

Defending Ray Still: An Interview with Jerry Kaplan, December 9, 2010

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Chicago attorney Jerry Kaplan defended Ray Still in his famous case after being fired as principal oboe of the Chicago Symphony Orchestra in May of 1967 by Music Director Jean Martinon. After Still was fired, he asked Kaplan to represent him in the arbitration proceedings. The arbitration was successful and Ray Still was restored to his position as principal oboe in December of 1967.

Still's case was one of the two most important labor arbitration cases of the twentieth century involving orchestral musicians. The other famous case was the strike of the Metropolitan Opera Orchestra during 1961; only through the personal intervention of President John F. Kennedy was the Met Opera season saved.

Jerry Kaplan began playing oboe during high school, and received a scholarship to play English horn at the University of Miami, Florida. He went on to attend the University of Illinois where he

continued on a music scholarship, although he majored in accounting. He studied oboe with **David Ledet** at the University of Illinois, and made his reed knives for him. Kaplan completed his B.A. at DePaul University in Chicago in accounting with an emphasis on taxation. He received a law degree from Northwestern University in 1955 and was admitted to the Illinois bar the same year.

Following law school, Jerry wanted to resume his oboe studies and began taking lessons from Ray Still, who recognized Jerry as a good reed maker. Since Still disliked teaching reed making, he turned that task over to Jerry. Later, Kaplan and Chicago Lyric Opera oboist **Gladys Elliot** designed the Brannon and Bloom shaper tips that have been copied by so many over the years.

Kaplan's wife, Linda, is a cellist. Between them, they have six children and eleven grandchildren. Jerry says that he still wants to be an oboe player "when he grows up." He is currently eighty-two.

My thanks to veteran Chicago Symphony oboist **Michael Heno** for his encouragement as well as his assistance with information and details I would not have been able to find elsewhere. Thanks also to Frank Villella of the Rosenthal Archives at the Chicago Symphony Orchestra, who provided the 1967 program for the first concert that Ray Still played when he was reinstated with the orchestra.

Nora Post (NP): *Let's start at the beginning. Can you tell me when Ray Still was fired from the Chicago Symphony Orchestra and how you became involved in defending him in his trial?*

Jerry Kaplan (JK): Of course. All of this happened in May of 1967, when Ray Still came to my law office on LaSalle Street, told me that he had been fired from the orchestra, and asked me to represent him. I was one of his oboe students, although I was also an attorney at the time. After I started practicing law, I knew I still wanted to study the oboe, and Ray agreed to take me as a student. He was also very impressed with my reed making ability, so he wanted to keep me around!

At that point in time, under the collective bargaining agreement of the Chicago Symphony Orchestra, the Orchestra Committee had the right to review the charges against Still. If they sustained the charges, Ray would have had no further rights, and there would have been nothing he could have done about having been fired. But if they rejected his discharge, then, under the collective bargaining agreement, he had the right to go to binding arbitration through the musician's union. The vote that they reject the charges was unanimous with the exception of one person. One player who I went to high school with—and I won't mention his name—voted that they sustain the charge.

NP: *What exactly were the charges?*

JK: There were multiple charges. I will catalogue them for you. Some were musical charges and some were insubordination charges. Let's start with the insubordination charges. The first was that Ray Still was accused of reading a book on stage during a *tacit* movement after Martinon had said that he didn't want anyone reading books on stage. Martinon told Still to leave to stage. Ray told him: "I am the first oboe; if you want me off the stage, you are going to have to *carry* me off!" The second charge was that he was listening to a World Series baseball game during a Friday afternoon concert, and that the transistor radio pulled out of his ear and blasted into the audience! (Keep in mind I'm not saying whether any of this was true or not, I'm just categorizing the charges.) Some of these were general accusations that he had made unkind comments about some of his colleagues. Another charge was that when he swabbed his oboe, he did it too flamboyantly, and that upset some of the people sitting adjacent to him in the orchestra. He was accused of making faces when the concertmaster played solos. These were the nature of the charges.

The musical charges were, first, that he sabotaged a performance of Stravinsky's *Petroushka*, where he did not follow the conductor. Another was that during a rehearsal of the Dvořák *Cello Concerto* with Rostropovich, Ray made a mistake in a meter change from two to four that's a very famous place where many, many people have difficulty (*Jerry sings the passage*). He also held his entire oboe too high, and that made Martinon nervous. When he adjusted his reeds on stage, he had a very large knife, and that intimidated some of the players around him. There were general comments about his displeasure with the playing of some of his colleagues. That's about it.

NP: *All of this sounds ridiculously flimsy. Was it Still's union activities that were the real cause of this?*

JK: Of course. Back in the history of the relationship between the union and the orchestra, the union, through James Petrillo, would negotiate the contract directly with management. The players had no input. When the contract had been negotiated, the players were told: "Here it is." Certain members of the orchestra felt that, similar to the procedures in other major American orchestras at the time, the players should have an orchestra committee that would participate in the collective bargaining process. Ray was very, very supportive of that, but management felt that it was inappropriate for principal players—who were paid above scale—to support the *tutti* players. So that was it, and management was not happy. Also, Ray's manner of presenting things was rather abrasive and confrontational. The president of the orchestra association at the time was Eric Oldberg, a very prominent Chicago neurosurgeon who came from a well-known musical family in the area. Dr. Oldberg was very displeased with Ray. What happened was that Chicago Symphony management created a list of players they wanted discharged, and they went to Music Director Fritz Reiner. Ray Still was not on the list. Reiner called Ray into his dressing room, and showed him the list. Reiner explained to Still that there were some names on the list that he himself wanted discharged for musical reasons. He pointed these out, saying: "These are *my* names." These were the players he wanted to fire. Then there was the management list. So this is some of the background on management's gripes with Ray.

The orchestra liked Martinon when he first came in, and he was quite popular. He had been a guest conductor; he had been relaxed and very nice. After Martinon got the job, he apparently turned out not to be suited for the position. At some point, management came to the conclusion that they had to get rid of him. At the point in time that Ray was fired, Martinon was already a lame duck. I suspect Martinon fired Ray partly in revenge, feeling that Ray was one of the leading forces against him. Management also felt this was also an opportune moment to punish Ray for his past conduct. As a result of that, the union asked that his dismissal be arbitrated, and the case was set for arbitration.

Ray was out of the orchestra from May to December of 1967. I won the arbitration on my birthday, December 21st, 1967. That was my birthday present!

NP: *Looking back to the trial, how do you remember it today?*

JK: During the trial, it was obvious that there was some truth in Ray's behavior patterns. He had said inappropriate things. But it never rose to the level of the basis for discharge. Some of the charges were not true at all, especially the musical ones. In the Dvořák *Cello Concerto*, for example, the spot where Ray made a mistake is a notorious passage. Everyone makes that mistake. In *Petroushka*, Ray was following the pianist and the English horn in that particular passage, so if Ray was not following the conductor, the pianist and English horn weren't, either (*JK sings the passage*). By way of coincidence, Ray's brother-in-law was in the audience and actually recorded that performance. It was perfect! So it was just Martinon's paranoia.¹

Let's take the book-reading incident. Ray wasn't reading the book. It was the oboist **Dick Kantor** who was reading the book. It was during a *tacit* movement, the second movement of a concerto. Because Ray didn't want to get someone else in trouble, he just told Martinon that he would have to remove *him* from the stage. Now let's get to the World Series incident, which was hilarious. That incident occurred during a Friday afternoon concert. It wasn't Ray who did it; it was actually **Wilbur Simpson**, the second bassoonist, who was listening to the game. When I had Martinon on the witness stand as cross-examination, I asked him if he knew anything about baseball. He said no. I mentioned to him that the World Series is never on a Friday unless it's a rain day, since that's the day the teams travel. I was fairly educated, since there were a number of sports nuts in the orchestra. Martinon didn't know anything about that. But most important was when I asked Martinon what month of the year this transpired in. He said "February!" So that blew the entire World Series thing out.

NP: *Tell me, what was Martinon like on the stand? Was he impressive?*

JK: No. He was in an environment he was totally unfamiliar with. This happens in litigation all the time. He was not a professional witness, he had not been coached properly, and he was not prepared for cross-examination. Management had no allegiance to Martinon—he was a lame duck. Basically they had set him up, too.

I won the case. In the end, they said that Ray's conduct had not been at the level of a dischargeable offence. However, they treated the absence from May through December as a disciplinary dismissal, after which he would be reinstated. So, the disciplinary

dismissal from May through December was basically a fine.

Ray went back to work the day he was reinstated in the Chicago Symphony Orchestra. There was a guest conductor that week, Maestro Sixten Ehrling.² I was in the audience for that performance. For some reason, Ray didn't play during the first piece—Creston's *Chthonic Ode*.³ But when Ray got onto the stage, the orchestra and the audience started to applaud. Ehrling didn't have a clue what was going on—he had no idea about all the politics. Of course, as I mentioned, one of the arguments against Ray was that he used too flamboyant a swab. So, as a gift, I bought him the largest white feather I could find in captivity. I gave it to him before the concert, and told him to swab flamboyantly.

NP: *That is funny! I have just one more question. In terms of the Chicago press, was this big news, little news, or no news?*

JK: It made the front page of the *Chicago Tribune*. I remember the headline: "Oboe Ace Restored."

Shortly after he was reinstated with the orchestra, Ray got a little bit pissed off and a little drunk late one night, and *called* the arbitrator! I guess one way to describe the conversation would be to say that Ray displayed his vociferous dissatisfaction with the language of the award. It surely wasn't kind to Ray.

Ray was the only principal player who sided with the *tutti* players. So he had some enemies among other principal players. Many of the principal players were indebted to management, since they had each negotiated very nice contracts for themselves. Principal trumpet player Adolf Herseth was very upset at being called to testify. He testified against Ray, but eventually he turned around. Concertmaster Victor Aitay testified against him. So did violist William Schoen, plus the assistant principal flute player Joan Bennett—she was the one who accused Ray of swabbing his oboe too flamboyantly. Maybe a half-dozen players at the most testified against Still and, needless to say, none of them were the *tutti* players.

Many years later I ran into the arbitrator—oh God, I can't think of his name now. He was semi-retired, and lived in Highland Park. I asked him if he remembered me. "Of course," he said. "You know what?" he asked. "I knew from Day One that Ray Still was too important to leave the symphony."

Here's what I learned subsequently. In labor arbitration, in order to appease management, even if you aren't going to sustain the dismissal, you still give the employee a lot of bad language in the opinion. You

understand? And they gave Ray a lot of bad language in the opinion. The other thing is that the orchestra management objected to me being Ray's personal attorney. Ordinarily they would have to use the union's attorneys, since they were the exclusive bargaining agent for the orchestra. But Les Asher, the lawyer for the union, got around that by saying that if management objected to my representing Ray Still, he would hire me as special counsel for the union. So, in the end, in addition to being Ray's lawyer, I was also special counsel for the union.

NP: *I can only assume this was one of the great memories of your legal career. Is there anything else you would like to add to all of this?*

JK: Yes. In retrospect, the very personality that makes an oboe player great is the type of personality that could make it difficult to deal with that person on a daily basis. **Marc Lifschey** had trouble in Cleveland—he was fired and then he was rehired. I understand **Harold Gomberg** mouthed off quite a bit in New York.⁴ Being a principal oboe player in a major symphony you have to have that aggressive, take-charge personality. I'm not saying that's the exclusive requirement. But as Michael Henocho of the Chicago Symphony puts it, you have to have the ability to take chances, and not play everything safe. In the music business now, all of that has changed. Principal oboe players play it safe now, and the only person in the orchestra who is entitled to have personality is the conductor.

As a kid in high school, for example, I used to be able to know which orchestra was playing by just listening. First of all, I could spot an orchestra by the sound of the oboe. I could tell Bloom's sound no matter where, and Ray's and Lifschey's—although those last two were sometimes hard to tell apart. I'll never forget once during a lesson we were listening to a broadcast, and Ray was saying how great Lifschey was playing. I packed up to leave, and then Ray ran out into the street after me, saying: "That wasn't Mark, that was *me!*" ♦

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ENDNOTES

- 1 Martinon was surely not the only conductor who suffered from paranoia. During Fritz Reiner's tenure at the Cincinnati Symphony (1922-1931), many players were convinced that he abused them out of sheer sadism. They claimed that any day he failed to lose his temper was a day on which he was too sick to conduct (see Philip Hart, *Fritz Reiner*, p. 32). Commenting on Reiner's tenure with the Chicago Symphony, a board member summed up the somewhat prickly rift that had arisen between Reiner and management: "We got rid of that son of bitch out of Chicago without even giving him a farewell party." (For descriptions of those events, see Kenneth Morgan, *Fritz Reiner*, p. 171.) There were several times in his career that Reiner openly feared he would be murdered by one of the members of his orchestra.
- 2 The Swedish conductor Sixten Ehrling (1918-2005) had been the music director of the Royal Swedish Opera, and principal conductor of the Detroit Symphony Orchestra among others.
- 3 According to Chicago Symphony oboist Michael Henocho, who was also in the audience for that performance, there was a spontaneous audience ovation when Still entered the stage for the Bloch *Schelomo* (with Leonard Rose as cello soloist).
- 4 Both Lifschey and Gomberg had rather high-strung artistic temperaments. Several well documented, although not terribly well known stories are certainly worth relaying about each of them:

The late Mark Lifschey was principal oboe of the Cleveland Orchestra under George Szell from 1950 through 1965. In 1965 he became principal oboe of the San Francisco Symphony, a position he held until his retirement in 1986. The story of

Lifschey's firing from Cleveland goes like this: During the 1964-65 season of the Cleveland Orchestra, Lifschey was clearly unhappy, although he apparently did not discuss why. When he was particularly annoyed, he would sometimes play a note intentionally out of tune. George Szell, who had been guest conducting in Europe that fall, had just returned to Cleveland, and was rehearsing the *Adagio* from Prokofiev's *Symphony #5*. Lifschey played something out of tune.

"Szell, warned and on his guard, stopped the orchestra and asked in a calm tone of voice, 'Now Marc, what's wrong with the pitch?' That simple question seemed to unlock all of Lifschey's pent-up emotions. He replied, 'That's the pitch I'm playing and if you don't like it, you can get someone else.' A collective gasp preceded an eerie silence, frozen in time and space for seconds that seemed like minutes. Szell then said, 'Very well, will you please leave.' Holding his oboe in front of him with its case under his arm, Lifschey left the stage cursing under his breath" (see Charry, *George Szell: A life in Music*, pp. 219-220).

As Szell's biographer Charry added: "No one could talk so disrespectfully to George Szell, especially in public" (Charry, p. 220). But there are always two sides to a coin, and I offer this stunning story about Szell told to me by Metropolitan Opera violinist Sandor Balint:

"Hugo Kolberg, my teacher, was a very prominent concertmaster in Europe before World War II—he had been the concertmaster of the Berlin Philharmonic. (*Author's note: Kolberg was born in Warsaw, Poland, in 1898. A violin prodigy, he became concertmaster of the Oslo Philharmonic at the age of only nineteen. After becoming the concertmaster of the Paris and Copenhagen orchestras, he became concertmaster of the Berlin Philharmonic in 1931 under the great Wilhelm Furtwängler, until he and his wife fled Nazi Germany in 1938.*) When Kolberg first came to the United States from Europe, he became concertmaster of the New York City Symphony under Bernstein, and then the Metropolitan Opera Orchestra. There's a very interesting story about this. George Szell was conducting at the Met. This was 1942, I believe. Szell came down off the podium and yelled at Kolberg after the first act of an opera at the Met. This was a public performance, and Szell was screaming at Kolberg. Kolberg told Szell he could not speak to a concertmaster that way. Szell stuck his face right into Kolberg's face,

and Kolberg went to push Szell's right shoulder to get him away, but somehow Szell's face got in the way, and Kolberg ended up hitting Szell in the face. Kolberg decided to leave the Met in the middle of that season. But he was a big name, and became concertmaster of the Pittsburgh Symphony Orchestra with Fritz Reiner. A lot of musicians love to hear the story that one concertmaster finally had the nerve to punch Szell out! Conductors like Szell were autocrats. Everything was fine as long as they liked you, but you never knew when they would turn on you. That was fairly typical of musicians' lives in those days, but somehow we all survived."

(Interview with author, January 30, 2011)

Ray Still told me an insightful story concerning Harold Gomberg. Still had been playing with the New York Philharmonic the summer before he joined the Chicago Symphony in 1953, where he was initially hired as assistant principal oboe. The New York Philharmonic contacted Still concerning the possibility of his joining the Philharmonic for the following season. He auditioned for the New York Philharmonic Music Director Dmitri Mitropoulos (1896-1960) in New York. Mitropoulos and the personnel manager of the New York Philharmonic offered him a position with the orchestra for the following season. The Philharmonic was having a lot of problems with Harold Gomberg, who was having problems with Mitropoulos.

Still went to Reiner, explained the situation, adding (in classic understatement): "Dr. Reiner, I'm really not cut out to be assistant material." Reiner replied: "Ray, don't go anywhere. I have plans for you." Still took Reiner at his word, sat tight, and became principal oboe of the Chicago Symphony at the beginning of the next season.

Meanwhile, back in 'The Big Apple, Dmitri Mitropoulos was certainly having difficulties with Gomberg. As Mitropoulos' biographer put it:

"Though universally acknowledged as a supreme master of his temperamental instrument, Gomberg was a strange, moody individual who was driven by an intemperate desire to stand out, and to be seen as standing out, above the other one-hundred-plus men in the orchestra" (see William Trotter, *Priest of Music: The Life of Dmitri Mitropoulos*, p. 327).

Mitropoulos was an extraordinarily gifted and dedicated musician and conductor; he was

also a very kind, gentle, compassionate and extraordinarily generous man. It was not his temperament to punish players for incompetence or poor performance. Like several of his predecessors at the Philharmonic—including Gustav Mahler (1860-1911), who left the Philharmonic brokenhearted and died very shortly thereafter at the age of fifty—Mitropoulos' nature was simply not tough enough to survive an orchestra like the New York Philharmonic. In those days the Philharmonic was known as a graveyard for conductors. Two of many examples: Leopold Stokowski, the autocrat of *Fantasia* fame, was asked about his experiences conducting the Philharmonic. He replied: "I prefer not to talk about it. It was one of the most shocking experiences of my life." George Szell, Music Director of the Cleveland Orchestra and guest conductor of the Philharmonic in hundreds of concerts between 1943 and his death in 1970, dubbed the New York Philharmonic "Murder, Incorporated" (see Abram Chasins, *Leopold Stokowski*, pp. 137-138). There were fistfights among the players backstage (see Horowitz, *Classical Music in America*, p. 321). This was hardball for even the toughest conductors.

But back to Mitropoulos' woes with the orchestra: the first-chair players really abused him simply because they knew they could. They realized that Mitropoulos would not fight back. Worst was principal trumpet William Vacchiano, but Gomberg wasn't far behind. *New York Times* music critic Harold Schonberg witnessed one such incident:

"Gomberg—wow! He could really be brutal. I was at one rehearsal...and at one point Mitropoulos stopped the orchestra and politely asked Gomberg if he would re-phrase his part a certain way. Which Gomberg did, but not to the conductor's satisfaction. Mitropoulos stopped again and said, 'No, no, Mr. Gomberg, you didn't quite get the idea.' And Gomberg looked him straight in the eye and snarled: 'If you think you can play it better, come out here and do it yourself.' I was astonished. And if I had been the conductor, and a player gave me that kind of sass, I would have sent him packing" (see William Trotter, *Priest of Music: The Life of Dmitri Mitropoulos*, p. 386).