National Academy of Arbitrators

ORAL HISTORY PROJECT

Ralph Seward

Interviewed by Richard Mittenthal

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ORAL HISTORY COMMITTEE
NATIONAL ACADEMY OF ARBITRATORS

INTERVIEW WITH RALPH SEWARD
BY RICHARD MITTENTHAL
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WHAT I HAVE LEARNED ABOUT YOUR BACKGROUND. YOU 3EGAN YOUR CAREER IN 19 36 WITH THE NATIONAL LABOR RELATIONS BOARD AND YOU BECAME EXECUTIVE SECRETARY OF THE NEW YORK STATE LABOR RELATIONS BOARD IN 19 37 AND GENERAL COUNSEL IN 1939 AND THEN I SEEM TO HAVE A GAP, I THINK THAT MAY HAVE BEEN THE PERIOD THAT YOU WERE WITH SIMPSON THATCHER IN '39, NO?

No. Well, if you want me to go back a bit, I graduated from Cornell in 1927 and I went abroad to Geneva for two years working with an organization called the Geneva Institute of International Relations. That is why I was telling you that I had thought of eventually going into the Foreign Service. And then I came back and taught government for two years at NYU, going to Geneva in the summer time. And went back to Geneva after that in 1931. I was starting an attempt to write a Ph.D. dissertation on the Use of Experts in the Economic Work of the League of Nations.

YOUR FIELD WAS ECONOMICS.

No, it was government. But I was interested in the problems of bringing knowledge to bear on governmental decisions despite all the inevitable political considerations, and it intrigued me to find out what kinds of problems, when you said you wanted an expert committee, led you to look for real experts, knowing that with other problems, though you still called it an "expert committee," you had someone from each of the great powers represented, Japan, France, England, etc. and expertise became very secondary to political considerations. Well, I won't go Into all that but it was Interesting. I came back and decided that I was swimming around on the top of all kinds of very interesting problems but learning very little about anything. I was very fed up with studies, but I didn't know anything, really, so I went to law school at Columbia five years after I graduated from College.

LAW SCHOOL WAS ALWAYS KIND OF DUMPING GROUNDS FOR PEOPLE WHO DON'T KNOW WHAT TO DO WITH THEIR LIVES.

That's correct. And I got out of law school in 19 35. That's when I went down to Simpson Thatcher, and I was there working in the Managing Clerk's Office and looking up law for the partners and answering court calendars and running around doing errands and so forth.

DID YOU DO ANY LABOR LAW WORK THEN?

No. But in law school I had met people who were interested in Labor Law, and I had written some memoranda, and through friends I had a chance to go down to the NLRB. This was before the Act had been declared constitutional; in fact, two weeks after I went down to Washington in 1936, the Carter Coal Decision came down in the Supreme Court. We were all convinced that we were completely unconstitutional (at least I was) but I hadn't found anything to hold me at the Wall Street Law Firm, really, except just the fact of finally being out and active in the world. These were still New Deal days and lots of exciting things were going on and I wanted to get involved in them, so I did go down to the Board and worked for the Board in Washington from April until, I guess, November, that's right.

A SHORT PERIOD.

In '36, that's right, and then the Board sent me out as regional attorney in Los Angeles and I was in Los Angeles having the time of my life. I was regional attorney there from November--I remember I flew out on the day Roosevelt won the Landon election—through July, and then Paul Herzog (by then they were just establishing the New York State Labor Board) Paul Herzog called me and asked me if I would like to be Executive Secretary of it.

HAD HE BEEN A FRIEND OF YOURS FROM COLUMBIA LAW SCHOOL?

I met him at Columbia and again in Washington at the Board. He was one of the members of the New York Board. This was a tough decision because I was enjoying the Los Angeles job. But I decided to take it, so I went East and became Secretary of the Board from '37 to '39- Well, the last eight or nine months after Bert Zorn resigned as General Counsel, I took over the General Counsel position. And then, Frances Perkins, down in Washington, had been trying to do something about the Immigration Service in order to develop procedures which would give aliens a little due process from time to time, and Henry Hart from Harvard along with Marshall Dimmock, who was one of the Assistant Secretaries and someone else, I've forgotten who, had written a report, a brilliant report, on the Immigration Service and its procedures—and Miss Perkins had decided to put through the recommendations; but they needed somebody in charge of what was then called the Board of Review to put the recommendations into effect. I was asked to take that job and decided I would and was with the Immigration Service from the Fall of '39 until the defense crisis in '4l, when Roosevelt set up a National Defense Mediation Board and Will Davis came down to be Vice-chairman of the New Board. He asked me if I would come over and be Executive Secretary for the Defense Mediation Board, which I did, and that led to the War Labor Board and on to arbitration.

THEN THAT WAS THE FIRST TIME YOU GOT INVOLVED IN ANY ARBITRATION EXPERIENCE.

My first experience with real arbitration was in '42, after I had served with the War Labor Board for about nine months. They had problems in the New York Milk Industry (this was in the Pall of '42) of two sorts. The Office of Defense Transportation was putting in regulations to save gasoline and rubber, and this meant cutting down the number of milk routes, and how you did this was the subject of a terrific fight between the unions and management. In the New York Milk Industry you had five different locals of the Teamsters doing business with scores of companies. There were bit ones and small ones—Borden, Sheffield and the Dairymen's League and then a lot of smaller companies and many family companies each with one or two milk trucks and a few delivery routes--and with one labor contract covering them all. Everybody was fighting everybody else about how to put the ODT rules into effect without a strike. For example, every-other-day delivery would eliminate umpteen jobs. Whose jobs were going to be eliminated? What was the effect going to be on loads and working conditions? Previously they had established an arbitration procedure in their overall contract; Arthur Meyer had been briefly the first Impartial Chairman; then Dave Morse had taken it on; and then Dave had resigned and gone into Military Government, and they wanted somebody to take that job on.

DO YOU KNOW HOW YOU ENDED UP WITH THAT JOB? WERE YOU RECOMMENDED BY SOMEBODY?

Yes, quite accidentally. We had a big dispute involving the Building Service industry in New York and for lack of anybody else to take it, I had been asked to chair that Building Service panel. Frank Tobin, Dan Tobin's son, was a labor member of the panel with Dale Purvis for industry, and we managed to work out a settlement which seemed to be acceptable, and it was after that that Prank Tobin asked me if I was interested.

DID THAT INVOLVE YOUR LEAVING THE WAR LABOR BOARD OR WERE YOU ABLE TO DO BOTH JOBS?

No. My War Labor Board job was becoming more and more an administrative job. I am not a great administrator, and I was more interested in getting into the actual labor relations end of it. So I was made Chairman of a War Labor Board Committee to oversee the institution of the ODT Rules and made Impartial Chairman as well.

WAS THAT A FULL-TIME JOB?

Full time and then some.

REALLY. WHAT WERE THE KINDS OF PROBLEMS THAT YOU HAD? ROUTE STRUCTURES SOUND MORE LIKE INTEREST ARBITRATION THAN GRIEVANCE ARBITRATION.

Well that was true, to an extent. This was a fantastic thing. You see the milk industry is manned in part by drivers on commission, so that the drivers were competing against each other as well; the Borden local was competing against the Sheffield local, and all the people in home delivery were competing against store delivery, and different types of delivery competing against each other. It's a cut-throat industry, and in New York, at least, it had a reputation for corruption, and everybody distrusted everybody else and there was sometimes more difficulty in getting an agreement on either side of the table than there was across the table.

WAS THIS A BOARD ARRANGEMENT WITH THREE, FOUR OR FIVE MEN OR DID YOU SIT AS A SOLE NEUTRAL?

As Impartial Chairman I was the sole neutral. On the War Labor Board Committee on ODT rules, I was chairman of a tripartite Board.

I'M TALKING ABOUT THE MILK INDUSTRY.

On the milk industry, no, I was alone. But it was a fantastic contract. It had been drawn up by Arthur Meyer, two or three years before, and in order to get something going and get some arbitration, because everybody distrusted each other so much, they gave the Impartial Chairman powers that really represented, I think, a temporary abdication of the functions of management and the unions. They agreed (I wish I had a copy of the clause, I have it back in my office) that I should have jurisdiction as Impartial Chairman not only over the interpretation of the agreement and its application but also over <u>any other problems</u> that arose that they couldn't get agreement on. It said so expressly.

THAT MEANT, I ASSUME, YOU COULD IMPOSE NEW CONDITIONS ON THE PARTIES IN THEIR JOINT INTERESTS.

Technically, I had the right, if it came up, to tell the companies how many trucks they could use, how they should organize their routes, how much milk they could put on a truck, how you handle door-to-door delivery in Harlem and whether a guy had to have a helper and so forth.

LET ME ASK YOU ABOUT THAT. DID YOU REGARD THAT AT THE TIME AS A KIND OF EXTRAORDINARY GRANT OF AUTHORITY OR DID YOU JUST NOT HAVE ANY — YOU CERTAINLY COULDN'T HAVE THE SAME FEELINGS ABOUT IT THAT YOU HAVE NOW AFTER ALL OF THESE YEARS OF LIMITED GRIEVANCE ARBITRATION.

It's hard to recall now. I don't think I was as shocked by it then as I would be now, because I came out of the Defense Mediation Boa'rd and the War Labor Board where we were dealing in Interest terms. Also, during my initial two or three months down there, I wasn't handling grievances, except a couple of early tough discharges. I was handling the ODT every-other-day delivery issues which were interest things and sort of everybody expected this to be done. Acutally, though, once the ODT rules were out of the way, we did settle down to a pretty ordinary grievance type arbitration raising

questions of contract interpretation. I think I was a bit more free swinging and loose with the remedies and so forth than I might be now. Although it is hard for me to recall, I have all my decisions at home but my mind is vague about them as I talk.

HOW OFTEN DID YOU SIT?

When we got going we would be having one or two hearings a week or more. We did get into so many that I finally had to have an assistant come in and help me hear the cases and write them.

COULD YOU TELL ME SOMETHING ABOUT THE SIZE OF THE BARGAINING UNIT INVOLVED?

Well it involved Northern New Jersey, Borden, Sheffield, and the Dairymen's League in Manhattan, and V/estchester, southwestern Connecticut (a little corner there up around Greenwich), and Long Island.

ABOUT HOW MANY EMPLOYEES WERE COVERED?

Darned if I remember now. Borden's, I know that they were declining. Borden's and Sheffield each had around 3 or 4 thousand; Dairymen's League would have had a couple of thousand; and then you 'would have had maybe as many in the independent companies all over Westchester and New Jersey and Long Island. I suppose ten to twelve thousand.

YOU REMEMBER THE TERMS OF YOUR OWN AGREEMENT WITH THE PARTIES IN TERMS OF YOUR EMPLOYMENT AS IMPARTIAL CHAIRMAN?

No, I don't.

IT MIGHT BE IMPERTINENT BUT, FOR EXAMPLE, HOW MUCH WERE THEY PAYING YOU?

They were paying me $13,000 which was a hell of a lot of money in those days.

THAT'S RIGHT.

Mike Cashel was the Teamsters' top official in New York and he took the position that he wanted to pay arbitrators high salaries because this was one way to keep them honest, in his opinion. He had been around in the world of the Teamsters and really —

WHO WAS THAT AGAIN?

Mike Cashel was the Teamsters' representative. An old, old timer.

WAS HE THE MAN THAT PRESENTED THE CASES AS WELL?

No, oh no.

DID THEY HAVE LAWYERS TO DO THAT?

They sometimes brought lawyers in, and they had Dave Kaplan, who was one of the Teamsters' economists in New York. He later went down to International Headquarters. Brilliant and a very good man. At that point, he was in the New York office, I believe, and he would come in on major economic questions. You see I not only arbitrated grievances, but when the contract expired, a year after I was there at the request of the parties, the War Labor Board made me an arbitrator of the next contract so I had to write the agreement. Dave Kaplan represented the unions in that and Solomon Sklar, another fine man, a brilliant lawyer, represented the industry.

3Y WRITING THE CONTRACT, YOU MEAN YOU WERE IN EFFECT ENGAGED IN ANOTHER COMPLICATED INTEREST ARBITRATION?

Oh, yeah.

WAS THAT UNDER THE AEGIS OF THE WAR LABOR BOARD RATHER THAN DIRECTLY FROM THE PARTIES? BY WHOSE AUTHORITY WERE YOU ENGAGED IN THIS EXERCISE OF WRITING A NEW CONTRACT?

It's hard for me to recall now. I know, of course, that was in the Wage Stabilization days and I had to report to the Board. I think I was appointed by the parties, I an not sure.

AS I RECALL, YOU SAID YOU WERE SITTING ONE OR TWO DAYS A WEEK. ABOUT HOW MANY CASES WERE YOU HEARING, IN TERMS OF ACTUAL GRIEVANCE AND HOW MANY DECISIONS DID YOU DO DURING THAT PERIOD?

I've got the whole file of them in my office. I would have to count them up. I haven't looked at it in many years. I suppose I actually wrote around 100 or more decisions in two years — because I was sitting every week. When we interrupted for contract negotiations cr when I was off doing the Office of Defense Transportation thing, it might have involved dropping grievance hearings for a month or more, several months. I think my recollection would be 100 or maybe 150.

I NEGLECTED TO ASK YOU WHEN THE IMPARTIAL CHAIRMANSHIP WAS FIRST ESTABLISHED IN THE NEW YORK MILK INDUSTRY.

Let's see. I went up there in 19^2. I think it was established in maybe '39 or '38. I think Arthur Meyer was there less than a year. Dave Morse was In there for two years.

THEN YOU HAD A BODY OF AWARDS THAT THEY HAVE MADE OVER THE YEARS, I ASSUME.

They were there. Yes, there had been many, but it changed a good deal. Under Morse they were very much interested in hardship cases; that is, fighting over individual routes and how much milk should be on an individual milk truck, and Dave and his assistants would have to go out and ride the milk trucks.

SO THEY COULD SEE WHAT WAS PROPER AND WHAT WASN'T IN THEIR OPINION.

Those really weren't precedent making things, those were individual judgments on individual trucks. There had been some precedents. I found, however, that I didn't have an awful lot to go by. They hadn't really gotten into a lot of seniority cases, and I found that the unions were riding high, wide, and handsome there, in terms of telling management how to run its business. I mean, the union representatives would go into the plant and order the drivers around. I remember my first case, it was at Sheffield. Sheffield fired three or four of its men who obeyed the orders of their union leaders instead of their foreman. I wrote about a one-page opinion upholding the discharges and rocked the industry and the union, I think.

WERE THE CASES WELL PRESENTED?

Sometimes, sometimes very badly. It would depend upon the Company and whether they brought in lawyers or whether it was -- my recollection is, as so often happens the companies were apt to bring in lawyers and the unions would be represented by their staff representatives. The staff representatives had been around and did a pretty good job, often about as good as the large companies. Then you had a little bit of a one- or two-route milk company run by a man and his wife with a son as one of the drivers, and they were pretty helpless and really didn't know.

WELL, THEN WHEN THAT HAPPENS DID YOU FEEL OBLIGED TO STEP IN AND BRING ORDER TO THE HEARING AND EXTRACT FROM THE PEOPLE THE NECESSARY FACTS THAT YOU FELT YOU NEEDED TO ARRIVE AT A SENSIBLE DECISION? ACTIVISTS IN THOSE DIFFERENT CIRCUMSTANCES?

Yes. I have always felt, I guess dating back to those days, that if you were going to have any chance of getting your teeth into a case you had to be an activist. I never have taken over the hearing and so forth, but I think there are ways, without doing that, of asking questions and making sure that the record is clear and drawing them out.

DURING THOSE YEARS, WERE YOU IN TOUCH WITH OTHERS WHO WERE DOING THE SAME THING? OR WERE THERE ANY PEOPLE IN NEW YORK, WHOM I ASSUME THERE WERE OTHER IMPARTIAL CHAIRMEN.

Yes, there were. Harry Uvilier was doing this in the laundry industry. I never met him. There was somebody who was handling the trucking industry whom I didn't meet. I would have liked to. I knew,

of course, because I had been on the War Labor Board with George Taylor, and I knew about Allan Dash who was over at General Motors and that these things were going on.

THAT WAS BEFORE THAT, WASN'T IT, 1942? I DON'T REMEMBER WHEN THE FIRST GENERAL MOTORS UMPIRESHIP BEGAN BUT I THINK THAT WAS SOMETIME AFTER '42.

No, I think Harry Millis was there for about, no George Taylor was there, he was at General Motors all during the Defense Mediation Board period and for a year before that, I think, and Harry Millis was in there for about thirteen cases before that.

DID YOU HAVE ANY FEELING OF BEING ON A FRONTIER AT THE TIME?

Well, I was scared to death. ".. didn't know what I was doing. Because I was completely on my own and didn't know what or how to handle it, particularly at first in the OTD thing, which was where the real crunch was. The grievances nobody really paid much attention to; but in milk you are dealing with small fractions of a penny profit or loss, which make all the difference to a company's ability to stay alive. How you handled costs and what you did with the economics of it, which I did not understand—this is a terribly complicated industry and I found myself almost completely alone. But I had the advice of a man named Don Pendleton, who was the industry member of my OTD Board, and of a union man named McDonough, a great big 300-pound Irishman, and they were a vast help to me. Though they were fighting very hard, they respected each other, and we eventually worked together pretty well as a Board, I think. But this to me was a personal frontier, because I knew that I could make or break these companies, and I felt utterly ignorant and terribly afraid that on the one hand I wouldn't do my job or that In doing my job I'd make mistakes that would be damaging to an awful lot of people.

WHAT I WAS GETTING AT WAS SOMETHING A LITTLE BIT DIFFERENT. I WAS REALLY TALKING ABOUT THE MILK INDUSTRY EXPERIENCE AND WONDERING WHETHER YOU HAD A FEELING AT THAT TIME THAT ARBITRATION, INDUSTRIAL ARBITRATION, WAS A NEW FRONTIER? IN OTHER WORDS, I'VE ALWAYS WONDERED WHETHER PEOPLE WHO WERE TRULY IN ON THE BEGINNING HAD ANY FEELING THAT THEY WERE DOING THIS PARTICULAR WORK?

It's hard to put one's self back into one's feelings about this. I knew that arbitration had been going *on.* I knew about George Taylor's experience at General Motors. I had been talking to him in the War Labor Board about it. Kis office was right next to mine, and I knew I hope, I knew the existence of the American Arbitration Association although I didn't know anybody, I didn't know, what is his name?

NOBLE 3RADEN.

Noble Braden. I hadn't met him at that point. I did when I was in the milk industry.

DID YOU KNOW WHAT KIND OF ROLE THAT ARBITRATION PLAYED IN 19^2 IN THE ARBITRATION ASSOCIATION?

Oh, I know that they were very suspicious of labor arbitrators and they were still under the influence of a woman, was it Keller, Dr. Keller?

YES, FRANCES KELLER.

Frances Keller.

A GREAT ADVOCATE OF COMMERCIAL ARBITRATION.

A great advocate of commercial arbitration, but regarded arbitration as a nonprofessional, public service to be done by individuals once or twice in their lives; they would come and benignly, you weren't supposed to know anything about it. You would have an assistant from the AAA to tell you how to rule on evidence and so forth. And she was very suspicious of everything that labor arbitration, as it was developing then, stood for, particularly because there was something vile or impossible called mediation that might get into it; and she didn't like anything George Taylor stood for in those terms and the whole deal of an Impartial Chairman such as I was in the milk industry was completely foreign in those days to the AAA approach.

BUT THE QUESTION REALLY IS, DID YOU KNOW, DID YOU SEEK OUT ANY OF THE OTHER ARBITRATORS, EITHER IN NEW YORK OR ELSEWHERE TO FIND OUT WHAT THEY WERE DOING? THERE WAS NO COMMUNITY OF ARBITRATORS.

No, I didn't but I probably should have. But there weren't many.

NOVOTNY CLOTHING WITH THE CLOTHING INDUSTRY, I KNOW, THE HISTORY OF ARBITRATION. A VERY DISTINGUISHED PEOPLE THAT SERVED WITH THE AMALGAMATED CLOTHING WORKERS, I BELIEVE HART, SHAFFNER AND MARX THING.

I knew about that theoretically. I really didn't know an awful lot about it. I didn't know the people. I was very green and, well, very hesitant really. And I was so completely tied up In the milk industry in the day-to-day problems, it wasn't until, let's see,- during the milk Industry, I began getting some other cases also. Ad noc and began getting into the steel industry, Bethlehem Steel, and so forth. It was in connection with ...

HOW DID THAT HAPPEN? THAT IS INTERESTING.

Well, I don't know really how it happened. I got a case from Hendy Machine Tool Company ....

NOW WOULD THIS HAVE BEEN THE VERY FIRST CASE OUTSIDE OF THE MILK INDUSTRY, OF PURE GRIEVANCE ARBITRATION?

The Hendy Machine Tool Company of Connecticut, (I think they were UAW, I don't recall), wrote me and asked me if I would arbitrate a case. A series of grievances. I said, "Sure."

DID YOU FIND OUT HOW THEY HAPPENED TO GET YOUR NAME?

I don't recall. What was happening in those days was that people were going to the War Labor Board, and they would have disputes and a lot of grievances be arbitrated. That was standard. You know that. Probably, this is what happened to Hendy. I don't recall any more, and maybe George Taylor or somebody gave them my name among otners. Anyway this was the first case outside of the milk industry that I handled. It was a series of six or eight grievances. I know I decided one of them for the union, the rest for the Company. I remember meeting counsel for the Company about six or eight months later. I met him in an elevator, and he said to me, "We appreciated your decisions and so on, and we understood why you decided that one case to the Union. We knew that you had to give them something." That made me so damn mad.

COULD YOU TELL ME SOMETHING MORE ABOUT THE DETAILS OF THAT CASE? IF YOU CAN RECALL THEM, AS TO WHAT IT WAS LIKE. WHAT WAS YOUR PER DIEM FEE AND WHO PRESENTED THE CASES FOR BOTH SIDES? THE KINDS OF PEOPLE WHO WERE PRESENT IN THE ROOM.

I should have looked this up before we started, and I can if you want me to later on. Or no, maybe the files are at Cornell. As I recall, I went up to some place in Connecticut, I have a vague recollection of the hearing room.

WHERE DID YOU MEET?

It was some room in the Company's offices, near the plant as I recall. I am very vague on this. I have a mental picture of the room, but where the room was, I don't know, and the usual room full of employees and company people with a company attorney whose name I no longer recall. We heard, I think, seven or eight grievances in two days. My fee, as I recall, was -- gee, I don't know whether I charged them $100 a day or not. I guess it would have been either $75 or $100, I'm not sure.

WAS THERE A TRANSCRIPT MADE OF THE HEARING?

I don't think so. But this is, I'm very vague.

DO YOU KNOW WHETHER THE UNION WAS ALSO REPRESENTED BY COUNSEL?

My recollection is that they were not. I think we had mainly a series of seniority grievances in those years, private grievance arbitration. It had nothing to do with the War Labor Board and with Umpireships but just private arbitration.

I WANT TO GO OFF AND DISCUSS THAT WHOLE WORLD OF PRIVATE ARBITRATION; BUT I THINK THAT PERHAPS IT WOULD BE USEFUL TO EXHAUST THE NEW YORK MILK INDUSTRY EXPERIENCE FIRST. I MEANT TO DO THAT AND I DIDN'T WANT TO START OFF ON ANOTHER DIRECTION. NOW, WHAT WAS THE OCCASION FOR YOUR LEAVING THE MILK INDUSTRY JOB?

I was offered the General Motors Umpireship.

YOU HAVE ANY GENERAL OBSERVATIONS ABOUT THOSE TWO YEARS OR HOWEVER LONG YOU WERE WITH THE MILK INDUSTRY? HOW SATISFYING WAS IT TO YOU PERSONALLY? DID YOU THEN SEE ARBITRATION AS -- DID YOU BEGIN TO VIEW IT AS A POSSIBLE LIFE'S WORK?

I can't tell you. I was doing it and enjoying it and, but I wasn't planning that far ahead. These were the war years and I know in the middle of it there was a possibility of my being drafted. I was still fairly old and so forth, but that was a possibility. Nobody really knew what was going to happen to them. And there was a possibility of getting back into the War Labor Board if things went on. Things were too uncertain. I was doing and enjoying; during those years, without leaving the milk industry, I was doing a good deal of ad hoc arbitration with Bethlehem Steel. I suppose ....

YOU MEAN DURING THE PERIOD YOU WERE WITH THE MILK INDUSTRY?

Yes. And I had an Interesting case with Jones and Laughlin which we arbitrated by mail completely. On a stipulation basis; it was fascinating.

WITHOUT EVER HAVING SEEN THE PARTIES?

Without ever having seen the parties. I was also, I became the Impartial Chairman of Sun Shipbuilding.

SUN SHIPBUILDING?

Yes, down in Philadelphia. And was handling cases there and had a variety of experiences. The differences between Sun Ship on the one hand and the milk industry on the other and the narrow restrictive authority I had under this Jones and Laughlin case as compared with the wide, free-wheeling authority in the milk industry was fascinating. I think it was then that I realized the importance of a fact that I've emphasized ever since. The fact that arbitration is a form of dispute settlement machinery which management and labor can tailor make to suit their own needs. Of course, this was far

more George Taylor's, I got more of my thinking from George Taylor than from anybody else, and he was such an inexhaustible source of new ideas and had this ability to take situations that you had been looking at for months or years and suddenly show them in a new light and show you their significance. So that was a fascinating experience.

YOU WERE LIVING IN NEW YORK THEN?

I was living in New York.

DID THE GENERAL MOTORS JOB REQUIRE YOU TO MOVE TO DETROIT?

Yes.

II DID!

Yes.

BEFORE I GET INTO ALL OF THAT, COULD YOU TELL ME SOMETHING ABOUT THE WAY ARBITRATION WAS THEN AS COMPARED TO THE WAY IT IS TODAY? ARE THERE SUBSTANTIAL STRUCTURAL DIFFERENCES BETWEEN THE PROCESSES YOU KNEW IN THE VERY BEGINNING AND WHAT IT IS TODAY?

I think it was less well formed procedurally. There were just as many possibilities. It could be done just as formally as sometimes it is done now, or as Informally as it is sometimes done now. I think now that it is more routine and one has more assumptions about the way it will be done. I think that some of the Ideas, I think I tried to say this in a talk in Montreal some years ago, that in those days seme of the ideas that are now just basic, unspoken assumptions, we were fighting around with and creating, the rule that management has the burden of proof in discharge cases, for example. That is now assumed, but we fought, bled and died over that one.

THEY WERE, ACTUALLY THAT WAS AN ISSUE IN A GOOD MANY CASES.

Oh, yes. And the whole question, whether or not an arbitrator should ever hear more than one grievance at a time or was it ....

DID YOU EVER HAVE TO DECIDE THAT ON A NUMBER OF OCCASIONS?

No, the parties did.

BUT SOMETIMES LATER ON, THAT QUESTION WAS ALSO ARBITRATED?

Yes. Yes, that has been. I never did. But I found you ran into this kind of terrific suspicion of the process and lack of familiarity with It. I remember one of my ad hoc cases during that period was out in Chicago with R. H. Donnelly. I have forgotten the

the question now, this again was a War Labor Board appointment as arbitrator, and I went in there and neither side would speak because they wanted the other side to talk first. The Company wouldn't move first and the Union wouldn't and aside from explaining it, they weren't going to say anything. Nobody would move.

HOW DID YOU RESOLVE THAT IMPASSE?

I just started it myself. I began asking both sides questions. That was the only thing I could think of to do. The minute that I began asking--I said here are all these papers--what does this mean, and so forth, and they began answering my questions. And then pretty soon, actually the Union began presenting it, really presenting the case, as it should have. It was the moving party. But you were feeling your way in so many of these areas. I wouldn't say that it is really very different now, except, what we were doing, we were doing for the first time rather than for the thousandth time, I guess.

WELL, TO BE SPECIFIC, WHAT I HAD IN MIND WAS, WHERE DURING THOSE EARLY YEARS, WAS IT UNDERSTOOD THAT THERE WOULD BE OPENING STATEMENTS BY EACH SIDE AND THEN THE WITNESSES WOULD BE CALLED, WOULD BE SUBJECT TO EXAMINATION, CROSS-EXAMINATION, THEN THERE WOULD BE FINAL ARGUMENT, WAS IT UNDERSTOOD THAT THERE WAS A CERTAIN WAY OF PROCEEDING?

I found in Bethlehem, they had been around the circuit a few times with Bill Simkin and some other arbitrators, and they already had the making of a procedure. In the milk industry, they had been working with Dave Morse and had an assumed procedure, most of the companies. Some companies would come in and not know what to do. The Union knew their way around. I found other people that were groping and didn't know, and you had to make up the procedures as you went along, and you really had to sort of--I never wanted to impose a procedure myself--you really had to see what they wanted.

WASN'T THE REALITY THAT THEY DIDN'T KNOW WHAT THEY WANTED? THAT THEY HAD NEVER THOUGHT ABOUT THESE MATTERS?

That's correct. Except if there were lawyers in the picture, they would come in with some preconceptions. If there were no lawyers, you'd have real problems. I remember at Sun Shipbuilding, they had never arbitrated, and we met in John Pew's office. A room about half the size of this, with Union men crowded on a settee. They didn't even have a table, just sitting around on a lot of chairs. We began functioning in that way, with just a lot of men in a room, with no tables, there was no place for papers, they didn't know what it was all about. I had to explain to them. We did have a transcript.

THAT'S ODD THAT IT SHOULD BE SO INFORMAL IN ALL OTHER WAYS AND YET TO HAVE A TRANSCRIPT.

Well the company had a lawyer, and he wanted a transcript and got one. The Union men didn't know what was going to happen, I had to explain to them. I remember making a soeech about interpreting the

contract. I think I shocked, them by saying that I wasn't there just to settle a dispute and make up my nind what was fair and right and just, but I was there to interpret and apply what they had agreed to. And if they had agreed to silly things, they very well might get a silly result. But ....

THAT WAS A JUDGMENT THAT YOU MADE OBVIOUSLY OVER THE COURSE OF THOSE FEW EARLY YEARS AS TO WHAT YOUR FUNCTION WAS. IT WAS PRETTY CLEAR IN YOUR MIND.

Yes, it became clear very early, to me at least, that I was to apply the agreement. I guess I arrived at that not exactly in self protection, though there may have been some of that in it, but because it didn't make sense to me to be substituting my completely uninformed judgment for the parties, judgment as to how they should run their affairs. But it did make sense to me (and this was something that I could quite comprehend and have at; least some claim to competence in) to look at their contract language and at the problem and try to relate the problem to the language and see how it should come out.

TO PARAPHRASE YOU, IT WOULD SEEM TO ME THAT WHAT YOU ARE SAYING IS THAT OUR ARBITRATOR'S CONCEPTION OF THEIR OWN AUTHORITY DERIVES IN ESSENCE FROM SIMPLE HUMILITY.

I think that there is much of that in it. Yes. How was I to know how to run the milk industry?

UNLESS YOU WERE BEING ASKED TO DO THAT ON OCCASION.

Yes, though I kept backing off and sticking to the contract as much as I could. I exercised just as little of that authority as I possibly could, except where the Office of Defense Transportation required me to go in and ....

WHEN YOU SAY THAT, YOU ARE REFERRING TO THE NATIONAL DEFENSE MEDIATION BOARD?

Or the War Labor Board. The Office of Defense Transportation ruled where they had to go in to save gas, and rubber, and so forth.

WHAT YOU JUST SAID, TOUCHES ON ANOTHER MAINSTREAM IN THE WORLD OF ARBITRATION, AND THAT IS THE EXTENT TO WHICH ARBITRATORS SHOULD BE OR WERE DIRECTLY INVOLVED IN MEDIATING. AND IT SEEMS TO ME THAT THE MILK INDUSTRY WAS GIVEN SUCH A BROAD AUTHORITY THERE MUST HAVE BEEN A LARGE TEMPTATION TO MEDIATE. PERHAPS THAT WOULD HAVE, I'M SURE THAT WOULD HAVE BEEN THE WISE THING TO DO WHEN ASKED TO DECIDE WHAT WAS ESSENTIALLY AN INTEREST QUESTION.

Well, yes. In the interest phase, of course, I keep going back to the ODT, but we were switching back and forth all the time.

Whenever I was dealing with milk routes and so forth, it had to be in terms of war time rules and how you could save gas and rubber and prevent doubling back and how many trucks could operate on that basis and so forth. And here I was dealing not only in terms of getting information from Pendleton and McDonough, my two side kicks from the Company and the Union, but was, well it was mediating with them.

THERE WAS A GOOD DEAL OF MEDIATION?

Well between them, they were the Board, and we got usually unanimous decisions because this was war time and I think we acted pretty unanimously. Finally, there was one problem that we couldn't solve between ourselves, and we went right down to the wire to a strike and they finally called a professor down from Connecticut to handle it. That was--what was it?—was it every-other-day delivery? or something of the sort, and the parties decided that (this was far sighted, it was not protecting me personally but they wanted to protect the Office of the Impartial Chairman and they knew whoever was going to make this decision was finished, once he made it) so they didn't eventually ask me to do that, but they called Professor Ware, I think his name was, down and this was on the verge of a milk strike. I know LaGuardia was in it up to his ears, and, of course, every time anything happened to milk, you had Washington, and Albany and New York, the Department of Agriculture, the Department of Health, there must have been ten different government agencies in on any problem really involving milk. So we were all concerned. I spent a lot of time down talking to LaGuardia about it and trying to get this strike thing worked out.

WERE YOU DEALING WITH FOLKS IN THE MILK INDUSTRY IN SOME OF THESE AD' HOC ARBITRATIONS YOU WERE DOING? WERE YOU DEALING WITH PEOPLE AT VERY HIGH LEVELS WITHIN THESE ORGANIZATIONS?

Yes. Much higher than you would now. There is a lot of difference in arbitration now and arbitration then. In those days you would very normally get the vice-president in charge of labor relations in the company or somebody directly under him. At the milk industry you would get, for example, Joe Pickett of Borden, I remember he was the vice-president in charge of labor relations of a Yonkers company. I have forgotten the Sheffield man's name, but this was typical. And you had the top staff representatives, you remember Mike Cashel, whom I mentioned was never there, but the top men in all those locals they were reporting back to Mike all the time. At Bethlehem, they had Jim Phelps, who was in charge of their arbitration staff and he appeared himself, handled all the cases and wrote all the briefs and so forth. You had fairly top people, I know, at General Motors. It wasn't at all rare for Walter Reuther to come in on an important case and help argue it and so forth. And the Umpire at GM in those days, if he required a conference, Harry Anderson and Harry Coen, the two vice-presidents in charge of labor relations and personnel, would be directly involved.

WELL, WAS THIS BECAUSE ARBITRATION HAD THEN A SOMEHOW LARGER IMPACT ON THESE ORGANIZATIONS—THEY SAW THE ORGANIZATION CASES AS A LIFE OR DEATH MATTER?

It was because it was so new. Yes, the cases were very much the same, but then they were very new, and here was a third party coming in and telling you what to do; and all the long-range questions of procedures and policy and so forth were being worked out and it was by no means a. matter of routine in those days and so much of it involved questions of first instance. Of course, at GM they had already been around the circuit several years with George Taylor and Allan Dash, so it wasn't so unfamiliar. But I found myself really departing from some of George's and Allan's procedures and so to that extent it was different.

DID THEY, BECAUSE IT WAS SO IMPORTANT TO THEM, REACT MORE STRONGLY TO A GIVEN AWARD THEN THAN THEY DO TODAY?

Oh, you can still cause explosions you know. Yeah, we got more explosions in those days than you do now. I remember all the questions of access, a union's right to access to records, for example.

AS PART OF THE GRIEVANCE PROCEDURE?

As part of the grievance procedure. When you got into that sort of thing, you were hitting management where it lived or thought it lived, though nobody is paying attention now. I remember in the early days at Swift Packing, sitting in Minneapolis for a couple of days because I was making a request for the production of incentive records, dealing with an incentive plan, and nobody was willing to let me or the Union see what the plan was. But this was typical. They had the same thing at Harvester in those days. This wouldn't happen now. Milk industry—well, that was all mixed up between interest and grievance arbitration. They were moving back and forth and, of course, in interest arbitration you are "working on a much higher level than you do with grievances.

MOST OF THESE CASES, I TAKE IT, WERE COMING TO YOU PRIVATELY, APART FROM THE UMPIRE? I AM NOT TALKING ABOUT UMPIRE ONES, BUT THE AD HOC ONES THAT YOU WERE TALKING ABOUT.

Privately, yes. Except insofar as they were the result of War Labor Board proceedings which was very frequent.

SO YOUR NAME IS BEING BRUITED ABOUT THE INDUSTRIAL EAST AND MIDWEST AS A RESULT OF YOUR V/ORK WITH THE WAR LABOR BOARD AND WITH THE MILK INDUSTRY?

I assume so, yes. I guess I was—people in the War Labor Board were passing my name around as they were a lot of the others that were coming up.

ONE OF THE QUESTIONS I NEGLECTED TO ASK WAS JUST ABOUT THE TOUGHNESS AND AGGRESSIVENESS OF THE PARTIES IN ARGUING A CASE. WERE THEY MORE DIFFICULT TO HANDLE THAN THEY ARE TODAY? I WOULD THINK THAT WOULD FOLLOW FROM WHAT YOU SAID EARLIER ABOUT THE IMPORTANCE THAT THEY ATTACHED TO THE GRIEVANCE, THAT IT WOULD HAVE BEEN ARGUED MORE FORCEFULLY, THAT THEY WOULD HAVE INDICATED THE IMPORTANCE OF THE ISSUE TO YOU IN MANY WAYS, CASES WOULD TEND TO BE LONGER, IS ANY OF THAT TRUE OR ARE WE REALLY ____

I don't think so, though it could be. It's very hard to generalize. You still get cases that are bitterly hard and you still get cases when it is wise to call an adjournment, quieting down when they get screaming. On the other hand, the run-of-the-mill cases are handled very quietly and effectively, though earnestly.

YOU DON'T SEE ANY DIFFERENCE IN THIS RESPECT? NOT TOO MUCH DIFFERENCE?

Not too much. I can remember plenty of cases where there was a lot of shouting and scre'aming, but whether there was more of It then than there is now ... there may have been, it's hard to tell.

SO YOU LEFT THE MILK INDUSTRY IN '44 AND WENT TO DETROIT TO BECOME THE, I GUESS YOU WERE SUCCEEDING GEORGE TAYLOR. ALLAN DASH IN 1944.

That is right.

WHAT WAS THAT RELATIONSHIP LIKE AT THE TIME?

That was tough. That was really a move from the free-wheeling minor leagues to the big leagues. General Motors had a philosophy, as you know, well worked out, of very strict limitation of the Umpire's authority to the interpretation of the agreement, and they thought it through and accepted its implications; they had the courage of their convictions. They were very careful. For example, they were quite willing that their Umpire should modify--should have the right to modify disciplinary penalties; but they would not admit that that was a natural function of an arbitrator. They, in the General Motors agreement, expressly delegated that authority to the arbitrator. And it wasn't both parties that delegated, it was the company, by itself, that delegated to the arbitrator in the agreement the authority to modify disciplinary penalties because setting a penalty was a management function. It was that kind of adherence to details that permeated the relationship and the kind of--I guess I said "courage of their convictions," and I meant it. GM could take a strike and did take quickie strikes over this kind of principle. And that didn't mean that they weren't settling a lot of grievances. It was a very small percentage of the grievances that went to arbitration.

WHAT WAS YOUR WORK LOAD, FOR EXAMPLE, IN THE FIRST YEAR OR FOR THE TIME YOU HAD SERVED THERE? HOW MANY CASES A YEAR WERE YOU HEARING?

I was there for three years. I meant to look that up for you.

RO'JGHLY.

Less than 100 a year.

WHAT WAS THE MIX OF CASES? WERE THEY--I KNOW TODAY, AS I UNDERSTAND IT, A GREAT MAJORITY OF THE CASES TEND TO 3E DISCIPLINE DISCHARGE MATTERS, RATHER THAN IMPORTANT POLICY CASES.

Very different.

WHAT WAS IT THEN?

In those days the parties were testing all phases of the agreement, ana the cases were tough, difficult, questions of seniority, questions cf scheduling, questions of the rights of union grievance men, questions of the fight between the skilled trades and the ether employees, etc.

HAD THE LINES OF DEMARCATION BEEN ESTABLISHED? HAD THOSE CASES BEEN WRITTEN YET WHICH ESTABLISHED LINES OF DEMARCATION IN THE STEEL TRADES AND GENERAL MOTORS?

Not to the extent I understand they are now. But what was happening was, because of the demands of war production and the fact that an awful lot of the skilled people had gone to the Army, the company was doing a lot of upgrading of production workers into trade and craft jobs. The seniority rights of upgradees--this was worked out in a whole series of umpire decisions-, and these cases were tough, these were real tough. Then there was discpline for quickie strikes. Such strikes did happen, and General Motors unfailingly would discipline somebody involved.

DISCIPLINE OR DISCHARGE?

Either or both. Usually somebody would be discharged and some people, who the company thought were less involved would be disciplined. My first really big case was the big strike at Chevrolet Gear and Axle which had gone to the War Labor Board and wound up in my lap. This, I guess, was the second hearing Walter Reuther was over arguing ...

WHAT WAS THAT ABOUT?

I think it was over production standards, I am not sure now, but it involved the discharge of six or eight—six union officers, most of them were officers. I was young and brash. You see what the company had done, in order to get the strike finished (this had gone to the War Labor Board, the local Detroit office of the Board) and the company had agreed with the Board to reinstate the strikers and to put them back to work as the price of getting everybody else back to work. So these men came back to work, and the company paid them two hours' call-in pay and then fired them again for their conduct during the strike. The War Labor Board sent me the case to rule on the merits of the discharges. Reuther was over there arguing

that the discharges violated the company's agreement to reinstate the strikers. So I had both issues. I held that the discharges would ordinarily have been justified, but I also held that the company had acted in bad faith with the union and with the Government and that that fact had to be taken into account in working out the remedy. In another set of cases I had put a man back to work conditionally and I grabbed hold of that idea and said that if these men would agree (and if the union also would agree) that they would not hold union office again for a year, they would be reinstated; otherwise they would be discharged and the discharges would be upheld. And that's what happened.

DID YOU SPEAK TO THE UNION ABOUT THAT REMEDY BEFORE YOU IMPOSED IT? HOW DID THE PARTIES RESPOND?

The company was, well they asked me to see Harry Anderson and Harry Coen. They said, "Mr. Seward we are very disturbed that you should find that we acted in bad faith with the Government, we want you to know, however, that we understand why you found that." Then Walter Reuther asked me to have lunch with him and said that he personally thought that I had found a perfectly acceptable solution, but that it was very dangerous in terms of an arbitrator interfering with the union's internal policies and would I please never do it again.

DID YOU EVER DO IT AGAIN IN YOUR CAREER?

That, no.

THAT KIND OF REMEDY?

I have used conditional awards occasionally.

NO, I MEANT IN A DISCHARGE CASE, REINSTATING SOMEONE ON THE CONDITION THAT THEY NOT ASSUME UNION OFFICE FOR A PERIOD OF TIME.

No.

IT IS INTERESTING THAT YOU—THE REMEDY INTERESTS ME BECAUSE I REMEMBER IN 1955 OR '56 SHORTLY AFTER I WENT TO WORK FOR HARRY PLATT THAT HE--A GREAT LAKES STEEL CASE—WHERE, IN A WILDCAT STRIKE SITUATION, HE REINSTATED SOMEBODY WITH THAT SAME REMEDY AND I WAS STRUCK THEN AS I WOULD BE FULLY EQUALLY IMPRESSED TODAY WITH ANYBODY WHO CHOSE TO DO THAT, BECAUSE IT WOULD APPEAR ON THE SURFACE, AT LEAST, IT WOULD BE SOMETHING BEYOND THE ARBITRATOR'S AUTHORITY.

Well, I remember before I did it I called George Taylor and explained the situation and explained what I was planning to do, because I knew it was risky, and I remember George's reply. He said, "Ralph, at home for many years on my desk I have had a little

figure of a Chinese mandarin; and whenever I have had a problem such as you have, I have asked the mandarin, and if the mandarin tells me it's okay I go ahead and do it." He said, "Ralph, you better ask the mandarin." So I asked the mandarin and the mandarin must have told me to go ahead.

WHAT WERE SOME OF YOUR OTHER VIVID GENERAL MOTORS' RECOLLECTIONS?

Well, General Motors, as I had said, on the one hand it was the big time and on the other hand they were feeling their way into their procedures. Of course, they were advanced in the sense that they had been working with George Taylor for a couple of years and with Allan Dash for a couple of years. Allan had been working with George and worked in a manner very similar to George. And Inevitably they built up a set of procedures.

THESE WERE WRITTEN PROCEDURES, OR SIMPLY PROCEDURES THAT THEY HAD BECOME FAMILIAR WITH AS A MATTER OF PRACTICE?

They had become familiar with as a matter of practice.

DID THEY MAKE YOU AWARE OF THOSE PROCEDURES WHEN YOU TOOK THE, ACCEPTED THE UMPIRESHIP?

No, as a matter of fact, I didn't meet Allan until I had been on the General Motors job for some time. I had known George, of course.

YOU HAD JUST BECOME AWARE, ON A DAY-TO-DAY BASIS BY YOUR RELATIONS, THROUGH YOUR DEALINGS WITH THE PARTIES?

For example, when I first went to GM, Allan had left the job in, I guess, June of '44 and they got to me around August, I was still winding up the milk job. Had a lot cases to finish up. But they had asked me to start at GM so I went out to Detroit twice. Detroit and some place else, one of the towns, I had forgotten where.

FLINT?

Well, no It may have ...

PONTIAC?

I think it was in Dayton.

OK.

But I am not absolutely sure. To hold some hearing. Then I went back to my office, and in the normal course I made up my mind and issued my first batch of decisions on my first set of cases. I

suppose ten or fifteen decisions. Maybe only ten, I don't know. Then I went back to Detroit again for this big hearing that I told you about yesterday on the Chevrolet Gear and Axle strike, and when I was there Art Johnstone, who was representing the union, said we were surprised to get your decisions without first having a conference. I then, for the first time, discovered that it had been George's practice which Allan had carried on, to have a conference with the parties and submit his drafts to them for discussion before he sent them out. This had been his practice all the time in the hosiery industry in Philadelphia and elsewhere and it was part of George's technique of staying close to the parties and responding to them. I didn't work that way, I can't tell you why..

DID YOU ASK THEM WHETHER OR NOT THEY WANTED YOU TO CONTINUE V/ITH THAT PROCEDURE AS PREBOARD CONFERENCES?

There was some discussion. It never arose as an issue because I was the first two or three months working in New York and mailing out my decisions from New York and I just didn't see fit to go out and have a conference about a decision which I had made. I think I took a more, I don't know what the adjective is, I think it was natural for me to be less of a mediator and more of a decider. Possibly I was a bit timid. It was easier for me to make up my mind and then come hell or high water send my decisions out than to meet with the parties and have a discussion. That was probably a weakness in me, but I found that General Motors welcomed it and the Union accepted it.

HOW DO YOU ACCOUNT FOR GENERAL MOTORS WELCOMING THIS CHANGE IN THE ARBITRATION PROCEDURE?

Because GM liked the judicial approach to arbitration and didn't like the mediatory approach and I think had been restive under this discussion procedure. They had, I've forgotten just what the adjective was they used to describe the conferences, but they hadn't seen the utility of them because none of the decisions had ever been changed. There had been changes in language, of course, but I think that Is a useful thing. I think that Syl Garrett, of course, at U.S. Steel Is still using that technique very well. But I went ahead in my own way mailing the decisions out without the conferences. I guess that's because I naturally feel most comfortable that way.

ONE OF THE ADVANTAGES OF THAT PROCEDURE I HAVE ALWAYS THOUGHT WAS ITS ABILITY TO PREVENT ERRORS.

I agree. It could be that I have made errors at Bethlehem and other places that might have been avoided by that procedure. I am not recommending my own more distant procedure; I am just saying that that Is the procedure I have always felt most comfortable working with.

IF I MAY JUST JUMP AHEAD FOR A MOMENT AND CONNECT THIS UP WITH SOMETHING THAT WE WILL TALK ABOUT LATER, THAT IS, YOUR ROLE AS CHAIRMAN OF WHAT WAS THEN KNOWN AS THE BOARD OF CONCILIATION AND ARBITRATION FOR U.S. STEEL AND THE STEELWORKERS. WEREN'T THEY THEN USING THAT PROCEDURE WHEN YOU WENT THERE?

Well, that was a three-man board, yes.

A FORMAL THREE-MAN BOARD?

A formal three-man board, we all shared offices.

I DIDN'T REALIZE THAT.

And I hope we do In these discussions have some time to talk about that because that was a fascinating procedure, where you were trying to mediate the meaning of words.

ALL RIGHT, I THOUGHT THAT PERHAPS IT WAS THEN THE SAME PROCEDURE THAT SYL'HAS TODAY BUT I GUESS IT WASN'T.

No, they had a formal three-man board there. I did, on the other hand, at General Motors every once in a while run into problems where, before the decision was made, I felt it important to talk with the parties; I can't list them now, but on several occasions I concluded there were problems implicit in the case that the parties had not seen. I remember a scheduling case, I don't remember the issue now, but if I handed down the only possible contractual decision, I felt, it would do damage to both sides. They hadn't foreseen this particular problem and (I am sorry that I can't be more specific about it right off the cuff) I remember calling Art Johnstone and setting up a meeting and talking to him and then to the Corporation about the problem and they both agreed, they all agreed that there should be no decision. That sort of conference and that sort of relationship was very easy. And then we did have sessions at which the union would come over and gripe about decisions every once in a while.

THAT MUST HAVE BEEN AN UNCOMFORTABLE SITUATION. I KNOW I HAVE EXPERIENCED IT AND FOUND IT UNCOMFORTABLE TO HAVE TO LISTEN TO COMPLAINTS IN THAT WAY.

Well it was uncomfortable, but okay, that was with the job. I got so, though I never liked, it, I didn't mind it, and we were all friends and the company would sometimes—I remember one decision I issued when I held--well it was one of those decisions which was a back-breaking, world-shaking decision when It was made. But it, like so many of these decisions, the parties absorbed it and finally decided they didn't want to pay any attention to it and went on with their lives. It was an interesting case, about my second year

at GM, I think, and again it involved Chevrolet Gear and Axle. There had been a dispute over production standards, there had been a grievance filed in protest against the production standards which were still in process during the course of the grievance. It was a grievance raising a real challenge to the contractual propriety of management's action in that case. It was a claim that by setting certain production standards, management had violated an earlier agreement, which was clearly, without regard to the merits, a perfectly valid type of claim to make. Without waiting for the processing of that grievance or for any determination on it, management suspended three men who would not live up to the new production standards and told them they were suspended indefinitely until they decided, in General Motors' terms, to do a fair day's work, which meant living up to the new standards. Whereupon the union, somebody got a bright idea and filed a charge that management at GM had violated the no lockout provision of the contract and that they had locked out these men. General Motors said, "My God, this isn't a lockout; this Is perfectly ordinary discipline. We suspended the men indefinitely but any time they want to produce they can come back." Well, this one really shook both parties; you could feel them building up steam over the implications — or what they saw as the implications—of the issue. We held a hearing. I think when I first heard about the case I had a feeling that "damn it the union had hold of something that couldn't be disregarded and couldn't be brushed aside." But I racked my brain because the parties were arguing at complete cross purposes. If you called this thing a lockout, the contractual consequences were clear; the union was correct. If you called this discipline, the contractual consequences were clear; the union had no case. But which was It and how could you determine it, and the contract gave me no clues. But finally it dawned on me that we weren't talking about two different kinds of action. You were talking about one kind of action and then whether you called it discipline or a lockout depended on motive. That sending a man home for the purpose of influencing his decision on a collective bargaining issue or a matter In dispute between the parties was a lockout while sending him home to influence his conduct otherwise was normal discipline.

YEAH.

And I came out and held the Corporation guilty of violating the no lockout provision and Charlie Wilson came storming down, I understand, to the labor relations department and Norman Ellis, who was the Chevrolet representative, began walking on the other side of the street from me and so forth. (He Is a good friend of mine, I saw him just a few weeks ago.) But really, you would have thought that the world was coming to an end. They came over and discussed the implications of it. This was what got me started talking about the case. This was another conference, gripe session and so forth. The Union was going through the ceiling with joy. But nothing happened as a result of the decision. Nothing changed. I think the Corporation thought twice, from then on, about doing what it had done, but it did not affect the corporation's disciplinary procedures. I don't think that this earth-shaking decision Is even remembered now.

IT WAS NEVER APPLIED AGAIN?

It was never applied again and it was never called for. It was one of those curious things, I am sure you've had, where at the moment the world shaking issue seems world shaking, and then the parties go on and there are no great waves.

HARRY SCHULMAN, AS I UNDERSTAND IT, HAD A STRANGE WAY OF DEALING WITH THOSE ISSUES WHICH HE FELT EVEN THOUGH IMPORTANT TO THE PARTIES WOULD NEVER AFFECT THEM AGAIN. HE SIMPLY DEPOSITED THEM IN A FILE AND LEFT THEM THERE FOR YEARS AND YEARS AND NEVER DECIDED.

That is correct.

DID YOU EVERY DO ANY LIKE THAT?

Yes, later on. I don't know whether you want to go into it or not. It was an ad hoc case at Acme Steel. It was a case which Lee Shaw and Ben Fischer argued before me all one day, which involved some question of what was a job. Management was moving people around among machines or something of the sort, I don't recall the details now, but it really raised questions of the meaning of the word "job" under the agreement and could management have a "job" come into existence on one shift and then disappear for the next two shifts or something of the sort. Contractually, it went to the roots of the agreement. The difficulty was, that though the men had felt strongly when they filed that grievance at Acme Steel, it had actually worked out well; and because of management's action they were making more money and liked what they were doing. I held that case for about a year and one-half and finally I called Ben and Lee Shaw, both and said, "Look, do you really want a lot of law made here, in view of the implications, or would it be better to let the whole matter drop?" They both called back and said, "By all means, let's forget it." But I never did it the way Harry did. It was interesting that I used to see Harry in those days, quite frequently.

THIS IS WHILE YOU WERE IN DETROIT?

At General Motors, yes.

YOU WERE LIVING IN DETROIT AS WELL?

I was living there commuting, my family for a while was in New York and then in San Francisco, but the job really required my presence there most of the time. After the family moved to San Francisco, commuting was impossible so I was living there. But Harry and I were working and here we were in the same industry with the ...

IN THE SAME CITY?

In the same city and the same union, very much the same problems and arbitration systems were so completely different, with Harry

really being godfather, friend, and counselor to the parties and doing a beautiful job, which they wanted. Whereas I was doing this contract interpretation—decide the issue and get out kind of thing—I guess we were doing the sort of thing that each of us did best. Although that wasn't the only reason. At Ford, there had been, you know the history so well, when Harry came in there there was no--they had no structure, they had no policy, they didn't know what to do, they needed somebody to teach them.

IT HAS BEEN DESCRIBED BY SOME OP THE PARTIES AS A POWER VACUUM.

Yes. 'Whereas there was, God knows, no power vacuum at General Motors and the UAW. I saw GM and the UAW in that relationship with lots of problems, but never saw either of them without a policy, without a point of view.

WITHOUT A POINT OF VIEW?

Without a point of view, yes. So that while Harry was screening his own grievances and deciding which ones he was going to decide and which ones shouldn't be decided and issuing little decisions, big decisions and so forth, and doing a beautiful job there (what a terrific mind that man has), I was working In this far more restricted area. I felt always that the GM system made ultimate sense. GM and the UAW realized the desirability of making settlements, of settling grievances and staying away from the Umpire if they could, as well as anybody else. But they felt (and I have always, I think, agreed) that they could make sense in the grievance procedure in terms of settling problems and being, if you will, loose and liberal if you want to or strict—making up their minds how they wanted to play it in the grievance procedure--if they knew that the contract was not affected by what they did; if they had absolute certainty that if they ever got to the Umpire what they had done in the grievance procedure wouldn't affect the issue. When they got to the Umpire, they were up against the agreement and only the agreement, and they had security--they knew where they stood. This was the objective and I thought, Lord knows you can argue about It, but I always thought that they made a lot of sense in taking that position, and we were fairly strict about It. Of course, we were developing new principles and we were making lav/ all the time. The contract was new and there was—as they amended it we would go over the new sections and there would be a lot of cases and I would have to figure out what they meant, but still you were sticking close to the agreement and neither side was asking me to substitute my judgment for the agreement or to go in and solve problems. They—both sides—recognized that It was for them to make the policy decisions and for me to interpret what they said In the agreement.

DID MEDIATION PLAY A ROLE AT ALL AT THE GENERAL MOTORS-UAW SYSTEM? I WOULD HAVE THOUGHT THAT WITH A MAN LIKE TAYLOR IN THE UMPIRE'S CHAIR, THERE WOULD HAVE BEEN A GOOD DEAL OF MEDIATION AT GENERAL MOTORS WHILE HE WAS THERE, AND I WONDERED IF THAT WERE TRUE AND IF IT WERE WHETHER THAT - ANY OF THAT WAS STILL PRESENT WHILE YOU FILLED THE JOB?

Practically not. When I was there. You will have to ask Allan Dash and he would give you a better idea of what George had done than I can. George talked to me about it. My impression was that in the early days, particularly in terms of procedure, George mediated and worked with the parties but that he didn't have the liberty he had as an Impartial Chairman in hosiery and with the garment groups. That he found himself in the GM job responding to their needs and basically GM was setting the pattern. The union was reacting to GM. Insofar as George was innovating, well, I am sure that George (being George, you know) did an awful lot of talking and explaining about ideas with the parties, at hearings and elsewhere. That's the way he worked. I don't think there was an awful lot of mediation; at least, I never got that impression. There wasn't room for it; you were up against contractual problems. Well, the well-known head and shoulders rule on ability and seniority which George developed ...

YES.

I am sure that there must have been a lot of discussion of how this works, but you could see that George developed it in common law terms from decision to decision explaining it. I don't think it was worked out, at least I never had the impression that it was worked out by more or less agreement, because GM was always restive under it and was restive and Irritated with me when I followed George completely in that approach.

DID THEY ASK YOU TO REVERSE ANY OF THE EARLIER RULINGS BY DASH AND TAYLOR? I TAKE IT FROM WHAT YOU SAID A MOMENT AGO THAT THEY REALLY DIDN'T WANT YOU TO CONTINUE THE HEAD AND SHOULDERS RULE IN SENIORITY MATTERS.

They never asked me to reverse it, though GM would do something else. The union would argue in Its brief in terms of the head and shoulders principle, while GM would always argue in terms of the language of the agreement and never mention head and shoulders. And then when I came up with my decision and would echo or follow George's approach GM sort of heaved a sigh and accepted it and moved on, and I think midway in my three years they realized that I wasn't going to shift, and we gradually got into head and shoulders approaches and procedures.

THAT IS ONE WAY OF HAVING THE ARBITRATOR OVERRULE THE PRECEDENT BY HAVING HIM CONSISTENTLY IGNORE IT WITHOUT COMMENT.

Of course. I am sure that's happened to a lot of my so-called precedents.

ANOTHER INTERESTING, I DON'T KNOW IF THIS IS A GENERAL MOTORS HIGH-LIGHT OR NOT, BUT I KNOW THAT YOU WERE ONE OF THE FIRST PEOPLE TO USE THE APPRENTICESHIP ARRANGEMENT AND HIRE SOMEBODY TO ASSIST YOU IN UMPIRESHIPS. IT SEEMS TO ME THAT GABE ALEXANDER WAS THE FIRST OF THE MODERN DAY ARBITRATOR APPRENTICES.

hat: ' s risht

I THINK THAT MY RECOLLECTION IS THAT THAT OCCURRED DURING YOUR YEARS AT GM.

Yes.

COULD YOU TELL ME SOMETHING ABOUT THAT--HOW IT HAPPENED?

Sure. They had a maintenance of membership thing at General Motors. I think this was the beginning of my last year there, maybe my second year, I have forgotten.

DID YOU HAVE A TWO-YEAR CONTRACT WITH THEM? WHAT KIND OF CONTRACT DID YOU HAVE AT THE TIME?

I think it was co-terminous with their agreement, I believe, but I would have to check that. Anyway, it was a provision which said that an employee could at the expiration of an agreement withdraw from the union if he sent a letter return receipt requested--what kind of mail do you call it?

CERTIFIED, RETURN RECEIPT REQUESTED.

Exactly. By certified registered mail return receipt requested. Well, that was spelled out in the agreement. A lot of employees attempted to withdraw from the union—a good many hundred--but a lot of them didn't, forgot to mail their letters certified, return receipt requested. And they also, a few others had failed on other technicalities or at least the union had claimed they had failed, and they all filed grievances. Or rather the union asked the company to fire them all or collect dues or something of the sort, but anyway, these cases all came up and there was a terrific batch and we had enough of a case load at General Motors to keep me falling behind and then scrambling to catch up as we all do, and I couldn't handle these return receipt cases by myself. So I said I had to have help on this particular batch of cases, and they agreed and I looked around, asked for suggestions. I've forgotten now who mentioned Gabe's name. Somebody in the War Labor Board or from the Detroit War Labor Board, but Gabe came in and he looked just absolutely ideal. He took the job, you know, supposedly on a temporary basis but proved to be absolutely ideal and began working with me--he was handling and hearing all of those cases. I heard the first batch and wrote the decision saying that registered mail return receipt requested meant what it said in the agreement and I had no power to change it, and so Gabe went out and heard those cases by the dozen all over the General Motors circuit, and we got the decisions out. And then he began--it was so good to have somebody in the office to talk to—his mind and his precision of language were such a help and he began helping me on drafts of other cases.

WAS HE THEN EMPLOYED BY THE SYSTEM OR WAS HE EMPLOYED FOR THE LIMITED PURPOSE OF HELPING YOU WITH THAT PART OF THE DOCKET YOU MENTIONED?

I have forgotten. We worked out some financial arrangements but it's too far back for me to remember what they were. I think he may have left the Board and been practicing with his father, in which case he was just taking a little time off from his practice or he may have been still with the Board. I'd have to ask him. But, in any case, he was working with me consistently and going—he went around on some hearings with me.

THE PARTIES WERE AWARE OF THIS RELATIONSHIP BETWEEN THE TWO OF YOU?

Oh, yes. They ...

WERE THEY COMPENSATING HIM FOR WHATEVER HE PROBABLY WAS RECEIVING?

Oh sure. They were compensating him and I've forgotten just how much or how it worked.

DID THEY EMPLOY HIM OR DID Y0U--IN A SENSE THAT THE THREE OF YOU TOGETHER MADE THE DECISION TO EMPLOY HIM?

Well, I had found him. I suggested his name to both sides, and they checked on him and said "okay" and they paid him.

HAD YOU HAD ANY SUCH RELATIONSHIP BEFORE? I KNOW YOU SAID THAT IN THE MILK INDUSTRY THERE WAS SOMEONE WHO ASSISTED YOU BRIEFLY THEN.

In my last, oh, six months In the milk industry, a young man, I am sorry I no longer remember his name because it was such a brief acquaintance, came in and began holding a few hearings. We had offices on Madison Avenue and he came in and shared offices. He was a very nice man, I think he had had some contact with the Industry before.

DID HE GO ON TO A CAREER IN ARBITRATION?

No, I don't think he did. He served there for two or three years; then they abandoned the milk Impartial Chairmanship and it no longer exists.

JUST DIGRESSING FOR A MOMENT. IT MUST BE A GREAT SOURCE OF SATISFACTION TO YOU TO INTRODUCE SO MANY MARVELOUS OR CAPABLE ARBITRATORS IN THE FIELD. I CAN ONLY THINK OF A FEW OFF HAND BUT IT WOULD BEGIN WITH ALEXANDER, VALTIN, PORTER, STRONGIN, THE LIST GOES ON.

Well, I have been very fortunate but there haven't been all that many.

Well, I was very, very lucky with the men I have had the good fortune to work with. It's always been easy because I've needed so much to talk to somebody, as you understand, and half of what people call a great educational process was just me trying to get help about some problems.

YES.

From these terrific men that came to work with me.

LET'S GO BACK TO THE GENERAL MOTORS SITUATION. WHAT ARE SOME OF THE OTHER HIGH POINTS? OR LOW POINTS, EITHER ONE.

There are so many things you could talk about. I don't know whether to talk about interesting stories or matters of procedure. Let's take an interesting case which was also a matter of procedure. We were feeling our way. The GM clause at the time, I don't know how it reads now, was written so that the umpire under the agreement seemed to have or could--you could read into the language—investigate powers. I think it said something like: a grievance would be appealed to the umpire who shall Investigate the matter, and, if necessary, hold hearings. I think that dated back to the Millis days when they were just feeling their way and were uncertain about what the umpire was going to do. Anyway because of that, or at least because It helped them solve problems and the contract didn't forbid it, there was room for investigation by the umpire, independent of formal hearing procedures. I think that kind of thing has dropped out, in fact I am sure it has since, but for one thing we had the question of what do you do with the witness from the collective bargaining unit whose evidence management wants.

THAT'S STILL A PROBLEM TODAY.

It certainly is. I was up against it In a real way in a Bethlehem case just last fall. At GM for a while we had the technique of the umpire interviewing such a witness in private and ....

BY PRIVATE DO YOU MEAN JUST THE UMPIRE AND THE WITNESS?

Yes .

DID THE UMPIRE HAVE ANY RIGHT TO RELY UPON THAT TESTIMONY IN PREPARING HIS AWARD?

Yes. I remember a case at A.C. Spark Plug where two gals on the late afternoon, you know 4-12 or 3-11 shift had gotten out of work and had stopped off at one of the local bars and had run into the General Foreman and the Plant Superintendent. To make the story short, the four had made a night of it and the Foreman and the Plant Superintendent hadn't shown up for work for a long time next day and there had been inquiries and word had gotten around, and A.C. Spark Plug was shocked to its ears. Of course, the girls came in later in the afternoon bright as daisies, but anyway A.C. Spark

Flug fired all four of them. The union said they didn't care what they did about the Foreman and the Plant Superintendent, but as to the two girls what they did after hours on their own time was their business. So they filed a grievance. A.C. Spark argued that they had the right—that their disciplinary authority did not stop at the plant gates or at the end of the shift hours. And the idea developed (this case originally came before Allan Dash) that events taking place out of working hours, off the plant, could be subject to management's authority if they had a direct impact on relations in the plant. (This again is an instance of concepts which are now very familiar to us but which were completely new and being formed ... argued over in those days of what were the rights of management outside the plant.)

BUT THAT WAS ORIGINATED BY DASH AT GENERAL MOTORS?

Well the issue came up, and he sent the case back for evidence as to what had happened in the plant--had there been any impact *on* intraplant relations—and to investigate. The parties as usual didn't investigate. (It's so rare when you send a case back to the parties, unless you give them very specific directions, that they will really get in and pitch.) So it came back to me, and the company came in and proposed to show that there had been great repercussions in the plant, that the women employees had been shocked and there had been all kinds of buzzing back and forth and conversation and work had been affected, because families wouldn't want their daughters working there and so forth. And they proposed to give me a list of employees and ask me to interview them, and the union objected very strenuously and said, "We don't want you to interview those employees; obviously management will have trained them in just what to say" and so forth. I said, "Okay, I won't interview anybody's hand picked list from either side, but I will go up to A.C. Spark Plug and ask that I be given an office and a couple of messengers and a copy of your payroll and I will interview anybody I want to." So I went up there and spent one of the most interesting days of my career as an arbitrator. I just called every fourth name on the payroll, spent all day at it and, oh, I guess in a certain group of departments but I must have talked to, I don't know how many now, a very large number of employees and it was very interesting how they split. It was particularly the women I called. I called a few men. The men could care less about what went on; they were just sort of delighted and amused at the whole thing and sorry to see the Plant Superintendent go, whom they liked, and they didn't care about the Foreman because he was over the v/omen and they didn't know him. But the women split between the young unmarried and the older married. You could just see among the older married women the lips set firmly and they "had no use for that Judy, she was the one that started the whole thing" and so forth and "marriages weren't safe while gals like Judy were in the plant" and they were glad she was out, while the other younger ones said, "My Lord, what are you supposed to do when a Foreman asks you for a date? Are you supposed to hit him in the face?"

YOU WERE ACTING LIKE A POLLSTER?

I was.

THE SEWARD POLL ON PLANT MORALITY?

I was. But it became very clear ....

HOW DID YOU DECIDE IT?

Well, it was clear that most of the impact in the plant, management was responsible for, when they came buzzing around and asking everybody and spreading the word. It was also clear that contacts between male supervisors and females in spite of management's unwritten rule, it was well understood that they weren't supposed to happen but they always did happen, and there were company picnics and the gals went home with their Foremen and all the rest of it. It was interesting that they all recognized management's point that if some gal was making time with a foreman, there would be jealousy on the part of the other gals and this would affect plant operations. On the other hand, the older married set also got the point when I asked them about it, about management's right to deal with people's lives off plant property. Oh, I put the gals back ...

WITH BACK PAY OR WITHOUT?

With back pay and ...

YOU HAD FOUND THAT THEY HAD NOT, WERE NOT GUILTY OF ANY INDUSTRIAL OFFENSE?

That's correct and I put them back. Actually, they came back and collected their back pay and quit.

WELL, THAT IS AN EXTRAORDINARY SITUATION.

It was interesting. As I say, the principles—well maybe they were clear to a lot of people--but in those days they weren't clear to me; and I was concerned about the limits of management's authority outside of the plant. I had been dealing in the milk industry, for example, with employees who always work away from the plant and management had terrific problems in supervising their actions while on their milk routes. Working hours in the milk industry were very flexible, and though there was a starting time when you went in and got your load and time when you were supposed to get back from your route, there were terrific problems about the way time was spent on the route and about the time involved in waiting in line to get back into the plant. So I was familiar with situations in which time limits and geographic limits on management's authority were not clear and had doubts about the validity of a statement that management has no right whatsoever to control actions off its property. I had real problems, and I really sweated over this case, because if I said the wrong thing it would affect the contract all over GM. But the decision was accepted. I think management expected it and there were no repercussions.

I THINK YOU MENTIONED SOME OF THE PRINCIPLES THAT WERE DEVELOPED AT GM BY THE ARBITRATORS. WERE THERE OTHER PRINCIPLES THAT YOU PERSONALLY DEVELOPED WHICH ARE STILL, TO YOUR KNOWLEDGE, PART OF THAT RELATIONSHIP? CAN YOU THINK OF ANY?

I don't know enough about what's going on there now to know the extent to which my old decisions are part of the present relationship. I know that several times I was asked to make contract interpretations in test cases to really test the meaning of a contract clause.

BY TEST CASE, PARDON ME, RALPH, BY TEST CASE, DO YOU MEAN A SITUATION WHERE THE UNION DELIBERATELY DID SOMETHING OR WHERE THE PARTIES SET UP A SITUATION IN ORDER TO GET AN INTERPRETATION? OR WAS THIS A SITUATION THAT DEVELOPED?

Almost that. The situations always developed but then the grievances were selected.

I SEE.

Because of their typical nature and representative nature, you usually, In this situation, would get a whole group of them. I remember they amended their seniority promotional provisions by adding a provision (I can no longer give you the words), which entitled employees who were dissatisfied with their jobs to request transfer outside seniority units or into other departments or some such thing. This raised terrific questions: questions, for example, concerning the right of an employee, under the provisions, to stay on a job rather than be transferred; or, if he got a job, did that mean he could then stay there and resist transfer, and (I can no longer go into all the phases of it). I think the parties had agreed on language without knowing or realizing its implications and the implications in terms of plant transfers and job assignments and so forth were very wide. Anyway, they brought about a large number of grievances and Walter Reuther came over and argued and I think, I don't know if Harry Anderson was sitting in the hearing room, but at least you could feel his presence there. Both sides were watching this because, as you know, the essence of operating a plant efficiently is flexibility in job assignment, and they were talking about items which were vital to both sides. Yes, I wrote decisions which were contract wide, and chain wide in their effect. I have no idea at the moment, for I haven't followed the General Motors contract, whether the contract provisions are still there or the extent to which they are still following those precedents. But I can still remember - I can still see that long wooden table, my yellow pad and the GM building out the window to my right and sitting there trying to figure out what was the meaning of the term "job" and what was the meaning of "vacancy" and what was a "vacancy," what was a "job," what was a "job assignment," what was a "transfer."

THOSE ARE THE KINDS OF PROBLEMS THE PARTIES NEVER ADEQUATELY DEFINE, THE KINDS OF TERMS THE PARTIES NEVER ADEQUATELY DEFINE IN THEIR AGREEMENT.

Because they are so sure that they know what they mean and you find each side knows exactly what it meant, but they are arguing at cross purposes because they meant different things. It's like what is a "lay off?"

WHAT WAS THE QUALITY OF ADVOCACY IN THAT SYSTEM? WERE BOTH SIDES VERY WELL REPRESENTED? I WOULD THINK SO.

It was on a high level and they developed in the Taylor days. I had nothing to do with developing their procedures; I accepted them basically. They briefed the cases in advance and briefed them very well. You had excellent grievance minutes developed and the briefs were built on the grievance minutes. You had a firm foundation at GM, although we had a lot of trouble despite the foundation; but you had a better foundation at GM than you often do for applying the rule that your case should be made in the grievance procedure and that you don't make a new case before the arbitrator. But they would have these briefs, both sides would read their briefs--and though, when I describe that to people, they say, "Oh my God, how did you ever stand it sitting there and listening to briefs read?" Actually, it was amazingly helpful. It shortened things down a great deal. You got a consistent statement of the case from both sides. Then sometimes the Union, if it was the moving party, or the company, if it was a disciplinary case, (we had gotten over the procedureal Issue very early); would call its witnesses and then there would be cross examinations and so forth. There was no transcript. I found myself having to do something which I do very badly, which is take notes, but the briefs were a great help and my notes were really supplementary to the briefs. And sometimes, when both sides had read their briefs, I would indicate the areas which I thought needed clarification, and sometimes I would myself ask for witnesses on this point or that point and then each side would examine and cross examine. It was very expeditious and you could make a lot of headway in that technique, because reading of the briefs replaced what so often is endless flounder, with witness after witness testifying before you finally get down to the issues.

WHAT WAS THE CASE LOAD THEN AT GENERAL MOTORS DURING THOSE YEARS?

I think, I know if I issued more than 100 decisions a year I was going to get a bit more money. I never made 100 but I came close to it a couple of times.

YOU WERE DOING THAT FULL TIME?

I was doing this full time and then some. In those days there was a rigid rule, if you were GM umpire you couldn't do anything else.

WERE YOU COMPENSATED ON A RETAINER OR WAS THERE SOME COMBINATION Of? RETAINER AND PER DIEM?

No, it was a salary.

STRAIGHT SALARY?

Straight salary, paid by both sides. I think that both sides contributed to a joint account which set up the office, and I was paid $25,000, I think, and I had some expense money on top of that.

YOU WEREN'T RECEIVING, I TAKE IT, MORE THAN THE PRESIDENT OP THE UAW?

That was the limit. I could approach it but I couldn't ....

IT'S ALWAYS BEEN A LIMIT IN THESE RELATIONSHIPS.

That's right.

THE SALARY OF THE PRESIDENT OP THE INTERNATIONAL ...

Exactly, exactly. But they did give me something, I can't remember what, towards expenses because I was, it did require me to live In Detroit, away from my family and so forth and they recognized that.

WAS THERE A PROBLEM, RALPH, IN THOSE YEARS WITH THE PEOPLE? WERE THEY CONCERNED THEN WITH THE SPEED WITH WHICH AWARDS WERE RENDERED?

They were concerned about the speed with which I rendered my awards, because I was then, as I am now, one of the slowest writers in this world, and I was polishing sentences. They had a thirty-day time limit on the decisions at GM. I made it sometimes but very rarely, and we were hearing a lot of cases so they were restive under my delays, never so much as to cause serious problems—except for me. I have always felt - you know the feeling you have with a backlog - "Why am I so slow?" and so forth. It just took me time to figure out the answer to questions, and it took me more time to get words that said it right. The cases were well presented by both sides. They had, GM had a group - they were not lawyers but men who had worked in their plants and came up. There may have been some lawyers, and there may be now I don't know. But when I was there, there was a man named Geirock and Earl Bromblet", who later became vice-president. Well, Earl was presenting cases and Fred Schwarz was just breaking in and a man named Scribner was there. There were others ....

ON THE UNION SIDE, WHO 'WERE THEY?

Art Johnstone was in charge and he had some assistants.

WAS LARRY CARLSTROM ONE OF THEM?

Carlstrom was in and out. Yes, he was there. Though only on certain cases. He was in one of the regions, and Art was really in charge. Art did a very good job. The union had this screening procedure ...

HAD THEY ALWAYS HAD THAT OR DO YOU HAVE ANY IDEA WHEN THAT WAS INSTITUTED?

It was there, I think, when I got there. They had adopted the rule, either when I got there or shortly afterwards, I am not sure which, that nobody from the district in which the grievance arose could sit on the screening committee. The purpose was to rule out politics. That was the only relationship I have ever been in where that was ture, and it worked very well. There were some cases, of course, where the Union was walking the last mile with an employee, particularly discharge cases. But by and large, they were hard cases and tough cases that ought to be arbitrated—where there were perfectly good reasons for arbitrating. I know that it was a relief, sometimes, when an easy one came along, because you didn't have to break your back over it.

WERE YOU SORRY TO LEAVE GENERAL MOTORS IN 19^7?

Yes, I was sorry because it was a failure. I left on the surface because I 'was offered the U.S. Steel job. I knew, however, that if I didn't take the U.S. Steel job my contract wouldn't be renewed because Walter Reuther told me so. We had lunch together. I had a major seheduling issue. This was about six months after that group of seniority decisions, and then I issued a decision on a very tough test case on some scheduling questions. Walter said he personally had no quarrel with any of these decisions. He might have argued a little bit about some points, but basically he accepted them completely. But this fall he was in the climax of his fight with George Adder for the presidency and he couldn't stand to have me as an obstacle. There had been great dissatisfaction over the decision in some branches of the rank and file, and I was a political liability. So in those terms I was sorry. I 'was delighted that the Steelworkers were making a change at the same time ...

YES.

For some reason or other, they had asked me to come. I have never been quite sure how this conjunction happened but it did.

ONE DOES BECOME WEDDED TO A RELATIONSHIP AFTER A FEW YEARS AND WOULD LIKE TO BELIEVE THAT IT WILL GO ON AND ON. THAT SELDOM HAPPENS BUT THE FEELING IS THERE NEVERTHELESS.

Sometime I want to tell you - I have been fired by experts. And I think the most expert was the Farm Equipment Workers at Harvester. When we get to that, it was a very interesting one. No, I was sorry;

I enjoyed the GM thing. It was a very lonely job, because I was away from my family, and I found (as opposed to the Steelworkers) the automobile workers in General Motors, though they were very friendly, permitted no off hours socializing at all.

HOW DO YOU ACCOUNT FOR THAT? THAT IS SOMETHING I NOTICED IN MY OWN EXPERIENCE, AND I SOMETIMES V/ONDERED WHY THE UMPIRE IN AN AUTO WORKER RELATIONSHIP IS KEPT MUCH MORE AT A DISTANCE THAN THE STEELWORKERS, WHERE THE PARTIES SEEM MUCH FRIENDLIER AND FAR MORE OPEN.

I can't account for it. You'd have to ask them. It has become a tradition; how the tradition started I don't know. Well, I think the Steelworkers' approach makes a hell of a lot more sense. It comes, I think partly from Ben Fischer and his very broad philosophical approach to the problems of arbitration. Partly because of Phil Murray and partly because of people In Management. I have found groups In steel management who had the same broad point of view and who felt that there were dangers in setting up a completely isolated ivory tower relationship. I don't know,.I know that Detroit was a very lonely experience. I was working very hard and didn't have time really to go out and make friends. And though I was beginning to enjoy Detroit very much in my last year, I was still working really too hard to build myself into the community, so in a way my going to Pittsburgh was a welcome change. It was a new chance.

BEFORE VIE GET INTO THE U.S. STEEL EXPERIENCE, HOWEVER, I THINK IT WOULD BE USEFUL TO GO BACK AMD DESCRIBE SOME OF THOSE AD HOC ARBITRATION EXPERIENCES YOU HAD BETWEEN 19^2 AND 1944. AS I UNDER-STAND IT WHILE YOU WERE AT GENERAL MOTORS YOU WERE NOT DOING ANY AD HOC ARBITRATION.

No, no.

SO IT REALLY WOULD HAVE BEEN THAT TWO-YEAR PERIOD.

Yes, that is correct.

PERHAPS YOU CAN GO BACK AND TALK SOME MORE ABOUT THAT. WE TOUCHED ON IT BUT THERE IS MORE TO BE SAID.

There is. I think I have mentioned some of it. But the variety of approaches to arbitration that you encountered and the variety of sophistication. On the one hand I was dealing with the milk industry, and, as I said, writing the agreements as well as interpreting them and having authority overloads and the operation of the business really. Authority, some of which I tried not to exercise but which to a certain extent I couldn't help but exercise. Then in the middle of it, I got a big package of -- well Jones and Laughlin and the Steel-workers asked me if I would arbitrate a case and I wrote back saying yes. And then In reply they sent me a very large manila envelope containing copies of their agreement and a stipulated issue involving the hours of overtime, I think, of the girls in the sorting room in the tin mill, and it was an issue which permitted either a yes or no

answer as they stated it; and they sent me an agreed statement of facts of some length, maybe ten or fifteen pages ...

THEY WERE CONTEMPLATING A HEARING?

... and two argumentative briefs and a covering letter which asked me to read the issue, read the statement of facts, read the contract, read the briefs and write an award without opinion which would say yes or say no.

NO, THEY DIDN'T WANT AN OPINION?

No, they didn't ask for an opinion; they just wanted an answer. Well, now if you - this was arbitration.

YOU NEVER MET THEM?

I never met them. I did exactly what they asked me to do, but I think it was then that I began to realize the power, the potential power of the parties to control arbitrators and to devise decision-making machinery which meet either their general needs or the specific needs of a case. They certainly didn't want a milk czar, as I was called by the newspapers, who could roam all around the contract or off the contract and make rules for the parties. They wanted an answer to a specific question in a specific department, and they didn't want anything else. They just wanted a yes or no answer, so they could get on with their business and they got it.

DID YOU FIND IT DIFFICULT TO PREPARE TO REACH AN ANSWER WITHOUT AT THE SAME TIME PREPARING AN OPINION CITING YOUR STANDARD OPERATING PROCEDURE AT THE TIME?

No, in that case I didn't. Because they were so specific and I thought if that is what they wanted okay. And it wasn't an issue which called for an opinion. What was needed was a statement that the girls were entitled to overtime for certain hours or something of the sort or they were not. I have now forgotten the precise question and which way I went.

A SIMILAR PROCEDURE WHICH COMES TO MIND IS THE CHRYSLER-UAW, THE EARLY CHRYSLER-UAW PROCEDURES—ARBITRATION PROCEDURES—AND THE ALCOA STEEL-WORKERS PROCEDURES, BOTH OF WHICH WERE PRESIDED OVER BY DAVE WOLF AS THE UMPIRE AND, AS I UNDERSTAND THE WAY THEY FUNCTIONED, THE PARTIES SENT THE ARBITRATOR A TRANSCRIPT AND THE MINUTES OF THE GRIEVANCE, PERHAPS A BRIEF, THE TRANSCRIPT BEING THE TRANSCRIPT OF EARLIER GRIEVANCE MEETINGS AND SIMPLY ASKED HIM TO DECIDE THE CASE AND WRITE AN OPINION ON THE BASIS OF THIS INFORMATION WITHOUT SEEING THEM, WITHOUT HEARING OR ACTUALLY SEEING ANY OF THE WITNESSES. MUCH LIKE YOUR SITUATION THEY WANTED AN OPINION.

Well, yes. Dave developed that system, I think, and developed it in a number of areas.

HE DID NOT SUGGEST IT HIMSELF TO THE PARTIES?

I think so. Because they didn't start out that way at Chrysler If I recall, and I am not sure that it started out that way in Aluminum. But I think Dave liked that procedure, that way of working. He was heading in that direction at Harvester, though he didn't stay at Harvester (the parties got very mad at some decisions, some of his early decisions) but he was heading, I think, in that direction. That procedure was an echo of what they used to do, If you will recall in the coal industry, Bituminous Coal Industry, many years before. Saul Wallen and Killingsworth, in their paper, mention that.

YES, YES.

The technique. There they had an umpire but he ruled by mail,. The transcripts had been taken by a Board with no neutral but one man who represented the union, and one who represented the company. They took the evidence, as I understand it, and they would mail the record and the briefs and everything to this arbitrator, umpire and he would issue his decision. You asked about witnesses. I would never be happy with that sort ofprocedure if the facts were really important, if there were real issues of fact and certainly not in discipline cases or in any case involving a real understanding of details of fact—which you can get from testimony and which the parties in a stipulation might overlook—and leave you with just- a general impression instead of a real feel for what was going on. There are obviously many cases of contractual interpretation where you sit at a hearing, and everybody realizes that no testimony is necessary. Everybody knows the facts, It's a question of interpreting and applying words, and that often could be done by mail just as well as at a hearing. But then again people often think that they are agreed on the facts and that there is no need for a witness and then discover, as you frequently do, that they aren't as much in agreement over the facts as they think they are. So I don't really like the mail procedure. I used to argue with Dave about his Chrysler procedure, but there was no need to argue because we both knew that we worked differently. I could never be happy with his approach.

THAT PROCEDURE DIDN'T STAND AT THE TIME. THAT'S BEEN LARGELY ELIMINATED....

That's right.

... FEW PLACES WHERE IT EXISTED.

Yes, it is interesting. Harry Schulman's approach was so personal to Harry Schulman that it could not stand the test of time. Of course, I don't think that any of us, any of our own quirks of working stand the test of time because we are all going to be succeeded by other peopel. And ultimately, though we can influence rpocedures the needs of the parties are going to determine the shape of their procedure. As an example, nobody in the steel industry, none of the arbitrators devised the procedure for safety cases. It just became obvious that they had to have it and it was developed by the parties.

WHAT WERE SOME OF THE OTHER AD HOC EXPERIENCES IN THOSE EARLY YEARS WHICH INDICATED THE VARIETY OF ARBITRATION SYSTEMS THAT WERE POSSIBLE OR THE UNIQUE NATURE OF THIS PROCESS?

Well, I remember being out in the middle of Ohio somewhere, to a company that made bathroom fixtures, or did in those days, and going in and finding instead of a hearing table, a lot of guys sitting around a room with comfortable chairs. I guess there was a table somewhere, because I put my briefcase and papers on it. I met everybody—they had three or four union leaders and three or four company people—and everybody was on a first name basis and we talked about this and that and then, "Let's get down to the grievance. Charlie, what's this case all about?" And Charlie, the superintendent, would say, "As I understand it, the union wants so and so, isn't that right, Bill?" And Bill says, "Well almost. This is what happened. This man was doing so and so and so and one of your stupid foremen told him such and such and that's against our practices...."

A WHOLE SEGMENT IS MISSING HERE. TAPE MAY HAVE BEEN ERASED.
-R.T.S.

Comment on first draft: "Here I must have been saying that I ordinarily don't like giving bench decisions."

. . . . what can they do? They would like to have the feeling that you were giving more consideration—that their arguments, particularly the losing side (of course, the winning side on a bench decision is very happy; you have recognized the obvious) but the losing side, where you have refused to recognize the obvious is apt to be unhappy, particularly the rank and file employees, the grievants themselves whose case has been in the grievance procedure for a long time and they've watched it go up through the steps, and they've heard it argued, and then suddenly the arbitrator seems to brush It off. I don't like to do that.

I THINK PEOPLE LIKE TO BELIEVE THAT THEIR PROBLEMS ARE SUFFICIENTLY IMPORTANT THAT THE RESOLUTION OF THE MATTER CALLS FOR SOMETHING MORE THAN A FEW MOMENTS OF SUSPENDED JUDGMENT.

I agree with you. Yes, we did that once on the U.S. Steel Board. It was unanimous. The Union member agreed with us that this group of employees had no case, and we went in and gave a bench decision; unanimous bench decision; and the men, we heard later, were very, very unhappy. It was an unwise thing to do.

WERE THERE ANY OTHER VARIANTS; STRANGE VARIANTS OF THE PROCEDURES IN THOSE EARLY AD HOC CASES?

Oh, I don't know. I think I told you about the early Sun Shipbuilding days when we were meeting In the office of young John Pew, vice-president in charge of labor relations. It was very informal.

At first we had no hearing table; we were just sitting around, but this time we did have a transcript and the Company had a lawyer, a very good man, a friend of George Taylor's, and an excellent lawyer. The union had no lawyer; just a couple of staff representatives, and they were feeling their way. We had no procedure. We had to make it up. They had a very rough and ready grievance procedure, and practically no grievance records. They had written grievances as I recall; and it was impossible to ask for briefs because there was nobody on the Union side who could possibly write a brief. And I found myself there, I think, more than ever before, in the difficult situation of having to help the Union explain its case, if there was going to be any sort of issue to consider. That was true, at least in the first two or three hearings. It's my recollection that they were really groping and they needed help, and luckily the Company's attorney—he had been around labor relations--had enough sense to help them himself. I don't know what finally happened at Sun Ship. I left it when I went to General Motors. I was only there for three or four months, for, I suppose, three groups of hearings; maybe six months. We were developing an orderly procedure; we would have been, I think, in shape to ask or bring pressure to get better grievance records and maybe prehearing memoranda or prehearing statements of some sort so that you would have formulated issues. I don't remember who succeeded me there, and so I don't really know what happened, or how it worked.

WERE ANY OF THOSE EARLY AD HOC EXPERIENCES—DID ANY OF THEM CONCERN INTEREST ARBITRATION?

Well, Milk, of course.

YES, I DIDN'T MEAN ____

Oh, ad hoc. Let me recall.

OR DID YOU KNOW ANYBODY WHO WAS ALSO DOING IT—AD HOC ARBITRATION, AT THE TIME--WH0 WAS INVOLVED IN ANY INTEREST CASES?

This is hard. Let me think. I'd have to think about that one.

YOU WEREN'T, I TAKE IT.

I don't think I -was, except for Milk. I don't recall getting into any, except I was doing some; was in on some War Labor Board matters and I sat as Chairman of the panel on a Time, Life, Fortune, Newspaper Guild case and some others in which we were into questions about Union security and various other things.

IN THOSE CASES I WOULD SUSPECT YOU WOULD ACTUALLY WRITE A CLAUSE FOR THEIR AGREEMENT.

Yes, certainly.

DID YOU HAVE ANY VIEW THEN ABOUT THE APPROPRIATENESS OF ARBITRATION AS THE VEHICLE FOR ABSOLVING INTEREST DISPUTES?

I very quickly learned to be very skeptical and cautious about it and to realize the great difference between applying standards and setting standards. The one is, obviously, a quasi-judicial process, and the other is legislative. You're making the laws; you're not interpreting and applying them, and it requires, I think, different procedures. I have always thought (and maybe it's what we were talking about before, my own personal predilections) that grievance arbitration basically is a judicial interpretive process. And though I have sometimes suggested settlement and sometimes have asked questions at a hearing that have led the parties to a settlement efforts have never loomed as large in my thinking about grievance arbitration as it used tc in George Taylor's approach. As to interest arbitration, on the other hand, the very idea of "litigating" the terms of a new contract seems ridiculous; there you are not dealing with one or two limited alternatives—was this right or was it wrong—but by definition you are dealing with numberless alternatives. And how you can effectively litigate that sort of thing in an adversary procedure, I do not know. I think it Is absolutely necessary, in interest arbitration, to bring the parties Into the decision-making process, if you are ever going to make sense. The very idea of a man sitting up in his ivory tower and himself deciding ... well, I have done it in the milk industry.

THAT'S WHEN YOU HAD THE ASSISTANCE OF THE PARTIES?

Yes, but not In the decision-making process. And I think I made a very serious mistake in the milk Industry. The Union was asking for overtime pay. They didn't have it for routemen, they had it for men in the plant. The companies were saying that the routemen were unsupervised, and how were they going to see that a man really worked on his route eight hours a day or forty hours a week or all the time he claimed. How were they going to prevent men from going off and drinking beer half of the afternoon and then go finish their routes and claim overtime? I was young and brash and thought that here the milk Industry has been spending at least three or four years before the Impartial Chairman arguing over the size of loads and the times in and times out and "hardship" routing issues and so forth, because there was no financial penalty on the companies whatsoever which might lead them to restrict heavy loading. The whole financial interest of the companies lay in loading as much on a man's truck as possible so as to distribute wage costs over as many bottles as possible. And I thought that maybe if I put an overtime penalty in, this would have a countervailing effect, and some of these hardship problems would begin to disappear. I realized the dangers, but I thought maybe it would work. Here vie had been working together for some time and there had been a lot of good faith shown by the union leaders and I had confidence that some of them at least would try to help the companies to police an overtime system. Anyway, that is what I did and I wrote an award and an opinion and all the rest of it and put these men on overtime. Well, the industry exploded, and looking back on It now, I think I was going too fast. They weren't ready for it. The Union was not in

a position to police it. I think there was abuse and I think I saddled the industry with a lot of unnecessary costs and I think it took them a number of years to recover. I know I was called back a good many years later on a Borden case in which the Company was finally trying to crack down on some employees who were abusing the overtime system, and I heard those cases. Well, that wasn't a mediated thing. That was a Sol Sklar on one side and Dave Kaplan on the other litigating it and then I retired to my office and sweated it out and came up with this thing all by myself. Well the world didn't come to an end. They continued to distribute milk. But I don't think it was wise.

HAD THE PARTIES EACH HAD A REPRESENTATIVE ON AN INTEREST ARBITRATION PANEL, DO YOU THINK MAYBE THE RESULT WOULD HAVE BEEN SOMEWHAT DIFFERENT?

Could have been, it could have been. At least, of course, It might have just transferred the argument into the board room, and it might have made it just as bad and more difficult because sometimes there comes a point when you have to go off and make a decision by yourself. But, I think it would have made more sense. And in dealing with the defense transportation problems of shifting routes to every-other-day delivery—problems which were just as vital to the industry—we did have a three-man Board. And it got so that I think we worked together very well and the presence of those two men was a terrific help to me. I could have really ruined that industry if I hadn't had them at my elbov; pulling me back when I was reaching out too far in one direction or another.

BUT THE ARGUMENT FOR A TRIPARTITE ARRANGEMENT IN INTEREST ARBITRATION DOESN'T REALLY SPILL OVER INTO THE GRIEVANCE ARBITRATION AREA FOR MOST PEOPLE, THAT'S ...

It doesn't for me. I have found members of a Board very helpful to me in terms of giving me information about grievances. Particularly in an Industry which I don't know anything about or in which I haven't done enough work really to feel at home, having a couple of men to fill in the gaps in the record, explain terms and explain the back-ground I have found very helpful. And of course in the steel industry the ability, which I have never hesitated to use, to go back to the parties to clarify information (not just to get more evidence, which we would do formally of course but to explore implications and make sure where we are going) can be .very helpful and you can avoid an awful lot of mistakes. That's part of the value of permanent um-pireships, of course, as you know.

WERE THERE OTHER AD HOC EXPERIENCES THAT YOU WOULD LIKE TO TELL ME ABOUT? NOT JUST IN TERMS OF DIFFERENT KINDS OF SYSTEMS THAT YOU HAVE HAD, BUT ALSO SOME UNUSUAL EARLY CASES IN THOSE YEARS THAT PEOPLE MIGHT BE INTERESTED IN READING ABOUT?

Well, most of the ad hoc work, while I was with milk, was at Bethlehem. Bethlehem was just starting its arbitration then. They had had a few cases with Bill Simkin and Professor Hotchkiss and some other people.

BEN SELEKMAN MAY HAVE DONE SOME OP THAT TOO.

He came in a little bit later. He was one of the three later on that was working in Bethlehem. Ben hadn't come in at this point.

HOW ABOUT THE AUTHOR OF "LABOR LAW" - THE FELLOW FROM THE UNIVERSITY OF VIRGINIA LAW SCHOOL?

Charlie Gregory. He didn't ....

HE DIDN'T BELONG TO SOME OF THOSE EARLY STEEL CASES?

I don't recall him at Bethlehem. He may have been. I know that Bill Simkin had been doing a good deal. We were engaged in Bethlehem then, in this ridiculous business of correcting wage inequities. This was before the steel 'wage inequity program, the job classification system and so forth.

WHAT WAS THAT LIKE?

Oh. Well I was very fortunate because Bill Simkin had preceded me. I heard a lot of cases of various sorts, and they were fascinating to me. And of course the impact of steel after dealing with milk was so large and seemed so vast and fascinating that It was terrific. But among the group of cases were a whole lot of wage inequity cases. I know the first case I heard was at Johnstown but then we got to Lackawanna and the first case there v/as an effort to readjust the wages of second and third helpers in relation to first helpers. And this was my education in wage arbitration. We had a terrific jurisdictional issue. There was a very vague clause and the Company was arguing for very limited scope for wage adjustment and the Union, of course, wanted us to be able to revise the whole wage structure. I was fortunate because Bill Simkin came out with his decision on the jurisdictional issue first and he made an awful lot of sense in interpreting this language so that you could adjust wages within related work processes, but you couldn't go beyond that. It was a very practical decision, typical of Bill Simkin, and a very sensible one. I don't think I would ever have made that much sense. I probably would have gene off on in a much more theoretical approach.

I DON'T BELIEVE THAT.

Well, I don't know, but anyway I heaved such a sigh of relief when I saw what Bill had done. And I felt very strongly that if having a lot of different arbitrators interpreting the same contract was going to make any sense, we ought to follow each other on major issues of contract interpretation at least.

WERE YOU SENDING DECISIONS TO ONE ANOTHER OR WERE YOU SIMPLY WAITING FOR THE PARTIES TO GIVE YOU COPIES OF OTHER AWARDS THAT MIGHT BE RELEVANT?

Th ey had given me copies and I got this copy of Bill Simkin's decision before I issued my own. Maybe I heard about and asked for it, I don't remember. Anyway, I got Bill's decision before I came out with mine and I just adopted and quoted his decision, a whole section of it in my own opinion, adopted and then applied his ruling to the Open Hearth. I changed Open Hearth wages somewaht. And we went on--I remember one case at Sparrowspoint, the ruling on the relation of wages of Boshmen, the Boshmen were tremendous guys who had to lift steel plates, piles of steel plates and lift them physically from one table to another, from one area on the ground up into a machine. Good Lord, great physical giants and then they were just working like hell and I thought they needed more money so I raised them a few cents. The Company told me later that I cost, my decision cost the Company hundreds of thousands of dollars. But we were making no sense at all, of course, because every time we corrected one inequity or what we thought was an inequity we were apt to create five more, and everybody else would complain and it was the obvious evils of that situation which led the steel companies and the Union to go to the War Labor Board and the War Labor Board to direct them to work out the steel inequity program, which was, I think, one of the most amazingly successful projects in American labor relations. But those Bethlehem cases were just fascinating. I know my first case at Johnstown. We had power, in those days, to change the size of crews. The lid men on top of the coke ovens at Johnstown were saying that their work was so hard and that they needed more men to give them spell time because of how hot and smoky it was. Well, so I went up and walked around on top of the coke ovens to see what it was like, and brother, it was awful hot and awful smoky and the gas was terrible. I didn't know how anybody stayed there for an hour much less eight hours and I gave them another man. Of course, I later learned that the guys had very carefully blocked up all the flues and. put on a show for me; there had been more smoke above that coke oven than the Johnstown batteries had seen before or since. But, I was young and I think I would recognize it now; but I was very young and inexperienced and they really put one over on me.

THE COMPANY NEVER MENTIONED THE FACT THAT THAT WAS AN ABNORMAL CONDITION THAT DAY YOU HAD BEEN SUBJECT TO?

No, they didn't. They told me later. The Union guys admitted it later, you know in several years, many months later I guess but ....

THIS WAS YOUR BAPTISM IN THE STEEL INDUSTRY.

This was my baptism in the steel industry completely. This was my baptism really to heavy industry. This was before General Motors. This was the first time I had ever-.. 'Well, I had been in plants through the War Labor Board. I had been in ammunition plants but not so many at that. But this was my real baptism in heavy industry where I was really doing a job and not just sort of passing through for an hour on behalf of the Board. Well, when you are young--well, I still can't go up into a steel plant without feeling a fascination and thrill of what Is going on and the way they do it.

YOU STAND IN A LINE OF THE MACHINES AND THE MEN AND THE COMPEXITIES OF IT ALL.

Just as I do at the other end when you get into operations so small and refined that it's like getting into the jev/elry industry.

HOW MUCH TIME DID YOU SPEND IN THIS BETHLEHEM AD HOC ARRANGEMENT? WERE YOU WORKING THERE ON A REGULAR BASIS OR DID YOU ONLY HEAR A FEW CASES OVER THOSE YEARS?

Oh. I heard I suppose twenty, maybe forty or fifty. I was twice at Lackawanna, three or four times at Sparrows Point, twice at Lebanon. I guess that was it.

WERE THERE THEN ANY UMPIRES IN STEEL, THAT EARLY?

No.

WHEN TO YOUR KNOWLEDGE WAS THE FIRST STEEL UMPIRE APPOINTED?

Herbert Blumer went into U.S. Steel and set up the U.S. Steel Board of Conciliation and Arbitration.

HE WAS THE VERY FIRST?

Yes, that was in '45 I guess.

HE WAS THEN A WAR LABOR BOARD MAN HIMSELF ....

I think so.

... AND AS I ASSUME HAD BEEN CONNECTED WITH STEEL?

I don't know. I think he may have tried but anyway by the time I got there, except for one or two cases, the conciliation phase of the work practically became a dead letter, nobody wanted it. I think rightly so. Both in General Motors and in U.S. Steel the parties were big boys and they knew why they had been fighting these cases. It was very different from a little plant where they were unused to labor relations and unused to picking their way through grievances and thinking of possible solutions and so forth. 'At GM and U.S. Steel, there wasn't much mediating you could do.

WHO WERE THE GUIDING FORCES BEHIND THAT EARLY, BEHIND THE BOARD OF CONCILIATION AND ARBITRATION AT U.S. STEEL? YOU MENTIONED PHIL MURRAY AND GOLDEN WHO HAD BEEN ON THE COMPANY SIDE.

Jack Stevens, who was the vice-president in charge of labor relations. He was very thoughtful and I think a very wise man, in addition to having the ability to keep himself alive and move ahead

at U.S. Steel corporate relationships. He had been in and out of the War Labor Board. Stevens was a real idealist in many ways, in so many ways a practical man, but he was the one who went along with the formulation of the practice clause, the steel practice clause.

THAT WAS PUT INTO THE AGREEMENT IN 1947. HOW DID THAT .... DO YOU KNOW HOW THAT CAME TO BE WRITTEN?

Yeah.

THAT MUST BE AN INTERESTING STORY, WHY DON"T YOU ...

I wasn't in on it.

I KNOW, I DO UNDERSTAND THAT ...

But as I understand it they had been hammering out for two years their wage inequity program; they had been going through this job of classifying by agreement hundreds of thousands of jobs, describing them, classifying them, and so forth. Also, they have been waging the beginning of their war on incentives. On the corporation side Cooper, their industrial engineer who developed their wage classification program, had been taken on by the corporation, and Cooper had developed this whole set of principles based on the concept of a fair day's work. And Cooper had, well not only a terrific mind, an excellent engineer but had a ponderous driving sense of logic almost Teutonic in its effect. And he was carrying these concepts of a fair day's work and pay 100% for a fair day's work and *1%* above that for each *1%* instead in work and all the rest of it out to logical conclusions along with concepts of the standard hourly wage rate as the minimum guarantee of a fair day's work and the idea that you're not, in classifying jobs, comparing jobs with each other but comparing them with a uniform standard. All of these very very basic concepts, which of course, were running potentially counter to what was going on in the plants at U.S. Steel to say nothing of every other company in the steel industry because not only did you have the topsy-turvy gerry-built job structures and wage structures in every steel plant but you had Incentives of every conceivable type and description, some of them went back to rule of thumb incentives created by a Foreman or a Roller in order to get more work out of his crew back in the early 1890s or 1900s or something. You had these practices, these habits of working developed, many of which had to do with seniority arrangements and hours and scheduling arrangements and so forth, but a lot of them had to do with wages and pay and crew size and how you did things in a plant. Steel is very big and steel is an industry where the work is basically done by crews, and when men or a crew work together they develop habits of working together. Different crews on the same process may work in different ways and develop on similar processes. Steel was slow to change their habits. There were a lot of fathers and sons in the steel industry working force, and there are a lot of practices and habits that reached back over the years and these became in men's minds, I had the feeling, almost like rules of right and wrong written in the skies. God

created Adam and Eve, and then He- created a particular way of moving up and down in seniority on the 90-inch rolling mill. Here was Cooper and the Union, (I say Cooper because Cooper was running this for the U.S. Steel) Cooper and the Union coming up with a lot of basic logical principles of classification and incentives — arguing like hell over some of them but developing (this was all going on in the background of Blumer's term as Impartial Chairman) with the idea that these new rules were going to be superimposed over this chaos of practices, this absolutely firm unyielding mass of practices. Both sides knew that something had to be done about it and what were they going to do? If you are going to adopt the new wage principles what was going to happen to the guys when their practices were affected? You know that in developing incentives one thing you have to do is re-engineer the process and that is going to affect crew sizes and working methods. You take a look at things and see if you're working and doing the job as well as you could before you establish your incentive. And this was bound to upset many practices. What were you going to do about it? Well, this was the origin of the practice clause and I think Stevens thought and hoped that they would be dealing only at that point with existing practices and that there would be no new practices developed and that you could work out sort of a compromise that the contract would control Insofar as It went but that when there were practices giving benefits over and above the contract, those would be preserved. I suppose Stevens hoped that eventually they would wash out, and I think that he never realized how broad the language was and how wide the scope of the practice club would be, the scope of its application, the practice clause as written.

WHO WERE THE DRAFTSMEN OF THAT CLAUSE?

I don't know, I always wondered who drafted it.

AS I RECALL WE WERE DISCUSSING THE U.S. STEEL BOARD OF CONCILIATION AND ARBITRATION AND IT IS MY UNDERSTANDING THAT YOU CAME THERE IN 1947 and left in 1949.

That's right.

COULD YOU TELL ME SOMETHING ABOUT THE BOARD ITSELF?

Well, it was a three-man 3oard. The employer representative was a man from Tennessee called Walter Kelly who had been running labor relations for Tennessee Coal and Iron for a good many years. He was an engineer and knew steel and knew steel labor relations. He had no patience and really little comprehension of the legal processes of interpreting a contract. I mean he didn't have any patience with those processes and when I raised objections having to do with language and long-run precedence and so forth, he used to get upset but he was a very good and very helpful guy. Eugene Maurice, a former district Director of the Steelworkers, was the union representative and he was a great man. He was like Walter Kelly in knowing steel and knowing steel labor relations, though from the Union's side, and having a sure Instinct for the nub of an issue. He was like Kelly also in that he had. really no interest In the legal

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precedent or a principle that the union was fighting for when he saw it and he could fight very hard. After I had been there for a few months the union sent over a young man named Steven Levitski, who was brilliant and who was then beginning to study law, to work with Gene and apply the theoretical analysis and do the writing and so forth, but that was the Board and we shared offices in something called the Commerce Building in Pittsburgh, as I recall. Kelly on one side and Maurice and Steve on the other, with a hearing room and room for our secretaries and so forth. It was a gold fish bowl, everything I said or did was observed and known and every discussion we had went back to the parties. It had a lot to be said for it. You notice that steel was approaching, the parties were just beginning to live under their practice clause, under the '47 agreement which had the practice clause and which had a whole new set of standardized wage provisions going right across the country, part of the contract now, which incorporated the CWS job classification system and they were just about through with their job classification process. They were also at the beginning of, well, they had completed their main incentive agreements but were at absolute logger-heads over their effect and over whether one of them at least (the "May 8th Agreement") was to be put into effect or how. They were very conscious therefore of backgrounds, imponderables, and implications reaching back into these issues which might lie in individual cases and not be apparent to me. And given their situation, the ability to learn from them the possible implications of these grievances and to have my suggestions or proposed draft decisions go through their grueling analysis and sit with them for hour after hour after hour while they argued cases and principles and consequences was immensely educational and helpful. I had learned something about the steel industry and about the processes of making steel in the ad hoc cases that I had had at Bethlehem, but I was just not aware of all the implications and the ins and outs and theories and approaches behind the job classification system and Cooper's approach to incentives and the "fair day's work" approach to incentive issues, as he had developed it. And if I had tried to come in, as I did at General Motors, sitting myself in an office and making up my mind purely about the meanings of words, settling problems simply in relation to the language of the agreement and being thrown back into the agreement all the time, if I had been doing that at steel in those days I would have, could have made colossal mistakes. Because I wouldn't have really known what some of the cases were about or what effect some possible decisions could have as opposed to other possible decisions on *zhese* background issues.

IN OTHER WORDS IN THE ACTUAL ARGUMENT OF THE CASES THE PARTIES REPRESENTED OR DID NOT ALWAYS FULLY EXPLORE THE IMPLICATIONS.

No, no. The parties did sometimes, and obviously all the cases that we had weren't world-shaking cases. But there were a lot of cases where they didn't really explore the cases fully; the local staff representatives who would be coming in from their particular districts or grievance committeemen and so forth or the attorneys who were representing National Tube or American Steel and Wire, Tennessee Coal and Iron and so forth, wouldn't have that familiarity;

they wouldn't have been sitting in negotiations at a top level and they wouldn't have been familiar with arguments, control-office arguments, that were going on all the time over at the union's central headquarters and the company's corporation headquarters.

WERE DISSENTING OPINIONS WRITTEN BY THE BOARD MEMBERS AND WERE THEY EVER STINGING?

Oh, yes, I should say.

DO YOU THINK THAT INTERFERED IN ANY WAY WITH THE RELATIONSHIP'BETWEEN THE THREE OF YOU?

No, I don't think so because the dissenting opinions were never as bitter as some of the arguments we had before the decision was made. I developed a technique when we were in agreement (as we were quite frequently on the less important cases) of asking the Board member of the losing side to write the opinion, to write the Board's opinion, that helped me with the backlog a good deal because I was having so many problems in writing the decisions where we were in disagreement and particularly the big ones. We got into, there was a curious process that went on, because we got into negotiations all the time over the meaning of these words. It's one thing to have a three-man Board on interest cases or on some types of grievance cases where you have the liberty to make policy or to where your decisions properly enter into sort of the policy-making field where you are choosing among a lot of alternatives. I have always been impatient really with three-man Boards in most grievance arbitration where the issues are clear and you are concerned mainly with the application of language to a problem and this is really just a matter of thinking the case through. At U.S. Steel the three-man Board was immensely helpful in educating me to the nature of the problems and the nature of the parties' long-range disputes and long-range goals. But we got Into really ridiculous situations when we were trying to sort of mediate out or negotiate the interpretations which were to be placed on words.

YOU ARE SAYING THAT IT REALLY WASN'T SUITED FOR THAT PURPOSE, A THREE-MAN BOARD, WHEN IT CAME TO THAT TYPE OF DEADLOCK IN THE ORIGINAL WAY OF MEDIATING AND YOUR COMPOSING DIFFERENCES OVER THE MEANINGS OF WORDS.

Somebody had to decide what the word meant and three weren't a lot of choices; it meant this or meant that; and particularly when it took the extreme form which it did, not a three-man Board, but a process of the central office of both sides knowing what was in the proposal drafts, knowing the issues, telling the Board members what arguments they should make to me and then having my replies reported back to them. This kind of thing got, well it was just extremely inefficient and exasperating and, of course, terrifically difficult.

DID THEY SENSE SHORTCOMINGS IN THE ARRANGEMENTS THEMSELVES?

I don't know; everybody was new to me. We had a new contract, new procedures, the Board had gone through this with Herbert Blumer but he had been there for two years and during that time the Board had drawn up some rules and regulations; but the cases then were more like the ordinary ad hoc cases; they weren't as world shaking, at least the parties didn't seem to treat them as world shaking (with some exceptions) as they did our cases. For though we didn't get into the guts of the practice clause or the incentive disputes, we were walking around them and the parties were choosing very carefully which cases would be brought, and screening out cases for a while that would get us too close; they weren't ready to bring those cases in. But this process, as I say, the parties were attaching terrific importance to the interpretation of their wage provisions, their seniority provisions which had been revised and a practice clause.

YCU REALLY STEPPED INTO A LARGELY NEW AGREEMENT IN 19^7-

Completely new.

HAD THEY APPRIZED YOU OP THE NATURE OF THE ISSUES YOU WERE LIKELY TO GET BEFORE YOU WERE HIRED?

They sent me a copy, a dark green 19^7 U.S. Steel Agreement, when I was at General Motors, and I remember opening it up and reading the practice clause and (being then in the General Motors atmosphei^e, the General Motors fierce defense of managerial prerogatives and all that) I remember reading that practice clause and thinking I was in an absolutely different world, realizing how GM's hair would stand on end when they finally read it.

BUT THEY DIDN'T GET AROUND ARGUING THE PRACTICE CLAUSE AND THE SCOPE OF THE CLAUSE, WHETHER IT APPLIED TO CREW SIZE, OTHER SUCH MATTERS DURING YOUR TENURE.

No, I got into that when I - after I left - a year or so after I left in the Pittsburgh steel case. I think I had the first one.

I KIND OF THINK SO.

That was a lulu. I heard that one, I mean the hearing lasted from about 10 in the morning until, oh, way on into the night past midnight and that one gave me some grey hairs also.

IT WAS CLEAR TO YOU IN THIS REFERENCE TO THE PITTSBURGH CASE THAT THAT WAS A NEW ISSUE THAT NEVER HAD BEEN DECIDED BEFORE IN THE STEEL INDUSTRY.

Oh, I knew this was the case that people had been talking about all the two years I had been at U.S. Steel. I mean, this had been one of the things, not in the offing, but these were the problems and these were the issues.

HOW DO YOU ACCOUNT FOR THE FACT THAT THE PARTIES DID NOT GET THIS QUESTION OF CREW SIZE AND SCOPE TO ARBITRATION WHILE YOU WERE AT U.S. STEEL?

I think they wanted to sound me out first and then they wanted to lay the foundation; they were dealing in other decisions first. I am not sure I know. There was a very careful screening procedure going on and cases were being—it was not only the general run of grievances and discharges, wage cases, and so forth coming along, seniority cases, ability cases, scheduling cases, hours cases, the run-of-the mill thing coming in--but there was a process of carefully selecting some of them that I should hear for a while. I don't know when they would have sent them to me, actually. I left before they did.

WHAT WERE SOME OF THE MEMORABLE CASES THAT YOU HAD DURING THOSE TWO YEARS?

Oh, boy. There were a lot of them. There was one case that illustrates the process of negotiating the meaning of words. It was a National Tube case arising in the foundry where a practice had arisen where the company always had let the foundry workers go home when they finished their job, that is when they had finished as much of their work on as many molds as they could do.

THEY MIGHT IN OTHER WORDS GO HOME AFTER FOUR HOURS OF WORK?

No. They would go home usually after seven hours but it might be six and a half or might be seven and a half. The new rules, the new wage language in the contract said that the standard hourly wage rates shall be the rate paid for every hour worked. The company decided that without establishing unfortunate precedents and upsetting its position with regard to a lot of wage practices where people were being paid for time not worked, it couldn't continue this practice. This raised the issue of the relation of the practice clause to the language of the agreement; I.e., of which took precedence. It eventually raised a question as to whether this was a wage rate or what the wage rate was. Were these people being paid the standard hourly wage rate when they were being paid (eight hours' pay for seven and a half hours' work) or were they being paid for more than the standard hourly wage rate for each hour worked. That got us into the question of whether it was an incentive. This didn't come up at the hearing; the union brought the case in as a practice case because they said that the last hours they stayed in the plant had always been considered work whether they were working or not. But we raised the incentive questions ourselves when it had become clear insofar as you tried to apply the standard hourly wage rate language you got into trouble with the practice clause and vice-versa. Couldn't it properly be called an incentive rate--the rate per hour varying with the number of hours worked. But that ran Into trouble with some of the incentive language, because it didn't square with a lot of the incentive language in the agreement. All this time, we all agreed that the guys ought to be paid their full eight hours; the Board was unanimous on this; we were arguing only over the reasons which would be given to support our findings; and this was an argument which was going on not only In our offices, but in the corporation's headquarters and the union

headquarters. Finally, the union came back and said we don't care whether you call it standard hourly rate or an incentive rate or a special kind of rate, a third kind which I had proposed. (They were all skittish of that, because the contract did not refer to a third kind of wage rate and that could lead them into unknown waters so I was squelched.) The company finally made up its mind and told me through Walter Kelly that I should call it an incentive rate, so I did and wrote an opinion to that effect which I signed and the Union signed. Then Walter Kelly, under the Company's orders, wrote a dissenting opinion pointing out that the incentive holding didn't square with all the language and thereby protected its position for future cases. Well, this was the atmosphere in those days when these cases impinged on the practice and the wage and incentive issues arose.

THEY OBVIOUSLY SENSED THAT THEY WERE INVOLVING AN IMPORTANT JURIS-PRUDENCE FOR THE FUTURE.

Oh, I think so. Nobody was as sophisticated as they all would be now and much more attention was paid to the importance of the single decision than would be paid now. Everything was much more vital and important and world shaking.

WERE THE CASES VERY CAREFULLY PRESENTED AND PREPARED?

That varied from group to group, from attorney to attorney, from staff representative to staff representative; some were pretty sloppy, some were very good. Of course they sometimes brought in specialists, Ben Fischer or Dave Feller would appear *on* the scene and you knew you would get a brilliant argument or the Company would get (Cooper didn't appear but sometimes some of their wage classification industrial engineering people would appear) and they had some very competent lawyers representing them.

DID YOU BEGIN DURING THAT TIME TO ARBITRATE SOME OF THE JOB EVALUATION QUESTIONS?

Yes.

THESE WERE SOME OF THE FIRST EVALUATIONS IN STEEL?

Yeah.

DID YOU FIND THAT VERY DIFFERENT FROM WHAT YOU HAD DONE BEFORE?

Very. This was my introduction to it and the cases were not, again this didn't get into the world-shaking thing, these were tough In the sense that I had to know what the jobs were like.

DID THEY HAVE TO CARRY SPECIMENS TEEN, THE RED BOOK TO HELP YOU?

No. There weren't many of them and it's hard to recall which specific cases there were, but there were some. I found them interesting in terms of informing me, interesting and difficult, but nobody was

paying attention to these cases. They weren't the cases that went to the central office. it involved just a job and unless I was way off the reservation it didn't do too much damage to either side.

DID YOU HEAR MANY INCENTIVE CASES? THOSE WOULD HAVE BEEN YOUR FIRST INCENTIVE CASES.

Some.

HOW DID YOU FIND THAT STRANGE SUBJECT?

Very interesting. We got to - we didn't get into the real guts of the incentives themselves - the question of revising the incentives - they got into the question of what was an incentive rate, of what was a "rate incidental to an incentive plan." Certain practices were going on; the question of whether or not they could be or should be continued or abolished when they were inefficient would take you not only into the practice clause but also to the question "is this an incentive' rate?" Is this practice - can it be considered a rate incidental to the incentive plan? In some cases, it would be yes and in some cases it was no. These would get into quite some difficulties. We got into - I remember so many of these cases, the issues. I remember the case involving the Hulett unloaders.

WHAT KIND OF UNLOADERS?

Hulett unloaders, you know where the crane operator is in these big shovels or buckets which are lowered down into the ore boats and pulled out with a crane operator riding the bucket. I had forgotten the Issue there, that's awful, most of these cases I still remember. How are we doing?

FINE, FINE.

I think one of the cases that contributed to my exit from U.S. Steel was the Tennessee Coal and Iron married women's case where TC&I had had during the war, it had prior to the war a rule against employing married women, and any female employee who got married was immediately discharged. Then during the war they had abandoned that rule and at the close of the war they were revising it and as I recall, I am not too sure, I think it was Herb Blumer who had upheld the company in reviewing the rule under the 1945 contract's version of the practice clause. It was a very weak practice clause which gave the '45 Board, Blumer's Board, some jurisdiction over working conditions, local working conditions or practices. I think he called this a local working condition or something of the sort, something he revised. He did that even though the practice of firing married women had not been In effect when the '45 agreement was negotiated, because the war was still on. The company had argued that this former practice was some-how intently In effect and he upheld It. I got a whole series of grievances on that, all combined in one case, which the union brought the second year I was there, and I reversed, at least, I held definitely for the union and in effect reversed Blumer's decision.

FOR THE UNION.

Held for the union. In effect reversing Blumer because I could see no basis in the agreement.

DID YOU ACTUALLY SAY THAT YOU FELT THAT BLUMER HAD BEEN WRONG?

I'd have to go back and read the decision.

I ASSUME THAT THE COMPANY RELIED UPON BLUMER PRECEDENT VERY HEAVILY.

Oh, yes, yes.

WERE THERE MANY OCCASIONS WHERE YOU WERE EITHER AT GENERAL MOTORS OR AT U.S. STEEL WHERE YOU ACTUALLY REVERSED THE DECISIONS OR RESULTS OF PREVIOUS UMPIRES?

No many. I haven't often done it anywhere or in any permanent Umpire situation. I have done it on an ad hoc basis and have disagreed with other ad hoc arbitrators not very frequently, but not infrequently. My rule has been that every arbitrator, in every case, unless he is instructed otherwise by the parties, has as his job to decide the particular case before him as properly and correctly as he can, without regard to any other decisions. He is not bound to follow any other decisions. But a Permanent Umpire setup would obviously make no sense at all if the Umpire didn't attach great weight to prior decisions and put a very heavy burden of proof on the party asking that such decisions be reversed. I have held that expressly and written at some length about it, I know I did at Harvester, I know I did at Bethlehem, I guess I have done it elsewhere.

GETTING BACK INTO SOME OF THE PROCEDURES INVOLVED, DID YOU KNOW HOW THE PARTIES BECAME INVOLVED WITH THEIR BOARD WHEN -- CONCILIATION AND ARBITRATION?

I was told, at least when I got there, that Phil Murray and particularly Clint Golden, when the Board was being set up, had regarded it as basically a conciliation process and that strong efforts to mediate and conciliate should be made, with cases to go Into arbitration only if conciliation failed.

WAS THAT FEELING EXPRESSED TO YOU WHEN YOU GOT THE JOB?

I learned very shortly. That that had been true and that some successful efforts had been made and we made some successful efforts to conciliate. Now to come to think of it I can only remember one or two, because by the time I got there the relationship was such and the parties had had such experience that they realized that by the time a case came to hearing before the Board they had exhausted their conciliation possibilities and they wanted answers and so they really made no effort and didn't welcome efforts to mediate.

DO YOU KNOW WHETHER THE COMPANIES SHARED THE UNION'S VIEW OP THE BOARD AS ONE OF CONCILIATION - HAVING A CONCILIATION FUNCTION?

I am not sure. I had understood that came primarily from Phil Murray and Clint Golden and Jack Stevens, who was the kind of man who would have approved that approach to labor relations. The reason he wrote the practice clause, he went along with the practice clause, because he was so anxious to get sensible ways of dealing with practical problems and had such confidence in the ability of people to work things out. I don't think he ever anticipated that the practice clause would be as technically interpreted as it later came to be or that the union would attach the same sort of importance to it and push it to the degree that it eventually did.

DO YOU KNOW HOW IT BECAME NEGOTIATED? WAS IT A VERY SUBSTANTIAL ISSUE BETWEEN THE PARTIES IN 19^7 NEGOTIATIONS?

Oh, yeah. Yes, the '47 negotiations at that time, they were completing the CWS Job Classification Program and were going to incorporate the agreement along with the whole set of wage provisions which they wanted to be standard across the country - across the corporation. Both sides, they had completed a whole series of negotiations which they at that time thought, the company thought, would enable them to start revising and redoing all their incentives. Place them on the "fair day's work" basis that was - where principles were incorporated into these agreements. The union had backed away from implementing this agreement, particularly the May 8th agreement in 19^7_s I guess it was, and that was one of the great issues about which the parties were at loggerheads. Also, in the '47 agreement they had tried to standardize a lot of other provisions; there had been a lot more room for flexibility and, of course, steel has always been a practice-ridden industry, is an industry in which men work in in crews rather than individually. Steel crews are not like automobile assembly lines where there isn't that much room for individual adjustment. It Is where men are working crews according to ways with alternatives and the crews adopt ways of working and ways of filling vacancies among themselves, and ways of spelling each other and ways of doing things and these become part of the life of that plant and had been. Some of the practices go back for generations in some steel plants or aid at that time and they varied. Some incentive rates had originally grown up as practices, and some foreman thought it would be a good idea if he gave the boys so much per piece, per ton or something, they would get up and 'work a little harder and that kind of thing. Well, when you suddenly try to superimpose over this massive area of practices from plant to plant a set of uniform wage provisions, a set of uniform incentive provisions, and a set of uniform job classifications you have the makings of a revolution on your hands because too many men have been working on a mill all their lives on the assumption that the practices they worked by were the next thing that God wrote just after He finished the Ten Commandments. So It was clear to both sides that you couldn't do this, incorporate all this unless you developed some way of dealing with these practices.

BUT REALLY IN A SENSE WHAT YOU SEEM TO BE SAYING IS VERY INTERESTING. SOMETHING THAT I NEVER THOUGHT OF BEFORE IS THAT THE PRACTICE CLAUSE MAY HAVE GOTTEN IN THERE AS PART OF A WAY OF SOFTENING THE BLOW — SOFTENING THE IMPACT TO THIS ...

Softening and regularizing the impact of the new rules. The practice clause gives things to both sides. It gives the union protection against abolition of practices which go beyond the agreement; it gives the union more protection than the company realized when they wrote the language, I think. It gives the company freedom, however, to adjust even those practices if they change the basis for them. There is a big issue as to where the agreement speaks completely, does it supplant contradictory practices; that gets you into the 11.3(c) question of whether or not those practices grant you benefits which go beyond the agreement. But it is quite clear that, except for 11.3(c), the agreement would in that case take precedence; that a practice which gave benefits which were less than the agreement, would have to give way to the agreement; and I think the corporation's idea and I suspect that the original idea, was that they were dealing only with practices existing as of 1947• I don't think anybody worried about later practices, because it says that no employee has the right to have new practices created. I think that Stevens thought that this would be a way of tiding over a period until these practices could either be incorporated into the agreement or dropped by the wayside and eventually the agreement would speak by Itself. I don't think he ever dreamed that new practices would arise, that repetitive action by management would be interpreted by the union as creating new practices and that the union would often be upheld in that, as I have sometimes upheld them. I think that when you consider the size of the problem they were facing it was a very statesmanlike thing to do; and I still think that the practice clause has basically been a Godsend to the steel industry in terras of settling disputes and giving people a guide as to how to handle a series of very difficult problems.

PROVIDES A MARVELOUS BALANCE BETWEEN THE EMPLOYEE'S NEED FOR STABILITY AND MANAGEMENT'S NEED FOR FLEXIBILITY.

That's right.

AND YET, YOU SAID EARLIER THAT YOU COULDN'T IMAGINE AN OPERATION LIKE GENERAL MOTORS AND THE UAW AGREEING ON SUCH A CLAUSE, AT LEAST GENERAL MOTORS NOT AGREEING TO IT.

Lord, *no.* Of course, General Motors has its stable operations, but when you change an assembly line, every time you change a model and change procedures, what's going on in the automobile plant Is so different from one month to the next or at least from one year to the next. You could have some very good practices at General Motors but it's a completely different, in the automotive industry, as you know, a completely different picture.

THE PRINCIPLE FEATURES OP THE STEEL CONTRACT, THE JOB CLASSIFICATION SYSTEM SAYS THAT PAST PRACTICE CLAUSE, NONE OF THOSE FIND THEIR WAY INTO ANY OF THE AUTOMOBILE AGREEMENTS. AS A MATTER OF FACT, THE UNION IS OPPOSED ON PRINCIPLE TO THE IDEA OF INCENTIVES AND IT ALWAYS INSISTED ON NEGOTIATING RATES AND RATIONALIZING THEIR RATE STRUCTURES.

That's right, yeah.

IT'S QUITE A DIFFERENT APPROACH TO THE PROBLEM.

I have never quite made up my mind. I have often thought when, particularly when I am in the middle of dealing with incentives, incentive problems, that they cause a hell of a lot more trouble than they are worth and that they are sometimes used as an alternative for good supervision. But on the other hand, when you sometimes watch the way crews work under a good incentive plan and the extent to which in this sort of team operation an incentive can work in getting interest and cooperation from the entire group, I don't think you can claim (as I used to in General Motors) that Industry would do better without the incentives.

HOW DID YOU COME TO LEAVE THE STEEL JOB, THE U.S. STEEL JOB?

I was asked to leave. Well, my contract expired in two years and GM, Jack Stevens, Phil Murray and Arthur Goldberg called and had lunch with me and Jack Stevens said, "I am awful sorry but we decided not to renew your agreement" and Phil Murray and Arthur Goldberg, of course, took the opportunity to tell me that they had no part in this decision and they thought it was short sighted. No, I think it's quite clear, although the union had fired Blumer and might have gotten something out of its system, I think that if I had gone on some key decision the other way, it would have been Phil Murray and Arthur telling me - kissing me good-bye. I think in those days the problems were too great and it took them another two or three years and some experience with Syl Garrett, before they both realized what a Permanent Umpire should be and could be, because Syl did such a marvelous job in helping both sides grow up.

IT HAS BECOME A VERY SOPHISTICATED RELATIONSHIP, MOT ONLY WITH U.S. STEEL BUT EVERYWHERE ELSE.

Oh, yes. I couldn't possibly pinpoint the reasons. I know I had a lot of battles with Walter Kelly, which means, of course, with the corporation, and I had a lot of battles with Gene Maurice and Steve Levitski, which means the union. I can't really tell what cases were crucial. I think a case that got American Steel and Wire all upset was something about the so-called Hoyt-Malloy agreement. Oh, there were a good many.

WHAT ABOUT THE VOLUME OF CASES DURING YOUR TENURE AS CHAIRMAN OF THAT BOARD?

I don't recall how many decisions I issued. I could find out very easily, I have got them in my office. I suppose I issued about a hundred or hundred and fifty, maybe more.

ALL TOGETHER?

All together. It was less than one hundred decisions a year. I think I issued as many as Blumer did. Lord knows we weren't up to the production that the arbitration offices turn out now.

YOU OBVIOUSLY THEN HAD MORE THAN YOUR SHARE OF LARGE POLICY-MAKING DISPUTES.

They were big ones.

DID YOU HAVE ANY IDEA ABOUT THE IMPACT THE WORK WAS HAVING ON COMPANIES OUTSIDE U.S. STEEL?

I had no impact personally. I knew the decisions were being circulated throughout the union and throughout the steel industry and I knew, I understood that there were discussions about them, but I wasn't contacted. I heard nothing, for example, from Bethlehem about my U.S. Steel decisions two years later and not much even then.

I HAD THE SENSE FOR SOME TIME THAT THE UNION AT LEAST TREATS THE ARBITRATION SYSTEMS IN U.S. STEEL AND BETHLEHEM AS THE PRECEDENT MAKING, AS THE PLACES WHERE PRECEDENTS ARE MADE AND SOMEHOW EXPORTED THROUGH THE SYSTEMS IN TIME. I DON'T KNOW IF THAT IS TRUE OR NOT.

I think it is true.

IT WAS TOO EARLY TO SEE THAT DURING 19^7, '48, "49.

No, I didn't know the extent to which my decisions at U.S. Steel were being used in ad hoc steel decisions. Of course, Bethlehem has always resisted following U.S. Steel. They always keep up with what's going on in U.S. Steel, but if the union ever cites a U.S. Steel decision at Bethlehem the company lawyers have their orders to rise in wrath and object violently.

WHEN YOU LEFT U.S. STEEL DID YOU THEN HAVE THE JOB WITH HARVESTER AND THE FARM EQUIPMENT WORKERS OR DID YOU, DID THAT COME LATER?

That's right. No, I happened to, oh, a few weeks later, a few weeks after I was told I was leaving U.S. Steel (of course, I was there for about six months finishing up the backlog.)

THAT WAS THE PITTSBURGH CASE YOU REFERRED TO EARLIER. PITTSBURGH STEEL.

No. Finishing up a backlog of cases of U.S. Steel. No. I happened to call Dave Wolf and he said, "Well, my God, I am just leaving International Harvester - would you like to work there?" And I said, "Why, sure," and Dave said, "Well, let me pass it on to some of my friends in the company and union," even though he had just been fired by the union. So lo and behold, in a few weeks they had asked me to come to Chicago. So I made the switch.

RIGHT AWAY, I MEAN?

Right away.

DID YOU MOVE TO CHICAGO?

No, I moved to Washington. They thought Harvester should be a completely full-time job but I refused to let it; I said I wanted to get into ad hoc work also. So I had an arrangement with them where I was paid on a per case basis and with a minimum guarantee and went into ad hoc also; although Harvester was the big one and It took up almost all my time, though I did, I think that year take some Pittsburgh Steel cases and some other steel cases. For some reason or other, ad hoc steel began to grow very quickly.

WHAT WAS THE INTERNATIONAL HARVESTER, FARM EQUIPMENT WORKERS EXPERIENCE LIKE?

Absolutely fascinating and again very different. As you know from your experience, every time you move into a new arbitration system you move into a different world in spite of some similarities. Harvester and the FE, let's see...Harvester was organized both by the UAW which had a small majority of Its plants, I think, and the FE which had a very large and important minority. The FE had some of the biggest plants and Harvester thought that the FE was Communist dominated. Maybe they were right; there were some men whom I thought might well have been party members. But I was never sure, and I never attempted to find out. But the relationships between Harvester and the FE had been very bad. They had finally got an agreement in '46. Negotiating had ended up in the Labor Department, with John Steelman and some of the mediators and conciliators running back and forth between the parties with the suggestion of the contract language and they finally had come up with an agreement which both sides could agree to only because on many important issues and in particular on incentives, the language could mean anything under the sun. The language was very vague and open to all kinds of interpretation. Then they had gone back and the union had started filing grievances. The company had been denying grievances. The union had begun appealing the grievances to arbitration (they had an ad hoc arbitration procedure) and the company would arbitrate only one grievance at a time, with a different arbitrator for each grievance. And if you had a juris-dictional question, that had to be a separate arbitrator; and there were jurisdictional disputes very often, so that you had literally thousands and thousands of grievances piled up. I was told that the grievances appealed to arbitration were in stacks tied up In bundles in the company's central relations headquarters. There were thousands, five thousand, six thousand, ten thousand, nobody ever knew how many. I don't know, and the people who were talking to me may have been exaggerating but very little arbitrating was done. And finally, in the next agreement, they decided that something had to be done about it, and they set up a Permanent Arbitrator system, hired Dave Wolf, and as I say, relations were very bad and Dave lasted for about, I think, thirteen cases or maybe twenty or something like that. Perfectly sound decisions, but he licked the union on some cases and

they said goodbye. So I came there with practically no precedents, with the whole thing starting from scratch, with nobody really knowing how to arbitrate, a very good man, Phil Lescohier, represented the company, and Harvester decided this time to go all out for the Permanent Umpire system and really to put the umpire decisions into effect; so any time an umpire decision came down it would be sent out to all plants with a memorandum directing everybody to read it and gave instructions as how to implement it and so forth. But still you had the parties bitterly suspicious of each other and unfriendly.

WAS THAT NEW TO YOU? YOU REALLY HADN'T RUN INTO MUCH OF THIS BEFORE.

I hadn't run into it to this extent before, and the agreement was full of the most ambiguous ambiguities that you could imagine. Well, we spent one year going over all the main issues. They were nibbling at this set of issues and they did a good job of screening out important issues and we went through one article after another of the agreement and it was a matter of coning in actually and interpreting it bang bang. One side or the other would be screaming bloody murder.

YOU WENT TO THE PLANT SITES FOR THESE HEARINGS?

Oh, yes. I went to the plant sites. You also had a lot of discipline cases, of course.

WAS THERE ANY ONE FIGURE IN THE FE THAT YOU DEALT WITH OR WERE THEY JUST THAT EACH LOCATION HAD ITS OWN STAFF REPRESENTATIVE?

No, they had an international representative that went around with us, and the names have gone. I will have to try to remember.

HENRY ROY?

No. There was a chap who only lasted - a brilliant man the company hated his guts, really hated him. He was, he represented the union in all the cases for the first eight or nine months. I can't remember his name. The arguments were pretty bitter. Personally, he was very nice to me, but the atmosphere of the hearing room was very tense. Then he got into a political fight, I think and was ousted and they brought in Jim Shields, whom I liked very much and whom the company liked. He had been Regional Director for the NLRB in Minnesota, and he resigned when the Taft-Hartley Act came through and ran for Governor on the Henry Wallace ticket and lost, and then they brought him in and he represented the union in all our other cases. He was very good and relations warmed up very much, although he was a hard fighter. It just wasn't always bitterness and ugliness.

WERE THE CASES DIFFERENT FROM WHAT YOU EXPERIENCED BEFORE, ESSENTIALLY THE SAME KINDS OF PROBLEMS WHICH ____

Different in some ways. In this situation with such vague language - of course, I was interpreting language and guided by the . contract - but the ambiguities were such that I had to go in and do

some legislating. Unquestionably. I did some legislating, a lot of it. I was really writing rules—and had to go in and sell these rules and give the parties some basis to work with.

DID THAT RESULT IN WIGGLING AWAY THAT ENORMOUS BACKLOG?

I don't know how they ever handled the enormous backlog. I think they got rid of them eventually. We went right around the contract, issue after issue. The toughest ones were, of course, the incentives. They had a whole set of special incentive issues that they were at loggerheads about. The short run issue, for example: these were all piece rates and what do you do with a short run when the set-up time was half his total time and he made so few pieces that he could not really get into the swing of production; should you make special allowances for short runs? This was a live issue, for it turned out that there was plan after plan in which short run provisions were at stake. That was just one issue. There were many others. Their seniority provisions, I remember. They provided—well, they had insane provisions; en any seniority job, the question of employee's ability was to be tested by a three day break-in period. This was *on* movements upward; or downwards, or bumping, or on all kinds of transfer. And one of the triggers that would start this whole process of people moving from job to job with possible three day break-in periods was a "lay-off." What the hell was a "lay-off?" We fought this out time after time, and it was quite clear that to the company a "lay-off" was when you reduced the force and by reducing the force you meant reducing the number of names on the payroll for that month.

THE ACTIVE PAYROLL.

The active payroll, and that—if you did that and reduced the force you had a "lay-off." Maybe the term was a "reduction in force," I can't remember. To the Union, of course, a "lay-off" or a "reduction in force," whatever it was, was when the foreman came to you and said, "No more work for you this afternoon and It doesn't look like there will be any tomorrow. Go home and come back Thursday." To the company that wasn't a reduction in force. There were only nine people on the job instead of ten in a department, but they hadn't reduced the force or "laid off" anyone. They had just sent a man home when there wasn't any work for him to do. Well, you can see the kind of thing that was at stake here, because with the extent of the seniority movements that could take place in a reduction in force, involving three day break-in periods and all the rest of it, you could make some jobs into grand central station on any given day, and the company's ability to run its plants would be seriously jeopardized. In some of the stable depart-ments, of course, it didn't make much difference, but in some depart-ments It would have been hard, it would have been impossible. Well, I had to legislate. I wrote finally the obvious decision, of course, that the words "reduction in force" didn't just mean the presence or absence of paperwork; that people's rights couldn't depend on whether or not the company wrote words on paper back in its offices. On the other hand, since a possible consequence of any seniority of any

reduction In force was a three day break-in period, a reduction in force could not be a movement which lasted less than three days. So I laid down the "three day rule," and both sides were through the ceiling.

THEY HADN'T ARGUED THAT?

No. This was my second year. We marched up the hill and down again a couple of times, and finally the issue had to be decided and I decided it. Well, the Union — this is an interesting experience, I just talked a little bit about my being fired from U.S. Steel; I take my hat off to the Farm Equipment Workers, the way they did it. This was almost at the end of my second year, in the spring, I think my contract was up in September, yes, and it was April. Anyway, I got a call, we had gone around the contract at least once, and then I had gone around again sort of interpreting, expanding on my prior decisions and as to some issues, three times. We were beginning to get some rules. But I knew the union wasn't happy. I knew the company wasn't happy on a lot of it, but the union was very unhappy with some things, and finally I got called, asking me to come out for a meeting with the central committee in Chicago. So I went out and we met in a conference room in the Congress Hotel. It was very cordial and pleasant. I knew everybody, and we talked about the relative merits of the White Soxs and the Cubs and so forth for a while, and then we got down to business. Fields, I think Gerry Fields was the head of the union, and he said to me, "Well, Mr. Seward, I guess you are wondering why we asked you out here." I said, "yes." He said, "Well, we asked you here because we think we need your advice. You have been here now for two years and you have issued maybe a couple of hundred decisions. (I don't know how many there were). We've spent a couple months, now, going over your decisions, and we find they fall into three categories. There is a whole set of decisions that we won, and we think they are wonderful, we love 'em. Then there is a second category of decisions that we lost; but we can see exactly why we lost, and we can live with the result and we accept those decisions. We understand your interpretation of the agreement, and okay, that is it, and we will go on from there. But there is a third category of decisions, Mr. Seward, which troubles us very much. These are decisions which we have lost in which we think you have changed the contract. You've interpreted it in a way we never intended it to mean and a way we don't think either party intended it to mean. And we don't think we can live with those decisions. And we have asked you out, Mr. Seward, to ask your advice as to what we should do in these decisions." Well, that was an interesting openingl So we sat down, and we had a very good discussion about the meaning of the Permanent Umpire system; about what you can do in this kind of situation; about the inevitability of decisions which amount to legislation; about the possibility of re-hearing the issues and the obvious fact that if the Union wanted me to rehear all the issues they didn't like, the company would have to rehear all the ones that they didn't like, and the whole damn permanent system would become ridiculous. We went over the possibly of setting up an appellant procedure, whereby the parties could hire a different Umpire, and

they realized that if they appealed all the decisions they didn't like the company could do the same, and you'd wind up relitigating all the main issues again. I made it very clear what we mentioned here before: I don't consider myself hired to perpetuate my errors and am always willing to hear an issue again and redecide it if they want to send it to me, but it would take a lot of arguing to get me to reverse myself and we went over why the burden should be on the party asking for reversal. It was a very, very Interesting afternoon, and I went home. Soon they brought back two issues, one was the three-day rule issue and one was another one, I've forgotten what it was now.

THEY ACTUALLY BROUGHT THOSE GRIEVANCES INVOLVING THE VERY SAME ISSUE BACK TO YOU AND ASKED YOU TO REVERSE YOURSELF?

Yes, they told me exactly why. And the company replied, of course, and I wrote two decisions examining the issues and the arguments and saying that I hadn't been convinced that I was wrong and declining to reverse myself. So the Union decided that they would have to have another Umpire, and it was a very — I had no anger, no feeling about this at all. We parted friends and I think with a great deal of mutual respect. Interestingly enough, the three-day rule has lasted ever since, I understand. I don't know about the UAW, but as long as the Farm Equipment Workers were there, the three-day rule lasted and I understand that some version of it went over to the UAW. It was an interesting situation at Harvester. After Jim Shields came into the union, a splendid guy, he is dead now, I liked him very much, he and Lescohier, relations were very friendly and though the cases very very hard fought and many of them were very difficult, the relationships were very pleasant. I enjoyed the Harvester experience a great deal.

YOU DIDN'T DO ANY WORK FOR HARVESTER AFTER THAT?

Yes. Years later, after I was in the Bethlehem situation, and after the UAW had taken over, I was asked back to handle a special group of cases in Chicago. They did ask me then to consider some sort of relationship, but I told them I couldn't. But they did ask me to take on that one batch of cases, which I did and that's the only one.

DURING THOSE HARVESTER FARM EQUIPMENT YEARS DID YOU DEAL WITH ANY OF THE PLANTS IN WHICH STEEL WAS MANUFACTURED?

No, but I did afterwards. I had a case at their steel plant on an ad hoc basis after I was in Bethlehem.

I THINK IT WOULD BE INTERESTING TO COMPARE STEEL MAKING UNDER THE UAW OR FE CONTRACT WITH STEEL MAKING UNDER THE STEELWORKERS' CONTRACT.

There was just this one case. It was a difficult issues, I don't remember just what it was. No I had just another case, an incentive case from some other plant which I heard at Harvester later on, and there I issued a decision that I came to think was the wrong decision,

an awful case and an awful decision to make. I thought I was required to make it under the agreement, but it was against all my grain. It was an incentive case where I held that the company, by changing a part number, could justify putting in a new incentive rate. I upheld the company on that, because they had negotiated so many agreements with that understanding, there, and I went along indicating that this must be implied in it and I have always regretted the decision because it offends my whole feeling about the nature of incentive and how you change them and so forth.

WELL, AS I RECOLLECT WE WERE TALKING ABOUT THE END OF YOUR TENURE AS INTERNATIONAL HARVESTER FE UMPIRE. FROM THERE THERE WAS A PERIOD OF A YEAR, I THINK, WHERE YOU WERE DOING AD HOC WORK.

That's right, that's right.

AND THEN IN 1952 YOU BECAME THE IMPARTIAL UMPIRE FOR BETHLEHEM STEEL AND STEELWORKERS.

That is true.

WELL, HOW DID THAT COME ABOUT?

Well, as far as the parties are concerned they had had for three years, no for several years, this tripartite umpireship so to speak. That is, they had had three umpires who had served more or less in rotation, Shipman and Selekman and Charles Killingsworth. And I guess they became dissatisfied with that, because their decisions didn't always jibe and sometimes were quite opposed to each other looking back at them now. I think 3en Fischer and Jim Phelps (these were the people I dealt with, then, Jim for the Company and Ben for the Union) seemed to feel that it would be far preferable to have one man deciding cases rather than three. During the big steel case of 1952, when I was sitting taking testimony with Harry Schulman during an intermission, I remember, both the Union and the Company representatives came up to me and asked me if I would like to be Permanent Umpire at Bethlehem, and I said yes. So I started that following fall.

NOW YOU WERE CONTINUING YOUR ROLE AS A SOLE ARBITRATOR? YOU WERE NOT BURDENED WITH A THREE-MAN BOARD?

That is correct. I. was the sole arbitrator.

HOW WOULD YOU COMPARE THOSE EXPERIENCES ....

As between the three-man Board at U.S. Steel and the sole arbitrator at Bethlehem? I don't know. Basically I enjoyed Bethlehem more than U.S. Steel, probably because it was more, although the cases were very tough, it was more relaxed and informal. I could get closely in touch with the parties and living a life quite apart from steel arbitration, and I enjoyed the people I dealt with. There are an awful lot of good people in U.S. Steel that I like, but the relations there were much more formal and the pressures never let up.

THAT WAS A PULL-TIME JOB?

No. Again it should have been; I have never let it be full time. Since U.S. Steel, I have always insisted on my right to take ad hoc cases and always have taken a few.

WAS THERE AN UNDERSTANDING THAT YOU WERE TO DEVOTE A CERTAIN PERCENTAGE OF YOUR TIME TO THE JOB?

No. The understanding was that I should keep up with it. And it was 99 or 95 percent full time, at least, and actually it was a full-time job but I was always taking on a few cases than I should have elsewhere in order to, as I say, do something else than steel all the time. On the other hand, I missed sometimes the educational opportunities that I talked with you about when you have the Board members with you all the time to talk to. Bethlehem started off as a very lonely job in that respect.

DIDN'T YOU HAVE ACCESS TO PEOPLE ON THE COMPANY AND UNION SIDES WITH WHOM YOU COULD DISCUSS SOME OF THESE PROBLEMS WHEN YOU HAD TROUBLES?

Within limits, yes. In some respects you could do that a great deal and more easily in some ways in those days than you can now. I remember after Bethlehem and the Union began revising their incentives to put them all on a standard hourly wage rate basis, they prepared for that by a special agreement they call the "May 25th Agreement," May 25, 1956. I had to interpret that in a couple of major decisions and some minor ones; and thereafter a lot of cases came up because the union sent out orders that all new May 25th incentives should be agreed to by the Union, so grievances were filed on all of them, to give the union time to make up its mind on its position and test them and so forth. After a while, of course, they began agreeing to them, but for a while we had a terrific stack of incentive which Bethlehem was revising, all of which, potentially were due for arbitration. Well, they wanted those cases arbitrated but on the other hand, there are some issues on which they just didn't want me around making a lot of law. They knew pretty well what they had agreed to, and they wanted to know where they were going; they didn't want me to sit in my room myself and write a lot of language which might cause them trouble. So they told me that In a lot of these cases, if there were difficulties, I should feel quite free to sit down with their top joint incentive committee, and they designated members from both sides to oversee this whole thing. So several times I traveled up to Bethlehem and presented problems which had arisen in various incentive cases, and we worked them out. It was a high level of discussion; a very frank and open discussion; with both sides concerned as to how best to handle the problem and what would be best for the interests of both sides. They had complete understanding of each other's position and complete understanding of the necessities of protecting the arbitration system, and sometimes they would say, "Well now, why don't you go back after you have gone through all the problems and write a learned decision suggesting some of these problems and then referring the problem

back to the Fourth Step of consideration, with the suggestion that the parties consult their joint incentive committee" so that they could get into the settlement process themselves; and that would happen and that would be the last time I would hear of the case. That was one form. Sometimes we worked our way through to a decision. Once or twice I made mistakes, and they were there to help each other and me to get out from under those mistakes. That was a good relationship. Sometimes we would get into terrific arguments. It sounds as though this was an easier situation with less important cases than the U.S. Steel cases, but I don't really mean that. There was a series of cases which we heard leading up the revision of their incentives in which we really had to get right down to the basic questions of what an incentive plan is all about and what the rights of the parties are in terms of revising incentives; when is an agreement necessary and when isn't it necessary; following a change, what parts of an incentive, you know, can be changed. Can the company take advantage of a little mechanical change in an operation to revise a complete incentive just because it is out of line or something of this sort. I found also that at Bethlehem the system was more informal. I got to know the local staff representative at the plants and the management people at the plants as the years went by; they became very familiar. Maybe this was because I have lasted longer in Bethlehem than at any of the other places. They have accepted me for a long while and I have had a chance to get to know a great many of the people.

THIS IS ALSO THE FIRST TIME THAT WE WERE AT LEAST IN AN INDUSTRIAL SITUATION WHERE YOU WERE THE UMPIRE FROM THE VERY ONSET OF THE UMPIRESHIP SYSTEM.

That is correct.

DID THAT PRODUCE ANY PECULIAR DEMANDS UPON YOU, BEING THE PIONEER?

Not particularly. By this time because, though I was the first single umpire at Bethlehem, after Milk and General Motors and Steel and Harvester and so forth, I knew the basic operation of a permanent umpireship. It was not new to me. We did have a lot of problems to square away in terms of precedents and in terms of procedure. They had had In the old days a procedure whereby the companies had used posthearing briefs, and as the unions rarely wrote briefs this gave the company a splendid opportunity to sum up and go over the records and write what were, under Jim Phelps, extremely good briefs. The Union was concerned about the backlog (everytime I arbitrate people are concerned about backlog) and one thing they thought was contributing to the delays was the posthearing briefs. The Union did not like them anyway, so the proposal was to abandon them and substitute prehearing briefs and we worked out quite a system.

YOU PARTICIPATED IN THOSE DISCUSSIONS?

Oh, yes. This was really with Bill Theis and Jim Phelps and with Ben Fischer coming in at crucial moments, and we worked out a system of relating prehearing briefs to the prior grievance procedure

and the issues developed there and worked toward the present system whereby the case is defined in the prehearing briefs, and the Umpire is to deal only with the issues that are set forth in the prehearing briefs. We didn't go that far, but I guess I was naive; in fact I am sure I was; I guess we all were. We were hoping that the necessity of writing prehearing briefs would act as a screening system and that since the staff representatives had to really write a brief before a hearing, they might begin to say, "My Lord, let's get rid of this case, it is not worthy of writing a brief." It really didn't work out that way because I found that, except In some cases (there were some districts where staff representatives like a man named Harold Bernard, for example, would write brilliant briefs) the staff representatives would just—you see the Company always wrote the Fourth Step minutes. The Union let them do that and so after the Company wrote the Union's position in the Fourth Step minutes, the Union staff men would send us as their briefs the Company's copy of the Company's statement of their position as the Company had written it In the Fourth Step minutes.

THEY STILL DO IT IN MANY SITUATIONS.

I am afraid they do, and it didn't really act as a screening system. It deprived us merely of the benefits of good briefs, and to a certain extent it, I think, lengthened the time and the difficulties. It lengthened the time, rather than shortened it, because good briefs in a very difficult case can be a great help in analyzing and getting the facts down and getting to the issues, as you know.

WHAT HAPPENED WITH THE, I THINK EARLIER I QUESTIONED ABOUT GABE ALEXANDER WHO HAS TO BE THE VERY FIRST OF ALL THE ARBITRATION APPRENTICES BUT I KNOW THAT YOU WERE VERY SUCCESSFUL WITH APPRENTICES AT BETHLEHEM STEEL AS WELL AS HAVING INTRODUCED SEVERAL ARBITRATORS IN THE FIELD ALL OF WHOM WHO HAVE MADE A REAL CONTRIBUTION. HOW DID THAT COME ABOUT AT BETHLEHEM?

Well, after the prehearing briefs didn't work in reducing the case load, I called for help and the parties agreed. So I began looking around for names, and I asked George Taylor to send me some names, and he did. And one of them was Rolf Valtin, who was just beginning over at the Mediation and Conciliation Service, and he came over, and we liked each other and he started working. Well, it worked amazingly well; it was such a relief to have him to talk to. He helped me, more than I helped him. You know how good it is to have a sounding board. For a while he just wrote draft decisions *on* cases that I had heard, which I revised and Issued; and then after about four or five months, I guess, I began taking him to hearings to sit with me and he began writing the drafts on the cases he heard. Then once, when we were going to the Steelton Plant, I got sick; Rolf was already on his way there, so I called him up and said, "Rolf, this is your hearing." From then *on he* was holding his *own* hearings. And as soon as he was holding the hearings, I thought he ought to be signing the decisions with me countersigning them, and

we got the parties to agree to that and it worked out very well. Of course, as always the more cases we were able to hear, the more cases came in. So later on we got Sandy Porter in on somewhat the same basis. And two other very good men came to work with me, but neither of these worked out. One, I think, went to the Conciliation Service and the other, Stan Aiges, went into industry. Then after successful experience there, he left industry and has become an arbitrator and a very good one.

DID YOU DERIVE A GREAT DEAL OF SATISFACTION OF HAVING BROUGHT THESE, I THINK, I HAVE ASKED YOU THIS QUESTION ON THE FIRST TAPE, IN CASE I DIDN'T I WILL ASK YOU AGAIN, I ASSUME YOU DERIVE A GOOD DEAL OF SATISFACTION OF EXPERIENCE FROM HAVING BROUGHT PEOPLE INTO THE FIELD.

Oh, I should say so. And the real pleasure is in working with them. Well, I guess one of the things I liked best about arbitration has been batting the cases around with others in the office. It's a very different experience than a three-man Board experience, where there's an arm's length relationship during the case discussions. The difference between that and a situation where everybody is in the same boat, trying jointly to find in discussion what the sensible and proper answer is.

LEAVING BETHLEHEM, NOW, I KNOW YOU HAVE DONE SOME INTEREST ARBITRATION. WHEN WAS YOUR FIRST EXPERIENCE IN THAT AREA?

Really, I suppose in the milk industry. Where I was asked to arbitrate the milk industry contract.

RIGHT, I THINK WE DISCUSSED THAT.

We talked about that some.

APART FROM THE MILK INDUSTRY?

Apart from that and some War Labor Board Panels.

DID YOU DO ANY, FOR EXAMPLE, I HAD SOMEHOW IN THE BACK OF MY MIND THE IMPRESSION THAT YOU HAD DONE SOME WORK IN THE NEWSPAPER INDUSTRY, EITHER AS AN APPEALS ARBITRATOR OR IN MANNING CASES WHICH WERE SOMEWHAT AN INTEREST CASE.

I did both with the Pressman. Yes, I am not sure that those were my first interest cases, but certainly they were among the first. I was on the Appeals Board for the Pressman, their Permanent and National Appeals Board for a while. I think I only heard three or four cases with that Board. Then I was asked to go out for a rather big manning case involving the Milwaukee Journal and Milwaukee Sentinel, both of them. That was a major experience.

NOT ON AM APPEALS BASIS BUT AS A HEARING ARBITRATOR?

Yes. That was an extraordinary experience. I had to learn—I think I did learn an awful lot about how presses are run and the ins and outs of it and what jobs are all about. I spent a lot of time in the Journal and Milwaukee press rooms and they had models in the hearing room and so forth and the hearing went on for, oh, many days. I know I had to go back and forth to Milwaukee several times and spread the hearing out over a number of weeks, and we had an industrial engineering firm in, one of the firms that has done a lot of work with the newspaper press rooms.

WHAT WERE SOME OF YOUR REACTIONS TO INTEREST ARBITRATION? DID YOU HAVE, DID YOU FIND IT AS MOST OF US DO MUCH MORE DIFFICULT TO PROCESS FROM THE ARBITRATOR'S STANDPOINT OR DID YOU FIND IT FAR MORE CHALLENGING THAN THE ORDINARY GRIEVANCE ARBITRATION CASE? DO YOU THINK IT WAS SUITED FOR THESE, THE ARBITRATION WAS SUITED FOR THE PURPOSE OF RESOLVING THESE KINDS OF MATTERS?

I find it hard to generalize. There are interest cases that I think arbitration is well suited for. As, for example, a pressman room manning case or a certain kind of wage case where you have narrow issues, and standards to guide you, and you can get an idea of what the parties; standards are and where you can, in a sense, litigate the cases, that is, where there are two different positions rather than fifteen or twenty possible ones and a limited number of alternatives rather than many. I am speaking now of the litigation type of arbitrating which you find yourself often pushed into, where the pressmen and the newspaper litigate their arbitration. I think that is why, even though the issues are manageable, they are so wise to have an appellate board sitting over this process, because I have such doubts about interest arbitration. So often in interest arbitration you are dealing with what should be a legislative process, a policy-making process, a choice between many, many possible alternatives. It's hard to do that well in a trial court, dealing through lawyers and opposing sides and witnesses. I think that is unsound unless at the decision stage the parties are themselves in on the decision-making process. Nov/ these grueling street transport cases, one of which I had recently, a Kansas City case; they are grueling experiences for an arbitrator, really, but the parties handled it, I think very realistically. They make no pretense really of fully presenting their arguments or anything else at the hearing. The hearings are formal opportunities to make a record, to get in exhibits they want, all the evidence they want; most of It is documentary evidence that they present; they have some witnesses, but there is no real effort to argue the case, sum It up at the conclusion of the hearing and go over the issues. They realize that the real argument and discussion is going on when the Board meets and they set aside as much or more time for the Board meetings to decide the case than they ever do for the hearing and are quite prepared to spend even more; and representatives from both sides are on the Board and it is understood by both sides that they are going to present their case really in the closed Board sessions and hammer the thing out with the arbitrator; and the decision is going to be

made as an arguing process, with give and take, possible agreement on some issues, consideration of all kinds of alternatives, the sort of thing you have to do to come up in an interest case with solutions that the parties can really live with. This doesn't mean that in those cases you don't have an awful time and sometimes go to the mat and get dissenting opinions; obviously you do, as you know. But it makes sense. I had, on the other hand a—recently I had a pressmen's case where they asked me to decide wages, a fairly complicated situation and asked me to decide this by myself even though it was a wage issue. I just kept wishing I had representatives of the parties in with me when I was deciding that case because here I was not interpreting agreements, or applying agreement standards and so forth; I was choosing between standards; I was choosing between policies; I was legislating for the parties; and I don't think it is too sound for an arbitrator like me to be legislating without the parties' presence. I think they ought to be in on the process of decision.

GOING BACK TO THE EARLY YEARS, I AM SURE THAT YOU WERE INVOLVED AT ONE TIME OR ANOTHER IN SO MANY OF THE SUBSTANTIVE CONTROVERSIES WHICH FLOURISHED DURING THAT TIME PARTICULARLY. LET'S JUST TAKE SOME EXAMPLES OF THE TERRIFIC FIGHT THAT TOOK PLACE OVER CORRECTIVE DISCIPLINE IN THE EARLY DAYS, THE MEANING OF "JUST CAUSE," AN ARBITRATOR'S POWER TO MODIFY DISCHARGE PENALTY. LET US JUST BEGIN WITH THAT. WHAT WAS YOUR POSITION ON THAT AND WERE YOU AND WHAT WAS THE KINDS OF PRESSURES BEING APPLIED BY THE PARTIES? I KNOW, FOR EXAMPLE, THAT WHIT MCCOY TOOK A POSITION BY AND LARGE AGAINST MODIFICATION AND HARRY PLATT WAS ON THE OTHER END OF IT ARGUING, URGING THAT YOU COULD, THAT ARBITRATORS DID HAVE THE POWER TO MODIFY UNDER THE ORDINARY "JUST CAUSE" LANGUAGE. WERE YOU INVOLVED WITH THAT?

On the modification issue, I had a comparatively easy time, in the early days, because, first, I was in the milk industry where I had the power to do anything, really. I could and did modify or set aside all kinds of penalties, when I was young and brash and free wheeling. I got out to General Motors and they had very express provisions in their agreement about it. I could modify but not out of any implicit power in an arbitrator to modify; I had power because General Motors, which thought things through, wrote into their agreement a provision saying that the Company delegates to the Umpire the authority to modify a penalty.

I REMEMBER YOUR TALKING ABOUT THAT EARLIER.

I did, I had forgotten that.

AND U.S. STEEL, YOU DID NOT HAVE THE POWER TO MODIFY. BY CONTRACT AGAIN.

That is right and the whole business about back pay and so forth was pretty well set out; we did have some problems, though.

DID YOU RUN INTO IT IN YOUR AD HOC CASES?

Not really, because by the time I got into ad hoc, I found the power to modify was largely accepted so I did it. As far as corrective discipline is concerned, again I found at General Motors that George Taylor had worked out the basic theory of corrective discipline; and although the Company had not accepted it, formally, it was beginning to work with it and the position I found myself in, as Allan Dash had, was that of refining the concept and working out the exceptions to It, the kinds of offenses for which corrective discipline need not be applied and the implications as to disciplinary processes in general; and when you allow discipline to affect a man's right to transfer or take people off of jobs because they can't do them, which isn't a disciplinary problem, but sometimes gets handled that way. They get disciplines for negligence at work and so forth. Working out those problems was new and fun and fascinating and we did, I think, work out; a few principles.

IN THE SAME CONNECTION WERE YOU INVOLVED IN MANY OP THOSE EARLY "WORK NOW, GRIEVE LATER" ....

Oh, yes. 'When could you or when if ever could you refuse to obey an order rather than grieve. This again I ran Into in my first days at General Motors. I remember it came up in terms of safety. I doubt I am the first one to make the safety exception to that rule, but I certainly have found myself making it. Nothing else seemed to make sense. I remember making one which caused a stir, when I held that an employee did not have to obey an order to do work in a different bargaining unit than his own. It seemed to me quite clear that when he was working In a different bargaining unit, he was no longer under the protection of his own grievance procedure, and that the whole basis upon which he could ordinarily file a grievance no longer existed for him, when he was sent into a different area where the same rules didn't apply. I felt that h&re if he wanted to refuse to work in that other unit, a little self help was appropriate. The Corporation screamed a bit, but they accepted it. I don't know whether the rule still lasts or not.

WHERE WAS THAT?

At General Motors.

WHAT ABOUT THE PROBLEM OF IMPLICATIONS, THAT CERTAINLY GOT TO BE A MORE COMPLEXING PROBLEM THAT ARBITRATORS ARE FACED WITH. WHAT ONE DOES WITH RESPECT TO SUBCONTRACTING, WHERE THE CONTRACT IS SILENT ON THE SUBJECT, THE KIND OF THING YOU WERE CONFRONTED WITH IN STEEL MANY, MANY YEARS AGO. I AM SURE THAT ARBITRATION IS STILL CONFRONTED BY THESE PROBLEMS. WHAT ARE USES OF THE WAY IN WHICH A PRACTICE SHOULD BE TREATED, ACTUALLY THE LANGUAGE ON THE SUBJECT?

Well, I am a heretic on that. Particularly on the implied powers or implied rights issue -- as to which there used to be so much debate and attention. I think I have always felt (or at least ever since I really though" this through, and many people I know still

disagree with me) that there isn't any conflict. I have agreed to and have upheld limitations on subcontracting, but I have always upheld them on the ground that the agreement limited subcontracting and was intended to and that is what the language meant. I have always, always agreed with management that the question was what does the agreement mean; but I often have disagreed with management in its position that the only thing you look at to find out the meaning of an agreement is the bare language. The silences in an agreement are sometimes as significant and meaningful as the words. And this is always a question for judgment, for argument. The issue is always what the agreement means. And so I have never been able to get myself into the middle of the supposed argument between the agreement or implied powers and so forth, because to me they are one issue: it is always the question of what does the agreement mean. The first subcontracting case that I ever heard was a rubber company case out in Cumberland, where management was contracting out trash collection or something of the sort and the union objected, and I upheld the company, because I felt in that case that I couldn't really legitimately read into their recognition clause or anything else in the agreement any indication that management had to use its own employees to collect the trash, couldn't contract it to somebody else. But there I was ruling on that agreement. What I would do about trash collecting in other cases, I don't know. I think it is very hard to read into most collective bargaining agreements an implication that in order for this agreement to work and so forth something so utterly peripheral to the main process as trash collecting has to be done by members of the bargaining unit unless there is some language or history or practice and so forth to make that clear. On the other hand, where you are dealing with, as I did in Bethlehem with scrap disposal, the handling of scrap which was less peripheral and more tied in with the industry and where there had been discussions of it in the grievance procedure, I felt that there were reasons there for holding (I held actually on a practice issue) but I think I might have well have held the Company was barred by implication in that one.

DID YOU KILL PART OF THE CONTROVERSIES ON THESE SUBJECTS AS IF YOU WERE PLAYING A ROLE IN RESOLVING CONTROVERSIES OR WERE YOU MERELY DOING YOUR WORK CONSCIOUS OF THE FACT THAT YES, THE SAME KIND OF PROBLEMS WERE BEING EXPERIENCED BY OTHER ARBITRATORS AROUND THE UNITED STATES?

Occasionally, in steel I've been put in a position where I knew we were making the basic law. Often I had to deal with the issue of what effect do you give, as an arbitrator under an agreement, to outside public law—the Wingspread Issue, as you remember.

YES. IT HAS BEEN AN ISSUE FOR SOME TIME.

That is right. This was way back in '44, I think, during the war, and it was the old super seniority issue. Two guys come up for a job, one is entitled to it under the law, the other is entitled to it under the local seniority agreement, what do you do? Well, I upheld the local seniority agreement; this hadn't yet come to the

Supreme Court; it was, at that stage, in several Circuit Courts of Appeals. But anyway I wrote quite a long opinion, and I think a good one, telling the parties that the arbitrator was a creature of the agreement, that his job was to apply the agreement and that if the agreement put the parties in a position where they were in contravention with the law, that was their problem, not mine.

DO YOU STILL FEEL THAT WAY?

Basically, yes. I am not at all sure that it's possible to adhere to it under some of the legislation which we have now. I notice many contracts which are beginning expressly to incorporate the so-called "outside" law and we have had cases in this office recently where you get conflicts in the Civil Rights issue between the labor agreement and the steel consent decree, for example.

THE CONSENT DECREE IS INCORPORATED INTO THE AGREEMENT?

Well, it is usually so held. It was by no means clear when the issue reached this office, but Sy Strongin held that the consent decree was part of the agreement and took precedence over other language. I thought that was a fine decision and a very sound one. I don't think I realized when I was writing that early super-seniority case decision at General Motors, that I was making law on an important issue. It seemed simply to be a very special problem that I figured out at best I could. Later on, I realized that this was always coming up a lot.

IT REALLY SEEMS TO ME THAT ARBITRATORS, BECAUSE THEY ARE WORKING IN THEIR OWN LITTLE SLOT SOMEWHERE IN THE COUNTRY, ARE NOT CONSCIOUS ORDINARILY 0? THE UNIQUE NATURE AND IMPORTANCE OF SOME ISSUES THAT THEY HEAR. I MEAN I CAN UNDERSTAND THE IMPORTANCE IN RELATIONSHIP OF THE PARTIES BEFORE THEM, BUT I AM NOT SURE THAT THEY CAN ALWAYS SENSE THAT THEY ARE DEALING WITH SOMETHING THAT IS UNIVERSAL AMONG EMPLOYMENT RELATIONSHIPS.

I think that is true. One of the disadvantages of our profession is how little we know about what preceded the cases we hear and xvhat follows. We get so little of the background, not only in terms of the Importance of the issue and broad precedential implications, but in terms even of the cases themselves. We get little slices of life. You come into a hearing room; you get a little slice of plant life that began at 5:00, Tuesday, when something happened and maybe went on for a few days or maybe a few months, and you get all kinds of arguments about it, and then you go back and get a grey hair or two trying to figure out how the contract should have applied to that slice of plant life and you issue your decision into dead silence. You never know what happened when the man was reinstated, for example; you never know whether a guy you put back was able to do the job actually, or messed it up when he went back.

DO YOU THINK WE WOULD BE BETTER ARBITRATORS IF THERE WAS SOME FEED-BACK MECHANISM, SO THAT WE KNEW WHAT THE PRACTICAL CONSEQUENCES OF OUR DECISIONS WERE?

I have no idea. We might be wiser, we might learn a lot. I always think that it would increase the interest In the job.

THERE IS CERTAINLY NO WAY FOR US TO KNOW OUR MISTAKES AT THE TIME WE MAKE THEM, THE PARTIES DON'T TELL US.

That is right. And even some of the cases that you think are so important and the decisions you write that you think will go down in history, just drop like a stone and are never heard from, and nobody mentions them and nobody really ever pays any attention to them. Whereas in other cases, where you fail to recognize the Importance of the case—it's something that looks to you fairly routine and you dash it off—and then suddenly, wow.', you have made new lav/ or you have done something awful or something tremendous.

THAT ONLY BEARS OUT SOMETHING THAT YOU SAID A MOMENT AGO THAT WE REALLY DON'T ALWAYS UNDERSTAND THE IMPORTANCE OF WHAT WE ARE DOING. WE ARE OVER-EMPHASIZING THE IMPORTANCE OF SOME CASE AND UNDER-EMPHASIZING THE IMPORTANCE OF OTHERS.

And it is so rare that we really know what we are doing. Sometimes we do, sometimes we do; but the parties always assume so much knowledge in an Umpire, particularly in a Permanent Umpire situation. They begin to think that because you have been around for a long while, you must know what's been going on in their negotiations and in their discussions and what their latest arguments or understandings have been or what they decided not to try; and all this life which is going on among themselves and between them, to say nothing of the life that is going on in the plant; and then you dip into it from time to time as individual cases arise, and you have been around for longer than most of the witnesses you are hearing, but you still don't know half as much about it as the people around the table.

WHAT WAS THE MOST DIFFICULT SUBSTANTIVE PROBLEMS THAT YOU WERE CONFRONTED WITH IN THOSE EARLY YEARS? SUBSTANTIVE ISSUES WHICH YOU HAD THE MOST PROBLEMS WITH? WAS IT THE INCENTIVE CASES, THE GREATEST DIFFICULTY FOR YOU OR SOME OTHER FORM OF CASE WHICH YOU ALWAYS HAD A PROBLEM RESOLVING?

I think the incentive cases were uniformly the most difficult.

WHY WOULD THAT BE? MOST PEOPLE SAY THAT BUT WHY IS IT?

You have to know a great deal more, I think, in an incentive case about things you are not trained to know about or at least that I certainly am not. Of course, you always have to know something about the workings of industrial processes; to judge whether they are

safe; you have to be able to make pretty good judgments as to the ability of men to do work you couldn't possibly do yourself. Sometimes, in an ability case, you have to have realistic antenna about a lot of processes. But in most cases you don't have to know as much about the ins and outs of an operation, as when you are dealing with a measured operation and judging -whether the measurements of that operation had been proper and whether they had taken in all conditions and whether the conditions were average conditions or unaverage conditions and whether the product mix during a given time was typical or atypical and so forth. You have to learn an awful lot that isn't natural to you. Then you have to learn the science, to learn somebody else's science, Industrial engineering; somebody else's specialty, and then you have to be able to play around with figures, which are always difficult for me, and with mathematical concepts which I have to work at before I can get them in my head. You are also dealing with something in which the results of your decision will be widespread and long lasting and ....

AND POTENTIALLY VERY COSTLY.

.... and potentially very costly. So I find incentive cases, I guess, the most difficult.

WELL, WE TALKED EARLIER ABOUT INTEREST CASES, I DON'T THINK YOU MENTIONED A FEW OF THE FASCINATING INTEREST ARBITRATIONS THAT YOU HAVE BEEN INVOLVED IN IN THE STEEL INDUSTRY. THERE WERE TWO THAT COME TO MIND AND MAYBE MORE AND PROBABLY ARE, I AM THINKING FIRST OF THE, AND I REALLY DON'T THINK I CAN DESCRIBE THIS ACCURATELY BUT IT WAS AFTER THE SUPPLEMENTAL UNEMPLOYMENT BENEFITS PLANS WERE NEGOTIATED, THE PROBLEM AROSE WITH WHAT TO DO WITH MONIES THAT COULD NOT BE PAID UNDER INDIANA AND VIRGINIA LAW OR SOMETHING LIKE THAT, I AM PROBABLY NOT DESCRIBING IT CORRECTLY BUT I REMEMBER AN ARBITRATION WAS HELD AS TO WHAT TO DO WITH THAT MONEY OR WHAT TO ....

Yes.

WAS THAT THE ISSUE?

It involved the adjustment of the plan in certain states where ..

THE STATES WHERE SUPPLEMENTATION WASN'T PERMITTED.

Exactly, and ....

THAT WAS A TRUE INTEREST ARBITRATION?

Yes. This is the case where I first had a chance to work closely with Syl Garrett and Harry Piatt.

YOU WERE THE THREE MEMBERS ON THAT BOARD?

That is right. It was a good experience, but unfortunately

I learned what Harry Piatt Is and the kind of mind he has, because he's the one that cut through and really saw through that Issue. That was tough. And that again was a case that was really hard for me, because this whole actuarial deal in the handling of unemployment benefit funds and all the rest of it was utterly new to me.

THERE WAS AN INTEREST CASE WHERE YOU DID NOT HAVE THE BENEFIT OF THE OFF-THE-RECORD ADVICE OF THE PARTIES. YOU DIDN'T HAVE A BOARD WHICH INCLUDED COMPANY AND UNION REPRESENTATIVES. I ASSUME THAT THAT WOULD HAVE BEEN AGAIN THE CASE WHERE THAT V/OULD HAVE BEEN HELPFUL.

That would have been helpful. Luckily, I wasn't there on my own. The three of us were there, and we eventually, of course, when we made our basic decision, we then did sit down with the parties and the language drafting was done with them, and those guys knew the thing backwards and forwards and there was no dispute. The experts on both sides knew each other and worked with each other well. Once the decision had been made, the rest of it, the agreement language, it was a pleasure to watch it being drafted.

THE OTHER CASE, OF COURSE, THAT I HAD IN MIND WAS THE ONE WE MENTIONED AT LUNCH, THE INCENTIVE ARBITRATION AWARD, WHICH IS AN EXTRAORDINARY, MUST HAVE BEEN AN EXTRAORDINARY EXPERIENCE.

That really was.

I THINK PERHAPS THAT FOR THOSE WHO ARE NOT ACQUAINTED WITH IT AND MOST OF THE PEOPLE WHO WILL BE READING IT, PERHAPS YOU' SHOULD EXPLAIN SOME OF THE BACKGROUND.

Well, this goes really back to those incentive cases and to some of the incentive problems which had been looming in the future when I was at U.S. Steel. I had been dealing with aspects of those problems for years. In the '68 negotiations there was an effort to deal with many of them. On the one hand, there was a desire by the union—there were a lot of people who were not under incentives and they wanted to be brought under the incentive systems, and the companies' position was that a lot of their employees were on work which couldn't be effectively or economically measured and shouldn't be put on any incentives. Further, the companies wanted to make progress towards the revision of unsound incentives, runaway incentives while the Union, of course, wanted to revise the tight incentives; and both sides were getting into questions that they could not possibly solve during the '68 negotiations if they were going to get an agreement. And you also had problems arising from the fact that the different companies had different kinds of incentive systems and approached incentive problems in different ways. And there was some pressure toward uniformity, at least to beginning to move toward uniformity so that no one would have advantage over others. Anyway what they did in the '68 agreement was to appoint a commission, a committee of the parties to study and try to settle It, with the idea that if it couldn't be settled, It would go to arbitration. And they appointed four of us, Bill Simkin, Syl Garrett

and me - Ben Aaron was an alternate, but didn't serve - to hear this. Well, there was no study; there were a few gestures towards study but basically nothing was done. There was, I think, a union election or something of the sort that year, and they didn't really get down to looking at the problem until the year had almost run out in which they had to study it. The incentives had to be put into effect, as I recall now, on August 1 of 1969, and anybody who was going to get on incentive and didn't have one was going to begin getting ten cents an hour. Well, there was a lot of pressure to get things started, so they abandoned the study effort, and we went to arbitration and we hed a big hearing for three weeks, I guess, in the Shoreham Hotel here in Washington. We took tons of evidence and got records from every company about its incentive earnings and the jobs that were on incentives and jobs that weren't on incentives and so forth and there was some discussion of their incentive problems, but there was no real joining of issues during the hearing. The companies seemed to be in a very difficult position in terms of getting together *on* any single position, and it wasn't until quite late in the game that they really began to tell us where they stood in any specific fashion. The union, of course, always has an easier time because it is a centralized outfit, but in any case we wound up the hearing with a very difficult legislative job on our hands. After talking among the three of us and talking with the company and union representatives, we decided that the only hope was to ask them to appoint representatives to sit with us during the decision-making process, which they did, and that was what saved us. Whatever the merits or demerits of our final decision was, it was a decision which was eventually accepted by both sides and which has proved workable and which the parties have been able to live with. I am convinced that the reason for that is not because of any genius on the part of Bill, Syl and me. It's because we had representatives of the parties in with us doing the job of helping us legislate, helping us to decide on the policies. We had to make the decision and we made the decisions but ....

BUT YOU WERE ABLE TO BEND, I ASSUME. IN THOSE EXECUTIVE SESSIONS YOU WERE ABLE TO NARROW THE ISSUES TO A POINT WHERE A DECISION COULD BE MADE.

Oh, yes. Sure, everybody took their hair down and we presented language to them and got their replies and their comments; or we would be meeting with the companies sometimes and with the union sometimes, we would be meeting with them jointly sometimes and it was immensely helpful. The guys they gave us were very, very helpful; it was the real hearing. The session at the Shoreham Hotel was interesting, but it really had little to do with the ultimate decision. The thing started, the process really started ....

AFTER THE HEARING WAS OVER.

After the hearing was over, when we could get down to brass tacks with the representatives of the parties. It made a lot of sense; the steel industry and the steel unions were very sophisticated oeoole in all this.

WERE THERE OTHERS LIKE THAT OR WERE THOSE THE ONLY TWO THAT YOU DID IN STEEL?

Oh, I did one - I don't know whether you would call it Interest or not. It was U.S. Steel after I had left that they had a major case involving incentives.

INTEREST CASE?

I don't know whether ... it involved the effect of the interpretation of the May 8th Agreement, May 8, 19^6 Agreement and the application of the whole "fair day's work" program. It grew out of some grievances, but it got Into such broad policies that it was taken right out of the grievance procedure and a special board was created — Sidney Kahn, oh hell — the chairman. He was Dean of the law school first down in Alabama and then at ....

COULD IT HAVE BEEN WHIT MCCOY?

No. I can't remember who was chairman but anyway this was when we really went to the mat on the whole basic U.S. Steel incentive problem. We wrote this decision. I am proud of it, because after my U.S. Steel experience, I was so afraid of too much language that I got the Board members to agree to a decision about five or six separate sentences - 1, 2, 3, ^•

THAT'S WHY I PROBABLY HAVEN'T READ IT. I DON'T REMEMBER THAT ONE.

Oh, brother, that was a tough one. Cooper argued that case practically by himself for the company. Ben Fischer and Dave Feller argued for the union. That was the gray hair department, that was one of the worse cases that I have ever faced in terms of difficulty. This is where the parties let you know that you were making law, that this was no ordinary grievance, this was it.

TURNING FROM THE SUBSTANTIVE AREA UNLESS THERE IS SOMETHING MORE THAT YOU WOULD LIKE TO TALK ABOUT.

Let's go ahead.

I WANTED TO GO INTO THE WORLD OF CHANGES, THE CHANGING NATURE OF THE ARBITRATION PROCESS AND HOW YOU PERSONALLY SEE THE PROCESS TODAY IN RELATIONSHIP TO WHAT IT WAS IN THOSE EARLY YEARS AND WHETHER YOU THINK THE CHANGES HAVE BEEN FOR THE BETTER OR WORSE. I THINK WE ARE ALL VERY FAMILIAR WITH THE HUGE GROWTH IN THE NUMBER OF ARBITRATION CASES AND THE WAY IN WHICH THE PROCESS HAS BECOME ONE OF THE COLLECTIVE BARGAINING INSTITUTIONS AND HOW IT HAS BEEN ASSIGNED A LOWER AND LOWER IMPORTANCE IN THE SCHEME OF THINGS WITH THAT SOPHISTICATION. HOW DO YOU SEE ALL THIS?

I think it was inevitable that should happen and it is both good and bad. It's good in the sense that it is a symptom of the acceptance of the process. So accepted that it is routine; often

boringly routine. It is getting familiar, people aren't afraid of it, people criticize it till hell won't have it, up one side and down the other. The main topic of arbitration is how awful arbitrators and arbitration is, at least how expensive we are and how slow and how many mistakes we make and everything else and there is a lot of merit in all the criticisms and yet the process has survived and become more and more accepted, I think. As I say, routine. The bad side of it is, partly, that some of the fun we used to have when we were on the firing line of new things is gone; maybe that is still there in the public sector, I don't know. I have a feeling, however, that there is an awful lot of good arbitration being done. I am talking now not just about the arbitrators, but about the good lawyers, good staff representatives and so forth who are still arguing cases extremely well, and they have learned an awful lot. But on the other hand, the processes have become routine. I think that on the whole the quality of the presentation has dropped, the quality of the briefs we get, an arbitrator is more apt to get slip-shod briefs, just one more brief that a lawyer is writing among the hundreds that he is writing. They are not big cases any more and so on. I think that as the volume of cases grows and the number of arbitrators has increased, I think that the quality of an awful lot of arbitration work, arbitration decisions has dropped. I am not sure of that, but one has the feeling that to the parties and the arbitrators, in many situations, this is just sort of more of the same. Something to be gotten through with and that the quality of the process, the attention that is paid to it, isn't what it used to be, in my opinion. That may just be me, looking back at "the good old days," I just may be an older man complaining about the passage of ....

WELL, I HEARD THE SAME THING ABOUT IT. TAKE THE NATIONAL LABOR RELATIONS BOARD AS AN EXAMPLE. I HAVE HEARD PEOPLE EXPERIENCED WITH THE BOARD'S WORKING- MAKE THE SAME KIND OF STATEMENT ABOUT IT. BUT THE BORING, COMPLAINING THE QUALITY AND DECISION MAKING SHORTLY AFTER ITS ARRIVAL ON THE SCENE IN THE LATE '30S AND THIS IS THE QUALITY OF ITS WORK TODAY, THEY MAKE THE SAME KINDS OF CRITICISM AND FOR MUCH THE SAME KIND OF REASON, EXPLAINING THAT GIVEN THE SAME VOLUME OF WORK IT IS IMPOSSIBLE TO KEEP THE QUALITY.

On the other hand, I think there has been much good exploring; the process is developing now in spite of this. There are new things. I think the development of quickie arbitration, expedited arbitration, has basically been a good thing; it has its dangers, but it has been an effort by the parties to control the process and to mold it to suit themselves. This is to me very important and very good when they do that. I like the development in interest arbitration of the, what do you call it ....

THE LAST FOR THE CHOICES FOR THE ONE ENTIRE OFFER .... THE LAST CHANCE ...

The last final offer or something or whatever the term is. I have never done that, but I think It is a very interesting development.

WELL IT'S CHOOSING BETWEEN ____

Choosing between two ....

.... BETWEEN TWO POSSIBILITIES AND AGAINST THE LAST OFFER.

That is the answer of course, or an answer to my complaints about much interest arbitration. This would make an interest case something which could be litigated. Perfectly reasonable and decided by one man on the facts between the two alternatives and which is not a legislative set of process in the sense that it was choosing among all kinds of alternatives. That development I like. I like the development of specialized arbitration processes for specialized problems and the development of specialists in arbitration. I think the thing is still growing, and to me as a man who has devoted his life to it, I still find these things exciting and very worthwhile.

THE EXPERIMENT THOUGH, FOR THE MOST PART, IS THE PROCEDURE ON HOW ONE GETS TO ARBITRATION AND HOW THE ARBITRATION SYSTEM IS STRUCTURED.

Yes, that is right.

THERE HAS NOT BEEN A GREAT DEAL OF EXPERIMENTATION WHICH PRECEDES THE ACTUAL ARBITRATION PROCEDURE, THE HEARING PROCEDURE, THE PRECISION PROCEDURE, THAT SORT OF THING. THAT REMAINS LARGELY THE SAME AS EVER.

Yes, I think so. Tough you now have people conducting hearings over the telephone and they may start doing it by television. Another development we may be going to fact, (I am not sure about this, for I haven't been really close to the developments in the civil rights front and Section VII cases and all that) but arbitration has always functioned, so far, as a two party process, with two power centers, (except in the public center where you sometimes get more power centers) but grievance arbitration certainly and most interest arbitration in private industry has been a two-party deal, with the union in control of one side and the company in control of the other. Now to the extent to which you are getting into the civil rights area or other minority areas, you may be getting into areas where the two-party relationship Is breaking down. You are getting cases where the union does not represent necessarily the interest of the grievant or all the grievants; where other parties have to be recognized and they may have to develop rules to meet that kind of thing. I am not sure what procedures will be developed. If that kind of multi-party problem really appears, it may have to go to the courts, I don't know, or to a government agency.

WHAT ABOUT THE DEVELOPMENT OF ARBITRATORS? DO YOU THINK THAT PROBLEM TAKES CARE OF ITSELF IN THE COURSE OF TIME OR DO YOU THINK THAT THERE SHOULD BE MORE EFFORTS MADE TOWARDS BETTER TRAINING OF PEOPLE WHO SERVE IN THIS CAPACITY. FOR EXAMPLE, PERHAPS THERE SHOULD BE MORE OF AN APPRENTICESHIP RELATIONSHIP. THE ONLY PEOPLE WHO HAVE BEEN WILLING TO DO THAT, THE ONLY ARBITRATORS WHO HAVE BEEN WILLING TO DO THAT ARE THOSE WHO HAVE THE APPRENTICES SUBSIDIZED BY THE PARTIES FOR THE MOST FART.

I think that this is a problem for the parties. I think it is a problem which has been faced remarkably well in the steel industry, because of the vision of some of the people on both sides of the fence in the steel industry. It has taken a lot of vision. I think the steel industry has been educating arbitrators for a lot of other unions and other companies to use.

RIGHT.

I am all for the university courses that can be developed as a help to people interested in arbitrating. But I have little confidence in developing arbitrators simply through lecturing to them or giving them courses or having them read cases. I think that ultimately one becomes an arbitrator by arbitrating; that means on-the-job training through various kinds of apprentice relationships, hearing office relationships, assistant relationships that can be developed. This can't be done just by arbitrators; no arbitrator can afford to set himself up as a school. It has got to be done by the parties, and it takes money. I think that some industries - well General Electric has recently been working in this area and some others now are coming into the picture. I understand a course they recently worked out at the University of Michigan was extremely good.

GENERAL ELECTRIC?

Yes, was extremely good and helpful, and they have gotten two or three guys who are going into the field as a result. More power to it, and I just wish that more people would do it, that more companies and unions would see the point. See there has never been any shortage of people who want to arbitrate. We have so many people who want to arbitrate that they are coming out of our ears, but the number of people on whom industry and labor can count to be responsible and effective arbitrators is still too small.

DO YOU THINK THAT THE PROCESS HAS ASSUMED A GREATER IMPORTANCE FOR THE PARTIES THROUGH THE YEARS? I KNOW THAT YOU ARE NOT ONE OF THE PARTIES BUT HOW DO YOU SEE THAT PROBLEM, THE WAY THE PARTIES VIEW THE ARBITRATION PROCESS, IS IT ... THEY ARE OBVIOUSLY MUCH MORE COMFORTABLE WITH IT THAN EVER BEFORE AND THEY OBVIOUSLY SEE IT NOW AS AN ESSENTIAL PART OF THEIR RELATION AND THAT WAS NOT ALWAYS TRUE.

I don't know how to answer that. I really don't. I think that for many companies and unions it is still vastly important as signified by the fact that it is used all the time. The cases that are coming up in private industry are no longer the precedent-making, law-making kinds of cases that they used to be; although as new specialties arise they are causing—as a matter of fact I am finding the cases we are having these days more difficult than a lot of the ones we used to have because the subject matter is different. But I really don't know how important they regard it; I really don't know as compared to the old days.

HOW DO YOU FEEL ABOUT THE FORCES THAT HAVE PROMPTED THE CHANGES THAT HAVE TAKEN PLACE, PARTICULARLY THE ENORMOUS INCREASE IN THE USE OF THE PROCESS. WHAT DO YOU THINK ACCOUNTS FOR WHAT'S TAKING PLACE, NOT JUST AN INCREASE IN THE NUMBER OF GRIEVANCES.

You ask what has accounted for the increase in the number of grievances. I really don't know. I. know that many causes share in it. Certainly it is not merely an increase in the number of organized plants or something of that sort, although that could account for some of it. I think that you suggested at *one* point in your memo that it might be the era In which we live, people being more disputatious, more ready to challenge authority. That may have something to do with it, I can't tell. One thing I hear about in the plants is that younger employees are coming in with better education and I have heard staff representatives complaining that their jobs are getting tougher because all the employees are able to read the agreement and ask questions about It; and argue about its meaning, which used not to happen. I don't think you could discount the sheer fact that arbitration is becoming a routine process, and a more easily available process; that more is heard about the process. It is no longer something mysterious that only the union representatives know about. It's no longer as threatening a process. A lot of people around the plant have been in arbitration hearings; and so it's easier, I think, for people to go to arbitration and more natural; but how much that actually has to do with this is just pure speculation on my part. How much it actually has to do with the growth I don't know. I do know that the growth is absolutely fantastic both from the AAA figures and FMCS figures. And this I don't understand. The number of grievances over at Syl Garrett's shop is increasing all the time. I haven't kept up with the figures. Our case load here, however, is not very different than it was five or ten years ago, and we haven't seen all this increase. We always had some plants that never arbitrate and some that do a few times and some that throw everything to arbitration, and that hasn't changed much. I am wondering whether most of this growth hasn't come about in the ad hoc field, rather than in the permanent field. I don't know, on the basis of my Bethlehem experience that would be it. On the basis of your experience with U.S. Steel and I don't know, ...

WELL, IT HAS BEEN MY EXPERIENCE THAT EVERYTHING IS GROWING. THE UAW SEEMS TO BE ONE OF THE FEW, THE BARE RELATIONS SEEM TO BE REALLY CONSTANT IN TERMS OF NUMBERS THAT IS GOING TO ARBITRATION BUT FOR MOST PLACES IT SEEMS, THE REPORTS THAT I GET FROM PEOPLE WHOM I SPEAK TO INDICATE THAT THE USE OF THE PROCESS IS GROWING BOTH IN PERMANENT SYSTEMS AND ELSEWHERE.

I just don't know what the factors are; it would be an interesting subject for investigation.

HAS YOUR CONCEPTION OF YOUR ROLE AS AN ARBITRATOR CHANGED OVER THE YEARS: HOW YOU SEE THAT ROLE TODAY AS COMPARED TO HOW YOU SAW IT YEARS AGO?

I think as a grievance arbitrator my role--or my conception of my role—has become more modest practically every year. In the early years I was terribly impressed with what to me seemed to be the great importance of the function; here were all these people coming for decision; I had the terrific responsibility of deciding these cases and they seemed to be so important. I now think that yes, we have a very important and very necessary function, but every year has taught me a great deal about how many other things the parties are doing with each other that has nothing to do with the grievance procedure and arbitration. At least in steel or any of the big corporation and union relationships, they seem to be doing so much more with the processes of agreement than with processes of settling their disagreements. Every time I decide a case, it seems to me very difficult and I get very concerned over it and I find out later that the parties had a much better perspective on the case than I did.

HOW DO YOU SEE - DO YOU HAVE ANY VIEWS ABOUT THE FUTURE OF ARBITRATION? I KNOW THAT NONE OF US HAVE CRYSTAL BALLS BUT IT IS INTERESTING TO SPECULATE ABOUT WHAT LIES IN THE FUTURE.

I guess we have touched on a few future things. I think that arbitration will continue in the industrial system, because it is necessary. I think that it will become more variegated. I hope it will continually become more adapted to the special kinds of problems that are presented to it, that there will be more variations in procedure and in personnel and specialities. I would like to see the time when the arbitral approach to medical problems is more intelligent than it is now. I would like to see the arbitrators' approach to industrial engineering problems become more intelligent and more informed, on the average, than it is now. And of course, as we get into more of the pension problems and as public law impinges on us and brings in things like OSHA and civil rights and various types of government regulation, we may find ourselves dealing with more specialties, and arbitrators will thereby become forced to learn a great deal more about more things. I hope we will also develop specialists because I think it would be good for the process.

ARI3TRATI0N SPECIALISTS. PEOPLE WHO HAVE EXPERTISE IN ONE OF THE OTHER AREAS THAT YOU MENTIONED.

They are moving now in that direction, there are arbitrators that you know who are rightly thought of as particularly expert in, oh, - some matters in industrial engineering or finance or something.

I CAN THINK OF ONLY ONE WHO IN MY VIEW WAS EVER WIDELY KNOWN AS A SPECIALIST IN INDUSTRIAL ENGINEERING PROBLEMS AND THAT WAS PROFESSOR LAHOSKI.

Well, I guess so, but in terms of - well take Jake Seidenberg on the economic and financial type of issues, he's excellent and deals with them expertly and I think many companies rightly turn to him when they have problems In that area. Now the one In the same field is, oh hell, Philadelphia ...

OH, YES. UNTERBERGER.

Yes, Unterberger. Excellent man. There are some people who, on the basis of the kinds of cases they have had, are becoming specialists or are coming willy-nilly to know more than others about certain areas, and I think it is a healthy trend. I would like to see more of it, because the parties should take advantage of the potential flexibility in the arbitration process and their ability to get the men they need and find the expertise that they need among arbitrators to decide the special problems they have. That I hope will be in the future and I think that we may have in the future as I said before the need to adapt to more than two-party relationships or two-party interests; we may have, in the future, to adapt more and more to public law; and it may be that the rule that I have lived by all my life that my only job is to interpret the agreement will no longer be found acceptable by the parties, that their needs will free them to ask for more.

WHAT ROLE IF ANY, RALPH, DO YOU THINK THE GOVERNMENT WILL PLAY IN FUTURE ARBITRATION SYSTEMS?

I am leaving the public sector out of it.

YEAH, RIGHT.

Obviously. In the private sector I hope it would be limited, and in some areas I think that will be possible. The danger, of course, is the tendency, in some areas, some localities, really in groups of industries, to run to the courts. Where you have industrial relationships that are on such a basis, that they don't strike much but litigate their problems up and down, and the more that that is done, the greater the ripple effect will be on the rest of us. I hope that the government will realize the terrific value to American industry of flexibility in dispute settlement in having the procedures in the control of the parties. The natural instinct of so many people and so many legislators is to pass a law or to try to find universally applicable solutions to problems, that I some times get pessimistic. If only unions and managements can learn across the board what so many of them now know: the importance of defending their own dispute settlement machinery from outside interference, from being taken over and becoming lawyer ridden, courtroom ridden, and every thing else. If they will join together and defend it, arbitration procedure machinery will be in no danger. If they abandon it, well, God help us.

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

Oh, I don't know. Never get yourself mixed up with God. Always realize the importance of having the grievant and everybody else go away from the hearing feeling that it has been a fair, thorough, and interesting process rather than a perfunctory one

and go away from the decision understanding the decision and feeling that the arbitrator has tried to be fair. You always must remember, when you go into a new hearing room, that you are opening a new book and you have to start learning all over again.

ONE THING WE DIDN'T TALK ABOUT AND YOU MIGHT WISH TO MAKE SOME COMMENTS ON - SOME OF THE OTHER ARBITRATORS WHOM YOU HAVE WORKED WITH OVER THE YEARS AND THE UNIQUE CONTRIBUTION THEY MAY HAVE MADE TO THE FIELD.

This is dangerous, because of the danger that I will leave people out who have added so much to my education and my work.

WELL, LET ME PURSUE ANOTHER LINE IF YOU DON'T FEEL YOU WOULD BE COMFORTABLE WITH THAT. I WOULD SUGGEST SOME OTHER QUESTION THAT I WOULD ... THIS ISN'T STRICTLY IN LINE WITH WHAT WE ARE DOING IN THIS ORAL HISTORY PROJECT, IT'S SOMETHING THAT I THINK SHOULD BE DONE AND IS APPROPRIATE FOR ME TO ASK NONETHELESS. COULD YOU TELL ME SOMETHING ABOUT THE FOUNDING OF THE NATIONAL ACADEMY OF ARBITRATORS AND WHAT YOU ROLE WAS IN THAT?

Did we talk about that at all?

NO.

My role in the initiation of It was very little. In fact was non-existent.

'WHO WAS IT WHO GOT THE IDEA THAT THERE SHOULD BE AN ACADEMY AND BROUGHT PEOPLE TOGETHER FOR THE FIRST MEETING?

What happened, and Bill Simkin can tell you much more than I, unfortunately, any of the others who were there, Joe Brandschain could. Many of the others are no longer with us. But a group got together in Washington, either in the spring or summer of 1947 with the idea of founding an arbitrators' organization. What was envisioned really, what kind of an organization, I really don't know at the start. But they convened a group to meet in Washington, I think in the summer of '47, and Dave Wolf was one of those. That meeting decided to conduct an organizing meeting in Chicago in, I believe, September or October of '47. I was then in the middle of switching from General Motors to U.S. Steel and I remember that Dave Wolf, when I was still in Detroit (I think in the summertime) came back with his eyes popping with enthusiasm. He called me and asked me to have lunch with him and tried to tell me all about this and urged me to come to the organizing meeting in Chicago, which I agreed to do. I think he tried to get Harry Schulman and Harry was tied up or anyway he didn't come, I wish he could have. So I didn't know anything about it until I went to the Drake Hotel, I think, in Chicago. There were a whole bunch of great names, many of them that I had heard of and never met before.

HOW DID YOU KNOW ABOUT ONE ANOTHER AT THAT TIME, THERE WAS NO PROFESSIONAL ASSOCIATION.

Just through word of mouth really and reading decisions.

THERE WERE THAT MANY DECISIONS? WHEN DID BNA BEGIN TO PUBLISH THE DECISIONS?

I don't know exactly but you heard about some. I heard about Bill Simkin, because he and others were arbitrating with Bethlehem Steel, for example. I had heard about Aaron Horvitz, well, because I had been with the New York State Labor Board and I had been with the milk industry, and I knew Bert Zorn and others who knew Aaron. And also, by that time, a lot of the people from the War Labor Board were arbitrating and those were names I knew and many of them I knew personally and it was a great experience to meet these people - to be joining with them on this. And I don't think anybody knew whether it would amount to anything or what it was going to amount to, but we laid plans for, I don't know whether we adopted a constitution then or made plans to adopt it at the annual meeting which was at the Drake Hotel the following year, the following January.

THAT WOULD HAVE BEEN THE FIRST ANNUAL MEETING.

The first annual meeting, yes.

AND AT THE ORGANIZATIONAL MEETING YOU WERE NAMED THE PRESIDENT.

That is right. I don't think anyone else wanted the job. I didn't. I certainly wasn't campaigning. I got nominated, and what the hell do you do? The driving force really, I think, was a man named Al Colby and a lot of Academy members disagreed with Al as time went on because I think they felt that he wanted to be restrictive in Academy membership. Al Colby really was the man who got the Academy going, and he was the one who put in the time and the office space and did the work. He was secretary, and I guess Carl Schandler, who was a good friend of his, was treasurer. Those two, but Al particularly was willing to do the kind of spade work that had to be done. Here I was off in Pittsbui^gh trying to learn about steel incentives and classifications and so forth and overwhelmed by what I was facing. Well, I did the best I could, but in the history of the Academy the initial service that Al Colby performed must never be forgotten. We would not exist if he hadn't done the hard, grueling leg work of getting things together and getting them started.

HOW MANY MEN WERE AT THAT INITIAL FIRST ANNUAL MEETING IN CHICAGO?

I have the list here somewhere.,

OH, ROUGHLY.

Oh, about fifty - sixty, something like that.

WERE THERE ANY GUESTS OR JUST THE ARBITRATORS?

I think they were just arbitrators actually.

HOW LONG WAS IT BEFORE THE GUESTS FIRST APPEARED ON THE SCENE?

The following annual meeting and they were the guest speakers. Or maybe they were members. I know the grand old man from Wisconsin ...

ED WITTY?

Ed Witty came down and made, I think, one of the basic speeches. He and George Taylor.

THAT WAS A MONOGRAPH THAT HE WROTE FOR THE UNIVERSITY OF PENNSYLVANIA?

No, he gave another speech though still fine. I have It in there. I don't remember, I know I can tell you one amusing thing three or four years later. No, it must have been in '49 because I know I was still President. We had an annual meeting in Washington. It was the second, I guess. Anyway we got Tobin to come and be our guest and dinner speaker. Secretary of Labor Tobin.

RIGHT.

And this was a feather in our cap until--well, we had invited a lot of other people, we had Cy Ching coming over, he was director of the Mediation Service and we, by this time, were beginning to invite industry and labor people and we were laying plans and working very hard, as hard as we could to make a success of our first Washington meeting and maybe put the Academy a little bit on the labor relations map as an organization. We were very glad to have the Secretary, we tried to get the President but we got the inevitable answer. Then we heard that Secretary Tobin was going to use our dinner as an occasion to make a speech proposing the reunification of the Federal Mediation Service into the Department of Labor with Cy Ching sitting right in front of him; and I got kind of mad, because I didn't think that our banquet should be used for this kind of interoffice agency fight, and I didn't want Cy to be put into that kind of position, sitting there without a chance to reply, so I organized a filibuster.

HOW DO YOU MEAN?

I knew that the Secretary, who had told us that he was going to San Francisco or St. Louis or somewhere, and his plane was going to leave at 11; and he had to leave early to catch his plane, and we had asked for short speeches from George Taylor and Frank Graham and Wayne Morse, the old War Labor Board members who were there. I don't know about Will Davis. So I went around to each of them and said, "Look, you talk as long as you possibly can." And I made a long introductory speech, and said everything I could think of and Frank Graham got little bit tight and went on forever and Wayne Morris was never at a loss for words and was delighted. Nobody ever knew. We finally wound up leaving the Secretary only about ten minutes before he had to get his plane, and he obviously couldn't do a damn thing except get up and make some cordial and polite remarks and put his sceech back into his oocket.

THAT'S THE ONLY TIME THAT HAS HAPPENED, I AM SURE OF THAT.

Sure, that's the only time that has happened. But, maybe that shouldn't go into the book, but it was fun.

YOU CERTAINLY COULD HAVE NO IDEA THAT BACK IN THE BEGINNING OF THE ACADEMY THAT IT WOULD HAVE GROWN TO THE SIZE THAT IT HAS.

Never in the world.

IT DIDN'T SEEM POSSIBLE.

Never in the world. In those days we had no money at all. We used to have—someone, usually the President, would have or engage a suite or a large hotel bedroom and the Board of Governors, we would get a lot of chairs. We would all sit around on the beds and chew the fat and get business done, whatever the business was. But damn it, the organization got going. We made some good decisions; even then the great importance of regional meetings was evident and of trying to organize committees so that they could function on a regional basis. It hung together, there was - It hung together and grew and people began writing, taking it seriously enough to write some of the brilliant papers that have been presented. And it grew, and everybody has objected to the guests and all recognized the difficulties at annual meetings in which the guests play so important a part, and yet, I think, that in view of the tripartite nature of the process that we are dealing with and the importance of keeping arbitrators always in touch with the parties and not playing God and not going off into their ivory towers, keeping the guests and giving them a chance to tell us off and so forth that we have got in the Academy, has been very important not only for us but for the process.

YOU WOULDN'T, I TAKE IT, LIKE TO SEE THAT POLICY CHANGED.

No, I would not. I would like to see more meetings when we are by ourselves but I would never like to have the annual meetings take place without labor and management being there, because, hell, we are all together and have to be.

I THINK I HAVE TO STOP.