

National Academy of Arbitrators
HISTORY COMMITTEE INTERVIEW

Lewis M. Gill

NAA President, 1971

Interviewed by Jim McDonnell

August 29, 1990

LEWIS M. GILL

PRESIDENT OF THE NATIONAL ACADEMY OF ARBITRATORS

1971 to 1972

INTERVIEWED BY DR. JIM MCDONALD

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Dr. Jim McDonald:

My name is Dr. Jim McDonald and I am interviewing Mr. Lewis Gill who was president of the Academy in 1971. This project is sponsored by the Academy History Committee in order to preserve the account of activities and the background of Academy Presidents.

I am first interested in your personal background. So, would you be good enough to tell me something about your birth place and where you were raised and take me up through a chronology of your younger years please?

All right. I'll try to make it brief. I was born in Grand Rapids, Michigan in 1912. I went through the public schools system in Ann Arbor, Michigan, fully intending to go to the University of Michigan. In my senior year in high school my father was transferred to Philadelphia and I went along, kicking and screaming, and attended, much to my later delight, attended Swarthmore College. Finished there in 1933. Syl Garrett was a classmate of mine. A lot of others, who became

arbitrators, were also there, Jim Hill and Frank Pierson, Clark -earr and quite a few others. Rolf Valtin came along later at Swarthmore. Sold magazines during the summer, three summers, with Syl Garrett during college. Learned more there than I did in college and law school combined. Finished at Penn Law School in 1936. Spent one year at the SEC, Securities and Exchange Commission, as a lawyer. Didn't like it. Transferred to the NLRV^S in the fall of '37. Stayed there as a lawyer on the staff until June of M1, when my boss at the NLRV^{IS} told me, one day, knowing that I was anxious to get out in the field and do some flesh and blood work instead of writing briefs, told me that his friend, Ralph Seward from New York, had just told him that the newly formed National Defense Mediation Board had just gotten authorization from some emergency fund of the president to employ six staff mediators. By two o'clock that afternoon, I was over being interviewed by Ralph Seward and was the second one hired by the War Labor Board, of those six, which was a major break, obviously. I was with the National Board in organizing stages became the War Labor Board in January of '42. I set up Regional War Labor Boards, little counterparts of the National Board in various regions around the country. In the fall of M2 I was the chairman of the Cleveland Regional Board. Ted Kehoe was the chairman of the New York Board. Syl Garrett was the

chairman of the Philadelphia Board, and so forth. I was out in Cleveland during the organizational stages of the Regional War Labor Board in February of '44. After about a year and a half in Cleveland, I went back to Washington as one of the alternate public members of the National Board. After about a year, they were converted to full fledged or varsity public members. I was there until the end of the war. The Board dissolved itself at the end of 1945. From 1946 until 1967, I was in Philadelphia as the negotiator for association for the major department stores in Philadelphia. After just starting there in '46, I began arbitrating on the, as a sideline. In 1950 the sideline began growing after a rather slow start for two or three years. By 1954 I had applied for membership into the Academy and was accepted. In those days they didn't have the strict rules against advocates being members of the Academy if they were active arbitrators. That came later. And the sideline gradually grew for some fifteen, eighteen years or so. And finally, in 1967 it came to the attention of the department stores that I was spending about ninety percent of my time arbitrating and so I made the plunge and went into full time arbitration and moved my office to my home in the beginning of 1968 and have been at it ever since. I think I better pause for rest there and let you ask me another question.

) Fine. That's a very helpful background. In this process of becoming an arbitrator, so many of us use a mentor or a teacher. Did you go through any of that experience or did your War Labor Board backgrounds fill those needs for you?

No I didn't go through any apprenticeship, I guess you could call it. And that was the reason. That the War Labor Board people and especially those of us who had been chairman of regional boards, had a great deal of experience in conducting hearings and making decisions. And in effect, we had that crash course, in what amounted to be, compulsory arbitration, during the war.

) Tell me the progress of your, and I don't mean to probe into anything that might be too confidential, but, arbitrators all go through this slow start and then it accelerates for many of us. Would you give me a sense of the numbers of cases that, as it grew from the fifties into the sixties and seventies?

Yeah, it happens that I'm statistically minded as far as keeping records of things. I can be fairly precise about that. I don't have any notes with me, but I think the very first year I got four cases. The second year I got something like eight or nine cases. The third year about twelve. And the fourth year, I think, about the fourth year I got up to fifteen or twenty. It moved a little

slower than in numbers in those days because there wasn't as much of it around, of course, there weren't as many arbitrators around either. I would say it was five years before I really began to feel that it was possibly a career for me. I think the first major break came when I was picked as the permanent arbitrator for Mac Trucks. It was 1963, '62. I had that for twelve years and then I did a lot of work as an arbitrator working under Ralph Seward at Bethlehem Steel. From there on, it went on to all sorts of other things.

That was the next question I was going to ask. You've maybe given me a good lead into it. What was the distribution, the nature of the companies and the unions that you dealt with? Did you concentrate? Were you a specialist?

Well, I didn't intentionally concentrate. Although for the first few years, since I was still doing negotiating for the department stores, I did not make myself available for any cases in retailing or dealing with the same unions, such as, the restaurant unions or the clothing unions where the department stores had contracts with them. But apart from that, the great bulk of my cases were in manufacturing and in particular auto workers, primarily Mac Truck, which other auto workers cases flowed from that, and steel, especially steel.

Bethlehem Steel being a major part of it," working with Ralph Seward, And I also did a lot of work in ship building for Bethlehem Ship Building, which sprang from the work at Bethlehem Steel. Just recently, I was looking at some old records and I think in those days, back in the sixties, about seventy percent of my cases were in manufacturing and were with three particular unions, the steel workers, the auto workers and the machinists, which spanned the largest unions in manufacturing. Some were the IUE, IBEW and so on. More recently, I'd say manufacturing accounts for perhaps twenty percent of my cases, due in large part to the tremendous growth of the public sector arbitration. Pennsylvania is a fertile place for that because the city of Philadelphia and the state have, are rather fully organized, with AFSME and other unions. And as everybody knows, the manufacturing has been declining where as the white collar or service industries have been growing and arbitration has followed course.

Along that same kind of line, did you have a geographical concentration? Are you an east coast arbitrator? Have you centered most of your work in this Philadelphia area or were you able to move around in the country?

Well in recent years, I've been deliberately restricting

myself to the general Philadelphia area and nearby communities. I did do some national work. I was with some of the airlines, United Airlines, some of their panels and went to various places around the country for that. I was on the panel for a number of years for Greyhound Lines. I did a fair amount of traveling for the Bell Companies, Southern Bell and Southwestern Bell, New England Bell and so on. But, I would say I've been more of a regional arbitrator than a national one. I was on four of the emergency boards, the Presidential Emergency Boards. Two of them were in the railroads. One in 1964, that was chaired by Richardson Dillworth, the ex-mayor of Philadelphia. The later one I was the chairman. That was in 1970. Rolf Valtin, Jake Seidenberg, Bill Coburn and Bob Boyd were my colleagues on that one. The other two, one was the Boeing Aircraft panel. Saul Wallen was the chairman. Pat Fisher and I were the other two members. The other one was in the airlines, a number of airlines and the machinists union. Ronnie Houten was the chairman and Jack McConnel of Dartmouth and myself were the other two members of that. So I guess that's, well one other major thing I should mention, that is, interest arbitrations. I've done about six or seven airline merger cases which are very large indeed in operations. One in particular, was double the size of the next largest arbitration I ever was involved

in, in terms of time. That was the merger of Pan Am and The National Airlines. Merging the pilots and flight engineers seniority lists had strung over about six months, and about three or four others like that with lesser airlines. And interest arbitrations in the local transit industry. I was on the panel of SEPTA, here in Philadelphia in 1971 with Eli Rock and Wayne Howard. We arbitrated the terms of the contract for the Amalgamated Transit Union in Cincinnati, Indianapolis, Memphis, Wilmington, New England. I've been on a couple of interest arbitrations in more recent years, along with Syl Garrett in New York City, the schools and the police and the firemen, fire fighters of New York City. So those are ...

Let me ask you about the ...

Things other than regular grievance arbitrations.

Yes, let me ask you about, you've mentioned these special panels, what was your experience with what we would call the more traditional national panels, with Federal Mediation, American Arbitration Association?

Well, I've always gotten a substantial part of my work from the Triple A, still do and, in particular, the

Philadelphia office. Especially in recent years, by far the major part has come from the Philadelphia Triple A. I have had cases over the years with other Triple A offices, but not very many. Part of that is a disinclination to do a lot of traveling. I've been on the Federal Mediation Panel all through these years but have not had a very significant number of cases there because they do not encourage arbitrators to restrict their availability. I've always taken the position that except for unusual cases I would prefer to stay within the general Philadelphia area, which has reduced the number of Federal Mediation Cases a great deal.

I'd like to move you now to a discussion of your Academy membership. You mentioned earlier in you conversation that you, at some point in the fifties, as I recall, made application. How did that come about? What moved you to know about, find out about and finally make application to the Academy?

Well I knew about it because a lot of my buddies from the War Labor Board were very active indeed in forming it. Bill Simpkin was the one who actually lit the fire under me, I guess, asking me in 1954. I'd began to arbitrate a fair amount around Philadelphia then and he suggested that I apply for membership, which I did. I had been, earlier that same year, I'd been down to Washington on

something else and I dropped in on a meeting of the Academy, which was going on in Washington, the annual meeting. It was a very joyous occasion, like old home week. All my old buddies, many of whom I hadn't seen since the War Labor Board disbanded in 1945, that had a major effect. I thought, this is something I've got to get in on.

When you became a member, and we know that you're here because you elevated yourself to finally be the president. Tell me about the level and the kind of activity you participated in, in the Academy, from the time you became a member until you became its president.

Well, shortly after joining, let's see, I joined in late '54, the first annual meeting I went to was in '55 in Boston. In '57 the Academy was meeting in Philadelphia and following the usual policy of sticking the junior member in the area, at least when you've had any clerical facilities available, sticking him with the job of being the arrangements chairmcin. I was the arrangements chairman for that '57 annual meeting in Philadelphia. Oh, I was on the program in minor capacities as the ???? in St. Louis in '58. The first major event came about through a strange set of circumstances. My wife and I had taken a trip to Hawaii in 1961, one of the last trips, I guess, of the Madison Steamship Lines. In the

library on the ship there was a copy of a book I'd never heard of, by Steven Potter, on gamesmanship. I was absolutely fascinated with the concept and his treatment of it. So in the following January, the board met in Pittsburgh, for their annual meeting and I had volunteered to make a speech, which I did, on the subject of gamesmanship in arbitration. Thrusting aside my usual modesty, I must say it was rather well received, partly because they had an open bar before the lunch when it was delivered, and there was a certain amount of pandemonium at the end of the talk, which is recorded in the volume for that year. At the end of the talk, Jim Hill, who was presiding, announced that he thought Lew Gill now had a great future behind him as an arbitrator, after that speech. It was somewhat of the same line that I'd probably committed hari cari in front of the audience but it worked out pretty well. Oh, let's see. That was in 1962. I was on the Membership Committee for a couple of years. I wasn't chairman of it but I was on the committee when Rolf Valtin was chairman of it. We used to meet in my offices in Philadelphia. I was a program chairman for the 1965 Annual Meeting in Washington. In 1969, I was, the Nominating Committee nominated me for president in the fall of '69. I took office in January of '71 and bowed out in the presidential address in Boston in the spring of '72. Since then, I've made a

couple speeches. I introduced Jerry Barrett for his presidential address in Atlanta and I had introduced Jim Hill for his presidential address in Montreal and more recently introduced Bill Fallon for his presidential address in Philadelphia. All those introductions amounted to kindly hatchet jobs on the ones who were about to speak. Some of them have never forgiven me. And I think that about does it. Oh, there is one other, in 1979, I made, what I'm sure will be my last speech of the Academy, such as it was it was on the subject of the coming golden years of the aging arbitrators and various ploys that the older arbitrators could use to escape from difficult situations, relying on their age and possible infirmities as a way of getting out of awkward situations. I had a lot of fun with that.

Good. I'm going to make a personal comment here and that there's a, two things, as you've talked I certainly am not going to accuse you of being a name dropper but in the last forty five years plus, you've named some of the leading lights in the arbitration movement and certainly in the Academy and you've had a magnificent relationship in history with some fine people. I'm sure you'd have to pause to comment on some of them.

Well, most of them were buddies from the War Labor Board, not all of them, Rolf Valtin, for example, who's one of

my very closest friends, came along later. I happened to get to know him well because he went to Swarthmore College and I happened to meet him while he was there at college. But most of the close friends stemmed back from the War Labor Board where we were all buddies together and that was a magnificent experience, during the war. A lot of them I haven't mentioned. I think I did mention Eli Rock. One of my protidest, at least most enjoyable moments was when I was playing manager, self appointed, of the War Labor Board softball team. We played the messengers. They had the youth and speed. We were old timers, most of us in our early thirties, and we had guile and skill, some skill, not much speed but strategy and so forth. That was a lot of fun. Ted Kehoe was third baseman. Eli Rock was center fielder. Syl Garrett was the left fielder. Ben Aaron was the pitcher. I was at first base because it was the only place in the field where I could be counted on to do a minimal amount of damage to the cause. The low point of the career, we had a schedule of two games, as I remember. The second one we sent out a lot of advance ballyhoo, using the mimeograph machine shamelessly to terrify the messengers, the opposition, announcing that the one Robben Fleming was arriving to take a position as a mediator and he had had a tryout with the Chicago White Sox. Well, he arrived alright and it was a complete fiasco because he

got up with this beautiful major league swing and he couldn't hit the Softball pitching at all. He kept popping up, but that was fun.

I have never heard a story about an arbitrator baseball team. I loved it. The thought of having a videotape of that just tickles me. I just can imagine.

It's too bad we didn't have one. I must tell you one incident, I've told it to many people and I don't think Ben Aaron appreciates it too much but, I don't want to prolong this unduly but...

No, please.

In the early days of the War Labor Board, I think a number of these later giants in the field were even younger than I was. I guess I was about thirty at the time and Fred Bullen, Ben Aaron, Bob Fleming, Eli Rock, Ted Kehoe, Syl Garrett, Syl Garrett was my age but, Ted Kehoe and Syl Garrett I'd pirated over from the NLRV but the others I hadn't met. Some of them, including Ben Aaron, it was the first job they'd ever had, right out of law school. Ben came in one day, introduced himself, he'd just been hired and I looked around the hearings that day to see if I could find some routine case. It

might be a good for him to break in as a panel assistant. I picked out a textile case. It sounded like a relatively peaceful industry, little did I know. The chairman of the panel was Fowler Harper of the, renowned famous Harper, and the author of Harper on ItMMh, which we'd had in law school. I never met him but I assumed that he'd be a dignified professor and suitable to indoctrinate the young Ben Aaron. Didn't hear any more about it, Ben went down the hall to report in. The next morning he was about an hour late. I thought that was rather odd for a second day on the job. He came in white faced, ashen, obviously in bad condition. I asked him what the hell was the matter. Well, it finally came out. I guess he thought this was a routine, normal routine for a hearing. The hearing had broken up at about 4:00 am in the management suite in a Washington hotel. The union delegation was raging around denouncing the company. Everybody drunk except Ben who was terrified. The company lawyer and spokesman was lying on the floor in his underwear. He was not only drunk but horizontal and Fowler Harper the dignified law professor that was chairman of the panel was raging back and forth announcing to the company that he was there as the representative and spokesman of the commander in chief in time of war and if the company didn't follow his recommendations they were guilty of treason. On that

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happy note, the hearing broke up at about 4:00 am. That was Ben's introduction to the field of arbitration.

Ah, poor fellow, poor fellow. Let's talk about your term, your tenure as president. How did it go? What do you remember? What were the highlights? Did you rack up any accomplishments or failures or embarrassing moments or all three.

Well, there were ... I enjoyed it thoroughly for one thing. I had been studying my buddy, Syl Garretts, tenure as president. At that point I was writing a newsletter for the Academy, which had a lot of dubious material in it, but I got a lot of fun out of it. As part of it, Garrett figured out some way as editor of the newsletter I should sit in on the Board of Governors meetings, so I could keep abreast of developments. So, I observed his technique at close range and he had a marvelous facility for smoothing out any difficult problems and sort of getting them all lined up for the Executive Committee the night before the Board of Governors meetings and everything ran like clockwork. I was very much in favor of that approach and tried to adopt it with some success. The one accomplishment, if I could call it that was, at that time, each president had sort of announced a project that he would try to concentrate on during his term in office. I think Gabe

Alexander started that,. It's since sort of died out for want of projects, I think, but uh, I couldn't think of any project except one and I threw this out in a memo to the membership, as soon as I took office, proposing that we have a series of inter-regional meetings, say the west coast, the midwest, the south, Canada, which at that time had a goodly number of members, and say the northeast or east coast. We'd already started that on the east coast. There had been a number of joint meetings in the fall, social as well as discussing business, with no company or union people just the arbitrators and families. The New York, Washington, Philadelphia regions had done that for a couple of years and I recommended that the other regions around the country undertake it and most of them did. I think that gave considerable push to the idea of inter-regional meetings, which now I gather, are having severe competition from the annual Fall Educational Conferences. People are disinclined to go to a lot of meetings during the year. That I guess is the closest, as close to an accomplishment as I can claim, launching or pushing along that process. The one major development in my term was the start of the spider in the organization. Bob Howlett was one of the early leaders of spider, as I think you know, the late Bob Howlett. He was on the Board of Governors and I remember that he and a couple of others were pushing rather hard to either

join with spider or merge with them or take them in which would mean that it would not become actually just an academy of arbitrators but also dispute solvers, notably including mediators, federal and state. I don't know the full story of spiders membership requirements. I personally have never joined it, not that I disapproved of it at all, I, in fact, rather admire it but it seemed to me then and it still does that there is some value in having the Academy of Arbitrators, as distinct from just being merged into the larger category of dispute resolvers. That may change as the business changes. The lines are getting more and more blurred, maybe they were a little blurred to begin with. A lot of parties have accused all of us of not knowing the difference between a mediator and an arbitrator or at least not caring to recognize the difference when we try to settle something. At any rate, I was opposed to a merger and it has never happened and I think that some of those who were pushing for the merger were not very happy about that. That, I think, was the only major issue that I can recall coming up during my term.

Where did you hold your annual meeting? You presided over what ...

Boston.

¹ In Boston.

It was in '72. And the speech I made then was, perhaps, notorious for one feature. I think it was the only time then and still is the only time that any speech, presidential or otherwise, has been devoted to the subject of the role of the arbitrators wife. I must say that that got quite a few laughs. My wife, God bless her, set up ??? and obviously the role model for this speech. It's quite an ordeal to put her through but she went through it in good style.

Good, good. That was the second thing I was going to comment on in your personal style, and I talked about you being a name dropper and I hope I did that in the nicest terms. The other one is that I'm stricken by your rye sense of humor. Does this infect you as an arbitrator? Does it show up in your awards?

No, I, Well, I appreciate the sort of compliment there.

It is a compliment. I admire it..

But , uh, no. I think I learned early on that the losing party doesn't see anything at all funny in the decision. It's a terrible mistake to try to use humor in the decisions. Now at the hearing, it's a different story.

A little bit now and then helps. For example, I found a good deal of success in the occasional confrontation at a hearing when the two lawyers keep insisting on talking at the same time, each one demanding that the arbitrator silence the other one and let him finish and stop interrupting, I have fairly recently developed a policy which I announce on such occasions that instruct the reporter to stop taking it down, if there is a reporter, and I say that my ruling is that you should both go ahead and talk simultaneously. I will take no notes and neither will the reporter but go right ahead. That seems to work pretty well.

No one likes to be rejected and ignored. Right? I said earlier that your career, first was the War Labor Board, and now up to exclusively working as an arbitrator has spanned literally decades. You are almost, personally, the embodiment of the profession, as it is known in modern terms. We look to those war years as being the seed bed of what our profession has become. So I think the next questions, I think you're imminently well qualified to deal with, however you wish, my next general questions and they are . . . How do you view your profession, arbitration, the dispute resolution business that we're in, as you look back over these years? Let me ask a three part question. As you look back, some almost fifty years, in your experience, how do you feel about it today? You certainly have the right to speculate and crystal ball, what do you

think its role is going to be in the future? Take that in any order.

Well, it's sort of a tough thing to ad lib about. I have thought about it, of course, not in preparation for this but I guess all of us have thought about it a good deal over the years. First of all, I think that I am very deeply devoted to the idea of voluntary arbitration with the parties selecting their judge, as it were, and paying him. I think the advantages of that, over say a labor court, where the parties have no say in who the judge is and since they don't pay him they can't fire him. They have, in fact, a life tenure unless they get involved in some horrible scandal. I would think the advantages to the parties are obvious, unless of course the perennial losers in arbitration probably figure they couldn't do any worse in court, might prefer it. As to my own experience, I think all of us who were on the War Labor Board were extraordinarily lucky to also have a share a feeling of some guilt, I think, of having benefitted vastly from the war, where so many of our colleagues were in combat. Although, I think we were doing more for the war effort there, than we would have been lining up in a trench or any other combat role. As to the future, I'm very hesitant about predicting that. Mostly because my track record for predictions, in general, is not too

good. I do think arbitration is less attractive as a career now than it used to be because, well a number of factors. I think the parties are getting more and more sophisticated, which is good, but not necessarily good for the arbitrators because they are settling more cases. They settle more at the hearings, which is absolutely delightful for me now but it wouldn't have been thirty years ago. I would say, fully half of the cases I get now are resolved short of a decision. Either they're settled by the parties before the hearing takes place or they're settled at the hearing, usually with encouragement from me, if there's any sign that they may be interested in settlement. So, I don't think there has been a dramatic increase, as we all know, in the number of arbitrators who are experienced in the last fifteen years. Fifteen or twenty years ago the Academy, regularly, had sessions on what they viewed as sort of a coming crisis in the availability of experienced arbitrators. You never hear that subject anymore. There is no shortage of arbitrators. There may be a shortage of particular kinds. There may be a shortage of minority, hispanic, black arbitrators, Spanish speaking arbitrators. I don't suppose there's been a serious problem for the lack of asian arbitrators but there's going to be, sooner or later as the asian influence grows and grows. I'm always careful not to describe women as

a minority because they are, in fact, a majority. There's a very healthy increase in the number of women arbitrators, as obviously there is in the number of women attorneys, especially in the labor field. In Philadelphia, anyway, there is a remarkable number of very capable women attorneys. I think if I were advising any young arbitrator at this point as to what to do in the face of all this sort of dimming prospects for continuing in the golden age of arbitration would be to get himself involved in some fashion in the other forms of alternate dispute resolution, which I confess I've had no experience with. Oh, I've had maybe two or three of what you might call commercial arbitrations but nothing to amount to anything. But I think there's going to be a wide range of ADR kinds of work, a tremendous range for that, in which arbitration skills can be employed. I'm sort of intrigued with the question of who's going to pay for it, but that's another matter and I have no suggestions in that.

Let me ask you a related question, I think it's related. You, certainly, and to a lesser extent, well, to a similar extent, I am a byproduct of the whole collective bargaining process. Do you have any feelings about, we certainly historically know where that has gone and how it developed, particularly in the thirties in the rise of industrial unionism and in the sixties and seventies the

rise of the public sector unions, which has kept us all in pretty good income and keeping us busy, how do you feel about the continuation of the "labor movement" or the existence of collective bargaining agreements in the future? Now and in the future. Do you have any ...

I think it's going to be here certainly twenty five years from now and I'd say well beyond that. I don't see the unions as disappearing from the scene at all. Now, I think the contracts are going to look a lot different. There's going to be a lot more flexibility in the contracts because we just will have to compete with the foreign competition, which is murderous on the wage level. American companies are obviously, even now, finding it impossible to compete in many areas. Competition is paying five cents an hour, or whatever it is for the labor, you can't compete very well if you're paying three, four or five, eight, ten dollars an hour. So there will be a lot of changes and especially I think in the jurisdictional disputes are going to have to disappear from the scene, largely, at least where they hold up production. But that's not the only problem. So, I think the unions are going to be here because I think they all know that if they disappeared the wage levels would drop very much faster. They're going to drop anyway, I think, compared to the rest of the world.

Instead of paying four times as much we may only pay twice as much twenty five years from now. But if there were no unions I don't think, having represented employers for a good many years and observing employers and unions, I don't think either side has any monopoly on virtue or sin. We're all humans and it's just natural for the employers to want to maximize their profit and for the unions to want to maximize the earnings and benefits for their members. There's nothing evil about either one of those things. If there were no unions to cope with, there's no question in my mind that the wages and benefits would drop very rapidly. And for that reason, I think they're here to stay.

said that the parties ...
were talking about the med arb situation.

Well, I was involved in two cases, this is some years back, where one was set up by Bill Ushery when he was Secretary of Labor, well the details are not important. It involved the meat packing industry. There was a major strike and somehow he cajoled the parties into agreeing to a med arb arrangement, whereby I would hold meetings of the parties as a mediator but than failing that I had the authority as an arbitrator to decide the terms of the contract. I had another similar one involving the

munitions industry. It was a very similar arrangement. They were fascinating experiences and I think they worked out, at least from my point of view, successful.

Were you comfortable with the two roles?

Yes I was. It's a different ballgame, of course, but then interest arbitration is a different ballgame, anyway, than grievance arbitration. I have never believed that the arbitrator in an interest arbitration should be kept in the dark as to what the parties are willing to accept for their offers and counter offers. I think the only way it can work, the only way it does work in practice, is for the arbitrator to, in effect, try to mediate in the sense of finding out what the parties feel they can live with. I think that's, the term of fact finding has always struck me as a rather useless term. The most important fact to be found is what each side feels they can live with. It's perhaps the only important fact to be found except maybe what are the comparable rates in your plants or, whatever, cities. I'm surprised it hasn't taken hold.

Would you have been equally comfortable if you'd been put in a med arb situation in a grievance arbitration?

No, that's different, I think, because there there can be a yes or no answer, not in all cases, but in most cases there can be a right and wrong answer. Now there is no such thing as a right or wrong answer as to whether somebody should get a five cent increase or an eight cent increase. It's not a yes or no. But whether somebody was justifiably discharged or justifiably denied a promotion or justifiably denied his preference for a vacation or a thousand other questions like that. I think that's different. I had one experience with interest arbitration, on a very small scale, but it was quite dramatic and humiliating for me, at Mac Truck. They had one case, they had had a provision in the contract in case of a new job, if they couldn't agree on the rate the arbitrator should set the rate for the new job. They didn't have a formal job evaluation plan. And at the hearing, they said "We decided that in this one we are not going to let you know what are respective positions were. We will give you our original positions and we think you should decide it on what you think of the merits." I said frankly "I don't think that's a very good idea, to approach it that way, but if that's the way you want to do it, alright." So, I made my decision. I was not very comfortable with it because I didn't have any idea. It was a highly debatable thing and I had no idea what they might find acceptable or what they had

proposed to each other, even. Next time I met with them, I was their so called permanent umpire and so I met with them frequently, and the next time I met I asked and I guess they told me. They said "Those decisions you made in the two jobs are a bit of a disaster. On one you awarded more than the union had been willing to accept and on the other one you awarded less than the company had been willing to offer." They said "That's the last we use that approach." I said "It doesn't speak very well for my judgment but I think you're right."

Yep, stay away from that. I'm curious, and it may be because I'm reflecting my own situation, you said you represented the major department stores in the Philadelphia area, while you were arbitrating, and that was your sort of background, apart from being a board member and so forth, you would maybe be called a management advocate at some point in your life.

In negotiations, not in arbitrations.

Yes, but you've been... Were you ever haunted by that? Did that ever factor into your selectivity?

Yeah, some. I was anxious to leave the work with the department stores, not that they weren't pleasant enough with me and the unions, I had good relations with the

unions, I tried to conduct it more as a mediator would than, what everybody of course knew is that I was paid by the management. But, to answer your question, is yes I was troubled because I never felt fully comfortable in the advocates role and also, frankly, I felt that it was hurting my chances of developing into full time arbitration, which, as soon as I got a taste of it, I knew that's what I wanted to do. Being a management advocate was holding me back. I went on for about fifteen years or so before I finally reached the point where I was doing enough arbitration so I felt fairly confident and I could make it. I took the plunge. My only regret is I should have taken it at least five years sooner.

Do you ever, and I'm going to use an unkind term here but I think you'll get the gist of what I'm trying to get at, having been a management advocate, during those years with the department stores, did you ever think that you were "tainted" as an arbitrator?

You mean in my own judgement or in the eyes of the parties?

Both.

In the eyes of the parties, of course, I'm tainted in the

losers eyes. No, but I've often asked myself, I could never get a fully satisfactory answer, "Am I, in a close case," the easy, obvious cases are no problem but in a close case, which could go either way, I was sort of always haunted by the question "Am I leaning over backwards in favor of the union to prove that my management experience isn't making me management minded or am I leaning forward the other way in favor of the management to prove that I'm not trying to lean over backwards"

The balancing act is impossible, isn't it?

Peter Sites, among his other immortal comments, described that problem because he had represented management and so had a lot of others. Syl Garrett, for a while, did early in his career. Peter Sites said "The only safe thing for the arbitrator to do is to lean sideways." Which, of course doesn't mean anything.

It doesn't make any sense but that's what he meant. It didn't make and nothing makes sense in that dilemma.

But it is a problem and I think the main problem is not so much in the arbitrators own mind, I think most of the experienced arbitrators are capable of putting aside any

preconceptions or experience he's had and going right down the middle, if he can find out where the middle is in that case. But in the preception of the parties, I think that's ... I had a case recently involving one of the department stores that I had represented twenty years ago. I didn't know any of the people that were any longer there, but I was uncomfortable. I had a feeling at the hearing, both sides didn't, of course they knew all about it. It was a union that I had dealt with at the time and they said that they didn't have any doubts about it but I was uncomfortable. I told them, I said "I really regret that I took this case." They finally, God bless them, settled it. I worked out a settlement, didn't have to make a decision. I think there is that, I think it's a mistake to take on a case involving a former client because no matter what you do you're going to be perceived as either leaning over backward or forward, and either one is bad.

Let's toy with one of the other arguments, one of the other ideas that's been pretty clearly stated by you. You like to resolve the issue. From what you've been telling me, you have no qualms about, and I'm using your phrase, if you see or feel the chance for a settlement you'll go for it. In the last few years that I've been attending Academy meetings, you must know that that's a still a very hot issue...

Yes it is.

...whether or not the arbitrator is violating his call, from the parties, when he moves from being exclusively an arbitrator and functioning exclusively as an arbitrator and crosses over into using mediation skills to bring about a settlement. I'd like you to expand on that because it's such a hot issue right now and lots of people get very upset about this.

I think a lot depends, I think it's partly a semantic dispute. I had a, years ago, I was on a program of the local IRRA, Industrial Relations Research Association, and Noble Braden, who was then vice president of the Triple A, was a staunch advocate of the judicial approach to arbitration, no mediation. That was a no no. They've since softened their position some. It used to be the Braden Approach Vs. the George Taylor Approach. This was billed as a debate on this question. Should arbitrators mediate? It turned out to be a love feast, to serve a fiasco as a program because we got down to describing what is mediation and I posed half a dozen scenarios where I thought it was appropriate for the arbitrator to raise questions, not to serve as a mediator, running back and forth as with proposals, but to just raise the question, is this case really worth it to either side to argue over one days discipline you're spending lot's of money and perhaps creating some ill

will. No matter what happens to it, is it worth it? Would it be useful for you to take a few minutes to consider whether you should resolve the case. I don't call that mediation. I think that's just raising the question and very often the parties are delighted to have it raised. Neither one wanted to raise it because it would be a sign of weakness. Well, Noble Braden said "Well, that's OK. No problem with that. That's not what I mean by mediation." And we could find almost no scenario where we disagreed. It's a question of what you define. I think the arbitrator is making a mistake, I don't think it's morally wrong or violating his oath or anything, to push a little for a settlement but I think it's a mistake to push it if it's obvious that one side doesn't want to. You can't mediate somebody who doesn't want to be mediated anyway. But raising the question, whether it's really worth it or, I frequently ask, I do it more now than I used to, I wouldn't do it thirty years ago, maybe, at least not as often, but I very often now ask if the two of you, the two advocates at the hearing, "Have the two of you discussed this case with each other?" And when they say no, as they very often do, I will just raise the question. "Would there be any useful purpose to be served in your talking about it before we go ahead." Half the time, maybe, this results in a settlement. That's not mediation. As they tell me, as

they very often do, no we've tried it and this ones got to go to a decision, fine. So I think it's a non-issue, although people love to still argue about it.

With some passion, frequently I've heard it debated pretty violently at some of our recent meetings, that we have no authority to move in those directions, that we have been hired by the parties to do a particular and specific task and that...

Fine, if they just tell vis that's what they want, then I'm not going to say no.

Yeah, but as you've suggested, theit even just asking the questions, they may very well say they want the announcement.

Well, I've heard horror stories. I guess we all have. I heard one particular arbitrator, a flashy type of operator who's very efficient and always in a big hurry, that he would blow into town and after a few minutes of opening statements he'd call the parties outside and say "Look, I've got to get back to Gotham City," I should say "I got to get back by two o'clock, why don't you put this guy back without back pay and let's get the hell out of here." That sort of thing, that's outrageous.

Yes, that's a violation of everything we stand for.

Sure, that's a far cry from asking if there's any point in you fellows talking about this.

Have you ever, and I'm not looking for specific cases but, would you ever pose the question, having heard opening statements and a substantial element of evidence on cross directing cross, would you ever take the parties aside and said "Look, you're asking for discharge and you're asking for full enumeration. Neither of you are going to get what you want can you voluntarily come somewhere down in the middle."

Oh I wouldn't put it in those terms, but ...

That was a pretty raw way of saying it but I think you know what I mean.

I think, I don't see anything wrong with that, but I prefer a little more subtle way of putting it. "Do you think, having heard all the evidence, do you think, since I don't know what I'm going to decide in this thing at this point, is there any point in you taking a shot at it or resolving it." There's nothing wrong with that.

We are after all, not only creatures of the contract, we are creatures of the parties, aren't we?

I think more of the parties, than, well we're obliged to follow the contract to the extent that it can be followed. I think it's important to keep in mind that we are creatures of the parties. That brings to mind another issue that used to be a very hotly debated, maybe it still is for all I know, and that is whether the arbitrator is entitled to send his opinions in for publication. Well, I've always had a strong feeling that that is up to the parties. That the arbitrator not only shouldn't send it in, he shouldn't even ask the parties for consent to send it in. If the Triple A wants to ask them, or the publishing agencies want to ask the parties for copies of the opinions, fine. It's their property. They paid for it and I don't think the decisions are my property, in a sense they are but I think it's doing the parties a disservice just asking them for consent to publish is a form of pressure.

They're reluctant to say no, for fear of offending you.

No, it's not so bad. If you send out the opinion, that's what the FMCS, I think, used to ask you to do. I think they used to ask you to indicate whether the parties consented to publication. I always resisted that. I put "Did not ask." Maybe that didn't do me any good with the FMCS but ...

Or your publishing record, either.

No, I think I've had fewer than, I used to have a fair number with Bethlehem Steel decisions because they had a standing arrangement, both parties agreed to turn them all over for publication. But, uh, I've had very few published, for that reason.

You almost took yourself out of the marketplace, in the sense that...

Well, I've told a lot of my friends that my problem is that the parties do know me. Not so much that I'm not well known but I have a record number of ex-umpireships. Jim Hill once introduced me and he got a lot more laughs than I did, he listed a long impressive list and wound up saying the umpireships that Mr. Gill had and is no longer the umpire in any of these establishments, in fact many of them have abandoned arbitration all together.

Very Good.