

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 Thursday, June 22, 2022. This is the fifth interview.

MR. POLLAK: Today George is going to talk about his part of his career where he worked in the entertainment law field. We're going to start at the beginning, which is how you had done all these other things that we've talked about, OSHA and sports. How did you first become engaged in the entertainment law area?

MR. COHEN: Well thank you, Roger. And again, thank you for being in the role you're playing here with me today. I think for context, I would say what you already were alluding to. I joined the Bredhoff law firm, with Elliot Bredhoff and Mike Gottesman, in 1966, and we're now going to start talking about post-1987. So for 21 years, the one thing I can assure you, I had nothing to do with representing any men or women in the entertainment industry. So this came as quite a remarkable shock to me. My basic theme, which I've shared with you in these first four interviews, is relationships and coincidences. I'll be more than happy to illustrate the applicability of those three words.

MR. POLLAK: That's great. Well this is enough after you began that it's getting close to when I began at Bredhoff & Kaiser, which was in 1990. I didn't realize until now that your work with the musicians had begun so close to that time.

MR. COHEN: In 1981, what was then Bredhoff, Gottesman, Cohen, et cetera – I forget what the firm's name actually was at that time – we merged with the other major labor law firm in Washington, Van Arkel and Kaiser. Henry Kaiser brought with him to our firm his legendary experience as having been the General Counsel of the American Federation of Musicians, going back to the James Petrillo era in probably the late-1940s and continuing in that role until about 1977 or 1978. During that period of time, he had established himself as one of the premiere union labor lawyers in the entertainment industry.

In 1978 or so, an outsider ran against the incumbent president. His name was Victor Fuentealba. He was a Baltimore-based gentleman. He beat the incumbent president and became the president of AFM and brought with him a new general counsel, who I actually have had a long-standing personal relationship, Cosimo Abato. Cos was a labor lawyer himself in Baltimore and a very fine clarinet player as well. Cos Abato served as the general counsel with Victor Fuentealba for about ten years until about 1987. Of course for that ten-year period, Henry Kaiser had nothing to do with his prior role as the general counsel. But in 1987, a good friend of Henry's who had been the Secretary-Treasurer of the AFM for a number of years named Marty Emerson, decided to run against Victor Fuentealba, and he won the election in 1987. At that point, Marty renewed his relationship with Henry, tried to get Henry out of retirement to become the new general counsel again. Henry reluctantly agreed, but at

that particular election, an internal union challenge occurred. Henry knew that I had spent quite a bit of time handling Landrum Griffin-related legal issues, and he asked me to play the point person role in advising and counseling Marty Emerson on how to handle the election dispute that was going on within the AFM. And of course, Henry being the man he was, I naturally agreed to do that.

MR. POLLAK: What happened next?

MR. COHEN: Well, what happened next was, as you would expect when you're involved in a difficult internal union election dispute, you spend a lot of time with your new client, namely Marty Emerson, affectionately known as "Uncle Marty." He was a relatively short, rotund gentleman who was a renowned jazz trombone player. He had a charismatic personality, which I immediately embraced. He enjoyed being with me as a human being, and during a three- to six-month period that the election protest was taking place, we developed a really warm relationship. But I was cautiously optimistic that when Marty ultimately prevailed, as he did in the union internal dispute, and Victor chose not to file a formal complaint with the Department of Labor, which meant Marty was now the President of the AFM, I fully expected that Henry Kaiser would return to his long-standing role as the general counsel. In fact, he agreed to do that. However, in various private conversations with me, Henry had indicated that he was not really excited about regaining that role at his stage in life, which put me on notice of a potential ominous event.

MR. POLLAK: Can you give us a little insight into what happened?

MR. COHEN: Well the ominous event took place much sooner than I had anticipated. I'd say two or three months after Marty Emerson ascended to the presidency, the union conducted a major Executive Board meeting, the first one that Marty was going to preside over. It was in the West Coast of Florida, Ft. Meyers, at a fairly run-down motel, if I remember correctly. Then-General Counsel Henry Kaiser went along with his wife. I was invited to join Henry, as I did. And in a very short period of time during the internal discussions that took place, along with the executive board meeting, Henry Kaiser decided on balance he was not willing to continue in that role, and he resigned as general counsel while the executive board meeting was in session. This meant, in essence, that I was the remaining lawyer left standing for the American Federation of Musicians.

MR. POLLAK: Very interesting. So now it's 1987, and all of a sudden you find yourself as General Counsel of the AFM. I have a question that you didn't ask me to ask you, but I really am quite curious. At this time in the AFM, who were the musicians? Was it mostly orchestra and symphony musicians, or was it still a lot of jazz musicians?

MR. COHEN: That's a great question. When I tell you what my first massive, unbelievable assignment was, namely to negotiate the major five collective bargaining agreements between the AFM and five different industry groups, you will quickly know what the answer to that is. I was told, within weeks after I ascended, that I had basically six months or so to

get ready for the next round of three-year negotiations. There had been a traditional three-year cycle in the AFM Industry negotiations, and I will slowly relay to you what that meant.

The first agreement that was going to be negotiated was the Phonograph Record Labor Agreement. That covered all professional musicians who around the clock played for what were then the major phonograph record companies in America. There were thousands of such musicians.

The second collective bargaining agreement that faced me was the Motion Picture Labor Agreement. There were a smaller number of musicians, i.e., those who did the scores for all the major motion pictures, whether it was Warner Brothers, Fox, Disney, 20th Century. You name all of the major producers, there were probably several thousand musicians working for those major motion picture companies.

The third agreement was a more fascinating, nuanced agreement. It was called the Commercial Announcements Agreement, but everybody in the Industry referred to commercial announcements as “Jingles.” If you put on the television, and you watched a commercial and heard someone sing with some musical background, those were the musicians who were employed in that industry, a very interesting potpourri of individuals doing that.

The fourth agreement was a more standard agreement covering the TV networks. NBC, ABC, Fox, CBS. The Johnny Carson band was like

the “gold standard.” It consisted of probably seven musicians who were the most sought-after musicians in the world. They had a permanent employment status. Their earnings in those days that I can tell you about, the late 1980s and 1990s, probably \$250,000 or more with incredibly comprehensive fringe benefits. And, of course, they were, as I said, the gold standard.

And the fifth, and also quite nuanced industry that I learned, was called the Traveling Broadway Musicals. When whatever musical it was, *Oklahoma* had an eleven-year run in New York City, and then *Oklahoma* would go out on the road with a group of musicians who are a permanent cadre from New York. But when they arrived at every single venue in the United States, their local agreement kicked in and the local musicians supplemented the musicians who were employed working out of New York.

Each of those five agreements involved not one employer, not ten employers, but an industry-wide group of employers. And Roger, each one, as you would expect, had its own what? Its own history, its own tradition, its own culture, its own way of addressing and enforcing interpretive questions. And that package of agreements, which dropped in my lap, and what I said at the time, and I repeat it now, in retrospect, it was the most challenging assignment I ever had. I regularly asked myself at that time, what have I gotten into? What can I do to possibly deal with this?

And before I leave the subject, added on to the challenge was the following. Each of those five industries that I've described had been represented for many years by many lawyers – who knew Henry Kaiser as well – highly competent, really knowledgeable, and incredibly experienced people in the actual agreements that were in place. Most of them had negotiated three, four, five of the agreements before I showed up.

MR. POLLAK: That's something. So what did you do to get ready for the negotiations?

MR. COHEN: Besides panicking, which is what any rational person would do, I'm twenty years into the practice of labor law, but nothing like this avalanche or monstrosity had ever confronted me. So the first thing I did was try to identify two or three AFM representatives who were going to become my educators, whether they came from the International Union staff or particular local unions or maybe consultants, and I would immerse myself in meeting with them about these agreements. Specifically, as you would expect, I would literally go through hundreds of pages of provisions in contract language trying to absorb what it meant, why it was there, was it important, was it a new provision or an old provision? And slowly but surely, I began to develop a minimum amount of confidence that I at least had some kind of grasp of the issues that I was to start to discuss with the particular union negotiating committee. The negotiating committees historically consisted of musicians who were staff representatives, the local union presidents from the major locals in the major cities, New York,

Chicago, Philadelphia, Los Angeles, San Francisco, Nashville. And each of those locals had staff people who had actively participated as part of the negotiating committee. But the bottom line was always the same: Henry Kaiser ran those negotiations. Not the president of the union, not anybody else. Henry Kaiser. Thus, the mantle that I inherited was we expect George to be our chief spokesperson. And that's quite different than many of the other unions that I represented in collective bargaining where I was sitting there as a legal adviser, a bargaining strategist. I would play the lead role in an issue or two, but I was not the single person with monumental responsibility to prepare for and conduct the negotiations. The history for each one of their contracts negotiations was that basically industry would block out a two-week period, Monday through Friday, and the parties would meet and negotiate for two solid weeks. There were always seven or eight other unions doing the same thing but in another timeframe. So if you were talking about the motion picture agreement, there was SAG, there was AFTRA, there was IATSE, there was the Teamsters, on and on. It was a very compact period of time in which each union was supposed to work its way to reach an agreement. And if you didn't in that time frame, you then sort of waited your turn before you could be regrouping, often many months later, after other unions had reached their agreements.

MR. POLLAK: So you had to manage the cadence as well as the content.

MR. COHEN: Yes. And what I of course became secondarily focused on was trying to establish a meaningful relationship with each of these chief negotiators who were my counterparts. The good news was I did have a reputation as someone who believed in the importance of negotiating collective bargaining agreements. I knew as well as anybody else that if you're a union representative, unless and until you achieve a collective bargaining agreement that's going to stabilize your relationship for the next three years or so, you basically have nothing. You have open season. And to add insult to injury, this great union, the AFM, which at one time had a substantial amount of bargaining power and leverage, a lot of that had disappeared by the time I showed up. It wasn't as if I was going to be able to just make demands, stare people in the face and expect they would cave in and give in to the concessions or agreements we were asking of them. It was just one fascinating, challenging experience after another.

MR. POLLAK: Right. I take it that by 1987, the impact of digital music, of synthesizers, was already underway.

MR. COHEN: Yes. Definitely underway. And very much on the priority list of every self-respecting company because that usually meant, if nothing else, a lot less live musicians to have to negotiate on behalf of.

MR. POLLAK: Anything you want to share about your first round or about the history and how that changed over time, because certainly those dynamics, the change of music technology, really influenced during the time you were general counsel.

MR. COHEN: Yes. It certainly did. I think it was very influenced by my counterparts. The Phonograph Record Labor Agreement chief negotiator was an incredible, charismatic character named Norman Samnick, who had been doing it for years, who had an insatiable desire to both be in charge but also be entertaining. The direct contrast between him and Nick Counter, who was the number one negotiator for the motion picture industry, was evident. Nick was solid as the Rock of Gibraltar, a former Colorado University linebacker, a straight arrow, a man of great integrity and knowledge. Fortunately, I was able to strike a responsive chord with each of these two gentlemen. I believe they understood that they had a challenge too because the worst thing for them was to come into a situation where my arrival on the scene was going to generate chaos, which they didn't want to happen. I also believe they understood that it was in their best interest to pay some degree of respect to an outsider coming in for the first time. And that was equally true with Bernie Plum from Proskauer Rose, who was the chief negotiator for the traveling musicians industry, and a Washington, D.C. lawyer named John McGuinn, who served in that capacity concerning the Commercial Announcement Agreement.

I came out of that first round of negotiations with agreements. Incidentally, AFM agreements are all subject to rank-and-file ratification by secret ballot, et cetera. That's an added dimension in terms of collective bargaining. And I was very focused on making sure that once

memoranda of agreements were executed, ratification letters were expeditiously sent out to describe what we had achieved and what we didn't achieve, that information was very well understood. Before I arrived, many members were concerned that agreements were being shoved down their throats with not enough transparency. I was extremely desirous of describing the dynamic of what had happened, what we had on the table, and why we chose to accept what we agreed to. In retrospect, I think that distributing my comprehensive summaries of the negotiations played a major role in the rank-and-file ratifying by large majorities the agreements that I had participated in negotiating.

MR. POLLAK: How did those communications take place? Did you do in-person like road shows with groups of musicians?

MR. COHEN: Yes. We did both. Well obviously where the big locals were, New York City had a famous local, Local 802. There were many thousands of members of Local 802 for every type of music you can imagine. Still true today. Los Angeles, it was Local 47. Similar story, but much more focused on Hollywood. Nashville, country western and things of that nature.

The Commercial Announcement Agreement covered more of a sort of independent, free-spirited musicians who seemed to do that work, and TV networks are always the regular bands that were playing live on stage for TV.

So the beauty of that, Roger, was I was engaged in all these fascinating, completely different situations even in terms of who the rank-and-file musicians were that were going to actually have to ratify each specific agreement.

MR. POLLAK: I bet you went to some interesting musical performances along the way.

MR. COHEN: I did. I also learned, which any labor lawyer in America understands, unless and until you show your interest in what your clients are doing on the job site, you're not going to get all the respect from them that you need. I've always been a great believer in that, but this was easy for me because I started on a blank slate and had to teach myself what musicians do in these diverse jobs. I sat through some scoring sessions in LA. I sat through some phonograph record sessions. I sat through some commercial announcement sessions. And once you do that, the musicians are rushing over after they're playing to tell you about themselves, what they do, and they're elated that you're showing some interest in them. All a positive thing.

MR. POLLAK: Was there particular bargaining improvements that you remember from the five rounds that you worked through?

MR. COHEN: It was exactly as you might expect. The dynamic is always the same. The young people want salary improvements now, and their more senior colleagues, realizing there's not an unlimited amount of money, want pension and healthcare improvements. My job was to try to figure out what the balance was between those two groups and then, this is no secret,

negotiating with your own negotiating committee sometimes is more challenging than negotiating with the other side. I don't like to tell the other side that too often, but I know that's true, and there's always that dichotomy. There's the very easily satisfied group. There's the militant group. There's the group looking at you and saying who the heck is he. He used to represent firefighters and policemen and teachers, and now he's the lawyer for musicians. I was not unaware of those kinds of comments. So I would say I focused on that; but equally important was to try to find what I would say there were a half a dozen critically important working conditions provisions that either the committee wanted to get rid of or hopefully ones that the musicians had not achieved but they wanted to achieve. Improving working conditions in all the industries that I've described is a pretty difficult task. Management is almost always reluctant to changing the status quo. I worked very hard to overcome that.

MR. POLLAK: Fantastic. I think you wanted to talk a bit about the motion picture agreement and the John Williams performance?

MR. COHEN: Yes. So, let's talk about the unique challenges musicians in each industry faced. Shortly before, and I'm not sure whether it was the 1993 or the 1996 negotiations. Before I showed up in Hollywood for our two week event, I was told that some of the major motion picture managers had realized that they could get talented musicians from either Eastern Europe or other parts of the world who were high-quality performers and who would work at considerably lesser rates of pay than our contract required.

They started going to Eastern Europe and doing the scores for motion pictures there. Now, to further complicate the matter, it's just not saving money on musicians. That was equally true on a lot of production costs, so there actually came a time that I was being told that the industry was having a conference, about a week before we were to begin bargaining, with many Eastern European entrepreneurs who were extolling the virtue of starting to do much more scoring overseas. Naturally my clients heard this and were in a state of somewhere between disarray and panic because in Hollywood, the musicians who do the scoring for motion pictures, that's their livelihood – 100 to 200 gentlemen and ladies who I called the “A” team, who were earning \$100,000 to \$200,000 a year because every contractor working for every motion picture producer knew who the best trombone players were. They know the best drummers. They know the best electrical guitar players, and they're the ones being called to scoring sessions constantly, making a lot of money up front and substantial fringe benefits. And now all of this I'm being told okay George, here's where we are. You better be prepared to go in and beat the heck out of these guys because we're in trouble.

I had a few thoughts about what to do. I'm not averse every once in a while to shaming my counterparts and letting them know what they're about to do is a disgraceful. After all these years of observing their high-quality product, no one ever challenged the contributions of the “A” team scoring musicians in Hollywood. And to make a long story long, through

a few close friends of mine in the industry, having nothing to do with the AFM, I was told that John, he was called “Johnny Williams,” who had composed all the music to Spielberg films and the Olympic themes and who was a great fan of the LA-based musicians who did the scoring sessions, might be willing to do a special program to showcase our musicians. It was my job to convince him to do the program. With plenty of help, I succeeded. It took place in a big theater where the Oscar awards used to be given, which was owned by the Motion Picture Academy. The renowned movie “ET” was going to be shown on the huge screen, and Johnny Williams would be conducting 95 musicians who were all seated directly under the screen playing live, doing the score of the movie while it was being shown. The top level of the musicians’ heads were about six inches below the bottom part of the screen. We had invited hundreds of prominent industry personnel, including vice presidents of labor relations and the company executives who had been at the conference the week before with the Eastern European companies. Johnny Williams never looked at the score. And I didn’t realize this, but music is involved in ET for about 95% of the actual motion picture.

When it was over, you know he received about five standing ovations. Every one of my counterparts realized that they had witnessed an extraordinary event, sponsored by the very AFM representatives who were about to begin negotiations with the Industry. I sincerely believe that this particular demonstration, protest, whatever you want to call it, did

play a role in calming the industry folks down, and that to me was a memorable experience. I hosted a lunch the next day for all the union officers and a number of the musicians and invited some management folks as well. So we did a unique job on that one. Bottom line: We reached a new collective bargaining agreement shortly thereafter.

MR. POLLAK: Great story. I know because I saw you in practice after 1990 and there were other things you did in the world of the musicians. I'm interested in who else you worked with around the country.

MR. COHEN: Yes. All these became offshoots of these five rounds of bargaining with musicians all over the country in these major local unions. As you'd expect, every one of these local unions had its own bevy of local lawyers because a lot of the activity of union representation is done at the local level. However, it just so happened, because I told you this is five industries, and those industries cut across the geographical locations of local unions that the AFM had historically, as an international union, served as the chief negotiator in other industries as well.

One of the really terrific things that happened to me was that when people see you in action and appreciate the way you interrelate with them, I started receiving some "fringe benefits" from that. The one I think I focused on first, which to me was the most fascinating to begin with, was the Nashville Local. The number of musicians in Nashville was increasing exponentially. What most people, including me, never understood many musicians, whether they're from New York, Chicago,

LA, Baltimore, want to go to Nashville and be part of the Nashville scene, which is a very music-oriented scene. So at one point in time, a sizable group of musicians from New York, LA, and Chicago who had religious backgrounds found out that there was this very special new major label called the Christian Music Label. They were starting to become a big-time player, albeit in a smaller market, all doing their scoring in Nashville.

Before you knew it, there probably were a hundred or more musicians from all over the country now working for the Christian Music Label. And I got a call one day from the president of the Nashville Local, an incredibly talented man named Harold Bradley, so talented that he and his older brother Owen Bradley actually were the first two major country western musicians recording in Nashville. The story is that for many years they recorded five days a week, 50 weeks a year, 9:00 a.m. to 4:00 p.m., plus overtime. Every single major country western singer used them. And at the Smithsonian Museum, there is a room which is a replica of the recording studio that Owen Bradley had initially established. Everyone in Nashville knew Harold Bradley. Harold Bradley was a world-class guitarist. Harold said to me, we're having a real problem with the Christian Music Label because they have no interest in even talking to a union. The president is a very religious man. Somehow his religious beliefs and unions were not compatible. Harold scheduled a meeting with the musicians who were getting increasingly unhappy about their low

wages, no healthcare, and no pension plan. But they wanted desperately to play for the Christian label.

On a Sunday afternoon, I showed up in Nashville, never having met any one of the musicians, and you know what happened. Harold Bradley announced we have the AFM General Counsel George Cohen here to discuss our situation. And, of course, I said very little, and I asked each of them who were the leaders of the group to get up and explain to me why they were frustrated, what was the nature of the frustration. A common theme emerged. It was very simple. They didn't have any all-important benefits or any input in participating in what their terms and conditions were, and they were all highly competent gentlemen and worked in some instances for other employers where the AFM had a contract. So after about an hour or an hour-and-a-half, slowly but surely, I started explaining to them that you are the *crème de la crème*. You are the critical components of the Christian Music Label, and all you have to tell me is that you are together, you are unified, and you are prepared to say the magic words to the other side – namely, you have to understand that we have decided we are no longer willing to continue to perform for you unless and until you sit down with our union and reach acceptable agreement. Well, about two more hours went by, and I eventually said you know, I cannot have a conversation with management with half of you for it and half against. I'm going to leave now. You are in a position to tell me whether you have a unanimous view that that is the message you

want to have sent, and I will be honored to be your messenger. And I excused myself. I think I'm telling it correctly. An hour later, I was called back in. Everyone was by then a little excited and applauding and supportive. That was the message they unanimously wanted me to convey to their management, and I said okay, here we go.

I told Harold, who was a little worried about his reputation – he was not known as a hard-nosed person; he was known as a wonderful musician who was always very friendly with the other side which was providing his members all this employment. I assured Harold I would be the picture of tact and diplomacy. He arranged for a meeting to take place with their president, lawyer, and executive director in New York City. I walked into the room, and my first immediate shock was to see who they had retained. It was like a novel. They had retained Norman Samnick, the notorious, charismatic, very, very ethnic spokesperson for a lot of industries there representing the Christian Music Label.

What actually unfolded, and I'm trying to say in a way that's not too ethnically incorrect, it was clear that the notion of dealing with George Cohen, a union lawyer, a Washington-based Jewish union lawyer no less, was slightly antithetical to what the Christian Music Label had in mind. What did they do? Retained their own Jewish lawyer, Norman Samnick, as their spokesperson.

In any event, the negotiating session began. In my opening remarks, I was the picture of tact, diplomacy, and respect. I explained that

I wasn't asking any of them to change any ideological concerns, that indeed the musicians who work for them were dedicated to their Christian principals. All I was there for was to work with them collectively, i.e., to accommodate their needs as the producers and the musicians as their employees. And I was "Mister Perfection" for almost two hours, with one overriding exception. Every fifteen minutes, Norman Samnick would interrupt and inject some Yiddish expression that I naturally believe they don't really understand. Eventually, their general counsel made clear he understood fully what I was saying, but he didn't understand what Norman was saying!

At the end of a two-day session, we put together a beautiful agreement, which probably, I hope, is still in place today. You know, when you reflect on miscellaneous success stories, that was a success story, and a beautiful one.

MR. POLLAK: That's great. I think you also had the experience of negotiating collective bargaining agreements for some different symphonies and orchestras around the country.

MR. COHEN: Yes. That was another example of why you cannot ever understate what we said to begin with – relationships and coincidences. Several of the very important local union symphony leaders also played for the National Symphony Orchestra here in Washington, Bill Foster, who also was on several of the AFM negotiating committees, and at some point in time, probably the late 1980s or early 1990s, came up to me and said you know,

we've never used an AFM general counsel to negotiate. We always use a special lawyer who knows symphony orchestra musicians, their mindset, their frailties, their unique concerns about working conditions, et cetera, but I think my committee might be ready for you. And I said Bill, that's your judgment. So the story began. Bill Foster introduced me to a wonderful committee which consisted of probably seven of the very proactive union musicians. The NSO then employed 92 or 93 musicians with a wide range of ages, many senior at that point. The turnover had not yet really begun. The NSO was in a state of flux because the musicians were not happy with the maestro at that time. We had a very unusual situation because there was a long-standing agreement in place between the Kennedy Center and the NSO, which in essence provided that whatever the shortcomings of the NSO's finances, the Kennedy Center would pick them up. What that meant was that in addition to the NSO, the Kennedy Center was going to have a spokesperson participating in the bargaining with us. And the lawyer for the National Symphony Orchestra – who else? Norman Samnick. Norman and I went through, probably five rounds of NSO negotiations, each resulting in three-year agreements. The musicians were really engaged, really smart, and totally dedicated to playing a major role regarding their working conditions. I spent as much time in preparation for these 92 musicians and in the actual negotiating process here in Washington for them as I did for 8,000 steelworkers. Every single provision of their agreement was reviewed and reexamined.

To get the respect of the other side concerning what the musicians had to offer, and they had a lot to offer, was the major challenge – to get management to relax and understand, even though they were “in charge,” there was nothing wrong with getting intelligent “recommendations” as to how to conduct their operations.

So I had a great time, and most importantly, I got there at a time when I think, by any rational standard, these musicians were being severely underpaid for their talent, their skill. Here’s a classic example: You have a second violin position vacant. You’re going to get a hundred applicants, some who graduated Juilliard. You’re going to get 25 who are really extraordinarily talented. There’s going to be five who could be in any symphony orchestra, and eventually it’s culled down, and the final three appear in a closed setting so nobody knows who they are, and the maestro actually ends up picking the one.

With respect to their all-important economic situation, by the time I retired in 2005, the package had achieved significant improvements in scale wages and fringe benefits. I left at the end of my Bredhoff and Kaiser career, replaced first by Jeff, then by Trish, and now by Ann. So I’m delight to say Bredhoff and Kaiser has continued to represent the NSO for all these years.

MR. POLLAK: Indeed they have. I was talking to Ann about a question they had on a non-bargaining issue just yesterday.

MR. COHEN: It's a beautiful relationship, and Bill has now retired. Alice Weinreb, who is a close friend of mine, the flute player, has retired, but she is now playing at my Maplewood facility. Glenn Garlick, the number two cello player, was on the negotiating committee forever. He is now coming to Maplewood and participating. So I'm still getting the fringe benefit of my relationship with the people who were on the negotiating committee.

MR. POLLAK: I'll ask you to relate one more story from the musicians' representation. That was the Internet Agreement that you negotiated and the story about the Metropolitan Opera performances.

MR. COHEN: Okay. That was another ultimately wonderful but a long-term, frustrating experience. Each one of the major symphonies is represented by a local union, but when recordings take place, then for the first time, the AFM's jurisdiction was invoked because the AFM didn't want one local doing one thing with respect to recording and another one possibly undercutting them. So the AFM actually conducted the negotiation on behalf of all the locals who were doing recordings. This became known as the Internet Agreement. I was the "victim" in the sense that I was asked to be the point person to negotiate the effort to have the first major Internet Agreement. There were other recording agreements before that, but nothing like the Internet, all the new technology coming into play. I'm basically told the following from my industry counterpart Marty Oppenheimer from Proskauer, who was incredibly thoughtful, very smart, very experienced, and knew his industry really well. The old business

model in which musicians got a substantial up-front payment for the number of hours they'd be recording was no longer a viable economic model. For example, the tradition at that point I believe was like an \$800 up-front payment, times 100 musicians, so that's \$80,000. Producers would not find that to be acceptable for several reasons: classical CD revenue was decreasing and recording in Eastern Europe for much less.

Well, musicians then had a choice. Were they willing to lower their "standard" and accept something less up front, or were they going to say absolutely not, it's beneath our dignity, we are never going to do this, i.e., undercutting our standard. And the latter was the mindset that I inherited as manifested by a 30- or 40-member negotiating committee from all these local unions. Slowly but surely, the amount of work was drying up, and slowly but surely, I was successful in persuading them, if you got \$400 up front and some share of what might be generated in revenue, that's better than getting nothing, which is what you're currently getting from this non-product!

And I would say after several years, at least a substantial majority of the "naysayers" agreed with that approach, subject to two conditions: (1) musicians had to receive a fair share of the net revenue (gross minus legitimate expenses), and (2) we insist on accountability. Our CPA must have access to their books and records. Management agreed. But then came the killer. Our musicians were insisting that the quid pro quo for their agreeing to a much lower upfront payment, management had to agree

that it could not record any specific musical numbers without the local union's prior written approval.

Now to say to managers, who have spent their whole life selectively figuring out which composers to record, giving the union veto power was met with very strong opposition. Not surprising.

After many hours of discussion at the bargaining table, the parties were truly "deadlocked," showing no room for compromise. It became increasingly clear to me that we were not going to have any Internet Agreement, even though both sides desperately wanted one. So I did what I did in Nashville. I called a union caucus. I went around the room. I said to my committee, I'm prepared to go into that room and tell the other side you can have the Internet Agreement you want, but you can't have it without giving the local union this commitment in advance. I told the committee in any judgment, there's a 50/50 chance Industry would reject that demand and we would leave here without any agreement. Does everybody understand that? Then I told them that as their chief negotiator, I would be left powerless if Industry rejected our demand and our committee relented. To avoid that possibility, I asked each committee member to stand up and raise his or her hand and say I understand George that you're going to say those words to them, and if they accept them, we're getting what we want, and if they reject them, we are going to go home. I handpicked the people who were going stand up first, including Bill Foster from the NSO. After much discussion, I was unanimously

authorized to demand that management accept that condition or negotiations would be finished.

We resumed negotiations. I said folks, here's where we are. Every single member of my committee has authorized me to say the following words. We want an agreement and are willing to make a major concession – lowering the up-front payment. But all we're asking of you is to come back in the room and say yes, you will agree to this one condition in advance of any other negotiations. And there was the usual chaotic response. I said no, no. It's no sense us talking together. We're going to go into our caucus. You're going to go into your caucus, and you'll call us when you've made your decision. They came back an hour later and Marty Oppenheimer said you guys have some nerve, but we agree we need an agreement. And the prerequisite that we were demanding in retrospect probably didn't keep one project from ever going forward. That's the way the world works. But it was a matter of principle and a matter of assertiveness, right?

Yes, those are great days when you walk out of successful negotiations and share with your colleagues what you achieved.

I want to say to you and for history, I am actually a believer of drawing lines at times. I believe it is sometimes imperative for a union to look the other side in the eye and insist upon some provision.

MR. POLLAK: Yes. You've got to have both.

MR. COHEN: And you must have the employee support. You can't do it on your own. That's the kiss of death. If you tried it on your own and you fail, you're through, right. You're through. You've lost your total credibility.

MR. POLLAK: Well, and I would guess you would say that all the constructive and interest-based bargaining that one does around the other 90% of negotiations create some credibility and believability around the line when it gets strong. People who draw lines all the time usually can't hold them.

MR. COHEN: True. But I believe there can be exceptions. I don't want to say it, but I will say it because it's history. The gun control issue, I believe, is an example of the mistake that's been made. I sincerely believe that when the Republicans refused to agree to a ban on AR-15s or to increase the age to 21, the Democrats should have responded this ends the negotiations. We are going to campaign reminding every parent in America that the Republicans will not accept any reasonable limits on guns that are killing our children. That's just my own assessment at what history is going to show.

MR. POLLAK: Agreed. Well, before we go on to talk about other entertainment unions you worked with, you looped back to working on some collective bargaining issues in your role at the FMCS, which we're going to talk further about it another session, but maybe you'd like to talk about a couple of those mediations.

MR. COHEN: The interesting thing was I retired from Bredhoff and Kaiser in 2005, as you know. I then did private mediation for four or five years, and then in

2009, I had the honor of being named Director of FMCS. Early in that career, I was jointly requested to mediate two disputes with Bruce Simon, counsel to AFM Local 802, and his industry counterparts from the Metropolitan Opera and the New York Philharmonic. And while in the normal course, their issues and those two orchestras might not have generated enough national attention to justify FMCS involvement, just the idea that it was New York City and these two highly-respected and renowned institutions, and I said you know what, I'm a train ride away. I'll see if I can play a constructive role. I had a wonderful time with Peter Gelb, the very powerful managing director of the Metropolitan Opera. The parties were down to one issue, and with a little persuasive quality on my part, I was able to sell a simple reality: to pay an extra \$600 increment was well worth the price for achieving three years or four years of labor-management stability. In just a one-day session, he came to the same rational conclusion, and an agreement was reached. The parties shook hands, and I then enjoyed my relationship with the Metropolitan Opera after that.

The New York Philharmonic mediation was much tougher. It lasted probably seven or eight days around the clock. Bruce Simon is a world-class union negotiator, and Willis Goldsmith, his counterpart from the New York Philharmonic, was equally knowledgeable and impressive. They worked hard to resolve a core pension issue. The thing I remember the most is the orchestra was scheduled to take a major tour through the

Far East, and all of the musicians' instruments were about to be loaded onto trucks and then transported by air overseas in these very special protective luggage compartments. The parties understood "No agreement, no tour." Those are the beautiful moments because that's when both sides have to sit there and "face the music" and say what are we doing to each other? Experience teaches that there's a little extra added inducement when you may or may not have a world-class tour of the of the Far East hanging in the balance. And yes, that's how one or two extra little added provisions find their way into a collective bargaining agreement.

MR. POLLAK: So interesting. So in addition to the musicians, I know you did work with the Directors Guild of America and also SAG and AFTRA involving a range of different projects after you began with the musicians in 1987.

MR. COHEN: So that, again, Roger, those are the wonderful offshoots of what I had been doing on behalf of the AFM. I'll discuss the Directors Guild first because I did a very precise number of small but important projects.

The Directors Guild of America was known by everyone in Hollywood as the most important labor union in the Industry, period. In part, that was because if you looked and saw who the officers had been – Martin Scorsese, Steven Spielberg, Stephen Sondheim – you might say to yourself that sounds like the most powerful "entrepreneurs" imaginable. Well, they were "union" directors extraordinaire. In fairness, the Directors Guild of America has many thousands of assistant directors who are much more like rank-and-file white-collar employees. But in any

event, that was the history, culture, and tradition. And in part, because those named directors were so highly respected and possessed enormous bargaining leverage, the Directors Guild ascended to the role that they usually negotiated first in every major round of bargaining. This was met with acceptance, maybe begrudgingly by some of the more left-wing leaning unions like the Writers Guild. In any event, everyone in Hollywood knew that the studios had to get an agreement with the Directors Guild if they wanted to make movies. Certainly the musicians understood that, as did SAG (the actors), IATSE, and the Teamsters. Also, keep in mind Hollywood has been and remains 95% unionized – a world apart from any other Industry.

Jay Roth and I had had an excellent long-standing relationship. He had once been a key lawyer for the Machinists Union. A great bargainer, a great litigator. Then he assumed the leading role as the Executive Director for the Directors Guild of America. He served as the chief negotiator in all the union's collective bargaining with the Motion Picture Industry. He knew I had certain sports-related specialties, and there came a time that the Directors Guild were particularly interested in the relationship between a union, its members, and their agents – a subject that I was intimately familiar with as counsel to the NBPA and MLBPA. And then he also was anxious to have me share with him some bargaining strategy. As a result, I was fortunate to get to know president Michael

Apted, a famous director, and his successor, Taylor Hackford, and a fabulous TV director named Paris Barclay.

Jay was a fan of my son Bruce Cohen, who had been a member of the Directors Guild before becoming a major motion picture producer – Academy Award winning “American Beauty,” “MLK,” and “Silver Linings Play Book” to name a few. The result was that any time the Directors Guild/committee officers had a matter in Washington, I participated in their high-level strategy, and I did play a role in some of the agency-related issues.

It was just a nice feather in my cap to be recognized by the Directors Guild of America, which is still the number one Hollywood union. I was fortunate to get to meet a number of different union officers and key staff in my numerous visits to LA on musicians’ business.

One day, completely out of the blue, I received a very unusual call – unlike any I had ever received. On the phone were both the Executive Director of SAG, Bob Pisano, and Greg Hessinger of AFTRA. Bob Pisano was a very well-known former management labor lawyer, and his general counsel turned out to be David White, who later ascended to the Executive Director of SAG. This is what I was told: SAG and AFTRA have had a twenty-year history of “dancing around the bush with each other,” should we get together or should we not? Should we merge? Should we affiliate? We’ve had various, what’s the word?, dalliances, that never turned to fruition, but we think we’re getting close to the right time

for this, and we'd like you to agree to be the designated facilitator for the discussions that are about to begin. This is going to be a big job because we each have committees of fifty officers and staff. We have all these often divergent separate interests. SAG historically turned down its nose at AFTRA. SAG members proclaim "the greatest success in my life was the day I got my SAG card," and they're looking negatively at these AFTRA members just doing the television work. Conversely, the AFTRA folks are saying these elitist SOBs. I'm listening. I'm saying well guys, you're telling me I can't facilitate this dispute! Why are you doing this to me or yourselves? No, no, no. The time is right. I say well I have only two conditions. I don't know anything else about your organizations, but I know you each have a lot of lawyers. So first, I'm only going to be responsible to you two because you're the Executive Directors talking to me, and I'm comfortable knowing whatever I do with you two, it's either going to be agreements with you and me or I can't do this, right? And they said you're absolutely right. I said and I have another condition. Once we talk about pensions or health care, I'm not accepting any other consultants or experts to work with other than Penny Clark and Bredhoff and Kaiser, because this is my team. I didn't have Jeff Freund in mind at that moment, but once I began to serve as facilitator, I said to them I also need a colleague with internal union governance expertise, and Jeff started playing a major role with me that lasted at least six months.

The format went something like this: for five days a week, several weeks per month, joint committee meetings took place in an LA hotel. These meetings consisted of about a hundred people in a room, including two executive directors, side by side with the presidents of their respective unions, staff representatives, and committee men and women. The task was monumental. The constitutions and bylaws of each union was reviewed in detail with the view of creating a new overall governance structure. You can imagine. In the midst of all these challenges, there was unlimited, unprecedented entertainment.

Now here I am, I had represented firefighters, steelworkers, basketball players, but I had never seen anything like what SAG/AFTRA discussions were like. A member would get up and make an emotional speech, and halfway through, a few actually started to cry, and some fellow member would come over with a box of tissues, and then to calm down the trauma level, the other side would say, well we baked chocolate chip cookies today because we anticipated this was going to be an emotional situation. I'm not making this up. This actually happened during the course of these discussions. There would be shouting. There would be emotion. There would be a little crying. A lot of cookies would be distributed. And then once in a while, an outstanding, thoughtful person would make a brilliant presentation, and everyone would pay a lot of attention and even applauded!

I did my damndest. We spent hours behind the scenes just with the two executive directors, the presidents and their lawyers. We drafted, I don't know, six major governance documents, constitutions for each, constitutions for a prospective combined organization. It was not going to be a merger. It was going to be an affiliation, because if you used the word "merger," the SAG team members would walk out of the room. Was it very close to a merger? Of course. Was it going to lead to a merger? Of course. But you couldn't call it that, at least not yet. That was just one of the many, many political nuances I had to deal with. At the end of the process, we would be working around the clock, and for me, all billable hours. From Bredhoff and Kaiser's standpoint, this was a really big six- to nine-month client. Not that we were charging that much, but we had two clients, and they were each paying us a reasonable hourly rate.

Okay. The documents are done. It was a Herculean effort. Rank-and-file approval was required. What you'd expect. Road trips. I did not go on road trips. I'm the facilitator. The key officers and staff gave a detailed presentation plus distributing all applicable documents. Then came the moment of truth. My wife and I were vacationing at a friend's house outside of Tanglewood. I was sitting by their lovely pool, and I get the message. AFTRA members approved by a large majority, 75% "Yes." Fantastic. SAG members, 58.5% approval. But SAG had a "super majority" provision in its constitution – 60% required – and therefore, the

deal has gone down the tubes because only 58.5% of its members voted yes. And I was not a happy camper. Without a doubt, this was the most disappointed I have ever been about an effort to resolve a dispute.

MR. POLLAK: I'm certain.

MR. COHEN: The good news is that a number of years later, a merger was consummated. One other redeeming fact: I remained good friends with David White, who has just retired as the Executive Director of SAG/AFTRA. A gentleman from Disney named Robert Johnson and I developed, together with Bruce and Julie, a whole family friendship. I had all these fringe benefits from this debacle. I'm exhausted, right?

MR. POLLAK: Yes. Well that brings us to the end of our discussion today, although I must say I hate to end on a downer story.

MR. COHEN: Well it was like everything in life, what was the most disappointing was when you think as all the people who called me almost tearful were saying where in the world would you get 58.5% vote in a secret ballot election where thousands of people have cast their ballots and still go down the tubes? That was the single most objectively distressing thing. What do you say?

MR. POLLAK: Well thank you.

MR. COHEN: Thank you.

MR. POLLAK: Another fascinating discussion. I believe not the last one that we'll have, so we'll be back together again next month.