE AND DRAFT THE CODE OF PROFESSIONAL RESPONSIBILITY. CAN YOU TALK ABOUT THAT? WHY WAS THERE A MOVE AWAY FROM A SUPPOSED CODE OF ETHICS?

I'm not really in as good a position to talk about that as some of the people who visualized that program in the first place. I guess Gerry Barrett may have been President of the Academy when this joint Committee was constituted, including AAA and FMCS representatives under the Chairmanship of Bill Simkin. But the emphasis in many professions in recent years has been in the direction of establishing Codes of Professional Responsibility rather than setting down rules for ethical conduct. A Code of Professional Responsibility, among other things, can provide an opportunity (which is embraced in our Code) to state some positive things rather than merely listing "shall not's." This kind of a document, when put in the hands of new arbitrators, can be very helpful. It also can be very helpful to some parties in providing a fairly sophisticated exposition of what arbitration really is all about. The new Code, I believe, treats some fairly practical problems that may arise in some detail. This goes somewhat beyond the scope of the original Code which perhaps became outmoded with the passage of time.

WERE THERE COMPLAINTS, THOUGH, OR PROBLEMS THAT LED TO THE DRAFTING OF THE NEW CODE?

Well, I can only say that there had been dissatisfaction with the earlier Code which started to surface as far back, I guess, as the early 60's and there were earlier efforts to deal with the problem. When Abe Stockman was Chairman of the Ethics Committee he was more or less a prime mover in trying to launch a program to revise the old Code. At one time we actually retained a distinguished professor from the Harvard Law School—Lon Fuller—as a consultant to meet with the Ethics Committee. I mention this only to indicate that the notion that a revision of the Code of Ethics would be appropriate developed over a period of years. It was only after the Academy had made a few unsuccessful efforts to do something that a joint Committee finally was established, with the two major appointive

agencies, and that finally did the job. As far as I'm concerned, I was very fortunate to be on that Committee because it was a marvelous experience working with such outstanding individuals.

SYL, YOU HAVE A GOOD TRACK RECORD IN THE INTRODUCTION AND THE TRAINING OF MINORITIES INTO THE FIELD OF ARBITRATION. COULD YOU TALK ABOUT THAT NOW—THE ROLE OF MINORITIES AND MAYBE WHAT THE ACADEMY HAS DONE AND SHOULD DO?

I find it hard to talk about what the Academy should do because I haven't given that any thought. Perhaps a few words about my own experience in this area would be in order. It may be, you see, that specific major Companies and major Unions are in a better position to do something effective in this area than the Academy. Obviously with the increasing recognition In recent years that as a nation we had a serious problem of discriminating against some groups of people, and were not utilizing all of our available human resources effectively, it has become apparent that major Companies and Unions bear an important social responsibility. Some years ago, for example, U.S. Steel and the Steelworkers recognized that there was a dearth of black arbitrators and we set out to recruit one as an Assistant to the Chairman at their Board of Arbitration. I spent a good bit of time interviewing prospects in Boston, Los Angeles, New York, Washington, D.C., and San Francisco. Ultimately we selected Ed McDaniel, who did a fine job with us until he left to become Impartial Chairman for one of the Can Companies and the USW.

As of this moment, the U.S. Steel-USW Board of Arbitration has one woman "full-time Assistant and uses 2 or 3 more as Special Arbitrators. They also have at least 4 or 5 black Special Arbitrators and are very close to hiring a new full-time black as an Assistant to the Chairman. At the Iron Ore Board, we have several blacks and several women among the 7 Special Arbitrators we use. There are no full-time Assistants at the Iron Ore Board.

One of the problems in developing black arbitrators, perhaps arises from the longstanding lack of full educational and economic opportunities over the years, so that there appear to be only relatively few blacks who combine both the educational background that is desirable and a real interest in becoming an arbitrator. In the U.S. Steel/USW relationship, for example, it generally was believed desirable that an Assistant on the Board should be an attorney. This was true even though we also used a fair number of economists and other non-lawyers as Special Arbitrators for the Board. Since Ralph Seward became the second Chairman of the Board in 19^7, as far as I can recall, everyone who has served as Chairman, Associate Chairman, or as an Assistant to the Chairman had been trained as an attorney. If you have that kind of a basic requirement, you thereby limit the number of people you can consider seriously as an addition to the Board staff. A talented individual who happens to be black and trained as an attorney obviously Is in great demand today and this situation is likely to continue for at least a few more years. The result is that in seeking to recruit a talented black attorney for

full-time work in arbitration you're in competition with an awful lot of others who may have more money to offer and fancier titles to boot. I quickly became aware of this hard reality because some talented individuals I interviewed already were making considerably more money than we could afford to pay. We were very fortunate at the U.S. Steel Board, initially, in finding three talented individuals with basic qualifications and finally selected Ed McDaniel. Ed had a genuine desire to become an arbitrator from the beginning and turned out to be extremely capable. As you know he has a radiant personality and today is very much in demand as an arbitrator.

ONE OF THE CONCEPTS THAT HAD YOUR PARTICIPATION, WHICH I DON'T FULLY UNDERSTAND AND HOPE YOU WILL EXPLAIN, IS THE ENA—EXPERIMENTAL NEGOTIATING AGREEMENT. IS IT APPROPRIATE TO TALK ABOUT THAT?

I think there is very little I can say about that just now. Indeed, there is some possibility I may be involved within ten days in hearing some ENA issues as to what properly constitutes a local issue for purposes of the ENA Agreement. I think the basic ENA concept is magnificent. It shows a degree of sophistication and realistic appreciation of practical problems by both parties which is, to say the least, encouraging. But, beyond that, I guess there's nothing I want to say at this time.

CAN YOU TALK ABOUT YOUR EXPERIENCES IN THE IRON ORE INDUSTRY BOARD?

My experience with the Iron Ore Industry Board of Arbitration is relatively brief. The Iron Ore Board didn't come into existence until August 1, 1978. It had become desirable in the parties' minds to establish a Board which would have industry-wide jurisdiction because I assume—nobody's ever told me this—they were getting somewhat conflicting approaches from ad hoc arbitrators and various inefficiencies arising from the need to select arbitrators for individual groups of cases. There apparently was not enough expertise being built up among the various arbitrators. In any event, the parties approached me early in 1978 to see if I might serve as 101 Board Chairman while I was still Chairman of the U.S. Steel Board. In order to help get the new Board off the ground, I agreed to serve as Chairman for five months with the understanding that Al Dybeck, who was scheduled to succeed me as the U.S. Steel Board Chairman on January 1, 1979, also would take over the 101 Board. So the 101 Board was organized on that basis. But by early 1979, it had become clear that the volume of work was much greater than had been anticipated, and far exceeded what one could fairly expect Al Dybeck to handle in addition to chairing the U.S. Steel Board. Moreover, by this time the parties were anticipating that a number of serious incentive issues would have to be arbitrated late in 1979 and into the 1980's so they inquired if I might be interested in resuming my service as Chairman. We finally worked it out so that I became Chairman again in August, 1979- It's been a very interesting experience. This Is the first time I've ever served as Chairman of an Arbitration Board, or an arbitration system, in which a number of totally independent companies were involved. All of the Iron Ore Companies have capable and independent Managements, unlike companies

one might encounter in group bargaining in the Trucking Industry, the Needle Trades, or Service industries, where you may have many small employers. The Iron Ore Companies have the facilities, the personnel, and the background of experience which makes them quite independent of each other in respect to arbitration. Thus in a sense I am dealing with eight independent Companies. That makes the operation quite a challenge and I am learning more about that as I go along. We are in a rather difficult period now because of the Steel Industry negotiations, and particularly local issue negotiations. Once new agreements have been reached I hope that we all may get together, if the parties so agree, in order to take a hard look at some of the bread and butter problems which have emerged and to decide if some adjustment in our procedures may be in order.

ARE THE ISSUES VERY SIMILAR TO THE ISSUES YOU EXPERIENCED IN THE STEEL INDUSTRY?

No. This is a substantially different kind of a ball game. You still have seniority problems but the contract language is somewhat different. There are many local agreements unique to the Iron Ore Industry. While there are incentive problems, as in Basic Steel, we're writing on a clean slate. Incentives are totally new in the Iron Ore Industry and were established only recently. Both the contract language governing incentives and the operations are quite different from those in Basic Steel. So that although there are some areas of substantial similarity there also are large areas of dis-similarity. Again, with eight Companies rather than a single Management, there is a new dimension which presents special problems. It's very interesting and rewarding, since I've reached a stage where I enjoy doing things that are new. I suspect that many Arbitrators of my generation may have gotten rather tired of handling routine cases and are eager for situations that are interesting, challenging, and different. That certainly is one of the attractive features about Iron Ore Arbitration.

SYL, WHEN YOU LOOK BACK OVER THIRTY YEARS OF EXPERIENCE, DID YOU MAKE THE RIGHT MOVE WHEN YOU LEFT TEACHING AT STANFORD AND CAME INTO FULL-TIME ARBITRATION?

That's a great question. You know, I had some difficulty making that decision initially in early 1952. I consulted two people whose judgment I greatly respected. One was George Taylor and he said in effect "For God's sake, Syl, don't take it." George believed I should keep a base In the academic world. He felt you never should permit yourself to be in a position where you are at the mercy of anybody. If you had an academic base, the world was your oyster. And, believe me, I was shaken when George told me that. So then I went to talk to Leland Hazard, who was Vice President and General Counsel of Pittsburgh Plate Glass—a man with an absolutely first-class brain, really a fine lawyer, and very much in tune with what was happening in Pittsburgh as well as being an influential citizen here. I had worked fairly closely with him in 19^6 through 19^9 in the Flat Glass Industry. When I put the matter to Leland, he said in effect "Well, Syl, that's an easy decision. You really must take it." He added,

"If you don't take this opportunity you'll kick yourself for the rest of your life." So, I finally came up with a half-baked compromise. I did, indeed, resign from the Stanford Law Faculty but also signed on to teach a course at the Pitt Law School. I taught there until 195^ when I had a major medical problem and realized that I didn't want to over extend myself. So I dropped out of teaching entirely except for serving as a sort of a Visiting Lecturer at the Carnegie-Mellon Graduate School of Industrial Administration in the late 50's or early 60's. I really have no regrets about leaving the academic world. There is no question that I made the right decision.

DO YOU HAVE ANY ADVICE TO PASS ON TO THE FUTURE GENERATIONS OF ARBITRATORS?

My only word of advice, I guess, hearkens back to my earlier remarks about the objective approach to contract interpretation. I think every arbitrator should make a serious effort to try to understand the particular bargaining relationship; the context, in other words, of the parties' negotiations. So often in ad hoc arbitration, you will find attorneys—particularly those who don't have much familiarity with collective bargaining—focusing only on the words as if arbitration were an exercise in semantics. As I said earlier, words have meaning, generally, only in the context in which they are used. The context can give opposite meanings to the same set of words. So that an arbitrator should constantly be aware of the fact that grievance arbitration is an integral part of the collective bargaining process, that each interpretation should be a realistic one. In order to know whether something is realistic or not sometimes you need to know a good deal, about the background of the given problem. You may need to explore what happened in negotiations, much as I hate getting into testimony about negotiations--you usually get so much self-serving, retrospective stuff that it's pretty hard to sift our what's useful. But, even when the parties' witnesses are trying to impress you with their colored recollections of past events, you may find that certain basic facts emerge as undisputed and so you do get a context, finally, even out of that kind of evidence. But, I suppose, this is perhaps the most difficult aspect of becoming really a top-flight arbitrator for purposes of interpreting agreements. You've got to have an appreciation of the medium in which you're operating. That's why its so difficult for new arbitrators in the first few years or so to produce results that don't aggravate one or the other of the parties seriously.

ARE YOU SUGGESTING THAT LAW IS THE BEST THRESHOLD INTO THE FIELD OF ARBITRATION?

Well, I think as arbitration is practiced today, a knowledge of the law is very useful; it is by no means indispensable. There always have been outstanding arbitrators who were not lawyers and there have been outstanding practitioners representing the parties who were not lawyers. But I think, ultimately, because there are so many lawyers in the operation that the non-lawyer necessarily becomes familiar with legal jargon, concepts and procedures, and to

understand what leading questions are and secondary evidence and all that kind of thing. When I run a hearing, it is hardly anything like a judicial hearing. I usually advise the parties at the outset, if they don't know me, that I do not sustain objections based on hearsay, leading questions, secondary evidence, or what have you, but that I want everybody to understand that—even though I don't sustain such objections—1 nonetheless do pay close attention to the quality of the evidence when I get around to deciding what the real facts probably are. I always specifically say that if you have evidence that's in the form of somebody's letter or affidavit or hearsay, or you develop evidence on critical points by leading questions, you should know that if the other side presents a live witness with first-hand knowledge with a different version, subject to cross-examination, that's generally the better evidence. Unless that witness's testimony is rendered incredible under cross-examination, or by other direct evidence, I'm going to take it as essentially correct. Now, another point which I make is that while an objection on the ground of irrelevancy might be sustained, it often is impossible to know if something is relevant unless you hear it first. So even irrelevant material may be presented, even though the arbitrator will give it no weight in the last analysis.

DO YOU THINK THAT CERTIFICATION WOULD HELP THE QUALITY OF ARBITRATION?

I don't know what that would accomplish, I really don't. First, who in the world would do the certifying?

I DON'T KNOW THAT BUT THERE ARE A COUPLE OF PEOPLE OUT THERE VYING FOR THE JOB.

That's one thing that bothers me about this idea. I'm not sure that I know just what the objectives are to be served by certification. Could you tell me?

WELL, SOME PEOPLE THINK THAT THEY'RE GOING TO ESTABLISH STANDARDS BY WHICH ARBITRATORS WILL HAVE TO ABIDE.

But then, I ask the question—whose standards? That's a troublesome question to me. I surely don't want the Government to be trying to certify arbitrators.

HOW ABOUT ARBITRATORS CERTIFYING ONE ANOTHER?

I think that's a very risky business. It just doesn't strike me as being sound. I've never been really interested in the notion of certification and therefore, perhaps I'm not in the position to express an opinion. I really don't understand what the advocates are driving at.

AGAIN, LET'S TALK ABOUT THE QUALITY OF ARBITRATION. FIRST OF ALL, DO YOU SEE A DIFFERENCE BETWEEN AN AD HOC ARBITRATOR AND A PERMANENT UMPIRESHIP?

Well, of course there is a difference but I'm not sure the difference relates to the quality of the arbitrator. You know, the whole medium is different. The parties' needs are different, their aspirations are different, it's a different kind of an operation. But there are many really outstanding arbitrators who do nothing but ad hoc work, or substantially nothing else, and I would not suggest that any Umpire or so-called Permanent Arbitrator is necessarily superior to an Ad Hoc Arbitrator—no way at all.

IS THERE ANY WAY OF COMPARING: ARE UMPIRESHIPS IN DECLINE?

I don't know.

WHEN YOU LOOK BACK, AGAIN NOW, WE'RE TALKING ABOUT TWO OR THREE DECADES, IS THERE ANYTHING, ANY CASE, THAT STANDS OUT IN YOUR MIND?

Well, there are many. You know, I've had some fantastic experiences.

YOU MENTIONED CASES G-60 AND -6l?

Well, you see Case N-159—the first contracting out case—was a big case way back in late 1951. That was followed by major decisions on local working conditions in Cases N-146 and CI-257. Then there were some massive incentive problems, dealt with in Cases A-372 and USC-316. All of those major cases were decided in the early 1950's.

WHAT WAS THE MOST DIFFICULT CASE YOU EVER HAD?

Difficult in what sense? You know, the Chicago-Northwestern Case—the so-called featherbedding case—was a fantastic experience. I started work on it on a Monday and had five days of hearings. The following Monday the decision was to issue. That was a fantastic physical chore. It wasn't until 4:00 a.m. on the Monday morning of the day the decision was to issue that I finally woke up from a few hours of troubled sleep and knew I had the answer to the last remaining critical problem. So I went to the desk in my parlor, got a yellow pad, and wrote out the critical language. When I met the two partisan members of that Board at 8 a.m., Ben Heineman and George Leighty, they agreed that we finally had a complete decision—even though Leighty finally felt that he had to dissent to one portion of the Award. That perhaps was the most difficult case that I ever had in terms of the pressures involved. As you know, I was appointed as the Impartial arbitrator there by President Kennedy, after about a month long strike had crippled rail transportation in much of the mid-west. The most difficult cases I had in U.S. Steel, of course, involved incentives and local working condition cases. In 1959 there was a tremendously important sequel to earlier local working conditions decisions. This was in Cases USC-846 et cetera. There were four cases which required a decision as to the status of local working conditions which had arisen after April 22, 1947 in U.S. Steel plants. That issue was at the heart of the 1959 Steel strike. Most people

didn't know that before tne strike began, I had given the parties a tentative draft opinion for discussion before issuance of a final decision. That was in June of 1959- A few weeks later the strike took place because many of the Companies were anxious to change the local working conditions provisions in the Basic Steel agreements. Indeed, it is fair to say that my interpretation of these provisions, embodied in that draft, underlay the industry's concern. My decision actually was issued, at the request of both parties, in September of 1959 while the strike was still on. About two or three weeks thereafter some of the more diligent Labor Reporters, such as Abe Raskin finally discovered that tnis was a key issue in the strike. That strike wasn't settled until early I960, although I guess the employees went back to work in November as the result of an injunction. But that case was a real blockbuster. As a result of the I960 settlement, the parties set up a Study Committee to review all of the earlier Section 2-B local working conditions decisions. One result was that about a year and a half later, during a hearing on still another local working conditions case, Vince Matera, the principal U.S. Steel Attorney said, in effect, that as a result of the study he had concluded that I had dealt with the local working conditions Issues in about as sound and practical a manner as was possible under the language in the Agreement. Of course, this was after Vince had cited a number of my earlier local working conditions cases which he argued, successfully, showed that the grievance then before me should be denied. In any event, that seemed to be the end of the serious problems in the area of local working conditions—at least as far as U.S. Steel was concerned.

If you really want to talk about problems, Case USC-316, my original major equitable incentive compensation case was a beaut. I suppose I could talk endlessly about that one and I won't. I will only say that I decided there to deal with incentive compensation issues on a "case-by-case" basis without embracing any theory for determining what an incentive should yield. Of course, I never told the parties what principles I was applying. Whenever I found that an incentive yield was too low I would just say that the incentive failed to produce equitable incentive compensation by X percent, and that the standards should be adjusted accordingly, and retroactively. After that decision in USC-316 and a flock of others that followed, I discovered years later that the parties had assiduously analyzed all of my "case-by-case" decisions to figure out what percentage above base was an appropriate yield on certain types of incentives where the employees really were putting out a decent incentive effort. This must have been an interesting exercise. To this day there Is no specific percentage figure in the U.S. Steel Agreement in respect to incentive earnings targets—although in the 1969 Incentive Arbitration Award, Bill Simkin, Ralph Seward and I did develop some specific percentage earnings targets for various types of incentives which were to apply to incentives installed pursuant to the Award. Now that 1969 Incentive Arbitration Case was certainly one that was fascinating, but perhaps the best person to tell you about that would be Bill Simkin who was Chairman of that Panel. Ralph and I were the other Panel members. That case was particularly important because it gave people in the Steel Industry and in the Steelworkers some

assurance that if they ever had to arbitrate the terms of a new agreement they might not be too badly shafted by the arbitrators. Thus this case helped to make it possible for them to proceed, ultimately, to develop the ENA Agreement.

WHAT WAS THE MOST UNUSUAL CASE?

That's hard to say. In some ways the United Airlines manning dispute was but I—Wow! Wait a minute now, wait a minute. Oh no; I've forgotten all about the Postal Service. The LCRES Case in the Postal Service probably was one of the strangest exercises I was ever involved in in arbitration. I will not attempt to elaborate on that bare statement and would only suggest to anybody who's interested that they might read the two Opinions in that case published in BNA's Labor Arbitration Reports. LCRES stands for Letter Carrier Route Evaluation System.

WHAT YEAR WAS THAT?

Those two decisions must have gone out in July and August of 1976.

WHAT WAS THE BRIEFEST CASE, BRIEFEST DECISION HERE IN TOWN?

I honestly can't answer that, Frank.

HOW ABOUT THE LONGEST ONE?

The LCRES Case was undoubtedly the longest hearing although the big incentive Case—USC-316—required 6 or 7 separate Opinions and Awards over 3 or 4 years. The LCRES hearing had run over, I guess, nine months--off and on, of course--and it seemed as if it would go on for the indefinite future. So I finally decided that there had to be some end to larding the record with repetitive material, and testimony which was of only remote significance at best. I guess that case provides a good illustration of overkill in a presentation, perhaps because or uncertainty as to the arbitrator's approach, and the unfamiliarity of the lawyers with the terrain in which they were operating. Anyhow I went to the NALC President, Jim Rademacher and to Jim Conway who then was Senior Assistant Postmaster General, and got them to agree that we 'could conclude the hearings shortly if I wrote them a letter setting forth a procedural basis on which I would proceed to decide the case within a few weeks. So we promptly concluded the hearings. I then got their briefs and I gave them a decision. That was one of those cases where there was plenty of evidence potentially available to both parties but the real question was how much they really needed. Well, I've had some cases where the hearing can be finished in fifteen minutes if the parties have done their work properly in the grievance procedure. Indeed, I can remember arbitrating for Goodyear Aircraft and the UAW back in 1956 and '57 when I would go over to Akron, and hear five or six cases in one day and dictate the decisions that night. There was no transcripts but each party presented a detailed written statement

the beginning of the hearing. I'm not sure I could have stood that kind of pace for very long but that was back in 1957 when the backlog at the U.S. Steel Board of Arbitration, believe it or not, had been reduced to a total of 44 cases. That was for all of U.S. Steel—44 cases in all stages of processing on April 1, 1957. This may have been the high water mark in my career with the U.S. Steel Board of arbitration. We were not only current but I was looking for other work to do.

WHAT HAPPENED TO THAT?

What happened to that is a good question. I think one thing that happened was that Landrum-Griffin came along, then the dues protest battle erupted in the Union, the duty of fair representation became a matter of serious concern, and Management became considerably more cost conscious and vigorous in combatting seeming inefficiencies. Anyhow, the backlog literally burgeoned starting in late 1957.

DO YOU HAVE OTHER CASES, AD HOC, ASIDE FROM BEING CHAIRMAN NOW OF THIS BOARD?

Ostensibly, I have a retainer to arbitrate employment security problems in the Basic Steel Industry. I've had that retainer for a year and a half but only a couple of cases have been brought to me. One turned out to be outside my jurisdiction. The other was settled without hearing.

I don't have any other retainers now, outside of the 101 Board, except that I will continue with U.S. Steel and the Steelworkers as a consultant to their Board for a few more years. My other arbitration relationships at the moment include Greyhound and the Amalgamated Transit Union: I've been on their Panel since 1952, I guess, and get a case from them maybe once or twice a year. I enjoy working with them. It's funny how you get to like people, you know, you feel at one with them and I have that feeling about Greyhound and the Amalgamated Transit Union. Also, I've been arbitrating off and on with Continental Airlines for some years now. I went out there originally in the late 60's or early 70's I guess, and served as Chairman of the CAL System Board with ALPA. When I became Impartial Chairman of the Postal Service around late 1973 I had to resign from that. Subsequently I had the privilege of sitting in on their negotiations early in 1979—that is the Pilots and Continental--when they developed their current Agreement. That was fascinating. Contrary to my original expectation, I was not totally a supernumerary and may have made a few modest contributions toward the end. I also have handled major Flight Attendant cases at Continental in recent years, some involving very difficult interpretive Issues.

I THINK WE'VE HAD IT, UNLESS THERE'S SOMETHING YOU WANT TO ADD.

No indeed.

JUST ON THE RECORD, I WANT TO THANK YOU VERY MUCH FOR YOUR TIME AND THE FORTHRIGKTNESS BY WHICH YOU ADDRESSED ALL THE TOPICS.

It was a pleasure.