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# THE INTERPLAY OF COLLECTIVE BARGAINING AGREEMENTS AND PERSONAL SERVICE CONTRACTS

*Edgar A. Jones, Jr.†*

The story of the legal ramifications of the personal service contract in the entertainment industry<sup>1</sup> got an obscure start in ancient Rome where a remedy was given to an owner for the mistreatment of his slaves. Centuries later in England, human life was devastated during the 1348-1349 "Black Death" bubonic plague, resulting in a great shortage of laborers of all kinds. The scarcity of human resources led to the enactment of the Ordinance of Laborers which established a system of compulsory labor, binding servants to remain with their masters. Penalties were imposed to keep scarce servants in place to prevent them from seeking higher wages from another master. An action for enticing or harboring a servant was given to the master against anyone who had received and employed his runaway servant.

After further centuries of evolution, there emerged the modern prin-

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This paper was delivered at the First Annual Entertainment Industry Labor Law Conference, organized and sponsored by the Labor Law Section of the Los Angeles County Bar Association.

The author has taught courses in labor law and arbitration at UCLA since 1951 and has served as an arbitrator in over 100 cases in the theatrical motion picture and television industry, as well as the legitimate theater under the jurisdiction of Actors Equity, since his first entertainment case in 1957. He has also had his own experience with personal service contracts and collective bargaining agreements during a six-year period, 1958-1964, when he appeared in the starring role of "Judge" in over 2,000 half hours of network television in three ABC-TV Network programs: *Day in Court*, *Traffic Court*, and *Accused*, negotiating and executing a number of personal service contracts under AFTRA jurisdiction.

1. One should note the somewhat ambitious scope of the phrase "entertainment industry." Visual and audio entertainment products are almost infinitely varied today, defying containment within the perimeters only of theatrical and television pictures, television programming, or legitimate stage productions. The broad spectrum of multi-million dollar collegiate and professional sports, for example, comprises a major sector of the modern entertainment industry, and others readily come to mind as well. We are undoubtedly the most constantly entertained people in the history of the world with our movie and stage theaters, stadiums, auditoriums, fields, parks and other settings, and most of all, and often simultaneously, in homes here, and throughout the world by satellites, in which consuming viewers sit before their televisions and VCR's to watch live, taped or rented video programs displayed on their screens. Even with lions and Christians, compared to us Nero was a Piker!

ciple that is protective of the relationships undertaken in what we now term personal service contracts. It blossomed on the London stage in the person of Ms. Johanna Wagner, an operatic singer of some repute. She had entered into a contract with Lumley to sing during a certain time in his Queen's Theatre for performing operas. But Gye, a competing theater owner, wanted to present her dulcet voice in his theater. When it appeared that she was succumbing to Gye's blandishments, Lumley brought about a landmark in the law of equitable relief by succeeding in his suit in Chancery to enjoin her from breaking the negative covenant in her contract by singing for Gye, as well as enjoining Gye from accepting her services.<sup>2</sup>

Not content with setting a landmark in equity, Lumley also successfully brought a common law action against Gye, thereby enabling the Queen's Bench to give birth to the general principle that one is liable for improper interference with a contractual relationship. The Queen's Bench held that "an action will lie by the proprietor of a theatre against a person who maliciously procures an entire abandonment of a contract to perform exclusively at that theatre for a certain time; whereby damage was sustained."<sup>3</sup> Although at first viewed somewhat askance, today *Lumley v. Gye* is accorded full acceptance in English and American law as to any contract, regardless of its character, so long as the defendant intends to interfere with plaintiff's contractual relations and knows that interference will result.<sup>4</sup>

Moving ahead into the twentieth century in our saga, when the National Labor Relations Act was enacted in 1935, Congress adopted the basic commitment of the American polity to the majoritarian principle in the designation or selection of representatives of employees for the purposes of collective bargaining. But at the same time, Congress in section 9(a) gave guarded acknowledgment to the need to protect the rights of individual employees from being stifled by the collective will.<sup>5</sup>

Ever since the founding of the republic there has been a continuing oscillation of policy between those two analytical irreconcilables, the fundamental commitment to majority rule and durable presence of the American phenomenon of individualism. Collective bargaining makes this tension between fundamental concepts very visible, particularly in

2. *Lumley v. Wagner* 1 De G.M. & G. 604, 42 Eng. Rep. 687 (1852).

3. *Lumley v. Gye*, 2 El.&Bl. 216, 118 Eng. Rep. 749. (Q.B. 1853).

4. W. PROSSER & W. KEETON, *THE LAW OF TORTS*, § 980-82 (5th ed. 1984).

5. The proviso in section 9(a) of the National Labor Relations Act read in 1935: "[P]rovided, that any individual employee or a group of employees shall have the right at any time to present grievances to their employer . . ." National Labor Relations Act, ch. 372, § 1, 49 Stat. 449 (1935) (current version at 29 U.S.C. § 151 (1990)).

the entertainment industry. It is quite common and expressly sanctioned by industry bargainers for personal service contracts to be negotiated by talent with employers who are parties to those collective agreements. There is no Ordinance of Laborers to constrain industry employers from competing to attract above-the-line talent from one to another employer. This is so even though the enticed employee is a member of a guild bargaining unit who, in the process of individual negotiation, will obtain overscale contractual provisions that are substantially more rewarding in wages, hours and conditions of employment than those available to other members of the same bargaining unit.

This, of course, is but a recognition of the economic realities that are characteristic of this industry. All, from the most established Screen Actors Guild ("SAG") or American Federation of Television and Radio Actors ("AFTRA") performer, Directors Guild of America ("DGA") director, Writers Guild of America ("WGA") writer, or International Association of Theatrical and Stage Employees ("IATSE") director of photography, set director, film editor, or the like, to the most recent aspiring entrant to any of the guilds or unions in the industry, start out as equal persons, identified only by their respective seniority in their particular bargaining units. However, a few emerge by talent or acclaim as more equal than others. As a miniscule but significant percentage move up and out from the quality of the unit into the magical world of the "deal memo," the overscale individual employment contract for personal services, and perhaps also into that delightful legal enclave, the economic penultimate, the Internal Revenue Service's gift to the industry, the "loan-out" agreement.

This emergence of the few from the collective cocoon attests to a basic phenomenon of the entertainment industry which is the driving motor for this tolerated, even encouraged differentiation among equals. In the popular media of entertainment there exists, without exception, the phenomenon of the publicly acclaimed individual who somehow has come to preoccupy the interest of consumers and critics. It is unquestionably true that that person — or rather, that *persona* — is wholly reliant for success upon the concerted efforts of the "necessary others," the talented people without whose imaginative and technical participation that out-front individual — "the star" — could not possibly exist. With few exceptions, those "necessary others" are compensated and dealt with strictly within the parameters of the collective-bargaining agreement. In establishing fair and realistic compensation in this industry, it is accepted that this uniqueness of *persona*, in and of itself, has a

determinable market value and is a commodity warranting additional compensation.

However, in laying the analytical foundation for the Supreme Court's reasoning in accommodating these two different types of contractual undertakings — the collective agreement and the individual employment or personal service contract — Justice Jackson in 1944 observed in *J.I. Case v. NLRB*<sup>6</sup> that “[t]he practice and philosophy of collective bargaining looks with suspicion on such individual advantages.” But, significantly, he added, “[o]f course, where there is great variation in circumstances of employment or capacity of employees, it is possible for the collective bargain to prescribe only minimum rates or maximum hours or expressly to leave certain areas open to individual bargaining.”<sup>7</sup> Nonetheless, he continued, “[w]e cannot except individual contracts generally from the operation of collective ones, and whether under some circumstances they may add to them in matters covered by the collective bargain, we leave to be determined by appropriate forums under the laws of contracts applicable.”<sup>8</sup>

Three years later, in 1947, Congress enacted section 301 which appeared in 1955 to be no more than “a mere procedural provision”<sup>9</sup> opening the federal court door but without the creation of any substantive federal law. Then the Supreme Court took hold of it in 1957 in *Textile Workers v. Lincoln Mills*,<sup>10</sup> proving it to be otherwise. The Court, through Justice Douglas, summoned from section 301 a congressional intent that called for a “range of judicial inventiveness” which would “be determined by the nature of the problem.” Federal law, not state law, would govern but state law could serve as a resource in finding “the rule that will best effectuate the federal policy,” although the state law would not constitute “an independent source of private rights.”<sup>11</sup>

In 1962, in a strong and surprising move in the direction of individualism, the Court expanded the entry to the federal courthouse under section 301 to include individual employees. The Court held that Congress had given the right to sue for breach of a collective-bargaining agreement.<sup>12</sup> However, deference to individuals was quickly followed by an oscillation back towards the collectivity when the Court held in *Re-*

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6. 321 U.S. 332 (1944).

7. *Id.* at 338.

8. *Id.* at 339.

9. *Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U.S. 437, 449 (1955) (Frankfurter, J., plurality opinion).

10. 353 U.S. 448 (1957).

11. *Id.* at 457.

12. *Smith v. Evening News Ass'n*, 371 U.S. 195, 199 (1962).

*public Steel Corp. v. Maddox*<sup>13</sup> that an individual employee could not enter that courtroom door without her union bargaining representative fronting for her unless she had first exhausted the collectively bargained grievance remedies and been wrongfully barred access to them.<sup>14</sup>

The Court seemed to be working out what it had intended in 1944 in *J.I. Case* with Justice Jackson's Delphic observation that "[i]ndividual contracts cannot subtract from collective ones, and whether under some circumstances they may add to them in matters covered by the collective bargain, we leave to be determined by appropriate forums under the laws of contracts applicable."<sup>15</sup> What had started out to be a reliance upon the "judicial inventiveness" of the federal judiciary — an oxymoron if ever there was one — quite shortly had given way to the realization that the arbitral baby born in *Lincoln Mills* was quite apt to be smothered in its crib by the rough handling of the judges, to whose care and nurturing the Court had naively committed it. When that became almost immediately evident, the Court acted three years after *Lincoln Mills* in the *Steelworkers Trilogy*<sup>16</sup> in what was to become a determined effort, albeit frustratingly recurrent,<sup>17</sup> to remove judges from tending the foundling whom a number of them had evidently concluded to be some kind of an illegitimate Quasimodo.<sup>18</sup>

The section 301 decisions of the Supreme Court have been based on an acceptance of the concurrent jurisdiction of state courts although, as we have seen, the law applied must be regarded as federal. Even if the state court draws on state law concepts to fill in a gap of policy, its rationale by a process of instant osmosis becomes federal law. On the other hand, in contrast to the concurrence of jurisdiction of section 301, the Court has worked out an elaborate web of federal-state preemption doctrines to cover the main body of regulatory law enacted by Congress in

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13. 379 U.S. 650 (1965).

14. *Id.*

15. *J.I. Case*, 321 U.S. at 339.

16. *Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960); *Steelworkers v. Warrior & Gulf Naval Co.*, 363 U.S. 574 (1960); *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

17. *See W.R. Grace & Co. v. Rubber Workers*, 461 U.S. 757 (1983); *AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643 (1986); *United Paperworkers v. Misco*, 484 U.S. 29 (1987).

18. *See, e.g., Stead Motors of Walnut Creek v. Automotive Machinists*, 886 F.2d 1200, 1217 (9th Cir. 1989) (en banc) (dissenting opinion); *Delta Queen Steamboat Co. v. District 2, Marine Engineers*, 889 F.2d 599 (5th Cir. 1989) en banc review denied, BNA DLR No. 71, at A-12 (April 12, 1990) (four dissenters).

Webster's third unabridged dictionary has the following entry for "Quasimodo": "In Victor Hugo's *Notre Dame de Paris*, a foundling humpback, strong and ugly, but with a tender and chivalrous nature."

1935, 1947 and 1959 to govern American labor-management relations under the administrative aegis of the National Labor Relations Board.<sup>19</sup>

For many years in practically all other American industries organized by labor unions, the majoritarian premise of collective bargaining had removed the prospect of effective individual employment contracts once persons had become classified as belonging to bargaining units represented by labor organizations.

Professor Archibald Cox was convinced that the interests of aggrieved individual employees would be better protected by strengthening the representational role of unions while foreclosing individual causes of action. He wrote, "[u]nless a contrary intention is manifest the employer's obligation under a collective bargaining agreement which contains a grievance procedure controlled by the union shall be deemed to run solely to the union as the bargaining representative."<sup>20</sup> This statement became the premise of decades of legal evolution.

In 1984, however, Professor Clyde Summers, long an advocate of individual employee rights, called for a revival of emphasis on the individual contract of employment as a legal concept. He wrote:

The effect of this reasoning [espoused by Professor Cox] was to convert the collective agreement from an instrument giving life and substance to the individual contract of employment into an instrument for subordinating individual rights . . . . Most unions have sought, and employers have granted, grievance procedures that expressly, or with the aid of the presumption, give the union exclusive control.<sup>21</sup> In all such cases, the individual

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19. See generally, 2 THE DEVELOPING LABOR LAW 1504 (C. Morris 2d ed. 1983).

20. Cox, *Rights Under a Labor Agreement*, 669 HARV. L. REV. 601, 619 (1956).

21. *But cf.* Jones, *Michaelson's Food Services, Inc.*, 61 L.A. 1195 (1973). A grieving employee threatened a class action on behalf of himself and 300 others, charging that the company fraudulently underpaid wages in collusion with the union which denied such collusion. The employee wanted to resolve his grievance through arbitration. However, the company denied any wrongdoing and argued that arbitration was not available for this dispute because there would be no assurance of a final disposition. An interim award was issued, directing the union to seek its enforcement or have its grievance dismissed as not arbitrable. This award established a workable structure for proceeding with class participation, designating each grievant and class participant as "party" to be bound by the award, and requiring the union to petition.

Enforcement was granted in part, denied in part, in *Hotel & Restaurant Employees v. Michaelson's Food Services, Inc.*, 545 F.2d 1248 (9th Cir. 1976). The court stated that: Although the usual procedure in an arbitration under a collective bargaining agreement is to name the Union and the employer as parties, but not the employee whose grievance is involved, the employee may be made a party. We conclude that the arbitrator could designate [Grievant] Manning as a party, whether or not Manning asked to be so designated. The arbitrator could not force Manning to participate, but he could still proceed, and could make an award for or against circumstances, such

has no contract rights; there can be no individual contract of employment. Even those employees who might be able to bargain for a substantial individual contract, or whose employer might otherwise provide individual contracts, are barred by the collective agreement from having any contract of employment or contract rights.<sup>22</sup>

However variant those two conflicting premises may be conceptually, operationally they are continuously accommodated in this industry. Nonetheless, one should recognize that the existence of this tension between majoritarianism and individualism creates, almost on a daily basis, delicate problems of conflict of interest. These conflicts must be resolved administratively by guild officials, balancing individual claims against the interests of the majority of their members. This process is made much more difficult because an increasing number of disenchanted employees continue to resort to duty-of-fair-representation litigation.

A unanimous Supreme Court came along in 1987 with an unsettling opinion by Justice Brennan. With no reference to Professors Cox or Summers, the Court stirred things up on the conceptual front with its reasoning in *Caterpillar Inc. v. Williams*.<sup>23</sup> This time the Court oscillated strongly toward individualism, considerably discounting Professor Summers' pessimistic conclusions about the prospects for individual contracts of employment. The Court attempted to mend the relationship of its section 301 federal-state preemption concepts to the "well-pleaded complaint rule," along with its "complete pre-emption corollary" in the context of Caterpillar's removal of the case to a federal court from the state one in which plaintiffs had filed their action against their employer. This was 1984, the glory days for plaintiffs in California courts who believed themselves to have been wrongfully terminated.<sup>24</sup>

In framing their complaint, the employees had relied solely upon the California wrongful-discharge law, undoubtedly to the consternation of Caterpillar's lawyers in that pre-*Foley* period.<sup>25</sup> They had steadfastly refused to amend their complaint so as to attempt to state a lesser, poten-

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as fraud, breach of duty of fair representation, and the like, even if he objected or declined to participate.

*Id.* at 17.

22. Summers, *The Contract of Employment and the Rights of Individual Employees: Fair Representation and Employment at Will*, 52 *FORDHAM L. REV.* 1082, 1089 (1984).

23. 482 U.S. 386 (1987).

24. See Jung & Harkness, *The Facts of Wrongful Discharge*, 4 *LAB. LAW.* 257 (1988) (a pre-*Foley* article realistically surveying the litigation scene).

25. See *Foley v. Interactive Data Corp.*, 254 Cal. Rptr. 211 (S. Ct. 1988); Jung & Harkness, *Life After Foley: The Bottom Line*, 5 *LAB. LAW.* 667 (1989); Gomez, *Entertainment Contract Litigation After Foley*, 23 *Beverly Hills L. Rev.* 345 (1989).



tially remunerative claim under section 301 for the breach of alleged oral promises of continued employment. Justice Brennan emphasized the right of individual employee-plaintiffs to be "masters of the complaint." They would thereby avoid removal of their case from the state to the federal court. When all was said and done — with unaccustomed brevity, eschewing philosophical inquiry for succinct dogmatic assertion — the individual contract of employment had been pulled out into what has certainly been an unaccustomed spotlight at center stage.

The essential facts were quite simple. The employees had been hired into classifications that were encompassed by a duly certified Machinists bargaining unit. Later, they became managerial or salaried employees for a number of years, ranging from three to fifteen. During that time, oral and written assurances were allegedly made to them that they:

could look forward to indefinite and lasting employment with the corporation and that they could count on the corporation to take care of them . . . . [W]hile serving Caterpillar as managers or weekly salaried employees, [they] were assured that if the San Leandro facility of Caterpillar ever closed, Caterpillar would provide employment opportunities for [them] at other facilities of Caterpillar, its subsidiaries, divisions, or related companies [which] promises were continually and repeatedly made, [creating] a *total employment agreement wholly independent of the collective-bargaining agreement pertaining to hourly employees.*<sup>26</sup>

In reliance on these promises, the employees asserted that they "continued to remain in Caterpillar's employ rather than seeking other employment." Even when they were downgraded into the bargaining unit, supervisors orally reassured them that the downgrade was temporary. Nevertheless, on December 15, 1983, they were notified that the California San Leandro plant was about to close and that they would be laid off.<sup>27</sup>

The employees sued Caterpillar, framing their causes of action solely under California law for breach of their individual employment contracts. The company removed them to the federal district court which dismissed their claims when they refused to amend them to state a section 301 cause of action. The Ninth Circuit reversed and was affirmed by the Supreme Court which declared that their claims "did not require interpretation or application of the collective-bargaining agreement."<sup>28</sup>

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26. *Caterpillar*, 482 U.S. at 338 (emphasis added).

27. *Id.* at 388-89.

28. *Id.* at 398. The Court also rejected the circuit court's holding that a case cannot be

Caterpillar argued that the individual's complaint was completely preempted by section 301. The Court rejected that argument, asserting that:

Section 301 governs claims founded directly on rights created by collective-bargaining agreements, and also claims 'substantially dependent on analysis of a collective-bargaining agreement.' . . . Section 301 says nothing about the content or validity of the individual employment contracts. [Nor was their complaint] substantially dependent upon the interpretation of the collective-bargaining agreement. It does not rely upon the collective agreement indirectly, nor does it address the relationship between the individual contracts and the collective agreement.<sup>29</sup>

Further, the Court noted that these employees "rely on contractual agreements made while they were in managerial or weekly salaried positions — agreements in which the collective-bargaining agreement played no part."<sup>30</sup> Justice Brennan did not say whether the fact that they were not employed in the bargaining unit when the oral commitments were made was of any particular significance. We may infer, however, that such promises to workers in this hourly-rated classification would not be binding unless, somehow, the Machinists had procured some contractual provision that would have enabled those promises to these individual employees to be enforceable and not applicable to all of the other members of the bargaining unit.<sup>31</sup>

Of course, in that event, the collective agreement would have been directly involved. There would then have ensued the application of the doctrine of preemption with which Caterpillar had sought to shield itself from liability. The Court in these circumstances, however, referred to the "irrelevance of the collective-bargaining agreement to these individual employment contracts."<sup>32</sup> Of course, that too is a rather ambiguous reference. One is prompted to ask, "What if the individual employment contracts incorporated the grievance procedure by reference, terminating in arbitration, as the mechanism for resolving any disputes concerning the terms of the personal service contracts?" Would that incorporation

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removed on the ground of preemption unless the federal cause of action asserted provides a remedy for the plaintiff. *Id.* at 391 n.4.

29. *Id.* at 394.

30. *Id.* at 394 n.9.

31. See Jones, *Western Airlines, Inc.*, 37 L.A. 700 (E. Jones, 1961) (terminated wildcat-strike Flight Engineers contractually entitled to return to Machinists bargaining unit through 90-day bargaining unit reentry provision in Machinists agreement with airline).

32. *Caterpillar*, 482 U.S. at 395.

by reference, in and of itself, be enough to convert the contractual relationship into one that should warrant preemption of state courts to deal with the dispute?

It was clear enough to Justice Brennan (and the unanimous Court) that "claims bearing no relationship to a collective-bargaining agreement beyond the fact that they are asserted by an individual covered by such an agreement are simply not pre-empted by section 301."<sup>33</sup> Is that, we may ask, because arbitration is properly to be regarded as a procedural matter without any substantive content that might affect personal service contract disputes? But then how should we reckon the substantive contractual intent ascribed by prior arbitrators to the sort of issue presented in this dispute that arises under this personal service contract?

Long-standing contractual principles of interpretation attest that an arbitration award made during an earlier term of a collective-bargaining agreement on a specific issue of contractual interpretation, unaltered during subsequent negotiations, remains a binding interpretive ruling such that it requires bilateral negotiations to alter the meaning attributed to the contract by the arbitral award.<sup>34</sup> For the purpose of preemption analysis, does that convert the otherwise issue-sterile grievance procedure into a substantively significant linkage between the collective agreement and a relevant and contested personal service contract? If so, does that not result in the preemption of state law as the determinant?

Given the widespread practice in the entertainment industry of incorporating by reference in personal service contracts the collective-bargaining agreement's grievance procedures, including arbitration, we might well consider what might be the portent of the following observation by Justice Brennan:

Caterpillar contends that the Court of Appeals' decision offends the paramount national labor policy of referring disputes to arbitration, since its collective-bargaining agreement with the Union contains an arbitration clause. This argument presumes that Respondents' claims are arbitrable, when, *in fact*, they are alleged to grow out of individual employment contracts to which the grievance-arbitration procedures in the collective-bargaining agreement have no application.

Is Justice Brennan's "*in fact*" conclusion of non-arbitrability warranted in the entertainment industry?

Recall Justice Jackson's anticipation in *J.I. Case* of "whether under

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33. *Id.* at 397 n.11.

34. See discussion in *Lucky Stores, Inc.*, 88-2 ARB ¶ 8316 at 4582 (Jones, 1988).

some circumstances . . . [individual contracts] may add to . . . [collective-bargaining agreements] in matters covered by the collective bargain, we leave to be determined by appropriate forums under the laws of contracts applicable . . . .” The Supreme Court’s jurisdictional rationales have clearly established that the preferred “appropriate forum” apply the “laws of contracts applicable” to individual contracts in their inter-relationship with the collective-bargaining agreement is the forum of arbitration created by the employer and union in the collective agreement.

Let us relate that observation to the Hollywood sector of the entertainment world which has been described in publications in all the media as countless as the sands of the sea, seeking as broadly and engagingly as possible to engage and stimulate the consuming public to embrace its visual products. But there is one set of industry publications that is periodically produced for a considerably more limited audience — the draftsmen themselves and those few others who must parse the industry’s collective bargaining agreements in the search for gleanings from which to infer the parties’ contractual intent. That intent must be found in language that has been shaped over the decades by a process of accumulation; constantly adding, rarely relinquishing, words and phrases that continue to grow and accumulate, changing shape and texture like reefs of coral, clinging to the past while annexing the present.

Today, the SAG and WGA collective agreements are bulging with intent expressed in hundreds of pages each. These collective agreements rival the intricate interweavings of the most complex Byzantine tapestries of the eleventh century. It has been covertly disclosed to me by reliable sources, on a promise of no attribution, that there has for decades existed an unpublicized side-bet competition between the negotiators of the Screen Actors Guild and the Writers Guild — sparked by lawyers on both sides of, as well as under, the bargaining table — that one can add more words while losing less than the other in the course of bargaining a new basic agreement. In a recent encounter in print, WGA weighed in with 368 pages of fine print in its 1985 Basic Agreement, only to be topped a year later by SAG which issued its own 1986 Basic Agreement containing an overwhelming 387 pages of equally fine print. The winner by nineteen pages!

Nor have the negotiators been content merely with semantic accumulation. They have coupled that tactic with miniaturizing its physical reproduction in tiny print. That has resulted in the addition of a magnifying glass in each arbiter’s kit. (As an aside, I might add that we may have here an excellent example of the phenomenon of unintended consequences inasmuch as state records disclose that the cadre of accept-

able entertainment industry arbitrators has increasingly been filing worker's compensation claims for diminished eyesight).

If you have ever wondered why it is that you so commonly encounter in your arbiters a spirit of meek humility and self-effacing expressions of insecurity — perhaps here is your answer. In us, you witness an endangered species threatened by engulfment in obscure and inexorably increasing verbiage, creating an overcast of an ever-thickening greenhouse effect, shielding out the pristine light of pure intent from which we inescapably derive our nourishment.

In concluding, let me share with you some interesting numbers that Alliance of Motion Picture and Television Producers (“AMPTP”) vice-president of Legal Affairs Carol Lombardini graciously shared with me. You may assess as you will the significance of them. The AMPTP has accumulated a number of arbitrator's written decisions since 1960 that presumably would shed light on the protective importance, or lack of it, of the semantic coral reefs accumulating in guild collective-bargaining agreements. Although it has no SAG cases in its files, it does have 240 of the IATSE and various craft union's cases since the 1960's, and it has 255 WGA cases and 190 DGA cases in and since the 1970's. Without SAG, that totals 685 arbitral decisions since 1960. As one reflects on the implications of arbitral activity, must it not be somewhat chastening that there should be so many arbitrations despite all of those safeguarding thousands of retained and accumulating words and phrases? You understand, of course, speaking for myself and my fellow arbitrators, we are not complaining about this situation to labor and management. Keep up the good work!