

National Academy of Arbitrators
HISTORY COMMITTEE INTERVIEW

Richard Mittenthal

NAA President, 1978

Interviewed by Robert Williams

June 2, 1989*

RICHARD MITTENTHAL
PRESIDENT OF THE NATIONAL ACADEMY OF ARBITRATORS
1978 TO 1979
INTERVIEWED BY ROBERT G. WILLIAMS
AT
THE CHICAGO HILTON AND TOWERS, CHICAGO, ILLINOIS
JUNE 2, 1989

Robert G. Williams (RW): We are attending the 42nd Annual Meeting of the National Academy of Arbitrators at the Chicago Hilton and towers in Chicago, Illinois. It is Friday, June 2, 1989. My name is Robert G. Williams. I'm interviewing Richard Mienthal, who was president of the Academy in 1978. This project is sponsored by the Academy History Committee in order that we can preserve the account of activities and the background and experience of our past presidents.

First, Richard, we're interested in your personal background.

Richard Mienthal (RM): Well, I was born in 1926, and raised in New York City; in Manhattan. Educated in public schools. Went away for the first time at age 16 to Cornell University as an engineering student; chemical engineering. Remained in school until I went into the armed services; the Air Force. When I returned, however, I decided that I had made a mistake in choosing engineering. I transferred into a chemistry curriculum and ultimately got my BA or BS; I'm not sure what the degree was, in Chemistry.

(RW): From Cornell?

(RM): Yes. And I worked briefly as a chemist. But somewhere along the line, my social consciousness was raised. I think it was probably in the service. Even though I was getting my degree in chemistry, I became interested in labor problems, which is a strange combination.

(RW): How did that connection occur?

(RM): I don't know. It had something to do with what I was reading or people I knew in the service. And I remember taking courses at the Industrial and Labor Relations School at Cornell. One was in labor history with a Professor Neufeld, and another was on the constitution and civil rights with Professor Konvitz. And then, after graduation, I worked as a chemist briefly but soon decided that a life as a chemist is not what I wanted. I didn't have any idea what I wanted to do, but I still had considerable eligibility left under the GI Bill of Rights, and chose to go to law school. This was a last minute decision. Law school, after all, was in a way a dumping ground

for many people who didn't know what to do with their lives. I was simply not ready for the work-a-day world, and New York University Law School provided me an opportunity to postpone my important life decision.

I got my degree in 1951. I was 24 years old and decided to get into labor law. I remember taking courses in labor law with Professor Sylvester Petro. I even had a course in labor arbitration with a member of this Academy, Professor "Manny" Stein, an economist at New York University. I still have the text, a case book in labor arbitration, written by Harry Shulman and Neil Chamberlin of Yale University.

(RW): It could be one of the first.

(RM): I agree. I think it included many of Harry Shulman's awards in there. It probably was written in the late 1940's. My first job was with the National Labor Relations Board in Washington with Board Member Petersen. He was a Truman appointee. The Truman administration was looking for a Republican who was sympathetic to labor. Petersen fit that description. He had been a legislative assistant to Wayne Morse, Senator from Oregon, who was an opponent of the Taft-Hartley Act. Working for him really turned me on. It was like being clerk to a judge except there were twelve or so attorney-advisors working for each Board Member. We were assigned a given case, reviewed a Trial Examiner's decision, transcript, and briefs, and wrote a memorandum reviewing the issues and recommending a position to the Board Member. We attended Board meetings when our cases were discussed and were often called upon to write the decisions. I was, of course, subject to a good deal of supervision. All of this, however, involved decision-making and opinion-writing. That is essentially what I have done these many years as an arbitrator. I've never done anything else.

(RW): How long were you there at the NLRB?

(RM): About three years.

(RW): What did you do next after that?

(RM) I was 27 years old. I'd been there about three years when Harry Piatt, a very well known arbitrator from Detroit, contacted me. That was just happenstance, because the Platts knew my in-laws; my wife's family. He had just been named the Republic Steel -Steelworkers Umpire. He also held a number of other umpireships. He was so overwhelmed with work that he needed someone to assist him. He offered me a job full-time as his assistant. It was an apprenticeship, except for the fact that I was thrown into the fray immediately. He sent me out to hear cases within weeks of my arrival.

(RW): He sent you right out to hearings.

(RM): He first took me with him to a few hearings. Then I was on my own. I was just "sink or swim." I heard maybe half of the Republic Steel-Steelworkers cases. Wrote those decisions on my own, which he changed or edited as he saw fit.

(RW): How old were you when you started this?

(RM): I was 27. That was the summer of 1954.

(RW): Do you know anyone else who arbitrated a case who was 27 years old or younger?

(RM): I think Charles Killingsworth started arbitrating even younger, and he began with more experience than I had. But I was very young. My name never appeared in most of those early awards. I wrote for Harry. I remember resenting that because I hungered for recognition.

(RW): At least a co-author position.

(RM): That's right. But I just loved the work and was fascinated by it. There was so much to learn. I also remember the NAA meetings at which the giants in the field — Garrett, Taylor, Cox, Wirtz - appeared. These fellows were twenty, thirty, forty years older than I was. I viewed them with awe because their contributions to their field had been so profound. During this period, arbitration was growing dramatically. I profited. Because I happened to be there when the process was exploding, my caseload grew.

(RW): Well, did you stay with Harry Piatt?

(RM): I stayed with him for some three years, but all during that time, my practice was growing. On my own, I had five cases the first year and fifteen the next year and sixty the next year. I developed a practice quickly.

(RW): So you had a full-time practice in about five years.

(RM): After three and a half years, I was busy full time on my own and didn't need Harry. Nevertheless, I did want to stay with him. I was insecure about going off on my own that early. I suggested we become an arbitration partnership but, fortunately for me, he rejected the idea and pushed me out of the nest. I was anxious. I was 29 or 30 years old but looked much younger. I tried to appear older than I was. I dressed conservatively and wore dark clothes.

(RW): You stopped shaving as regularly.

(RM): I never grew a beard. My wife had turned prematurely gray, and I took her with me whenever I tried to prove that I must be older than I looked. I'm sure I missed opportunities because of my appearance and because it takes a long time to learn the arbitrator's craft. A hundred cases is not enough. I think you have to handle three or four hundred cases before you fully understand what you're doing. It's tough when you start.

(RW): When the puzzle begins to fit together, you've been through a fair number of cases.

(RM): May five hundred cases before you really start to understand it all. And I'm not even sure then. The nice thing about the work is that you keep growing. That's one of the glories of the profession.

(RW): Well, then, when you left Harry, after a couple of years, and you had a full-fledged practice, was this still out of Michigan?

(RM): That's right. I had an extraordinary experience in 1956, two years after I started with Harry. I remember getting a call or a letter asking me if I was interested in an umpireship for Dana Corporation, an auto parts manufacturer, and the UAW. A multi-plant bargaining relationship with some 5,000 employees. To my astonishment, I still don't understand how it happened, they offered me the job. That was in February of 1956.

(RW): How old were you then?

(RM): I was 29 or 30. The reason why I'm telling you this is because I still have that job. We've been together for 33 years.

(RW): Well, you grew up with those parties in terms of...

(RM): That's right. It's been an extraordinary experience. One of the more satisfying things I've done. So that covers, I suppose, the first part about background.

(RW): But you jumped off then, essentially, from the NLRB experience and your experience with Harry Piatt, and you hit the floor running then.

(RM): Harry was my mentor, and he gave me the opportunity I needed. He was not really a teacher in the traditional sense. He never sat down with me and said, "Let's go over this draft opinion" and then showed what was right or wrong. He gave me work to do. He taught me by having me hear and decide cases and then editing and correcting my words and ideas.

(RM): He would critique what you've done?

(RM) Yes. For the most part, he accepted my opinions. His criticisms were, however, extremely helpful. We didn't work in the same office. It was a rather peculiar relationship in some ways. I worked in an office some floors below him. I perhaps saw him once a week, and then maybe for a few hours. I think many arbitrators, and this is a personal observation, are ingrown and don't mind being alone.

(RW): Maybe that's one of the appeals of the profession, in a sense, that...

(RM) I grew to love Harry dearly because of our relationship and the opportunity he provided for me. And he was a truly great arbitrator. Of all of the people I've know, he had this incredible instinct for what was a reasonable result. That doesn't sound like much, but find a truly acceptable solution is really the guts of the process.

(RW): Were the FMCS, AAA, or state agencies significant at all in your development as an arbitrator?

(RM): Yes. In the beginning, I was on the FMCS and AAA panels and I got a lot of work from them. I worked with many parties directly, without any appointing agency. That went on for sometime, but about 25 years ago, I took my name off the panel lists, and I've been off them ever since. I was able to create a practice of my own. I thought about going back, but I never have.

(RW): How did you first get involved with the National Academy, and who recommended you for...

(RM): Harry had been active in the Academy, and he suggested at some point, after three or four years, that I apply for membership. I was admitted in 1958. But I think I was turned down the first time on the grounds that I didn't have sufficient background.

(RW): Were too young.

(RM) Not that. It had something to do with the number of cases. The membership rules were different then. Arbitration was not as widespread as it is today. Consider the American Arbitration Association office in Detroit. There was one hearing room; the regional manager had an office; and there was a secretary's desk and a waiting room outside. That was it. There may have been ten people on the AAA list.

(RW): The case volume had not picked up yet.

(RM): True.

(RW): When you applied for the Academy, essentially, what was your caseload experience at that time?

(RM): I don't think I could go back to recreate any of that. I'm not good on maintaining files.

(RW): How about a ballpark guess.

(RM): My hunch is that I probably had somewhere between seventy-five and a hundred cases under my belt by the time I was admitted into the Academy. Or may more. I was busy, and I was zipping along.

(RW): But your career, essentially, had already been established, by the time you were admitted to the Academy?

(RM): It seems to me, after three years, I was busy full time. For a great many years, I was routinely hearing anywhere from 90 -110 cases a year. That went on and on and on. At the time I was admitted, from seventy-five to a hundred cases a year.

(RW): After you got into the Academy, can you remember some of your early assignments or what your jobs were that contributed to the Academy's development?

(RM): Well, I remember being on the Arrangements Committee at my very first meeting. That assignment was because Harry was President that year; 1958, I believe. Because of my connection with Harry, I got to know a lot of the Academy leaders. That translated into the opportunity to perform a great deal of Academy work. The Membership Committee at the very beginning, then the Law and Legislation Committee, then the Ethics Committee. I know I became Chairman of the Ethics Committee in the early 1970s.

(RW): You were repeatedly appointed by the different Academy presidents?

(RM) We didn't have very many ethics complaints. And there weren't many advisory opinions required. I remember writing one of the. There was continuing talk about revising the old code of ethics. Abe Stockman, one of our founders and an extraordinary person, urged the Academy to change the code. Alex Elson gave an important paper at the Montreal meeting in 1974 detailing the reasons for change. I was chairman of the Program Committee that year. Then I was asked by the then President, Gerry Barrett, to prepare a memorandum to the Board on the question of whether the Board of Governors should initiate a project for either amending the code of ethics or creating a new code of professional responsibility. I wrote a memorandum to the Board proposing the latter alternative. The Board of Governors adopted that report. And I remember meeting in New York City with Gerry and, I think, Lew Gill and maybe Eli Rock and others. We met with several AAA officers and spent a long time discussing whether there should be a new code, and the decision was made to go ahead.

(RW): That was the turning point then, when we started rebuilding our code.

(RM): That's right. It was that meeting at which it was decided. I also remember, I'll never forget this, they turned to me, since I was the chairman of the Ethics Committee, shouldn't I likewise be chairman of that committee to rewrite the code. I remember being horrified at the prospect. They asked me whether I would do it. And I remember saying that I didn't think it would be something I could do. Not because I didn't want to do it, but because the chairman of this proposed committee would have to devote six months or more of his time to this project. I said I had a family to support, and I didn't think I could possibly make such a time commitment. I think there was some anger at me for declining. But I made it clear that I'd be happy to do whatever I could, but I simply couldn't chair the committee. Then the decision was made to get Bill Simkin and make him the chairman. The AAA, as I remember, put up five thousand dollars. That, probably, was the most distinguished piece of work of an Academy member in the Academy's history. Bill put in two, three, four thousand hours of work. Endless discussion, constant revisions. It was a truly major project. I was delighted that I played some role, however small, in getting the project underway.

(RW): Was the regional system started or underway by then? I know that Michigan has been very active ...

(RM): Yes. We had our regions than and had meetings. I doubt that it was organized quite as formally, as it is today, but there were regions.

(RW): Do you remember having programs? Were you ever regional chair?

(RM): Yes. I was a regional chairman. We had several programs each year.

(RW): How about some of the other officer positions that you held?

(RM): I was on the Board of Governors, and I was vice president. Those are the steps you automatically take if you keep moving up within the Academy. At some point, I chaired the History Committee. I don't know what it was called at the time. It's similar to what we do now in trying to find out more about the history of arbitration. I was particularly concerned about getting the remembrances and impressions of those who arbitrated before the second World War, to get some notion of what the process was like then, how it evolved. The committee members interviewed some ten arbitrations who had such early arbitration experiences. I taped Ralph Seward. I don't know if you ever heard those tapes. Have you?

(RW): I haven't.

(RM): There's a book out. Ultimately, the tapes were transcribed and published.

(RW): That's the book Dallas has, I think.

(RM): Yes. You can get a copy from the Academy. Ralph Seward was fascinating. His was a marvelous story, although it showed that the process hadn't changed a hell of a lot. It was much more informal at the beginning than it is today.

But, returning to the Code, Simkin was the Chair, Seward and Garrett represented the Academy, and the AAA and FMCS each had two representatives as well. It was a blue-ribbon committee. The proposed new code came before the Academy for a vote at the 1974 meeting in Puerto Rico. Dave Miller had been President that year but tragically died. I was asked by the Executive Committee to stand-in for Dave at the Puerto Rico meeting.

(RW): 1974?

(RM): Yes. As the acting president, I presided over the code debate which lasted from nine in the morning until five-thirty or six in the afternoon. The debate, of course, was whether to vote the code up or down.

(RW): You spent all day on this?

(RM): All day; just on that issue. There were amendments urged and defeated. EdTeple, as Parliamentarian, was called upon to make several important procedural rulings. There was a

large block of people, particularly from the east, I think it was New York, who opposed the new code. It was clear from the beginning that the general sentiments overall would be in favor of the change. It was one of those debates in which everybody in the room, almost everybody, felt compelled to stand up and be heard. It was quite extraordinary. People spoke from their hearts about the code and the need for some control over our professional standards of behavior. There were inspirational statements. It was very stimulating. I'll never forget it.

(RW): You worked very hard that day, I'm sure.

(RM): Of course. Another thing that was a vital part of my life in the Academy was the writing of papers. I was very fortunate and was asked in 1960 to do a paper on past practice in the administration of collective bargaining agreements. Then I did others — the law and arbitration; credibility; the art of opinion writing; arbitral implications; absenteeism; and so on. I did a lot of papers. I really enjoyed that.

(RW): When did you find that there were some of the advantages, to yourself as well as the advantages to others ... what did you find in writing papers? You're not from the academic world.

(RM): That didn't matter. I found, first of all, it was much more interesting to me than writing decisions, because I was starting with a blank page. In decision writing, the parties provide a framework of "givens" — facts, contract language, arguments, precedents. The arbitrator works within this framework — picking and choosing, seeking a sensible answer that will fairly reflect all the "givens." But when you write an article, you are just given a blank sheet, and you create your own agenda; you decide what should be on this page. There are no "givens." It's far more imaginative or, at least, should be.

(RW): Did it force you to sit back and take a look at yourself, as well as other arbitrators? And sort of begin to conceptualize and better understand what you're actually doing?

(RM): That's right. That's exactly what happens. You go into a subject with a microscope. You go deeper and deeper to catch the essence of whatever you're writing about. And after you're finished, you understand it in ways that will help you the rest of your career. And you understand it deeper than you ever could possibly understand it otherwise.

(RW): When you have to write it, you also gain great insight into what you're really trying to say and hear and understand.

(RM): Writing an award, by the time you're finished, you may understand the case better than the parties do.

(RW): President-elect. How were you nominated?

(RM): You mentioned if the NAA affected your caseload, and that's an interesting question.

(RW): Well, you already had a full caseload.

(RM): Well, no. I wanted to make one comment about that because I suspect that membership in the Academy, in some subtle ways, does improve one's acceptability. I sense that my activity in the Academy helped me in many ways. By gaining the good will of other arbitrators, you become better known in the every wider labor-relations community. That probably serves to produce more cases from different places.

(RW): You mean your exposure at the Academy as a national organization?

(RM): No, not so much that. Not to the parties but rather to the arbitrators themselves. I've seen it myself. I go out and for some reason the parties ask me, "Well, who's a good arbitrator? Do you know any of these guys? Who's good at this sort of thing?" If people know about you and think well of you in other parts of the country, there's bound to be a positive effect.

(RW): They call up one arbitrator and ask him to do a case and make a speech, and he says, "I can't do it." "Well, do you have anyone to suggest?" And the next thing you know, the chain of events go on. And you feel like a lot of that is happening.

(RM): Yes. My hunch is that it's more my association with arbitrators that's helped rather than with the parties at these meetings.

(RW): And that's not the conventional instinct of people. "If you get into the Academy, you're going to get more cases" kind of thinking.

(RM): I think it helps. After all, a lot of contracts say that only Academy members can arbitrate for the parties.

(RW): Well, that's interesting. How about as to whether your nomination process, when you became President-elect; how did that come about?

(RM): I have no idea. I suspect the fact that I served as acting president a few years earlier made a difference.

(RW): Can you recall what were the basic duties of the President-elect?

(RM): None, that I'm aware of. Everything was quite informal. Arthur Stark, an extraordinary man, was President-elect and I was President-elect-elect, I guess. We got together at an airport hotel and spent most of one Saturday talking about the Academy and what we could accomplish. We decided we would, during the years we were both going to be president, that we would push the notion of continuing education.

(RW): The seed of that began during this conversation?

(RM): Perhaps. We created a committee to arrange: for education conferences mid-year. Arnie Zack was my chairman. Meetings were held, one in Bermuda, I think. They were not

particularly well attended but they were successful. And people came back with the message that something good was happening. I'm proud of that because that was the seed of what we now know as our yearly education conference.

(RW): Med-winter program?

(RM): Right.

(RW): As President-elect, did you begin to think about committee appointments and ...

(RM): Only shortly before the annual meeting. It wasn't a difficult task because, again, I was fortunate. Stark reconstituted the committees dramatically his year in office. And I decided that it didn't make a bit of sense for me to reconstitute them still again. I made minor adjustments to try to get more people involved, but I didn't tinker with the essential committee structure.

(RW): You didn't bring committee anarchy to the structure.

(RM): It would have been crazy for me to attempt something large again.

(RW): Would you have any sage advice for future individuals who became President-elect? What they should do with their time in office?

(RM): I think it would be very helpful reading over all the minutes of the Board of Governors meetings for the previous four, five, or six years. It would be dull reading, but I think they could get a flavor of what's going on. What's been happening.

(RW): Give you a feeling of a kind of continuity.

(RM) Yes. And to meet with the current President-elect to plan for the future.

(RW): What about efforts to identify talent that might be used when he becomes president?

(RM): That would be helpful, too. People's conception of talent is so varied. One man's hero may be another man's dud.

(RW): Let's talk a little bit about your term — your years as President.

(RM): Well, I don't think I achieved very much. I'm proud of the continuing education program.

(RW): What were some of the problems of getting this off the ground and running?

(RM): Arthur called it the SM Program: Stark/Mittenthal or SadoMasochistic. Besides the continuing education project, I remember, the guest policy was a big issue.

(RW): What was that about?

(RM): Well, we've had problems with the presence of guests at our annual meetings. Some view that as being unprofessional. Lawyers do not invite their clients to ABA meetings. This is the only organization I know of where the professionals mix with their clients. Some Academy members tried to tinker with the guest policy to discourage guests or at least control their numbers. There was some unhappiness on this subject. I decided to appoint a committee to reevaluate guest policy. Al Dybeck was the chairman, and he ... that committee concluded that there wasn't anything that had to be done; they were satisfied to leave things alone. That may have been the right conclusion.

(RW): Was that the time when they had two days set aside for guests?

(RM): Yes. The meetings then were maybe three days. A half-day for business, a half-day for some other stuff, and then two days of public meetings. But our meetings, over the years, have gotten longer. I really didn't have any major problems apart from the Membership Committee, whose chair caused some embarrassment which had to be straightened out by the Board of Governors.

(RW): What were the issues involved?

(RM): They were largely a matter of personality.

(RW): And that required some water on the fire?

(RM): Yes, that's exactly what it required. Greatest accomplishment... I was particularly pleased with my presidential address that year. I remember it vividly. It was one of those exquisite transcendental moments in one's life where all of the love and attention that you've given to something, to this Academy, is returned in kind. I don't know if you were in Dearborn, Michigan, that year? Were you?

(RW) No, no.

(RM): Well, over the years I've been saving little scraps of paper. I don't know why. Little things that happened that I thought about during the year, over thirty years, about my experiences as an arbitrator; small things that ran through my head. I decided, when I became president, that my presidential address would be an attempt to recapture those scraps and write about the joys of being an arbitrator. Have you read it?

(RW): No, I haven't, but I think I'll pick it up.

(RM): Please read it. It was an attempt to describe why it had been so much fun to be an arbitrator. Why it's such a good life. It was all from inside of me. I had a marvelous time writing it. Because I never had a large measure of self-confidence, I had great fears that this paper, being so different, would not go over. I remember that vividly. It was not a long speech, perhaps twenty-five minutes. It went over marvelously well. The audience was enthusiastic

because it was an affirmation of their lives as arbitrators. Positive, up-beat stuff. A hundred people came up to me and hugged me. It was an emotional high. Most of the time, I am sufficiently controlled so I don't allow myself to experience fully such emotions. But that day, the hour after the speech, I actually felt levitated, floating a foot off the floor. It was the reaction of my fellow arbitrators to the speech and the resultant sense of oneness.

(RW): When you were writing this speech, what were your feelings at the time? In the process of developing the speech.

(RM): That was hard work. It's tough to do, to try and capture all this and say it in a stylish a way as possible.

(RW): Were you moved by your own feelings in making this speech?

(RM): Oh, during it, sure. It's a marvelous job, a marvelous way to live, and we should all applaud the fact that we've been allowed to do it. I'll never forget that day. It was the same day my daughter was admitted to medical school.

Being president had no effect on my caseload. Most of the Academy work was being taken care of by committees. I simply oversaw what they did. I believe the committees that are most important are the Committee on Professional Responsibility, the Membership Committee, and the Program Committee.

(RW): That's really where you're setting the standards for the profession.

(RM): That's it.

(RW): How about your last comment here about... What's your view of the qualifications needed to be president?

(RM): I thought about that this morning while I was on the can. And I wrote down the ...

(RW): Great thinking occurs on the throne.

(RM): In talking about qualifications, he should have the distinction of a Seward, the administrative skill of a Mark Kahn, the reasonableness of a Start, the Academy dedication of a Miller, the grace of a Murphy, the energy of a Valtin, the brightness of McDermott, the fellowship of a Rock, the earnestness of a Dunsford ... I could go on, trying to create a perfect composite of president.

(RW): Your borrowing characteristics from prior presidents ...

(RM): Those were just some of the ones that came to mind.

(RW): And the "what" of a Mittenthal?

(RM): Than you, but I'm just one member of this extraordinary group of "judges." Every one of us has some quality, of mind or character, that is admirable.