II. Mergers in the Airline Industry

Experienced panelists will discuss the timely topic of mergers, and how seniority list integration disputes in arbitration have evolved over the years, adapting to the demands of changing needs and technology. The panelists will discuss how their experiences have relevance to all airline crafts touched by mergers.

Moderator: **Richard I. Bloch,** NAA, Washington, DC
Panelists: **Jeffrey R. Freund,** Bredhoff & Kaiser, Washington, DC
Bruce York, Director of Representation, Air Line Pilots Association, Herndon, VA
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MARGIE BROGAN: I had to wait until Rich was finished telling one of his famous stories before I could introduce him. But actually, Rich Bloch needs no introduction. We thank Rich very much for pulling together this really terrific panel. I will just let Rich take over. Rich Bloch, thank you.

RICHARD BLOCH: Going through my desk the other day, I came upon a gilt-edge fancy membership card because, like most people in this room, I spend a large percentage of my life in airports. I had some 35 years ago applied for membership in one of those relatively plush airline clubs. In return for proof that I had flown over 150,000 miles on that carrier together with my check for $200, I was awarded a life membership card in the Eastern Airlines Ionosphere Club. I didn't realize, until a bit later, that the life it was referring to was theirs not mine. And that existential anecdote encapsulates the core and character of why we are gathered here today.

Airlines are vanishing and appearing and mutating and merging at speeds that beggar the imagination. I was reminded of these merger things when I boarded the plane to come out here today. Instead of the livery being splashed the length of the fuselage and on the tail, it was attached in one of those little magnetic signs like they use on pizza cars. Frequently the arcane process of merging airline workforces, whether they be pilots, flight attendants, or ground personnel, is accomplished by a remarkable seniority integration mechanism that represents one of the most unique and important applications of arbitration that any of us will ever encounter.

Permit me to lay out a hopelessly simplified view of the problem. Consider two airlines. On the one hand, we have Gigantous Enterprises with a fleet of 50 jumbo jets that fly internationally and boasts of a workforce of tens of thousands of folks. On the other hand, we have De Minimis Airways. They have a fleet of 12 aging turboprops that fly daily between International Falls, Minnesota, and Wolf Point, Montana. Their staff includes 50 pilots, many of whom began their flying career wearing leather helmets and white scarves. But while long in the tooth, they've been long-term, loyal employees of De Minimis. Assume now that Gigantous believes it would be a good idea to acquire De Minimis to fill that roaring gap of people who want to fly from New York to Paris by way of Wolf Point. So it acquires it.

But now, what does the newly merged enterprise do about its workforces, both of whom we shall assume work under seniority-based collective bargaining agreements. To get a taste of the problem, look only at the man or woman in seniority position number one. The captain at Gigantous, let's say, has 25 years of longevity at that carrier. She flies as captain of a 747 jumbo jet, works 11 days a month flying between Paris and New York and earns $225,000. The most senior pilot at De Minimis Airlines spends his time flying not some big Boeing but some little Fokker. He's in the air between International Falls and Wolf Point 18 days a month and grosses $16,000 a year. But he has been at De Minimis consistently without any intervening furlough for 30 years. If we look only at the longevity of this pilot, as measured by his date of hire, he will have bidding priority over the pilot from Gigantous Airlines. He will be thrilled. However, given the other pilot's reaction, he may be well advised to have someone else start his car for him in the morning.

Now multiply that by several thousands of people whose seniority numbers may be bumped not by one, but perhaps hundreds of even thousands of slots, depending on how one merges the seniority lists, and you begin to see the problem. Seniority will normally control not only access to aircraft and compensation levels, but to promotional opportunities, vacation preferences, and a wide range of lifestyle elements. That's why, in the airline industry, seniority ranks second only to oxygen in terms of importance.

That gives some sense of the importance of effective dispute settlement procedures. The Air Line Pilots Association has devised a negotiation and arbitration process that, in its capacity for flexibility to individual circumstances and many other elements, has

served this industry and its constituents well and provides a good deal of material for a spirited discussion. Our panel today includes three of the most knowledgeable and practiced practitioners in the industry.

Bruce York is the Director of Representation for the Air Line Pilots Association. He will begin in a moment by providing an overview of the process. He'll be followed by Messrs. Dan Katz and Jeff Freund, advocates, who have faced one another in many of these markedly high-stakes encounters.

Following their presentations, the panel will be available to respond to or, given the nature of the inquiry, duck from, questions that might occur to you as you listen. Let me begin please by introducing Bruce York from the Air Line Pilots Association.

BRUCE YORK: Thank you. Thanks, Rich. I think that "Mergers in the Airline Industry" is a topic that fits the bill, certainly, of the Academy's theme for this year of "Varieties of the Arbitration Experience." As Rich said, it's my job to give the 20,000-foot view to start. Before doing that I want to acknowledge how capable our panel moderator is. Not only did he have me up all night with a highlighter preparing a chart for today's session, but he managed somehow a week ago to get an article about airline mergers dealing specifically with integration on the front page of the Business section of the *New York Times*, the May 19 issue. So, I don't want to cross him. He said to do that last night.

My fellow panelists, and others in the audience who also have experience with arbitrations that flow from mergers, can vouch for the fact that there's a lot of variety in them. The nature of the arbitration itself differs sometimes. The arbitration process and format differs; the kinds of evidence used often differs. The standards applied to decide the case are not always identical. The results of the cases are very different and, even, I would argue, the emotions that flow from these decisions, based on Rich's comments about the importance of seniority, are not run-of-the-mill emotions.

I remember being told a while ago that Lou Gill swore he would never do another seniority integration after the Pan Am-National merger. I hope I'm not scaring anyone off by that. I still think they're challenging cases, but they're really interesting cases. But I would say they're probably not for the faint of heart.

There can be different arbitrations involved in airline mergers. There can be rights or interest arbitrations related to the process to achieve a single collective bargaining agreement following a

corporate merger. But, we're going to focus on seniority integration today. Even when we focus on that, the variety is endless. We have had single arbitrators. We've also had arbitrations that include pilot board members, arbitration panels, and processes that don't include lawyers and use a presentation style or a conference-style presentation rather than a hearing-style presentation. So why is this subject so interesting right now?

Economic forces have driven consolidation in many industries, of course: rail, trucking, steel, technology, telecommunications, and many others. The airline industry is particularly well suited for consolidation if—I'm going to come back to this—*if* the processes can be accomplished fairly and efficiently.

You all know that the airline industry is very capital intensive, not regularly profitable, and really volatile. It's subject to lots of forces outside its control: the economy, gas prices, weather, as well as volcanoes whose names you can't even pronounce, viruses that are supposed to affect only birds and, unfortunately, of course, terrorist activities that dramatically alter the travel landscape.

Mergers can help address the financial uncertainty by reducing excess capacity, raising revenue, and gaining cost energies. Mergers were always largely thought of as a domestic issue but, as we now see, they occur on the international stage, too. KLM and Air France as well as British Airways and Iberia are a result of Open Skies agreements that challenge international carriers, just as we've been challenged domestically for years from a financial point of view.

Although controversial perhaps, I'd argue that mergers can help employees. Highly fragmented, fiercely competitive, cyclical, and capital-intensive industries aren't usually associated with job security, high wages, and good benefits. But let me give you an example. The total pay and benefits of pilots at FedEx and UPS, where there's a clear oligopoly, are at least 50 percent higher these days than the pay and benefits of pilots flying at passenger airlines. I don't think that's a coincidence. I spend most of my time at the bargaining table. If you think about achieving consistent and favorable bargaining patterns in contract cornerstone areas, I would much rather deal with three or four or five carriers to complete a bargaining cycle rather than the ten or fifteen carriers we had to deal with in 2000 when I came back to ALPA from the fun world of entertainment.

Merger activity, in my belief, is going to continue at a brisk pace. Amazingly enough—and Fred Horowitz may recall—at the time

that Western merged with Delta, which was a big deal, I think there were somewhere between 1,200 and 1,400 Western pilots. Western was a very significant carrier. But we have a merger and a seniority integration going on now with three carriers that some of you may have never heard of—Mesaba, Colgan, and Pinnacle Airlines—that includes 3,000 pilots. And ExpressJet and ASA, two other carriers that many people have never heard of, involves 4,000 pilots. So it's really happening everywhere and it's going to continue.

Let me talk for a minute about the ghosts of pilot seniority list integrations past. There are a couple of examples that highlight how these things can really be very positive or very worrisome. In 2006, US Airways and America West merged. Five years later, an integrated seniority list still has not been implemented. There is no merged contract. ALPA was replaced with an independent union. Animosity and litigation between the two pilot groups—pre-merger pilot groups—continues. Pilots have lost a billion dollars in possible contract gains and value, having not negotiated this new single agreement since 2007 when we were ready to complete negotiations. The company can't derive the full benefit of the merger and its synergies, and, I think, can't even market itself very successfully as a consolidation partner despite Doug Parker's efforts and belief that further transactions are necessary and appropriate. No one really feels good about the results of this process.

On the other hand, in 2008, Delta and Northwest merged. The seniority list and the joint contract were completed at the date of corporate closure. Pilots received about $750 million worth of bankruptcy contract concession repair. They also own 6 percent of the company through equity participation that is worth another half billion dollars, at least. Corporate managers have been successful in reducing redundancies, and they're establishing Delta as a leading brand all over the world. There are also single-contract negotiations and seniority integrations in the pipeline where the result of these processes is not yet known—United-Continental, AirTran-Southwest and ASA-ExpressJet, to be specific.

So you can see that the results of these processes and the arbitrations themselves can be dramatically different. Obviously, from the airline pilot's point of view, we do have a view on things that make these work better than not. I'm going to just touch on a couple of those, and I'm sure Jeff and Dan will provide more of an explanation.

The Air Line Pilots Association believes that the arbitrations that deal with seniority integration have to do three things. They have to be efficient, they have to be rational, and they have to be fair. That means, at a minimum, the parties should try and solve as many of their disputes as possible before the arbitration process begins to reduce complexity and disagreement, if possible. That makes the process more efficient and allows the arbitrator to focus most productively on the key issues.

Second, we strongly argue for mediation—often with the same person functioning as the arbitrator—as part of the process.

Third, and I know Dan and Jeff will touch on this, we think in order to be efficient and rational, it really helps to have a clear process agreement or protocol. These agreements can specify the amount of time the hearing will take, talk about the type of evidence that will be used or not, reference the order of presentations, and generally ensure that the key issues are being considered by the arbitrator and that decisions are based on the best information available.

My last point before turning the stage over to Dan is that as important as these arbitrations are, all participants and stakeholders—employees, managers, and even corporate shareholders—have to keep these arbitrations in perspective. They are one part of a comprehensive approach in an airline transaction. The idea is not to pillage and prevail over the opposing pilot group, but instead to build a strong and successful company from a merger—one that can compete in the marketplace and one that has produced a strong, well-led, motivated workforce. That result is good for the company and also one that produces better pay, benefits, and job security. Those things can't happen unless we view the seniority arbitration as part of the big picture and in context.

RICHARD BLOCH: Dan, before you go on—and thank you very much, Bruce—just a tag on the volatility issue, and a note just for folks who are not directly familiar with the process. This is a process that normally occurs—not always—but normally occurs without intervention of the companies at all. It is between the employee workforces—the pilots or the flight attendants or whatever. Sometimes the company is there in one capacity or other, but almost—I think it's fair to say—almost never.

DANIEL KATZ: That's wrong.

RICHARD BLOCH: All right. Well, you'll correct me. But, the point I was about to make is that the success of this process is a

very dearly held notion of stability in the airlines. That's why this seems such an important role in all of this. And, I'm reminded of some testimony that was made by the CFO of Delta. It wasn't the merger case; it was in a bankruptcy-related case before us. He testified that in an era when oil prices are going from $60 a barrel to $80 a barrel to $100 a barrel, that a one-cent change in the price of oil cost Delta $25 million a year. So you see the type of volatilities that are at hand.

Dan, set the record straight.

DANIEL KATZ: Okay. Rich is right that usually the employer is not a party to the seniority integration arbitration. But traditionally these arbitrations arose under the labor protective provisions that were imposed by the Civil Aeronautics Board, an agency of the U.S. government; in that context the employer was a party to the arbitration. In some of the cases, like Pan Am-National, the employer actually participated in the flight attendant and pilot seniority integrations by making proposals on what the employer thought would be a fair way to put the seniority list together. They did it. But after watching that, a lot of employers didn't try to do that again. Though they did have a right to participate and, in fact, in the Continental-People Express arbitration which was modeled on the standard Allegheny-Mohawk Labor Protective Provisions, the employer participated in the arbitration as a party. And like Pan Am, the employer did make proposals on how seniority lists should be put together.

Let me spend a few minutes hitting the highlights of the paper that follows this discussion. That paper gives an outline of the legal framework for seniority arbitrations. We're talking about putting seniority lists together for two separate employers. Even if the provisions of the collective bargaining agreements between each of those employers have provisions regarding seniority integration, there still needs to be a mechanism, one way or the other, to have the employees of two separate airlines have a legal right to participate in an arbitration with each other over how this list should be combined.

I'd like to address some of the history of how the seniority arbitrations arise and also talk about a handful of flight attendant seniority integrations, which show some of the variations in how the lists have been put together by arbitrators over the years. Let me start with the Civil Aeronautics Board.

I think a lot of people in the audience are aware that the Civil Aeronautics Board is a now-defunct agency of the federal

government. They used to establish and approve the rates that airlines could charge and the routes that airlines could fly. It also had the authority to decide whether it was in the public interest for a route to be transferred from one airline to another or for a merger to take place. Without the Board finding that that was in the public interest, it was not possible for the route to be transferred or the merger to take place.

For many years, in the 1930s and '40s, the Civil Aeronautics Board did not address seniority integrations at all. It was kind of the law of whoever could get away with what they wanted to do, did it. Sometimes that resulted in seniority lists being merged, where people got full credit for the length of service they worked at their predecessor carriers. Sometimes they got half credit. Sometimes they got no credit whatsoever and went to the bottom of the other seniority list.

In the hypothetical that Rich described, some airlines like Gigantous and De Minimis were put together by means of an arithmetic ratio. So that if there were 60 pilots on one and 600 on the other, you would take 10 from the larger group and then slot in one from the other group and then 10 more from the big carrier, and one more from the smaller carrier, ignoring altogether when anybody might have been hired at their predecessor airline.

That started changing in 1947 when Western Airlines, the same airline that Bruce mentioned, sold its Los Angeles-to-Denver route to United Airlines along with four DC-4 aircraft. The CAB approved the route transfer as being in the public interest. It started out in 1947 denying the requests from the unions for protections for the employees. It said there's no evidence that they're going to be hurt by this route transfer. Well, it turns out that employees were hurt.

So they reconsidered the case in 1950 and came up with the first batch of what we call labor protective provisions. These labor protective provisions did not allow the Western pilots, who were affected by it, or other employees to transfer with seniority to United Airlines. But they did give certain benefits to people who were injured as a result of the transaction. And that was the start of the CAB's labor protective doctrine. It was approved by the courts, and the Board went on to apply the labor protective doctrine, including seniority integration rights, based on two theories. One was the one that Bruce articulated about the success of the transaction. The CAB said, if these seniority lists don't go together, the employees could become obstreperous and the transaction might

not be efficiently and in an orderly manner combined. If we say that the transaction is supposed to be in the public interest, it's not in the public interest to have this employee disruption prevent the consummation of the transaction in a meaningful way. So it's important to have seniority integration and labor protective provisions so that the merger will be successful.

The other theory that the CAB articulated, and that the Supreme Court upheld in a railroad case in a similar context, is what we call the employee welfare theory. They said the public interest includes a lot of things. The public interest is the shareholders of these companies. The public interest is the service provided to the communities that are being served by these carriers. But if those components of the public are going to have their interests advanced, it shouldn't be entirely at the expense of the employees who work for the airlines. If without protective provisions the employees will be picking up the entire tab for the benefits that the shareholders and the traveling public and shipping public and the companies are going to receive, then that wouldn't be in the public interest. So in order to ameliorate the harmful effects that the transaction would have on employees, the Board developed these labor protective provisions, including those requiring arbitration.

But before it required arbitration, it did one thing that it didn't dare to repeat. It tried to put the seniority list together itself. The agency tried that in the North Atlantic route transfer case in 1951, and it became so overwhelmingly controversial and heated that the Board said, never again, and it didn't try to put the list together after that. Instead they said we're going to get arbitrators to do this. People will negotiate with each other. They'll negotiate with the carriers. If they can't figure it out, they'll go to people who are used to resolving these kinds of disputes, people who are experienced in resolving employee controversies. The Board will reserve its functions for the things we know how to do.

It confronted that situation in 1970 when American Airlines acquired Trans Caribbean Airlines, a little airline with smaller airplanes. The pilots refused to participate in an arbitration. The courts agreed with the Board that it was within the power of the Board to order arbitration of seniority lists, so the lists were ultimately arbitrated. I think it was Russell Smith of the University of Michigan who did the arbitration and resolved the dispute that the Board didn't want to touch itself. But the courts, in a decision in the Second Circuit, upheld the Board's authority to delegate to

arbitration. So, the order to arbitrate came from an agency of the U.S. government.

These provisions were standardized in the merger case involving United and Capital in 1960 and then revised again in 1972 in the Allegheny-Mohawk merger case. Those are the two carriers that merged to form US Airways. When we talk about the Allegheny-Mohawk Labor Protective Provisions, it's the provisions that the CAB approved in 1972 in connection with that merger. Section 3 required fair and equitable integration of the lists by negotiation. Section 13 said if you can't agree on it, there will be an arbitration, and the employer is a part of that arbitration.

So these labor protective provisions led to arbitrations in most of the mergers that are in Bruce's chart that covers transactions occurring from the 1930s all the way to the present time. Leading all the way through the Airline Deregulation Act in 1978, it was standard CAB policy to order arbitration if the parties could not solve the seniority disputes by agreement.

In 1978, however, when the Airline Deregulation Act was passed, the CAB took a new tack and said Congress had told us not to get involved in regulating the airline industry in a way that's different from any other industry. So, we're going to take a hands-off attitude. We're going to back off. The employee welfare issue is not our interest anymore. It doesn't matter to us that a particular airline transaction might be defeated by the lack of success in combining seniority lists, because now we have free entry into the airline industry. If one airline is shut down by controversies over the merger, another airline will come along and fill the gap by providing air transportation to where the first one was going before.

So in the early 1980s the Board got out of the business of ordering arbitrations. And for more than 20 years, there wasn't really a mechanism for arbitration other than the merger policies of groups like the Air Line Pilots Association and the Association of Flight Attendants, which had internal policies for combining flight attendant and pilot seniority lists by negotiation and arbitration if need be.

The policies continued governing what happened in the seniority area until December 2007, when Congress enacted the McCaskill-Bond statute. It was sponsored by two Missouri senators who were concerned about what had happened in prior TWA mergers and had passed a law that said that any transaction for the

combination of multiple air carriers into a single air carrier will require the arbitration of seniority lists.

There has been recent litigation over this provision involving Midwest Airlines and Republic Airlines, and the matter is still in the courts. But a federal district judge in Wisconsin rejected a couple of arguments of the Teamsters that the law does not apply. One argument was that the transaction involved holding companies and not airlines. The judge said, no, that's not what the Congress wrote. They said it didn't have to be a merger or transaction between the airline; it's a transaction for the combination of air carriers that it governs. So they rejected that argument by the Teamsters union.

They also rejected the argument that there shouldn't be a seniority integration under the McCaskill-Bond law because of the fact that Republic shut down Midwest Airlines shortly after acquiring it, saying that what the seniority integration depended upon was whether the intent of the carrier was to combine these airlines. So there was definitely a replacement of the CAB doctrine in terms of the McCaskill-Bond law, which referred back to the Allegheny-Mohawk merger case in the terms of the statute itself.

Since then, United and Continental and AirTran and Southwest have mentioned this law in terms of dealing with their proposed integration of the operations of the two carriers that are merging, and they have already agreed to processes that will put together the seniority list in a fair and equitable manner.

I promised that I would mention a few of the flight attendant seniority integrations, just as an example of how the seniority lists have been combined under the labor protective provisions, either in the party's contract or ordered by the CAB. The variety of the methods that have been used is interesting. Richard Kasher did an arbitration involving the Pan American and National flight attendants in 1980. There were about four times as many Pan Am flight attendants as National flight attendants. He constructed a merged list by taking the top half of the list and merging them by the length of time that each of the flight attendants had flown with their pre-merger company. But in the process, he thought that it wouldn't go together fairly if he just took the actual time the flight attendants had worked. So, he ordered that 360 days should be added to each of the National flight attendants' actual time, and then lists were combined. Then for the bottom half of the list, he took the actual amount of longevity that each flight attendant

had, and he combined the list on that basis. So it was essentially a date-of-hire list, but the National flight attendants in the top half got an extra 360 days' bonus credit.

Arthur Stark integrated seniority lists for Republic Airlines and Hughes Airwest. He broke the list down into portions, like Arbitrator Kasher did, and part of the list was done by date of hire at the top. But then he had a ratio of the system that I described before, where they were slotted together in the middle and then he went back to date of hire towards the bottom of the list.

Marcia Greenbaum decided a flight attendant seniority integration involving Seaboard World and Flying Tiger. She also broke the list into three portions and did ratios in part of the list, date of hire in another part, and adjusted length of service in a third part, which involved taking credit for furlough time and removing that.

The difference between length of service and date of hire is that date of hire starts from the date you're hired and goes until the time the lists are combined. Length of service deducts from that time any time that you're on furlough.

Sylvester Garrett combined the seniority lists for the Texas International and Continental flight attendants. I represented the Texas International flight attendants in that case and he, likewise, used length-of-service ratios and date of hire in various portions of the list.

One other that's worth mentioning is another one by Arthur Stark. When United Airlines acquired the Pacific routes of Pan American in 1985, 1,202 Pan American flight attendants came with those routes to United Airlines, and Arbitrator Stark combined those lists with a pure ratio, starting part of the way down the United list and then slotting Pan American flight attendants in, using this methodology: for every approximately seven and a half United flight attendants, he would slot in one Pan American flight attendant.

It's worth mentioning that these were all in the 1980s. After the CAB stopped giving labor protective provisions and the DOT took over the functions of the Civil Aeronautics Board, the DOT did not award labor protective provisions in any merger case. There were a couple of mergers involving American Airlines in which the Association of Professional Flight Attendants integrated the Reno and TWA flight attendants in 1999 and 2001 by inserting the incoming group as of the date of the acquisition itself. Those actions were challenged in court. There was no arbitration in either case, and no negotiations took place between the

representatives of the two flight attendant groups, only between the union and the employer. The courts upheld APFA's actions in both the Reno and the TWA cases. The Republic-Midwest Airlines issues are before a system board, chaired by Fred Horowitz, as well as the federal district court in Wisconsin that I mentioned.

So there's been a great variety, not only of how the lists are combined but also the legal mechanisms by which arbitration has been arranged, if any. That really covers the subjects that I wanted to outline, at least as an overview, to give you some background on the legal structure that prevails in seniority integrations.

RICHARD BLOCH: Thank you very much, Dan. One of the aspects of this whole remarkable process, and which happily coincides with our theme of our meeting, is the technology involved. Jeff Freund is going to direct himself to some of those issues in his presentation. Jeff?

JEFFREY FREUND: Thanks, Rich. Dan's recitation of the various ways in which arbitrators put together flight attendants lists really is a good segue into the piece that I want to talk about. But, before I say that, I want to say the following: If I had my druthers, none of you would ever have an airline seniority integration arbitration, and Dan and I would never have another one of these cases, for all of the reasons that Bruce was talking about in his opening remarks. Unfortunately, when these cases get to the arbitration stage, they are incredibly contentious. And when I say incredibly, I'm understating by an order of magnitude of a thousand how difficult the inter-employee relations become.

The most important feature of mergers of airlines, from my perspective, is that the combined employee group, be they pilots or flight attendants or ground workers, can come together in a strong unified way to act collectively as bargaining agent for their newly formed group. When the scars of the seniority integration battles are nothing but open wounds, as we've seen, unhappily, at US Airways, all employees from both groups are ultimately disadvantaged.

I don't blame either the arbitrators or the lawyers for that happening. These are difficult subjects, but in an ideal world, the pilots, the flight attendants, and their leaders would be able to step up, reach agreements consensually, and move forward. And I think they'd all be better served.

But that's a fantasy, I'm afraid, so I'm going to spend a minute or two talking about some of the, well, nuts and bolts may be a little deeper than what I'm really going to talk about, but I can't

think of a better word. The heading of the notes that I'm going to talk from reads "Fairness, Technology: The Lawyer's Toolkit and the Arbitrator's Challenge." That's a fancy way of saying that these are complicated cases, and there are emerging methods and tools out there that the parties and the arbitrators have found to be very helpful.

So what's the objective of a seniority integration? My experience is primarily with pilots, but it really would apply to any workgroup. The objective ultimately is to put together a fair and equitable seniority list. And by a fair and equitable seniority list, what I mean and what I think those of you who have decided cases in this area mean, is that it is a list that preserves to the fullest extent possible the reasonable pre-merger career expectations of the separate employee groups when they come together as a single employees group. So that's easy to say.

George Nicholau, in FedEx-Flying Tiger, had a quote which he repeated in the US Airways case and which Rich Bloch and Fred Horowitz and Dana Eischen repeated again in the most recent Delta and Northwest case. It really sums up the issue in a way that's so perfect that I want to read it to you. He said the following: "There are four basic lessons to be learned from these pilot seniority integration cases. That each case turns on its own facts; that the objective is to make the integration fair and equitable; that the proposals advanced by those in contest rarely meet that standard; and that the end result, no matter how crafted, never commands universal acceptance." That is wisdom that we can all live by, because those of us who have been engaged in this process have all experienced that to one degree or another.

There is a second quote that comes from the most recent decision—at least the most recent decision involving a major airline transaction—and that is in Delta-Northwest. Rich Bloch, Fred Horowitz, and Dana Eischen were the panel that decided that case. Dan and I had the good fortune to appear in front of them for 15 hearing days a few years ago. In putting together the seniority lists that eventuated from that hearing, they said the following: "As in all such exercises, the focus here is necessarily on groups, not on any individual pilot. Inevitably and unavoidably, there will be perceived disparities and mismatches on individual levels on both sides under the merged list." The reason for that is because these lists, when they start, are very diverse. A seniority list may be in order of date of hire on the individual separate lists, but they aren't ordered in any way by date of birth. So, you have widely

divergent age ranges among a very orderly date of hire list. The pilots, who are bidding on their separate seniority lists, are not necessarily bidding for the full exercise of their seniority. So, there are pilots who are sitting in higher positions than their seniority might otherwise entitle them, and pilots who are sitting lower than their seniority might otherwise entitle them as of the date that the integration takes place. So the notion of putting together a large group of pilots, or any group of employees, from two separate airlines and making it both fair and equitable in the sense that it is intended to and will have the result of preserving their pre-merger career expectations, simply cannot be met with respect to every person on the seniority list.

So with that as background, Dan was talking about the various ways arbitrators have put seniority lists together. There's date of hire, as he mentioned. There is entailing or stapling, which is putting one group at the bottom. There's adjusted date of hire, which could be length of service—that is, date of hire taking out furlough time. Or there is adjusted date of hire by adding an extra 360 days to one group or the other. There's ratioing, doing a straight ratio. There are a hundred pilots in one group and ten pilots in the other group, and you can just insert them in one for ten ratio. There's something called a status and category ratio, in which you take, for example, a group of large wide-body captains on one airline, count them up, take a group of large wide-body captains on another airline, count them up, and put them together on the basis of their ratio. And so on and so forth until you've exhausted either the pilots, the categories, or yourself; and that produces a seniority list.

A lot of attention in the cases is paid to these methodologies for putting lists together. But I contend that when you really think about it, these methodologies are just that—methodologies. That is, they are tools. They are not ends in and of themselves. There is nothing magic about date of hire. There is nothing magic about ratios. There is nothing magic about status and category. Those are methods designed to put together a list so that when you are done with it, you can look at it and say, okay, taking into account all of the things that I have to take into account as a decision maker, has this produced a distribution of the pilots of the two groups in a way that's fair, keeping in mind what their expectations were when they went into the merger. So, they are a means to an end. What we've seen over the years in these seniority integration cases has been an evolution of the understanding of that and

an evolution of the way in which the parties and, then, through them, the arbitrators have looked at these cases.

In the dark ages, which is pre-2000, when technology was not quite as robust as it is now, Dan, in his cases, was famous for putting together what I call dot charts. We would go into these cases and on a piece of poster board, Dan would have 700 black dots and 300 white dots. And they would be ordered in the way in which he was asserting the integrated list ought to look. Then I'd ask a bunch of questions, and we would talk about what would happen if we moved this dot over here and moved this dot down there. Then I'd come in with another board and would have those dots. The arbitrators would look at those dots, and they'd say, "Okay, neither of those dot charts look good." Then, they would sit down and make their own dot charts. They would, perhaps, use a methodology of the kind that I described—date of hire, status of category, straight ratio, or some combination of those various approaches—until there was a dot chart that looked like it was a good dot chart, and everybody could go to the beach and be happy.

The problem with that—and I really do mean that it's a problem—is that it's a very static picture that one is looking at when you look at dot charts that comprise the pilot groups as of the day you're putting the seniority lists together, because a seniority list simply isn't static. Things change over time that have an effect on the way in which those seniority lists work. People get older. They retire. Pilots historically had to retire at age 60; now it's 65. They have to come off the list. Equipment types change. The pay relationships between equipment types change. All of that happens on an ongoing basis. And, you have pilots on a seniority list who, as of the date of the integration, are anywhere from age 64 down to their twenties who will have a long career ahead of them. The picture of the list as of the day it is effective, no matter how fair it may look on that day, doesn't necessarily predict that it's going to be fair the next year and the next year and the next year as circumstances change.

So in the late 1990s, kind of independently, pilot groups—largely pilot groups—began to develop what have now become very powerful tools. The computer skills of the pilots that we work with and the consultants they retain and the power of very small computers to deal with very large data fields has made looking at the effects of putting a seniority list together over time much more feasible.

So, in the last series of cases that Dan and I have done, and we have a few coming up ahead of us, we have built these computer models, which can, in real time, put together a list with as many as 12,000 pilots. Again, it could be flight attendants; it could be any group of employees. The programs can put together a group totaling 12,000 entries with all kinds of facts associated with them: their age, their date of hire, the seat they're presently sitting in, the seat they would be able to sit in if they exercise their full seniority. And these programs can change assumptions, also in real time: the fleet composition, the likely retirement age of the pilot group, the compensation rates for various pieces of equipment or categories of equipment. They can run that model over time showing what that static dot chart—black-and-white dot chart—looks like in one year, in two years, in five years, in ten years, and so on out to the end of a pilot's career.

They can do other things as well. They can quantify the results of those lists in any way in which you would like to quantify them. They can quantify them in terms of the career earnings that a pilot would have under one scenario as compared to the career earnings the same pilot would have under another scenario. What the career earnings of the entire group of the pilots on one airline would have on one scenario as compared to the total career earnings of the pilots—or any other work group—on the other carrier. It can measure those total career earnings against the total career earnings that the pilots would have on their separate stand-alone airlines through the course of their career and show the gains and losses that one group would have *vis-a-vis* the other under various integrations scenarios. As I said, you can change the assumptions in these models. As a consequence, we as advocates and you as arbitrators have a tremendous amount of data you can look to in order to try to figure out, not just whether a list is fair and equitable on the day that the list comes together, but whether it's going to work out in the future for some reasonable period of time at least, to continue to be a fair and equitable list.

Now I can't speak for how the arbitrators who have been faced with this massive amount of data have actually worked with it. Fred and Rich are here, and if you want to ask them afterwards, I'd actually be curious to hear what they had to say. But I can tell you this, that in the executive sessions in the Delta-Northwest case, when these models were used in their full glory, I would say that the panel asked—through technical experts assisting the panel

from both sides—for at least 30 different scenarios showing different combinations and aging them over various periods of time. After absorbing all of that data, they issued an award, and it's the award that controls the Delta pilots today.

I think the panel would be the better judge of how they used those models, how to use that information, and how helpful or unhelpful they found it. But in terms of being able to present a case and being able to tackle the real issue—namely, what is the fair way to put these groups together—without having to resort to old saws like date of hire or status and category ratio or adjusted date of hire or straight ratio, but rather thinking about what actually happens when you put a group of workers together and looking at that over time, I think it comes closer to meeting the objectives of certainly the ALPA merger policy and, I think, generally, it meets the objectives of the principles that apply to seniority integration of all types.

I want to talk about one more topic, unrelated to technology, that Bruce raised. The key to having these cases done efficiently is having the groundwork, the structural groundwork setting out the way in which the process is going to unfold, resolved in advance of the hearings. So, historically and traditionally, pilot groups negotiate really three kinds of agreements. Sometimes the issues merge into fewer than three, but they deal with three different subjects. One of them is the transition agreement, which describes how the airline is going to operate during the period of time between the time it comes together and the time in which an integrated seniority list is issued. That's an operational agreement, and the companies are parties to the agreement as well.

The second is a process agreement, which is an agreement that deals with the arbitration process. How the arbitrators are going to be selected. How data—that is, the personnel data of the workers on each group—are going to be collected and verified and exchanged and challenged between the parties so that you don't have disputes, if at all possible, at the hearing as to whether somebody's date of hire was really A or B. It sets the number of days of hearings. It sets the order of presentation. It describes whether there are going to be briefs or not be briefs. And I will say on that subject that we've been overruled on occasion. In the Delta case, Dan and I agreed in our pre-hearing procedural negotiations that we would write pre-hearing briefs but not post-hearing briefs. But Rich and Fred and Dana disagreed with that proposition and insisted that we write post-hearing briefs even though

we had agreed not to. Whether there are going to be pre-hearing briefs, whether there are going to be oral arguments, whether the hearings are going to be open to the public, whether they're going to be more narrowly closed or whether they're going to be closed entirely, all of those things get hammered out in the process agreement.

Then the last kind of agreement is very narrow, what I would call, in a sense, an evidentiary agreement. It's an agreement about what you're going to put into evidence, what you're not, what your confidentiality limitations are. A whole variety of things, again, designed to make the running of the case smooth so that it actually can be accomplished in something less than a lifetime of the parties.

So with that, I'd turn it back to Rich.

RICHARD BLOCH: Thank you, Jeff. Very helpful, and I guess I would just make two initial comments. The points that Jeff makes about the technology and the current state of the ability to project and take a look in terms of fairness, what looks good, not just today, but how's it going to look in a year or five years or even ten years, is extraordinary just in terms of the process that we went through: We secluded ourselves—the panel—in an undisclosed location for four days or five days straight and spread out these things on the walls and the floor and the tables. We just walked around and talked—and I really mean, I think we probably were talking 12- and 14-hour days—just looking at these computer lists and trying to get a sense of where fairness lay. It was enormously helpful, the idea, the ability to request a view of the future on this stuff.

The other thing, I guess I should tell is the story of the first time I saw Dan's charts, his dot charts. That was in the context of a particularly complex set of circumstances, because it wasn't just a question of what was the seniority date or what was the longevity, the date of hire. They had other wonderful possibilities. Pilots who were flying wet leases in Saudi Arabia and others who had taken time off for this or that, and should that be considered. Dan had red dots and black dots and purple dots and yellow dots. There were these crummy dots all over the place. It was a three-person panel. In those days, they used pilots from other airlines to sit as the second and third members of the panel. During the first day of hearings, we looked at these dots, and they were all colors. One guy turned to me and, very quietly, he said, "I don't remember what the purple dots are." I turned and I said, "Jews."

On that note, we will entertain any questions that you may have about the process.

CATHERINE HARRIS: Catherine Harris from Sacramento, California. I just have a question about this computer model. You were talking about projecting career earnings over five years, ten years. Were you including within that promotional opportunity as well? Moving, say, to the number one position on the aircraft?

JEFFREY FREUND: Well, that's really the premise and the beauty of the computer technology. The short answer is yes. But what you can do with these models is, you retire people when they retire, you move people up when they move up. You've already set your parameters as to what position you have to be in in order to bid up from a narrow-body captain to a wide-body captain, and so when you bid up to a wide-body captain, you then—

CATHERINE HARRIS: So you'd be able to project that, say, for example, for the smaller group that's getting absorbed by a larger group?

JEFFREY FREUND: These models are incredibly flexible and you can—I hate to use the word "predict" because anyone who knows anything about the airline industry knows that you can't predict tomorrow, let alone five years from tomorrow—but you have to have some assumptions when you go into this exercise.

CATHERINE HARRIS: But, do you have an expert who is actually sitting at a laptop, to whom you could say, "Show me what this looks like, or show me what that looks like"?

JEFFREY FREUND: Well, these models have changed over time, so when they first came up, you'd want to get a new scenario. Then the technicians would have to go back, and it would take a day or two to produce a list. It would produce all of that, all of that kind of information and more, more than you'd even care to know. Now, both the programming abilities and the computer power are such that you can do this almost in real time; not quite, but pretty close.

CATHERINE HARRIS: It must be nice. Must be a big improvement.

JEFFREY FREUND: Well, some would argue the opposite, that it generates too much data. But it's an improvement in the sense that you aren't forced to focus only on what happens on day one. Of course, any model is only as good as the assumptions you put into it. So, whatever assumptions you put into what the fleet is going to be, those assumptions may not actually eventuate. But, you do have to have some assumptions.

RICHARD BLOCH: Just a pointer. I'm in the midst of one now where I'm engaging that process, and I call in my request: "I'd like to see this with these assumptions." And I have a list in ten minutes.

GEORGE FLEISCHLI: Yes, George Fleischli from Madison, Wisconsin. I have a question for Richard. What kind of explanation do you give—I assume you come up with a list—and what kind of description or explanation do you give for that?

RICHARD BLOCH: Well, as a general matter my response, and those that I've seen, respond in two ways. One, you try and give as clear a picture as possible as to what you've done. And, sometimes that's arcane. The more difficult job is to say why. And there, you have very often, two airlines or more who are both claiming that they are the ones who brought the equities to the table. The one who says, well, we were responsible for bringing a mature contract that resulted in a higher pay scale or better staffing ratios or whatever. The other who says, if it hadn't been for us, you people would have gone belly up in a year, because we're bringing you new routes and new people to put in the seats, etc., etc.

The cutting edge of this comes to the point where you say, we believe that these equities prevail, but there's a little here, too. And so, therefore, we have shaped to give credit for that sort of input. But, it is the job of evaluating the respective equities, the respective contributions to the merger that is, as far as I'm concerned, the art and craft of writing this sort of thing. If that's responsive to your question.

GEORGE FLEISCHLI: Are the decisions lengthy?

RICHARD BLOCH: Yes, I think they are.

GEORGE FLEISCHLI: So, you go into a lot of detail in terms, not just explaining what you did and how you did it, but—

RICHARD BLOCH: Yes. I don't remember how long the Northwest was, 50 pages or something like that, 60 pages. But, they go long.

DANIEL KATZ: The one I mentioned involving Russell Smith and American and Trans Caribbean, even though Trans Caribbean was a tiny little airline, he went in and evaluated all of the prior decisions and what was the impact of the financial condition of the carriers on the way in which the lists were combined. Because putting together the lists in a fair and equitable manner can take into account many different considerations. And, the pilot and flight attendant groups who have been involved in these arbitrations frequently will have a whole array of things that they

think are fair and equitable and the arbitrators sift through that to pull out what they think is most critical. So Russell Smith's decision was over 100 pages long, including these appendices on the impact of financial condition of the carriers on the outcome of the seniority integrations.

GEORGE FLEISCHLI: I guess one last question. Does that impact on the prospect of challenges to the decision? I mean, you can almost never answer all of the questions that would arise in this kind of a contest. It's sort of like a three-dimensional interest arbitration.

RICHARD BLOCH: Look, we all start with the same premise that when you combine two seniority lists, there's only one person who's not going to have a bitch.

BRUCE YORK: I was just going to mention, George, that I had occasion to look at the Northwest-Republic paperwork last week for another subject. And although the decision in that case from Tom Roberts was a relatively short decision, 20 or 30 pages, that was one document in a huge set of binders, two or three of them. We now have approximately 25, 26 follow-on decisions?

DANIEL KATZ: We had 24 interpretive arbitrations.

BRUCE YORK: Twenty-four subsequent dispute resolution decisions that flowed from that one decision where arbitrators were asked to interpret the decision itself.

RICHARD BLOCH: It did more than put together the two seniority lists. It said, here is the combined list. This list is subject to some conditions and restrictions, which are going to temper the way the list is actually used. So while it was only 20 or 25 pages long, as Bruce said, these words required interpretation in 24 separate arbitrations subsequent to the initial decision as to how those conditions would affect the use of the list itself.

JEFFREY FREUND: On the question of what it takes to survive a successful challenge of an arbitration, if you were also asking that question, it is almost inevitable that someone is going to challenge a seniority integration award in one fashion or another. And it is more than almost inevitable—I would say it's inevitable—that those challenges will be unsuccessful.

RICHARD BLOCH: Josh?

JOSH JAVITS: Josh Javits, Washington, D.C. On the question of reading the future and knowing the future, things like—

RICHARD BLOCH: We just have a reading, not knowing.

JOSH JAVITS: Yes, yes. Guessing, you use horoscopes. If bases are going to close, if equipment is going to change, if pilot train-

ing costs will rise, and these changes increase risks for pilots, are those types of changes within the parameters of things that you think about or have information about with regard to what may happen in the future? Are you informed about what the carrier's plans are post-merger? Presumably there are going to be some of these changes.

RICHARD BLOCH: My answer to that is a mixed one. In my experience, at least, there are some things you find out during the course of the hearing that may be subject to dispute. Will a particular new piece of equipment arrive or not? Will there be a shedding by the resultant merged group of certain aircraft they don't want to use anymore? Okay, you can have arguments on that. And the panel very often will make an educated guess as to the likelihood of this happening. There are things you can do when you expect that to happen, such as constructing fences, saying that this group of pilots can't move over to other equipment until such a certain time because something might be happening here and so forth. But, obviously, there's also a limit. And at least in one of the opinions, I said no one ever looks at their career expectations with the expectation of merging with another airline. So, there are certainly limitations that you have to recognize in terms of those kinds of guesses.

The other point I would make is that one thing that I'm sure we all look at in the process of this is the demographics of the workforce, to see what sort or turnover is going to be likely among these folks, because that, too, will inform what sort of protection you give a certain workgroup as to other folks moving into their slots in the near future.

DANIEL KATZ: Let me add something to Rich's answer. I think it's a good question, Josh. The parties to these arbitrations will always think that it's relevant and submit evidence about what's going to happen in the future in their view. And, indeed, that's very appropriate. Because, as Jeff said a few minutes ago, the list is going to be used to allocate scarce resources, that is, valued jobs in the future. So, to build a list that's fair and equitable in the manner in which it allocates these employment opportunities, it's necessary to do some projection about what the future is going to look like or else you would be shooting in the dark. But from the standpoint of the arbitrators, the decision makers in this context, what they narrow down to be relevant may be something as simple as who's going to retire by reaching retirement age in the future. Or, it may go beyond that.

In one case I did in 1988, where Ron Natalie was the lawyer for the Piedmont pilots and I was the lawyer for the US Air pilots, there was a tremendous amount of technology that was available. It was an ALPA merger policy arbitration panel; Sam Kagel was the chair of the panel, and then there were the pilots from TWA and Northwest who sat with him as part of the three-member board. The Piedmont pilots asked Arbitrator Kagel to build a list based on assumptions about the fleet and the staffing and the growth of jobs due to the carriers' orders for airplanes. They wanted to lump the jobs as being comparable or not comparable, and they had computers—big, mainframe-type computers—on which they could run all these projections into the future and vary the list based on how he wanted to do these assumptions. Arbitrator Kagel wasn't interested in doing that.

The US Air pilots, my clients, were advocating a date of hire list, and we projected out what the date of hire list would look like for the next 20 years based on age 60 retirements. We showed them on a big screen, going into the future, and, that was good enough for Sam. That was the technology that he thought was a valuable tool in predicting the future. It was age 60 attrition. So it's really a tool for the arbitrators to use as they deem appropriate.

JEFFREY FREUND: Josh, before we go on, one more comment on what the future might bring and again to go back to our most recent case. Dan and I spent quite a bit of time in the last case debating about whether the 787s that Northwest had ordered would or would not be delivered, how they would be used, whether the DC-9s that were already in the Northwest fleet would've remained in the Northwest fleet had Northwest remained a standalone carrier and would remain in the combined fleet upon merger, and whether the 747 freighters would continue to fly either on a standalone Northwest or a combined fleet. Whether the arbitrators concluded that either one of us had proved the points that we were trying to make is a question that you have to ask them. And whether it was worth the time and the energy that we spent in trying to make our points is a question that you'd have to ask them. I can't put myself in that position. But we, as advocates, certainly tried to make a case. There are some things one can divine from the opinion in that case with respect to the 747s and the 787s and some 777 issues that seem to suggest that that panel made some judgments or, in the absence of being able to make some judgments, drew some lines to take into account varying possibilities. But, it is definitely something that the lawyers and the pilot

groups—the employee groups—believe are both necessary and appropriate to do.

RICHARD BLOCH: Jim Adler?

JIM ADLER: Yes, Jim Adler, Los Angeles, California. Could you comment on how the procedure is different, or is it different, if ALPA does not represent both units? Also, who pays? Is it paid by the union as a whole? Does each unit get assessed, or does the employer pay part of it? And finally, if it doesn't look like everybody is going to find a position at the end or it's questionable, do arbitration panels provide for economic compensations, severance? Or, is that outside of the scope of the work of the arbitration panel?

DANIEL KATZ: Let me tackle the first part of the question, about the difference when ALPA is the bargaining agent for both sides versus one where it's not. Under ALPA merger policy, they have an internal policy that governs when both groups are ALPA-represented pilot groups. The process involves arbitration and, under the current merger policy, the two pilot neutrals, as they were called, are replaced by three neutral arbitrators, although there's a great deal of flexibility in the current policy to do it different from that if that's what the two groups want to do. But the employer is not a party to the arbitration.

Under the Allegheny-Mohawk Labor Protective Provisions that I described, the employer is a party to the arbitration and can participate in the arbitration by making presentations and proposals, or not, as it chooses. And in recent cases, like Southwest and AirTran, we have negotiated a process agreement that has a very detailed series of steps that mirrors what happens in ALPA merger policy, and also the AFA merger policy, where the data is collected concerning every employee's employment that's exchanged. It's verified and certified and exchanged with the other group. There's negotiations, mediation, and then arbitration. So that process agreement replaces the more general reference in the McCaskill-Bond statute to the Allegheny-Mohawk Section 3 and 13 process that I described earlier.

JIM ADLER: On the payment issues, Bruce, certainly on the ALPA pieces—

BRUCE YORK: Well, I think there are two things that distinguish it from ALPA's point of view. Certainly in an ALPA case, under our merger policy—and I think Dan touched on this—but policy really prohibits ALPA staff persons from being involved on one side or the other because of the obvious conflicts. And that

really extends to our economic and financial analysis department, lawyers in my or Jonathan Cohen's department, and staff in many other respects. In a merger that doesn't involve two ALPA carriers, we feel free and do assist in providing background support to the ALPA group, as you can imagine. So that's one significant difference.

The second issue Jeff mentioned earlier is part of the transition agreements we try to enter into and have been pretty successful in seeking and obtaining reimbursement from the companies for a wide range of fees, and that includes arbitrators or arbitration panels, merger counsel for the pilot groups, hotels and meals where the hearings are being held, and many other things.

RICHARD BLOCH: Okay, we have about four minutes left. Just a couple more questions, please.

ROBERT SIMMELKJAER: Robert Simmelkjaer here, New York and New Jersey. I would think that with the use of computers and the capacity to conduct a multivariate analysis, with various independent variables available that you may manipulate in some way, such as length of service, type of equipment flown, and so forth, you would be moving quite far away from the system and period of red dots and green dots on the wall. You could also generate a number of scenarios, but then I guess you're left with how much weight you want to give to each of these variables. In other words, what are the equities as opposed to the pure analysis of the quantitative elements in your choices? So, is that the case that this process has been simplified significantly in terms of the technology and, basically, you're down to equities and values in terms of assigning weight to these various choices that you end up with? Has that occurred?

DANIEL KATZ: I think that the task has been made more challenging and not simpler because the technology provides access to quick analysis, as Jeff was describing, of a variety of factors. And so, the advocate's job is to take all this available information and to put it into a package that's going to be useful and persuasive to the decision maker. And because there's more information to handle, there are more possibilities. While that's an advantage, it's also a challenge and makes the advocate's job more complicated.

RICHARD BLOCH: I agree with Dan. Anything else?

TIM CULLEN: I was actually perfectly comfortable just sort of sitting in the back of the room and listening. But out of fear that ALPA is going to continue to echo in my ears for the rest of the night, I'll step up here and say there's an awful lot more than

pilots that are at stake when it comes to any merger and flight attendants, customer service, ramp mechanics—Tim Cullen with Aircraft Mechanics Fraternal Association—and it's my understanding that the parties are supposed to meet prior to arbitration and attempt to work out their seniority issues. And then, and only then, it gets presented to arbitrators. At that point, arguments are presented by each of the groups with each of the issues or each of the points that would add seniority or subtract seniority. And then, it's your job to weigh those individual items accordingly. You know, it's an interesting thing to the 360-day piece that we heard earlier. It's one thing to say we added 360 to a limited number of people, but you can also view that as you subtracted 360 from a larger majority of people. So, just is that a proper understanding of the process?

RICHARD BLOCH: I think on every level it is. We take seriously, very seriously, the impact of any sort of juggling with these things. We're well aware—and more aware now because of the technology—of the impact that has. The other point that you made, which I think where it should be left as the hallmark of this session, is that those pre-arbitration meetings and discussions couldn't be more important, and that the better the parties are at unifying their information—that is to say sometimes there's a dispute, for example, as to what date of hire means in a given company, etc., as between the other company's definition—the more they are able to resolve those disputes before they bring it to arbitration, the better any product is going to be. And we, as arbitrators, hope for that sort of colloquy.

TIM CULLEN: Okay, thank you, everyone.

RICHARD BLOCH: Thank you. I see the bearer of doom approaching. So, we thank you all very much on behalf of the panel.

BARRY WINOGRAD: Thank you, Rich. Thank you, Bruce York. Thank you, Jeff Freund. And thank you, Dan Katz. Just terrific, and I love the idea that the more technology we have, the more challenging life can become—contrary, almost.