

National Academy of Arbitrators
HISTORY COMMITTEE INTERVIEW

David E. Feller

NAA President, 1992

Interviewed by Jim Oldham

May 26, 1994*

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Jim Oldham: We are in Minneapolis, Minnesota. It is May 26, 1994, and this is Jim Oldham talking with Dave Feller. This is the standard format that we have used for interviewing past Presidents, and we will start by asking Dave to talk a bit about his personal background. If you would, go back to square one and tell us where you were born and early days of getting through school.

Dave Feller: I was born in New York City, then moved to Harrisburg, Pennsylvania, when my father went bankrupt in New York. He opened up a store in Harrisburg.

Oldham: What happened to him in New York? What was his business there?

Feller: He was a dress manufacturer, and he picked very bad styles one year. If you picked bad styles, you hit the dirt, as he did.

Oldham: He should have gotten in touch with Lucy, Lady Duff Gordon.

Feller: He was also sick. I think he had pneumonia, and there was a partner, and it was a long complicated story, all the details of which I am not familiar. What I am familiar with is the fact that the size of the retail business was much more stable than the wholesale business, the manufacturing business, and he went out on the Pennsylvania Railroad until he found a city of a size that he thought could support a store to sell ladies clothing, and he came to Harrisburg. I remember very well when that was because we moved before he even was able to rent a house for us. I remember spending Christmas in 1922 listening to the carols being sung on a recording at the department store across the street from the hotel, where I was cooped up.

Oldham: How old would you have been at that time?

Feller: Six. I was born in November 1916, and I know I was six because it was 1922, and it was Christmas time. I went to public schools in Harrisburg, graduated from William Penn High School in 1934. William Penn High School was rated by the state of Pennsylvania as the next to the worst school of its size in the state.

Oldham: And did you find it so?

Feller: I had a lot of fun. I remember the good people of Pennsylvania decided, being the Depression, that they couldn't afford to have football coaches just as coaches; they had to use teachers as coaches. Of course, the immediate reaction to that was to take the coaches and make them teach classes. I had a physics teacher that was absolutely the biggest ninny I ever heard. He was a very good football coach.

Oldham: My own high school was in west Texas, and I did not realize at the time how bad it was until I went to college. I, too, had a high school teacher who was the football coach. He taught history, and it was awful.

Feller: There were a couple of good women teachers, all spinsters because, at that time, given the expected family structure and there being a Depression, if a woman got married, she got fired. And so the female teachers (and most of my teachers were female) were all old maids. But some of them were very good. I got into Harvard College without taking college boards.

Oldham: How did you decide to go to Harvard College and to apply?

Feller: I really wanted to go to Antioch and, as a matter of fact, my father and I drove out to Yellow Springs, Ohio. We interviewed with people there. Antioch at that time -- perhaps still -- had this program where you work for six months and go to school for six months, but they had to place you in jobs. Remember this was Depression time. The person that we interviewed said, "You're Jewish," and I said, "Yes, I'm Jewish." "Well," he said, "that's a problem because we have to place people, and we have difficulty finding jobs for Jews." So we drove back, and my father said, well, you've got to apply someplace else if you can't get into Antioch. I said, well, Pop, I can't; it's too late to send away for application blanks and what not. I went over to see a friend of mine who lived across the street and I said, have you got any spare application blanks? He said, "Yes, I got one from Harvard."

Oldham: That's a great story.

Feller: So I filled it out. And they admitted me because at that time nobody from Harrisburg had ever gone to Harvard College, and they had a provision that said if you were in the top 7th of your class from a high school which does not adequately prepare for college boards, you could be admitted in the interest of diversity. That is how I got into Harvard College. It was only when I had some roommates there that I discovered all that they knew and had learned in high school, and I felt how terribly deprived I had been during my earlier education. The question is, why did I go to Harvard? I got admitted to Antioch, too. I spent the summer at summer camp working as kind of quasi-camper, quasi-junior counselor, and I got admitted. I got letters of admission from Antioch and Harvard, and I really still wanted to go to Antioch, but everybody said, "You got into Harvard; you're not going to Harvard? You're crazy; you're crazy." So I finally, against my own desire, went to Harvard, and the first year was miserable. I kept saying I made a terrible mistake.

Oldham: Now before we go on to Harvard, let me add just one more background question. Tell me about your family. Did you have brothers and sisters; was there a pattern of higher education in your family, and the like?

Feller: I have a younger brother who went to Dickinson College. Both my father and mother were immigrants, and neither had much schooling.

Oldham: What was the old country?

Feller: My mother's country was Russia, what is now Byelorussia, from Minsk. My father's country was Rumania. He left Rumania in a false bottom of a stage coach to avoid the draft. My mother's father died when she was young, and she had been farmed out to grandparents. They arranged a marriage for her, but she decided she didn't want to do that and, at the age of 16, she just got up, not having a word of English, and somehow got enough money from somebody to get passage. She had an uncle in Newcastle, Pennsylvania, and she somehow got onto a train bound for New York, got off in Newcastle, still not speaking a word of English, was met by somebody who was expecting somebody, and spent two days in the wrong house. It wasn't her relatives; they had someone else. Anyway, that was my mother's story.

Oldham: All right. Back to Harvard. The first year was miserable.

Feller: Harvard has a very cold atmosphere. The first year I was in a room with two other people, one of whom I became very friendly with; the other of whom I was very friendly with at the beginning, but then he didn't speak to me the rest of the year, and it took until senior year that we could get back on speaking terms. I was always very good at taking exams. I was just good at it. We took a course called History I in which we had exams, little short one-hour exams, every couple of weeks. I never went to class, and on my way over to the hall where the exams were given, he would tell me everything I needed to know in order to take the exam, and I always came out with a higher grade than he did.

Oldham: Hard on a relationship!

Feller: He came to resent me enormously. He obviously must have known more than I did, because all I knew I had learned from him. Anyway, I got out of Harvard.

Oldham: What did you major in?

Feller: Economics. I indeed wanted to be an economist. It just shows you how the culture has changed. In those days, the only real employment opportunity for economists, economics graduates, was to teach economics. The whole notion, I think, began with the New Deal that brought in economists. Nowadays, economists, my God, that's a big profession, but in those days, it was not so. But I was fascinated by it. I graduated top in my class in economics. I never forgot the graduation ceremony, commencement. You go through all this regalia and then they hand you a scroll, which is your diploma -- a cardboard roll, and inside is a little letter saying there is no diploma here because you had a very special kind of degree, and we had to have it specially engraved, which my mother promptly took home and framed. There was controversy in the department about me. Some people wanted to give me a *summa* and some people wanted to give me a *magna*, and they read it as a new degree: *magna* with highest honors. I take it it is now part of the regular categories, but I think I was one of the very first.

Oldham: You did get your diploma eventually.

Feller: Eventually I got a diploma. I wanted to continue in economics, but there was a girl I was going around with and wanted to get married to, and I figured there was no economic future in economics. Still, I enrolled both as a graduate student in economics and entered law school and went to classes in both places the first week. Then I was so fascinated by the law school professors and what not, I decided to go to law school. And I got through law school.

Oldham: That girl was Gilda, I trust?

Feller: No, by the time I got out of law school, she -- that girl -- was married to someone else. I didn't meet Gilda until I was in Washington after the war.

Oldham: I see. Law school at Harvard; this would have been during the 30s still?

Feller: Yes. Well, I got out of college in '38 and law school class of '41.

Oldham: Just say a word about your experience in the law school at Harvard. Was this a good experience, and who stood out in your mind as your best teacher or two?

Feller: Oh, no question, Lawrence Seavy. I took Torts from him. As a matter of fact, I was so fascinated by his class that I was living with a graduate student in economics and a physicist, and I insisted they come and sit in a class to watch this Socratic method. He was just marvelous. I guess Seavy and Paul Freund.

Oldham: Constitutional law?

Feller: What I particularly remember, we had a constitutional litigation seminar in which Freund described just exactly how you went through and set up cases. It turned out in the end to be very useful to me.

Oldham: How much of the legislation and activities of the New Deal infiltrated legal education at Harvard during those years?

Feller: Not much. I never took labor law, for example. I think the *Jones & Laughlin* case holding the National Labor Relations Act constitutional was just decided, but the labor law casebook had nothing about the National Labor Relations Act. They handed out a mimeographed copy of the Act. I think nothing that we now teach in labor law was taught then. Literally the entire field has evolved. It was all antitrust.

Oldham: I was just going to say I am trying to imagine what it would have been.

Feller: It was all antitrust cases and the old common law ... cases.

Oldham: *Begelon* and *Vegelehn*.

Feller: *Begelon* and *Gunzer* and all those cases, and *Danbury Hatter*; that was labor law then. It was taught by Jim Landis. I didn't take it. So I got out of law school, and I still wanted to be an economist, the girl having married someone else.

Oldham: Now economics was feasible again.

Feller: It's quite different now, of course, where you have recruiters come to the law school, but in those days you went out and hunted a job. I went down to Wall Street and didn't get any offers that I wanted to consider. I just did it as a matter of routine. I didn't want to be a lawyer. Then came a flyer announcing that there was somewhere you could apply for what was called a Bigelow Fellowship at the University of Chicago, which was a half-time job. You work with first-year students in writing projects. But it was only a half-time job, and I could enroll in the Department of Economics, and I still wanted to be an economist. I enrolled in a great course. Someone made a crack yesterday about Milton Friedman. Milton Friedman was never heard of then -- I don't know whether he was around. These were the days of that great Polish guy and Frank Knight. I took a great course, but in the second semester, Ed Levy left to go to Washington, and ultimately became Attorney General and Chancellor of the University. He left, and they needed somebody to teach his courses, and they asked me. I volunteered, but I had to drop economics to become a law teacher. I taught a course called, Chicago was way ahead -- "Law and Economics" -- and a course called "Risk and the Business Enterprise," which was really Agency and Partnerships and a little bit of Corporations. And I hadn't even taken Agency from Seavy.

Oldham: That is amazing. That course title would sound like it was offered today.

Feller: Yes, it would. But that was before Coase and Posner and all that; the analysis was quite different. But I taught there and then I was drafted. I remember being in a replacement depot in Cumberland, Pennsylvania grading blue books.

Oldham: So this would have been 1942?

Feller: Yes; I got out in '41; this was summer of '42. Oh, I did one other teaching job in the summer of '42. Chicago then had a special program: you went to college for two years, then you went to law school for four years, and you took an economics course in law school and a number of other courses, so it gave you a full-rounded education. I taught the economics course at the law school in that summer. And then I was drafted in the Army.

Oldham: If you would, say a word about the Army years. Were you in for a tour of a number of years?

Feller: Oh, yes. I could fill any number of cassettes with some very funny Army stories.

Oldham: Well, tell us a couple, at least.

Feller: I had originally tried to get into the Army earlier. You know, it was a great patriotic war, but I was turned down because my eyesight was 20/400. It is much better now because

I've had cataracts and implanted lenses; my eyes are much better; but I was 20/200 in one eye and about 20/400 in the other; very nearsighted, so I was turned down. Then they were reaching the bottom of the barrel, and I was classified 1-B, limited service, and I was drafted as limited service and sent to New Cumberland. They gave us all these tests - aptitude tests, intelligence tests, and I told you I'm very good at taking tests. I did very well on the mechanical aptitude tests, and anybody who knows me knows my mechanical aptitude is zilch. I once tried to fix a toilet, the valve inside, and ended up cracking the whole thing and had to buy a whole new toilet. But, in any case, I did very well on the mechanical aptitude test and very well on the intelligence test, and I watched all my fellow draftees going out, and I was staying there in New Cumberland. Just staying there; didn't know what was going on.

Finally I get a notice to appear, and I am told I am being sent to the military intelligence training center, and the Captain said, "Well, you will head this contingent of people who took the Western Maryland Railroad to Camp Richey, which is up in the mountains of western Maryland," and he said, "What a great assignment!" I said, "I wish I could do better -- I did well on the test." Then I met my contingent of ten people. We were being sent as basic personnel to service the military training center. It was a dreadful bunch, and they made me a military policeman. I was a lousy military policeman, and I somehow couldn't measure up to the requirements. Then they had me driving a truck, a fire truck, to watch out for fire in camp. In the camp, we lived in tents. In the miserable cold winters of western Maryland; it was a rough time. I was driving a fire truck around with orders if I saw a fire not to do anything but to call somebody to do something about the fire. I did this; drew a shift of 5 o'clock in the morning and was not very happy.

I had been told, early on, never volunteer in the Army because you'll get in trouble, so I always kept my mouth shut when anybody asked for people who had special aptitude. But when they said we need somebody who can type, and I had done a little typing when I was on the Law Review, you know, you type up your stuff. I wasn't very good but I held up my hand, and so I was assigned to training headquarters. Now this was the military intelligence training center. I was sent there as a typist to type up manuals and stuff. I wasn't a very good typist. In those days it was quite different; everything was mimeographed, and they hadn't yet invented the plastic sheet that you put on top of the mimeograph, so you had to use a differential touch. If you used the same touch, all the "o's" would pop out and the little parts of the "e." I remember doing pages 38 and 39 of this manual, and I handed in my mimeographs, and they said, "Oh, no, this won't do." They gave it back to me, and I was very careful to do it very light. Nobody scanned it very well, and they got these 100-page manuals, and page 38 and page 39 were illegible. They decided I wouldn't do very well as a typist, and they didn't know what to do with me. The one thing I learned about the Army is once you are assigned to a place for a reason, and it turns out the reason is wrong, there is no reverse valve; they can't go back.

I was now in training headquarters, and they had to find something for me to do. There was a library upstairs in the headquarters, and that library was the military intelligence training library. It had a whole bunch of books that had been seized at some German bookstores and all the important intelligence materials had been taken away. So I had six copies of Woodworking Made Easy in German, and stuff like that. But they needed someone to sit up

there, so I was sitting up there, and a tragedy occurred. There was a regular routine by which military attaché reports and other secret and confidential material were sent to us, because it was the military intelligence training center, and they got circulated around, and a couple of them got lost. Then there was a big investigation, and a team came out from Washington and inspected the security systems, and they decided that circulating these things was not proper. They had to find a place to keep them and what better place than the military intelligence training headquarters library. And so I came to be in charge of all the secrets that came in. There were 15 people in the camp that had four-way clearances who had access to the material; nobody else. Nobody had ever investigated me, and I wouldn't have passed investigation, but I was there already, so they never checked me. I would send to the various sections we had training photo intelligence, interrogations of prisoners of war, interpreter and terrain intelligence, scouting reports. I would file this stuff, catalog it, and make up a little sheet indicating what the nature of the materials was, the subject matter, and this was distributed around to the various sections. If anyone had appropriate clearances, he could come to my library and read it; that was very strict.

So my first funny story has to do with this. I was called down by the man who was in charge of the staff, a colonel, and at that time I had made it all the way to Sergeant. He said, "Sergeant Feller." "Yes, sir," I said. He said, "There is a severe paper shortage; you must make every effort to reduce our use of paper, and you must reply by endorsement, standard military file." He said, "What paper do you use up there?" I said, "Well, I have card catalog." He said, "Can you dispense with that?" And he said, "What else do you have?" I said, "That is the only paper we use except I have these notices that I have mimeographed on which I just fill in the appropriate thing." He said, "Can you dispense with that?" I said, "No, sir." He said, "What kind of paper do you use?" I said, "Regular mimeograph stock." He said, "Could you use onionskin?" I said, "Yes, sir," and he said, "All right. As of today, you use onionskin." I said, "What do I do with these hundreds of forms I already have?" He said, "Oh, throw those away." And so I did! That is the Army. But he could reply by endorsement. From that day forward.

Anyway, I got tired of all this after a while. I was there for a year and a half. I never went through basic training, never learned how to shoot a rifle or anything, but I got to know the ophthalmologist they had at the place. I said I want out of here. Can you certify that my eyes are good enough to do photo intelligence work? He said sure. So I got into photo intelligence school. It was a great school run by a Colonel Shipley Thomas who had great ideas for training. It was the most democratic school in the Army. We had colonels and majors and captains and sergeants all in the same classroom.

Oldham: The work would involve photo reconnaissance interpretation?

Feller: Interpretation of photos but you had to learn the German Army organization. I could look at a photo taken at 20 thousand feet and, by looking at the latrines and the paths and such, could tell you what kind of division it was. I had to know the exact composition, what kind of armor it had. I learned all about the German Army. You could look at a photograph and glean all the information necessary to know what the nature of your enemy was, by the picture taken.

We had exams -- the toughest exams I ever had -- because we had these terrible problems where you had to go out and find your way in the woods with a compass and directions, and then you got to the next tent in the middle of this forest, and you never knew whether there was water to drink. The idea was to put you under combat conditions, and then you get there, and they hand you an exam, and they said how many of this kind of guns and ... and then if you answer the exam correctly, then you got the directions to go to the next point in this 2-day exercise. That was a 2-day problem, and then we had a 6-day problem which was even worse, but on the basis of how well you did on those things that determined where you went and what rank. I mean we had privates who were promoted to Master Sergeants. For a while, nobody was shipped out, and then an order came from the Central Pacific for some people.

Having learned all about the German Army organization, I was shipped out to the Pacific, which I knew nothing about. But we supposedly knew how to read aerial photographs, and I was sent out. We went to New Caladonia and to Guadalcanal. The fighting was over in Guadalcanal. That is where I should have gotten a purple heart but didn't. We did some training there and set up a volley ball court. The Marines had been there, and the Marines discard equipment like mad. There were these mess trays -- we had mess kits -- these round things. The Marines had these big trays, great trays, and somebody had left one somewhere beside the volley ball court, and I stumbled and got a cut on my knee. They said to turn it in for a purple heart. I said don't be silly, but later I regretted that because when the war was over, you got five points for every medal, and the rate at which you got sent home depended on the number of points. If I had got a purple heart, I would have had five more points. But anyway, we ended up in Bougainville.

How long do you want to go on with this Army stuff? I could go on with the Army stuff forever.

Oldham: Well, just give us a representative sampling here, and we better get to the Academy pretty soon.

Feller: In Bougainville I was the chief non-com of this photo interpretation team that had been sent to this Americal Division. That Division didn't want the photo interpretation team -- had no use for it. These were all people who had failed in some way. I had a Russian interpreter whose Russian wasn't good enough and two Italians and one Fin. I was the chief non-com, or the head of this operation. We had a Captain and a first Lieutenant. The Captain was a man who had joined the National Guard in 1927, or joined the regular Army. Back in the mid-twenties -- back when jobs were available -- the regular Army was the place of last resort for the incompetent, and the Captain was one. But still he became a Captain; he went into the school at Camp Richey as a Captain and went out as a Captain. His civilian occupation (he was in the reserves) was prison guard in the New Jersey State Reformatory. Well, he was our Captain. He knew from nothing, but he was a bastard. Anyway, I was the chief non-com, and I had three people working under me, and they had nothing to do because at this point we were in Bougainville. Bougainville and August Bay were marked on the maps as unfit for white habitation. It was all jungle. The only reason we were there was

because there was an air strip which they used to bomb, and there were two divisions, the 37th and the Americal. The jungle there is a first growth jungle, which is unlike the stuff you see on TV where you have to hack your way through. In a first growth jungle, the trees shade out all the stuff. You can't see the sun because of the high trees and the heavy foliage. It follows when you take an aerial photography, you can't see anything except trees. And all we had were these pictures with trees. They were flying sorties and sending us pictures of trees. That is all we had. But I had to find some way to be useful. So I thought, we've got these pictures and what the hell are we going to do with them? I got a manual on map-making, and we had stereoscopes, and I taught these people how to make maps. They were rather rough maps with lots of blanks, but we were making maps. Our Captain at this point said, "You're using up all these supplies," and he said, "Stop it; you're not allowed to do it." I told him to go to hell. Actually, I said, "Yes, sir," and he went back to his cot or wherever, and we continued to make maps.

Then a tragedy happened. The maps they had were made up from the results of patrols. Patrols would go out for a week at a time and search to see that the Japanese weren't coming back. The Japanese had been on the island -- in fact, at one point they used to shell our place. Once every afternoon, about 2 o'clock, one shell would come in. We could never figure out why. But anyway, they would send these patrols out to make sure that the Japanese were not getting reinforcements up in the hills and were not going to come down and try to take us off the island. There was the 37th and there was the Americal, and there was a dividing line on the map. The maps were made by these patrols that would go out and report that they had gone out so many miles, and they had seen this and that. The 37th had a town on their map called, I think, Ouno. On our sector there was a village called Houno; I forget the exact name, but we'll say Houno and Ouno. We sent a patrol out to Houno, and they got blown up by booby traps that the 37th had put in Houno, because Houno and Ouno were the same. When you're making a map from just reporting where you had gone, you tend to greatly underestimate the space you've covered. In clear areas, you go fast; then you get into places that have been burned over, and you have to hack your way. You go a hundred yards, and you think you've gone three hundred. So all the dimensions were off. These were maps that were made simply, without surveying instruments or anything, just from reports of patrols.

Then the General in charge of the division got mad as hell: "Why can't we get some good maps?" He turns to Captain N..., and he says, "You've got all those pictures; can't you make maps from those pictures?" And N... says, "Yes, sir," and turns around and says, "Feller, can you make maps?" I said, "Yes, sir." We produced them in 24 hours -- maps which we had already made, and he got a silver star. But we got our revenge. There was lots of revenge on Captain N.... Like switching the contents of the letters which he sent to his wife and his sweetheart.

Oldham: Did you really?

Feller: No, we didn't, but we planned to do it. He sat in his tent writing a letter to his wife. He sent a letter every day to his wife, but he had a girlfriend on the west coast and a wife in New Jersey. He was such a dreadful man. But at that point we had him, you see, because he

now had a reputation as a man who knew how to make maps. He didn't know a damn thing about making maps, so he did what we told him. From then on, when we finally got some promotions coming through and he was going to decide how he was going to allocate them, I would say, "No, that's not the way it's going to be; it's going to be this way." And that was the way it was. We got extra supplies. We were in great shape.

We fixed him when at one point a requisition came. They wanted somebody to come back to the states to teach at a military intelligence training center about how to use aerial photographs and what not. He put in for this. He wanted to get out of the jungle. At that time, we were in the Philippines, and the General said he was way too valuable to send back.

Oldham: You got your revenge.

Feller: In the end I probably cost the Army more money than any other enlisted man.

Oldham: Why?

Feller: Well, we were supposed to land in Cebu City. It was a two-regiment operation, and they had Navy planes flying for photographs. They would drop them off on the ship, and they would analyze the photographs of the beach where we were supposed to land. They dropped all these photographs, and I looked at the photographs, and I said, "Oh, oh, right on this beach there are pill boxes. You can't land two regiments." So they held up the landing operation for a day, and they brought the whole Navy, and they pounded that beach. They knocked the hell out of the sand dunes because that is what they were -- sand dunes. There weren't any pill boxes.

I don't want to go through the whole routine, but we were slated for rest and recreation in Cebu, and we were slated to be in the first wave of the invasion of Japan. We had photographs of the beach where we were going to land -- a super secret place. We were analyzing those pictures, and it was going to be murder; it really was going to be murder. One out of ten would have survived. Whatever one may think of the propriety of wishing the atomic bomb on Japan, I'll tell you when that news came around, there were some very, very happy folks in that outfit.

Anyway, I wanted to go home. We were shipped to Japan. We went into Japan the second day after the surrender; had a great time. I have lots of stories about that, which I won't tell you.

They had this point system for getting home, so N... left, and I said to the Lieutenant who had been in charge, "I want a bronze star medal." He said, "Write it up." So I wrote it up, I got a bronze star and five points. Then I came back to the states.

I went to Washington looking for a job. I had a good friend who had roomed with me who was an economist; later became a professor at MIT. He introduced me to a friend of his who had a little shop doing appellate work for the government. He shepherded me around and sent me to one place or another and finally decided to hire me. I was the only person in that

office who had not been a Supreme Court law clerk. I worked two years with Moose Eisenburg learning how to write a brief. That is what it was, and it was a painful process. You couldn't write the simplest letter. You had to use "would" and "should" properly, and you would draft a brief, and it always came back, "Why is this sentence ahead of this sentence?" It was really going to school, working for this man. He had come to the conclusion that there was no joy in lawyering, that he couldn't try to do good things. The only joy was being a craftsman. Everything that came out of his shop had to be a piece of craftsmanship that you would look at and say, "Now that is something; it is well written." Even if you turned out a brief on the application of the rule against perpetuities to some estate, it had to be a piece of craftsmanship.

Anyway, I decided I had had enough of that after a couple of years. At the time, Fred Vinson had three law clerks, one of whom had the title of Chief Law Clerk, and Vinson had assumed that that person would stay for a second year. I have forgotten the name, but he later became a professor, a very distinguished man, but he decided he was not going to stay for a second year. He hadn't yet told Vinson, but one of my law school classmates, Al Rosenthal knew it. Almost simultaneously there appeared on Fred Vinson's desk a note from this man (who later became Dean of Columbia Law School), whose name I can't remember, that he was not going to continue and a note from Henry Hart of Harvard Law School saying there is this great guy around who is great law clerk material. So I became a Clerk at the Supreme Court in 1948 term. I graduated from law school in '41, and this was very unusual. I worked for Fred Vinson for a year as the Chief Law Clerk. After that, then I got hired by Tom Harris, who had been Chief of Litigation. All of that is in my fireside chat. You don't want me to repeat that.

Oldham: No, we have that session, and we can connect this tape to that material. Let's shift over to arbitration and come to the Academy. I don't think in the fireside chat you said anything about how you became an arbitrator. Could you pick up at that point?

Feller: My first arbitration actually was in Washington before I went to the University of California. I had been recruited and had agreed to go to Boalt Hall when a dispute came up at the Bureau of National Affairs. They had fired somebody. I remember they had a strike, and I arbitrated the discharge grievance. I remember it particularly because it was the first arbitration decision I ever wrote. Ralph Seward had had a heart attack, and he was in the hospital, and I had appeared before Seward and admired him enormously. He was just a tremendous intellect and a tremendous judge. I wanted him to see my first product, and I remember taking it to him in the hospital. When he said he thought it was good, I felt great.

Anyway, that was my first arbitration. Then when I went out to Boalt Hall, I decided I should try to do some arbitration on the side, because it provided some more money, though the money wasn't really the reason. You learn a lot of things, particularly if you go from industry to industry. You learn about the different practices and how the different industries work. So I tried to do that.

It was difficult to get started. Bob Graining from Inland Steel was one of the most helpful people to me. He was the management representative.

One thing that helped was that when I had negotiated, I had followed Arthur Goldberg's model of integrity. You don't cheat. Then you get the respect of the other side.

There is a Goldberg story, by the way, which I didn't tell in my fireside chat. I forget what year it was. We had a very complicated, difficult issue, and we had a drafting session. The Chief Executive Officer of a major steel company -- I guess I shouldn't name him, but it was Roger Blough, United States Steel -- sat in on the session when we were settling this thing. We worked for several hours and agreed on something, and suddenly, before we were ready to sign off, Arthur disappears with Roger Blough. He came back and then we signed. That was it. And I said to Arthur, what went on out there; what was going on. Arthur said, we went out and Roger said, Arthur, have I agreed to anything I shouldn't agree to, and Arthur said no, you have not. But he had that kind of respect with the other side, and I tried to get the same kind of thing, and I was helped by steel company people who recommended me as an arbitrator, so I got started doing some arbitrations.

I didn't do a lot of arbitration; I would never have met the Academy standard in the terms of the volume, but I did, there was certain comfort in the fact that I didn't depend on arbitration for a living, so I could write things as I saw them irrespective of what the parties would think. I remember I had one case involving Greyhound, and I guess the ... busdrivers and wasn't very It wasn't Greyhound, it was the competitor Trailways, and the whole thing was outrageous. The person who should have been fired was the Business Agent of the Brotherhood who advised all these people not to drive a bus because they had a demand for a bonus. This is a case of incredible mismanagement by both parties. Needless to say, I was never hired again. I didn't care, but I was on permanent panel of arbitrators at the hotel and restaurant workers culinary workers and all for the resort hotels of Las Vegas for several years. I was on the adjustment board for the flight attendants for United Airlines for a couple of years, and you learn about a particular industry. Fortunately, I would get fired after a couple of years and try something else and learn something else. I did a lot of work with Owens Illinois and the glass bottle blowers, now merged into another union; it's a very interesting union. I learned about the technology of the glass business. It helps me in doing crossword puzzles. The furnace for making glass, I know it's a lair.

Oldham: Did you get some ad hoc cases through FMCS and AAA as most of us did?

Feller: I got some and, as a matter of fact, I started to get too many. I didn't want to spend all my time there. At one point, I told FMCS and AAA don't send my name out. Now that I'm fully retired from teaching, I wrote them a letter last year saying send my name out now. I didn't get much from AAA; AAA doesn't do a lot of these on the West Coast. I can never understand why anybody used them, very frankly. I remember the first AAA case. I was in Los Angeles, and I show up at the place of the hearing, and there is this guy, and I said, who are you, and he said, I'm the tribunal court. I said, what, what do you do, and he said, well, I mark the exhibits. I said, well, you know, I can do that myself.

Oldham: They realized eventually the error of that policy.

Feller: It tells you how far back that goes. And then this business of sending it to them and having them doing the billing; it seems to me they were just gross interveners in the process that can be done much more simply directly, and FMCS was better. But mostly permanent panels. The last permanent panel I was on was for three years for the Teamsters and Safeway's big distribution center in Richmond, California, and a very contentious local, a very contentious lawyer, but like most permanents, this one wasn't permanent. You were signed up for the duration of the contract, and neither party could fire you, but as I later discovered, that had a big kicker in it, because they were ... I couldn't control the hearing. I mean they ended us with cuss words and what not back and forth between the representatives of the workers. The managers were pretty reasonable guys. I finally said to them, I quit, and they said, you can't you've signed up for the term.

Oldham: And you said, so sue me.

Feller: Well, I said I didn't realize when I signed on that I had agreed to serve to three years, and they said, yeah – to serve for three years. I said, well June 30 the contract is up; I'm out of here. They said, oh, no, as we read the contract, you have to hear all the cases that are pending at that time, and I said, no way, that's not the way I read it, and they said, we'll sue you, and no, they said, well you can't do that, and I said, sue me. Of course, they didn't. The union lawyer who was very contentious and rambunctious, there was change of leadership in the local, and he was fired and is no longer in the practice, I am told, and is now nice and quiet with my successor. I kind of wish I could get back there, because it was a very interesting problem. But that was the bulk of my arbitration.

[Beginning on page 18, there is an addendum, dated May 29, 1994, related to arbitration in the maritime industry that Dave said should be inserted here.]

Oldham: Great. Now just a moment while I change tapes. This is Tape #2, May 26, 1994, Jim Oldham interviewing Dave Feller, and we have just reached the point when we can ask about the Academy. How did you first get involved in Academy affairs? Who recommended you? Tell us about that.

Feller: Well, I knew the Academy and had been a frequent participant in its meetings. We represented the steelworkers, and the steelworkers always sent a delegation to the Academy meetings. I delivered a couple of papers, I think, and, as always, I was willing to get up from the floor on any occasion. As you read the index, you'll find my name there a lot before I was a member. Then, finally, when sufficient time had elapsed, I applied for membership. I did not have the requisite number of cases, but I came in under that exception about somebody who has contributed to the arbitration profession or whatever that language is. And I was admitted. I remember the first meeting I went to, I was on the program.

Oldham: When was this, if you remember?

Feller: I don't remember what year. But I was on the program and I had been on the program before, and I had always had my expenses reimbursed. So they said, "Congratulations; you're a member now; we will not pay your expenses." We didn't have

new member orientation then. You had the thing that we now do of getting up in a meeting and making a 3-minute speech. But had I known I had argued cases before all the steel arbitrators stuff. In our office we didn't do many but the really important ones we did, which they thought were crucial to the union, so I had known a lot of the Academy people, and I got admitted to the Academy. What more do you want?

Oldham: Let's just go from there to your career in the Academy. We typically ask about NAA assignments, committees, and, well, the participation in Academy affairs that you were involved with before you rose to be President-Elect.

Feller: I served on CPRG, I forget for how many years, under Arthur Stark when Arthur was chairman. I was on a special committee to devise something. I guess Dan Eischen and Ted St. Antoine and I were on a special committee to design some method of implementing some recommendation from a committee that had been headed by Ben Aaron. I don't remember what the recommendation was, but I think the conclusion of the committee was that we oughtn't do anything, and we didn't. What else did I do. Outside of making speeches, I guess that was about it. No, I served on one other committee; I can't remember what it was. I still can't remember what it was.

Oldham: I assume you became a Vice President.

Feller: Oh, yes, and I was on the Board of Governors, and then after that I was a Vice President.

Oldham: And did you have during that time, do you recall, any particular projects that you were involved with while you were Vice President, or any controversies that occurred while you were on the Board of Governors that you were outspoken about?

Feller: Not really. I was outspoken but overruled on the question of whether CPRG could have this policy on suspensions without amending the constitution and by-laws. I felt we clearly could. The committee on legal affairs decided to the contrary, so we just had to amend the constitution to put in that suspension policy. I drafted some opinions for the CPRG, I know. In those days, you could serve as a governor and be on a committee, too. That is no longer the case. I don't remember any particular controversies.

Early on there was a controversy about the dues when they had to change the dues structure. And I was a very vociferous opponent of the change. Dues had been structured out as a percentage of your income or based on your income, and apparently arbitrators who are supposed to be trusted by the parties to be honest were not very honest about reporting their income, and so they changed the dues structure, and I thought the dues structure would drive a lot of academics out of the Academy. The academics did very little work but arbitrated four or five cases a year maybe, and it just didn't pay to become a member of the Academy for the amount of dues required. I lost that fight. One fight I won was changing the date of the annual meeting to a point where it didn't interfere with an academic schedule.

Oldham: Good; I'm glad to hear that.

Feller: It used to be held in winter time in January or February, I forget when, but at the time, you couldn't teach a class and go to an Academy meeting.

Oldham: Turn to your time as President. During that time, what major problems was the Academy involved with, if you recall, and what stands out in your mind at that time.

Feller: The biggest problem was the boycott.

Oldham: This was the Denver meeting?

Feller: This was the Denver meeting, and it was my term as President.

Oldham: Just for the records, say what the boycott was.

Feller: I'll tell you what it was. The voters of Colorado passed by initiative a measure the net effect of which was to forbid any municipality from passing or enforcing an ordinance prohibiting discrimination against people on the basis of sexual orientation. Colorado had never had any statewide protection for gays and lesbians. The only places that had prohibitions were in several communities, one of which was Denver, one of which was Boulder, and there was a third one I can't remember, that had in fact not only been enacted by the City Council but had been affirmed in a referendum.

The effect of the initiative was to make those ordinances unenforceable. And then that became a great public issue, and there was a big boycott organized by the lesbian and gay organizations to boycott Colorado because this thing had been passed; indeed we had two vice presidents of the Academy who wrote, and I had a couple of calls from other people, saying we ought to honor the boycott and either cancel the Denver meeting which had been set up many years in advance, even if it meant paying some cancellation fee to the hotels. Either cancel the meeting or hold it in some other state.

And I looked at it very carefully, and I decided that something was aimed at the wrong target. Our meeting was in Denver. Denver was a city that had passed the ordinance, and the voters of Colorado had overruled Denver, and it seemed to me entirely inappropriate to refuse to go to Denver because it had been victimized by the rural voters in Colorado, and I went to a great deal of trouble, with some help from the library at the law school, to tell me where to get it to find out the actual totals on the vote, and what the vote was county by county. And amendment 2, as it was called, was overwhelmingly defeated in Denver, overwhelmingly defeated in Boulder, and the other one was Aspen, overwhelmingly defeated in Aspen, but it won because it was overwhelmingly approved by the rural voters of the state. It just seemed to me just wrong not to go to Denver because it had been victimized, an opinion with which several officers of the Academy disagreed.

I thought the best story about that was Barbra Streisand. The lesbian organization or gay and lesbian organization in Aspen was trying to raise a lot of money for a campaign to defeat this initiative proposition or to finance litigation to have it held unconstitutional. The litigation

ultimately succeeded. And so they were putting on a big benefit. It was going to be held in Aspen, and Barbra Streisand was supposed to appear. This story appeared in the Wall Street Journal, and she then cancelled and said she wouldn't go because it was Colorado, and they were boycotting Colorado. It seemed to me that was just biting off your nose to spite your face in the worst possible way.

Anyway, that was my view, but the problem was if we had a large number of members who felt that we should not go or the guests who felt they should boycott Colorado, we would have a fall-off in attendance which would not be a desirable thing, so I wrote a column in the Chronicle, and then I had a letter sent to every member explaining exactly the reasoning as to why I thought it was unfortunate. There is a law firm which I will not name in San Francisco, and I get a letter from the managing partner of the law firm, well, before I tell you that, I've got to tell you that I suggested in the letter to the membership that anybody who really felt strongly about this initiative should make a contribution to one of two organizations, which I named. One that was financing litigation to say it was unconstitutional, and the other was planning a campaign to put it back to the voters, and I felt that was the thing to do, and other thing to do was to come to Denver to show your support for Denver. Now to get back to this lawyer from this law firm that represents unions. The letter said we have been invited in prior years to send a member of the firm to be a guest at the meeting of the National Academy, and we have come, but in view of your decision to hold the meeting in Colorado in this boycott, we will not go because basically this firm is supported by union dues, and we're sure that our clients would object to our going to Colorado. I responded to that letter by a letter saying I'm sure you're not aware of the fact that the Colorado Federation of Labor has declared its opposition to the boycott as well as to this amendment, and Denver local council has done the same thing and urging everybody to come to Denver, so I'm sure your constituents of your law firm would not feel at all betrayed if you went. But if you don't accept that reasoning, I will make sure that you will not be invited to be a guest. But I suggest you take the money which you would have otherwise have spent in coming to the convention and contribute to one of these two named organizations. Let me know what your decision is. Never got an answer. The boycott was the thing, and it turned out that the attendance in Denver was quite good.

Oldham: Okay, Dave, before we bring this interview to a close, let me ask you to be reflective about the Academy as an organization. You've been through its presidency. Looking back on it, would anything come to mind by way of criticism or commentary or suggestions about the structural operation of the Academy? Were there things as you were President you thought were done incorrectly and ought to be changed in the future? Perhaps not, but if so we would love to hear about them.

Feller: There are a few little things, but they are not worth talking about. I think our policy on suspensions is very badly written and illogical, but it is not a matter of great moment. I am still harboring my old feeling about the dues structure, because I would like to find out how many people who do arbitrating who are academics or the kind of people we ought to have in the Academy are not in because of the amount of cost. It is quite clear that for people who do it on a full-time basis and make a living, I'm sure the listing in the Academy directory is well worth the cost of the dues. That is not true with respect to others. I know that

because I have a colleague, Jan Vetter, who does some arbitration, or did, and I suggested he join the Academy, and he said, well simply there was no any way it was worthwhile for him to do it, and I tried to persuade him otherwise. And I know we did lose some people when we changed the dues structure, but that battle has been fought and lost by me. I don't suppose it can be changed. That's really about all. I'm a little ... I guess I would be a dissenter on the notion that the Academy should extend its wings and really encompass all kinds of arbitration.

Oldham: You're cautious about that.

Feller: I'm very cautious about it. It is a natural instinct in any organization to want to survive even if the reason for its existence ceased to exist. The March of Dimes, of course, is the classic example. They have to find a new disease. And it is quite clear with the decline of union organizations the amount of the type of labor management arbitration the Academy was founded to do is declining. It is the nature of the beast, and it would make me unhappy to desire to continue to promote an organization to continue and to have it greatly change its character in order to retain a sufficient membership. I don't think we have gone that far. We're in danger of going much farther, but I think right now as far as we've gone is all right. We are having a declining membership; we will continue to have a declining membership. We have more resignations than new members, and if it is a smaller organization, so be it. Otherwise, it will lose its reason for being.

Oldham: If I can remember the early years of my comparatively short membership in the Academy, the complaint was that the Academy was growing much too fast and was becoming a different, impersonal type of organization from the way it had begun. But it seems to me that at the moment there is still a growth pattern in public sector cases, so that might offset the decline in private sector cases, and we may be holding about steady, but even that causes something of a change in the typical experiences of the arbitrators. But the hard question is whether we shift over and become an organization that does employment and commercial arbitration as well as labor.

Feller: Yes, whether we become what our title says we are -- the National Academy of Arbitrators, all kinds. Right now, we are an academy of very special arbitrators, and I think a lot of benefit is we get together and exchange experiences; we have a common basis. Once you get into commercial arbitration or even employment arbitration, you are acting in a quite different way from the old-fashioned grievance arbitrator, and I don't know that there will be that much commonality and that much interest, and the organization will cease to have the charm it now has.

Oldham: Well, on that we have to stay tuned. It may be the wave of the future, but at any rate you have been a very special participant and figure in this organization of very specialized arbitrators. Thank you for this wonderful interview.

Feller: And thank you for finishing it at 12:11.

Oldham: This is Sunday, May 29, and we have an addendum to add to the tape because of recollected experiences in the maritime industry. *[noted on page 13]*

Feller: It should be inserted where you asked me about the kind of arbitration experience. I think one of the most interesting experiences I had was as a chairman, I think was the title, of the License Personnel board for the Pacific Maritime Association of the Masters, Mates and Pilots.

Oldham: Give us a date.

Feller: Oh, that was about 15 years ago. I got that I think because Ed Flynn headed the maritime association or labor relations for them, and I had known him as a negotiator for Kennecott Copper. But the License Personnel Board is unlike the typical arbitration procedure in the sense there is just - you file a grievance, and it goes through the License Personnel Board for a hearing. As Chairman, I would sit there and listen to what would be the first step in the grievance procedure in which this discussion would take place. If there was no agreement, I would then decide. And I would write up the minutes of the meeting, which would describe those items which were agreed upon and those items upon which I had to decide. I learned a lot about maritime matters. We had difficult issues like when a mate was entitled to pilotage fees; where a ship was when a bomb was set off in a barge attached to a ship -- whether the ship attack bonus or the harbor attack bonus was payable; or whether a mate could be relieved from the helm to greet the pilot coming aboard ship.

Oldham: For those of who have no familiarity at all with the industry and the collective bargaining arrangement, tell us a bit about who would be covered in a collective bargaining agreement; who were the parties.

Feller: There are the masters, mates and pilots. These are the supervisory personnel on American flagships.

Oldham: And the ship owners are the management, so to speak.

Feller: The navigation company, so it's a typical collective bargaining situation except these people are not subject to the National Labor Relations Act, because they are supervisors. I also served for nine years as the permanent umpire between the American Radio Association and all of the American flag shipping lines, both east coast and west coast and Gulf coast. I served under the understanding that they had somebody else to take care of typical small grievances. I was only going to be in on the really important ones. And that went on for nine years. I think I had a case my first year that had to do with the pension obligation, and then I didn't have any for eight years. I had an arrangement in which I billed a quarterly retainer, and after about six years, Gilda said to me, "You know, that's a fairly substantial retainer for which you did absolutely nothing," and she said, "It's unconscionable." So I called up Bill Steinberg who was head of the American Radio Association and said, "Bill, I can't continue. It is just unconscionable, and I think I had better just resign." He said, do you want to shut down all the American flag shipping? And I said, "No, I don't want to do any such thing." He said, "Well, you understand the last issue which prevented a strike the last time we were

out, and we almost went to strike was on picking a neutral, and if you resign, we're going to have to strike again." So, I said, "I wouldn't want to cause a strike; I'll send you a bill in the morning."

Oldham: Go ahead; pay me.

Feller: I continued until they had one big case, and I got a telegram saying we're going to have a hearing in New York tomorrow. I had to be there because a whole fleet of ships was being sold from the east coast to the west coast with the specification that the crews were not to be retained, and it was being sold to an outfit which had a contract with the Radio Officers Association, which is a rival union, and that meant that all the American Radio Association people would lose their jobs.

Oldham: That, by the way, must be the same organization that figured in the Supreme Court case, the Radio Officers case.

Feller: Well, this is not ARA, not mine; it was the other. I forget the name of the then AFL union. The American Radio Association was a CIO union, and we had to have an immediate hearing because the transfer of the ships was to take place in three days. I flew off to New York not knowing anything about this. We started a hearing at which the Prudential lines, I think it was the name, asked that I be disqualified because it turns out the American Radio Association, long after I had been a member of my old firm in Washington, had been representing ARA on a matter unrelated to this case. I said I didn't think that was a disqualification and also on the ground that I would be violating all the maritime acts and what not and committing a felony if I decided this case. And I think the thing was that they had not been given adequate notice. I said, "Well, I'm prepared to give you additional time" because I had very small notice myself, "provided you undertake not to transfer title to the ships," and they said "no way." So I said, "Then we go on with the hearing." And we went for two solid days, ended up the hearing, and I sustained the claim of the American Radio Association that under the agreement, the company was obliged to make a condition of the sale that the radio officers went with the ships.

And there was NLRB precedent that would have made that illegal, and I was aware of that precedent, and I carefully tailored my decision so it would not violate the law. After two days of day and night hearings, at about 11 o'clock at night, I entered; I just gave them an oral opinion, because the ships were about to go. It was a very long and detailed opinion which I just did orally and then got on an airplane, a night plane, and I was totally exhausted. I had about 10 drinks and I fell asleep in the airplane and woke up half way to San Francisco with a thought that in my oral opinion I had omitted one critical part. I got home about 5 o'clock or 6 o'clock in the morning and immediately sent a telegram giving them an amendment to my oral opinion covering that point, and of course I was immediately fired. And that was the end of that episode, but it was very interesting. Harry Platt became my successor. And he once complimented me on that opinion in that case that was done in such a hurry.

Oldham: Was it recorded and circulated?

Feller: Everything was taken down, including the oral opinion, and the interesting thing the next day after I did this, the union went to the district court to get the order confirmed so they could stop the transfer of the ships, and the district court said, no, my award violated the Maritime Act whatever the claim was and therefore was unenforceable, and they took an immediate appeal to the Court of Appeals said they would not issue an injunction because the contract was about to expire anyway. But they would set it down for a further hearing, and then later the radio officers settled. It was interesting because Bill Feinberg said, look, radio officers are a dying breed; we no longer have them except we're required by law to have them on passenger ships. A number of American flag passenger ships are becoming almost zero, and the only thing we're interested in is preserving the few jobs we have ...

Oldham: So it was somewhat like the locomotive firemen in the railroads, I guess.

Feller: ... and our pensions. And the pension system was very important to them, but it was a likeable experience. Anyway, that was how I learned about masters, mates and pilots and seamen and radio officers.

Oldham: Tell us about a favorite case, if one comes to mind, from your masters, mates and pilots crews.

Feller: Oh, there was this marvelous case. The parties had negotiated before World War II for bonuses in time of war, and you got a general wartime bonus if you went into a war area, and then there were special bonuses, I forget the exact amount, but let's say they were \$200 per man if you were in a harbor which was bombed and \$500 per man if you were in a ship that was bombed. Then the question is how do you know the difference, and they worked out detailed rules. For example, if the shelling came from a shore battery and the shell landed within the specified number of yards of the ship, then it was deemed that the ship was being attacked. Because of the accuracy of artillery, anything further than that you were just in a harbor that was under attack. If it was a bomb from an airplane, the yards were about double because of the inaccuracy of the airplane bombing, and they worked out complete detail.

And then they had this problem in Viet Nam because they hadn't taken care of this. The ships that came up the Mekong was this fairly large draft until you get into something they called a bay, I think. It was a big expanse of water, and then going further up the Mekong, it was quite shallow and the ships would go up this big lake and they would unload their cargo into barges and lighten themselves up so they could continue up the river. And there were 50 or so ships waiting for this process to take place. And what the rule didn't take care of were attacks by frogmen, and this particular ship ...

Oldham: Using plastic explosives or what?

Feller: Yes, one of these frogmen would come up and attach plastic explosives to the ships and blow the ships out of the water. Well, this ship was carrying rice and, because of the frogmen in the harbor, when the ship was being unloaded, there were lights ... and there

were people with rifles to shoot any frogmen that could be observed. And this ship was carrying rice and it had a barge beside it, and they unloaded the rice onto the barge, and somebody detected some motion in the water, and then an explosive was attached to the far side of the barge and then went off. The barge provided excellent insulation so that nothing hit the ship, but the barge went down. And the question was, you are entitled to the ship attack bonus clearly if the ship was hit. Now this ship was not hit; the barge was hit. The question is what is payable, the ship attack bonus or the harbor attack bonus. Which I said, and they said it was clear, and the argument was what was the intention of the frogman. I said obviously we need a witness here; can somebody produce the frogman, and that would seem to be kind of difficult, so the owners argued that, well, he attacked the barge; he didn't attack the ship and that was very simple; no ship attack bonus, and the union said, well, there were barges located all over this big lake. No frogman would risk his life to attack a barge; obviously he intended to attack the ship, but he was detected and therefore got rid of his explosives by putting them on the barge. And since he intended to attack the ship, which was really the critical question, the ship attack bonus was payable. Now the question was how to decide.

Oldham: So, on the union's logic, if a pilot aimed at the ship he was bombing, all the people on the ship should get ship attack bonus.

Feller: Well, that's right, but they had guidelines to determine whether that was the case, but if it fell within 500 yards of the ship, then it was regarded as intending to hit the ship, given the range of accuracy of bomb from afar, but at 200 yards and it was shore artillery, that was all to determine what the intent of the shooter was. This case depended on the attack. It was a very difficult case.

Oldham: How did you solve it?

Feller: I found out that the able-bodied seamen and the engineers had all accepted the harbor attack bonus without protest and decided I wasn't going to give the mates any better deal.

Oldham: That's a good practical way out.

Feller: I wrote an opinion which didn't say that, of course.

Oldham: We have to adjust the dates, don't we, because you said you were doing this work about 15 years ago.

Feller: This was during the Viet Nam war.

Oldham: We have to go back farther than that.

Feller: Oh, yes, I keep forgetting it's 1994. I guess if you want to add some interesting cases, I guess one of the most difficult cases I had, this is the one with the transfer of ships was very difficult -- the one that was not difficult because of the time pressures was one and I did quite a lot of this, and I guess it is technically not arbitration, but it was advisory

arbitration in the University of California system. So I was a hearing officer, and I had a hearing in Los Alamos, at the laboratory there. It was unilaterally established but had none of the defects of the usual unilateral establishment. In other words, I was chosen jointly by the parties, and the question was whether this scientist, this physicist, had been improperly laid off when they reduced the budget for the laboratory, and the problem was that he was a rebel within the theoretical physics group who said that the system which they were proposing to spend some \$10 million or more to set up for an experimental inertial confinement fusion (this is the attempt to get fusion on hydrogen so you get power and inertia confinement with magnets), and the question was, and he worked in this group, and he thought they were spending money just absolutely, and he had a different system with a different chemical and went over everybody's head to the top to Washington to disapprove, and they had to lay off, and they decided to lay him off, and he said it was discriminatory. I had to learn all the physics. I had a physicist who gave me a little background explanation on this thing, but it has a lesson for arbitrators in that kind of situation. There are broader kinds of arbitration or dispute resolution you've got to be aware of, and I was acutely aware of it.

The provision was that the arbitrator's fee was to be paid jointly by the grievant and the university, but if the arbitrator's recommendation was not accepted by the employer, then the employer would pick up the entire fee. Well, I was aware of that problem and that there would be a problem, and so before I accepted it, I insisted that the payment of the fee had to be made in advance, and I estimated, because I was told the hearing would last three days and I doubled that 3 days for study and preparation time and would not proceed until I was paid in advance, and of course it turned out to take two weeks, and it took two weeks, and it took me about at least a month to write the award. And between the two weeks we had one week of hearing, and then we had a recess. I got a letter from the grievant saying they could not put up any more money because they were out of money. So that created an ethical problem. The one way I was sure of being paid was to make a recommendation which would not be accepted, because then the university would have to pay the entire fee, and they had money. If I made a recommendation that was accepted by the laboratory, then I would not get paid, and that creates an ethical problem.

Oldham: It certainly does. It was one of the examples on yesterday's program.

Feller: I didn't know what to do about it. I solved it by making my recommendation that the university should pay the entire fee for reasons I set out. I didn't care whether it was accepted or not; in either case, the university had to pay.

Oldham: Maybe that's a lesson for future cases.

Feller: If you put that recommendation in, you stipulate that this is a critical recommendation; if not accepted, you get paid by the employer; then that solves the problem. Those are the addenda.

Oldham: Before we conclude, one other small matter -- and not so small in your life, but one that we can insert. I realized I never asked you how you and Gilda came together, and it would be nice to have that bit in the record.

Feller: Well, it's odd. I graduated from law school in 1941 at Harvard. She graduated from Radcliffe College in 1941, and we never met. In those days, it was regarded as extremely unfashionable for Harvard people to date Radcliffe women. Wellesley was preferred. After the war and I was working the Department of Justice, I shared a house with three other men, which is a very famous house on Q Street. Paul Freund had been one of them, Harold Leventhal had been a member of these bachelor lawyers, we had a housekeeper and cook, and we each had separate rooms in a brownstone on Q Street, and it was a marvelous arrangement.

Oldham: Who was living there when you were there?

Feller: Al Rosenthal, who later became Dean of Columbia; Arnold Raum, who was a tax lawyer, and I think he went on to the tax court; not Arnold, Leonard Raum. Ernie Cook, who was in the Federal Housing Administration; Harry Kahn, who at that time was in the State Department and went back to being a broker which he had been before that. It was a good bunch, and there was some change over the years, as one person would leave, another person would come. But anyway, we were evicted. We got an eviction notice because we rented the place, and somebody wanted it, and we tried to protest it. Al Rosenthal and I went to court to try to get an order preventing the eviction, but it didn't work, so we had an eviction party, and the second floor of this house was one big room, enormous room, and we had two parties on successive nights. One for our married friends and one for unmarried people, and Gilda was recruited by the girlfriend of another member of our group who was asked to recruit some women to come, and Gilda was one of those women. And that is where we met.

Oldham: And what was Gilda doing at the time?

Feller: She was working for the Bureau of National Affairs editing labor arbitration reports and writing head notes for labor arbitration reports. And I looked very young at the time, and she thought I was somebody's kid brother that had just been dragged along to this party. And I went up to her, and she said, haven't we met some time before -- that old line. We hadn't, as it happened, but we came close. If I can extend this, there is a marvelous story.

Oldham: Go ahead.

Feller: Gilda was a real innocent, as you can tell from this story. She and a friend had been working when they were in Radcliffe for Daniel Boorstin, who was then preparing to publish a volume of the earliest Delaware reports, and these girls were given the job of sitting down and reading these handwritten reports and typing them up and deciphering them; it was a big job as you can see from the kind of thing we had at the program where that letter was written; deciphering what it was; all hand-written. It was very hard.

Oldham: Yes, I've read lots of pages of that very type of thing.

Feller: And they were given the job of deciphering these and turning in a copy that could be used. And it was all very dull stuff, mostly land claims and what not, but they finally got to

something interesting --- it was a rape case. And they could try to make out the charge, and the charge was this man had forcibly had a word they couldn't write out that he had knowledge, and they could see that it began with a "c" and ended with an "l" and they couldn't figure out what was in between, and they couldn't figure it out, so they had a big argument. One of them said the word is "causal" because this is very basic. Gilda said, no, no, he took her behind the bushes; it was "casual." The man who was in charge of this for Boorstin was a man named Irving Helman, who was a year behind me in law school, and he, I think, did this out of the Gannett House in the Law Review, and these two girls showed up and said, we have this disagreement whether it's "causal" or "casual," Gilda arguing for "casual" and her friend arguing for "causal." And Irving just nodded sagely and said, "Well, I'll take care of it." But that was the end of it. But the story has a kicker. Many years later, after I had met Gilda but before we were married, Irving Helman came to Washington. We are now in year 1946. Irving Helman came, and we had a party, and Irving Helman was there, and I brought Gilda up to introduce her to him, not knowing anything about this thing, and I said, "Irv, I would like you to met Gilda Halpern," and he said, just without blinking an eye, "Well, Gilda and I are casual friends from many years ago."

Oldham: Rich!

Feller: And I said, what the hell is that all about, and I got the whole story.

Oldham: This was before you were married. All right, that's a good answer to how you met Gilda. And we'll close on that now.