

National Academy of Arbitrators

ORAL HISTORY PROJECT

G. Allan Dash, Jr.

Interviewed by Clare B. McDermott

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ORAL HISTORY COMMITTEE
NATIONAL ACADEMY OF ARBITRATORS

INTERVIEW WITH G. ALLAN DASH, JR.
BY CLARE B. McDERMOTT
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ALLAN, WHY DON'T WE START WITH SOME BASIC PERSONAL INFORMATION.

In 1930 I wrote my senior research thesis at the University of Pennsylvania on the "Industrial Relations Program of the Philadelphia Rapid Transit Company," the then-existent street railway system here in Philadelphia. My Senior Research Director was a man who worked for the Industrial Research Department at the University of Pennsylvania, and who had also been my Professor in Industrial Relations. In those days the Undergraduate Wharton School of the University of Pennsylvania's approach to Industrial Relations was largely "how to satisfy employees so as to make their unionization unattractive." I was thinking in that direction for my research.

For about three years after graduation (1930) I was in the Insurance business because I was standing by waiting for something; that was in the midst of the Depression, and was a field in which I had some interest at the time. In 1933, when the National Recovery Act was passed, a great many industries had to do a sudden job of economic research to get together data concerning their inability, they said--to afford anything larger than a 25¢ per hour minimum wage. At that time George W. Taylor was an Associate in the Industrial Research Department of the University of Pennsylvania--along with four or five other persons including my former Industrial Relations professor, Waldo Fisher. They agreed to do various kinds of economic research for the NRA at an appropriate compensation for the University. George Taylor had previously written his Doctorate thesis on the Hosiery Industry Industrial Relations Program, and he was asked to be their first arbitrator in '28 or '29. He served as their Arbitrator beginning then and when the persons in the Federal Government connected with the Hosiery Code determined that an economic research study should be made, they asked George Taylor to direct it.

PARDON ME, ALLAN, WAS HE AT THAT TIME ARBITRATING FOR THEM TOO?

Yes, he had been arbitrating for them for 1928 or '29--had been for four years--had set up the machinery which has been since copied many, many places, including the Automobile Industry and, of course, with additional developments and improvements, in many of the other large scale unionized industries. At that time a single Agreement covered about fifty hosiery plants, and he was the Arbitrator named therein. He needed assistance. He had an Assistant and a Secretary, but he needed additional assistance to assist in the economic research. They thought of various people and my former

professor, Waldo Fisher, suggested my name to George Taylor. I went to see him at the University in July, 1933, and started to work with him on a six-month temporary basis. I went there for the last half of 1933-

PARDON ME, AGAIN, WIL YOU...WAS THIS HERE, IN PHILADELPHIA, OR WAS THIS A WASHINGTON OFFICE?

This was in Philadelphia, out on the University of Pennsylvania campus. I took the position for just six months. At the end of that six months we finished analyzing the Hosiery Industry N.R.A. questionnaire with WPA help—we had approximately twenty people on the staff to make the study. Dr. Taylor decided that he needed help in other aspects of economic research so I was hired as his Research Assistant. From 1934 to 1937 I assisted him, in a small way, in making economic research studies on aspects of the Hosiery Industry needed for his arbitration. But my main function was economic research in industries other than hosiery, in various textile and clothing lines, and so forth.

PARDON ME, AGAIN, YOU'RE TALKING ABOUT SOME EXTREMELY EXCITING YEARS IN THE COUNTRY'S HISTORY AND THE HISTORY OF LABOR-MANAGEMENT RELATIONS. IT MUST HAVE BEEN—IT SOUNDS RATHER PROSAIC THE WAY YOU PUT IT HERE. I HAVE A FEELING THAT IT PROBABLY WAS NOT.

Well that would be correct. The organized Hosiery Industry people were still floundering around but they were getting excellent guidance from George Taylor. He really placated them by coining up with the idea of serving not only as their Arbitrator but also as the Impartial Chairman of their negotiations. His successor was Bill Simkin, our second National Academy of Arbitrators' President. Bill's successor was Thomas Kennedy, another member of the National Academy of Arbitrators. With a one-year intervening period during which a former NAA member served (W. Roy Buckwalter, Ph.D.), I took over as the Full-Fashioned Hosiery Impartial Chairman.

WHAT YEARS WOULD THESE BE?

Well, let me see, Bill Simkin served, along with George Taylor, for a little while. At the time, Bill was teaching in the Industry Department of the Wharton School of the University of Pennsylvania, but George Taylor was a "full-time" Impartial Chairman from 1929 to 1939- Bill Simkin lapped over with him a bit, and then was the Impartial Chairman from '39 to '42, Tom Kennedy from '42 to '43, Roy Buckwalter in 1944. I served from '44 to '51, and then Bill Simkin resumed the position. The three of us (Taylor, Simkin and me) were then back together with an arbitration office here in Philadelphia (1947) and we stayed with that set-up for a few years. The Hosiery Industry was dwindling because it was moving South, until the complete demise of the Hosiery Union Agreement in 1953 or '54.

I'M FEARFUL THAT YOU'RE LEAPING OVER SOME VERY IMPORTANT STUFF I'D LIKE PERHAPS GET YOU BACK TO. YOUR BENT IN THE EARLY '30S WAS AM ECONOMIC ONE OR A HISTORICAL ONE? WHAT GOT YOU INTERESTED IN BRUSHING U? AGAINST GEORGE TAYLOR AT ALL?

Well, I didn't know of George Taylor until July, 1933, and the reason that I was brought out to Penn, as I mentioned, was strictly for the NRA study. That's when I got to know him, and that's when I first got to know what arbitration was all about.

WHAT GOT YOU WITH WALDO FISHER FIRST?

When I was with Waldo Fisher, I was simply a student in the Undergraduate Wharton School. I did my Senior Research thesis with him. It won a few awards, and I suppose for that reason, my name and face remained in his memory.

THAT IS WHAT I HAD HEARD. THAT'S WHY I WANTED...

He was the person who suggested my name to George Taylor. Oh, yes, I also had done a paper for a course in my last Undergraduate year. The question involved a furniture salesman's incentive program that was presented to an Industrial Policy course by the head of the Industrial Research Department—Dr. Anne Bezanson. She graded the top ten papers that week and she remember mine, possibly because I came close to the solution she had recommended to the Furniture Company for the incentive problem.

BUT THIS WAS NOT POLITICAL SCIENCE OR GOVERNMENT OR LAW? YOUR ENTREE TO THE WHOLE FIELD WAS AN ECONOMIC ONE, IS THAT CORRECT?

Yes, I would say so. I have no training in the law, except for Business Law at the Wharton School.

PROBABLY MUCH THE BETTER FOR IT.

My graduate work at the University, after I returned in '33— from '33 until '40 — included, a Masters Degree in 1935, plus the required course work for a Ph.D. I passed my language exams and so forth when my General Motors arbitration job dropped on me like a "ton of bricks" in 1941. Since then I have been, with the exception of six months in the War Labor Board days of late '44, a full-time Arbitrator.

WOULD YOU BE CALLED DOCTOR OR NOT AS SOME OF THESE...

No, I should not be. I was a part-time Arbitrator from '37 to '41. But let me just go back to one point I wanted to make. It is little known. I previously noted that it was George Taylor who made the suggestion to the organized Hosiery Industry which worked well there, but I don't know that it exists anywhere else. They renamed their "Arbitrator" as their "Impartial Chairman." The reason for that was that their arbitrator sat through their negotiations, as I did, when I became the Impartial Chairman, as Bill Simkin and Tom Kennedy had done. We did not run the negotiations; the parties did. In fact, they sat opposite each other at a long table and the Impartial Chairman sat at one end. He was just sitting there, usually as a listener and a note taker. As a result, when

the parties brought into being a new Agreement provision, the Impartial Chairman was present at the "birth", and he became fully knowledgeable of what they were talking about, what they meant in putting new provisions into their contract.

WOULD HE BE FREE TO SPEAK OUT IF HE THOUGHT SOMEBODY WAS MOUTHING NONSENSE?

Yes, at times all of us did. When they would get on to a difficult position where they were not making any headway, we would suggest that they go forward to the next item on their negotiation agenda. Most times, when it was George Taylor sitting there, they did so immediately. Later on, when it was some of the lesser lights, perhaps they didn't do so as readily, but they still did it--eventually. But this was a procedure that, to me, worked well for that Industry.

THAT'S PERFECTLY FASCINATING.

As a consequence you still see the term "Impartial Chairman" used.

IT DELIBERATELY IS TO HAVE A FUNCTIONAL DIFFERENCE TOO.

It was intended to have a functional difference. Now, when George Taylor was later called out to General Motors in 1940, and he made this suggestion of Impartial Chairmanship, neither side would have anything to do with it. They said, "You're the Umpire." In fact, they called their Arbitrator the "Impartial Umpire." "You call the balls and strikes and nothing else," they said--"we write the rules of the game; you call the balls and the strikes, and you won't hear us write up the rules of the game."

Let me get to the reason, and path I took in getting into arbitration. I was, as I said, George Taylor's Research Assistant from '33 to '40. In 1937 the American Federation of Hosiery Workers, which had organized the Full-Fashioned Hosiery Industry, (for which George Taylor was serving as the Impartial Chairman), organized the Hosiery Dyers and Finishers in the New York City and Philadelphia areas. They were the companies which dyed and finished hosiery that was knit in the "grey." Now, the Full-Fashioned Hosiery Industry is largely a thing of the past. Almost all ladies' hosiery today is made seamless, or is panty-hose. In 1937 the Dyeing and Finishing branch of the industry that became organized included roughly 45 companies, 20 here in the Philadelphia area and 25 in the New York area. The New York area companies were closer to the sales market; they could develop color, styles and packaging, and get their products to the New York Hosiery market buyers quicker than could the Philadelphia companies. When they were organized, they wanted an Impartial Chairman--George Taylor just didn't have any more time, so he suggested that I take a shot at it.

YOU HAD BEEN WORKING WITH THEM IN SOME RESPECTS BEFORE THIS?

Well, not with the Dyers and Finishers. I had been working with the Full-Fashioned Hosiery Knitting Companies, some of which did

hosiery dyeing and finishing. I didn't know the dyers and finishers at all. Nor they, me. But they took George Taylor's recommendation. I told him that I did not feel capable, at 29 years of age, to start out fresh as an Arbitrator in a branch of the Industry that had no prior experience with arbitration. But he said he thought I could and, so, I did. The very first hearing I had was on October 1, 1937- It was a tough case involving the 20 Philadelphia companies under the initial Agreement seeking a five cent (\$.05) per hour wage differential below the New York companies wage rates. When they signed their first Agreement, it had a single wage scale. But the parties had entered into a side agreement to submit to arbitration the question of the Philadelphia companies' request for the wage differential.

KIND OF A "SOUTHERN" DIFFERENTIAL OR SOMETHING,...

That's now an inappropriate phrase. I ruled that there should be no differential for the Philadelphia companies because there was too minor a difference in costs between the two areas. True, the people here in Philadelphia had a little bit lower costs in some items and higher in some such as transportation of their products to the New York Market. But as far as I was concerned, there was not enough difference in the costs of operation in the two areas, and I did not feel that the New York companies had sufficient advantages over Philadelphia companies to warrant any wage differential for the Philadelphia' companies.

ROUGH CASE TO START OFF WITH.

Yes, and to make matters worse., it was my very first arbitration in any Industry. And then, right after that, the Keystone Hosiery Manufacturers Association was formed in the Reading, Pennsylvania area. That's roughly 75 miles from here. Some of the biggest plants were located there.

THESE ARE PEOPLE WHO HAD BEEN PART OF THE DYERS OUTFIT BEFORE? A BREAK OFF? OR A NEW BATCH OF PEOPLE?

This was a different group of Hosiery Manufacturers, some of the largest in the country, which the Union finally succeeded in organizing. In fact, without mentioning names, the biggest hosiery company that ever existed in the Industry in the United States was in Reading, but the Union never succeeded in organizing it fully. They did succeed in organizing the next largest, and on down to the smallest in the Reading area. These manufacturers felt that they had sufficiently different problems from the rest of the Industry to warrant forming an Association of their own. They set up in the Keystone Hosiery Manufacturers Association and the Union, following the basic Agreement here in Philadelphia, suggested provisions that were, perhaps, a year or two behind the Philadelphia Agreement provisions.

THESE EMPLOYEES WOULD BE IN A DIFFERENT LOCAL, I TAKE IT.

Yes, it was a different Local. The same heads of the National Union, but different officers for the Keystone Association and different local union officers. They asked George Taylor to be their Arbitrator, but again he said he did not have time. So, from '38 through '41 I served as the first Arbitrator there. My caseload, of course, increased. (Incidentally, I did not participate in negotiations so was never referred to as the Impartial Chairman in reading.)

In 1938 the Textile Industry here in Philadelphia faced a very bad financial situation. A lot of the companies were deeply in the red. They had a second recession (subsequent to the '33 depression) so the Textile companies asked the Union for wage cuts which the Union could not grant and still retain their representative status. But the "handwriting was on the wall," and it was indicated rather clearly that something had to be done to save the Textile plants in the Philadelphia area. The Union apparently decided to let an Arbitrator grant wage reductions, if the companies could prove their need therefor, and the Arbitrator could take the "shellacking" from the Union membership. So, I was asked to arbitrate the wage reduction request of the companies, and saw a lot of red ink for about a year in the cases that were presented to me in '38. These were all interest arbitration, not grievance arbitration.

THIS WAS THE PHILADELPHIA/NEW YORK GROUP OR THE READING GROUP? OR BOTH?

No, I'm sorry I didn't make it clear. This had nothing to do with the Hosiery Industry. This had to do solely with the Textile Industry.

OH, I SEE. IN GENERAL.

The Textile Industry in general, not with Hosiery. In fact, there were some wage cuts in the Hosiery Industry; but George Taylor carefully got "out-of-towners" to handle those—Ralph Seward and Saul Wallen. These were before the War Labor Board days, at least one of them was, and one was after the W.L.B. I never had anything to do with those wage reductions. But I did have something to do with the Textile Industry and, as a consequence...

WHAT YEAR AGAIN? THIS IS THE SECOND RECESSION OF '37-'38?

This was only in the year '38 and, as a consequence, I became persona non grata as far as grievance arbitration was concerned in the Textile Industry for awhile. But in 1940 I started to get requests for Textile Industry grievance arbitration because the parties knew me.

YOU WERE PERSONA NON GRATA IN 1938 WITH BOTH SIDES OR WITH ONE SIDE MORE THAN THE OTHER?

I was persona non grata as far as the Union was concerned; I was a "fair haired boy" as far as Management was concerned because I did grant wage cuts of 5%, 7%,—in that area—trying to turn the

economic tide for the Textile Industry because it was competing with the South where the wages had not come up as rapidly as they had in the Philadelphia area under the N.R.A. Codes. As a consequence of the textile grievance arbitrations I did experience a substantial increase in caseload.

In 1939 George Taylor was asked to come out to General Motors to assist the parties in setting up their arbitration machinery. In February of last year (1977) I attended a dinner in Detroit between the UAW and General Motors Officials. A hundred or more persons were there, including their living past "Impartial Umpires." Some of them, who had been present in the beginning of their relationship...

SOME OF THE OLD BOLSHEVIKS CAME BACK.

Yes, Walter Reuther's brother was there--Victor Reuther--but most of the people I knew at General Motors have since passed away or retired and moved far from Detroit. The occasion was the 40th anniversary of the signing of the first Recognition Agreement in February '37. Between February '37 and sometime in '39, which I cannot now remember, the parties had evolved details of their first Recognition Agreement and they operated under it, but they did not have machinery for settling day-to-day issues, and they experienced a lot of "wildcat" strikes. George Taylor was asked to come to Detroit and, with his assistance, an arbitration procedure was set up that was patterned somewhat after the one in the Hosiery Industry, except that it had nothing to do with "chairmanship" but strictly with "umpireship." For a few months the parties could not agree on anyone to serve as their Umpire. They got a man by the name of Harry Millis who wrote some twenty decisions which had the unhappy effect of making both sides angry. It took a bit of doing, but the parties finally succeeded in coaxing George Taylor to take a leave from the University of Pennsylvania to serve as the G.M.-U.A.W. Umpire. George went to Detroit in late 1940 with the understanding that he would remain for no more than a year. He was there from the fall of '40 until January, '42. In the year of his absence I continued on in economic research at Penn, but I continued in arbitration because now some of the cases that would have gone to George Taylor--not the Hosiery Industry which had gone to Bill Simkin--but some of the other arbitration cases, came to me. I, of course, increased my rates a little bit. I notice you're interested. My initial rate was \$25 per day; I was not making \$25 a day at the University of Pennsylvania at that time, therefore, for any time that I took off for hearings I reimbursed the University for my salary. So the maximum that I could make was \$25 a day when I was initially serving as an Arbitrator. And that was my rate from 1937 until mid-year of 1939. I did my writing at night, which enabled me to limit my use of University time to the daytime hearings. To accommodate me, and overcome the shortage of Arbitrators, the parties I served sometimes agreed to evening and Saturday hearings.

THAT'S AN INTERESTING DISTINCTION RIGHT THERE. I'M REASONABLY CERTAIN THAT IS NOT, AND HAS NOT BEEN, UNIFORM WITH OTHER MEMBERS OF THE ACADEMY AT ALL UNIVERSITIES.

At the moment, as far as I know, it's not thought of at the University of Pennsylvania, but you see, at that stage, I was an Economic Research person, a 40-hour employee which included Saturday hours, George Taylor was not; he was a full Professor, and he could do things in the times he did not meet classes and, at such times, was not responsible to the University. Then, at the end of '41, when George Taylor's year was over at General Motors he indicated that he was going to return to the University of Pennsylvania for teaching. George Taylor's first love was University work; mine was not. And he was asked for suggestions for successors. He suggested two, Bill Simkin and myself.

LET'S GO BACK TO THIS NEGOTIATING POSTURE THAT THE HOSIERY PEOPLE HAD WHERE THE IMPARTIAL CHAIRMAN WOULD SIT IN ON THEIR BASIC NEGOTIATIONS AND IF THEY WEREN'T MAKING AN AWFUL LOT OF HEADWAY HE'D SAY, "WHY DON'T YOU MOVE TO SOMETHING ELSE AND, PERHAPS, YOU'LL THINK OF SOMETHING LATER ON." WOULD THAT SAME ATTITUDE HOLD IN A STRICT GRIEVANCE ARBITRATION HEARING? WOULD HE FEEL FREE TO SAY, "YOU PEOPLE HAVE FORGOTTEN SECTION 19?"

To some extent he would feel free to do that, because the informality that was present in the negotiations carried over into grievance arbitration. I might say at this point when I attended hearings with George Taylor, I drove him to the hearings that were out of the city, and I helped him by taking some notes and he took some. The cases were largely presented by the Association Executive Director, and on the other side, if the case was important enough, by the President of the American Federation of Hosiery Workers; if not, by another Union Officer. This was true from the middle to the late '30s, when the caseload got too heavy to be handled by top Union Officers.

AN OFFICER OF THE LOCAL OR A HIGHER OFFICER?

An Officer of the International. And then, later they had what we refer to now as International "Reps" who would come in and handle the cases for their areas.

TRANSCRIPT, ALLAN?

No--never. I don't recall any Hosiery hearing that was ever transcribed in any form.

AND I DON'T SUPPOSE, ONE OF THESE RECORDER DEMONS?

No. We never saw one of these recorders; I don't believe they existed then. The Arbitrator would take his own notes, and his notes were the only record of the hearing.

WERE THEY THE KIND OF THING THAT WE MIGHT EXPECT AS A MATTER OF PERFECT ROUTINE TODAY--OPENING STATEMENT, UNION POSITION OF THE CASE, ETC.

Yes, with the party filing the grievance starting the presentation. If it was a discipline case we expected the Association to start, and they always did.

NOV, WAS THAT A PRE-SET PROCEDURE OR DID THAT HAVE TO BE HAMMERED OUT?

I came on the scene with George Taylor when it was already established by the parties with George Taylor's direction. I recall him saying, and I've often used it since, "After all the Company took the administrative initiative here; the Company took this step for its own reasons which are going to be developed at this hearing. If the Union starts, the Union will be responding to something that hasn't yet been said." So, therefore, he had established the precedent that any case which involved discipline would require the Association to start. The Association representative would have talked with the Company representatives before the hearing, and he would present a statement of the case as he understood it. His counterpart on the Labor side of the arbitration table would do the same thing. I don't recall the percentages, but in the majority of cases the oral statements included the respective parties' facts and arguments, and that ended it. As a consequence, we would complete the hearings on three or four grievances in a day, on which the parties had conducted advanced discussions to agree upon the basic facts and simply repeated them to the Impartial Chairman (with the addition of their arguments) to enable him to make notes, and then they would go on to the next case.

THAT'S INTERESTING.

As time passed, if, for instance, in a discharge case, an individual was accused of doing something he denied, he was given a chance to give his version of the facts, but it was not done by the Union President asking him questions for him to answer. Rather, the grievant was usually asked to give his version of the facts in a narrative form without interruption. Often there was nothing in the way of what we now call "cross-examination."

I SEE. HE JUST CAME AND BEGAN TO PCUR IT ON?

Yes; if the Association had questions about some of the things the grievant had said, they might ask him a few questions, but this seldom occurred. The Association would depend on their own participants to present their version of the facts if there existed a difference between the two versions. The procedure of examination, cross-examination, redirect, recross, etc., those terms were never used. And I might say, parenthetically, a lawyer was never present at the grievance arbitrations.

AND I TAKE IT THAT WAS NOT ACCIDENTAL.

Well, I don't know. There were lawyers present during the negotiations, but there were never lawyers present during the grievance arbitration procedure.

THAT'S INTERESTING.

Those people really developed--some of them are still in arbitration, but not in the Hosiery Industry--they were excellent in expressing the understandings that had been reached--and the Impartial Chairman listened

to them closely because he had made his own notes during the negotiations and could refer to them to determine what the parties were talking about in the grievance arbitration. The hearings were kept informal, but the Impartial Chairman did not "throw his weight around." Incidentally, the parties always invited the Impartial Chairman to attend their social functions, and the principals kept on a first-name basis with him, though not at actual arbitration hearings.

HOW ABOUT SINGLY? WOULD HE FEEL FREE TO MEET WITH EITHER PARTY WITHOUT THE OTHER?

There were occasions when he would do that...in a real hot situation.

WITH OR WITHOUT THE KNOWLEDGE OF THE OTHER?

Always with the knowledge of the other side, but separate from each other.

NOW, LET ME ASK ALSO. SUPPOSE THE ARBITRATOR WAS IN THIS NEGOTIATING SESSION AND GAINED WHAT HE THOUGHT WAS AN INSIGHT AS TO WHAT THE PARTIES WERE GETTING AT, AND THE LAWYERS CAME ALONG WITH THE POLISHED LANGUAGE WHICH WAS SUPPOSED TO BE THE VEHICLE GIVING EXPRESSION TO THAT INTENT. ASSUMING THAT THERE HAD BEEN A MEETING OF THE MINDS, AND THE IMPARTIAL CHAIRMAN DISAGREED WITH LAWYERS' EXPRESSION THERE-OF. WOULD HE GET A SHOT AT LOOKING AT THIS POLISHED LANGUAGE BEFORE IT BECAME "THE AGREEMENT?"

Yes, and I remember Taylor doing that many times; and Taylor at times, and I, at times, would admonish the parties that they were putting in a word that had a meaning that was too extensive, and if they didn't intend that, they should find some word which would better express their meaning.

I WOULD TAKE THAT TO BE A VERY VALUABLE SERVICE TO THE PARTIES. DID THEY REALIZE THAT OR DID THEY NOT?

I suppose they did. While George Taylor did this more than did his successors, the parties did recognize that the Impartial Chairman, sitting at the end of the negotiating table, was going to have to administer and apply their new Agreement provisions, and if another word would make more clear what they were talking about, It would be best to adopt such a word. Therefore, the Impartial Chairman had much to do, at times, with sharpening the wording of new provisions to make them clearly expressive of the parties' intent.

TO MY KNOWLEDGE, ALLAN, THAT IS UNIQUE, IN THE TRUE MEANING OF THE WORD. DO YOU KNOW OF ANY OTHER INDUSTRY WHERE THAT KIND OF THING EVER TOOK PLACE?

No. I do not, and I have never served in any other Arbitrator capacity where that was true. Now, we did something, very limited,

between 1947 & 1950 between B. F. Goodrich and the Rubber Workers which remotely resembled this approach. We had a three-day session, without any grievances involved, during which we went over the new provisions that had been recorded in the new Agreement, and both sides talked about them informally, to indicate to the Arbitrator the content of their new understandings. In that Company, and in U. S. Rubber where I was Bill Wirtz's successor (he was the first arbitrator there—I was the first at Goodrich and Bill Simkin was the first at Goodyear—I think I spent approximately three years as the Arbitrator at each Company); in all three of those companies, the parties had sessions with the Arbitrator at the beginning of his period of service, as to their methods of setting standards and piece rates because probably half of their cases, unlike most other industries, were in the standards and piece rate areas. These were sessions with the Company's Industrial Engineering Departments, the Union and Company representatives who handled arbitration, plus the Arbitrator.

THEY WERE TRYING TO MAKE YOU INTO AN INSTANT EXPERT, ALMOST, ON RATES AND STANDARDS.

So you will understand, they did this only once for each Arbitrator, without any reference to a pending grievance. That was the indoctrination procedure they used. I do not know if they still do so, but that procedure certainly saved me a great deal of time in getting acquainted with their individualized standards and piece rate setting practices and procedures. But it was the same concept of putting the Arbitrator, without any grievance on the table, in a position to understand what they were talking about without any of the heat or pressure that accompanies a regular arbitration hearing.

GOING BACK TO HOSIERY AND TEXTILES. IS IT POSSIBLE TO CITE ANY KIND OF ROUGH DIVISION OF INTEREST AND GRIEVANCE CASES?

Well, my son made an analysis of my decisions a few years ago. And I would say that in the 40 plus years that I have acted as an Arbitrator in all industries (1937 to 1978), I have written approximately 5,000 decisions. I would make the informed estimate that about 250 of them were interest arbitrations.

BACK IN HOSIERY, NOW, COULD YOU SAY WHAT THE SPLIT MIGHT HAVE BEEN?

Well, in hosiery the first case that I mentioned was an interest arbitration. That was the first and the last in the Hosiery Dyeing and Finishing Industry. All the rest were grievances. In the Keystone set-up I never had any interest arbitrations. My interest arbitration cases varied all over the lot, in different industries—some cases were in the industry where many of our colleagues presently work, i.e., the Street Railway and Bus Industry. But, unfortunately, my brother went into that business on Management's side in the late 40s and that closed the interest arbitration door of that industry to me. I have never had an interest arbitration in that industry since he became connected with it.

YOU HAVEN'T FELT FREE TO FORBID HIM TO DO THAT, I GUESS?

No, that has been his full-time business for 30 years, plus. And although the Union asked me several times to do so, saying, "We know your brother has an interest on the Management's side of the industry but he's not going to be in this case," I would still turn it down. Under no circumstances would I handle an interest arbitration in that industry.

I UNDERSTAND. THAT EXPRESSES A FINE FEELING OF SENSITIVITY FOR THE APPEARANCE OF THE THING. NOW, IS IT POSSIBLE TO SAY, ALLAN, AGAIN TO GO BACK IN HOSIERY, KEYSTONE, DYERS AND FINISHERS, AND MAYBE TEXTILE, TOO, YOUR CASELOAD PER YEAR, THAT KIND OF THING?

I can do so, using the analysis that my son made in indexing my decisions using the BNA index system. Perhaps I'd better say something else first. In the Hosiery Industry, and later on when I served, starting in '59, in the Ladies' Garment Industry in Philadelphia and the South Jersey market, and in '61, following Bill Simkin in Men's Clothing, the parties looked to the Arbitrator to mediate a lot of their cases and they came to him, presented their cases, and then just looked at him waiting for his suggestions of a possible compromise solution. As a consequence, I had a great many cases which resulted in what we referred to, euphemistically, as SWD's--"Settled Without Decision"--and in those years I had a large number of them. Not half, or anything of that sort, but a very large proportion. I've gone back to some of the records I had and added them to the written decision cases because they were arbitration cases that often involved full days of hearings.

ABSOLUTELY. AND THE PARTIES GOT THE PRODUCT THEY WANTED.

Yes, the result they wanted. Now, with that statement: my first year in 1937 I wrote approximately 10 decisions; in '38 I wrote 30; in '39 and '40 I wrote about 40 each year; in '41 I wrote about 50 in 11 months.

GENERAL MOTORS YET OR NOT?

Not General Motors yet.

O.K.

Now, on the night of Pearl Harbor (Sunday, December 7, 1941) I rode in the Detroit "Red Arrow," with George and Edith Taylor to Detroit to take over as his successor on the G.M.-U.A.W. Impartial Umpire job. The next day--the day World War II was declared--we went to lunch in the Fisher Building in Detroit. George W. Wilson, then President of the Corporation and some of the main executives of the Company, plus Walter Reuther of U.A.W., were with us. Just when I was on the threshold of the biggest arbitration job I have ever held, and we were talking about my succeeding George Taylor, the Star Spangled Banner came on the radio and everybody stood in the restaurant and cheered. Then Franklin Roosevelt made his famous "date-which-will-live-in-infamy" speech.

In January, 1942 I succeeded George Taylor, out of a clear blue sky. I was supposed to lap over with him for three months, but while we were holding hearings in a Chicago hotel a telephone call came to him from FDR. I was taking notes of the case at hand and George was too. He left, and we waited, He returned sort of white-faced. When we asked if he was ill he replied, "No, but the call was from the President of the United States, and he asked me to come to Washington tonight." He went on to say that the President was setting up a War Labor Board and needed him, so he was asked to drop everything and get to Washington. Everybody congratulated him and he left the hearing room immediately. We stopped for the rest of the day and the next day I went ahead with the schedule. So instead of a three-month lap-over, I had some two weeks. In the succeeding 30 months, covering all of 1942, 1943 and the first half of 1944, I wrote the most decisions of my career—over 500. In fact, in '42 and '43 I wrote slightly over 200 per year, and about 100 in '44, and that last was really in less than six months.

THAT JUST FRIGHTENS ME TO HEAR IT—A 200 FIGURE IN A YEAR.

To make it worse, the hearings were held all over the United States from the West Coast, Los Angeles, to New York and Atlanta on the East Coast, virtually all the travel being done by train.

AND THIS WAS ONLY GENERAL MOTORS?

Only General Motors. This was before effective machinery came into existence to screen the grievances for arbitration. That did not occur until later when Ralph Seward was the Impartial Umpire. They got effective screening machinery first in the Union because Walter Reuther became U.A.W. President instead of Vice-President, which he had been when I was the Impartial Umpire, and he set the machinery up which started to function rapidly so that the pendulum between "wins" and "losses" swung in the Union's direction quite suddenly.

DO YOU THINK THAT WAS SIGNIFICANT IN REUTHER'S DECISION TO DO SO?
THAT HE COULD SEE THAT THEY HAD SOME TURKEYS?

Yes, they knew that all along, but it was politically impossible for Reuther's men to withdraw grievances from arbitration because he would have lost out with some of his major constituents. It may be of some interest to note that when I succeeded George Taylor I found that the decisions he had written had been duplicated and distributed by the parties in an amount of 25,000 by the Union and 10,000 by the Corporation. I had come from an economic research background at the University of Pennsylvania in which everything I wrote, after I polished it as best I could, was then "vassarized" by an English major graduate of Vassar on the staff who reread every study we wrote and polished it into the best of English. Then the top printing runs of any of the research studies I did totaled two thousand. That was my background. At G.M. I was suddenly faced with writing decisions which were printed and distributed in 35,000 copies lot, with no one

to do any "Vassarizing," and with an excellent writer, George Taylor, as my predecessor. I did not want to make the changeover to my style of writing too obvious, so I worked very diligently for at least the first year that I succeeded him. In spite of my fear of such a large printing of my decisions I was still able to turn out approximately 200 of them in that year.

THAT'S ASTONISHING.

And, I might say, I had practically no home life.

O.K. THAT WAS GOING TO BE MY NEXT QUESTION. NOW, YOUR WHOLE FAMILY IS HERE IN PHILADELPHIA AND YOU WERE ON THE ROAD OR IN DETROIT?

I had only a son and my wife who stayed in Philadelphia. Mrs. Dash joined me in looking for a place in Detroit but we decided I would not be home there very often, so my wife and son might as well live in Philadelphia, where she could have her parents as company, than move to Detroit and be alone with our young son while I was away for long stretches of time on hearing schedules. Possibly our decision was affected by George Taylor's comment: "These positions are far from permanent although they call you a 'permanent Umpire.'"

In '43 the grievance machinery was not functioning any better and I wrote, again, approximately 200 decisions. In the first six months of '44 (I finished the job at the end of June '44) I wrote approximately 100. Now, in addition to those, I wrote one-party decisions which had to do with the Union and individual employees in "Maintenance of Membership" cases. The Corporation had an observer present at such hearings, but he said little except in rare cases. In some of the cases the Corporation's representative did indicate why it felt the Corporation should not be required to discharge an employee who had ceased paying Union dues, or had insisted in resigning his Union membership, even though the "Maintenance of Membership" provision--which is what they had under a War Labor Board settlement--required that the employees retain their membership in the Union for the duration of the Agreement. I issued, perhaps, 75 to 100 of those decisions, spread over the two and a half years I was on the job. But I have not counted those in these 200-per-year figure.

WELL, I WISH YOU WOULD EXPAND ON THAT: AT LEAST FOR MY SELFISH BENEFIT. THAT'S PERFECTLY FASCINATING. I WAS NOT AWARE OF THAT. WAS THE COMPANY THOUGHT OF AS A FORMAL PARTY TO THIS? WOULD THERE BE A CAPTION? DID YOU PUT OUT A PUBLISHED AWARD?

Well, no. They did not publish those decisions. My figures on these are really estimates. I, at one time, asked General Motors, for purposes of my own statistics, to give me an idea of the volume of these decisions because I left the decisions in the Impartial Umpire's Detroit office. They told me that they figured that it was between 75 and 100 "M of M" decisions. But they never published them though, of course, they received copies.

THE CORPORATION GOT COPIES?

The Corporation got copies.

THE WHOLE UNION GOT COPIES? OR JUST THE LOCALS INVOLVED?

The Locals and the International got copies, but the International did not print them, or distribute them to their Locals.

DID THE CORPORATION FEEL THAT YOUR RENUMERATION IN SUCH CASES SHOULD BE ONLY FROM THE UNION?

No.

STILL HALF AND HALF?

Yes. I was on a retainer arrangement. If I had 25 or 200 cases, the retainer remained the same. So these extra decisions were issued under that retainer arrangement. As an example of the type of case involved, I recall one chap who had fixed some typewriters at a Local Union Office. He had a bill outstanding against the Local which he claimed just kept dragging along. He gave a notice to the Company to stop deducting Union dues from his pay for forwarding to the Local until he got that money or until his undeducted dues equalled the amount of his unpaid bill. The Union asked that he be discharged for failure to pay his dues.

FASCINATING AWARD, TOO?

Well, I ruled that the Umpire, under the "Maintenance of Membership" appeal machinery, could not be used as a collection agency, and that the employee should use other available procedures to collect the monies owed him by the Local. That is one case that sticks in my memory. I think it might be interesting to note--I've said this before on other occasions - in the years '42, '43, '44 and, I believe into '45, about 100,000 grievances per year were actually recorded on grievance forms in the G.M.-U.A.W. relationship. It varied a bit. These statistics were given by some of the General Motors Corporation executives in talks sometime after 1945- Of those 130,000 grievances, about 1,000 were actually filed in my office, about one out of a hundred, and of those, perhaps, half were withdrawn before arbitration was actually scheduled. The remaining 530 were combined in various ways to be resolved by the 200 decisions I have cited. So I received and arbitrated only 500 out of the 130,000 grievances that were filed each year.

I'M CURIOUS ABOUT THIS COMBINING. YOU MEAN THAT IF THERE WERE FIVE THEY'D HOLD FOUR AND PUT ONE BEFORE YOU AND THEY'D RIDE ON THE SINGLE DECISION?

Mo, they'd put the whole five in, because sometimes there would be slight differences between the grievances, but the basic principle was the same. They would give me the whole five to resolve and I would issue a single decision resolving all five, or granting some

and turning down others. However, I don't want to give the impression that the cases that came to me were only the most important ones, not at all. I recall the last time I went to San Francisco on a G.M. case—we had a whole group of cases scheduled to be heard there--but I received a series of notifications that all but one of the cases had been settled and/or withdrawn. And when I got to California I learned that the single remaining grievance involved an employee in a Warehouse which the Corporation had sold to the Navy in the interim. The Corporation was never again going to operate that Warehouse; therefore, it would never again employ the grievant in that Warehouse. As I presently recall the grievance involved the protest of a disciplinary suspension invoked against the grievant about the seventh hour of a work shift, that was imposed for two charged offenses. And all the grievant was asking for was an hour's pay—that's what it amounted to—and clearance of his record. In that particular his record was a dead file, the whereabouts of which was not known to the Corporation. But the Corporation went to the expense of having two of its representatives go to San Francisco from Detroit, its local representatives being there, and the U.A.W. did exactly the same, because they had a man from the U.A.W. headquarters in Detroit who went to every case. And, of course, they had to share my expenses from Detroit to San Francisco. I remember that I wrote a decision finding that the grievant was responsible for one of the charged violations but not the other. Therefore, I halved the suspension and awarded him a half-hour of back pay. Now the cost of taking the five of us from Detroit to San Francisco was thousands of times greater than the back pay award. (We traveled by train, not by plane.) But both parties stuck to their positions, and they wanted the question resolved, and they got it resolved. Subsequently, both parties pointed to that case many times indicating that it proved how they insisted that the Impartial Umpire machinery was all-important, and every employee had the access to it who wanted it. Later on, of course, that kind of thing would have been washed out in short order. The Company would have cancelled the discipline and paid the small back pay claim to save the time of its executives for bigger things. If not, the Union would have dropped it. (If there was ever a case where the old vaudeville routine of—"pay the \$2.00"—was appropriate, that case was it.)

SOMETHING OCCURS TO ME WHICH I HADN'T THOUGHT OF BEFORE. IF YOU TRAVELED BY TRAIN THOSE DISTANCES THAT WOULD HAVE BEEN A 2[^]-3 DAY TRIP TO THE COAST FROM HERE, SURELY? IT WOULD BE A BIT LESS FROM DETROIT?

Well, most of the time I was in Detroit because I was home only on every second or third weekend.

YOU WOULD HAVE TAKEN SEVERAL BRIEFCASES FULL OF WORK WITH YOU BECAUSE TO TURN OUT 200 A YEAR, YOU'RE WRITING THEM ON THE TRAIN, ARE YOU NOT?

I certainly did. I regularly worked possibly a fifteen-hour day and a seven-day week for three weeks in a row. Then I cut it down to a five-day week every second week and I came home on every other weekend. That was true for most of the 2\ years. (Of course, I wrote decisions on the train trips, both directions, between Detroit and Philadelphia.)

WOULD YOU HEAR GRIEVANCES IN BATCHES?

Oh, yes, and some days we would hear four or five grievances.

AND THEN WRITE IN BATCHES OR WAS IT SPRINKLED ALL THROUGH?

It was intermingled. I was writing and hearing, writing and hearing. I was hearing during the daytime, writing at night and on weekends. And I mean by that, 25-hour weekends.

WAS THERE AN ASSISTANT OR ANYTHING?

Well, yes. I did have an assistant, but not to do any writing. He just drove me places where the hearings were held. While Detroit was the center of my operations, Saginaw, Flint, Pontiac and so forth were the Plant locations where the hearings were held. He would drive me out to those places and take care of some office details. Of course, I also had a secretary. But that's all. Just a three-person office.

DID THE UMPIRE'S OFFICE HAVE TO DO THE ADMINISTRATIVE SCHEDULING AND GETTING HEARING ROOMS, AND SO FORTH, OR DID THE PARTIES DO THAT?

Yes and no. The hearings were almost all held, at first, at the plants. Later on the Union felt that they should be held in more impartial surroundings. So we started scheduling them in hotels close to the plants. At that point my secretary took over the administration details of setting up hotel schedules.

PARDON A RATHER ABRUPT...CAN WE DO THE SAME THING RIGHT NOW FOR THE HOSEIERY SITUATION? WHERE WERE THEY HELD?

Mostly in Philadelphia. My initial hosiery hearings were all held at the YMCA up at "A" Street and Allegheny Avenue. We would have perhaps a dozen persons there from each side, and we might have a three- or four-day schedule of hearings covering some fifteen cases.

DID THE PARTIES PAY FOR THAT HEARING ROOM OR NOT?

No, the "Y" made that available for nothing, and the parties made an annual contribution to that organization.

PARDON THE INTERRUPTION. NOW YOU WERE AT GENERAL MOTORS AND I TALKED ABOUT AN ASSISTANT AND ADMINISTRATIVE DETAIL.

The assistant did the driving for me, but he did not function like Rich Bloch presently serves as assistant for Arthur Stark at G.M. That did not occur until later on with Nate Feinsinger. I don't believe Ralph Seward, Gabriel Alexander or Saul Wallen had an assistant as Bloch serves now. George Taylor certainly needed one when he was there. And I surely needed one. It was beyond imagination that he and I accomplished the job, as I think back on it.

WELL, I'M FRANKLY APPALLED. THE QUANTITY OF WORK IS...A KILLER.

And, of course, it meant that I did not see part of the growing up of my son. I have always felt sorry about that, but it was the position that launched me into full-time arbitration. Now, one of the questions you noted in the outline you gave me was, "When did I decide on arbitration as a career?" I thought of arbitration, initially, merely as an income producer and, hopefully, as a developer of my expertise in the field of labor relations...

A BROADER KIND OF THING?

Yes. From '37, until I went to General Motors I did not think of it as a career, even though at G.M. it constituted my total income. My University salary, of course, ceased completely after the first week of December, 1941.

YOU DID NO, WHAT WE WOULD NOW CALL, AD HOC WORK IN THE TIME WHEN YOU WERE WITH GENERAL MOTORS?

No. In fact, in the middle of my General Motors experience I detected an unhappy feeling with my decisions on the part of the Corporation so I asked to be released from the position at the end of my first year. The Corporation seemed to accept my request with alacrity. The Union did not. Thereafter they unsuccessfully tried to agree upon my successor. They asked me to return. In the interim period I served with Syl Garrett, in the capacity of Vice-Chairman of the Third Regional War Labor Board here in Philadelphia, which Syl served as Chairman. I served on a salary basis for two to three months. When I returned to the G.M.-U.A.W. Umpireship, the War Labor Board asked if I would continue to serve as Vice-Chairman in Philadelphia, along with another man, and I did. The Corporation said it would agree to such an arrangement provided that I would do it without compensation. They did not want me to receive compensation from any other employer! However, I was only able to give an occasional day to the regional W.L.B. work because the G.M.-U.A.W. Umpire schedule continued as it had been. On the weekends I returned home I extended my stay through the succeeding Monday and served as the W.L.B. Vice-Chairman on each such Monday. I did this at that time probably every other week. In the last year or so I was on the G.M. job I received additional allowances from G.M. and the U.A.W. for travel expenses, which made the Umpireship a little more financially palatable. The second and final time I left the Umpireship was because of the Union's discomfort over a major decision. In fact, the two major jobs that I have held in arbitration--the G.M.-U.A.W. and the Hosiery Industry--both folded over the same basic problem; namely, the support of the discharges of the leaders and directors of wildcat work stoppages. The principle that I have adhered to, and followed George Taylor for many years, i.e., that "starters" or "leaders" of wildcat strikes who were discharged suffered a proper "for cause" penalty, was the reason for both of those positions folding on me.

Let me just go ahead with these historical notes. In '44 I served the last half of the year on the Appeals and Review Committee of the National War Labor Board in Washington, and did no arbitration.

But starting in late '44 the Pull fashioned Hosiery Manufacturers and the American Federation of Hosiery Workers asked me to become the Impartial Chairman in the organized full-fashioned hosiery industry to succeed the man who had succeeded Thomas Kennedy—and I took it then.

JUST FOR FUN, NOW, WHO WAS THAT?

Thomas Kennedy was succeeded by a Temple University professor, W. Roy Buckwalter (a former Academy member) for one year. Then in 1945 I had what, for me, was a very light caseload, around 50 decisions. In '46 my figures show approximately 75 hosiery cases that I heard and decided, plus a lot of the SWDs which I have not included in my statistics. Then, in '47, B. F. Goodrich had its first Agreement with the Rubber Workers, and they asked me to come out as their Arbitrator. I didn't assist them in any way in setting up the arbitration machinery, but my decisions in the three years I was there did establish a lot of the principles which, I have been told, were followed later on by succeeding arbitrators. Ben Aaron was my immediate successor.

I WAS NOT AWARE OF THAT.

But when I found that the combination of arbitration positions like the hosiery job and B. F. Goodrich, plus ad hoc, could be carried by one arbitrator (my rate was then \$100 a day), I determined that the potential income was far and above what I could have made even as a University Professor. So it was about that time that I thought I would really give arbitration a try as a profession, and see if I could function as an arbitrator on a full-time basis. At the same time I indicated to the University administration that I would not be returning from my leave of absence of late 1941 to serve as the G.M.-U.A.W. Umpire.

I UNDERSTAND VERY WELL BECAUSE THE SAME THING HAPPENED TO ME IN MUCH LATER YEARS.

I found that my acceptability was growing, and that I had almost as many cases as I could handle.

IT PRACTICALLY MAKES THE DECISION FOR YOU.

Yes, that's right. I certainly must admit I backed into the field, but then the field itself made the decision for me, and from '47 on I have intended to, and I have, carried it on as a full-time occupation. My gross income has taken upward steps which I can not account for solely as a consequence of my increases in per diem fee. Each year, since 1945, with minor exceptions, my gross income has risen slightly above that of the prior year. There have been two major upward plateaus I have reached so that for the last eight years my income has fluctuated within two or three percent of the top level I have reached. And, of course, I can't be sure that the last year's income is the top, and that's why it's so hard to agree to the idea, as my wife urges, to let go and retire.

PARDON ME, WHILE YOU'RE ON THAT--WOULD THIS STEP-INCREMENTS IN YOUR INCOME, HAVE BEEN TRUE ALSO DURING YEARS WHEN IT WAS A TOTAL SALARY INCOME?

No. I have only had one period of time, Mickey, since I began arbitrating, that I have had only one arbitration retainer--that was during the time I held the General Motors and U.A.W. Umpireship. All the rest of the time I've had retainers plus ad hoc income. For instance, at the moment, and since 1959, I have been the Impartial Chairman in the Ladies' Garment Industry for Eastern Pennsylvania and South Jersey, on a retainer shared in by the Union and two Associations. That has been my "anchor to windward." In '61, the Philadelphia market for the Men's Clothing Industry also placed me under retainer (when Bill Simkin left for the F.M.C.S. Directorship), and those two were "anchors to windward." I had plenty of time for ad hoc cases, almost as much as I wanted to accept. And those combinations, adding to the ad hoc work, have kept pushing my gross income up to the height I am now reluctant to surrender. Men's Clothing folded for me a year ago, but my ad hoc work seemed to fill the gap completely, and I have not experienced any drop off in my gross income.

THAT'S A COMFORTING FEELING, ISN'T IT? WHEN YOU CAN SENSE THAT YOU HAVE SOME CONTROL ON THE VALVE AS TO THE VOLUME OF OUTSIDE WORK THAT YOU WOULD DO.

And in connection with the regular retainers for continuing relationships, I might say that as my biographical sketch will indicate to you there have been some breaks in that, but from 1940-41 until '59 I always had what I considered a kind of retainer. But perhaps in the Rubber Industry you would consider it something less, i.e., a guarantee rather than a retainer. If they did not use me a certain number of times in a given year they would make up the income to an agreed-upon figure at the end of the year. That covered all three companies--Goodrich, U.S. and Goodyear--which extended over a period of 12 years. Then in the Clothing Industry there has been a retainer in both men's and women's. The men's ceased and women's has continued, although it has expanded because I am now the Impartial Chairman not only for the Philadelphia market but also for the South Jersey and the Eastern Pennsylvania markets. Each of those carries a retainer. I am also on panels, like you probably are, for the United States Postal Service and its Unions, and Greyhound Lines, Inc. and its Joint Council Union. Both the Postal Service and Greyhound Connections, unfortunately, require travel, and to that extent they are not as attractive as my "close-to-home" ad hoc cases, but they do have an attractive consistency. I feel I had my fill of "living out of a suitcase" between 1941 and 1959-

THE GARMENT POSITIONS DO NOT, AT LEAST NOT MUCH, I GUESS?

No, just short automobile drives within a hundred miles of Philadelphia.

IS IT ALL RIGHT HERE?

It's either right here, Southern Jersey within an hour, or in Eastern Pennsylvania within two hours at the outside. And that's a drive which my son now makes with me. He drives me and participates in the discussion, with me, and writes some tentative opinions at my suggestion, and under my direction. In the Postal Service and Greyhound cases there are transcripts, there are posthearing briefs, and occasionally reply briefs. So these clients are the kind that an assistant can help you in, as my son does. But these are of recent vintage. In all the other relationships that I have mentioned, in hosiery, textiles, General Motors, in my 12 years or so in the Rubber Industry, and in most of my ad hoc cases (I can't say all the ad hoc cases) there have been no transcripts. I would say that, excluding my present Postal Service and Greyhound work, I do not have a reporter present in more than one out of ten cases. My note-taking is very copious for that reason. That was my training. I took notes--most detailed notes--from the very beginning. For a full day of hearing I take between 50 and 60 pages of notes.

YOU DON'T PEEL THE ABSENCE OF A TRANSCRIPT IS ANY DRAWBACK?

Well, I know it slows down the hearing. Yes, because I have to occasionally say to the parties, "one moment please," or something of that sort, to hold them back so that I can get a complete thought down in my notes. I do not attempt, of course, to record all that they say, but I do try to summarize the testimony as we go along.

PRETTY CLOSELY?

Yes, perhaps too closely. When it comes to closing statements I try to get almost every word because that's where they advance their arguments with which I want to be thoroughly cognizant. But that has been my training so I just know that if there's a transcript I'm going to get home earlier. If there's no transcript, I have my normal business day.

I SUPPOSE YOU'VE DEVELOPED YOUR OWN PRIVATE--NOT SHORTHAND SYSTEM-- BUT SOME KIND OF SQUIGGLES THAT ARE MEANINGFUL TO YOU.

Yes, and my son cannot read them. That's correct. No one can read them.

I DO THE SAME THING. GO AHEAD, I'M SORRY.

I was going to say that from the standpoint of number of cases-- I don't know where I left off earlier--but late in 1947 I took on B. F. Goodrich and as a consequence, what would have been a slight fall-off in '47 still maintained itself around 100; '49 and '50 it went up to 125 or so. In '50 I resigned from the B. F. Goodrich position and I went down to about 80. But then I took on U. S. Rubber in late '51, and in '52 it went up to 140; in '53 to 100; '54, 100; '55, around 110 (now that was the time Bill Simkin and I took on the Goodyear together), and in '56 and '57 I wrote 180

decisions per year. In '58 it went down to 150 or so, and then in '59 I made the mistake of accepting the great honor of being the President of the National Academy.

THAT'S WHAT I WAS LOOKING TO SEE--WHICH YEAR. I WANTED TO SEE WHAT THE DATE WAS.

My caseload dropped off to 120.

OH, LORD, I HOPE...

But then I increased my per diem fee, maybe because I had been President of the National Academy; I don't know why I did it, but I did, and my caseload fell off a bit to around 100 for '61 and '62.

WOULD YOU ATTRIBUTE ANY PART OF THE FALL-OFF TO THE CHANGE IN YOUR FEE?

I think so, particularly here in the AAA cases. And I just increased my rate again on January 1 ('78), and I've had no AAA cases yet this year. Of course, it's a very short time but I have cases that were set up in '77 and they are still ahead on my hearing schedule. However, I expect an increase in time. For the last six months I know I've been getting some cases because of the illness of some of the Philadelphia area Arbitrators, and possibly because my most recent per diem increase was not as great as others have been reported to be. But, anyway, in '63 I went up to around 120; in '64, 150; '65, 110; '66, 140; and then the largest number of cases I've had since General Motors, 190 decisions in 1967. In '68, 120; in '69, 140; 1970, 125; 1971, 130; 1972, 140; 1973, 130; '74, 155; '75, 140; '76, 135 and last year, 135-

From about 1963 until this year I have written additional decisions that are simply single-page form decisions, covering companies that have gotten into arrearages in contributions to the Health and Welfare Benefit Funds in the Men's and Women's Clothing Industries. I receive a letter notification of the arrearage from the Union, and my secretary, at my direction, sends a letter, over my signature, directing the Company to make up its arrearages. My secretary checks with the Union auditors ten days later and if the arrearage still exists I issue a one-page decision (patterned after one written by Taylor and Simkin in 1947), directing the Company to pay the arrearages on anything about which there is no doubt. If there is any doubt, they are told to inform my office so that a hearing can be held and a definitive decision be issued only as respects the doubtful items. Those "Letter Decisions" go out in ranges anywhere from twenty the first year I served in the Clothing Industry to as many as 150 or more as it is now. Because the funds are in a sense covered by ERISA, the Union has to take all possible steps to keep the Companies current in contributions, so I do have a great many of them now. I have many cases that require the issuance of as much as 10-page decisions directing that companies satisfy these arrearages, and why. Several have been appealed to court and have been upheld.

THESE THINGS COME UP BECAUSE OF ACTUAL DISPUTES AS TO LIABILITY FOR THE PAYMENTS, OR SOMETIMES THE COMPANY JUST DOESN'T HAVE THE MONEY?

Both, but in most cases the cases are caused by the Companies' pressing needs to use the contribution monies for working capital.

I SEE.

Under the contract the companies are required to pay a certain percentage of their payroll into these Benefit Funds which are jointly administered by the Associations and the Union, and I serve as one of the trustees of the Funds. It is necessary that these Funds be kept current because if not the companies may use the money to pay bills, wages, Union dues, taxes, etc. A great many of the companies do use the money for working capital as they are heading for bankruptcy. The Union gets a decision from me to try to get to the "head of the line" of creditors if the Company fails. If the Company is an independent, I.e., not an Association member, I must charge them separately for my services. Then I end up with an unpaid "Accounts Receivable" and, finally, a creditor at the "end of the line" of a bankrupt Company. I have received many notifications of bankruptcies from a multitude of trustees but I've never collected a dollar from any of them. I, of course, have other kinds of "accounts receivable." That's the second major difficulty I find in the profession—"unpaid accounts receivable." I don't know why I attract "bad" business, but I would estimate that I have approximately \$50,000 of unpaid accounts—not just from the clothing industry, though that is a substantial part of it—that are from one year to forty years old.

THAT'S TOTAL? NOT FOR JUST ONE YEAR?

Yes, that's my total for all years.

I notice that one of the points in the outline covers lawyers and their presence in arbitration proceedings. I would say that in the early years of my experience I had no lawyers present in grievance arbitration—none at all--that starts with General Motors and extend up through Rubber. There was one lawyer present at the General Motors' hearings. They had a man present from the Legal Department, but he simply attended without participating. However, if anybody from the Corporation or the U.A.W. would raise a question that the Corporation felt required a legal opinion they asked him. He didn't proffer any legal opinion unless requested to do so.

ON THE RECORD? OR THEY WENT OFF AND CAUCUSED?

They went off and caucused on occasion, but usually did not include him in their presentations, or ask him if their presentations were sufficiently complete. The Labor Relations Department representatives "ran the show"; the lawyer was present largely as an observer. But he played an off-scene part that was important to the functioning of the Impartial Umpire's office as an effective instrument in

sound labor-management relationships, i.e., he enabled me, as did his U.A.W. counterpart, to be aware of the changes in the general feelings of the parties toward the Umpire machinery and my person as the Umpire. I learned this approach from George Taylor. I cultivated my contact with the one person from each side, as George Taylor had done, to keep my hand on the pulse of the parties' reactions to the Umpire machinery in general and to me, in particular, as the Umpire. George Taylor resigned at the end of 19¹, so he had no need to use these personal contacts for this reason. I did, twice; early in 19³ when the Corporation became disenchanted with some of my decisions, and in mid-19⁴ when the U.A.W. decided that it was impossible to stomach my decision that sustained the discharge of six Local officials who had led and directed a four-day wildcat strike involving 14,000 employees.

COULD WE SPEAK FOR A MOMENT ABOUT SOME OF THE ATTITUDES IN YOUR EARLY HEARING DAYS? WERE THEY FRIENDLY? TENSE? FISTFIGHTS? WHAT KIND OF THINGS WENT ON? OR HAD GEORGE TAYLOR ALREADY TONED THIS THING DOWN IN SUCH A WAY AS TO AVOID SUCH HAPPENINGS?

I would say he had in the General Motors-U.A.W. relationship, but particularly in Hosiery. The relationships in hosiery between the top officers of the Union, the top officers of the Association and the Impartial Chairman, were excellent. When I took over as the Hosiery Impartial Chairman I had some of the people from the Association and the Union, with their wives, come to our home for an evening together at least once a year--just as George Taylor had done.. When we would go on hosiery cases to New England, Northern Jersey, etc., we would travel together in somebody's car (Management, Labor and the Chairman), and we would stay at the same motel. We would have drinks and dinner together and maybe a "bull session." It was a very close relationship. It is so, again, in the Ladies' Clothing Industry. But in between, at General Motors and in the Rubber Industry, they treated the Arbitrator in a "hands off" manner--they left me strictly alone. When I went to a hotel after hearings I was all by myself. I had absolutely no social life with any of the parties in Detroit or Akron.

THAT'S PART OF THE LONELINESS OF THE LONG-DISTANCE ARBITRATOR. ALLAN, IN THOSE DAYS WHEN YOU WERE TRAVELING, EATING, DRINKING, FEELING FREE TO HAVE SOME KIND OF CONTACT WITH THE HOSIERY PEOPLE OUTSIDE THE HEARING ROOM, SUPPOSE YOU HAD A CASE COMING UP IN MASSACHUSETTS AND THE ASSOCIATION MAN GOT SICK AND WASN'T GOING TO GO, WOULD YOU STILL DRIVE WITH THE UNION MAN ALONE? WOULD YOU HAVE DINNER WITH HIM?

If the Association representative scheduled for the trip could not attend, there would be a replacement for him from the Association's Philadelphia Office. I do not recall ever traveling with only one party in any Association case.

MY QUESTION WOULDN'T HAPPEN?

I recall it happening only once in a Southern case, but I wrote a letter to the two companies involved explaining that I would hire

a car and they asked me not to go to that expense. While I did not know them they urged that I come with the Union man, Andrew Janaskie, who was going to drive and handle both cases for the Union. That's the only case I recall ever having such a question arise. I've had other troublesome things happen to me as an Arbitrator.

EVER THREATENED?

Yes, I've been threatened physically twice and, financially once, since I've been in arbitration. Once in a General Motors case I sustained the discharge of an employee in the New York area for making personal use of plexiglass that was intended for use in the building of plane turrets. He used it to fashion small hearts and crosses for jewelry. An FBI agent had attended the hearing to testify as to the value of the plexiglass to the war effort, the care taken to keep control of every ounce of it, and the procedure used to track down the employee as the culprit responsible for the disappearance of several pounds of it. Several months after I sustained the discharge I was at a New York hotel holding other hearings when I was called out to take a telephone call from a man who would not identify himself, but who told me I had better meet him at lunchtime if I valued my health. I reported the incident to the Corporation and the U.A.W. men at the hearing, and both parties immediately identified the man as the "plexiglass heart" man. For the rest of my two-day stay in New York the two biggest U.A.W. and General Motors men escorted me to meals, to and from my hotel room, and to my railroad seat until my train left for Philadelphia.

YOU NEVER HEARD ANYMORE REPERCUSSIONS?

Never. The other physical-threat case was of more recent vintage, four or five years ago, in which the Union shall be unknown. It happened in Southern Jersey. I wrote a decision denying the Union's request to jettison a 27-year past practice in the middle of the contract. An International Representative, who was not at the hearing, but who had been the preceding International Representative at the plant involved, telephoned me after receiving the decision and berated me at great length. Of course, like all arbitrators, I've had deprecating letters but this was a lot worse. After telling me off in no uncertain terms for several minutes, he said something to the effect that I had the G..D.. nerve to send a bill for \$225.00 for my services, and then added: "The only way that you're going to get paid is for you to meet me and a couple of my buddies beside some dark river some midnight and we'll see that you're taken care of the way you should be." I dropped out of that Industry from that date onward.

DID YOU PURSUE THAT AT ALL? WITH HIGHER PEOPLE?

No, I mentioned it to a lawyer about a year later who handles cases for the same Union, in a different area. He asked that I record the incident in writing, but I decided not to do so. The bill, of course, has gone unpaid. It's another one of my "accounts un-receivable."

The other case, which endangered me financially rather than physically, was quite well known to many Academy members who aided my Counsel in preparing my defense. It arose out of a July 19, 1961 Decision which I wrote directing Seidel Fashions, Inc. (under contract with the International Ladies' Garment Workers' Union) to move back its high-priced blouse operations from a recently established South Carolina plant to the Philadelphia Plant, on which it still held a lease. Perhaps I might give you some background on it, note how it concerned me and, using my file, tell you of the outcome of the case.

Seidel Fashions, Inc. had resigned in 1960 from the Fashion Apparel Manufacturers' Association, which had an Agreement with the International Ladies' Garment Workers' Union that was binding on all of the Association's members, and continued to be binding for its duration even if a member resigned from the Association. Part of the Agreement, the wording of which was placed therein long before I became the Arbitrator, provided that no member "during the life of (the) Agreement shall move its factory...outside of the City of Philadelphia." The provision of the Agreement which named me as Impartial Chairman provided that, to discourage Agreement violations "the Impartial Chairman shall, in all cases of violations... impose such terms as will remedy any advantages sought to be secured by the violations...(Underlining added)." The facts proved conclusively that the Company had closed down its Philadelphia operations during the pendency of the Agreement and had moved its higher-priced blouse manufacturing operations (at the expense of 225 Philadelphia jobs) to the South Carolina location where it had set up a lower-priced blouse manufacturing operation several years earlier. Under the responsibilities placed upon me by the cited Agreement provisions I found that the Company's action violated the Agreement, that its violation had enabled it to secure some \$78,000.00 in financial advantages arising out of its failure to make proper Health and Welfare contributions, and for failure to pay proper Union dues, both from October 31, 1960. I directed that it pay the sum of \$78,000.00 to the Union for proper credit to the 225 discharged employees' accounts. Additionally, I directed the Company to return its higher-priced blouse manufacturing operations to Philadelphia for the duration of the then-existing Agreement, with the provision that if it did not do so, additional penalties of some \$350,00 were to be paid by the Company in a lump sum to the Union for Health and Welfare contributions (which included Severance Pay) and for Union dues, for a period of 20 future years. The penalty was discounted, at six percent per year, to give the Company credit for advance payment.

The Company did not abide by my Decision but entered suit against the Association of which it had been a member, the Union, the Union President, and me, as the Impartial Chairman. The suit was grounded on two complaints: (1) That the named defendants had brought into being an Agreement provision (prohibiting movement of Plant operations outside of Philadelphia) in violation of Sections 1 and 2 of the Sherman Anti-Trust Act; and (2) The Defendants had conspired to bring into being an arbitration decision that would cause the Company irreparable financial harm. (In the interim the matter was considered by the National Labor Relations Board and its findings placed upon the Company a financial obligation almost three times the size of the penalties I assessed for its failure to abide by my Decision.)

Since the Company's suit charged a violation of the Sherman Anti-Trust Act, and involved triple damage claims on two complaints (the Company had a net worth of approximately \$750,000.00) I found myself a defendant in a \$4,500,000.00 damage claim, a bit startling for me to say the least.

After lengthy court litigation I was separated as a defendant in the Company's suit, and the suit was eventually dismissed as to me. I was ably assisted by my lawyer, fellow Academy member Berthold W. Levy, with "amicus curie" help from a number of Academy members, with our then-President Benjamin Aaron in the forefront. (Later the court action was dismissed as to the Association, the Company declared bankruptcy because of its inability to meet the financial penalties imposed by the National Labor Relations Board, and all court actions were dropped.)

The court's action in my case included the following findings:

"A judge cannot be sued civilly for any act which he does in the performance of his duties, even if the act was deliberate and malicious. [Citations.] It has been said that to expose civil liability on judges in the performance of their civil duties would produce utter chaos in the judicial system. [Citations.] This rule of immunity extends to quasi-judicial officials and those so closely associated with the judicial process that their protection from harassment is necessary in order to protect the judicial process. [Citations.] It has been held that an arbitrator is not liable in a civil action for damages for an award alleged to have been made by him fraudulently and corruptly. [Citations.]

"An arbitrator is a quasi-judicial officer, under our laws, exercising judicial functions. There is as much reason in this case for protecting and insuring his impartiality, independence, and freedom from undue influences, as in the case of a judge or juror. The same considerations of public policy apply, and we are award of opinion that the same immunity extends to him. (Hocsac Tunnel Dock & Elevator Co. v. O'Brien, 137 Mass. 424 [1884], at Page 426.)"

DID THAT BECOME ANOTHER "ACCOUNTS RECEIVABLE?"

Oh, yes, that was an accounts receivable, plus the fact that I had a legal fee to meet.

YOU MENTIONED HOW YOU STEPPED OUT OF THE G.M.-U.A.W. UMPIRESHIP. HOW ABOUT THE HOSIERY IMPARTIAL CHAIRMANSHIP AND OTHER SUBSEQUENT CONTINUING ARBITRATIONS LIKE IN THE RUBBER INDUSTRY?

In the Hosiery Industry Impartial Chairmanship my demise began with a city-wide wildcat strike. The Manufacturers' Association filed with me a request for a financial penalty against the strikers of the type initially fashioned by George Taylor. He established a principle of asserting financial penalties in wildcat strikes in

multiple plants in which it was impossible to prove strike leadership in some 20 to 25 plants at one time. George Taylor evolved the principle of finding, in his decisions on wildcats, that for each day the employees engaged in a "wildcat strike," he or she would be penalized with the loss of two days of pay, which would then be contributed to two charities, one chosen by the Association and the other by the Union. So if they were out on a "wildcat" for two days, they would owe to the charities, to be chosen by the parties, four days of wages. (Paid through payroll deductions assessed over a sufficient period of time to enable the employees to receive the proper minimum wages under the Federal Wage and Hour Law.)

In a situation that occurred in '51 I indicated my intent to follow that approach if the Association insisted in filing a case that requested a penalty for a four-day "wildcat" in all of the Union, not to do so because I was persuaded that the very strained relationships then existing over the closing of some of the Philadelphia Plants would either cause a collapse of the Impartial Chairmanship machinery—and I didn't think that would occur—or Allan Dash would be finished as the Impartial Chairman. I think perhaps it was personal, but I did my level best and said to the Association representatives that they should think "five" times instead of "twice," before filing the request for a hearing on the "wildcat."

TO WHOM WERE YOU SPEAKING?

I was talking to both sides at a luncheon. At the end, the Association President said, "It's your job as Impartial Chairman to make your findings, and it's our job to replace you if it means the end of you." So I wrote the decision exactly the way I said I would and, as I surmised would happen, the International President and Vice President and the Philadelphia Local President came to see me in the Lewis Tower Building Office I shared with George Taylor and Bill Simkin from 1945 to 1959. That's where it happened, and I was out!

As far as the Rubber Industry arbitration is concerned, I left the Goodrich job in 19⁴⁹ because I had too much work, the U. S. Rubber job in 1953 because I detected the "handwriting on the wall" that was going to result in a request for my resignation, and the Goodyear job (which I shared with Bill Simkin) because I was fired (for Union political reasons) in 1959— Bill Simkin had the same thing happen to him at the same time.

In one other relationship in which I served as the continuing Arbitrator for somewhat over five years (not on a retainer) I was told by the Industrial Relations Manager that a number of my recent decisions may well have placed his job in jeopardy, and that I would probably be hearing from him. I did, in the form of a letter that he had insisted, and the Union had agreed, to follow their Agreement provision and request a new PMCS list from which to select a new Arbitrator. Two years later the Industrial Relations Manager retired, and shortly thereafter wrote to me to the effect that he

was going to try to get established as an Arbitrator in Florida. He asked me if he could use my name as an Arbitrator reference and, believe it or not, I said "Yes." He wrote again, later, and said he had written 10 decisions in five months--all that he wanted to handle.

WHEN THESE DISAGREEMENTS CAME UP I SUPPOSE YOU ABIDED BY THE PRACTICALLY UNIVERSAL UNDERSTANDING, YOU DON'T RESIST, YOU LEAVE?

Yes, I just leave. Even in an ad hoc case I have resigned sitting at the arbitration table, and I have not charged the parties. In these situations, where one side or the other indicates that they lack confidence, for one reason or another, in my impartiality, I have stepped out, and that has been it. I have not always waived my expenses but I have waived my fee.

THAT, TOO, OF COURSE, IS PRACTICALLY A UNIVERSAL ARBITRAL RESPONSE TO THAT DEVELOPMENT AND INDICATES, AGAIN, THE IMPROPER USE OF THE WORD "PERMANENT" IN THESE SITUATIONS.

I always think of that word "permanent" in mental quotes when I say it in relation to arbitration.

A question was asked in the outline as to the subject matter of my decisions. I would say in the sections of the Hosiery Industry that I was initially involved in, outside of the very first wage case I mentioned, discipline was primarily the subject matter. I can't particularly separate the other Hosiery cases by types but certainly layoffs and recalls were important because the Industry was losing employers and employees. I had a considerable number of those cases as my statistics show. And then various aspects of seniority, "wildcats," and "slowdowns" were prevalent in the Hosiery industry, with a smattering of production problems, promotions, overtime, etc. Piece rates on new machinery, or for new attachments on old machinery, also resulted in a meaningful number of decisions.

At General Motors I had the full gauntlet of issues. But I particularly recall one of the most difficult issues there involved promotions. They had one of those ambiguous provisions, that did not change for many, many years, and may still be in existence, which provided that "where ability, merit, and capacity are equal promotion shall be made on the basis of seniority." Now putting three words like "ability," "merit," and "capacity" in a single provision, gave no end of trouble. George Taylor wrestled with those words, trying to give them some kind of definition, some kind of objective measurements. I tried, too. Neither of us succeeded, and I don't know if Ralph Seward (my successor) ever solved the problems. But that kind of provision caused a great many cases there. In General Motors, the Impartial Umpire had nothing to do with standards. They were specifically excluded from his jurisdiction. The speed of the assembly line was the Corporation's decision. The loading of the line was the Corporation's decision. The Umpire had no jurisdiction over any such matter; if there were disagreements over such issues, strikes and/or lockouts could be used to settle them.

SAFETY QUESTIONS, ALLAN?

Yes, they could come to the Impartial Chairman in Hosiery and the Impartial Umpire at G.M. But, when I got into the Rubber Industry I found standards the dominant issue I was asked to resolve. Everything there seemed to be based on standards; the Arbitrator was even on a kind of incentive standard. My rate, at least at the start of my 13 years in that Industry, was determined by the number of cases I had in a day. If I had five, the first was paid for at a certain rate, the second was slightly lower, the third lower still, and so forth. This arrangement applied to the hearing days, not to the writing days.

THAT'S CONTRARY TO THE WHOLE CONCEPT OF ARBITRATOR'S FEES.

Yes, but that was nevertheless true In the first two of the Rubber Industry set-ups in which I served. It was not true of the last one. The last was strictly on a time basis, and if I got finished a case in part of a hearing day, I charged for the full day. And if we had a second and a third case in the same hearing day I still just charged for that day. But it was not a case of turning out the hearings and decision writing on any Incentive basis.

WELL NOW, ALLAN, DID THEY HAVE A RATE MAN STANDING OVER YOU OR DID THEY TRUST YOU TO KEEP YOUR OWN TIME?

Yes, they just trusted me.

WAS THERE A STANDARD FOR WRITING? PREPARATION AND THAT, TOO?

No, that was also left up to the arbitrator. He was to indicate the number of hours he spent on his writing of each of the cases.

AND IT DIDN'T MATTER WHETHER THEY WERE HOURS ON A RELATIVELY EASY CASE OR HOURS ON ONE OF THOSE CASES THAT JUST CAUSES AGONIZING...?

No, it did not matter. Whatever time the Arbitrator used, he charged for. But the parties expected that the total fee would follow the hearing time, for it was assumed that a case that took a brief time for hearing would take a brief time for writing.

GENERALLY TRUE, BUT NOT ALWAYS.

There was a question raised in the beginning concerning the most difficult kinds of cases. For me these have usually been the standards and piece rate cases, because the Companies have their own processes and procedures for standards and piece rate setting, and in a few short hours they have to acquaint an ad hoc arbitrator with all of the details thereof. On my retainers, of course, I had no such difficulties.

HE MUST BECOME ALMOST AN INSTANT EXPERT?

Yes, that's right, I have never ducked them, but many Arbitrators in Philadelphia will not touch them, and as soon as they learn that a case involves piece rates or standards, they withdraw. Some ask that the AAA or FMCS not place them on panels which will be involved in resolving such issues.

WHAT IF THEY GET ALL THE WAY TO THE HEARING?

Well, I don't know how they handle that, but I know that in my case, if I had started in arbitration right out of undergraduate school, I would have had to resign in such cases. But, as a graduate student, I studied Industrial Management, incentive standards, incentive rate setting, and so forth, and I actually taught such subjects for a year. So the terminology and procedures cause me no qualms.

YOU CAME TO THIS WITH PROBABLY A BETTER GENERAL BACKGROUND IN THE SUBJECT THAN MANY OF THE PEOPLE WHO TESTIFY IN FRONT OF YOU.

That is possibly true. But, there are one or two specialists like Herb Unterberger here in Philadelphia who has been an Industrial Engineer, and who knows all of the details and minutiae of incentive rate and standards setting. [Editor's Note: Dr. S. Herbert Unterberger died in late 1979-3

I HAVE FOUND THAT YOU HAVE TO TALK WITH THOSE PEOPLE WITHIN THE CIRCLE OF THEIR EXPERTISE.

Yes, you're right. But where it's necessary to run a stop watch, take elemental times, and so forth, I have ducked those cases. While I could run a stop watch while I was teaching, you lose your touch for judging speed ratings, i.e., the degree of incentive speed with which observed employees are apparently working. So I've had to use Industrial Management personnel from the University of Pennsylvania in perhaps a half dozen cases over the years, where efficient speed ratings have had to be taken.

WERE YOU DOING THAT, ALLAN, ON YOUR INITIATIVE OR ON THE PARTIES' DEMAND OR REQUEST?

I requested it. '

AND THEY AGREED?

Yes. When George Taylor came back from the Vice-Chairmanship of the War Labor Board, he returned to the University of Pennsylvania. When Bill Simkin came back from his WLB shipbuilding work he came to an office I ran for the Hosiery Impartial Chairmanship in the back part of the floor below which we are now sitting at 1520 Locust Street, Philadelphia. We ran the office strictly for arbitration. Then a year or two later George Taylor came with us and we moved to the Lewis Tower, 15th and Locust Streets, and had a large office there. (George Taylor continued his University connection.) We had three secretaries and a male assistant who served me on production and wage studies in the Hosiery Industry.

DID YOU HAVE A HEARING ROOM THERE?

Yes, we had a room strictly for hearings; in fact, we had the major arbitration office in Philadelphia. This held true from 1947 until 1961. In 1959 George Taylor left us and returned to the University, full time, and had nothing more to do with arbitration except in very rare cases. Bill Simkin continued for two additional years and then became the FMCS Director in 1961. Eli Rock came in with me just before Bill Simkin left.

THAT'S WHEN I FIRST KNEW YOU, I GUESS.

Eli Rock and I ran our office together from 1961 until 1975 when we decided to close down because of increasing expenses and decreasing use of our hearing room. Eli changed his mind and stayed in town. He has no hearing room; just office space. We use hotels and so forth for hearing rooms. I now operate out of my home. When Bill Simkin and I had our office together, and George Taylor came with us, we felt the prestige of his connection with us. With George Taylor gone, Bill Simkin in Tucson, Arizona and I working out of my home, our large office is but a memory, with Eli Rock our sole survivor.

FOR THE YEARS SINCE YOUR G.M.-U.A.W. UMPIRESHIP HAS ALL OF YOUR INCOME BEEN ARBITRATIONAL?

Yes, outside of the brief time at the War Labor Board (July 1944 to May 1945) all of my income since 1942 has been from arbitration--not counting 14 Wage and Hour Committees I chaired in Puerto Rico. For a brief time during the War Labor Board experience my income seemed too uncertain, but when I received the B. F. Goodrich arbitration position to go along with the Hosiery Impartial Chairmanship position, then I decided that I had two anchors to windward, and I could depend on arbitration as a full-time profession.

Now, have I found it a career that I like? Yes, most emphatically! I feel that the constantly changing issues which we must resolve present real challenges. Of course there have been many of the humdrum, run-of-the-mill cases which we all get over and over again, and I do grow weary of that sort of thing. But I have grown much more weary about the traveling to the hearings. My peak traveling was from '42 to '60, that was the General Motors and the Rubber Industry work. All the Rubber Companies have plants on the West Coast so I went out there many times a year. But since 1960 my traveling has been reducing until now it's about 25% of what it was. It wouldn't be even that if it wasn't for the fact that I have accepted appointments on the panels of Greyhound Lines, Inc. and the United States Post Office.

OH, I SEE.

I was in Omaha, Nebraska last week on a Greyhound case. I don't know where I'll go next time. Each Arbitrator takes the case that comes up in the sequence of his name on the Greyhound panel.

In the last several years I have turned down 10 to 20% of my ad hoc requests ; some of them have been with the Union from which I received the physical threat. In fact, I'm seldom asked by that Union anymore because most of the Union officials--at least in the East--know I will not accept.

I'LL ASK THE QUESTION SIMPLY NOT TO LET IT GO UNSPOKEN. YOU DON'T FEEL FREE TO NAME THE UNION?

No, I'd rather not. Now there's a question whether I had anything to do with the theory of "implied limitations" that came to the foreground in the late '50s and early '60s. Well, possibly I had something to do with the publicizing of the theory in my Opinion on the case of Celanese Corporation of America and District 50, which is published at 33 LA 925.

MOST PEOPLE HAVE MEMORIZED THE CITATION OF THAT, I GUESS.

In that Opinion I did analyze 64 published decisions of fellow arbitrators. At that time I had a lot of time on my hands, and I remind you that I was basically trained as a research person. While customarily I do not read what other arbitrators say in their published Opinions, in this case I was the first of 14 Arbitrators already selected to hear 14 cases at Celanese concerning various aspects of constructing a six-or seven-story building, District 50 was contending that the Company should not have contracted out the construction work but should have had it done with its own employees. The building was begun when I got there; I was the first Arbitrator on the scene, and the arbitrability question was raised with me by the Company. Fred O. Blue, Esq., Counsel for the Company, did a marvelous job on his brief. I believe his counterpart for the Union was a Union Area Representative, Tanner, who was not a lawyer. I feel sure he had legal assistance because both men not only cited numerous arbitration decisions, which favored their positions, but also Fred Blue cited a great many court decisions. I wondered about the widely varying conclusions both of the arbitration decisions and the court findings, so I decided to do some research. And when I did, I uncovered the fact that when the question of arbitrability was raised in such cases under Agreements that were silent as to contracting out, the Courts invariably said the issue was not arbitrable. But the arbitrators most often found that the issue was arbitrable because of the "implied limitations" upon the companies' rights to contract out regular work, or maintenance work, if the result would be a significant reduction in employment, weakening of the Union, violation of other Agreement provisions, etc. I ruled that the issue was arbitrable and that I would hear and decide the Tinsmithing case, submitted to me, on its merits. The Union handed copies of my Opinion to the next half dozen arbitrators before whom the Corporation reiterated the non-arbitrability argument, until the Company finally decided that it wasn't going to get any other finding from the remaining arbitrators, and it dropped its non-arbitrability contention to allow the cases to be heard on their merits.

THEY DIDN'T PRESENT THE NON-ARBITRABILITY CONTENTION AFTER THAT?

No. In my case, and in those of the half dozen arbitrators who followed me, they spent two days each time in presenting increasing volumes of citations and arguments on the arbitrability Issue, and then suddenly ceased that approach. I was the first Arbitrator called back to make a finding on the merits of one of the grievances—the Tinsmithing case, as I previously noted. I ruled against the Union because to have accomplished the extensive tinsmithing work required, the Company would have had to hire more Tinsmiths than were available in Narrows, Virginia, and, in addition, would have had to work its own Tinsmiths on double shifts for three or four consecutive months. Each of my succeeding fellow Arbitrators, except one, followed my lead and each found for the Company for varying reasons — not necessarily the same reasons I used. The single exception was an Arbitrator who found (I do not recall the craft involved) that the limited amount of craft work with which his case was concerned could have been done with a very minor overtime schedule for the Company's employees in that craft. Therefore, he ruled against the Company and it had to reimburse its craft employees who had "lost" the work to the employees of an outside contractor. Therefore, though it "won" all the non-arbitrability issues raised by the Company, the Union "lost" all but one of the cases on their merits.

But I will never write such a copious Opinion again on any subject because, as a consequence, I was suddenly an "authority" in the field. I had to make speeches, free of charge, of course, until Scotty Crawford very graciously wrote his paper on the same subject that was given two years later at the Academy's meeting at Pittsburgh, after which he became the "authority" and I retired on my faded laurels. He was followed a few years later by Marcia Greenbaum who brought the subject up-to-date and pushed me into the background where I belonged.*

You next ask, absent a body of precedent in the particular relationship with which you're serving, what attention do you pay to past decisions? Well, in these continuing relationships that I mentioned, like General Motors, I did follow George Taylor to the extent that he had written decisions on particular subjects. Where I had new issues to resolve I plowed ahead on my own on the basis that I felt proper. I suppose I set some new principles because I later saw decisions of my successors, 'Ralph Seward and Gabriel Alexander, and noted they did cite principles which had been established by Taylor and/or Dash. In B. F. Goodrich, of course, I was the first Arbitrator so every decision I wrote established a principle which often made one side or the other shudder, but were often followed by my successors.

*Editor's Note: Academy member Anthony V. Sinicropi "revisited" the "Old Battleground" of subcontracting, as published in the "Proceedings" of the Academy's 32nd Annual Meeting.

WHAT WAS NOT RUBBER'S FIRST AGREEMENT WAS IT?

It was B. F. Goodrich's first.. It was signed, I think, during the War Labor Board days (maybe '44) but it had no formal arbitration procedures at first.

O.K.

To the extent that B. P. Goodrich had arbitration it was on an ad hoc basis originally. That proved faulty both because of the inconsistency in many of the decisions and because the parties were forever having to break in new Arbitrators on the details of their complex standards setting procedures. To solve these problems they agreed to change from ad hoc arbitration and to agree upon a single continuing Arbitrator for the duration of their Agreement. The other large Rubber Companies followed suit, and as far as I know all of them have done so since the late 40s.

You ask about my practice of reading the published awards of other Arbitrators such as in BNA, CCH, etc. I never read them on my own though, on occasion, I read those cited by the parties if I feel the need of differentiating between my case and the cited Awards. My reason for doing this? I feel, this is perhaps old-fashioned, but is nevertheless my feeling, that as a creature of the parties provided for by the parties in their very own Agreement, it is my job to determine what they meant by recording particular terms and provisions in their specific Agreement. Therefore, what other Arbitrators say other parties meant in placing provisions in their Agreements, even though the provisions are identically worded, does not seem to me to be significant in determining what the particular parties before me meant by using such wording. I suggest an illustration might be helpful. Without naming them, two of the top-rated Arbitrators in the Automobile Industry, in the late '40s, interpreted virtually identical provisions of two of the principal companies' Agreements with absolutely opposite results. I subsequently read both of those decisions and I am firmly convinced that both were correct in light of the parties' understandings when they recorded those provisions. Both Arbitrators interpreted what the parties showed evidence of meaning by recording those provisions. I might say that the one Arbitrator who sustained the Company's position kept his position until he decided to relinquish it a number of years later; the other one was terminated posthaste. And both of them have been among the most widely known Arbitrators in the country; unfortunately for our profession, both are deceased.

BUT THAT'S A CLASSIC EXAMPLE, I THINK, ALLAN, OF WHAT YOU SAID. YOU FIND THE SAME LANGUAGE BEING INTERPRETED IN TWO DIFFERENT DIRECTIONS, AND YET THEY'RE BOTH RIGHT.

Absolutely. But the parties don't seem to understand that possibility.

Next, you ask something concerning "the time between the filing of a case and the time that they actually came to arbitration." That has varied dramatically in my experience. In the Hosiery

Industry, as I have previously noted. It was a very quick process; sometimes the very next day, seldom more than a week. I recall one incident in a Northern Jersey Hosiery Plant where I was holding a hearing on a discharge that had happened three or four days earlier. As we were concluding the hearing there was a furor outside the hearing room, loud voices and so forth. We concluded the discharge hearing and five or ten minutes later the Local Union second-in-command walked into the hearing room and said, "I have another grievance to be arbitrated." As I recall, it concerned an employee who ten minutes earlier had returned from a medical leave of absence and insisted on going to work that afternoon. The Company refused in the absence of a medical examination, so the Union Local Officer wanted to file that grievance for hearing while the Impartial Chairman was on the scene. That quickly! No grievance procedure at all!

AND HE DID?

No, I simply said, "You take the issue through the Grievance Procedure and I'll come back again." The International man who was present fully agreed with me, and I never heard anymore about it. They worked it out, of course.

I have recorded some thoughts here in this area. In the Hosiery Impartial Chairmanship it took from two days to two weeks from a happening or event to an arbitration hearing. At General Motors, simply because of the sheer size of the caseload, if the incident happened close to Detroit where my office was located, we'd sometimes get to hearing as soon as a month. But, a large number of the cases around the area covered by the Corporation took as long as six months to get to a hearing, which meant that in discharge cases a fairly large back pay bill could be involved if the discharge was reversed. In Rubber, it was a bit shorter, usually, because the Companies, in the standards cases, were building up a huge liability which they wanted to get out of the way. I would say that the average case there took two to three months to get from grievance recording to arbitration. They had a Grievance Procedure with quite a few steps, but they were very insistent that each step be used fully, and there were time intervals that they required between steps. And it took further time after the grievances were filed with the Arbitrator. Often when they realized that the last step was going to be useless, they would file it with me directly, upon mutual agreement, without utilizing the final step.

When Bill Simkin and I served simultaneously as the Goodyear Arbitrators (he had held the position earlier, returned to it as the senior Arbitrator, and I served as the Associate Arbitrator) we were able to hold hearings within a month of the time the parties filed issues with us. Quite in contrast, the United States Postal Service, on which I serve as a member of the Arbitration Panel maintained by it and its several Unions here in the Northeast portion of the country, take from six to fifteen months from the date of a discharge to the date of the discharge hearing. The panels are made up by areas (Academy members Wayne E. Howard, Vernon W. Jensen, John W. McConnell, Nicholas H. Zumas and I serve for the Eastern Region) usually involve disciplinary suspensions of thirty days or more, and up to discharge. As a consequence we are dealing with back pay

claims of substantial size. By regularizing hearing dates and using more Arbitrators the parties are reducing their backlogs as well as the size of their back pay claims.

In Greyhound it has been considerably slower. I've seldom been on the scene in ten months after a discharge, and sometimes it has been as long as 18 months. While it has improved somewhat recently, in some recent discharge cases if I, as the Chairman of the three-man Board of Arbitration they use, indicate any intent of returning the dischargee to work the two Arbitrators-at-Interest are not reluctant to work out some compromise solution on the amount of back pay to be awarded. This is possible with a three-man Board of Arbitration, but in the United States Postal Service there is no way for a sole Arbitrator to work out anything. He just has to say "yes" or "no," and that's it. The Postal Service tends to be a bit hidebound by the old Governmental Manuals which both parties still follow in practice, even though they're supposed to function now as a private industry designed not to make a profit but to cover costs. I am concerned about what has happened in these latter two situations because I feel that the old hackneyed "Justice delayed is Justice denied" cliché is present here. These discharged personnel often hang around without seeking another job to mitigate their losses, expecting that their cases will be heard shortly, but they may be delayed a year before being arbitrated. Then the Arbitrator asks what the grievant has done toward mitigation and learns he just started to look for a job because he had every expectation that his case would go to arbitration quickly, and he did not want to have to leave another job to return to the Postal Service. These things disturb me, and to a degree I am trying to bring about something in the way of improvements as one man on a large panel. Now maybe that would be a good place to break and we could start talking about how arbitration has changed over the years, in my experience.

I THINK IT WOULD.

Just to finish up this heading: "The Beginnings." I had a feeling in my early years that the informality of many of the relationships, and the parties' presentations to me as their Arbitrator, was extremely advantageous and led to quicker decisions, to less delays. I won't say the results were necessarily more acceptable decisions, but the process was a quicker one, and it was much less expensive than it has recently become. There were many instances in which, through the mediation approach, or through having listened to the two sides at a hearing, I became aware of the fact that they had reduced their areas of difference materially. If it becomes clear that they haven't talked about that reduced area of difference, and that giving them a chance to do so may help to resolve the issue, it often results in doing away with the necessity for writing a decision. You can make a suggestion that they just simply talk on that new area of difference, via a mediation approach, and the Issue can be settled without a decision. I do this quite often now.

DID YOU STAY IN THE ROOM WHEN THE PARTIES WERE TALKING?

Well, in some cases, no, because I did not want to hear what they said to each other in their attempts to get together. But in most instances I have stayed, and the end result has been that they have settled the residual issue. In the old days, when Noble Braden was the top man at the AAA, this approach was discouraged drastically by the AAA. Mr. Braden's approach was that when the parties came to the AAA they had exhausted every possible step under their Agreement to reach a successful conclusion. Since they had not succeeded, he felt, they wanted you as the Arbitrator to make the decision for them, and not to try to get them together through any mediation procedure. "They are separated," he said, "It's your job to write a decision and not your job to try to get them together." George Taylor held a fundamentally different position on this point, and he and Noble Braden had a number of outstanding public discussions expounding upon their varying views. Later on, the AAA shifted its approach. But I remember the first time I had an AAA case in which I tried that mediation technique; I think it was in 19⁵ or 19⁶. It involved a Company and a Union not too far from here, where I had some thirty AAA cases scheduled for hearing over a period of a week. When we started, the Philadelphia AAA representative was with me at the hearing. The parties indicated that their schedule might exceed a week, and I asked them if they had any sequence in mind as far as the grievances were concerned. The Union indicated that it would like to hold the hearings on the grievances on which they felt strongest in their positions, and which were most important to them. The Company said it had no reason to object, so we went ahead. We got through a number of cases the first day--I don't recall how many. But on the afternoon of the second day, the last two cases the Union presented were obviously poor ones--they were real "lemons." I felt for the Union to go forward with cases that were rapidly deteriorating in quality was a waste of everybody's time and the parties' money. So I asked for a sidebar with the head representative for each side, which the AAA representative attended. I said words to the Union to the effect: "If you have presented the cases in order of importance to you, and in sequence of your most meritorious issues, I have the frank feeling that your cases have deteriorated badly this afternoon, and you haven't a ghost of a chance to win the last two." I recommended that the Union have another look at the rest of the cases before "we go forward and waste three more days." The Parties held separate conferences for several hours, during which the AAA representative took the occasion to say to me: "You shouldn't do this. This is not the way we approach it in AAA." I told him this was my training under George Taylor in the Hosiery Industry, and so forth. When the parties finished their sidebars, as I recall it now, they said that they had settled the cases that I had heard for a day and a half, the Company would yield on a few of the remaining cases, the Union would withdraw all of the others, and I would not need to issue any decisions. In a day and a half we wrapped up 30 cases set to take up five days, or more, of hearing. Later I got a call from New York informing me this was not the AAA philosophy of arbitration, and that it was hoped I would not follow such an approach as a usual thing. But I did not change, and if there was any lull in my AAA appointments it was quite temporary. Of course I don't get

many chances to use such an approach on a mass of issues scheduled for consecutive days of hearing, but I still practice the mediation approach if it appears to have a reasonable chance of success, even in individual cases. If the approach is successful, I usually compliment the parties with some comment to the effect: "Well, a case settled by the parties themselves is usually settled better than when it is done by a well-intentioned, impartial, but relatively uninformed outsider." Thank goodness the AAA no longer discourages its Arbitrators' mediation efforts..

YOU HAVE SOME SUCH CASES, SO DO I. BUT I'M NOT EVEN SURE THAT THAT'S TECHNICALLY MEDIATION. YOU MUST HAVE SOME THE OTHER WAY, TOO, EVERY ONCE IN A WHILE?

Yes, sometimes I have been able to get a Union representative to accept a partial settlement of a grievance, or even to withdraw a grievance entirely.

I DON'T KNOW THAT IT'S MEDIATION. ARE YOU JUST KIND OF SAYING THAT YOUR JUDGMENT INDICATES THAT IF THAT'S ALL THE FACTS, THERE IS NO SENSE IN PUTTING ANY MORE IN...I DON'T UNDERSTAND?

Well, let me illustrate. We hear cases on discharges. The Company starts. It presents its case and you have a gut feeling, even before the Union Rep. opens his mouth, that the Company has no case. And the Union then makes it clear the Company does not have a case by what it says in its opening statement. I sometimes make a suggestion in such a situation that we get together off the record, and I do stay with them where it's clear that they want me to do that, and they seem to suggest they have dropped the idea that a decision will be needed. Otherwise I don't stay around because I don't want to hear what they say to each other with any thought that they're only going to arbitrate their last differences of opinion and not go back to where they were at the start.

Now, as far as how arbitration has changed over the years, there has certainly been much written about that. As far as I am concerned, my reactions as an old "Taylor-made" arbitrator, as many say (and I surely say that boastfully because I yield to no one in my fond memories, respect and esteem for George Taylor), I find much to be concerned about in the changes that have occurred in arbitration.

GOOD LORD, YOU KNEW HIM AS CLOSELY AND AS WELL AS ANYBODY.

I suspect so. I know he frowned a great deal on what has been happening to arbitration in the last ten years or so, as he heard the newer happenings from us. He just squelched much of the new formalities in the few cases he had in his last few years. But the formality, the transcripts, the presence of lawyers in even minor cases in some relationships, and the examination, cross-examination, redirect and recross examination of witnesses, objections to questions and to exhibits, concerned him, as it does me to an even greater extent. The persons who used to handle the arbitration cases

in the old relationships, and who used to sit near the head of the arbitration table, have been shoved down the table, and their places have been taken by lawyers for both sides, seated before the high International Union representatives for the Union, and the Corporate Officials for Management. These have taken over the prominent seats at the arbitration table, and the ones who handled the cases in the first one, two, or three steps of the Grievance Procedure have been pushed down to the end. I have had the feeling, in recent years, that it has become increasingly difficult to get to many of the facts of the kind I feel are necessary for my resolution of a case, because of the blocks the lawyer advocates, and sometimes by blocks fashioned by parties who fancy they can act as advocate "Counsel," throw up in the form of objections to this or that kind of examination or cross-examination questions of a witness, objections to the types of evidence offered, lectures to the Arbitrator concerning rules of evidence, and all that sort of thing. To my old fashioned approach, such tactics lose sight completely of what we used to refer to as the "therapeutic value" of a lot of what went on at the arbitration proceedings. The individuals who are involved in presenting cases in arbitration today too often forget that, after the arbitrator leaves, the parties must continue to live together in their day-to-day relationships which can be disturbed no end by the way the case, in arbitration, is handled by the advocates; and the lawyers and the people who are at the front of the arbitration table in too many cases forget the fact that arbitration is not litigation of adversaries forever destined to live apart after the proceedings are complete.

WHICH THE LAWYERS OFTEN ARE, THEY'RE LIKE HIRED GUNS!

Yes, that's probably an apt characterization for some of the cases I have in mind. As a consequence, I have striven over the years, as I've come near the end of my arbitration practice, to continue to ask many questions of witnesses when I feel it necessary, even though it may appear that I am favoring the side which is being poorly represented. I do not do so for that reason, of course. I just want all the facts because I think the decisions should be based upon the facts, and not upon the skill of the advocates. And this is a statement I have made directly to lawyers, much to their concern at times. In fact, it has occasionally caused me to be accused by one party or the other of favoring the opposite party because of the way I ask questions of witnesses. In two or three cases that I can recall I have simply finished by saying: "Well, this is an indication of your lack of confidence In me or you would not have said what you did, and I feel that you should get someone else to decide this case."

THAT WAS ONE OF MY QUESTIONS.

And I have resigned in three or four instances in the last half-dozen years at the arbitration table. I have simply withdrawn, and I've sent no bill, not even to cover the costs of traveling.

ANY RESPONSE, ALLAN, IN THESE CASES FROM THE OTHER PARTY?

Oh, yes. I've had reactions from the other party: "Well this shouldn't happen. We've gone to the expense of bringing our lawyer here and we think you should go ahead," and so forth. Sometimes I then give my lecture "502" or "503," and I've insisted that I would not continue because I feel that either side that feels impelled to protest my actions in asking questions of witnesses thereby indicates a lack of confidence in my impartiality in that individual case, and should not have to complete the hearing and accept a decision from me. Then, too, to stay and complete the case could do a disservice to the other party because I may be tempted to lean over backwards to demonstrate that the remonstrances of the complaining party had not affected my impartiality—a chance I simply would not take.

I ALMOST DID IT ONCE BUT I WAS CONVINCED THAT IT WAS REALLY JUST EXCESSIVE STUPIDITY ON THAT ONE PARTY'S SPOKESMAN'S SIDE AND IT WOULD HAVE BEEN UNFAIR TO THE OTHER SIDE, SO I STAYED. I MADE A SPEECH, TOO, AND THEN SAID, "WELL...," THAT SOMETHING YOU CAN'T SECOND-GUESS, IT'S JUST, YOU KNOW, YOUR CONSCIENCE TELLS YOU.

I had a case In this AAA office three or four years ago in which a lawyer, who is now a judge, said something to the effect that a ruling I made to allow certain testimony to come into the record...I usually try to avoid making rulings by rather circuitous reasoning...demonstrated that I was showing myself partial to the other side; he was for management. He expressed doubt that I should remain as the Arbitrator, and though it was the second or third day of hearing I resigned on the spot. In that case I did send a bill along with my resignation. Both parties then accepted a fellow Academy member from Philadelphia. When they go to the same place in the hearing where I had resigned, my successor made the same ruling and accepted the tender of the same document from the Union. He had learned that I had resigned over the Company lawyer's objections to my admission of a Union tendered document, and he later informed me, when faced with this same potentiality, he said something to the effect that he was going to rule the same way as the prior arbitrator had done, and he was not going to withdraw from the case. He made the two statements simultaneously. The case (an insurance collector's debit issue) was completed, but I don't recall the result. I do know that it took my successor at least a year to collect his fee from the Company in that case, but I never collected mine from either party.

That reminds me. Uncollected fees really bother me. I have not made a recent calculation but I am certain they now exceed \$50,000.00 in my files. I would say that there are two or three from Labor; all the rest are from Management, without exception. On a few long-overdue bills to labor--two or three years old--I have written to the International Headquarters, sent a copy of my decision, a copy of my bill, and have indicated that I feel arbitration bills should be paid whether decisions go one way or the other. The International has always interceded; a few times the International has paid the bills and said it would assess the Local.

In others it directed the Local to pay the bill. That's the way I have secured payment from reluctant Local Unions, but you can't do the same as far as Management is concerned, because there's no one above Management to persuade it to pay an Arbitrator's bill. Management makes up its mind not to pay, and that's it.

HOW ABOUT LITIGATION? HAVE YOU GONE TO THAT?

In one Southern case I sought assistance, through litigation, and did direct a recommended lawyer to enter suit. He notified the Company of his intention to do so, and the Company paid the bill, through him. I received, I don't remember now what it was, payment of a proportion of my bill.

A MINOR PROPORTION?

No, it was more than half. I returned to the Union an amount of money to equalize the amounts I had received from both parties. I didn't do that as far as expenses were concerned, just on the fee.

THAT'S AN INTERESTING COMMENT. I'M NOT SURE I WOULD HAVE THOUGHT OP THAT.

But, it was a point on which I have been rather a stickler. Now you might say, "Well why not return to the Union the payment it makes if the Company does not pay!" That's one I have not thought through sufficiently; I hate to do work wholly gratis. I just let the unpaid Management bills pile up and then place them in a "dead file" after seven years. Of course my Secretary sends three or four dunning letters for a year or two, but gives up finally. I know of one Philadelphia Arbitrator who turns over his unpaid bills to a Collection Agency.

Now, the next heading for discussion is, "Hearings, Have They Changed?" Certainly as far as I am concerned they have changed dramatically. I feel certain that if my wife, who attended some of my early Hosiery hearings and who has not attended any in any Industry in the last twenty-five years, would walk into one of my hearings today she would think I was in a completely different profession. She used to go with me on some of my trips and would tell me later that while she would be listening to the Company's side of a discharge case, long before the Company was finished she would wonder why the Union had brought the case. However, after the Union was finished presenting its position, she wondered how the Company had the nerve to discharge the poor grievant, or grievants, for such minor infractions. They were presentations largely by one person for each side. Now, if she would attend one of my cases I'm sure she would feel she was in a Courtroom. Just incidentally, and on the lighter side, I seldom dress in dark clothes for hearings to discourage the parties from treating me like a judge and adopting adversary techniques.

IF THE PARTIES WANTED TO BE BEFORE A JUDGE, THEY WERE FREE TO GO THERE.

Absolutely.

THEY MUST HAVE MADE A DELIBERATE DECISION NOT TO.

And I've told them at times, "If you want the strict rules of evidence followed here please get yourself a judge, or get yourself an Arbitrator trained in law. But you don't want me because I know very little about the rules of evidence, and I have purposely avoided them as much as possible.

AND YOU'RE NO WORSE OFF FOR THAT.

I have purposely avoided learning them. Now some of the variations between types of evidence rub off on you from constant exposure to lawyers; you cannot help it. But I've not followed the rules of evidence, and under the AAA rules of procedure, for instance, they need not be followed.

Next is, "The Quality of Representation." Certainly with the increased presence of lawyers, I feel that the quality of representation has improved considerably in a great many relationships; it has improved tremendously in others. At the same time it has become more cumbersome and expensive and, perhaps, has made the parties near the end of the arbitration table feel less important, less significant in the whole process. Still I think things are not slipshod like they perhaps may have been in the early days, and I'm sure I did not recognize the slipshod approach in many of my early hosiery and ad hoc cases. I recall no slipshod G.M.-U.A.W. hearings.

WELL, ALLAN, I'M SURE YOU'VE SEEN THAT: I GUESS YOU HAVE, A SHARP NON-LEGAL MAN WHO CAME UP OUT OF THAT INDUSTRY AND PRETTY WELL KNOWS THE INS AND OUTS. I THINK A LAWYER IS HARD-PUT TO BEST HIM.

That's possibly right. He knows the approach, he knows the industry well, and neither side can say anything that puzzles him badly because he understands the technique of the industry, the relationship of the parties, the personalities of the parties' major spokesmen, etc.

TWO GOOD LAWYERS ARE SHEER PLEASURE, THOUGH IT'S NOT ALWAYS TRUE SOMETIMES I THINK THAT THE PRESENCE OF A LAWYER IMPROVES THE PRESENTATION.

I completely agree with you. Some of them I have run up against have been just ornery to the nth degree, and it looks almost as though they want to disturb the parties' relationship. And it's not just one side or the other--it can be on either.

You ask next, "Has that affected opinion writing?" Well, I suppose with the excessive repetition of some of the run-of-the-mill stuff, I don't give some of my decisions nearly the amount of time for thought and writing as I did in the early years. I have found a tendency on my part, recently, to write shorter opinions on the simpler cases. At one time I followed the Taylor approach of recording somewhere in the decision each and every major argument made by both sides, and then answering most such arguments, at least briefly. I might very well now follow that to the degree of mentioning the major arguments, to show that I was aware of them, but I do not necessarily answer all of them. And I may just single out the arguments which I think are most important, answer them, and then write my decision accordingly. So I suspect that I can be accused, rightly, in the last ten years or so, of being too brief in some of my decisions. For some decisions, however, which I feel warrant it, I go into great detail. Some of my decisions are still almost as verbose as my decision at Celanese, which was one of the longest I ever wrote.

As to the effect of "writing time on costs," I have the feeling that if I would make a comparison of time spent on writing to time spent on hearing the result would be very close to one to one. At the present time I can't compare my present experience with my Hosiery and Textile days. Nor can I with my General Motor days when I had a back-breaking job that was covered by a retainer. And I even can't use my Rubber experience that was paid for on a different basis. But since 1960, while I have been deciding a lot of ad hoc cases and on many continuing relationships, I feel certain that I have averaged approximately one writing day for one hearing day. I might add that one aid is that I dictate many of my simpler cases on a recorder, edit the transcript of my dictation, proofread and sign the final typing. That speeds up much of my study and writing time considerably.

I WAS AFRAID YOU WERE GOING TO SAY THAT YOUR DICTATION WAS THE ONE THAT FINALLY WENT IN THE ENVELOPE AND OUT IN THE MAIL.

Oh, no, never.

I WOULD BE ENVIOUS OF THAT.

No, I have no such capacity, nor can I imagine ever developing it. But if I take my own notes and then receive posthearing briefs. I can review my notes fairly quickly, read the briefs to make certain that they don't go beyond my notes, then summarize the background from my notes, record the parties' major arguments from their briefs, answer the principal arguments, express my findings, and give my decision. For a single day of hearing my study and writing time seldom exceeds my hearing time, unless I must spend one-half a workday (four hours) for travel time over and above a seven or eight-hour hearing day. In this latter eventuality I charge for a half day of travel.

I have increased my per diem fee by \$50.00 each five or so years in the past two decades, as my experience has increased, my total performance time has decreased, and my operating costs have increased. From figures I have seen published in the past several years I know I am not in the top bracket of arbitration charges, though I am quite satisfied with my fee. It helps me meet the costs of training my son who has visions, and the capacity, to follow in my footsteps and, as a writer, far outstrips me.

"Sophistication of the Parties" should be discussed. In most of the relationships in which I started with the parties they were quite unsophisticated, but so was I. Today, however, they are ultra-sophisticated; I doubt if I have kept pace. I can't speak as to General Motors from firsthand knowledge, but I have talked with my successors, particularly starting with Nate Peinsinger. The parties clearly have discarded old attempts to make grievances vehicles for disturbing their relationship or to gain bargaining positions over each other in pending negotiations. Both parties now have very effective screening machinery. As a consequence, the 130,000 grievances per year may still exist, but the number that goes to the arbitrator has dropped precipitously. The present arbitrator, Arthur Stark, may issue a decision a week, maybe fifty a year. On some of Nate Peinsinger's years he issued twenty-five or so decisions in a whole year. Parenthetically, the salary has tripled since I held the position, while the caseload has gone down by 80 percent.

ISN'T THAT AMAZING!

Yes. But on the other hand, I don't mean to imply that I have been at the wrong end of all my continued arbitration arrangements. I was in the right spot insofar as Clothing was concerned. The main principles were set by my predecessors, and the retainer has increased quite satisfactorily.

There is a question as to whether there have been changes in the types of cases due to the changing economy, the sociological concepts and so forth. In a relationship like the Dress Industry and the Men's Clothing Industry, particularly, we had arbitration principles long since established; George Taylor started them in Men's clothing in 193[^] and in Dresses in '47, and they were followed by Bill Simkin. When I took on in 1959 and 1961, respectively, I followed them. The Union often did not file cases before me up to 1970 because they knew, in certain situations, like an employee slugging a foreman and knocking him down the stairs, it was senseless to take a discharge protest to the Impartial Chairman in such a case; he would give the grievant short shrift. But, with new founded approaches in society as a whole and minorities in particular, and new Court rulings dealing with proper Union representation, I have received cases dealing with issues settled finally 30 plus years ago; the Union just can't drop them. The Union personnel who present these cases to me recognize the virtual impossibility of securing a changed decision, but they bring them

to me because of the pressure of the Locals, the membership, the Human Relations Committees, the E.E.O.C., the recent Court Decisions dealing with damages assessable against Labor and Industry for lack of fair representation, etc.

WELL, LANDRUM-GRIFFIN WOULD HAVE SOME IMPACT...

Yes, would have some impact. But I am having to repeat the same principles as contained in old Clothing decisions. This has happened in the last half-dozen years, and has increased the caseload in those industries. In the first half-dozen years I served in those industries, and the retainer was quite generous for the work I did (I spent more time in attending Bar Mitzvahs, Christmas parties, Retirement Parties, Histadrut Dinners, ILGWU and Association Affairs, than I did arbitration cases, to earn the retainer); now I am writing arbitration decisions. I think in the last few years, if I would divide the time I spend in arbitration into my retainer fee, I would be earning less per day than I do in ad hoc arbitration.

THAT'S FASCINATING. ALLAN, HAVE YOU HAD A CHANCE TO OBSERVE WHETHER THE SECOND-GO-ROUND ON THE CONCEPTS IS SINKING IN ANY BETTER ON THESE YOUNGER PEOPLE?

Well, I would say so.

ARE THEY BEGINNING TO SEE THE LIGHT?

Yes. Particularly in the Ladies' Garment Industry. Now the Ladies' Garment Industry, I think, outside of possibly the City and State government offices, is the principal employer of minorities in Philadelphia area industry. When the industry shifted, and they had training programs for a lot of the minorities to train them to sew, operate machinery of the nature used in the industry, and the minorities started to make decent earnings, the Industry found in the minorities a wonderful source of employables. However, in the branch of the Clothing Industry that makes the basic, low-price garments, if the garments get out of line pricewise, there's a tendency for the housewife to buy piecegoods and a pattern to make her own dresses. So the Women's Garment Industry, outside of the Cutters (a strenuous male trade) has never been a very high paid industry. The Industry has not been able to give much in the way of large wage increases, but it has given considerable in the way of fringe benefits, health and welfare, supplementary unemployment compensation, disability benefits, severance pay, retirement benefits, etc. The Union's principal approach has been to gain these kind of benefits for its members. But the decisions, which I say I have had to issue, have had to be sold to the new members by a plethora of new officers. There has just been a change in the top officers in the Women's Clothing Industry here in Philadelphia and in New York. Irvin Solomon has taken over in Philadelphia and Chick Chaikin has become the new President in New York, one of the most brilliant Union men whom I have ever known. He is holding very strong reins on his members. The International has elected more women to the top

jobs in the Union, and they have kindly retired a lot of the old vice-presidents who were well up in their eighties, and some even in their nineties. As far as we are concerned here in the Philadelphia area, the changes have resulted in new, relatively youthful leadership, but leadership that understands the principles of the Impartial Chairman machinery and no longer attempts to throw over the traces. So, in the Ladies' Garment Industry I feel the situation has changed favorably in recent years. In the Men's Garment Industry the situation has remained rather static, with Union pressures still remaining on the Arbitrator. That is one of the reasons I stepped out, not because an individual case resulted in my leaving but because my caseload started up in a fashion that dramatized that the local members were disregarding the unchanging top leaders with increasing frequency.

DIRECTION?

They were throwing over the traces too often so that I was taking a shellacking that caused me to resign in December a year ago. And you heard at lunch the question asked about "I. Herman Stern," he is my successor.*

The next point you ask is my evaluation of the present "Number of Arbitrators?" Well, I am sure we need a lot of them. I don't know that the number of labor-management relationships which require Arbitrators has increased. That is beyond my ken, but certainly in the basic labor-management relationships I serve, arbitration is still a very important concern to them. I have noted no significant reduction in the number of cases in my continuing relationships. I have no basis by which to judge the trend in the need for ad hoc arbitration, except that the number of requests that I get to serve as an ad hoc arbitrator has also increased drastically in the last few years. That might be a temporary matter in Philadelphia caused by the illness of a number of men in my age bracket** who are not available at all, or only on a spasmodic basis. It certainly has resulted in an ad hoc caseload that I had no concept of just a few years ago.

You ask about, "The effect of high volume and routinization upon the quality of the arbitrator's work?" I suppose, if you load yourself down with a caseload which causes you constantly to seek for extensions of time for the writing of decisions, it's going to affect the type of work you do. I have been, I think, lucky. Of course, I do work a great deal on weekends, and at night. I do a great deal of writing at such times and, as a consequence, I have seldom asked for extensions. I perhaps ask for extensions three or four times a year because of a long hearing that has delayed my writing schedule, an unexpected peaking of receipt of posthearing briefs, a personal or family problem, etc. Luckily, I am able to

*Editor's Note: Arbitrator I. Herman Stern recently died and his place has been taken by Academy member, S. Harry Galfand of Philadelphia.

**One heavily used Philadelphia Arbitrator, S. Herbert Unterberger, recently passed away.

deliver my decisions on time in some 95 percent of my cases. I will not claim, however, that the quality of my decisions does not suffer when I am rushed to meet deadlines. The most obvious way I notice I have responded is their brevity in times of stress. In some of these instances I have met my delivery deadlines by working like a dog. Alexander Freund and I have a Secretary who is very helpful in getting over problems like these, and she will work many late night hours to get us over the humps we sometimes come upon quite unexpectedly. But, let's say, as far as my caseload is concerned, the delay matter is of minor significance. Perhaps that is one of the reasons I get so many requests because the parties do not have to wait excessively for my decisions.

"Forces which prompted the changes that we talked about," you next suggest we discuss. One, I feel, is social forces--the greater willingness to challenge authority. This was true in a number of the relationships in which I served as continuing Arbitrator. I remember a case in 19³ involving a General Motors employee in Cleveland who, in the first year of the contract there, was discharged for punching a Foreman severely in the plant parking lot. As I recall it the Corporation Labor Relations man made a brief statement tying the pommeling incident to the work relationship between the discharged employee and the Foreman, pointed out the Foreman who was present but whose features appeared almost normal some three or more months after the incident, and then said something to the effect--"We want you to see what this Foreman looked like shortly after the grievant worked him over." Then they held up several larger-than-life-size photographs of just the Foreman's head. It was terribly mutilated with mere slits for eyes, a nose turned sideways, lips puffed and cut like hamburger, and cheeks that were a mass of swollen welts. The U.A.W. man handling the case at the head of the table (in my Detroit office), Mr. Thomas Arthur Johnstone (who handled every case for the U.A.W. I had in 30 months as the Umpire), placed his hands on the table as he rose, and white-knuckled and white-lipped looked down at the numerous Cleveland Unions Reps, and employees and asked, "Is that what the Foreman looked like after the grievant finished with him in the parking lot?" When he received a chorus of "Yes," punctuated by a few laughs, he virtually shouted: "Any person who makes another human being look like that deserves no protection from the U.A.W., nor will he ever hold another job in a U.A.W. shop if I have anything to do with it. This grievance is hereby withdrawn from arbitration, and I, personally, sustain the discharge."

This was the first arbitration case the Cleveland Committee had attended. They jumped up and started to scream at him. I grabbed his arm and pulled him into my office next to the hearing room, and my assistant came from another room and locked both doors to my office. The General Motors people, a few of them big fellows, stayed around long enough for the Cleveland Reps to leave and for a group of big International Union men to arrive to escort Johnstone back to the protection of the International Office.

In contrast to this case I recently had a discharge case in a Men's Clothing Plant where a member of supervision was attacked by an employee with a pair of scissors. But when the Foreman continued

to escape him and he was unable to use the scissors as he desired, he picked up a large cardboard roll (on which cloth is delivered to the Plant), slid a heavy pipe into it, squeezed one end like a baseball bat, and pummelled that Foreman on the back of the head, knocked him down a short flight of steps and messed him up pretty badly. The Union brought the case, though the Foreman was in the hospital, arguing that the employee should not have to wait to get his job back. The top Union personnel knew that the arbitration principle had been long established that discharge would always be sustained for attacks on Foremen. But the young group in the Plant would not listen and argued that an employee in a Plant has the right to do whatever he can do outside, and if anyone feels affronted as a consequence, they have the right to sear cut an assault warrant and gain appropriate redress, i.e., the Foreman had the right to take action against the employee as a member of society, but possessed no right to affect his employment. I wrote a decision the next day denying all of the Union's arguments and sustaining the discharge. But this case reflects a surprising change in Union approach from that shown in my 19³ U.A.W. discharge case. This may be a reflection of a drastic change in social mores in 32 years, but it also suggests to me that the recent Court decisions dealing with the right of employees to every opportunity of effective Union representation is having severe impacts upon our work.

"Is the job of arbitration as challenging or demanding on me as it was in the beginning?" you ask. In the humdrum run-of-the-mill cases, no, of course not. They are recognizable a half-hour after the hearing begins. And I suppose I feel a sense of relief when that happens occasionally, but if all of my cases were like that for a period of a year I think I would just close up my briefcase and quietly fade away. But I'm happy they are all not like that. About two years ago my son, who has been traveling with me on most of my cases (driving, taking notes, recording summary arguments, etc.), indicated that he just could not get over the number of different issues that can arise under a grievance procedure. And he admits to me that occasionally during his note taking his notes suddenly become kind of Greek to him because he hasn't the vaguest idea of the issue involved. And I suggest to him that that used to happen to me, but one must just keep on taking notes and finally the case makes sense. And if I did not get an occasional case like that I guess I would find it a bit cloying but, happily, the cases do change. Even after ³ years I seem to come up against an issue possibly once a month that is entirely new to me.

On an overall basis it is not as challenging or demanding as it was in the beginning. I worked, as I've said, many hours per day and week. I still do, but I am now usually able to watch the 11:00 P.M. television news. It was not too many years ago that I seldom looked at a television set. Now, it may be that I just bit off too much before; but that's the way I have been in the business and, as a consequence, I've found it hard to slow down. However, my wife, not in the best of health herself, insisted that I do so. She gets me to relax now, about once per year on a three-week cruise. The only trouble is I almost kill myself trying to get my current cases out

of the way, plus those that will be due during our cruise time. But I somehow get over it, and she's now talking about another cruise plus a summer vacation. Possibly she'll be the one who will persuade me to do what I should do for my own good, slow down! Of course, I am sure that there are parties for whom I have arbitrated in the past several years who silently wish that my wife succeeds in her endeavors.

"Do I see a future in arbitration?" I certainly do. I've urged my son over the years to follow in my footsteps. He found many reasons not to do so. I think, principal among them, was that he recognized from the time he was a child, until the time he got married and left home, that I worked too hard and too-long hours. He apparently conceived of arbitration as an excessively taxing job. I agree that it has been the way I have gone about it, going anywhere, everywhere, anytime I have been asked, perhaps as an "Arbitraholic." But recently he has been married a second time and has taken a different approach to life. Finally, he has agreed that there is a future in arbitration as a profession for one who studies hard and applied himself conscientiously, though not for six 15-hour per day weeks. He was a Journalism major who has helped me for some 10 years in editing my decisions. He now takes notes at some of my hearings, records closing arguments and "roughs in" the preliminary portions of some of my decisions. In some cases I tell him what I want the decision to be, and he writes some suggestions which I expand upon. In others he summarizes transcripts, briefs the positions of the parties, includes the important citations, and then I write the opinions. (Oh yes, I should also mention that he spent a good part of a year in perusing, classifying and indexing--via the BNA Index--some 5,000 of my decisions before I placed them in a Research Division of the University of Pennsylvania just before I closed my downtown office.)*

My son is convinced of the future of arbitration, and the shortages of arbitrators in this area, from what he has heard from fellow Arbitrators, (he has received some two dozen appointments to date and has written 15 Decisions), labor representatives and Management personnel. He realizes that his major initial problem is establishing acceptability. A father-Arbitrator can help with introductions; the son-Arbitrator must do the rest. But, of course, we will be associated, as long as I live, in any way that he wants us to be. But he is only one case of many that I have heard in this area who have come into arbitration in recent years as relatively young persons. (He is already eight years older than I was at the start of my G.M.-U.A.W. Umpireship.) Most of the "new" Arbitrators I know in this area have come from retirement from Labor, Management or Government positions. I don't know about your area, Pittsburgh. We've had no real training program except that a few people who have expressed themselves as interested have been permitted by AAA (with the approval of the Arbitrator and the parties) to sit in at actual arbitrations. As my Assistant, and more recently my Associate, my son has now had the experience several hundred times. This, I think, is an excellent training ground for him.

^Editor's Note: At the final editing of this manuscript it was learned that G. Allan Dash, III is a full-fledged arbitrator, on AAA, FMCS and Stare Panels, and deciding a growing volume of his own direct appointment cases.

Now, "expedited arbitration" is our next subject. I think one of the places that my son might increase his acceptability is in "expedited arbitration." While I won't name them., for obvious reasons, there are several relationships where expedited arbitration has been adopted for the settlement of grievances involving certain types of situations, particularly discipline of less than a certain seriousness. And my son has read literally thousands of decisions of mine, some of them in whole, many of them in major part, and some just cursorily to classify them according to the BNA index system, as I've previously noted. And I know he is, as many people would who do a reasonable amount of study of my decisions, be in a position to handle these expedited arbitrations where there is no real opinion needed, and one must just judge on hearing the testimony where the proper decision lies. As to "interest arbitration," I have had feelings for years that in this field there is a real area for the development of arbitration. But I cannot fully understand why it has not been accepted more widely. Of course, you may know this better than I do.

NOW YOU'RE TALKING PRIVATE SECTOR?

"Yes, "interest arbitration" in the private sector. In the public sector, I agree that there's a lot of "interest arbitration." I have sort of ducked it. I have taken some under the Pennsylvania law—a dozen or so—but it is one of the areas in which I feel that some of the younger men and women can get their start and really develop themselves as Arbitrators. They can get acquainted with the peculiarities of labor-management relationships in the way that I did in the private sector in my early years.

"Is private voluntary arbitration as we know it likely to survive?" I have seen no signs of its significant illness during its 35 plus years of real life. I have seen some places—I'm going to one in Ashland, Kentucky, Monday—where the arbitration process is disregarded by the employees in one Plant of a Ladies' Clothing Company that has branches around the country. Just this one, and the employees there seem to feel that arbitration is too slow. So they "hit the bricks" on "wildcats," and the Company, in too many cases, has found out what is causing the problem, has given in, and that's it. Now the Company, after four or five years, is stiffening its back, and, for the first time in three years, I am returning to Ashland. But, I have a feeling that this Company is a rather isolated lack-luster arbitration supporter. At least it is the only one in my experience.

"Do I have advice to pass on to future generations of arbitrators?" Well, I have an example in my son. I've been talking to him for four years now, giving him all kinds of advice I can think of. Certainly there is much to be gained from reading hosts of published arbitration decisions. Experience from actual hearing attendance is extremely valuable. Attendance at arbitration seminars, conducted by experienced arbitrators, is a must. Study of college-level and graduate level, courses in labor history, personnel, labor-management, industrial management and, if you can find it, arbitration, can make a novice a pro. But above all I would read as much as I could of the

25 volumes of the National Academy of Arbitrators Proceedings, published at Washington, D.C. by the Bureau of National Affairs, Inc.

And I would read the specific books available on arbitration of the type that would help me to prepare myself as an Arbitrator. The authors who have written such books have done all of the necessary research and study, so it is senseless for a new man to try to do it himself. Research is always best based upon finding out what others have done on a particular subject, and then building on that. In our field, that's exactly what I would advise a man or woman to do, go to the expert sources, the books on collective bargaining and arbitration, and read the articles that would be of interest in preparation for particular arbitration subjects. There are exceptions, of course. Some of the writing is far too erudite, is directed toward particular collective bargaining subjects of the day, or problems of the moment. There is so much available one must make choices if he or she is to have time to hold hearings and render decisions.

TOPICAL?

Yes, correct. But when we wrestle with a new issue in arbitration the summaries of published decisions on the subject become, fairly quickly available—such as BNA, CCH, AAA, etc. I urge my son to refer to them from time to time and he does so. We know there are many books on arbitration in general, and many by topics. With all I agree in part, but disagree with others even in major part. Frank Elkouri's "How Arbitration Works," and its revisions still strike me as excellent resource material for new arbitrators. I disagree with portions of it but that's because I'm of the "old school," and follow the old approach. I suppose I'm not as viable as I should be as an arbitrator, but I try to keep myself modern and not show myself as an unchangeable ornery old cuss. But I freely admit, Mickey, as I get older in this business, I must fight a tendency to deliver lectures to persons appearing before me which I fancy are based on far greater arbitration experience than they have, but which often fall on stony ground or uncover feelings of rank resentment. I guess I'll never learn, but I hate to waste time having parties stumble over themselves on details of handling grievances through their grievance procedures before coming to arbitration.

I THINK I KNOW WHAT YOU MEAN.

But I often get away with it. It sometimes is taken in good grace and even invokes occasional thanks. And at times, when I deliver it, it results in settlements. Usually, when settlements occur, I say, as George Taylor always said, "An issue that is settled by the parties is settled out of the depths of knowledge and understanding of their past relationships and hopefully for the good of their future relationships; a settlement enforced by an outsider (like an Arbitrator) even though he is well intentioned, is accomplished by one basically ignorant of the parties' relationship." I often add that when they give up the opportunity of settling their issue on the basis of their expertise and well-rounded "partial knowledge" (the opposite of impartial) and look to me as an outsider to settle

the issue for them, they are substituting "impartial ignorance" for their own "partial" approaches. I congratulate them for working out their issue, often on the basis of compromise.--a tool I cannot use if I must settle their issue via a decision.

I HOPE YOU WILL NOT HOLD YOUR PATENT AND COPYRIGHT ON THAT BUSINESS PROM GEORGE TAYLOR.

Oh, no, I'm sure we all use it in one form or another.

BECAUSE I GENERALLY SAY IT, I DON'T HAVE THE DEPTH OF GEORGE TAYLOR'S WISDOM, AND I SIMPLY SAY, "YOU GUYS CAN SETTLE THEM GENERALLY BETTER THAN I CAN DECIDE THEM." BUT THAT'S AN EXCELLENT WAY TO PUT IT, "IMPARTIAL IGNORANCE."

Back in the 30s and 40s, George Taylor often said that he had seen many management Tables of Organization but when a Union came into the picture, he had never seen any block added to the Table of Organization that was marked "Union." But there's a failure to recognize in many management organizations that when a Union becomes firmly entrenched, decision making is not as freely made as before, and many new factors have to be taken into consideration in management's decisions. Too many managements fail to recognize this, and proceed with their managerial decisions as though the Union is not present, or if it is given any consideration at all it is evaluated very lightly. I know in the General Motors initial reactions to the U.A.W. (I hope you will pardon my repeated references to G.M.-U.A.W. but it has been the largest labor-management relationship of which I have had any intimate knowledge) in the early 40s neither party had any conception of arbitration as a way to create a settlement and a sound relationship between them. I know I'm not breaking any confidences when I say G.M. did not expect its "shotgun wedding" with the U.A.W. to last very long, or to have to put up with the U.A.W. for many years. So they were not interested in any arbitration decisions based upon what the Umpire felt would "contribute to the soundness of the relationships between the parties." Soon after I got there I learned not to use such phrases in my decisions. I just said what I was going to do in my decisions and that was it. Whether or not it contributed to the soundness of the parties' relationships was quite immaterial to the Corporation.

The times have changed drastically In Detroit. I mentioned that in 1977 I attended a 40th Anniversary of the signing of the first simple U.A.W.-G.M. Recognition Agreement. When I was the Umpire at General Motors between late '41 and '44, If anybody had told me that 33 to 36 years from then there would be a large banquet hosted by the Corporation (with an equal number of G.M. & U.A.W. people plus six former and present Umpires) at which they would be celebrating the signing of anything between them, I would have taken a thousand-to-one odd bet against that., and I seldom bet on anything. I said that to some of the Corporation people whom I saw in Detroit in 1977, and none of them differed with my reverse prognostication.

WERE ANY OF THE G.M. OR U.A.W. PEOPLE PRESENT WHO PARTICIPATED IN THE UMPIRE MACHINERY WHEN YOU WERE THERE?

There were only two present from the Corporation whom I recognized as having been at hearings, but they were retired and were present as guests, along with the ex-Umpires they knew. But the men now in charge of labor relations and arbitration may have been trainees when I was the Umpire. This is another thing that you will recognize as you get older, Mickey. When I started as the Umpire at G.M.-U.A.W. (at age 33) I was customarily the youngest person at the arbitration table. Today, sadly I must admit, I am almost invariably the oldest.

THAT IS INTERESTING.

And many times It makes me feel as though I have made no progress. I sometimes am convinced that I have not moved forward in the slightest. Here I am doing the same thing at this age as I did 43 years ago. I might add, too, that this is something that George Taylor used to talk about to Bill SIMkin, Ralph Seward, Syl Garrett, Gabe Alexander, me and many other "Taylor-made" men. After perhaps five years in full-time arbitration he would say: "There's nothing more that you can add to arbitration. Oh, yes, an occasional challenging case will come up, but there will be other arbitrators around to handle those. Get into some other labor-management field where you can assert more of an impact on society." And that's why, I believe, he did a great deal of work with the government, and why he accepted consulting work with the government, labor and industry.

I had a chance to be a member of the NLRB. I was asked to consider becoming a member and had pressures from some politicians in that direction. George Taylor urged that I do it. Bill SIMkin (then PMCS Director) urged that I do it. Ben then I asked confidants around Philadelphia, labor, industry and Arbitrators. Almost without exception they urged me to turn it down. Their reasons were basically that: "You will be a creature of your legal staff, and in short order you will be labeled 'Management,' or you will be labeled 'Labor.' And when your term ends, and you try to return to arbitration, one side or the other is going to have nothing to do with you. So if you make your mind up to accept the NLRB position, just conclude that you are leaving arbitration permanently and will have to look to other fields for your future." On that basis I made my decision—"no"—and that ended it. And some of the disappointed calls I got from my Washington friends were very genuine and touching to me. Worst of all, it was the last major advice George Taylor gave me, and I did not accept it.

YOU DON'T SEEM TO HAVE ANY REGRETS THAT SHOW THROUGH.

Mo, I haven't, not at all, except that I disappointed George Taylor.

ALLAN, IN THE '34-'37 PERIOD YOU ASSISTED GEORGE TAYLOR IN RESEARCH, ASSISTED HIM LESS IN ARBITRATION (YOU ESCORTED HIM TO ARBITRATION HEARINGS) AND FROM '37 TO '41 YOU HAD AN EXPANDING ARBITRATION PRACTICE IN THE SMALLER HOSIERY SET-UPS AND IN NEAR-HOME AD HOC

CASES. NOW IN THAT '34-'41 PERIOD, WHEN YOU WORKED CLOSELY WITH GEORGE TAYLOR, HOW DID YOU THINK OF YOURSELVES? WAS THERE ANY WAY THE TWO OF YOU, OR POSSIBLY OTHERS LIKE YOU IF THEY EXISTED, COULD SAY, "I'M AN ARBITRATOR." OR WERE THERE OTHER PEOPLE IN YOUR MIND IN THE COUNTRY, THAT YOU WERE AWARE OF, ABOUT WHOM YOU WOULD SAY, "OH, HE'S AN ARBITRATOR, TOO." WAS THERE ANY SUCH SENSE OF COHENSION, OF COMMON PROFESSIONAL INTEREST?

Of course there was a history of using arbitration by public-spirited citizens to settle strikes in railroads, the anthracite coal fields, the American Newspaper Association & Printing Pressmen, in the Men's and Women's Clothing Industries, street cars, meat packing, etc. from 1903 to 1933 or so. I believe the AAA had lists of Impartial persons available for choice, around 1937, but they held other positions that did not make them suspect. I never heard them referred to as "Arbitrators." I also feel that in the early years the AAA's major interests were in commercial arbitration. However, I never heard of any of these persons being referred to as full-time Arbitrators. Certainly there was no organization of such men in anything like we have now in the National Academy of Arbitrators.

At the University of Pennsylvania, where Dr. Taylor was, he was the only person available as an Arbitrator in the early '30s. Bill Simkin, Frank C. Pierson and I trained with him and served in arbitration, along with our University connections in the latter half of the '30s.

WAS BILL GOMBERG AT THE UNIVERSITY OF PENNSYLVANIA THEN?

No, Bill Gomberg did not come to Penn until the late '50s; I think it was 1959. There were men who served an arbitration function at the University during the early '40s, developed through George Taylor--such as John Perry Horlacher, Robert P. Brecht, John R. Abersold, George J. Anyon, Joseph Brandschain, Alexander H. Frey, William N. Loucks and John W. Seybold, who began arbitrating part-time in the early '40s, who later joined the Academy, but who are either now on limited service or who have passed away. Most of them started arbitration on George Taylor's recommendation but none of them worked closely with him as did Bill Simkin, Frank Pierson and myself. We worked very closely with him, at the University, I mean. Other persons worked very closely with him at Washington in the early '40s. Syl Garrett, Ralph Seward, Ben Aaron, Gabe Alexander, Dave Wolff, Saul Wallen, Harry Platt, Robben Fleming, Lewis Gill, Eli Rock, are the ones that come easiest to my mind.

NOT IN THE '30S THOUGH?

Not in the '30s. These were in the '40s. Insofar as Arbitrators in the '30s are concerned, Taylor, Simkin and myself in the Philadelphia market are all that I can presently recall. There were some Arbitrators in New York like Harry Uvilier, who is now dead, who was the first Impartial Arbitrator in the Ladies' Garment Industry in the early '30s. There were some in the Men's Clothing Industry in the early '30s. But these men were confined to the New York market for their single industries and handled no cases for their industries elsewhere, or did ad hoc work in any other industries.

DAVE COLE, DID YOU KNOW HIM THEN?

No.

AWARE OF HIS NAME EVEN?

No, not in the '30s. It must have been before the War because when I met him in Washington, I already knew him. I did not know of him as an Arbitrator. I have the feeling that he was a consultant for Northern Jersey Textile Manufacturers, and that's how George Taylor knew him. They did some sort of consulting work together. George Taylor, you see, had been a consultant both for Labor and Management. He was not simply an Arbitrator. Except for his one year at General Motors-U.A.W., he was always something other along with arbitration. He always had his connection with the University of Pennsylvania, and even met Saturday graduate classes when he served as the War Labor Board Vice-Chairman. He only took a leave of absence from the University of Pennsylvania for the 19⁴¹ year he served as G.M.-U.A.W. Umpire. But Taylor, Simkin, Pierson and I were the only ones who I can presently recall were significantly interested in arbitration in the 1935-19⁴¹ period. Your interviews with other of the old-line Arbitrators will probably uncover some earlier practitioners of our profession.

YOU'RE TALKING NATIONALLY?

Well, I knew of none other than the ones I mentioned.

I THOUGHT I'D HEARD OF NATE FEINSINGER'S EARLIER INTEREST.

I learned of him when I went to Washington. I met him there. I learned of a great many men, who later became members of our Academy, for the first time when we formed the Academy in Washington. Some of them could very well have been arbitrating before I did, and even before George Taylor.

THAT'S RIGHT. YOU WERE AT THAT MEETING, WERE YOU NOT?

Yes, I was one of the dozen or so at the first meeting in Chicago when the concept of the Academy was first discussed. Then we expanded the list of persons who might possibly be interested to some 50 plus men, who were invited to attend a formulation meeting in Washington.

I'M NOT SURE THAT THIS IS WITHIN THE COMMITTEE'S FUNCTION, ALLAN, BUT SOMETIME I'D LIKE TO DO THAT PART OF IT WITH YOU, TOO.

Well, I'd have to jog my memory a little better.

I KNOW, BUT THAT SHOULDN'T BE LOST, AND IT IS FAIRLY MURKY IN THE ACADEMY'S DOCUMENTS, VERY MUCH SO, I CAN SAY.

Alfred A. Colby, our first Secretary (he served in 1947 and 1948), was said to have written some of the organization meeting minutes, but I don't know what ever happened to them. I know that when I served as Academy President in 1959-1960 they were never in my possession. When I relinquished the Presidency to Father Leo Brown in 1960 I sent all of my office records to Secretary Bert Luskin.

WELL, I TRIED TO DO IT IN THE BOSTON MEETING AND I HAD ACCESS TO WHAT THE SECRETARY HAS BECAUSE AL DIRECTED: IT WAS MY FIRST YEAR AFTER I BECAME SECRETARY. I HAD THE RECORDS THEN, AND THEY WERE SPOTTY AS CAN BE.

Well, I recall that it was in the early '60s that the past Presidents were asked to send all of their files, other than personal things, to the Secretary (then Bert Luskin), and I did so. Al Colby's name appears in the 1964-1965 membership directory, and all the Presidents' records must have been sent to Bert Luskin before then because Dave Miller was then Secretary. Possibly Colby didn't send anything to Bert Luskin as our former Secretary, but I seem to recall hearing Colby say that he had written up the minutes of the first meeting.

I MISSED THAT IF HE DID.

But I don't say the minutes still exist. It is possible that Mrs. Colby discarded them in cleaning out Al's files after his death.

HOW ABOUT JOHN DAY LARKIM?

Well I met him sometime after the Academy was formed. I did not know him before that. I don't recall him having any connection with the War Labor Board but he may have been connected with the Chicago Regional Board. And he might have been working in Chicago as an Arbitrator before 1941, I don't know.

HOW ABOUT CHARLIE KILLINGSWORTH?

No, I did not know Charlie Killingsworth until his work with the Board.

BEN AARON?

I met Ben Aaron in Washington in 1943- In fact, I recommended him as my successor at B. F. Goodrich in 1949 or 1950, because the War Labor Board had ceased functioning and he had decided that he wanted to try arbitration. This was a retainer-guarantee arrangement, and I knew he was well suited for it. But I did not know Ben before I met him in Washington.

WHAT ABOUT SYL GARRSTT?

I left the G.M.-U.A.W. Umpireship in the Spring, I think, of 19^U3, to serve as Vice Chairman of the Third Regional War Labor Board

under Syl Garrett here in Philadelphia. But I knew who Syl was when I joined him as his Regional Vice Chairman. It may be that when he was with Hay Associates I had met him prior to War Labor Board days, but not much before. Certainly it was not in the '30s.

DO YOU HAVE ANYTHING THAT REALLY JUMPS TO YOUR MEMORY NOW ABOUT FORMATION OF THE ACADEMY? WHO THE MOVING FORCES WERE, LIKE SOME SORT OF MEETING IN CHICAGO?...WHICH LED TO THAT WASHINGTON MEETING, AT WHICH A FEW MORE PEOPLE WERE PRESENT THAN AT CHICAGO?

I'm trying to remember something about the Chicago meeting, which was held at least 30 years ago. It was along the lakefront, at a modest-sized hotel, in the late Summer of 19[^]7, I think. I don't remember exactly who was there but I have recollections of Ralph Seward, Bill Simkin, Nate Feinsinger, Al Colby, Whitley McCoy and a few others being present from Chicago and the surrounding areas. At first, the discussions, as I remember them at that small meeting, were along the lines of forming a Society for Continuing W.L.B. friendships, for fraternizing with our fellow arbitrators, and so forth, nothing in the way the Academy has developed. Then I think that it was at our larger meeting in Washington later in the same year that the concept was advanced that arbitration had become such a significant part of the collective bargaining process that we should push our fraternizing to the background and form a learned Society to further and improve the practice of arbitration. The idea was expressed that we should form a professional society of recognized arbitrators, set up a Code of Ethics for our members to follow, write papers on subjects of common interest, hold seminars, etc., i.e., become an "Academy of Arbitrators" to foster the competence and capacities of those we deemed of sufficient integrity to be invited to become members.

Shortly thereafter Al Colby wrote a letter to some 25 or us, considered offensive by most of the recipients, saying that he felt that the Academy was the kind of thing that should be furthered by the men who were in arbitration on a reasonably full-time basis. He urged that we should be willing to contribute \$500 a year for a number of years--this was in 19[^]7--to get the organization underway and fully afloat. That suggestion fell with a dull thud on everybody, as far as I know. But when we were recently talking about the present dues of \$200.00 per year, it reminded me that the \$200.00 figure was the one Al Colby suggested as an alternate to his \$500.00 idea, but in 19[^]7 the \$200.00 suggestion met with just as cold a reception as had the \$500.00.

I WISH I'D KNOWN THAT WHEN I WAS STRUGGLING WITH THOSE...HOW ABOUT PAUL PRASOW? WAS HE ONE OF THE RECIPIENTS?

I doubt it. I think he became a busy Arbitrator a bit later.

THE ONLY REASON I MENTION IT IS I THINK HE WAS AT THE WASHINGTON MEETING AND I WAS SURPRISED WHEN I LEARNED THAT. I WOULD NOT HAVE PUT HIM THERE.

No, I would not either, but he could have been. I must admit, though, that there were several people who were at the Washington meeting whom I did not know. He could have been one such.

I SEE. WE'LL PURSUE THAT AT ANOTHER TIME. YOU SAID SOMETHING TO THE EFFECT THAT THE ANNUAL RETAINERS FOR TEXTILES, HOSIERY, CLOTHING, G.M., ETC. HAD GONE UP, SOME OF THEM AS MUCH AS THREE TIMES BETWEEN 1943 AND 1975 OR SO.

That's General Motors. I know that in the clothing set-ups, while the retainers have increased since their starting levels, the retainer I receive is approximately double the 1960 retainer. But, as an offset, the caseload in the Clothing industries has decreased significantly, so the retainers are not bad in relation to the current caseloads. As an aside, I have found over the last decade or so as a "permanent" Arbitrator has been replaced, the retainer has increased. Perhaps that means the greater the turnover the more attractive the retainer becomes to the newcomer. Two years ago I resigned an Impartial Chairmanship in Men's Clothing. My replacement received a 33-1/3 percent increase in his retainer. He recently died—his replacement received a 25 percent increase in retainer.

WHAT I WAS REALLY GETTING AT, AND IF YOU THINK THE QUESTION IS IMPROPER, FORGET IT—IS THERE A FIGURE YOU CAN MENTION FOR THOSE EARLY RETAINERS?

That's all right, because I wasn't the person who earned it. I think the first retainer (1934 in the Men's Clothing Industry) was \$5,000, plus a fund to convert Dr. Taylor's University business office (it was in a house on the campus) into very attractive surroundings. Incidentally, it benefited me because I had my desk in his office.

WAS THAT THOUGHT OF AS EXCLUSIVE—NO OTHER ARBITRATION FOR HIM?

Oh, no. Just whatever work the Men's Clothing Industry had for him in the Philadelphia area. His University salary was much more than that, and remember that was in 1934. Today (1980) the retainer is \$10,000.00, and that's in 46 years but, on the other hand, the caseload for \$5,000.00 was much higher than it is today at \$10,000.00. In the Ladies' Garment Industry, which started much later insofar as Taylor was concerned (he was the first Arbitrator in the Philadelphia market and started in 1947), the initial retainer was \$7,500.00. In 1980 the retainer is \$24,000.00, but in addition to the Philadelphia market it covers South Jersey and the Eastern half of Pennsylvania, the latter two being new.

Eastern Pennsylvania, for the Industry, is the portion of Pennsylvania that is closer to Philadelphia than it is to New York. It comes under the Philadelphia market and I am Impartial Chairman. The retainer for Eastern Pennsylvania is not as large as for the Philadelphia market, but it approaches what it was in Philadelphia back in '47. The caseload, after an upturn in 1975 and 1976, has gone down. Now, there is an exception. I write simple one-page form

decisions on Health and Welfare contribution delinquencies for the Philadelphia and South Jersey Companies. But I have to hold hearings and issue full decisions on the Eastern Pennsylvania Health and Welfare delinquency cases. I will schedule hearings, starting at 10:00 A.M. in Allentown, Pennsylvania, and each three-quarters of an hour after that (with an hour's lunch break) until the docket is completed. We may schedule 12 cases a day and hold eight of them. But usually about half are settled by the Companies making up the delinquency before the hearing, sometimes by tendering a check to the Union Accountant at the time scheduled for the hearing.

CAN YOU KEEP PRETTY CLOSE TO THAT CLOCK?

Oh, yes, because the writing of the hearing letters cause half the delinquent companies to settle by the hearing date. In some cases the Company's sign "Demand Notes," or other legal evidences of indebtedness to the Health and Welfare Funds, which satisfy the Union because such procedures meet the ERISA requirements that the trustees of the various Funds (of which I am one) take all possible steps to keep the employers current in their Fund Contributions. If I have seven such hearings in a single day I divide my per diem into seven parts, even though it comes out to pennies, and I divide the fee for my writing time in the same way. The writing of these Eastern Pennsylvania cases takes longer because each one has something a little different about it that has to be recorded. The bulk of the several decisions can be the same, but there are paragraphs which must vary. So it takes longer to write them than it does to hear them. I divide my per diem accordingly. But if, in writing, some of the cases take a little longer than the others, I simply proportion my per diem accordingly. When I start my writing on each case I record the time, when I finish I record the time, and start the cycle for the next decision.

HAVE YOU ALWAYS DONE THAT, ALLAN? KEEPING A RECORD OF YOUR TIME? IN YOUR EARLY DAYS DID YOU DO THAT?

No, I did not. I do that in this multiple case situation because if my total charges of my per diem multiplied by the number of days I use exceeds my retainer I can bill the parties, at the end of the year, for the difference.

I SEE, IT'S RELEVANT, NOW.

Yes, it is relevant. But if the parties would double the retainer I would probably forget the minutia.

CAN YOU SAY WHETHER YOU EVER HAD THE SENSE OF A GEOGRAPHIC DIFFERENCE IN ATTITUDE TOWARD ARBITRATION IN YOUR EARLIER DAYS? THE '30S, THE '40S? MIGHT YOU EXPECT A ROUGHER, COARSER KIND OF PRESENTATION IN SOME AREAS GEOGRAPHICALLY THAN YOU WOULD IN OTHERS? OR WAS THAT NEGLIGIBLE?

Well, in the Rubber Industry and General Motors I would say that down through the central part of the country they were a bit on the rougher side, and a bit more outspoken insofar as the Umpire was

concerned, than the other areas I covered. They seemed to be somewhat more genteel on the West Coast. I don't know why, perhaps it was because arbitration was a relatively new concept to them. On the East Coast...I can't generalize too much, but I would say, as a basic off-the-top-of-my-head response, I did feel that the hearings were easier in the East and rougher in the Mid-west. I had some "lulus" in some places, especially in Chicago, and I found difficulty, at times, in smoothing things out to get hearings started, or to keep them going on an even keel.

THAT'S WHAT I WANTED TO GET AT. I WANT TO ISOLATE THE SITUATIONS WHERE THESE WERE PHYSICALLY THREATENING TO YOURSELF. ANY BRAWLS IN THE HEARING ROOM? ANY FISTICUFFS?

Oh, yes. I've never had any actual fisticuffs in my sight, but I have had Management and Union representatives suggest they step outside and settle matters with finality. I have been able to settle those things down, sometimes by giving the "hot heads" a little lecture," and sometimes by stating that I would resign simultaneously with the first blow.

NOBODY LUNGED ACROSS THE TABLE?

No, none that I've ever seen. I've had some pretty awful things said by employees to management personnel at the hearing table that could be considered cause for major discipline if said in the Plant. And I've heard management personnel say things to employees and Union representatives that have made me shudder.

PEOPLE JUST COULDN'T RESTRAIN THEMSELVES AT TIMES?

Correct. They would say, "You're a G.D. liar," an "S.O.B."--that sort of thing, and much worse at times.

WHAT WOULD YOU DO IN THOSE EARLY TIMES, ALLAN? WHEN THERE HAD NOT BEEN DEVELOPED A COMMON TRADITION OF BEHAVIOR YET? ASSUMING THERE IS NOW?

I cannot say with any exactness. I guess I handled each situation as it came along. I'm trying to recall incidents, but none seem to come to mind. I believe my approach has been simply to say, "That sort of thing has no place here. You've called upon me as an outsider, to settle a problem for you. I don't want to hear you wash your dirty linen, you may wash that elsewhere. Just give me what I need, so that I won't have to close up my notebook and leave."

THERE WAS A REAL THREAT HANGING IN THE AIR?

Yes, at times there was something of that sort present.

DID YOU EVER HAVE TO EXERCISE IT?

I recall a York, Pennsylvania case which I heard in a lawyer's office. There was some sort of breakdown in the hearing for a reason

I cannot recall. The Union representative directed a violent diatribe toward a Company Labor Relations man that was truly filthy. I interrupted, finally, and suggested we take a continuance to another day to permit tempers to simmer down a bit. The Union representative said something I could not hear, and when I pressed him for a repeat he glared at me, got up and left the office, and called his members after him. I waited a half hour and left requesting that the Company let me know if a continuance was requested. I never heard another word from either party. What I did expect to happen there, as I remember now, was that the Union would substitute someone for the violent rep. and the case would be completed. But that never happened.

DID YOU SUBMIT A BILL FOR THAT CASE?

I don't think so. I was not satisfied that I had handled the case as smoothly as I should have, felt the Union would not pay for its share of my time, and decided not to foist on the Company a cost that would not be shared by the Union. I have done some other "odd" things about fees which some of my colleagues question. For instance, I have had a case or two with the UAW in which, after I got to the hearing room, I discovered that the Agreement provided the "Loser Pays All" of the Arbitrator's fees and expense. I would take time, before the hearing, and before anything was said about the case, to outline the very basic faults I found with a provision which placed all of the costs of a settlement of a labor dispute on one party. Then I would say, as kindly as I could, that I did not want to hear the case with such a proviso attached to my billing. Sometimes the parties said they would waive that requirement because I had traveled so far. On other occasions no such offer was made, so I would inform both parties that while I was reluctant to do so I would have to resign--at times the parties seemed flabbergasted--at other times they allowed me to leave in complete silence. Of course, in such cases I sent no bills. But after I discovered that the principle had spread to many other UAW shops I asked the AAA to check the UAW Agreements and not place my name on panels for cases in which "The-Loser-Pays-All" provision appears. The FMCS computerization program does not permit this to be done, so when I get UAW designations from it, or receive them directly, my secretary checks this question and I do not accept if the "offending" provision is included in the parties' agreement.

In a few cases where I slipped up I have written the decision and sent it with a transmittal letter saying that I am so fundamentally opposed to the provision that "I am enclosing my decision without a bill, but please do not call on me for any future cases." I might add that these few latter cases have not been UAW cases, but they have adopted the "Loser-Pays-All" principle.

OH, I MISUNDERSTOOD YOU. YOU DIDN'T CHARGE AT ALL?

Didn't charge at all, even though I may have traveled a distance overnight and experienced considerable expense.

AND RENDERED AN AWARD?

And rendered an award! In one case I heard one non-UAW case at the AAA office here in Philadelphia. Before we began a second case that same day I discovered that there was a "Loser-Pays-All" clause in the arbitration provision. I could have waited, heard the second case with the possibility that one party would "lose" one of the two decisions and I could divide my bill evenly. But I am so opposed to the "Loser-Pays-All" principle, and did not desire to have to lean over backwards to avoid having the two cases balance out each other, I informed the parties that they would get their single decision with no bill, but I would not hold a hearing on the second issue. I wrote the decision, sent no bill, and have never heard from the parties since that date.

I UNDERSTAND IT'S DIFFICULT IF NOT IMPOSSIBLE TO FIND OUT THE CHARGE ARRANGEMENT BEFORE THE EVENT IF IT'S A NEW SET OF PARTIES.

Yes, that's right. But I think several of these last cases happened because I had accepted UAW cases, understanding that the "Loser-Pays-All" principle had been jettisoned; but it had not been. Incidentally, I recently discovered the "Loser-Pays-All" principle in a case involving organized civilians at an Air Force Base. I hope it does not spread to public employers.

THAT'S INTERESTING. I'VE HAD SOME OF THEM AND HAVE NOT ALWAYS WOUND UP ON THE RIGHT SIDE OF THEM EITHER. SOME OF THESE THINGS THAT WE MAKE SO MUCH OF NOW WHEN WE'RE TALKING ABOUT THOSE DAYS WITHOUT KNOWING IT--WHO GOES FIRST, AND CAN YOU CALL PEOPLE FROM THE OTHER SIDE, AND IS THE ARBITRATOR FREE TO CALL HIS OWN WITNESSES, AS IT WERE, DO YOU HAVE TO GO THROUGH ANY HASSLES WITH THAT STUFF?

Yes, I've had some from the middle period of my experience until now. When informality was the approach usually the "opening" party did not call a witness from the opposite side to begin its case. I am thinking primarily of a Company beginning its presentation of a discharge case by seeking to call the discharged employee as its first witness. Under the informal approach I experienced in the first ten or fifteen years I served as an Arbitrator the parties, in effect, said: "We will tell our side of the case, then the other side will present its version. If there are differences we, and then you (the Arbitrator) can ask enough questions to try to reconcile the differences in our respective versions of the facts. If this is not successful we will let you, the Arbitrator, review our versions of the facts and reach your own conclusions as to the true facts of the case." But now I have a lot of discipline 02^ discharge cases (particularly in some relationships in which I serve as a member of a panel of Arbitrators) in which the Company lawyer will make a brief opening statement and then say: "I call, the Grievant as my first witness as on cross-examination." In many of those cases the Union lawyer has resisted and insisted that the Company must prove its case with its own witnesses and documentary evidence. I have had some such cases in which the Union has refused to let the

disciplined employee be called first, and some in which the Company has refused to proceed unless permitted to call the grievant as its first witness. I just try to feel my way along to attain some kind of accommodation until I can get an agreement either that the grievant would testify first, with the Company to be bound by his or her answers, or that the Union would assure the Company that the grievant would be called as part of its case and could then be subjected to full cross-examination. But I get insisitencies from some Union lawyers that the case "has to be proven by the Company on the testimony of its own witnesses, not by ours." Somehow I am usually able to muddle through. However, in the beginning years of my experience that sort of thing did not usually happen.

I had a three-month relationship as the Arbitrator at New York Ship (on the other side of the Delaware River from Philadelphia) some 20 years ago. The parties had a very formal relationship developed while the late Scotty Crawford was their Arbitrator. (I cannot now recall why Scotty was no longer available, but it was long before the illness which led to his 'death.) I knew both of the parties' lawyers very well--they are still practicing--but I was amazed that from the start of my very first case each of them raised constant objections as to documentation offered by the other, questions asked of their own or adversary witnesses, etc. As time passed they got more and more formal, often assigning numbers (all verbal) to their major objections, and letters to the sub-portions of the support for their major objections; and the responses to the objections came in exactly the same manner. I tried to avoid sustaining or overruling the objections, but finally they both insisted that this was the way they had operated for a number of years and that I would have to sustain or overrule each and every one of their objections. I replied that I always tried to adjust my handling of hearing procedures to the parties' mutually agreeable arrangements. I asked, however, "If some of my rulings are in error who is going to overrule me?" I finally said that I felt that I was not the Arbitrator for them, that they should obtain an Arbitrator trained in the law. They did! That relationship does not exist anymore because only minor ship repairs are done there now; all shipbuilding has ceased. Of course there was no relationship between their formal arbitration proceedings and the present nature and extent of the Company's business. But I do cite that relationship as one in which the parties started out on a quasi-Court approach and expected the Arbitrator to continue in that fashion. (Incidentally, I still have cases with both of those lawyers but they are far from formal.)

I THINK THAT'S VERY IMPORTANT AS TO HOW PARTIES GOT STARTED, AND I THINK ONE CAN INFLUENCE THE OTHER VERY MUCH IN THAT WAY, EVEN THOUGH THE OTHER MIGHT FIND THAT ITS LONG-RANGE BEST INTERESTS MIGHT HAVE BEEN TO DEVELOP IN A MORE INFORMAL STYLE.

I agree with you completely.

WHEN I SPOKE A WHILE AGO, ALLAN, ABOUT GEOGRAPHICAL FACTORS, I REALLY MEANT THAT I HAVE HEARD IT SAID THAT THERE'S A NEW YORK, AND MAYBE EVEN A GROWING PHILADELPHIA, DISPUTETIOUSNESS IF YOU'RE DEALING WITH

LAWYERS, DIFFERENT FROM WHAT YOU MIGHT EXPECT OF A ST. LOUIS OR HOUSTON OR DALLAS OR SALT LAKE CITY OR SAN FRANCISCO LAWYER. DID YOU NOTICE ANYTHING IN THE EARLY DAYS ON THAT?

Well, you see, when I did most of my traveling around the country (up to 1960) I rarely saw a lawyer.

I SEE. WELL, YOU SAID THE RUBBER WORKERS AND THE RUBBER EMPLOYERS WERE NOT USING LAWYERS?

Emphatically, No -- Rubber did not. The companies used the Industrial Relations people, and the Union the International Reps. So, I cannot make that kind of a contrast out of my memory. I did have some ad hoc work at times that took me some distance away, and I may have met a few lawyers on those cases, but I would say that there are some lawyers here in Philadelphia with whom I have had a great deal of experience who, as the years pass, have grown more and more contentious. But there are some other lawyers, quite younger men and women, who have been in the field for just a half-dozen years or less who are extremely contentious and who make life quite difficult for an old Arbitrator like me.

I'VE SEEN SOME DOWNRIGHT UNPLEASANT PEOPLE TO DEAL WITH.

Yes, and some have no hesitancy in saying things which make your hair curl at times. (Mine would curl more if I had more.)

NOT AT ALL PRODUCTIVE TO A SOLUTION TO THEIR PROBLEM!

Not at all. And sometimes their outbursts probably hurt their cases.

AND ALMOST SAID WITH TOTAL DISREGARD WHETHER THE PROBLEM GETS SOLVED JUST SO THEY WIN A CASE.

Yes, this is a favorite topic of mine. I feel that an arbitration case that is "won" by the skill of an advocate, let's say in preventing documentation or testimony from becoming part of a hearing record, is a complete misuse of the arbitration process. So, I usually say, in questions about offering a document that erupts in numerous objections from the opposing side claiming that such documentation "will prejudice the arbitrator," if either of you has a feeling that a document could be of meaningful importance to me in deciding this case, and if the document has to do with some aspect of this case that was known to exist when the issue came into existence, i.e., it's not something that has come into existence subsequently as later discovered evidence, I am going to let it in for what it is worth. And I'll admit that that does place on you the requirement to respond, but if I'm going to err, I'm going to err in the direction of letting it in. I do this because the people at the arbitration table from the Plant (employees and supervision alike) are the ones most concerned that they should get every fact in front of me. No matter what it means to the men at the front of the arbitration table, and what difficulties it puts in their way, I let it in "for what it is worth." I am sure, as a result, I am often not asked to return, but that's not my concern.

I do not consider the working people and supervisors before me as litigants forever destined to be divorced after they leave the arbitration table, as most litigants are when they leave a courtroom. They must continue to live together in a day-to-day relationship after the arbitration decision is issued. If there is a chance that the decision "might have been different" in the minds of either the employees or the supervisors if a particular document had been accepted by the Arbitrator, I am never going to take the chance of allowing that to happen by permitting the skill of either advocate to succeed in having it barred from the record. A decision that is "won" by the skill of an advocate can often be at the expense of introducing a divisiveness into the parties' relationships that may never be overcome.

THERE'S ONE QUESTION I'M NOT SURE WE'VE GONE OVER. HOSIERY, I SUPPOSE, AND MAYBE TEXTILE, WERE YOUR MAJOR ARBITRATION INTERESTS IN THE BEGINNING. BUT WERE YOU DOING A LITTLE BIT OF AD HOC WORK IN THE LATE '30S AND I? SO, HOW DID YOU GET THOSE CASES, IF YOU KNOW?

In '38 the textile cases that I had, which were largely interest arbitration, came through George Taylor. He was asked to handle them but he did not have the time. And I charged only \$25 per day, believe it or not, for interest arbitration. I believe that Temple, Drexel, LaSalle (Philadelphia Colleges) and so forth, had not developed any men in this field at all in the '30s. When parties new to Collective Bargaining agreed to the concept of arbitration to settle the terms of their initial Agreements, in this area they turned to the Wharton School at the University of Pennsylvania and would ask, "Who is available as an arbitrator?" And I suppose, after the dozen or so cases I had in Hosiery, I was "available as an arbitrator." The same thing happened to Bill Simkin. We got ad hoc requests in '38, '39 and '40 that far exceeded our capacity to handle them. In fact, as I recall it, in 1940 my arbitration income was twice the size of my University income, and in '41, my last year at the University, it was much more than that, so much so that the University administration began to frown upon the amount of time I was taking for arbitration. I cannot say that they were wrong.

WERE YOU THEN ON AAA LISTS?

No, I don't believe I went on the AAA lists until after the War. The Philadelphia office of the AAA was then in the Widener Building when I had my office here in this building (1520 Locust Street). The arbitration caseload from the War-Labor-Board-installed Grievance Procedures in this area was tremendous, and it was growing by leaps and bounds. A lot of University people in the meantime, had come into it, and not only from Penn. That's when the Bob Brechts came into arbitration practice, and they were being called upon with increasing frequency. A few of them could have been in the original formation of the Academy. Incidentally, George Taylor was not interested in the original formation of the Academy because he considered it directed toward sociability of the War Labor Board dispute personnel that had no real place or future in arbitration. But when the Academy's emphasis shifted to the improvements in the practice

and concepts of arbitration, he firmly agreed and joined. He, of course, could well have been President if he had accepted nomination when he was asked.

DID YOU EVER HAVE, IN THOSE FORMATIVE DAYS, PARTIES COME IN WITH A STIPULATED ISSUE?

That did happen. I don't think the word "stipulation" was used at first. But I do remember before World War II receiving letters asking me to arbitrate issues that were worded as questions.

THE PARTIES HAD AGREED TO THE SPECIFIC ISSUE?

Yes. They had agreed, and such letters, as I remember, were jointly signed in some instances.

NOW, WOULD YOU HAVE HAD, IN THOSE TIMES, ALLAN, CASES IN WHICH THE PARTIES SIMPLY SUBMITTED LETTERS OF ISSUE PLUS A COPY OF THEIR AGREEMENT, AND ASKED YOU TO DECIDE IT WITHOUT HAVING A HEARING?

No, I would not say I had that experience before the War. I would say after the War, I had some issues submitted to me on the basis of briefs, but they were rather rare. I know I became an "expert" in the wallpapering business arbitration out of a clear blue sky, because I issued two decisions that satisfied both parties. I suddenly had a whole raft of wallpaper cases which I had to stop because the University administration complained. It took only two decisions to become an "expert" then. Now it takes a hundred and two.

IN THOSE DAYS, ALLAN, DID YOU GET WHAT WE PRESENTLY SEE AS THE DIFFERENCE BETWEEN ARBITRABILITY AND THE MERITS?

The question of arbitrability, and the claim of non-arbitrability-- I was trying last night to figure out when I first heard the contention that a grievance was not arbitrable. I think I had it raised for the first time at General Motors, during the War. I do not remember it at all in Hosiery, in Textiles, or in any of my ad hoc cases, but I do remember the question being raised in some of the General Motors' cases. The earliest one of those was a "beaut." The General Motors Company had negotiated its June 3, 19⁴¹ Agreement with the UAW when it was making automobiles plus a small amount of "defense work." That was the situation when I became the Umpire. Except for the pouring of motor blocks, and a few other continuous processes, it was a five-day-per-week industry, not a seven-day continuous process such as was much of the Steel Industry. But after World War II was declared and the government insisted that all possible war production be operated seven days a week, within two months many of the G.M. Plants were gutted of machinery, conveyors, etc. and were converted from the production of automobiles to a whole host of war products. As a consequence the Company decided that since the government was insisting that it go on a seven-day operation basis on just about all production, it should no longer be required to pay double time for Sundays and holidays as the existing Agreement required. The Company set up all kinds of new continuous swing-shift schedules on many operations. The Company refused to arbitrate the crockery of dropping

such double-time payments, but did agree to submit the matter to the War Labor Board along with a number of other general matters that separated the parties. The War Labor Board found, on February 27, 19², a major portion of the issue submitted to it, i.e., "the question of double-time payment for Sundays and holidays for swing shifts on war production" should be submitted by the parties to their grievance machinery and their Impartial Umpire. On March 11, 19² I issued Decision B-120 which held that I had to resolve the issue within the terms of the written Agreement, and since the Agreement required double-time payment for Sundays and holidays I could not change it. I noted that if I assumed the right to find that the production of war materials negated the double-time provision of the Agreement, where would I stop?

However, I concluded the decision by saying: "If this double-time provision should prove to be an obstacle to full war production, the Umpire urges both parties to turn into action their avowed intentions toward maximizing production, by reformulating such provision as quickly as possible."

The Company had set aside, in escrow, funds to meet the double-time payments it withheld while the issue was being handled, first by the War Labor Board, and then by me. (I later learned that these escrow funds totalled approximately ten million dollars when paid to the covered employees.) Subsequently, the War Labor Board considered the issue in its applicability to the entire war effort, and through its efforts the President issued (as I recall it), Executive Order 9280 that voided all double-time requirements in all Agreements except those applicable to a seventh consecutive day worked-.

After I returned to the G.M.-U.A.W. Umpireship in early 19³ I had discussions with some of the officials connected with Labor Relations-G.M. and the U.A.W. I learned that this "double-time" decision had come close to being the cause for my receiving my "walking papers" from the Company. But the top Company official with whom I spoke (now dead) told me that the Company had concluded that if it had succeeded in getting me to jettison the double-time provision because of the war effort the Union could have countered with requests for all sorts of changes, and the Agreement would have descended into utter chaos in a very few months.

THAT WOULD HAVE BEEN A SHORT RANGE SET OF WALKING PAPERS. ONE POINT I MEANT TO MENTION-IT'S ANOTHER LITTLE NIT PICKER. DID PEOPLE ASK YOU TO ISSUE SUBPOENAS IN THE EARLY TIMES?

Not at all. As I said earlier, no lawyers were present. I have issued, possibly, 200 to 300 subpoenas in all of my experience, most of these in the past 10 years. I have a case coming up in New York that has been in the works for about a year. Various reasons have existed for continuances, and the continuances have given rise to discovery proceedings on the part of the lawyers for both sides about certain records. They have requested that I sign subpoenas for numerous persons to appear, in certain instances against their own desires; In other instances to bring records which the parties do not want to release, and perhaps will not release except through the instrumentality of a subpoena. I have checked with both of the

lawyers and both agree that the subpoenas should be issued as each has requested, and I have signed them.

I understand that the AAA maintains a supply of subpoena forms that the parties may secure on request. But I had no such thing years ago. Probably most people in Collective Bargaining in those years never had any conception of needing such a formality. I might add that in Benefit Fund contribution delinquency claims in the Ladies' Garment Industry I have signed more than half the subpoenas I have signed as an Arbitrator.

APPARENTLY THEN, ALLAN, IN HOSIERY, TEXTILE, G.M. TIMES, IF THE UNION WANTED TO, A GREAT PROBLEM OR SOMETHING THAT MIGHT REQUIRE INTERNAL MANAGEMENT DOCUMENTS, DIDN'T HAVE ANY TROUBLE GETTING THEM. IS THAT ACCURATE?

In Textiles and Hosiery, that is correct. If we needed wage data, if we needed production data, absentee and tardiness data, we could get them at the snap of a finger. Neither companies nor Unions ever thought of making it difficult to get such information. In General Motors there may have been a bit more reluctance to release data, but I think the huge size of the undertaking was the principal hurdle in that instance.

DO YOU THINK ANY OF THAT CAKE FROM THE FACT THAT THE OFFICE WAS CALLED "IMPARTIAL CHAIRMAN" IN HOSIERY, AS OPPOSED TO UMPIRE AT G.M.?

No, I don't think so. I feel it was largely the way George Taylor persuaded the companies that the release of data would basically benefit the companies. He "broke them in," and his successors benefited from his efforts. As I noted before, much of the original data compilation (in the Hosiery Industry) was for the good of the companies, so they accepted the idea of yielding data readily because such action benefited them. The companies would often say the "leggers" or "footers" are knitting far more dozens of "legs" or "feet" than they claim, and we have data to prove it. George Taylor would then ask them to compile the data and send it to him. On many occasions, while I served as his Assistant, I would visit the Hosiery Plants and either check the submitted production data or would record it originally from Company production and payroll records. Then I would analyze it and give it to Taylor and he would then write his decision on the basis of the collected data.

DID YOU EVER SAY YOU DON'T TRUST THE SUBMITTED DATA--THEY ARE NOT ACCURATE?

Well, often we would make spotchecks. I would do the spotcheck, usually I would have somebody from the Union with me--customarily it would be somebody from the Local Union who was appointed in advance.

WHO PROBABLY KNEW WHERE THE BOOKS WERE ANYHOW?

I got to know a lot of the companies very well, of course. During the NRA days, in the early '33-'34 period, a lot of these companies had to open their books to analyses for minimum wage setting purposes,

and so they were used to this sort of thing. For part of the '34-'35 period I had a half-dozen men who worked with me including-- extreme nepotism--my brother and two of my brothers-in-law. In fact, the one brother-in-law, William B. Marks, Jr., my wife's brother, did so much wage analysis work he became a Wage Analyst. He was a graduate of the Wharton School, too. Later he became the principal wage setter for private sector employees of the Department of Defense in Germany. After the War he negotiated contracts with the Labor Unions of Germany on behalf of the Defense Department.

YOU CAN'T TELL WHERE THIS IS GOING TO LEAD.

And this all developed from the work in the Hosiery Industry back in the early '30s.

YOU SAID SOMETHING WHEN YOU WERE TALKING ABOUT THE SUBPOENAS THAT YOU HAD SIGNED FOR PEOPLE TO APPEAR. HAVE YOU HAD ANY USE OF SUB-POENAS FOR "DISCOVERY" IN THE EARLY DAYS, ALLAN? WERE THERE SITUATIONS WHERE THE PARTIES WOULD GET TOGETHER, AT YOUR DIRECTION, AND YOU WOULD SAY, "WELL, YOU GUYS GET TOGETHER AND FIGURE THIS OUT?"

Well, I have done some of that--talked sometimes at the hearing. I've said, "I don't want anything brand new here, now, that you haven't talked about yourselves. So why don't you go back, dig this stuff out and see what it will mean to you as a basis for settling the issue you have presented to me. If it doesn't settle the issue, then bring me the data and let me look at them and let me decide." But I've tried to avoid having them do the "discovery" in my presence, especially if I am an ad hoc arbitrator and they would have to pay for my time.

I SEE. DID YOU, IN THOSE DAYS, EVER DIRECT THE PARTIES TO EXAMINE A WITNESS BY WAY OF "DISCOVERY" OUTSIDE YOUR PRESENCE, WITH THE RESULT THAT THE PERSON WOULD THEREAFTER NOT APPEAR BEFORE YOU? WOULD THE KIND OF THING HAVE OCCURRED, SUCH AS WE MIGHT CALL PRE-TRIAL DISCOVERY, IF WE WERE IN LITIGATION?

Well, I don't remember it in that form. I have recollections of arbitration hearings where people have said things that surprised their own side, and I have withdrawn and suggested that they go on talking in view of those statements. That's all that I can recall in that area.

YOU DIDN'T HAVE ANYBODY SAY, "I CANNOT INTELLIGENTLY CROSS-EXAMINE JONES UNLESS I CAN FIRST TALK TO SMITH AND ROBINSON." I HAVE HAD DISCHARGED EMPLOYEES SAY THAT THEY WOULD REPLY TO QUESTIONS IF THEIR ANSWERS WERE NOT RECORDED ON THE TRANSCRIPT OF A HEARING, OF IF A CERTAIN PERSON, OR PERSONS, WERE NOT IN THE HEARING ROOM. I HAVE RESPONDED, IN MOST CASES, BY CLEARING THE HEARING ROOM OF THE PERSONS THE WITNESS REQUESTED TO BE EXCUSED, INCLUDING THE REPORTER IF THERE WAS ONE. THEN THE DISCHARGED EMPLOYEE HAS SAID WHAT HE DID NOT WISH PUT ON THE RECORD, OR HAVE A CERTAIN EXCLUDED PERSON HEAR. THIS HAS USUALLY BEEN SOMETHING EXTREMELY PERSONAL ABOUT THE INDIVIDUAL INVOLVED. I RECALL THIS HAPPENING ON JUST TWO RECENT OCCASIONS. I DON'T REMEMBER THAT SORT OF THING HAPPENING IN THE OLD DAYS.

HOW ABOUT, ALLAN, WHAT WE NOT GET..., I SEEM TO BE GETTING MORE FREQUENTLY IN SOME AD HOC WORK, A MOTION TO SEQUESTER THE WITNESSES.

I don't recall this occurring in the early days, but it has happened to me quite frequently in the past several years. When I first received the request I have the present recollection that I was "floored," and I required a lengthy dissertation as to why it had to be. Now when it happens, it happens perhaps a few dozen times per year, I simply ask the other side if they have any objections. Usually they don't have, and sequestering has followed readily. This happens to me in the U.S. Postal Service cases more than any other relationship I've ever had, but most of my Postal Service cases involve discharges in which the parties become aware, in advance, of widely varying recollections of observed actions and/or words and want the witnesses to repeat their versions without benefit of hearing the versions of other witnesses. I've had it in some of the accident cases with Greyhound Lines (in which drivers have been severely disciplined or discharged) where persons are present for both sides to testify as to their observations at the scene of the accident. In those cases, on occasion, both parties request sequestration. It is accomplished except for the grievant, the top Company person and the Union official. It seems to slow the procedure down because each person has to go out and send the next one in. But I have granted it. As I previously said, new concepts come from the presence of lawyers, and I feel this is one of them.

DO YOU FIND THE LAWYERS MORE OFTEN THAN NOT MAKING THIS MOTION TO SEQUESTER, IF THAT'S WHAT WE SHOULD CALL IT?

I would not say the lawyers request it unnecessarily. But I do not recall any such motions by anyone but a lawyer.

I'M ASSUMING THE ANSWER TO MOST OF THESE FOLLOWING QUESTIONS WOULD BE IN THE NEGATIVE, ALLAN. THAT'S WHY I'M JUST ASKING YOU, TO HAVE A RECORD OF THEM. WHAT WE SEEM TO BE FINDING SOMETIMES TODAY, PARTICULARLY IN A DISCHARGE CASE, IS A MAN SHOWING UP WITH HIS OWN LAWYER WHO WANTS TO PROCEED IN KIND OF A TROIKA FASHION RATHER THAN A BI-PARTISAN PROCEDURE. WOULD THAT HAVE OCCURRED IN THE EARLY DAYS AT ALL?

I remember one instance in General Motors (about 19⁴) where it happened. There was a situation—not the Cleveland case I mentioned—where the grievant had pummeled another employee, but before hitting him the first time took off the employee's glasses and put them down. (Both employees were white.) Unfortunately, he put them down on a running belt; they went down around the rollers that turned the belt and they were crushed into tiny fragments. But that is not the answer to your question. In that case the grievant did have a personal lawyer at the hearing—that is the first time I recall it having happened. The point was made that the grievant felt that he would not have the complete facts brought out, or that all of his legal rights would not be protected. As I recall, we had a wrangle. The Union did not like it and objected strenuously to outside Counsel being

present. The Corporation supported the Union and argued that it did not want outsiders interfering with Its relationships with the Union. We finally worked out a compromise to permit the grievant's personal Counsel to remain as an observer without right of participation.

After that experience I doubt if I faced the question again until the early '60s, except In one case I recall happening here in this AAA office. In the very early '50s I had the AAA case I have referred to in which a very well known Labor Lawyer in this city (Edward Davis) was Union Counsel. The grievant was black and brought a black lawyer with him. Davis (a white) was obviously amazed (it was his first such experience), made a strong protest to me, and asked that the personal counsel be barred from the hearing. I finally persuaded Davis to allow the personal counsel to remain, but he did so only after preparing a handwritten memo of understanding that Davis would handle the case and the personal counsel would simply observe and, before the hearing would be concluded, would have an opportunity to confer with Davis.

Starting probably in the early '60s I began to get an increasing number of personal lawyers appearing with grievants at arbitration hearings. Drawing on my brief prior experience, and recognizing the increasing emphasis on civil rights, I worked out a plan, which usually proved successful, of having it agreed that Union Counsel would be the sole spokesman for the grievant, the Union Counsel would sit in the number one seat at the arbitration table, the grievant would sit next to him, and the personal Counsel would sit in the third seat. Before any witness would be excused I would encourage the Union Counsel to confer with personal Counsel to determine if personal Counsel wanted any further questions asked, with Union Counsel to ask such questions of the witness. At the end of the hearing, if verbal summaries and/or arguments are to be given, I again suggest that Union and Personal Counsel confer, and that the Union Counsel then present such summary and arguments. On a number of recent hearings Union Counsel has followed his summary and arguments by asking the grievant to tell me, as the Arbitrator, if he feels he has been fully and properly represented. I have yet to hear that question answered In the negative.

HAS THE "PERSONAL LAWYER" QUESTION ARISEN ONLY IN MINORITY CASES, WITH THE POSSIBILITY OF A RACIAL MATTER BEING INVOLVED?

No, there have been some of both, but the majority have involved minority grievants. In the Clothing Industry, in the last ten years, I have had possibly a dozen cases in which a black lawyer has been present as personal counsel for a black employee. I've had some in United States Postal Service cases where a black lawyer has been present for a black employee. But I have also had a few cases in both of these relationships in which white personal lawyers have appeared on behalf of white grievants. In such cases the white grievant may have felt alienated from the Union, or may have felt he received less favorable treatment than another "Union brother," or may have reasoned that the Union would not press his case assiduously because he was seeking the job held by another employee who might be favored by the Union.

ONE THING WE HAVEN'T MENTIONED AT ALL, ALLAN. PERHAPS THERE'S NO REASON TO BE I SHOULD AT LEAST EXPOSE IT. DID YOU RUM ACROSS COMPANIES SIMPLY REFUSING TO COMPLY IN THE '30S AND EARLY '40S? PERHAPS MORE IN YOUR AD HOC WORK IN THE EARLY DAYS?

I cannot place any figure or date on my response. For some reason or other I recently found a lengthy letter from a Corporation in Pittsburgh in which my decision was taken to task page by page. The letter ended with something to the effect that the Company did not intend to comply with it for enumerated reasons. I think I received a letter from the Union and replied that I had no interest in joining it to seek compliance. But I recall adding that if clarification of the Decision would help, and if the Company would join the Union in re-establishing my jurisdiction to meet again, hear their variations in interpretations of my Decision, and issue a clarification, I would be happy to do so. I heard nothing further from either party.

DID YOU HEAR OF ANY UNION ENFORCEMENT ACTION IN COURT OR COMPANY ACTION TO VACATE AN AWARD—FIRST IN THE EARLY DAYS?

Yes. One of the early Independent Hosiery Company cases I had before the War was a discharge case which I ruled on in 1939 or early 1940. I wrote a decision in which I put a man back to work who had been discharged for "allegedly intending to steal." I think they were the terms used. He was a long-service Hosiery Knitter working on the night shift without supervision. His machine had performed properly to knit the welts of 20 ladies' full-fashioned stockings, but something went wrong and, as a result, the 20 welts had to be removed as "press offs." (This was a common occurrence, and the press offs could later be threaded onto needle bars and be mounted again in the "legging" knitting machine to complete the knitting of the stocking leg.) The grievant put the 20 "press offs" in a brown paper bag, placed the bag on a shelf at the end of his machine, and at the end of the shift, went home. He testified that he did this to keep the "press offs" clean until the day-shift Foreman arrived and could add them to other "press offs" for later completion. When the day shift Foreman came in the next morning, he found the paper bag with the "press offs," decided that the Knitter had placed them there intending to take them home, but simply had forgotten them. He reported the incident to management and it decided to discharge the Knitter for "an intent to steal."

The discharge issue was submitted to me and I overruled it, noting the lack of value of the "press offs," observing that the grievant had not taken the "press offs" out of the Plant, and that it was just as possible that he had placed them on the table for the day shift Foreman, if not more so, as it was that he intended to take them for some obscure use. I also observed that if he intended to steal them he could have taken them with him at the midnight end of his shift when no supervision was present. The decision was issued, and it was, as I say, an Independent Hosiery Plant. As far as I recall, it was the Company's only arbitration case, and the Company refused to reinstate the grievant. The Union sought specific performance through State Equity Court in Montgomery County, Pennsylvania. I received a

subpoena from the Union to attend the hearing. (This was in the early days, before the more recently established master plan for quashing subpoenas issued to Arbitrators.) I attended, accompanied by a now member of the NAA, Bert Levy, who was introduced to the Court by his firm's correspondent in Montgomery County. He made his presentation that he represented me and I was called as a witness.

The attorney for the Union was totally inexperienced in collective bargaining and did not know the right questions to ask. So when I was sworn and seated in the witness chair, I turned to the Court, at the suggestion of my attorney, and asked if I could be considered as an "amicus curiae," since I was present under subpoena, had no interest in the results, and was strictly impartial. The Judge replied to the effect, "I'll decide whether you're a friend of the court later on, you just go ahead and answer the questions."

HE WAS STILL IN THAT TIME WHEN JUDGES WERE SUSPICIOUS AND ALL THAT?

Yes, at least he certainly was.

THIS IS FASCINATING.

Then the Union's Counsel started to ask me questions about the way my office functioned, what kinds of cases I handled, how I arranged for hearings, how I conducted the hearings, etc. But, as I recall it now, the Company's lawyer objected to every substantive question, and was sustained by the Court in every instance. The Union Counsel would try another tact, the Company Counsel objected; his objection was sustained, and the end result was I said practically nothing in the way of direct testimony other than my name and address. The Company attorney asked me nothing on cross-examination because there was nothing in the record upon which to cross-examine me, so I was excused. It was a very frustrating experience.

Later, the Court wrote an Opinion and Decision overruling my decision and saying, in effect, that no employer (under the Lajoie baseball case precedent) could be required to employ anyone he did not wish to have on his payroll. The Court said that my decision directed the Company to do something which I had no right to direct it to do, and, therefore, It was voided by the Court.

DID ANYONE SUGGEST TO HIM THAT THERE WAS A LABOR AGREEMENT.

Oh, yes. That was submitted as an Exhibit, but he said that it was not possible for anyone to direct the Company to employ, or keep on its payroll, anyone to whom it did not desire to provide employment, Agreement or no Agreement.

REALLY, IN HIS TERMS, ALL YOU WERE SAYING WAS "DON'T FIRE HIM." YOU WEREN'T DIRECTING THE COMPANY TO DO ANYTHING. THEY HAD ALREADY HIRED HIM.

Courts have become a lot more knowledgeable and sophisticated in collective bargaining matters since 1939- The Union, in that case, had lost its contract with the Company and was battling for this one man. The International Union agreed that the Court's Decision made bad law, and that there should be an appeal, but the Union said it just couldn't afford further litigation. It had lost the contract, had no dues income from the Employer's employees, and was not interested in going any further with the litigation.

WHY DID THE UNION LAWYER THINK HE NEEDED YOU AT ALL? HE HAD THE AWARD.

As I recall it he wanted to establish the fact that the arbitration process had existed in the Hosiery Industry for more than 10 years, that the procedure was thought to be eminently fair by both Labor and Management, that dozens of discharges had been sustained and dozens overruled under the procedure by Arbitrators other than me, etc. But he never got the chance to do any of these things; the Court just did not seem interested in listening to him or in giving him any real opportunity to present his case on behalf of the grievant or the Union.

SC YOU APPARENTLY FELT A CERTAIN SENSE OF LESS THAN HAPPY WELCOME.

You bet. After the Court's decision was issued Bert Levy said to me, "Don't let what happens to you in the Montgomery County Equity Court stop you, or don't let this result condition what you do, because this Decision is bad law, and it won't stand up if it's tested elsewhere." Luckily that decision set a zero precedent for Arbitration, though it meant that an employee lost a job he should have retained.

I'M PREPARED TO STOP FOR JUST A MINUTE, ALLAN.

I noticed one point that we passed over. There's another question concerning my beginnings in arbitration. It asks, "How did the parties view the arbitration process? Was it a quasi-judicial proceeding or an extension of collective bargaining?" Here again, George Taylor's influence was very strongly felt in this area. His concept of arbitration was that it was simply an extension of collective bargaining and, as a result, mediation, to him, was a natural part of the arbitration process to be tried at as many arbitration hearings as possible. As a consequence, I adapted myself to that approach. I have, on occasion, mistakenly tried to apply it where parties consider arbitration quite the opposite of collective bargaining. Sometimes I've been sorry with the results.

GOT SHOT RIGHT OUT OF THE WATER!

THERE'S ANOTHER QUESTION THAT I DON'T KNOW THAT WE'VE TOUCHED ON EXCEPT A LITTLE. WERE YOU LIKELY TO GET A WHOLE LOT OF CLAIMS THAT GRIEVANCES WERE UNTIMELY FILED, OR HAD NOT BEEN APPEALED FROM STEP TWO TO STEP THREE WITHIN THE PROPER TIME? WAS THAT KIND OF THING THE GRIST OF VERY MANY OF YOUR CASES?

Here again I would say that it did not appear until the latter part of my General Motors' experience in '43-'44. I do not recall the early Hosiery Agreements even mentioning time. There, the essence was speed, and little time elapsed between a cause for a grievance and an arbitration decision. They did not see the need for mentioning time intervals for processing grievances, and the Impartial Chairman expedited cases rather rapidly. The G.M.-U.A.W. 1941 Agreement included time limits. But the grievances then involved had to do with automobile production and the Company was making War production, so delays in processing many of the cases would, not cost the Company a lot of money, so not too much attention was paid to time limits. But, as the grievances later on applied to war production a new interest arose in time limits, and I began having timeliness questions raised as bars to the arbitration of grievances. At first I disallowed these claims on the basis of past practice, but I introduced a suggestion into several successive decisions involving timeliness question, to the effect that a general awareness of the timeliness requirements of the Grievance Procedure be taken throughout G.M. and the G.M. section of the U.A.W. After a few months I issued a decision stating that from the date of that decision forward the Umpire would apply the Agreement timeliness requirements as written. With a few isolated instances that decision terminated timeliness considerations as bases for deciding grievances.