Oral History of George Cohen, Esq.

This interview is being conducted on behalf of the Oral History Project of The Historical Society of the District of Columbia Circuit. The interviewer is Roger Pollak, and the interviewee is George Cohen. The interview took place at the home of George Cohen on Tuesday, November 16, 2021. This is the second interview.

MR. POLLAK: This is Roger Pollak, oral history interviewer of George Cohen. Today is Tuesday, November 16. It's about 5:30. I'm sitting here with George in his living room. This is our second interview, and George is going to cover some or all of the period 1957 to 1970, and he's going to start off with a discussion of what happened after he graduated from Cornell Law School.

MR. COHEN: Thank you, Roger. It's a pleasure to try to remember and recollect what happened 60-some years ago, and I appreciate all the wonderful assistance you've been giving me in that regard.

I graduated Cornell Law School in June 1957, which meant I had been at Cornell for six years, three of college, and three of law school. In my senior year of college, and because Cornell was a land grant college, we had mandatory ROTC for our first two years in college. When I realized that I was going to be in law school for two more years, myself and a whole group of my colleagues who were in a similar situation, we "double registered" in the ROTC program, having decided that we would prefer to be lieutenants than privates when we completed law school. I received my Commission contemporaneous with my graduation from law school, and then the question was what were my orders going to tell me to do. I had signed up for a two-year tour of duty. I received my orders

early in the summer and learned that I was not going to be assigned until early in the fall, which meant I had three or four months of free time. Because I had never clerked for any law firm in my prior two years, I had been busily engaged in making some money to be able to afford ongoing law school tuition, and law clerkships were not quite as commonly thought about as they are now today.

My dad, who was always promoting his son, arranged to have me interviewed by a law firm in Mineola, Long Island, New York, the county seat for Nassau County. It was a small law firm led by a very prominent white-collar criminal defense lawyer named George Morton Levy. He interviewed me and hired me for the interim period until I had to go on active duty. The fascinating thing for me was how did that come about? It came about again because of sports. George Morton Levy was the President of Roosevelt Raceway, a harness racing track near Mineola, Long Island. He befriended my dad in my dad's capacity as the Sports Editor of the *New York Post*, and I got the fringe benefit of going to work for his law firm. They were excellent lawyers who were wonderful to me. I did the usual kind of work for someone with no experience. I helped on motion practice and procedure. I left them in the fall of 1957 saying if I ever decided to come back to New York and didn't want to go to a big law firm, I might well want to chat with them about my future career.

So what happens when a young Second Lieutenant joins the Army? You go to training. My training for the first four months was at

Fort Lee in Petersburg, Virginia. After that, you receive a permanent assignment for the remainder of the two-year term of duty. In retrospect, I lucked out because I was assigned to U.S. Army Security Agency Headquarters in Arlington, Virginia. When I received my first interview when I arrived at the post, I was told that Lieutenant Colonel Herr, who was in charge of the Judge Advocate General's Office, was looking for a law school graduate. He essentially said the following: I've been waiting for a young lieutenant to substitute for me because I'm about to go on a tour of all our facilities around the world which will last about six to nine months. So Lieutenant Cohen, "Welcome aboard. I'll be with you for about ten days, and then I'm leaving you."

What he left me with, in retrospect, was quite a phenomenal opportunity because at the headquarters was a two-star general and about ten colonels who made up the officer corps. A lawyer from the JAG office is also part of the officers corps, so Second Lieutenant Cohen was in the presence of all these experienced long-term serving highly talented officers, and I was their "lawyer," which put obviously quite an amount of pressure on me.

The subject area I addressed most often was government contracts because the agency let millions of dollars of contracts throughout various facilities around the world. I, of course, knew nothing about government contracts. A lot of things had to do with security because we were a high-security facility. I developed the following technique, Roger. Knowing as

little as I knew, I learned early on that we did have something called a "red phone" in the office. If you said to someone asking you a question that I think this has security implications, you had to then stop your conversation and wait for a red phone call, which usually took between fifteen and twenty minutes from the time the person told me the problem. I would then do an expedited research job so that at the end of that period when the red phone rang, I was much better prepared than I had been twenty minutes earlier. So that was a lesson I learned very early in my life. The experience of working in that setting as a 23-year-old young, naïve, very non-qualified law school graduate stood me in very good stead for the rest of my life when I left the military at age 25.

But I've left out what may have been the greatest fringe benefit that I got, which is to say we had normal five day a week eight-hour day working hours. Phyllis and I were married in December 1958. She was instrumental in me deciding to go to Georgetown Law School at night to get a graduate degree, an LLM.

At Georgetown, there was an incredible plus that I now can remember. I was asked by Nick Chase, one of my professors, to do some research for him in my spare time. He was not a labor lawyer, but he was a very well-known litigator. At the end of my short three-month stint being his pro bono researcher, he recommended me to the National Labor Relations Board in the summer of 1960. So I simultaneously got my LLM and was interviewed and hired by the NLRB in Washington, D.C. in the

Summer of 1960, thanks to his recommendation. I should say that I was supported, as well, by the Dean of the Law School, Paul Dean, so I had two wonderful Georgetown Law School references, and I'm sure that played a major role in my being hired at the NLRB.

MR. POLLAK: And much hilarity was made at Georgetown Law School about Dean Dean.

MR. COHEN: Yes. He also was a wonderful gentleman. He also taught me labor law. Highly respected. You know in those days, Georgetown Law School was at Fourth and D Street, Northwest, in an old, dilapidated building. It had an incredible adjunct program even then, and now, you know, it's the beacon of virtually all adjunct programs. There must be I would say at least 25 or more labor law-related courses being taught in that program, many by colleagues of ours who were practitioners. So they were not only quite smart and talented but experienced and pragmatic as well.

MR. POLLAK: Alright. So that led you to the NLRB.

MR. COHEN: That did. Now I'm at the NLRB.

MR. POLLAK: What year is this now?

MR. COHEN: 1960.

MR. POLLAK: Just after I emerged in the world.

MR. COHEN: Well coincidentally that's good. That meant you were only 26 years behind me. That's all. So the NLRB that I walked into was an amazingly interesting, fascinating place because John F. Kennedy had been elected in November 1960 and became the President of the United States in January

1961. He then had the opportunity, you know how the statute works. The incumbent President's party gets to have a 3-2 majority on the National Labor Relations Board, and he nominated the gentleman that I then began to work for. His name was Gerald A. Brown. He was a careerist. He had been the Regional Director in the San Francisco regional office of the NLRB. Not a lawyer, but he was incredibly knowledgeable and experienced and proactive about two causes that came to be near and dear to my heart and your heart. What were they? Union organizing and the process of collective bargaining. He joined two other fellow Democrats, John F. Fanning and the third person who became the chair who was formerly a legal assistant to Senator Douglas of Illinois, Frank McCulloch. The three of them became known affectionately, or in some circles cynically, as the "Kennedy Board." Their decisions were much more liberal and much more progressive than what had been true of the predecessor Eisenhower Board. That was of course part of what Congress intended in embracing the 3-2 majority principle.

I became the most junior lawyer on the staff of Member Brown. I'd say each one of the board members had between fifteen and twenty lawyers working for them, almost all career people. You had two major jobs. First, it was the greatest way to learn the law because you were responsible for preparing legal memos about most every section of the NLRA. And then you drafted either memos for your board member to think about the issues before him or her, or actually drafting what became

decisions of the National Labor Relations Board. Very early on, this amazing thing happened to me. Board member Brown walked into my office, which was incidentally the smallest office that any lawyer ever had at the NLRB. I wanted my own private office, and the only way to get it as a junior person was to take a closet and have the closet remodeled for me, a closet with a desk, a chair, and a place to hang my coat on. Member Brown says to me something like, You know I always wanted young people who have never been in this agency before to give me some insights about what they think might be viewed as the important decisions of the Eisenhower Board that I might wish to overrule to reach a more worker-friendly result, so I would like you to spend a week or so and then send me a short memo listing what you think are the five or six areas of the law that I should be looking at with a serious view. I said to myself, whoa. First of all, I don't know the law. Second of all, this is quite an unusual request, and obviously I was delighted.

There were two subject areas that the NLRB covers, one is called representation cases, which means organizing-related law, and then, of course, the substantive law covering the basic provisions of the statute. I knew he was interested in both, and he had, of course told me what I said to you, he was interested in union organizing. So the first question always in union elections is looking at employer conduct during the course of an election campaign and asking yourself what's the difference between just "puffing" and threatening employees that if they vote for the union,

something bad is going to happen to them. The line, of course, is a very fuzzy line, and all good management lawyers have worked their way through all the NLRB decisions to figure out how can they implicitly threaten enough to effectively encourage them to vote "no." So that was obviously a fascinating area that I called to his attention. And the others involve more esoteric nuances such as recognitional picketing and the difference between a consumer boycott, which is lawful, and a secondary boycott, which was unlawful. The end result of that was in the course of the next two or three years, I had the wonderful opportunity to draft some of the decisions that Member Brown felt fit into those categories. Also, he was regularly called upon to make speeches, and I did in fact draft a number of speeches for him laying out what his philosophy was about the role of a board member and the justification for the decisions he was issuing which were reversing and overruling some of the prior precedents.

I could not have asked for a better two- or three-year experience. But I did realize at that point what every NLRB lawyer knows immediately, that nothing that the NLRB does is final and binding. In order to get a decision enforced in a meaningful way, either the NLRB has to go to a circuit court of appeals to seek enforcement, or if the aggrieved party challenges and petitions for review, the NLRB has to defend against that. I put those two things together. I had been on the moot court board at Cornell. I loved appellate court advocacy. I liked the idea of making thirty-minute arguments after writing a brief.

So at that point, around 1963, I made the decision I would apply for a transfer from the NLRB side of the NLRB, the Board member side, to the General Counsel's side. And there was a wonderful unit called the Appellate Court Branch. There were about thirty young lawyers, their supervisors, and a couple of senior officials in it at that time. I applied and was accepted in 1963.

MR. POLLAK: George, before you move to that, I'm just curious having watched the evolution of management side practices to basically neuter the labor law, how you perceive when you reviewed the landscape, you viewed it in a context of a period when relations between labor and management were by and large so much more constructed and bounded by certain unspoken guardrails that later were blown to smithereens, and that's the current environment we're in. Do you have any observations about what that was like versus what you saw later on?

MR. COHEN: Of course I do because you know that's what you do when you're given the assignment I had. Your general comment was true, but as always, it is the case when every agency always says 92% of our decisions are done unanimously, but it's the 8% that are the real hard-core disputes in which, depending upon which party is in power, are the critical ones. That much you learn pretty quickly.

The second thing, any time anybody asked me what should be done about the National Labor Relations Act, I had some pretty quick, very simple definitive answers. The single most important thing I always

believed was that there were two competing injunction processes under the Labor Act. One was called Section 10(l), which meant if a company believed it was being adversely affected by any picketing or a so-called secondary boycott, it could file a charge with the NLRB, and if it issued a complaint, three days later a federal district court judge could issue an injunctive decree notifying the union that if it kept up the conduct, civil and or criminal contempt could follow. Juxtapose that against Section 10(j) of the Act when the employer committed what we would consider to be a serious violation of the law, all 10(j) says is that if the General Counsel issues a complaint, the NLRB may, but is not required to, seek an injunction in federal court. And even if the NLRB ever decides to go to a federal district court, it's discretionary whether or not the judge is going to issue a temporary restraining order or a preliminary injunction. And knowing what we all know that most of the organizing campaigns took place in the South where federal district court judges were least friendly to the union movement, unions rarely, if ever, get 10(j) injunctions. Therefore, the message is very clear from an employer standpoint – I can immediately find out which employees the major union organizers are. I can fire them on the spot. I know that two or three years later I might get hit with a reinstatement with back pay order, but meanwhile I've done two things. I've gotten rid of that union organizer, and I have sent a very clear message to the employees. You support the union, they are helpless in terms of dealing with management, and therefore you'll be wasting your

time and your good dues money by voting for the union. That was always a very very powerful, influential phenomena that was attributable to the two distinct ways that those sections of the law operated.

MR. POLLAK: Was that technique used in the same way in 1962?

MR. COHEN: Absolutely. The really knowledgeable experienced management lawyers knew exactly how little they had to fear by taking a very affirmative immediate stance in trying to suppress any kind of major union organizing campaign.

MR. POLLAK: So turning back to your progress through the time at the NLRB, you moved into the General Counsel's office.

MR. COHEN: I did.

MR. POLLAK: What year was that?

MR. COHEN: It was somewhere around the middle of 1963, and I stayed there until September 1966. I had a good three years in that group, and I think I told you already they were an amazingly talented group. You know in 1963 the word was out if you wanted to be a government lawyer and really be a first-class litigator, you either went to the Justice Department, the SEC, or the NLRB. That was the generally accepted notion. Not to denigrate the many other federal agencies, but it was well-known and understood that the NLRB was the best place you could get appellate court training. For example, the Solicitor General would allow the head of the Supreme Court Section of the NLRB to argue cases before the Supreme Court. That gives you an idea of how much respect the SG's office had for our agency.

I went to work knowing that I was going to get an amazing experience writing briefs and arguing cases before the circuit courts of appeal. That was the major job you had. But here comes history again. Here comes good fortune for me. Good fortune with a lot of humor. A very small percentage of the work of the Appellate Court Section was in unusual circumstances to find yourself in a federal district court, and interestingly my first two court appearances were in federal district courts, and they weren't the usual cases.

The first case I had involved my supervisors, two incredibly talented appellate court lawyers, Melvin Welles and Marcel Mallet-Prevost, calling me to the office a week or two after I got there. They gave me good news. Instead of having to wait to write a brief and wait for the court of appeals schedule, we've got a couple of federal district court cases that are available for assignment, and we thought you'd be a natural for them. I said great.

The first involved me going to a place that you've heard of, right outside of Sea Island, Georgia, a place where President Eisenhower used to do his golfing, in a lovely little federal district court, and here was the issue. The issue was whether an employer could enjoin an unfair labor practice hearing from taking place. The issue was totally controlled by Supreme Court law. And basically it held that no court could issue such an injunction. This particular company involved was the Tidewater Equipment Company. My supervisor assured me that within five minutes

of the argument, the judge would know there was zero merit in that claim, and I would get a judge's opinion immediately dismissing that court case. I'm before a Judge Scarlett in the Southern District of Georgia. Judge Scarlett looked 105. He probably was in his 80s at that time, and I believe, in retrospect, he was famous for once having issued an opinion holding it was unconstitutional to require desegregation of public schools in his district because blacks were inherently inferior in intellect to whites. That was Judge Scarlett.

I walked into the courtroom, and the elderly African-American bailiff helped prop him up and put him in his chair at the bench. I, of course, was going second because the lawyer for the company represents the moving party. He essentially got up and said, "Your Honor, it's great to be here. My granddad argued before you, my dad has argued before you, and now I'm going to argue before you, and I can't tell you how honored I am. I know I saw you recently at the church and at the country club, but it's really nice to be here today, Your Honor." And for five minutes, he made an argument which, in fairness, I would say to you, Roger, that no rational person could have understood basically a word he was saying, and that included, it turns out, Judge Scarlett.

So after about five or eight or ten minutes of Judge Scarlett, trying to understand what this lovely gentleman was saying, he did the following that went something like this: "Young fella from the government, would you please stand up now." I said, "Yes, Your Honor. It's a pleasure to be

here." He said, "I'd like you to do me a favor." I said, "Your Honor, I'm an officer of the court. What can I do?" "I'm having difficulty understanding your opponent's argument. Would you be kind enough to briefly summarize it for me." I said, "Your Honor, I'm an officer of the court, but I think this is a very unusual, perhaps extraordinary, request you're making of me." He said, "I understand that, but I'm asking you, young fella, to tell the Court what you understand his argument is." And you now know what's going to unfold. I started in, and basically in four minutes of explaining what this other lawyer was floundering around about, here's what happened. Your Honor said, "I like that argument." I said Your Honor, that argument has been rejected by the United States Supreme Court, the Fifth Circuit Court of Appeals, and every other court that has ever looked at it. He said, "I understand that, but I'm telling you I really like that argument." I said Your Honor, this would not be the right direction for this court to be going under these circumstances because let me just say again. He says no. There's really no need to say anymore. I have decided I'm going to issue a temporary restraining order against this hearing going forward. I said, Your Honor, this is a mistake as a matter of law, and you understand that we are going to have to go to the Fifth Circuit. I understand where you're going to go, but I'm doing this. And on the Bible, that's what happened. I then got in an airplane and flew back to Washington. And this is what happened next. One of my best dialogs of my life. Marcel Mallet-Prevost, 65 years old, handsome, grey-

haired gentleman, probably had argued hundreds of court of appeals cases, the man who had assigned me to do this case. Mel Welles, everybody knows, one of the great appellate court lawyers in the history of NLRB, a baseball buff extraordinaire. A person who was a bridge wizard. He was a brilliant renaissance man. He and Marcel were in the office. "George, I know you won this case. How did you win it?" I said, "Gentlemen, I did win this case, but I won it for the wrong side." Well, you understand what happened. Hilarious reactions. They made me go through what I had just gone through in even more detail. The beautiful thing about it was they didn't get mad. They didn't get upset. They loved it actually. The loved the whole story. They loved what had happened. They loved my explanation. The reward was I'm going to go to the Fifth Circuit Court of Appeals, and you know what that meant. It meant an argument in New Orleans. I brought Phyllis with me. The Fifth Circuit was then sitting in the old Agricultural Building in the French Quarter. I had Judge Brown, Tuttle, and Wisdom, three of the great giants then of the Fifth Circuit being wasted on this, right? And I'm going first because I'm now the petitioner. The case is captioned *NLRB v. Tidewater Equipment Company*. I get up, and I argue for three minutes. Judge Tuttle, I believe, was presiding. He looks down at me and asked who was the judge below, and I said Your Honor, it was Judge Scarlett. He puts his hands up, time out. He swings his chair around. The other two judges swing their chairs around. From the bench, "Injunction overruled. Opinion to follow." So I

then had the most delicious meal with Phyllis you could ever have in a fine French restaurant, and that was my first argument!

MR. POLLAK: I'm just curious about your frame of mind like in your first appearance in district court and then the court of appeals. Were you nervous? What were you like as a young man?

MR. COHEN: I was in Brunswick, Georgia, a tiny little post office building and when you saw the judge being propped up and you have a case you can't lose. The answer was I wasn't nervous. I was thoughtful about the procedure and to try to make sure I conducted myself in a professional manner. In retrospect, could I have said "Your Honor, I'm not going to do that?" I asked my supervisors that, and they looked at me and smiled and said whether you could have or not, that would not be the way you would probably respect a court, and you would probably have gotten into more difficulty than you know. I have never to this day ever asked anybody else about that because Judge Scarlett is probably the only judge in the world who ever said anything like that. You make the other lawyer's argument.

MR. POLLAK: Interesting. So that's *Tidewater*. What about *Rock Hill*?

MR. COHEN: There's no way to outdo *Tidewater*, but in a way, in terms of me, *Rock Hill* outdid it by far. Okay. And then you're going to probably ask me why did I continue in the practice of litigation after this?

The second case. A much more different circumstance. It's in the Southern District of New York. There's a very esoteric section of the

National Labor Relations Act, and if I told you I knew it was Section 9(c)(3), you'd laugh at me and say George, and I'd say because I had to look it up to prepare for this. It basically provides there's something unique about organizing campaigns when unions try to represent plant guards. And it goes on to provide if one particular union, which has a conflict in representing them, if they get elected by the rank and file plant guards, that union cannot use the National Labor Relations Board to support a refusal to bargain case. In practical terms, voters are alerted there is a big disadvantage to vote for that union. But in this case, the ballot prepared by Regional Director NLRB did not contain those magic words. So, the company went to court complaining that they need an injunction because some employees are going to vote for this union without understanding the downside of voting for this union.

Another case never before in the history of the Act, right? So I'm in court opposing the effort to get an injunction to modify the NLRB ballot. Historically, ballots have been the exclusive province of a Regional Director of the NLRB. Now, who is the regional director of the NLRB in New York City? His name is Sam Kaynard. He's known as being a reprobate, an incredibly fascinating, charismatic, noisy creature, which, in fact, unfolded here in this situation. In any event, he's not in the courtroom. The argument is in the Southern District on a motion before a really smart, highly respected judge named Edward Weinfeld. Everyone who practiced in the Southern District knew if you get him, you got a

really smart judge, a man who conducts himself in a very professional manner. The other side makes its argument. They're done. Judge Weinfeld calls on me, and I make what I thought was as thoughtful an argument as you can make in these unique circumstances. I argue that almost all the time, the regional director has this authority, and it's not usually a reviewable authority to determine what? What the notice to employees looks like and what the ballot looks like. I do recognize Your Honor this is a unique situation. I think there are competing interests, but I urge, on balance, we have the better of the argument that you should not get yourself involved in this situation and leave it for the employees to make their own judgment even though they might make a mistake blah blah blah. After a twenty-minute argument, the judge says to me, Mr. Cohen, this is a very interesting case. I find it worthy of a lot of attention. I appreciate greatly the argument you have made here, but here's what I'd like to have happen. I'd like you to leave the courtroom right now. It's 12:00. I'd like you to call the regional director who made this decision, and I'd like to have him in chambers this afternoon with the court reporter at 2:30 because I appreciate you are a nice young lawyer, Mr. Cohen, without saying those words, but I want to see what the Regional Director had in mind when he decided this was the ballot he wanted to use. I said, Your Honor, I will leave the courtroom, and I will make the call you requested of me. Now you understand it's 1964. There are public telephones. You put a quarter in, and you dial the regional

office of the NLRB. I had never met Mr. Kaynard. I have never spoken to Mr. Kaynard. And this is essentially what happened when he picked up the phone, which will delight you, Roger. I said, "Mr. Kaynard, my name is George Cohen. I haven't had the pleasure of meeting you. I recently started working for Marcel Mallet-Prevost and Mel Welles." And I said, "and I'm here to argue this case." I got about five words into the case, and he said the following. "You dumb son of a bitch." Precisely those words. And then he said the line that I will never forget. He said, "I told Marcel years ago don't send a boy to do a man's job." And I said, "Well, Mr. Kaynard, here's the good news for you. You are going to have an opportunity to do the job because I've been instructed to tell you to be in court at 2:30 this afternoon and Your Honor wants to hear directly from you." He said, Great. He said, "Cohen, meet me in front of the courthouse. I'll be wearing a Russian scarf, a beret on my head. I have a big handlebar mustache. You won't miss me, and I'll show you how it's done." I said, Mr. Kaynard, I'm looking forward to that. And on the Bible, he showed up looking like I just described, sounding like I described, and in we go together. This is what essentially unfolded with a court reporter transcribing it. His Honor looks at him and says, Mr. Kaynard, I want you to know that your young colleague was here earlier today. He made a very interesting, strong, thoughtful argument about why I shouldn't have jurisdiction over this matter. I am troubled by that thought in these unique circumstances, given the statute, and I'd like

to hear from you as to why you prepared the ballot in the manner you did. Mr. Kaynard responded, Your Honor, you have no business touching this. This is my exclusive province. I determine under the law what a ballot should look like. I determine what the notice to employees should look like, and quite frankly, Your Honor, I don't even know why I'm wasting my time here today. Almost verbatim. And Your Honor says to him at that point, You know, Mr. Kaynard, Mr. Cohen made a much more impressive argument than you did. I think I've heard enough from you to know I'll be issuing an injunction against using that ballot today. And so we walked out of the courtroom. He uttered a couple of four-letter words, and I will tell you over the next twenty years, we became good friends, Sam Kaynard and I. Sam Kaynard learned over time what a wonderful person I am and how wonderful it was that we shared that experience together!

MR. POLLAK: That's a great story, George.

MR. COHEN: Now I've told each of these stories, you should know, every time I was honored or being recognized by any of our bar associations because they're so illustrative about what can happen in your life when you spend time in a courtroom. Now I'll tell you about the boring cases I handled in the same three years.

MR. POLLAK: Those are great stories in that they show the things that can happen. What you call boring, which you're about to get to, obviously is really what

happens 99% of the time, so it's pretty extraordinary that that's what happened to you as you began your career.

MR. COHEN: With those two experiences in mind, Marcel Mallet-Prevost and Mel Welles had a great amount of affection for me because we laughed together, the three of us, an unprecedented amount of time. These are the first two cases they gave me, so that the joke was let's see if we can find George a couple of run-of-the-mill cases. I then briefed and argued I'd say in the next two-and-a-half years, six or eight appellate court cases, all mainstream issues. But the nice thing is I was in different circuit courts. I argued in the D.C. Circuit and the Fourth and Fifth Circuits. I began to understand what it is to stand up and make an argument. I also learned two lessons that I never forgot. Every time one of our young colleagues at Bredhoff and Kaiser drafted briefs for me, I shared the same things with them. What were they? Number one, never put in a brief words that you could not feel comfortable standing up before a court and saying. Next, when you're writing a brief, you should be thinking about one thing: this is a communication with the Court. How do I best communicate to get the judge(s) to understand what I'm saying, why I'm saying it, and hopefully why it should directly affect the outcome of the case. I certainly learned that early on from my own wonderful supervisors at the NLRB. And then when it came to argument, what I learned when you are second up after the petitioner has made its argument, resist the temptation of immediately trying to destroy what the other lawyer said. Make your affirmative case

that you're there to make, and really keep focus on what you want the court to view as your best foot forward. Third, because I also would like to talk in a later session about appellate court advocacy, I don't want to use them all up, but the other thing, it is so fundamental. Many young colleagues make the mistake, if they are asked a question, they respond, "I'll get to that." You should never say that. You immediately answer the question. It doesn't matter if it's the beginning of your argument, the end of your argument. It doesn't matter if it's relevant or irrelevant. You are there for one purpose. That is to say to serve the interest of the Court, and if the judge asks you a question, you stop what you're doing, and you answer that question. And again, I had a thesis that I've used all my life, particularly with our younger colleagues. "This is not your bar mitzvah." You are not there because your mom and dad are watching you in the courtroom and want to applaud you when you're done. You are there because you are an officer of the court. I felt if you kept those three things in mind and, further, never read from your brief, you're going to do okay as an appellate court advocate.

MR. POLLAK: Fascinating. I wanted to ask you just to reflect, just for fun, a little bit on what it was like. You worked from the 1960s to the present, and obviously there was a little bit of change in how briefs, for example, are produced, but what was it like to prepare a brief at the NLRB in 1964? I'm imagining the smell of carbon paper.

MR. COHEN: Yes. And yellow pads. I used yellow pads right through. I'm going to tell you two things which you would completely understand. A NLRB lawyer in the appellate court is constrained by the decision that has been issued that you are trying to get enforced. This can be a very challenging piece of business because sometimes the Board decision is either not written very well, not quite as informative as you'd like it, and maybe even a little short of rationale at times. You have an ongoing challenge not to rely upon *post hoc rationale*. I had one particular decision which I remember. I read it, and I said how am I going to write a brief to persuade three judges that this is a, rational decision of an important government agency. I concluded the answer was essentially it can't be done. I did chat with other attorneys in my office and then read all of the cases on *post hoc rationale* which stand for the proposition that when you're a government lawyer and you're standing up in court, you better not try to sell the judges on any reasoning not contained in the decision itself.

Here was my solution: *post hoc rationale* is better than no rationale at all! My colleagues loved that saying because they knew young appellate court lawyers always shake their heads when they get decisions that they've got to try to get enforced by three circuit court of appeals judges. Which led me to cynically suggest to my supervisors at the end of my career that really what should happen is that the Board members themselves ought to be sent to a circuit court of appeals once in a while to defend their own decisions. They might begin to understand what

it takes to write a decision that's going to end up getting enforced. I thought that was a great potential solution. The Board members would always get upset if they found out that one of us in the appellate court section had lost the case and their decision wasn't enforced. They wanted us to know that in their minds, we were not the court of appeals lawyers they had hoped we would be.

MR. POLLAK: Fascinating. Alright, so we worked our way through the first part, and we made our way up to 1966 and the important transition in your life, *the* important transition in your life, that I can't wait to hear that part of the story.

MR. COHEN: I gave you enough to know that I was really totally engaged in my career. I came to the conclusion that I have had two great experiences at the NLRB. What do I want to do next? Phyllis and I talked at length about this because this was going to be an important decision. We had fallen in love with living in Washington, and I had been through the whole Kennedy and Johnson period at the NLRB, so the bottom line was I wanted to stay in Washington. I wanted to represent working men and women through their unions. That was reverse snobbery A-1. I always felt there were ten lawyers on management side to one on the union side. I loved the idea of representing people who worked. I felt that working people were underrated, underestimated. Period. And lastly, I realized I had no real skill or experience as a trial lawyer. Also, I thought I had developed an interest in and a skill in briefing and doing appellate court

work. So I started looking around. There was a small union bar in Washington, D.C. But again, what's life? Coincidences, relationships, and luck.

Michael Gottesman and his lovely wife Roberta and Phyllis and I had met socially two or three years before that. We had shared a number of delightful evenings and family events together. Their children and my children were almost identical in age. Bruce came first, and their son Ken, then my daughter Julie, then their daughter Deb. Michael had just gotten what I thought was the most fascinating job in the world.

Here's a quick background. Arthur Goldberg had come from Chicago in the late 1950s to Washington, D.C. as a highly respected Chicago labor lawyer. The AFL-CIO had retained him to draft and negotiate the AFL-CIO merger, which he succeeded in doing, in the late 1950s. And then he had set up his small law firm in Washington. It consisted of David Feller, who had been a brilliant Supreme Court clerk, and Elliot Bredhoff, who had been hired out of NYU. The three of them were the partners, and there were two young associates, Jerry Anker, and Michael Gottesman. The five of them were together for a short period of time. And then in the 1965 Steelworkers Union election, an extraordinary thing happened. The incumbent President, David McDonald, was challenged by the Secretary-Treasurer, I.W. Abel, affectionately known as "Abe." David Feller became the campaign manager for David McDonald. I.W. Able upset McDonald in the election, and, politics being what they

were, David Feller decided it was not appropriate for him to stay in the firm now that it was going to be representing the Union, led by I.W. Abel. David formed his own small law firm that Jerry Anker joined. When I say formed his own law firm, they were in the same suite of offices with a door between them and two different firms, Bredhoff & Gottesman and Feller & Anker.

Michael was urging me to join his firm. I was thrilled. First of all, I was a friend of his already. I had never met Elliot Bredhoff, but I knew that their major client was the Steelworkers Union. You should know at that time the Steelworkers and the Autoworkers were the nation's two major unions, apart from the Teamsters. Late 1960s, early 1970s, the Steelworkers probably had 1.5 million members, of whom 300,000 or so were in Canada. Everybody knew and understood UAW was the more progressive liberal group but that the Steelworkers were the "meat and potatoes" guys. I learned all about that from Michael. I was interviewed by Bredhoff & Kaiser. I had also been interviewed by four or five other union firms in Washington, D.C., one of which I was very interested in as well, but I was told by the senior partner that my experience as an NLRB lawyer had "tainted" my whole future in his firm.

I will tell a story that's sort of apocryphal, but I will tell it again for the record. You also should understand I'm four years Michael Gottesman's senior, so I'm going to go into a law firm with the second-most senior partner in the firm four years younger than me. I am now 32

years old, and Michael is 28 years old. Elliott was probably in his early 40s.

The interview, which included things like Elliott saying, "I noticed you didn't go to Yale Law School," where he and Michael had both graduated from. I said yes. Elliott also said, "I noticed you weren't on the Law Review." I said that is correct. Finally, he said something like what is the most important thing you have to commend yourself to us, and I immediately replied, "I have season tickets to the Redskins games." He said, "You're hired." Even if it didn't exactly happen that way, it was close enough that I feel really good telling that story.

MR. POLLAK: Wonderful story. David Feller went on to become a famous arbitrator, right?

MR. COHEN: Well first he became a famous professor at Berkeley Law School in California, and yes, David Feller I think is considered to be one of the most brilliant people who were ever part of the labor movement. He argued the Steelworkers Trilogy before the Supreme Court. He was a brilliant professor and a brilliant arbitrator. I had the high honor of working with him in various times in my life independently of the firm. On my tenth wedding anniversary in 1968, I assisted him in one of those Taft-Hartley emergency injunction disputes that he was handling. My job was to draft stay motions to hand up to the district court and then the court of appeals. That's how I spent that night with David Feller. It was an Indiana plant that made a special kind of bullets that was being shut down

by a strike called by the Steelworkers Union. We lost and the injunction issued under Taft-Hartley. I returned home after midnight to begin my 11th year with Phyllis. As to Jerry Anker, I've known him my entire professional career. He died a few years ago. A wonderful, brilliant man, and a great friend of Michael and of Elliott's as well.

MR. POLLAK: George, just one other question about what happened with the split, the firm around the election between Abel and McDonald. Abel was the insurgent, and you said Feller became the campaign manager, but we were McDonald's lawyers in some respect. I know that counsel is counsel to the institution, but it's interesting that Feller had to move out, but Elliot managed the politics of it, to be able to stay around.

MR. COHEN: We need Michael Gottesman here. I knew Dave pretty well. When he decided that he was going to be the campaign manager, I assume he and Elliott had a conversation which he was going to exclude Elliot from that part of his role. I also don't know if I'm telling you factually whether I.W. Abel was the instigator or David Feller was the instigator of his departing. I am pretty confident it was the latter that I've just discussed, but it was mutual at the end.

MR. POLLAK: Fascinating.

MR. COHEN: Now, to round out the picture that you asked, because these are fascinating, historical events. Who was I.W. Abel's lawyer during the campaign? He was Bernard Kleinman, a terrifically qualified Chicago-

based labor lawyer, who then became the General Counsel of the United Steelworkers of America shortly after I.W. Abel was elected.

MR. POLLAK: So in some sense it did bring a change because we had been outside general counsel at Bredhoff, and Bernie then became the first inside general counsel. I got to work with Bernie at the beginning of my career in the 1990s and really enjoyed that

MR. COHEN: You were a lucky person. As you'd expect, not as much as Michael, but I had many cases with him and the whole legal staff, which I'll talk about a little whenever you want.

I was making $15,000 a year at the NLRB when I left. I was promoted one GS each year I was there. I was going to be promoted to become a supervisory appellate court lawyer just before I left. When I sat down with Elliott and Michael and they said what are your salary demands, I didn't have any, but I said here's my situation. They said okay. This was not with my knowledge. Evidently, they decided they're going to speak with Bernie Kleinman and the Steelworkers officers and tell them about me and that I'd been at the NLRB for six years and was being paid $15,000 a year. In any event, the Steelworkers agreed to pay Elliot and Michael $7,500 for 50% of my time. I can assure you for the next four years, I devoted 80% to 120% of my time for $7,500 and whatever increases Michael and Elliot were able to negotiate.

It gives you an idea what compensation was like as a union lawyer, and believe me, I was not dissatisfied.

MR. POLLAK: Absolutely.

MR. COHEN: I thought I was doing fine.

Now I'm going to try to summarize 1966 to 1970. I would say I developed and honed all the litigation skills a young labor lawyer would like in handling traditional run-of-the-mill labor-related litigation situations.

NLRB. Well since I had been at the NLRB, every time Elliott and Mike saw an NLRB case (incidentally, Bernie Kleinman knew that) I was a natural person to do representation disputes and unfair labor practice cases. I'm not going to discuss this all now, but as a result of that, I was assigned *H.K. Porter* and argued that both in the D.C. Circuit Court of Appeals and the Supreme Court in 1968 as a 34-year-old neophyte. So I got an amazing fringe benefit out of that case. I also was fortunate to work with the staff of lawyers in Pittsburgh, General Counsel Kleinman and his terrific colleagues, Carl Frankl, Jim English, Al Lawson, to name a few. They all knew that I was part of the team, and so they were always conferring with me about NLRB-related matters. In cases assigned to me, I was always the lead lawyer on behalf of the Steelworkers Union, but they were giving me whatever assistance I wanted.

Okay, so I had a great experience as a neophyte. I went to Michael and spent a lot of time getting his advice and guidance.

I had oodles of breaches of the duty of fair representation cases where the unions are defendants, first before the NLRB and then federal

district court and courts of appeals. I handled suits to enforce arbitration awards. I handled suits in opposition to companies trying to set aside arbitration awards. I had a lot of lawsuits under Landrum-Griffin involving union elections. The Steelworkers had an incredibly comprehensive program whereby any candidate who lost a local union election had an internal union appeal, and it wasn't a kangaroo appeal. It was a legitimate one.

At that time, the Steelworkers probably had 5,000 or 6,000 local unions running elections every two or three years, whatever the law required. Of those elections, probably 500 were appealed, internally. Of those, probably 200 or 300 ended up with potential litigation with the Labor Department petitioning before a federal district court to set aside the election results. For example, challenges to meeting attendance rules and conduct before the election. The Department of Labor issued complex regulations. The people who were administering and enforcing those regulations, I've got to tell you, were overly enthusiastic about their ability to try to set aside elections. I can only say to you I argued at least 25 of those related cases in four years.

Bernie Kleinman had the following "modus operandi." The Steelworkers Union would not hire local counsel in every area of the country like every management law firm did, and many unions did. Oh no. He said, we're going to control our budget. We're going to control our destiny, and we're going to control the way the law is being made. So

Mike and George and Carl and Jim, you're the guys. You're going to go into every court.

So what did that mean? That meant that not only were you in federal district courts all around the country but, Roger, the opposing local lawyer had either been at church with the judge before, had been at parties with or a friend of the judge. For example, Bethlehem Steel was never going to use a lawyer in any federal district court case who wasn't a major player in the bar of that particular federal court. And you know I had clients who thought that given my NLRB expertise, these judges are just going to fall over backwards when you stand up and argue. On the one hand, you don't want people to think that you're not capable of winning an argument, but you don't want them to believe that by selecting me, they had a foot in the door, because the lawyer arguing against me had already been in that court 25 times in the last 5 years in his life.

You could just imagine what kind of courts you're in. I mean I was in Boise, Idaho. I was in the South. I was in the Midwest. I was in Landrum-Griffin cases where the insurgents would come to the courthouse having read my resume. One plaintiff once stopped me as I was about to make an argument against his position. He was trying to set aside a steelworker election that he lost, and he stood there in front of about ten of his buddies and he read from Martindale-Hubble, you're a member not only of the Seventh Circuit, but also the Third Circuit, the Sixth Circuit, and Ninth Circuit, et cetera. This was a very interesting phenomena in

Landrum-Griffin cases. My clients, Steelworkers International Union officers, were being criticized for sending me to oppose their efforts to undo a local union election.

MR. POLLAK: Very interesting. So you had some additional experiences similar to what happened in Brunswick, Georgia?

MR. COHEN: On occasion, yes. What I left out in the world of litigation, which is a terrible omission, is my first assignment as a Steelworkers lawyer and, you know, I'm now famous with you for first assignments. In September 1966, I walked into the office, shook hands, and Elliot and Michael told me we've got a really interesting thing for you to do. Pack your attaché case and head over to the DOL, the Office of Federal Contract Compliance. The OFCC has begun a landmark precedent-setting procedure against the Bethlehem Steel Corporation alleging that the company, one of the biggest government contractors in America, should be debarred from having another government contract based on their long history of employment discrimination against black employees, both in hiring assignment and other terms of employment. In addition, they alleged that the seniority system negotiated between Bethlehem Steel and the Steelworkers that had existed for years and years, the "unit seniority system," albeit neutral on its face, had an adverse impact on black workers and hence was unlawful. That system was the "bread and butter" of the United Steelworkers of America all across our country. Now the OFCC wanted it to be declared null and void. So your job, George, is to support

the OFCC's challenge to all the discriminatory employment practices that Bethlehem had engaged in, but on the other side of the aisle, you are to oppose the OFCC's initiative to set aside the unit seniority system. That's all I had to do!

MR. POLLAK: Just like that.

MR. COHEN: Just like that. The Steelworkers had already formally intervened. That proceeding went on for months, but not every week or every day. I appeared as the only lawyer for and on behalf of the United Steelworkers of America. Bethlehem Steel had a team of lawyers from Cravath, Swaine, and Moore and in-house as well. The OFCC had about twelve lawyers representing every aspect of the government. Fortunately, I had with me the most experienced, talented, skilled representative from headquarters in Pittsburgh. Probably the most famous of all was Ben Fisher, who had just replaced a chap named Marvin Miller, who was once the economic guru of the Steelworkers Union and had just left to become the first Executive Director of the Major League Baseball Players Association. And the irony, in retrospect, MLBPA became my client in 1980. So I had Ben Fisher. I had a gentleman named Dee Gilliam, who was the head of the arbitration department. I had the heads of the civil rights and apprenticeship programs. I had a whole bevy of talented staff. But the enormity of trying first to digest the history of this industry and then to know what to ask when the time came for me to examine witnesses was awesome. What did it teach me? It taught me what it meant to learn

a lot quickly and then to use your resources to the maximum extent possible. I think it influenced my whole outlook on how exciting the practice could be, what your opportunities were, and how important a job you're given. Because here's this great, powerful union caught in this amazing dilemma.

So the final part of the story, which I was not involved in but Michael was, focused on the issue I described to you – the seniority system. I won't go into detail on that, but in simple terms, it meant you were assigned to a particular unit. There were thousands of units in a major basic steel plant, and that unit was designed to be the most efficient because everybody there worked with each other. And naturally, to get the maximum productivity, it was industry's desire that employees stay in that unit, be the most productive and get their promotions within the unit. So if you transferred to another unit, you lost your unit seniority and had to start again to accumulate seniority at the next unit you transferred into. This necessarily was an impediment to workers transferring and mobility. There were a large number of United States Circuit Court of Appeals decisions over the next ten years raising that issue with other corporations in other settings. Every single one of those ruled that there was an adverse impact on the ability of black employees to transfer out of jobs they were initially discriminatorily assigned to by the company into more desirable jobs. Thus, even though it was a racially neutral system, the courts set it aside in violation of the Equal Employment Opportunity law. The United

States Supreme Court disagreed with every one of those decisions years later and held that system was entitled to be enforced because it applied to all employees – black and white alike – and it was not established with an intent to discriminate. It was a Teamsters case, so Michael didn't argue it. I think it may be the only case the Supreme Court had ever decided in which it essentially overruled so many circuit courts. So I had a chance to live all of that.

MR. POLLAK: Before the Supreme Court ruled, was the steelworkers' seniority system also struck down by the Circuit Court of Appeals?

MR. COHEN: Now I have to go back. That's a very good question.

MR. POLLAK: Right. I knew there was litigation throughout the 1970s.

MR. COHEN: We need Professor Gottesman to talk us through that.

MR. POLLAK: I came to Bredhoff because of Professor Gottesman. He taught at Yale, and that was where I found out about Bredhoff and Kaiser.

MR. COHEN: You were both fortunate.

MR. POLLAK: Alright. Well then that brings us to the fourth page of your wonderful outline. You wanted to talk about the beginning of your career as a negotiator and then also about the beginning of public sector collective bargaining. Of course when I met you, you were hard into a lot of different bargaining activities.

MR. COHEN: Okay. I neglected another thing that's worthwhile you're knowing about my life, Steelworker Union negotiations. First of all, there was something called the top five committee with authority to negotiate all economic

benefits industrywide. The management side was represented by the CEOs of the five largest, most powerful companies led by U.S. Steel and Bethlehem Steel. For the Steelworkers, Bernie Kleinman and Elliot Bredhoff were the two lawyers, along with President I.W. Abel and the two other highest-elected union officers.

All local working conditions were negotiated separately with each company. So Elliot would delegate to Michael, and then, to a lesser degree, to me, various functions that we handled involving sub-special committees, such as contracting out of bargaining work, safety and health, and grievance-arbitration. Even though I was not directly involved in any of the major bargaining, I got a chance to understand what collective bargaining was like when you're talking about the behemoths of the steel industry. And I had the good fortune to be in two or three of these really important subcommittees.

I also did work every four years on Steelworker Conventions, the Union's highest policymaking body. A week before every convention, all the committees met, and Michael and I were assigned by Elliot to various roles. We were sent to certain committees, usually the constitutional committee or the collective bargaining committee. The committee members were local union officers and International Union officers and staff members. We would spend one week, night and day, listening to the committees' discussions, to the debates, and then when it came time to write the committee reports after they coordinated with us on any legal-

related issue, we played a role in drafting the committee reports and proposed amendments to the constitution. Then, of course, we had the good fortune to stay at the convention. You can imagine what it was like. At that point, 5,500 local unions sent delegates. The main speakers were all the national political leaders, all the leading lights in the world of labor-management relations, professors, academia, et cetera. Those conventions took place in Atlantic City and Las Vegas. They were monumental experiences in my life, staying up night and day learning how to drink in the middle of the night and still be able to work early in the morning, all part of becoming a rank-and-file union lawyer.

MR. POLLAK: I.W. Abel was reelected and reelected for two more terms, right?

MR. COHEN: He was President 1965 to 1977

MR. POLLAK: We talked about the negotiating teams, and we're on the last page. Do you want to talk about *H.K. Porter* and your representation of the steelworkers?

MR. COHEN: No. I think I want to save that for the Supreme Court interview because that's too long. I want to tell you since I started with public sector unions in 1968, and I promise you I'll do 1968 to 1970. So, I'm sitting in the office, and this in 1967 or 1968, completely ensconced in the Steelworkers Union. We also were representing the United Hatters Union, and on occasion Elliot would ask me to do something as he was also counsel to the Industrial Union Department, AFL-CIO.

I would say that initially 90% or 95% of my work life was the Steelworkers Union. Then, beginning in 1966-1967, an amazing phenomena takes place in American labor relations. One state, county, municipality after another issued ordinances, laws, et cetera, saying two things. One, public sector employees can organize lawfully. Procedures were established to let employees select a union if a majority of the employees in an appropriate unit for bargaining opt to vote in a secret ballot election for a union. And second, the union can then engage in collective bargaining with the employer to set mutually agreed upon wages, hours, and terms and conditions of employment. But this is public sector. This is police, firefighters, teachers, IRS agents. We can't let them willy-nilly go out on strike, which is the premier economic weapon that private sector unions have. So what are we going to do? We're going to declare that public sector strikes are illegal and put some real teeth in those words, which I'll tell you about in one section about the Virginia law. Well if you engage in a strike as a public school teacher or police or firefighter in Virginia, you're immediately discharged, and you can never be employed again. And as one Fairfax County teacher group said to me when they hired me, would you say that again, George. Do I understand you to be saying that if I go out on strike, I will automatically be fired without any recourse and never again be hired by Fairfax County. Yes. You have heard me. Let me say that one more time because 250 of you are in this room at this time. So you have significant rights, but they're

only in accordance with the rules and regulations of the law or ordinance. What this meant in practical terms is that a wide variety of dispute resolution procedures emerged depending upon the particular jurisdiction in which you were employed. A few examples would be informative. In lieu of the right to strike, most jurisdictions provided for mediation after an impasse in the negotiations. Some went on to provide for final and binding arbitration ("interest arbitration") from a neutral arbitrator selected by the parties. Still others would only provide for a fact-finding procedure without the ultimate step for arbitration, et cetera. And I do recall that the District of Columbia had enacted a unique variation. The arbitrator's award was final and binding only if two-thirds of the City Council approved.

In any event, for my first experiences, I was then retained by the Arlington Education Association (1,000 classroom teachers), the Fairfax Education Association (5,000 teachers and administrators), and the Education Association of Alexandria (1,000 teachers). All of these organizations were under the umbrella of the Virginia Education Association in Richmond.

Next, officers from Local 36 IAFF in Washington found out about Bredhoff and Gottesman. They went to Elliott. Elliot said to me, since you're already representing all these teachers, why don't you take Local 36 Firefighters as well. Great. And then Local 36 told another firefighter local in Prince Georges County which thereafter resulted in my

being retained by the Fraternal Order of Police (FOP)local in that same county. So to make a long story long, you can see what I'm telling you. Between 1966 and 1968, I now have the dream come true, hahaha. I've got all these new clients, and they're all total neophytes. Nobody has ever done anything about union organizing or collective bargaining. Initially, it was just me. Over time, I put together a great team. Jeremiah, Bob, Jeff Gibbs, and later, Mady Gilson and Devki Virk. I lived in Fairfax. I would drive to Arlington either 8:00 in the morning or 5:00 in the evening. It was like a "hobby." I'm being paid probably $35 an hour, but I'm just going to meet with these people and listen to them tell me their problems, tell me what they want, and then try to create a solution.

Arlington was the poster child. Arlington's Superintendent of School finds out the teachers retained a labor lawyer from Washington, D.C., and he decides he needs a really strong management labor law firm. So the joke became that wherever I went, Morgan Lewis and Bockius was retained. I never asked for any share of their retainer! I can assure you their retainers were much larger than mine.

On behalf of the Arlington County teachers, I negotiated the first Recognition Agreement in the history of Virginia for public sector teachers. That took about a week of trying to slowly but surely persuade the other side it was in their best interest not to go through a big election proceeding and instead use card checks. Under the card check system, employees were asked to sign and date a standard card stating in essence

"I hereby authorize (insert name of labor organization) to serve as my exclusive representative for purposes of negotiating my wages, hours, and conditions of employment." Those cards would be presented to a jointly designated neutral, an arbitrator or priest, for example, to compare, the signatures on the cards with the employee's payroll signatures maintained by management. And if a majority of the teachers in the bargaining unit had signed valid cards, management would recognize their representative and commence collective bargaining. After the Arlington School Board agreed to this procedure, Fairfax and Alexandria did likewise.

The first rounds of bargaining were all "doozies." I was not able to reach any negotiated agreements, not at all surprising as this procedure was so alien to all concerned. Ultimately, however, thanks to the dispute resolution mechanisms, agreements were reached with the negotiating committees and approved by votes of the rank and file teacher members and their respective school boards.

The quality of the lawyers I dealt with on the management side, like Chuck O'Connor and Harry Rissetto, were very instrumental, in resolving disputes to reach agreements.

MR. POLLAK: I'm fascinated by two things. One is, everything under these public employee organizing and bargaining laws was a question of first impression, and then there were no contracts. You had to produce them out of whole cloth, so presumably once you got one maybe in Arlington,

then at least you had a form to work with, but when you were starting out, what did you draw on to begin to like structure these.

MR. COHEN: That's the 64-dollar question. So let's go over what I did. These are the no-brainers. You identify people who can really educate you about their problem and possible solutions. And I was really fortunate. Almost every executive director and/or their immediate staff provided that help. But you understand fully that this didn't happen in a day or a week or sometimes a month to educate yourself.

And then I taught them about the need for priorities, and I taught them what you "want" versus what you "need." I developed all these catch-all phrases with the idea that they would respect me for the help I was giving them and get them to understand I was there for them. And they began to appreciate that without an agreement, they have nothing. With an agreement, they have stability, agreed-upon economic benefits and working conditions. In Arlington County, supervisors have only a one-year term. They said we can't be bound by anything more than one year while we're in office. And I said to them, you are going to regret those words, and of course, one year later, they said yes, we think we want a two-year contract. That would avoid dealing with me every year! That was the joke. We don't want to be in the room with him that often.

So it was a great mutual learning experience. I was learning, they were learning, everyone was learning. And, of course, the second round is easier. And the other most fundamental thing I always said to them, and

you will appreciate this. What they all wanted to do is draft a 120-page document and give it to the other side to begin bargaining. And I gave them as nice a half-hour lecture as I could, which ended up with me taking the 120 pages and throwing it against the wall. That's what you're going to get when you hand the other side those proposals before negotiating.

In Virginia, it was all a new procedure. There was no road map. That's fair to say. So you sit down and say okay, I've got classroom teachers, first to sixth grades. I've got junior high teachers. I've got senior high. I've got teachers who are music teachers and art teachers. Everybody has their own individual interests and own individual concerns. We have to set up committees. I want the three best, smartest people in phys ed. I want the three smartest in arts and music. You figure out one of the things that we get good at doing, as you know, is analyzing and evaluating and coming up with a plan of action. Within the bargaining unit, there were many different interests. Young teachers were focussed on pay raises now, while more senior teachers focussed on pensions and healthcare. So in a nutshell, negotiating within your own team. I've always said it's sometimes more difficult than to deal with the management.

MR. POLLAK: That was certainly my experience. Were the Defined Benefit Pension Programs in place before the unions?

MR. COHEN: I used Penny Clark to help me deal with all the complex pension issues. I did this because the Fairfax system had decided the following: Since on

average female teacher lives longer than the average male, we ought to have an actuarial deduction for all women in terms of their pension. As a group, women are going to live five years longer, and they're going to get monthly pension payments five more years than the men are getting. So they're going to get $80 a month less than the men. Wow. Chuck O'Connor from Morgan Lewis and I sat down in 1968 or 1969 to successfully persuade each of our clients to end that disparate treatment. And yes, that was an interesting experience. He remembers that just as I remember doing that.

MR. POLLAK: This is fascinating. I think that brings us to the end for today. I'm sure that you are all talked out. This is the end of our second installment with George Cohen. We've talked our way up to about 1970.