

National Academy of Arbitrators  
HISTORY COMMITTEE INTERVIEW

Robben W. Fleming

NAA President, 1966

Interviewed by Jack Steiber

July 28, 2005

ROBBEN FLEMING  
PRESIDENT OF THE NATIONAL ACADEMY OF ARBITRATORS  
1996-1997  
Interviewed by Jack Steiber

July 25, 2005

**JACK STIEBER:** I'M RECORDING AN INTERVIEW WITH ROBBEN FLEMING, WHO WAS PRESIDENT OF THE ACADEMY IN THE YEARS 1966 AND 1967. THIS IS PART OF A PROJECT THAT THE ACADEMY IS CONDUCTING FOR THE HISTORY COMMITTEE. I'M GOING TO ASK BOB FLEMING, AS WE KNOW HIM, SOME QUESTIONS. SOME THINGS HE'LL REMEMBER VERY WELL AND OTHER THINGS HE MAY NOT REMEMBER SO WELL BECAUSE THEY'RE TOO FAR BACK TO EVEN TRY TO REMEMBER THEM. I MAY DIVERT FROM THE QUESTIONS BECAUSE I KNOW A LITTLE ABOUT HIS BACKGROUND, BEFORE HE BECAME PRESIDENT OF THE ACADEMY.

SO BOB, I'M JUST GOING TO START MAYBE WHERE I SUPPOSE WE ALL START, WHERE WE WERE BORN, WHERE WE WENT TO SCHOOL, ETC. I SUGGEST WE START WITH YOUR EDUCATIONAL BACKGROUND. WHY DON'T WE START WITH WHERE YOU WERE BORN AND GO ON FROM THERE.

**ROBBEN FLEMING:** Well, I was born in Illinois in the little town of Pawpaw, P-a-w-p-a-w. It's about fifty miles west of Chicago. And, I lived there through my high school days. And, then after I left high school and I went on to Beloit College, which IS right on the border of Wisconsin and Illinois, just over the border

into Wisconsin. I graduated then from Beloit and then immediately went on to law school at the University of Wisconsin. The minute I got out of Wisconsin, the United States Army informed me that I was now in the Army. I served them about two and a half years in the Army.

**JACK STIEBER:** WHAT WAS YOUR CAPACITY IN THE ARMY?

**ROBBEN FLEMING:** Well, I was a nobody when I went in, as we all were. And, I was sent to Officer Candidate School. I became, ultimately, a Captain.

I mostly was a part of a group that governed cities as they fell. That is, when the Germans were being pushed back out of France, and then on into Germany, as soon as a city would fall, the Nazi leadership would, of course, immediately be taken out of power. We would insert in place of that an individual in the town. We would run it; we, being Americans instead of the Brits. We would run it momentarily but we would then find leadership from those groups which had opposed the Nazi leadership. There were in fact quite good records being kept by certain bodies in Germany at that time who were opposed to Nazis. They had millions of people who were the kind of people you would want. So our job then, as we went through Germany, and then as we pushed the Nazis out, would be in the cities to get the top leadership of the cities drawn from

individuals who had nothing to do with the Nazis.

There were German groups that had good records on that and had lists of people who had been opposed and who were qualified people. So they were not hard to find. And literally, the day we pushed through and took a city, we would immediately contact German sources that could give you the names of people who had been opposed. It's sort of funny, you know; you would go to a city you never seen before. You weren't sure who was holding it sometimes. Were we or were they, as we went in? But as soon as we were sure that we were holding it, we would go in and we would have been furnished by people who kept such records, the names of people who had been anti the Nazis, and literally names of people, where they lived, their addresses and so forth.

So we would literally, the day the place fell, we would find that person. They had the address. We would go to their homes. I well remember going to a home and you'd bang on the door and people would very reluctantly come to the door. When they did, they came up from their basements. These were names of people we'd been given as qualified. They were uneasy about this sometimes, partly, I suppose because they weren't sure we were sure that the Americans owned the place. But, they did immediately then proffer their services. And, so we would throw the laziest out of these cities,

not trying to get rid of everybody because you'd get people who would run from the city if you threw them all out. You'd be in terrible shape, but we'd throw out the town leadership and insert these people.

So that was literally what I did as we went across Germany.

**JACK STIEBER:** WELL, THAT'S INTERESTING. DID YOU SPEAK GERMAN?

**ROBBEN FLEMING:** I had two years of German while I was in college.

**JACK STIEBER:** I SEE.

**ROBBEN FLEMING:** Which was by then five years ago. But as with most cases at that time, the emphasis was not about speaking, it was about knowing and reading. However, I did know German fairly well and, therefore, fairly quickly could convert this into knowing how to speak, and did. Of course, I had interpreters with me all the time.

**JACK STIEBER:** WELL, THAT'S INTERESTING. NOW I KNOW AFTER YOU GOT OUT OF LAW SCHOOL, YOU AND I MET WHEN WE WERE BOTH WORKING FOR THE VETERANS EMERGENCY HOUSING PROGRAM. AND, YOU MAY RECALL, THAT THE HEAD OF OUR SECTION WAS A MAN NAMED MANNY LERNER. REMEMBER, MANNY?

**ROBBEN FLEMING:** Yeah.

**JACK STIEBER:** I THINK YOU WERE A SENIOR MEMBER OF THE STAFF. I WAS

A RESEARCH ASSISTANT. THE ONLY REASON I WAS THERE IS BECAUSE WHEN I WENT INTO THE SERVICE IN 1942, I WAS ENTITLED TO GET MY JOB BACK WHEN I CAME OUT.

**ROBBEN FLEMING:** Uh-huh.

**JACK STIEBER:** AND WHEN I CAME OUT, THE AGENCY THAT I HAD WORKED FOR WAS NO LONGER IN EXISTENCE, THE LABOR DIVISION OF THE EMERGENCY HOUSING PROGRAM. AND, MANNY LERNER, WHO HAD BEEN IN CHARGE OF THE MANPOWER OFFICE THAT I WORKED IN BEFORE THE WAR, WAS NOW IN CHARGE OF THAT.

**ROBBEN FLEMING:** Yeah.

**JACK STIEBER:** THE ONLY ONE THAT I HAD ANY KNOWLEDGE OF AFTER THAT WAS YOURSELF AND OTIS BREUAKER. SO THAT GOES BACK TO THE PERIOD AFTER YOU WERE OUT OF LAW SCHOOL. YOU WENT DIRECTLY BACK TO THE UNIVERSITY OF WISCONSIN TO START UP THEIR INDUSTRIAL RELATIONS CENTER.

**ROBBEN FLEMING:** Right, right. Well, I had never left Wisconsin, in a sense. I had always had a tie to it. But, yes that is the reason I went back to it. And, then I, I - and this is where it gets a little blurred in my memory in terms of how long I stayed at this because I remember that I was officially on the faculty of the law school, at the University of Wisconsin. And, then, I got promoted

to something or other and I can't remember for sure. Within a relatively short period, I became President of the University of Wisconsin.

**JACK STIEBER:** WERE YOU PRESIDENT OR WERE YOU CALLED CHANCELLOR?

**ROBBEN FLEMING:** I was called Chancellor.

**JACK STIEBER:** BECAUSE THEY HAD MORE THAN ONE CAMPUS?

**ROBBEN FLEMING:** Yeah. I was called Chancellor.

**JACK STIEBER:** RIGHT.

**ROBBEN FLEMING:** And then I was invited to the University of Michigan to be President.

**JACK STIEBER:** BUT THERE WAS AN INTERVAL BEFORE THAT. I THINK YOU WENT TO THE UNIVERSITY OF ILLINOIS TO BECOME DIRECTOR OF THEIR INDUSTRIAL RELATIONS INSTITUTE, AND PROFESSOR OF LAW.

**ROBBEN FLEMING:** That's correct.

**JACK STIEBER:** WISCONSIN BEING NEXT DOOR TO THE UNIVERSITY OF MINNESOTA, WHERE I WAS A GRADUATE ASSISTANT, THERE WAS SOME OCCASION THAT YOU CAME UP THERE, MAYBE FOR A MEETING FRO SOME OTHER REASON.

**ROBBEN FLEMING:** Yeah, I have vague memories of that.

**JACK STIEBER:** NOW, AT WHAT POINT WOULD YOU SAY THAT YOUR INTERESTS

IN LABOR ARBITRATION DEVELOPED, GOT STARTED?

**ROBBEN FLEMING:** Well, I think that started really because even before I had an official relationship, I had when I was in college at Beloit; Beloit was a city that did have organized labor. And, I had gotten interested in that and I had also gotten interested in arbitration. So I had already begun to do some arbitration, and I liked it. Then as I got better known in that, I was -- my memory is hazy on this -- but I had a tie with the University of Wisconsin. Then I went on to become President of the University of Michigan.

**JACK STIEBER:** AT WHAT POINT DID YOU BECOME A MEMBER OF THE NATIONAL ACADEMY OF ARBITRATORS?

**ROBBEN FLEMING:** I remember that very well because I was quite instrumental in bringing that about as a matter of fact.

**JACK STIEBER:** YOU MAY HAVE BEEN. I DIDN'T CHECK IT BUT THE RECORDS WOULD SHOW. YOU MAY HAVE BEEN A CHARTER MEMBER OF THE ACADEMY.

**ROBBEN FLEMING:** Well, I think so.

**JACK STIEBER:** WHICH WAS STARTED IN 1947.

**ROBBEN FLEMING:** Well, I think so.

**JACK STIEBER:** YOU KNOW, WITH PEOPLE LIKE RALPH SEWARD.

**ROBBEN FLEMING:** Yeah, I'm pretty sure, I'm pretty sure of that



because I remember, it was quite a hectic connection with the start of the association.

**JACK STIEBER:** AT THAT TIME THE ACADEMY WAS JUST GETTING STARTED.

**ROBBEN FLEMING:** Right.

**JACK STIEBER:** THOSE OF US WHO THAT CAME LATER, I THINK, FELT THAT BEING A MEMBER OF THE NATIONAL ACADEMY OF ARBITRATORS WOULD GET THEM MORE CASES.

**ROBBEN FLEMING:** Yeah.

**JACK STIEBER:** BECAUSE THERE WAS A DIRECTORY AND WELL KNOWN PEOPLE IN IT.

**ROBBEN FLEMING:** Well, you remember that both the state and national government ran agencies that --

**JACK STIEBER:** (INTERRUPTING) THEY STILL DO.

**ROBBEN FLEMING:** Yeah.

**JACK STIEBER:** THERE'S THE AMERICAN ARBITRATION ASSOCIATION AND THE FEDERAL MEDIATION AND CONCILIATION SERVICE, WHICH IS A LITTLE DIFFERENT; BUT THEY BOTH MAINTAIN PANELS.

**ROBBEN FLEMING:** Yeah.

**JACK STIEBER:** DO YOU REMEMBER ANYTHING ABOUT YOUR -- YOU BECAME

PRESIDENT IN 1966, YOU WERE PRESIDENT OF THE ACADEMY.

**ROBBEN FLEMING:** Yeah.

**JACK STIEBER:** AND, IS THERE ANYTHING ABOUT THE TIME THAT YOU WERE PRESIDENT, THAT YOU RECALL; ANY MAJOR PROBLEMS OR THINGS THAT MAYBE YOU DIDN'T EXPECT TO FIND AND, IT TURNED OUT, THAT IT WAS A LITTLE DIFFERENT THAN YOU MIGHT HAVE BEEN EXPECTED TO DO IN THAT OFFICE?

**ROBBEN FLEMING:** Well, I don't know that I think of anything. It was very different. I do remember, and I was quite active in that, that I played a real role in terms of getting the thing started. And that a number of us who had been active in arbitration had the feeling that it was time to, aside from the way the government did it, to have an organization of our own; we thought that maybe we would improve the arbitration system if there was an organization. Because what would happen, as you know, when the agency appointed somebody, that wasn't really because of their, they belonged to some organization. It was basically because they knew certain people. My recollection is and it was our feeling that if you were going to have an organization of arbitrators, that that in itself would become stamp of approval of a person as a qualified arbitrator.

**JACK STIEBER:** RIGHT.

**ROBBEN FLEMING:** And that was a reason why we thought we had

authority.

**JACK STIEBER:** MANY YEARS LATER A COMMITTEE OF THE ACADEMY PUT OUT A BOOK CALLED "FIFTY YEARS OF ARBITRATION." THAT WAS PROBABLY THE FIFTIETH ANNIVERSARY OF THE ACADEMY. AND ONE OF THE THINGS IN THERE WAS THAT, WHEN YOU BECAME PRESIDENT, IT SAID FLEMING WROTE TO DAVID MILLER, WHO WAS THE SECRETARY OF THE ACADEMY, AND SAID, "YOU KNOW, I NEVER THOUGHT WE HAD ALL THESE COMMITTEES. DO I HAVE TO APPOINT PEOPLE TO ALL THESE COMMITTEES AND DO ALL OF THE PAPERWORK ASSIGNED TO IT?" AT THAT TIME THE ACADEMY DIDN'T HAVE AN OFFICE EXCEPT FOR ANOTHER ACADEMY MEMBER, WHO WAS DAVE MILLER. AND HE SAID, "NO." HE SAID, "I DO IT."

**ROBBEN FLEMING:** Huh.

**JACK STIEBER:** APPARENTLY YOU WERE THE FIRST ONE, THE FIRST PRESIDENT THAT FELT THAT WE NEEDED TO HAVE AN OFFICE.

**ROBBEN FLEMING:** Yes.

**JACK STIEBER:** NOWADAYS, WE HAVE AN OFFICE STAFFED BY THREE DIFFERENT EMPLOYEES.

**ROBBEN FLEMING:** Mm-hmm.

**JACK STIEBER:** BUT AT ANY RATE, DOES THAT REFRESH YOUR MEMORY?

**ROBBEN FLEMING:** Yes, yes; I think so.

**JACK STIEBER:** YOU REALLY FOUND THAT IT WAS A LITTLE MORE THAN YOU HAD BARGAINED FOR WHEN YOU BECAME PRESIDENT.

**ROBBEN FLEMING:** Yes, Yes. I think that's right. I do remember that as we were trying to get started there, we finally felt we had to sort of have some kind of an organization if we were going to do it.

**JACK STIEBER:** ABOUT THAT TIME YOU WROTE A BOOK CALLED THE LABOR ARBITRATION PROCESS.

**ROBBEN FLEMING:** Yes.

**JACK STIEBER:** AND AS FAR AS I KNOW, IT WAS PROBABLY THE FIRST BOOK, WHICH REALLY WENT INTO THE DETAILS OF ARBITRATION.

**ROBBEN FLEMING:** I think that may be right.

**JACK STIEBER:** CAN YOU RECALL ANYTHING THAT LED YOU TO WRITE THAT BOOK? SINCE YOU WERE A PROFESSOR, YOU OBVIOUSLY HAD TO TAKE TIME TO DO THAT. BUT, DO YOU REMEMBER WHEN YOU DECIDED THAT YOU WANTED TO PUT TOGETHER SOMETHING, WHICH WOULD GIVE PEOPLE AN IDEA ABOUT WHAT ARBITRATION WAS ALL ABOUT?

**ROBBEN FLEMING:** Yes, Yes. The more I got into arbitration, the more I saw that it needed organization, that if we were going to make this thing work well, then I thought, well, you know, if you're

going to have organization, you really need to have a common understanding what it is you're trying to do here. If you're going to do that, then somebody has got to sit down and think this out and write it out. And, then see if other arbitrators, before you publish it, see if other arbitrators feel that is an appropriate and accurate thing to be saying about this. And then if it is, and in absence of anything else go ahead and publish the thing. And, maybe it will serve that purpose and if it doesn't influence, at least arouse the others to feel that this really has to be in the future. If you want this to be a very good organization, you've got to have some organization. You've got to have somebody who - so that there is sort of a common rule here as to how one goes about this.

**JACK STIEBER:** WELL, THAT'S WHY I SAY, IT'S ON MY SHELF AND YOU KNOW, THINKING ABOUT THIS MEETING, I FELT THAT THIS WAS SOMETHING THAT YOU MUST HAVE STARTED THINKING ABOUT.

**ROBBEN FLEMING:** I had.

**JACK STIEBER:** I THINK ONE OF THE THINGS THAT I WAS A LITTLE SURPRISED AT WHEN I LOOKED INTO IT, YOUR PRESIDENTIAL ADDRESS WAS ON THE SWEDISH LABOR COURT SYSTEM.

**ROBBEN FLEMING:** Yes.

**JACK STIEBER:** MOST PRESIDENTS TALK ABOUT ARBITRATION, WHAT ARE THE

KIND OF PROBLEMS THEY HAVE AND SO ON. AND, I WAS SURPRISED THAT YOU WERE TALKING ABOUT SOMETHING, WHICH WAS AN ALTERNATIVE TO THE AMERICAN SYSTEM. DO YOU RECALL DID YOU SPEND A YEAR OR SO IN SWEDEN THAT WHETTED YOUR APPETITE TO DO THAT?

**ROBBEN FLEMING:** Yes. Well, I don't think I spent a year there but I did spend some time there and I did know something about it. And the thing I remember best is that as I learned about it, I thought, well, here's an alternative. And, I thought particularly about the promoting this, but it did seem to me that if we're going to be in this kind of business there ought to be alternatives of how you can do these things. And so, I'll write this about this, simply to get it out there for people to see and think about it; maybe to make some change, maybe they won't.

**JACK STIEBER:** HAVING GONE TO ENOUGH MEETINGS AND LISTENING TO PRESIDENTIAL ADDRESSES, I DON'T THINK ANYBODY HAS EVER GONE OFF INTO A TANGENT AND TALKED ABOUT THAT SUBJECT.

**ROBBEN FLEMING:** Yes.

**JACK STIEBER:** BUT ONE OF THE THINGS ALSO --

**ROBBEN FLEMING:** Was I the first? Was I first one who made speeches like that?

**JACK STIEBER:** AS FAR AS I KNOW, MOST ARBITRATORS WHO BECOME

PRESIDENT LIKE YOURSELF, WHO HAVE HAD A LOT OF EXPERIENCE AND THEY KNOW THE KIND OF PROBLEMS THEY ENCOUNTER, AND I THINK -- THEY DON'T NECESSARILY KNOW ABOUT OTHER COUNTRIES. BUT THAT IS SOMETHING THAT YOU DECIDED TO TALK ABOUT.

BUT THE OTHER THING ABOUT THAT IS, OVER THE YEARS WHEN YOU WERE ON PROGRAMS, YOU ALWAYS TALKED EXTEMPORANEOUSLY. IN OTHER WORDS, YOU VERY RARELY SPOKE FROM A TEXT WRITTEN OUT, A SPEECH.

**ROBBEN FLEMING:** That's right.

**JACK STIEBER:** IS THERE SOMETHING THAT YOU HAD DECIDED THAT THIS IS THE KIND OF THING THAT LENDS ITSELF BEST TO GETTING ACROSS WHATEVER YOU WANTED TO SAY. ALTHOUGH, I MUST SAY, THAT THE SWEDISH SPEECH OBVIOUSLY WAS NOT THAT KIND OF A TALK BECAUSE YOU ACTUALLY WENT INTO GREAT DETAIL ON HOW THE SYSTEM WORKS.

**ROBBEN FLEMING:** Yes.

**JACK STIEBER:** BUT OTHERWISE, MY RECOLLECTION IS THAT YOU VERY OFTEN TALKED --

**ROBBEN FLEMING:** Extemporaneously.

**JACK STIEBER:** EXTEMPORANEOUSLY, AND MAYBE EVEN DECIDED SOME TIME AGO THAT WAS AS GOOD A WAY AS ANY TO GET YOUR POINT ACROSS.

**ROBBEN FLEMING:** Well, I always -- I never liked to read speeches.

And so what I did do, I'd write notes of items I wanted to cover. And so in front of me, instead of having a lengthy thing, I would have points I wanted to cover. And, I always felt that I did a better job when I did that than I did trying to make a formal speech about it. So my objective was to create a better understanding of the elements of the arbitration system and so forth. But, I never wrote, I never wrote speeches much in my life. I would just write notes.

**JACK STIEBER:** I ALWAYS FELT THAT I SPENT MORE TIME WRITING THAN I DID TALKING ABOUT A SUBJECT.

IN THE ACADEMY, TWO ARBITRATORS THAT HAD A CAREER IN BOTH ARBITRATION AND UNIVERSITY ADMINISTRATION WERE CARL KERR AND YOURSELF.

**ROBBEN FLEMING:** Yes.

**JACK STIEBER:** IS THERE ANYTHING THAT YOU CAN THINK OF THAT LEADS PEOPLE WHO ARE SELECTING UNIVERSITY PRESIDENTS TO CHOOSE SOMEBODY THAT HAS HAD EXPERIENCE IN ARBITRATION. IN OTHER WORDS, IS THERE SOMETHING ABOUT SUCCESSFUL ARBITRATORS THAT ALSO LENDS ITSELF TO ALSO RUNNING A MUCH LARGER ORGANIZATION AND DEALING WITH THE KIND OF PROBLEMS THAT OCCUR IN UNIVERSITIES?

**ROBBEN FLEMING:** Well, in one sense, I think the answer is yes and in



another sense, I'd say it well, it's not that strong a factor. But yes, certainly, because arbitration isn't the same everywhere, and under all circumstances. And, if you're going to talk about arbitration, you have to understand that while it may look the same pretty much, it isn't always the same as there are variations of how we do this and so forth.

So, I don't remember that. I certainly felt that there was more than one way to do arbitration and university administration. I can remember cases in which people would specifically ask you to do it in different ways. So I can remember making speeches in which I would talk about the fact that this was kind of a broader proposition than one might think. There are many variations in arbitration. For instance, that there were lots of opinions and places, where the parties didn't rely on a single arbitrator. They'd have several arbitrators on the same case.

**JACK STIEBER:** WOULD YOU SAY THAT YOU HAD A MENTOR? ANYBODY WHO YOU WOULD CONSIDER TO BE IN RETROSPECT A MENTOR THAT LED YOU TO BECOME AN ARBITRATOR, OR HELPED YOU BECOME AN ARBITRATOR?

**ROBBEN FLEMING:** Well, sure, Nate Feinsinger.

**JACK STIEBER:** WELL, I'M NOT SURPRISED THAT YOU MENTION HIM.

**ROBBEN FLEMING:** And Ed Witte. You see, when I was in law school,

both Ed Witte, who was in the Economics Department, and Nate Feinsinger were well known arbitrators at the time. In quite different ways, they were not alike a bit in personalities or the way they went about settling cases.

**JACK STIEBER:** THEY CERTAINLY WEREN'T. I KNEW BOTH OF THEM.

**ROBBEN FLEMING:** Yes, Yes. They were very different people. But, they were the two people I knew who were involved in arbitration. Well, Nate in some sense was a mentor of mine. Ed was only in the fact that I knew him and I knew how he operated and so forth. But, I never really worked with him closely. Nate, I did work with. But, Yes, those were the two people. I never thought of myself and I don't think they did as being their protégé, either one of them. It was more like the fact that I had gotten in the business sort of on my own. And in the process, I learned some things from them because they were older, more experienced people. But, I didn't -- I think it was a rare, rare case where I would get a case because, let's say Nate was too busy or something else, and he'd shuffle it off to me. I don't remember that I got any cases through them.

**JACK STIEBER:** DID YOU EVER GO TO ANY CASES THAT NATE WAS ARBITRATING, JUST SITTING IN?

**ROBBEN FLEMING:** Don't think so.

**JACK STIEBER:** I THINK NOW, THE ACADEMY, BECAUSE IT'S DEVELOPED OVER THE YEARS, HAS SPENT A LOT MORE TIME IN TRAINING PROGRAMS FOR NEW ARBITRATORS.

**ROBBEN FLEMING:** Right, right.

**JACK STIEBER:** AND ONE OF THE THINGS THEY ARE DOING, AND ESPECIALLY THOSE WHO ARE VERY BUSY ARBITRATORS, ARE ESTABLISHING MENTORSHIPS, HELPING SOME OF THE PEOPLE WHO WERE TRYING TO BREAK IN TO ARBITRATION. IN FACT, I HAD MY OWN EXPERIENCE IN THAT RESPECT WHEN I WAS AT THE GRADUATE SCHOOL AT HARVARD, WORKING ON MY PHD. I WANTED TO BREAK INTO ARBITRATION. BUT I JUST DIDN'T GET ANY CASES. I LATER MET FEINSINGER WHEN I WORKED AT THE WAR STABILIZATION BOARD. I WROTE TO NATE FEINSINGER BACK AT WISCONSIN. AND I SAID, NATE, HOW DOES ONE BREAK INTO ARBITRATION? AND HE WROTE BACK AND HE SAID, "GEE, I DON'T KNOW. WHY DON'T YOU ASK JOHN DUNLOP" THE REASON HE SAID THAT WAS BECAUSE DUNLOP WAS INSTRUMENTAL IN MY GOING BACK FOR A PHD BY GETTING ME FELLOWSHIPS.

I KNOW YOU'VE BEEN INVOLVED IN MANY WELL KNOWN ARBITRATIONS WITH PRESIDENTIAL COMMITTEES, PRESIDENT COMMISSIONS AND MEDIATION AND SO FORTH. WHAT WAS THE MOST MEMORABLE KIND OF CASE?

**ROBBEN FLEMING:** ... Because I was in law school and I did work with Nate some. I had taken Nate's course and I did work with Nate some, though not that I recall ever, I don't recall ever going to a case

with him. But, I had taken his course, in which he used a lot of cases that he had. I had gotten really quite interested in it.

I could see that there were different methods. Different people seemed to have different methods of doing this. Ed Witty and Nate, they were very different in the way they went in. Ed was the economist, basically, and Nate was a lawyer. They were both good at it. But they were quite different in the way they approached a case.

I had got invited to serve as labor arbitrator before even this began. I had been at these kind of things before on my own. So I had some experience in it. But presumably both of them had more experience. Nate was sort of great for mediation. I think he didn't like as much to get into cases where you just couldn't settle them. I, as I came along, and when I would see these cases that you obviously couldn't settle; I would try to think of well, what can you do, if you can't get them to settle; so I did some things.

One I remember particularly was that there was a question -- and it's a little difficult for me to remember this in detail, but a case came up in which a man had to climb a pole and then another man not too far from him had to climb another pole. There was a question about what if one of those guys got in trouble? Could the guy who was on the other pole, which is maybe not more than ten,

fifteen yards away, could he come down fast enough and go over and climb up and in effect rescue this guy, who was losing his hold up there, or couldn't he? They had a rule that a man had to be able to come down fast enough from his pole, if necessary, to go over and in effect rescue the other guy who had gotten mucked up somehow up there. So, what are you going to do about it?

**JACK STIEBER:** WAS THIS BECAUSE ONE OF THEM WAS DISCIPLINED OR DISCHARGED?

**ROBBEN FLEMING:** Yes.

**JACK STIEBER:** BECAUSE HE DIDN'T WORK FAST ENOUGH?

**ROBBEN FLEMING:** And so the question became to me in fact, how do you determine which guys are legitimately qualified to do this kind of thing and how fast can they do it? And, I was supposed to determine this. So I said, well, you know, the only way I know how to judge this thing at all is why don't we try this? Get these poles out here and we'll try it and see. I don't know how fast they can climb on a pole and how fast you can go up and save the other guys if you had to. This was very important to both parties, both union and the company. But they couldn't figure out any way to solve it. So I said, "Well, why don't we try that?" So we put the poles up and --

**JACK STIEBER:** I ASSUME THESE WERE TELEPHONE POLES OR WERE THEY?

**ROBBEN FLEMING:** No. This was down in a prison.

**JACK STIEBER:** Uh-huh.

**ROBBEN FLEMING:** Because see they had invited me to come over and hear this case. I went over and the question was how much time does the management have to allow for this guy on one pole to legitimately slide down his pole and go over and, if necessary, get this other guy taken care of? I said, "I don't know how long it would take him. You don't know long how it would take him. So the only way I can see to handle this case is let's try it. We'll get out a couple of poles out there and have them climb up. And, then we will say that the other guy is in trouble and he has to have the help from this guy. So how long does it take a guy? I don't think we ought to have just one trial. I don't have any idea how long it would take him. You don't have any idea. So I can't tell you and you can't tell yourselves. So why don't we do this? We'll have an experiment. And between the union and the company, you construct the experiment to your mutual satisfaction. And to the heights that you would normally want them to go and, then we will presume that one of them is in trouble. The other guy's function is to slide down his pole and go over and help the other guy."

**JACK STIEBER:** Help them.

**ROBBEN FLEMING:** So I said, "You know, I don't know of any way to tell you what the exact time is. So why don't we run some experiments? It would seem to me would make more sense. We get some reality into this and how long it would take to do it."

So they agreed. And we did do it. They did that severalas to how much time it would take. And, we ran several practice runs. And, we had an official time keeper who was neutral in this. And, so we would run these guys up the pole. Then one of them would have to come down, and he had to be able to go across and then shimmy up this thing in order to reach this other guy.

They wanted me to give them a time. And I said, "You know, I don't know how long it's going to take them. So it seems to me the only legitimate way to do this is to do it. So let's have the session and you have guys who would be doing this, do it. We'll run it three or four times maybe with different people and try to see then if we think we could fairly conclude that it takes X amount of time."

Well, they agreed. And to my astonishment, we did it and we came up with a time. And, everybody was satisfied. The only sensible thing I can see is try it. So let's get a new crew, time keeper here. We'll go out of here and we'll have to run this three or four times and see. And then hopefully, we can say at the end of

that time, well, a fair amount of time is X on this." And so then we tried X several times to see and if they could do it in that amount of time. We tried that with a number of different people.

And so they agreed to that and they built it into their contract that this is the way you had to do it. You had to be sure that there was sufficient time for the guy on pole two to shimmy down, go over here and go up pole one or visa versa. And so, that's the benchmark you use. They did. And, apparently it worked like a charm.

**JACK STIEBER:** THAT SEEMS TO ME TO BE AN ILLUSTRATION OF MEDIATION MORE THAN ARBITRATION.

**ROBBEN FLEMING:** Yes; that's right.

**JACK STIEBER:** WHICH LEADS ME TO ANOTHER QUESTION. AMONG THE CURRENT ARBITRATORS, I WOULD SAY A VERY SUBSTANTIAL PROPORTION DO BOTH MEDIATION AND ARBITRATION.

**ROBBEN FLEMING:** Yes.

**JACK STIEBER:** IN FACT, SOME OF THEM WILL PUT IT ON THEIR LETTERHEAD.

**ROBBEN FLEMING:** Oh.

**JACK STIEBER:** MEDIATOR AND ARBITRATOR. AND MANY ARBITRATORS WILL



SAY, "I PREFER MEDIATION OVER ARBITRATION." IN FACT, SOME OF THEM WILL SAY, "AT THE BEGINNING OF A SESSION, I OFTEN OR FREQUENTLY TAKE THE PARTIES OUT IN THE HALL AND SAY, YOU KNOW, I'VE HEARD YOUR OPENING STATEMENTS. IT SEEMS TO ME, BLA, BLA, BLA, THAT MAYBE WE OUGHT TO BE ABLE TO TRY TO SETTLE THIS WITH MY HELP." DO YOU HAVE ANY PREFERENCE, AS AN INDIVIDUAL WHO'S DONE BOTH MEDIATION AND ARBITRATION? HOW ABOUT YOURSELF?

**ROBBEN FLEMING:** I don't think I ever had any preference. I did on a number of cases say to them if I thought it was the truth, that I thought that they could settle it if we could run some experiments about it.

I never had any strong feelings that you had to do something any one way. My feeling about it was you try to find a way that would seem logical.

**JACK STIEBER:** Yes. WELL, AS LONG AS THEY ACCEPTED IT.

**ROBBEN FLEMING:** Yes.

**JACK STIEBER:** THAT'S REALLY MORE IMPORTANT THAN TELLING THEM WHAT TO DO.

**ROBBEN FLEMING:** Sure. That's right.

**JACK STIEBER:** ONE OF THE THINGS THAT MAY HAVE CHANGED A LOT SINCE

YOUR DAYS OF ARBITRATION, DID YOU FIND THAT THE PARTIES, EMPLOYERS AND UNIONS, FREQUENTLY USED LAWYERS TO REPRESENT THEM RATHER THAN HAVING THE PRODUCTION MANAGER OR HUMAN RESOURCES DIRECTOR OR ON THE UNION SIDE, THE INTERNATIONAL REPRESENTATIVE? WHAT KIND OF REPRESENTATION WAS MORE COMMON DURING THE PERIOD THAT YOU WERE ARBITRATING?

**ROBBEN FLEMING:** I would say I think the companies tended to use lawyers, that the union was less dedicated to that. But sometimes, I would encourage them to have their lawyer work with them on that because I thought that they were going to get skinned if they didn't have a lawyer.

**JACK STEIBER:** WELL, THINGS HAVE CHANGED TO THE EXTENT WHERE BOTH PARTIES ARE VERY OFTEN, REPRESENTED BY LAWYERS. JUST THE OTHER DAY I HAD A CASE AND ONE OF THE THINGS THAT WAS UNUSUAL WAS THE UNION WAS REPRESENTED BY A STAFF REP AND THE MANAGEMENT WAS REPRESENTED BY I THINK THE PRESIDENT OF THE COMPANY OR SOMETHING LIKE THAT. I WOULD SAY NOWADAYS A RELATIVELY HIGH PROPORTION OF ACADEMY MEMBERS ARE LAWYERS.

**ROBBEN FLEMING:** Mm-hmm.

**JACK STIEBER:** AND DO YOU HAVE ANY FEELING AS TO WHETHER OR NOT THIS IS A GOOD THING OR A BAD THING? THERE'S OFTEN A -- ONE OF THE SUBJECTS OF DISCUSSION AT ACADEMY MEETINGS IS THAT ARBITRATION HAS

BECOME MUCH TOO LEGALISTIC. ONE OF THE REASONS IS THAT YOU HAVE LAWYERS ON EACH SIDE. AND VERY OFTEN THOSE LAWYERS DON'T EVEN KNOW ANYTHING ABOUT THE CASE.

**ROBBEN FLEMING:** Yes.

**JACK STIEBER:** IT'S NOT AT ALL UNUSUAL FOR THE ATTORNEYS TO SETTLE THE CASE AFTER THEY LEARN ABOUT THE FACTS FROM THE PARTIES. I GET THERE AT TEN O'CLOCK AND THEY SAY, WE'LL STILL TALKING. THEY COME OUT ABOUT ELEVEN, ELEVEN-THIRTY AND SAY IT'S ALL OVER. I HAVEN'T DONE ANYTHING.

**ROBBEN FLEMING:** Yes.

**JACK STIEBER:** AND, THE REASON IS THAT THE LAWYERS GET THERE AT EIGHT O'CLOCK IN THE MORNING AND SAY, "WHAT'S THIS ALL ABOUT?"

**ROBBEN FLEMING:** Yes.

**JACK STIEBER:** ONCE THEY REALIZE IT, THEY START TALKING SETTLEMENT.

**ROBBEN FLEMING:** Yes.

**JACK STIEBER:** BUT DO YOU HAVE ANY VIEW WHETHER OR NOT IT'S A GOOD THING OR BAD OR INDIFFERENT WHETHER OR NOT ARBITRATION DURING THE PERIOD THAT YOU KNEW IT WAS BECOMING OR HAD BECOME MORE LEGALISTIC?

**ROBBEN FLEMING:** Oh, I don't know that I thought at the time that I was doing it. I thought it was different in the sense that the

lawyers were more like lawyers. But, I don't know that I had any feeling that one way was better than the other. The other way was a little less precise. And on the other hand, it was -- I always liked to have -- if this was a question of who did what in this circumstance, as it was in a number of them. I would much rather hear the individuals talk about this than I would the lawyers because if the individuals talk about it, and they begin to say, "Well, I'm not sure exactly whether it was this or whether it was that as I think of it now." So you know, this leads you to say to yourself, well, you know, if you don't know; you were there, I don't know how I'm supposed to know." So I would feel better if I had -- I think I felt if I had a better sense of what really happened. If the parties talked about it than I did when lawyers did. Because the lawyers, in typical lawyer manner would make sure that they directed the conversation in a way, which would give you a very reasonable way to have done that. In fact, that might not have been quite the way it was done.

**JACK STIEBER:** I THINK YOU WERE ON SOME VERY IMPORTANT CASE. MY RECOLLECTION IS THAT YOU AND CLARK KERR AND MAYBE A THIRD PARTY, I DON'T REMEMBER WHO IT WAS. IT MIGHT HAVE BEEN IN MEAT PACKING, THAT YOU WERE ON A TRIPARTITE PANEL.

**ROBBEN FLEMING:** Yes. I was.

**JACK STIEBER:** AND A NUMBER OF OTHERS.

**ROBBEN FLEMING:** Well, a particular one was one in which we were to decide if the parties didn't. They did. So we never heard it. The agreement was -- and this was all in writing - and we got some fee for it too, whether we did anything or not -- but I do remember that, yes, it was an important case to the parties. So the agreement was that if they could not agree, they would then come before us. And, we would decide. But, they wanted to first see whether they could settle. If they could, then, well, we'd get a modest fee for having been hired to do it. If we decided it, we would get paid more than that. I had a couple of those kind of cases. It seemed that to be a reasonable thing to do.

**JACK STIEBER:** WHEN DID YOU ACTUALLY STOP DOING ARBITRATION?

**ROBBEN FLEMING:** I don't know. I don't remember now.

**JACK STIEBER:** PROBABLY, MAYBE -- I'M GUESSING NOW -- BUT PROBABLY AFTER YOU THOUGHT YOU HAD STOPPED, YOU MIGHT GET A CALL FROM PARTIES THAT YOU KNEW BEFORE ASKING YOU TO ARBITRATE?

**ROBBEN FLEMING:** Yes, I did.

**JACK STIEBER:** OR YOU MIGHT RESPOND, "I DON'T HAVE TIME" OR SOMETHING LIKE THAT?

**ROBBEN FLEMING:** Yes. I did. And, I suspect that's the reason why I faded out on it. I don't think I had much after I became President of Michigan University. I did some because I remember that I did. But, not that much and I just kind of faded, I think. And then by the time I left the presidency of the university, I didn't really try to rebuild my practice.

**JACK STIEBER:** WHAT WOULD YOU SAY ARE IMPORTANT QUALIFICATIONS FOR CHOOSING A PRESIDENT OF THE NATIONAL ACADEMY OF ARBITRATORS. THINGS HAVE CHANGED OVER THE YEARS, BUT NOW THERE'S A NOMINATING COMMITTEE THAT THE PRESIDENT APPOINTS USUALLY ABOUT FIVE MEMBERS. AND THEY SUBMIT NOMINATIONS FOR PRESIDENT, VICE PRESIDENT, AND THE BOARD OF GOVERNORS. NOW, FOR EXAMPLE, THEY SEND OUT LETTERS AND ASK THE MEMBERS OF THEY HAVE ANY NOMINATIONS. WHAT WOULD YOU THINK MEMBERS OUGHT TO LOOK FOR IN CHOOSING A PRESIDENT? WHAT KIND OF QUALIFICATIONS MUST ONE HAVE OTHER THAN BEING AN ARBITRATOR TO BE A PRESIDENT OF AN ORGANIZATION OF ARBITRATORS OF 650 PEOPLE, LET'S SAY?

**ROBBEN FLEMING:** Well, I think it should not be a person who believes there is a preeminent arbitrator type. That is, I don't think that there is any reason to believe that various kinds of individuals can't be good arbitrators. Yet, their methods may not be the same.

I do think that you need to have people who in one way or another have had some experience in trying to resolve problems where there are competing interests because if you haven't had any experience like that, you're going to get experience. I'm not sure you ought to get experience if all your experience comes while you were doing it. It seems to me you're going to be better if you ask people that had had experience in similar kinds of things, not necessarily, exactly the same kinds but similar kinds of things. Because you see, in part you've always got to remember that hopefully when the whole thing is over, both parties, however it came out, will say "we think this was a fairly conducted kind of thing." If they don't feel that way, then they may very well feel that they should have won. But if they don't feel that they were done in, and that it was fairly conducted and that it could reasonably have been decided either way, let's say, and an arbitrator chose to decide it by against the,

**JACK STIEBER:** DID YOU EVER GET LETTERS FROM LOSING PARTIES?

**ROBBEN FLEMING:** I never did, never did.

**JACK STIEBER:** WELL, THAT'S INTERESTING. THEY MUST HAVE BEEN SATISFIED. I HAVEN'T GOTTEN MANY BUT I'VE GOTTEN A FEW?

**ROBBEN FLEMING:** Have you?

**JACK STIEBER:** Yes.

**ROBBEN FLEMING:** I don't remember ever getting a letter from a party.

**JACK STIEBER:** ACTUALLY, TALKING ABOUT THE BUSINESS ELECTING OFFICERS, WHEN I BECAME A MEMBER OF THE ACADEMY, I DIDN'T GO TO MEETINGS FOR A WHILE. AND, THEN I ONCE HAD THE TEMERITY TO STAND UP AT A MEETING AND SUGGEST, THAT YOU KNOW, MAYBE WE OUGHT TO HAVE AN ELECTION, NOT NECESSARILY FOR PRESIDENT BUT AT LEAST FOR THE OTHER TWO OFFICERS, VICE PRESIDENT AND MEMBERS OF THE GOVERNING BOARD.

**ROBBEN FLEMING:** Yes.

**JACK STIEBER:** WELL, I REMEMBER AT LEAST TWO PEOPLE STOOD UP AND SAID, "REALLY I DON'T THINK THAT'S THE KIND OF THING THAT IS GOOD FOR THIS ORGANIZATION. WE WOULD GET A LOT OF BACKBITING AND THINGS LIKE THAT." AND THAT WAS THE END OF MY SUGGESTION.

**ROBBEN FLEMING:** Yes.

**JACK STIEBER:** THEY SEND OUT LETTERS AND ASK FOR NOMINATIONS.

**ROBBEN FLEMING:** You get complaints about the way the system works?

**JACK STIEBER:** I THINK THERE'S ALWAYS A FEELING AND PROBABLY THERE'S SOME TRUTH TO IT THAT IN AN ORGANIZATION THERE'S GOING TO BE CLIQUES.

**ROBBEN FLEMING:** Yes.



**JACK STIEBER:** NOW, A COUPLE OF FORMER PRESIDENTS AND THREE OR FOUR OTHER WELL KNOWN MEMBERS ARE APPOINTED TO SERVE ON THE NOMINATING COMMITTEE. RIGHT NOW I THINK ONE OF THE THINGS THAT REALLY PLAYS AN IMPORTANT PART, WHICH PROBABLY DIDN'T IN THE EARLY DAYS, IS THE INDIVIDUAL'S INVOLVEMENT IN THE AFFAIRS OF THE ACADEMY. HAS HE OR SHE SAT ON IMPORTANT COMMITTEES, LIKE MEMBERSHIP COMMITTEES OR PROGRAM COMMITTEES OR OTHER THINGS LIKE THAT, WHICH IS REALLY A LOT OF WORK?

**ROBBEN FLEMING:** Sure.

**JACK STIEBER:** THAT EVEN VERY WELL KNOWN ARBITRATORS DON'T WANT TO BE BOTHERED WITH.

**ROBBEN FLEMING:** Yes.

**JACK STIEBER:** BUT THESE ARE THE PEOPLE THAT REALLY ARE WILLING TO PUT IN TIME ON ACADEMY MATTERS.

**ROBBEN FLEMING:** Yes.

**JACK STIEBER:** IS THERE ANYTHING ELSE THAT YOU CAN THINK OF THAT MIGHT BE OF INTEREST TO MEMBERS?

**ROBBEN FLEMING:** Well, I guess the only thing I'd say about it, I don't think there ever ought to be a single type, that proper person to do this. Because my experience is that quite different people,

who operate very differently nevertheless, can do the job very well. And, if they will take the thing seriously, and they will not think of themselves as the great person in the sky who's going to make up all these decisions and so forth, I think it will work out.

**JACK STIEBER:** WELL, LET ME ASK YOU A FINAL QUESTION THAT'S GOT NOTHING TO DO WITH ARBITRATION: AS A UNIVERSITY PRESIDENT, WHAT WAS THE MOST DIFFICULT PROBLEM YOU HAD TO DEAL WITH?

**ROBBEN FLEMING:** Oh, I don't know. I guess I don't think of problems that way. I sort of try to deal with them as they come along. They're often very different just because of the nature of what the problem is. You get cases in which there are strong feelings about things and lot of other cases in which there's not too much likelihood of helping anybody.

**JACK STIEBER:** I WOULD HAVE THOUGHT THAT KNOWING THE PERIOD DURING WHICH YOU WERE PRESIDENT AT THE UNIVERSITY OF MICHIGAN, THAT THE VIETNAM WAR WOULD HAVE PRESENTED SOME MAJOR PROBLEMS IN TERMS OF STUDENTS AND FACULTY AND THINGS LIKE THAT WHO FELT STRONGLY ABOUT THE MATTER.

**ROBBEN FLEMING:** The way I always handled those problems was to have a little group. For instance, I had a group of students. They came to me and said they did have feelings about a problem. So I would get them in; then I'd say, "Well, how do you want to go at this?"

And, we'd talk about how they'd go at it, which they hadn't necessarily thought about very much. But then we'd talk some more and maybe say, "Well, you know, there's more than one way to do this." So I'd think about it a little bit and then we'll maybe we'll talk to some people about it.

I always thought that if you let them play a real decision in how you were going to do it, as distinguished from actually doing it, that you'd come out pretty well. Because how can you argue with being overlooked and so forth if they've had their opportunity to participate? An interesting fact of faculty life is that there are some people who are very leery of having students, for instance, have any say in a lot of different kinds of things. Well, I was never bothered by that. So I went out and made appointments of various kinds on matters that they were interested in. I'd call them in and talk them about how we go about doing this. And, they - - since they don't know really much about how to do that, they'd ask to think about it for the first time, how you're going to do it. And, they then had to consider alternative ways of doing it, let's say a faculty person and a student person and so forth and so on. That little group is going to decide how you're going to do this. They won't always have the same points of view that you do. So if you, without throwing the whole thing out the window and just saying, "Go ahead and throw anything out." If you say, "Well, okay.

That seems to be a reasonable way to do this. Why don't we do it that way?" And if you do that, my experience with them was that they would accept it.

**JACK STIEBER:** OKAY. WELL, ANYTHING ELSE THAT I SHOULD HAVE ASKED ABOUT?

**ROBBEN FLEMING:** Well, it's been good fun.

**JACK STIEBER:** WHEN I WAS ASKED TO INTERVIEW THIS OLD FRIEND, IT GAVE ME A GOOD EXCUSE TO COME AND TALK WITH YOU.

**ROBBEN FLEMING:** Well, I'm glad.