

John Kagel

Interviewed on June 1, 2007 by Barry Winograd

1 MR. WINOGRAD: Good afternoon, everyone. I'm
2 Barry Winograd, the interviewer appointed to preside in
3 this matter which involves John Kagel, former President
4 of the National Academy of Arbitrators in 2000-2001, that
5 was your term?

6 MR. KAGEL: Yes.

7 MR. WINOGRAD: And we are about to proceed with
8 an interview for the Oral History Project undertaken by
9 the Academy.

10 Today is June 1st, 2007 and John is present.

11 Are you ready to proceed.

12 MR. KAGEL: Yes, sir.

13 MR. WINOGRAD: This interview is being
14 transcribed by his wonderful wife and superb reporter,
15 Mary Pat Radocy.

16 Do you think we need to swear in this
17 interviewee?

18 MR. KAGEL: Thank you. I will swear.

19 MR. WINOGRAD: Here's what we want to know. We
20 want to know some basic biographical information.

21 When were you born, your mom, your dad, your
22 siblings, that kind of thing.

23 MR. KAGEL: I was born on January 19, 1940.

24 My father was Sam Kagel, my mother, Sophie Kagel. The
25 location was Berkeley, California, Alta Bates Hospital,

1 where I have arbitrated a number of times since. I have
2 tried to disqualify myself but they won't let me.

3 MR. WINOGRAD: On the basis of bias.

4 MR. KAGEL: I was born there, yes.

5 I have a brother, Peter,, a lawyer, who is a
6 couple years younger, in San Francisco. My sister is a
7 very successful restaurateur in Santa Fe.

8 MR. WINOGRAD: She's the baby, so to speak.

9 MR. KAGEL: She's the youngest.

10 MR. WINOGRAD: You are the oldest child.

11 MR. KAGEL: That's correct.

12 MR. WINOGRAD: Is that why you were destined
13 to be an arbitrator.

14 MR. KAGEL: I don't know.

15 MR. WINOGRAD: Any other early influences on
16 your future career.

17 MR. KAGEL: There really wasn't. While
18 growing up, I tended to tune out when this topic was
19 discussed.

20 MR. WINOGRAD: Did it come up at the dinner
21 table, for example.

22 MR. KAGEL: Sometimes, yes.

23 MR. WINOGRAD: Your father is a very well
24 known arbitrator.

25 MR. KAGEL: So I understand.

1 MR. WINOGRAD: We will note that he did pass
2 away just about a week ago or ten days ago, right.

3 MR. KAGEL: Yes, ten days ago.

4 MR. WINOGRAD: Everybody in the Academy feels
5 for that loss and I appreciate your willingness to go
6 ahead with this interview today.

7 MR. KAGEL: I'm grateful for the Academy that
8 was held in San Francisco this year. There were numerous
9 references to Sam and his career and all in great tribute
10 and I am grateful that they did that.

11 MR. WINOGRAD: We may come back to that
12 subject in the course of this discussion.

13 So you grew up in Berkeley.

14 MR. KAGEL: I spent the War Years in Oakland
15 down on 37th Street at Market Street.

16 MR. WINOGRAD: That's the West Oakland area.

17 MR. KAGEL: Yes, now which is pretty grim in
18 terms of what it's like now. At that time, it was a
19 mixed neighborhood. It was a lot of fun.

20 MR. WINOGRAD: Where did you go to high
21 school.

22 MR. KAGEL: Then we moved to Berkeley when I
23 was 8, went to Berkeley High which was also mixed because
24 it was the only high school in town.

25 MR. WINOGRAD: And still is.

1 MR. KAGEL: True.

2 MR. WINOGRAD: In terms of your education,
3 after high school, you went off to the University of
4 California at Berkeley, right.

5 MR. KAGEL: That's where I graduated. I went
6 to Pomona College for two years and transferred when I
7 was offered a job as a copy boy on the San Francisco
8 Examiner for the summer. The sports editor said, "Too
9 bad you don't go to Cal, we need a sports reporter."

10 MR. WINOGRAD: So you were a stringer for the
11 Examiner.

12 MR. KAGEL: A little more than that.

13 MR. WINOGRAD: They paid you.

14 MR. KAGEL: Yes, they paid me. And also
15 during the summers, I would work on the copy desk as an
16 editor.

17 MR. WINOGRAD: That eventually led to a
18 regular reporting position, is that right, later on.

19 MR. KAGEL: Not really. It could have but I
20 went to law school instead.

21 MR. WINOGRAD: You graduated in 1961.

22 MR. KAGEL: Correct, in History. I had an
23 ROTC commitment because at that point the draft was in
24 vogue and I had it set up so I had a six-month active
25 duty recruitment but the Cuban Missile Crisis came along

1 and everybody was jumped-up for two years and the only
2 reason I fit was I was put into the Armor Corps. Rather
3 than do that, I decided to go to law school, to some kind
4 of school to stay out of the Army at that point.

5 MR. WINOGRAD: To get a deferment.

6 MR. KAGEL: Yes, and ended up at law school.

7 Q. At Berkeley again.

8 MR. KAGEL: Yes, because I was in.

9 MR. WINOGRAD: Did you get tired being in
10 Berkeley so much.

11 MR. KAGEL: Not at all. It was a fun place to
12 be.

13 MR. WINOGRAD: At Berkeley you graduated from
14 law school in 1964.

15 MR. KAGEL: That's right. One other thing
16 about Berkeley, in the final year of law school, it cost
17 \$100 a semester which also made it extremely affordable
18 to be able to go there.

19 MR. WINOGRAD: You left Berkeley in '64.
20 That was prior to the Free Speech Movement because that
21 was the following fall, correct.

22 MR. KAGEL: Right. I was out waiting for the
23 bar results because at that point I had switched over, I
24 had moved to the Judge Advocate General Corps and they
25 wouldn't take you in until you passed the bar, which,

1 fortunately, I did, but not until the fall when the
2 results came out.

3 MR. WINOGRAD: So you did your military
4 service as a JAG officer.

5 MR. KAGEL: Yes.

6 MR. WINOGRAD: Where.

7 MR. KAGEL: In a suburb of Washington, DC, I
8 and two of my classmates from Boalt ended up in what was
9 called the Defense Appellate Division which was a
10 detached branch of the JAG Corps so it would not be under
11 command of influence, and it was essentially a public
12 defender on appeals in criminal cases, court martials.

13 MR. WINOGRAD: You wrote a lot of briefs.

14 MR. KAGEL: Read a lot of transcripts and
15 wrote a lot of briefs and argued before the Court of
16 Military Appeals.

17 MR. WINOGRAD: Did you have any interest in
18 staying on in the military at the end of your two years
19 of service.

20 MR. KAGEL: No. Unfortunately, it was three
21 years of service for that.

22 MR. WINOGRAD: Three.

23 MR. KAGEL: Yes. What we found was that being
24 a reservist was a much better position than being in the
25 regular Army especially in the job we had which was to

1 fight the Army every day. We ended up with some
2 interesting things going on there, one of which was to
3 when President Johnson said that all the military
4 supported his increasing of troop deployment in Vietnam,
5 I wrote a letter to the White House and said, "Well, you
6 didn't ask me, essentially, and I didn't approve of it."

7 I got back a letter from something called the
8 Internal Security Organization of the U.S. Government and
9 I never found out what that was.

10 MR. WINOGRAD: Of the military or Department
11 of Justice.

12 MR. KAGEL: It was not the military --- and
13 said the president was very interested in my views.

14 MR. WINOGRAD: I'm sure he was.

15 MR. KAGEL: No doubt. At that time, they were
16 only sending single JAG officers to Vietnam so I'm not
17 sure why I was ever exempted from that duty.

18 MR. WINOGRAD: Were you single then.

19 MR. KAGEL: Yes.

20 MR. WINOGRAD: This is '65, '66.

21 MR. KAGEL: It was '65 when that happened. I
22 had some success in getting people off who were ---
23 that's not the right term --- in making a successful
24 defense on appeal.

25 MR. WINOGRAD: Why isn't it the right term.

1 MR. KAGEL: Because they usually didn't get
2 off. They usually got a new trial of some kind but I was
3 able to have some success in their defenses.

4 But we also found at that point the way the
5 training worked, we were the last group who had to go
6 through some infantry or armor training before they sent
7 us to the JAG School at the University of Virginia and so
8 we got to know our colleagues pretty well because we had
9 to run around in tanks in the middle of winter at Fort
10 Knox, Kentucky. I think you have a picture of that in
11 your introduction to my speech.

12 MR. WINOGRAD: Let the record reflect that in
13 2001, in Atlanta, Georgia, this interviewer, in the
14 company or in cahoots with Gil Vernon of Eau Claire,
15 Wisconsin, introduced John before the assembled throng of
16 Academy members and guests at the luncheon prior to his
17 presidential address, and that's the reference. We had a
18 picture of John standing next to a tank.

19 MR. KAGEL: Right. I had a Christmas card
20 that year with that picture saying, "Peace on Earth."

21 Anyway, one of the cahooters was our reporter
22 today, too, as I understand.

23 MR. WINOGRAD: Yes, she's a wonderful woman,
24 John.

25 MR. KAGEL: In any event, we got to know

1 people who were sent all over the country and one of them
2 was sent to Fort Leonard Wood in Missouri and I found out
3 that the commanding general there had set up a deal or
4 had told anybody who was about to be --- any officer who
5 was going to be in a court martial to give the maximum
6 sentence possible and that particular general then would
7 reduce the sentences if he felt it appropriate. That
8 violated the Code of Military Justice because there was
9 two facets to a courtmartial: One is a guilt phase, and
10 then if found guilty a sentencing phase. In the
11 sentencing phase, you can make your pitch and see if the
12 courtmartial will maybe reduce the sentence if they feel
13 it appropriate. So this took that discretion away. We
14 got word of that and were able to bring some writs before
15 the Court of Military Appeals which had no authority for
16 writs but we sort of talked them into it to stop this.
17 At one of the court sessions, there was a gentleman whom
18 I knew from the New York Times who said, "What are you
19 doing here?" And I said, "I can't really talk about it
20 but why don't you wait until the next case." And that
21 was the case and it ended up on the front page of the New
22 York Times when the news was slow.

23 MR. WINOGRAD: Under the heading, "Novel
24 Breakthrough in Military Justice."

25 MR. KAGEL: "Commanding General Screwing

1 Around with Courtmartials."

2 MR. WINOGRAD: You fulfilled that military

3 obligation.

4 MR. KAGEL: Yes, but there's another facet to

5 it. Being in Washington DC, the time requirement for

6 this duty wasn't terribly much. We had half a day off

7 for physical training which meant you could do whatever

8 you wanted. All we had to do is show up on time during

9 the day and then argue cases and as long as we got our

10 briefs in, it was okay, we could do the briefs whenever

11 we wanted to so I had a fair amount of time on my hands

12 once I figured out what was going on. I volunteered in a

13 Congressman's office, Jeffrey Cohelan who was head of the

14 Milkwagon Drivers Union or one of the Teamsters locals

15 who was then defeated ultimately by Ron Dellums, now the

16 Mayor of Oakland, so I did volunteer work in his office

17 for a year and a half which was interesting to be exposed

18 to that kind of life.

19 MR. WINOGRAD: Volunteer work while you were

20 also in the service.

21 MR. KAGEL: Yes.

22 MR. WINOGRAD: Was that during the period of

23 time that Cohelan was challenged in a primary by Bob

24 Scheer in 1966, do you remember that.

25 MR. KAGEL: Could have been but I was back in

1 Washington so I didn't see any of that action out here.

2 So I don't know about that.

3 I do know Cohelan, there was a Congressman, a
4 longtime head of the Ways and Means Committee from rural
5 Virginia where Dulles Airport is now who was defeated and
6 I remember Cohelan came out, I was delivering something
7 to him on the house cloak room next to the House floor
8 and everybody was shaken up by the fact this guy could be
9 beaten, an incumbent could be beaten so there was an
10 interesting lesson.

11 MR. WINOGRAD: And eventually he was to
12 Dellums in '68.

13 MR. KAGEL: Yes. So the last year in the
14 military was another formative event. I was defending a
15 doctor, Special Forces doctor who refused to go to
16 Cambodia when ordered to do it, and he pled guilty. At
17 that time, you could defend, you could appeal a guilty
18 plea, at least on legal grounds. He had private counsel,
19 a guy named John Cassidy. John had been a special
20 counsel in the Justice Department primarily involved in
21 Bobby Kennedy's efforts to go after the Teamsters Union.
22 He had just partnered with a fellow named Jack Miller who
23 was the deputy for the Criminal Division under Bobby
24 Kennedy, even though Jack was a staunch Republican, as
25 well as an ex-FBI director or deputy director and a very

1 formidable PI lawyer. So these guys formed a four-person
2 firm in Downtown Washington.

3 So I said to him, I said, "Can I go to work for
4 you guys since I have all this time off?" They said,
5 "Come on over. I worked with those guys for a year and
6 probably could have stayed on and that would have been an
7 interesting, different career.

8 That firm, the first day I went in there, there
9 was a guy doing a cartwheel across the reception area.
10 That was Jack Miller who had just won some point of law
11 that he thought was important.

12 MR. WINOGRAD: You left because you figured
13 if that was a condition of employment, you would be
14 disqualified.

15 MR. KAGEL: No, I left because I think I liked
16 the area in California better.

17 MR. WINOGRAD: Summers in Washington are
18 really tough.

19 MR. KAGEL: That firm, Jack Miller, was the
20 finest lawyer I ever met, dealt with. He went on to
21 represent Nixon and all the Nixon papers and tapes and
22 negotiated his pardon, which Jack explained to me later.

23 MR. WINOGRAD: So John, one thing I wanted to
24 ask you about. This car, you got some car while you were
25 back in Washington.

1 MR. KAGEL: No, I got it here. It was a 1964
2 Porsche. I still have it.

3 MR. WINOGRAD: Rebuilt.

4 MR. KAGEL: The engine has been rebuilt once.
5 It has about 300,000 miles on it.

6 MR. WINOGRAD: Do you still drive it.

7 MR. KAGEL: Sometimes.

8 MR. WINOGRAD: Are you saving it for your
9 children.

10 MR. KAGEL: I'm not sure if they deserve it.

11 PATRICK KAGEL: What?

12 MR. WINOGRAD: So you came back to
13 California.

14 MR. KAGEL: Correct.

15 MR. WINOGRAD: When did you have a family and
16 children.

17 MR. KAGEL: I got married back there.

18 MR. WINOGRAD: In Washington.

19 MR. KAGEL: Yes, and moved out here. Then I
20 had a daughter, Susan.

21 MR. WINOGRAD: Susan. Is Megan the second.

22 MR. KAGEL: Andy is the second and Megan is
23 the third.

24 MR. WINOGRAD: Andy is going off to Iraq.

25 MR. KAGEL: Unless we get a good political

1 settlement now until December. He is finishing his
2 residency in Emergency Medicine and is off to Iraq as a
3 Brigade Surgeon which means he's not going to do surgery
4 but he will administer other doctors and probably not do
5 any emergency medicine which is typical for the Army, I
6 think. Hasn't changed.

7 MR. WINOGRAD: You have grandchildren.

8 MR. KAGEL: He has two children and I have a
9 third grandchild on the way with Susan.

10 MR. WINOGRAD: Where does she live.

11 MR. KAGEL: Bellingham Washington. She is an
12 elementary schoolteacher with a specialty in
13 environmental curriculum.

14 MR. WINOGRAD: Where is Megan?

15 A. She is in Seattle and she is involved with
16 major gifts with a renowned theater company.

17 MR. WINOGRAD: And helps secure money to help
18 the theater company going.

19 MR. KAGEL: Right, but only after the people
20 give a lot of money as opposed to some other kind of fund
21 raising.

22 Q. What are your thoughts about your son going
23 off to Iraq?

24 A. I try not to think about it. Since I don't
25 think this war as a good idea in the first place, in fact

1 as ill-conceived as possible and it is a place where
2 anybody can shoot anybody, I am obviously very concerned.
3 The whole thing is a crock.

4 MR. WINOGRAD: Where does he expect to be
5 stationed.

6 MR. KAGEL: He's going over with a brigade of
7 the Fourth Infantry Division. I'm not sure where he will
8 end up. Wherever it is will not be any good.

9 MR. WINOGRAD: How long is he expected to be
10 there.

11 MR. KAGEL: Nominally for a year but they have
12 been extending people for whatever they want to.
13 Hopefully, we'll get --- I know we'll get a new
14 administration but with a group of new people who work on
15 bring people back.

16 MR. WINOGRAD: I'm sure I speak for all of
17 your friends and associates in the Academy wishing him
18 success in terms of coming through this experience and
19 coming home to give his dad a big hug.

20 MR. KAGEL: I appreciate that. At least he'll
21 be going over there trying to heal people who are
22 wounded, whether they are Iraqi or Americans. That's
23 helpful.

24 MR. WINOGRAD: You came back to California
25 with these little kids.

1 MR. KAGEL: No.

2 MR. WINOGRAD: In due course.

3 MR. KAGEL: Yes. In due course. I came back.

4 My father had sent me some stationery at the beginning of

5 my Army career, that is to say when I was driving tanks.

6 We had a good time driving tanks, by the way.

7 Can you imagine a bunch of guys just out of law

8 school, who have passed the bar and know they don't have

9 to drive tanks for a living being given a tank to drive?

10 MR. WINOGRAD: On the streets in Washington,

11 DC.

12 MR. KAGEL: No, over hill and dale. We had a

13 good time because we weren't very serious. That's why

14 they don't do that any more with Army lawyers.

15 MR. WINOGRAD: He sent you stationery.

16 MR. KAGEL: The stationery said "Kagel &

17 Kagel" on it.

18 MR. WINOGRAD: Hint.

19 MR. KAGEL: Right. How many thousands he had

20 printed up.

21 I had done very well in law school and probably

22 could have gotten a job any place I felt like it.

23 MR. WINOGRAD: You were Law Review.

24 MR. KAGEL: Yes.

25 MR. WINOGRAD: Did you think of clerking for

1 a judge?

2 A. Yes.

3 MR. WINOGRAD: He sent you the stationery.

4 MR. KAGEL: I had already done this three
5 years in the Army and I was ready to go do something.

6 He sent me the stationery so I knew I could go
7 back to his office and look around and decide what I
8 wanted to do so I did and I picked up some law clients
9 who were architects and engineers and got involved in
10 their kind of preventative law kind of work which I found
11 interesting because I liked the people.

12 In the meantime, my father was having these
13 arbitration cases. I was not paying much attention to
14 him any more than I had been paying attention to him at
15 the dinner table but you couldn't help not knowing about
16 it because they were going on.

17 MR. WINOGRAD: Your father was also a very
18 shy, retiring-type of fellow.

19 MR. KAGEL: Yes, so that was one of his
20 traits, for sure.

21 He had three incest cases that year and when he
22 started to get incest cases, I woke up and said, this
23 does tend to go beyond the technical kind of thing beyond
24 a construction of a collective bargaining agreement which
25 I thought dull.

1 MR. WINOGRAD: Whether incest was just cause
2 for termination.

3 MR. KAGEL: Yes, and the nexus was the acts
4 were on company property and the people, the criminal
5 cases didn't go forward because the complaining witnesses
6 wouldn't come forward and that kind of thing.

7 MR. WINOGRAD: Children may be reading this
8 interview, John.

9 MR. KAGEL: I won't go into detail.

10 It did point out the fact that arbitration was
11 a much broader --- had a much broader scope than I had
12 tuned out about as a younger person, although I had taken
13 Sam's arbitration course at Boalt Hall and gotten a B.

14 MR. WINOGRAD: Your dad was a professor at
15 Boalt for about fifteen or twenty years.

16 MR. KAGEL: Right.

17 MR. WINOGRAD: You took his course, that was
18 allowed.

19 MR. KAGEL: Sure, I was only a number on the
20 final. I got an A in labor law.

21 MR. WINOGRAD: Did he teach labor law also.

22 MR. KAGEL: Yes, that was the reason he was
23 there teaching labor law but he taught a course in
24 negotiation, mediation and arbitration, I think maybe one
25 of the first that anybody ever taught.

1 MR. WINOGRAD: And you got a B in that
2 course.

3 MR. KAGEL: Yes.

4 Q. That might be grounds for a disqualification.

5 MR. KAGEL: Should have been. After all ---
6 but it was the second semester of my third year.

7 MR. WINOGRAD: Good excuse.

8 MR. KAGEL: Coasting. So I got interested in
9 the arbitration part of it and in 1968, he got appointed
10 by the mayor through the efforts of Lou Goldblatt of the
11 Longshoremen's Union and some others to mediate the San
12 Francisco newspapers strike that was going on and that
13 took him about three or four weeks. He said, "Here, you
14 run these hearings and I'll tell the people that I will
15 make the decision from the transcripts." And so I got
16 thrown into it in that way, I mean literally ended up,
17 first case was an Oil, Chemical and Atomic Workers case
18 with Vic Van Bourg representing the union and I don't
19 remember who was representing Standard Oil at this time
20 but that was the first one and then there were a number
21 of others. I guess I didn't screw them up too badly
22 because Sam then gave me the transcript, here, draft a
23 decision, let me see if I like it, kind of a thing.
24 So I was an apprentice without knowing I was an
25 apprentice essentially.

1 MR. WINOGRAD: Good training, though.

2 MR. KAGEL: Very good training. I was used to
3 dealing with transcripts because I had been dealing with
4 these criminal cases with transcripts for three years.
5 So I would draft opinions and he would mark them up and
6 he would read the records of these cases that he was not
7 present in.

8 MR. WINOGRAD: Were you still practicing law
9 during this time.

10 MR. KAGEL: Yes. You have to remember, this
11 is the late '60's. Life was simpler.

12 MR. WINOGRAD: When did you stop the actual
13 practice of law.

14 MR. KAGEL: I would guess around 1970, 1971.

15 MR. WINOGRAD: That's when you were admitted
16 to the Academy, in 1971.

17 MR. KAGEL: It was a little easier to get
18 admitted to the Academy. You didn't have to go through
19 the drill you have to now. I'll get to that in a second.

20 Let me finish this chapter. The economy had
21 gone south for the architects and right at the same time
22 people started picking me as an arbitrator because they
23 had seen me doing this stuff for Sam. So that's when I
24 pretty much didn't take on any new clients and the old
25 clients went away because they contracted their offices

1 and couldn't afford a lawyer any more and so I started
2 doing arbitration and became pretty much a full-time
3 arbitrator around 1970.

4 MR. WINOGRAD: How did you get into the
5 academy so quickly.

6 MR. KAGEL: At that time, I think if a couple
7 people wrote letters to somebody then you were invited.
8 That's the way I remember it happening.

9 MR. WINOGRAD: But your dad was not a member.

10 MR. KAGEL: No, but he was a secret member in
11 a way, although he would never admit this now, saying it
12 after he has departed. He chose not to do it and that
13 was described in the '75 proceedings by Ben Rathbun who
14 was then kind of the labor correspondent for the BNA who
15 was very well respected. I don't think they have anybody
16 now. They have a fellow that does some of it.

17 Anyway, I don't remember who but Sam said, why
18 don't you join this outfit? You'll get some exposure.

19 MR. WINOGRAD: So he encouraged.

20 MR. KAGEL: Well, yes. I think Morey Meyers
21 was in our building at that time and he was suggesting
22 that I join the Academy so I think he got a couple of
23 other people to write a letter and they invited me to
24 join. The meeting was in Atlanta so I flew back there
25 and get appointed and then I don't think I even stayed

1 for the whole meeting, I flew back.

2 MR. WINOGRAD: So at this point early in the
3 1970's you are in your early 30's, you are a member of
4 the National Academy, you have some children, you are
5 working full-time as an arbitrator.

6 MR. KAGEL: Essentially, yes.

7 MR. WINOGRAD: This is basically the path you
8 have been on ever since.

9 MR. KAGEL: Pretty much. I haven't varied
10 very much because every day is different, as you know.

11 MR. WINOGRAD: As we know. It's a different
12 story every day. The truth is always stranger than
13 fiction.

14 MR. KAGEL: Except for some attendance cases
15 which tend to be repetitive.

16 [Note that the interviewer laughed.]

17 MR. WINOGRAD: Yes. Let me observe for the
18 record that in the course of John's career and as a
19 member of the National Academy, he has served on the
20 following committees either as a member or as a chair:
21 He's been on numerous program and arrangements
22 committees, he's been on the Legal Affairs Committee, a
23 member of the Board of Governors, Legal Representation
24 Committee, Membership Committee, Special Committee on
25 Code Revisions, Professional Responsibility in

1 Governance, the Restatement Project on the Common Law of
2 the Workplace, he's been on the Executive Committee,
3 Designating Agency Liaison Committee, he was President of
4 the organization, the Special Committee on Technology,
5 Academy Liaison to the Task Force on Dispute Resolution
6 and he's been on the Nominating Committee and most
7 recently on the Protocol Conference Planning Committee.

8 Did you know you had been on all those
9 committees?

10 MR. KAGEL: No, and some of them never met,
11 I'm certain. That does sound very impressive but the
12 amount of time taken outside of the presidency was pretty
13 nominal.

14 Before we quite go there, I have done some
15 other things.

16 MR. WINOGRAD: In your life.

17 MR. KAGEL: Yes.

18 MR. WINOGRAD: Let's backtrack.

19 You have been married twice?

20 MR. KAGEL: Yes.

21 MR. WINOGRAD: Your first wife's name.

22 MR. KAGEL: Joan.

23 MR. WINOGRAD: And that's the mother of the
24 first three children I already identified.

25 MR. KAGEL: Yes.

1 MR. WINOGRAD: Where were you living, by the
2 way, in this period as your practice was developing in
3 the '70's and '80's.

4 MR. KAGEL: I lived initially in Berkeley, I
5 lived up in the Hills originally in a house that was
6 later bought by Barbara Chvany or by Ken Silbert, both
7 Academy members, because she wasn't married then and Ken
8 Silbert was representing unions and one day he said he
9 moved into Berkeley and I asked him where he lived. He
10 told me and I said that's where I had lived.

11 Then I moved down the hill to a
12 Maybeck-designed house because my then wife was having
13 sinus problems because that place was most directly
14 opposite the Golden Gate Bridge when the fog came in.
15 We went looking for other places to live and ended up in
16 Palo Alto which I thought would be another college town
17 and while it's a very nice town, it's not much of a
18 college town but Stanford is pretty isolated from the
19 town itself so most of the faculty members don't live in
20 the town, they live on the campus.

21 MR. WINOGRAD: But it's a lovely community.

22 MR. KAGEL: Oh, yes.

23 MR. WINOGRAD: Good schools.

24 MR. KAGEL: Excellent schools. And then
25 fortunately, for us, it became a hot bed of the Silicon

1 Valley and all the people made lots of money from that
2 that bought houses.

3 MR. WINOGRAD: You moved down to Palo Alto
4 but you were still working in the City sharing space with
5 your dad.

6 MR. KAGEL: Right.

7 MR. WINOGRAD: As I recall, you had a
8 wonderful office in a landmark historical building on
9 Market Street right near Sansome.

10 MR. KAGEL: Right. It's called the Flatiron
11 Building which, of course, is still there. We kept that
12 office for thirty years. There had been a couple of
13 other locations in the neighborhood before that and had
14 to move out around --- I moved out in 1997 because a
15 dot-com company bought the building or became the
16 principal tenant and wanted to raise our rent. It was at
17 that time you could go anywhere with a fax machine and a
18 computer and you didn't need to have an office any more.

19 We had Barbara Chvany who became an arbitrator,
20 Kathy Kelly had been in our office. We had three
21 arbitrators in that office and we had three conference
22 rooms and sometimes we'd have three arbitration cases
23 going at the same time.

24 MR. WINOGRAD: If you would take a moment, I
25 think, readers would be interested in having you describe

1 the office in its appearance.

2 MR. KAGEL: Well, this office was on the
3 point of the building and that was Sam's office. Sam had
4 lots of stuff in his office. He had a side cupboard that
5 held a bar, old Jack Daniels bottles, a big
6 floor-standing globe, a waist-high handmade leather
7 Indian drum, his own oil paintings, one of the Golden
8 Gate Bridge and one of the view down Market Street toward
9 the Ferry Building. He had Oriental rugs, leather chair
10 and couch, a weathered coffee table and ashtrays, an old
11 high-backed wooden Windsor chair, a tall palm and some
12 ferns .

13 A TV series was filmed there once called Crazy
14 Like a Fox and they put up on the window Private
15 Detective Agency, Harry Fox. We left that there. That
16 name was on the directory in the building and we also
17 left that there. Fans of this TV program would come up
18 to see it.

19 When they filmed the TV program, they brought
20 all kinds of props up from Hollywood to stock the office.
21 Once they saw all the stuff that Sam had in there ---
22 there were all kinds of souvenirs and plaques on the wall
23 --- crazy stuff, they all took their props back, they
24 just shot it as it was.

25 MR. WINOGRAD: Must have been a breach of

1 contract.

2 MR. KAGEL: I don't know.

3 Sam had an old wooden roll-top desk and leather
4 chair that tipped way back. On his desk, he had a small
5 black-and-white three-channeled TV with an old
6 rabbit-eared antenna so he could watch Perry Mason.

7 MR. WINOGRAD: I recall visiting that office
8 in my early years as an arbitrator that there were
9 engravings or productions or art work of Thomas Nast and
10 others from the 19th Century.

11 MR. KAGEL: There was some of that and early
12 California engravings, too, of Yerba Buena, as San
13 Francisco was then called, and we were able to get a set
14 of those. I think they were given to my father as a
15 graduation present by his in-laws when he got out of law
16 school. He also had a painting somebody prepared when he
17 got out of law school, sitting there, when he used to
18 smoke a pipe, with smoke curling around his head with the
19 caption, "More crime and less punishment."

20 MR. WINOGRAD: The picture then is you worked
21 in an office that actually was triangular in shape, if
22 you looked at the entire floor plan, with rooms of odd
23 shapes and sizing and also, as I recall, with files that
24 seemed to climb the walls in every nook and cranny of the
25 office.

1 MR. KAGEL: I don't think it was quite that
2 bad. We did have some file cabinets and at that time
3 kept all the decisions and all the records.

4 I think what you're saying is there was one
5 room that before we had secretaries at the time, they
6 weren't even called administrative assistants at that
7 point --- who were very good and very loyal and we still
8 are in contact with them and they would pile all these
9 decisions up in envelopes until they got around to
10 archiving them and sending them off to some storage
11 place. All those are now at the San Francisco State
12 Labor Archives.

13 MR. WINOGRAD: Your father's, as well as
14 yours.

15 MR. KAGEL: Mine, too, at least up until the
16 time we abandoned the office. But I don't keep mine now,
17 I just keep the decisions.

18 MR. WINOGRAD: So life rolls on, John Kagel,
19 arbitrator, practicing with his dad, some other people in
20 the office for periods of time.

21 MR. KAGEL: Yes.

22 MR. WINOGRAD: And then over the years, as
23 your kids grew up, you and your wife separated and then
24 you fell in love.

25 MR. KAGEL: I met this court reporter and the

1 way I met her was that Sam Kagel had a case in Seattle
2 with the National Football League and this reporter, who
3 is now my lovely wife, who is transcribing this, had been
4 reporting football cases before Sam became their
5 arbitrator. This, as I understand it, was his first case
6 with the Seahawks. I happened to be in Seattle also on a
7 paper and pulp case so I was talking to Sam by phone
8 because we were hoping to get together but the way the
9 cases broke, it didn't work. He said he met this
10 reporter who was from San Francisco who is really good.
11 I said, well, why don't we use her along with the other
12 people that we normally use.

13 In any event, Mary Pat began to do cases in the
14 office and if she wants to add an addendum to our
15 relationship as it grew --- and certainly you can ask her
16 after this but --- she can insert it right in the record
17 if she wants. Just put in "Reporter's Note" and put in
18 whatever you want to put in.

19 In any event, one thing led to another. After
20 my first marriage fell apart, we got to know each other,
21 lived with each other from 1984 and eventually, in 1987,
22 got married. We have had two children since, Molly who
23 is now 18 and going off to Santa Clara University in the
24 fall and Patrick who is 16 who will be a junior next fall
25 in Palo Alto High School and who has successfully

1 auditioned to play string bass in the San Francisco

2 Symphony Youth Orchestra..

3 MR. WINOGRAD: And wonderful children.

4 MR. KAGEL: Yes, indeed. Wonderful children.

5 MR. WINOGRAD: So you are really blessed.

6 Five kids overall.

7 MR. KAGEL: Five kids overall.

8 MR. WINOGRAD: And they all talk to you.

9 MR. KAGEL: They all talk to me and nobody has

10 been in jail yet.

11 MR. WINOGRAD: Good for you.

12 MR. KAGEL: At least for any crime that I know

13 about.

14 When Mary Pat and I got married, we lived in

15 San Francisco at her house on Bernal Heights and that was

16 fun for me because I was without kids at the time and

17 that was a different life. Then when the kids came

18 along, we moved back down to the same house I had in Palo

19 Alto, which I had rented out to Stanford students and to

20 a fellow named John Bennett who worked for Crown

21 Zellerbach and I got to know him in that role, he was a

22 employer representative in paper cases and then he went

23 into private practice down there. He needed a place to

24 live so it worked out well for both of us.

25 MR. WINOGRAD: So now you're back in Palo Alto

1 which is a lovely sunshine-blessed community on the
2 Peninsula and you are still an arbitrator.

3 MR. KAGEL: Right.

4 MR. WINOGRAD: And a mediator also.

5 MR. KAGEL: Mediator, yes, but as you know,
6 the arbitration business has expanded beyond the labor
7 area. I had done some of that before but now there's
8 employment cases that have been assigned to us from time
9 to time and sometimes commercial cases, sometimes
10 commercial mediations.

11 MR. WINOGRAD: But the labor arbitration is
12 still the foundation or core of your practice.

13 MR. KAGEL: That's correct, and I don't want
14 to change that.

15 MR. WINOGRAD: You like it.

16 MR. KAGEL: I like it because there's a
17 continuing relationship between the parties and I think
18 it's important to contribute to that as opposed to other
19 forms of arbitration where it's pretty much a one-shot
20 deal and much more a substitute for litigation than even
21 labor arbitration is, although certain lawyers are trying
22 to make it the same way in labor arbitration now.

23 MR. WINOGRAD: Tell me about transcripts.

24 MR. KAGEL: What would you like to know?

25 MR. WINOGRAD: Well, my recollection is that

1 your dad also had a point of view about transcripts which
2 is that they are essential to due process in the labor
3 arbitration context.

4 MR. KAGEL: And I have adopted that. If
5 somebody wants an opinion anyway as opposed to just a
6 decision, I won't take a case without a transcript and
7 the reason for that is that I think I can do a much
8 better job. I know there are arbitrators who claim their
9 notes are better than a transcript but I would have some
10 major question about that.

11 I quote extensively from transcripts in writing
12 decisions and, as you know, decisions are normal in labor
13 arbitration. If I don't quote from them, I'll at least
14 put in the page references where I'm getting the facts
15 from. Part of it is my history training. I was a
16 history major and it seems to me important to document
17 what you're saying but also it protects the parties from
18 themselves because if somebody attacks the process, they
19 have a record to show what happened. There have been
20 instances where that's occurred and the transcript has
21 saved me.

22 MR. WINOGRAD: It's an insurance policy.

23 MR. KAGEL: Absolutely.

24 MR. WINOGRAD: Tell me what you have found to
25 be the most satisfying aspect of your career in this

1 field, kind of a general question.

2 MR. KAGEL: Well, I think there's several
3 aspects. I think one of them is the relationship you
4 form with people. It becomes mutual respect, for
5 example, not just lawyers but even --- I don't want to
6 say even --- but people who represent the parties,
7 business agents. Some of the union people who represent
8 their unions do a better job than the lawyers and I've
9 gotten to know them over time and the relationships
10 between them and between their clients in some cases I
11 have been arbitrating since 1968 in certain
12 relationships, I'm still doing it.

13 MR. WINOGRAD: You're the institutional
14 memory of this relationship.

15 MR. KAGEL: Yes, I am and sometimes you don't
16 want to inject that into their debate but sometimes you
17 have to tell them why things are the way they are. And I
18 found that to be very interesting and satisfying.

19 MR. WINOGRAD: So you are integral to that
20 ongoing relationship.

21 MR. KAGEL: Yes, until they tell me that I'm
22 not and they can tell me that any time they feel like it.

23 MR. WINOGRAD: Now the situation on the docks
24 with the Longshore and Pacific Maritime, you are the
25 senior arbitrator under their system.

1 MR. KAGEL: Well, Sam Kagel had that job for
2 --- and will never be beaten --- which is 53 years. I
3 mean that's mindboggling to me that anybody can do that.

4 MR. WINOGRAD: Are you going to run out of
5 time.

6 MR. KAGEL: I'll run out of time,
7 notwithstanding whatever medical miracles may be out
8 there coming. And then they selected me when they
9 decided Sam would no longer do it, in 2002, and I found
10 that also to be fascinating.

11 What happens in that relationship is I served
12 primarily as an appellate arbitrator. They have
13 arbitrators at each of the principal ports to make
14 decisions and then if the parties can't agree to accept
15 those decisions, they come to me for the purpose of
16 whether or not those decisions violate the agreement but
17 I make no credibility determinations in those cases,
18 except there's certain cases where I have sort of a de
19 novo jurisdiction but most of it is appellate and it's
20 also been very interesting as well.

21 There's a long history where they trot out
22 cases from 1947, 1936 that's precedent for their
23 agreement; it is fun.

24 MR. WINOGRAD: How would you feel if one of
25 your kids said, hey, dad, I think I'd like to be an

1 arbitrator.

2 MR. KAGEL: If they could do it without being
3 a lawyer, that would be pretty cool but I think they are
4 going to have to go through law school first.

5 MR. WINOGRAD: That's the nature of the
6 business.

7 MR. KAGEL: I think that's pretty much it. I
8 think people are expecting --- although obviously it's
9 not universal as the Academy membership shows, that the
10 parties pretty much want lawyers to do this, although the
11 Longshoremen were concerned because they will not have
12 lawyers represent them in their hearings --- never have.
13 So they get a little leery of lawyers.

14 MR. WINOGRAD: You're the only lawyer in the
15 room.

16 MR. KAGEL: Yes.

17 MR. WINOGRAD: So to speak.

18 MR. KAGEL: There might be others but I don't
19 know if they are or not.

20 MR. WINOGRAD: What are your longest-standing
21 labor arbitration relationships, is it the paper and pulp
22 industry.

23 MR. KAGEL: That would be the longest one.
24 I'm sure the first one had to be in 1968 or 1969 and I'm
25 still doing them. They use other people now. They had a

1 uniform agreement where they only had Sam and myself and
2 then as that broke up, there's usually other folks as
3 well but there's still some where I'm the only one that's
4 ever done it.

5 MR. WINOGRAD: Let me switch gears here and
6 talk a bit more about the Academy.

7 MR. KAGEL: All right.

8 MR. WINOGRAD: Did you want to be president
9 of the Academy.

10 MR. KAGEL: I really never thought about it.
11 I guess, but I never really ---

12 MR. WINOGRAD: I'm asking because in
13 reviewing your record of professional service with the
14 Academy, I notice that you have given presentations in
15 1981 on grievances in the Federal sector, in 1993 on
16 mediating grievances, in 2001, that was your Presidential
17 Address.

18 . You have been involved in various other
19 articles, contributing chapters to professional
20 publications but I notice you were the vice president.
21 For a minute, I thought I had missed that position. I'm
22 sorry to interrupt you.

23 MR. KAGEL: The problem is I guess I can't say
24 no because most of these people ask you to do them. The
25 Academy is not a good place if you want to run for

1 something, you probably will be ostracized for that, I

2 would think. I've never done it.

3 Let me back up.

4 MR. WINOGRAD: Okay.

5 MR. KAGEL: There's this business where I was

6 sort of the legal --- I don't know what they called it

7 at the time ---

8 MR. WINOGRAD: Legal Affairs Committee.

9 MR. KAGEL: Yes.

10 MR. WINOGRAD: What's that do.

11 MR. KAGEL: That was supposed to be sort of

12 the legal counsel to the Academy. Why I was qualified

13 for that was never clear. But at that time, the Legal

14 Affairs Committee chairman had to attend all the board

15 meetings so I attended about five years of board meetings

16 twice a year and during that time, I was --- I started

17 to teach a course at Stanford with Doug Barton who is an

18 employer lawyer. He was a Stanford grad and he lived

19 down here. We taught a seminar on arbitration. So I

20 would walk in with a big suitcase full of materials and

21 sit there through all of these meetings and I got to know

22 people like Arnie Zack and others who were, you know, of

23 that ilk because I was the youngest guy sitting there

24 going through this stuff and sometimes somebody might ask

25 me a question, is it legal to do what we're doing, and

1 I'd say do it or not do it or whatever it was and I'd sit
2 there. Then that ran into somebody saying, well, since
3 you have done all this, we'll put you on the Board of
4 Governors. So that ran together. I ran about ten years
5 of that stuff.

6 MR. WINOGRAD: That's a lot of meetings.

7 MR. KAGEL: It was. But the way it worked at
8 that time is while the spring meeting was in conjunction
9 with the regular conference, they didn't have this fall
10 session so they just had the Board of Governors who would
11 meet by themselves usually in the same city where they
12 were going to have the spring thing so it would be just
13 this small group that would get together and we'd go out
14 to dinner and drink and get to know each other and that
15 was kind of fun because it was quite intimate in that
16 sense. So I spent a lot of time doing that but I was
17 just going to these meetings and they were paying my way
18 to go.

19 MR. WINOGRAD: So over all of these years,
20 what's been your major contribution to the Academy.

21 MR. KAGEL: Two that I'm proud of. One was
22 the chapter I've written for the Common Law of the
23 Workplace. Arnie Zack told me I was going to write this
24 chapter, he and Ted St. Antoine. I wasn't too keen on it
25 but what I was able to do is synthesize everything that I

1 had done.

2 MR. WINOGRAD: This is the first chapter of
3 the book Common Law in the Workplace published by BNA
4 which has to do with practice and procedure in labor
5 arbitration.

6 MR. KAGEL: Yes. The importance of this
7 chapter is pretty much an overview of arbitration, labor
8 arbitration, not so much about what the doctrines are for
9 decisions but how you run a case, what's to be expected.

10 MR. WINOGRAD: What's the second major
11 achievement.

12 MR. KAGEL: That was the presidency. It
13 wasn't because my term was particularly fruitful or any
14 different but we had a number of court cases that came up
15 during that period of time and I think they were major
16 decisions that we were able to influence.

17 MR. WINOGRAD: Through amicus filings.

18 MR. KAGEL: Yes. There were two of particular
19 note. One was the Garvey case. It involved baseball
20 collusion settlements and a decision of Tom Roberts who
21 had been a president of the Academy had been overturned
22 by the Ninth Circuit in a very ruthless kind of decision
23 by Judge Reinhardt where he just was brutally oppressive,
24 in my view, towards Roberts.

25 MR. WINOGRAD: And Garvey affirmed the

1 limited scope of judicial review of arbitrations.

2 MR. KAGEL: Right. But the story behind that
3 was it was Dave Feller's last case. I hope somebody has
4 his oral history, and if not, I'll be glad to give two
5 pieces of it that didn't get down. But in that case,
6 Dave said, we'll let somebody else do this one, and since
7 it was late to get the petition for cert or get attached
8 to that, I figure, well, I get to write one. I had no
9 idea what the procedure was that I had to follow but I
10 figured I could find that out. So I was all set to do it
11 and then Dave calls up the next day and says, "I figured
12 it out in my mind how I want to do this." So he wrote
13 that.

14 My contribution was I had some idea about it
15 and I suggested to Dave that, "What about this idea?"

16 He said, "That's pretty intriguing, let me
17 check it out." He came back the next day and said, "I
18 looked it up in the library and we can't do that because
19 there was this case that went the other way in which the
20 union prevailed and the lawyer representing the union
21 before the Supreme Court was David Feller. He didn't
22 even remember the cases that he had put on in front of
23 the Supreme Court. In that case, Dave wrote --- and my
24 name was on it, but I got to read the draft and make a
25 couple of wordsmith kind of corrections that the Supreme

1 Court didn't have to have a hearing on this case, they
2 could just slap it down and reaffirm from the trilogy on
3 to tell the courts to stop doing it and that's had some
4 influence since.

5 The other case that I am proud of is the fact
6 that Michel Picher called up and said that there's this
7 case in Canada where the Academy would like to be
8 involved and he told me about it. I said yes, because
9 the Academy is an international body, and I think it's
10 important that we recognize that. That case had a
11 wonderful conclusion including a videotape of Michel's
12 argument before the Supreme Court of Canada. Talk about
13 a tour de force. So I was very proud of those
14 contributions that I hope are sustained. One is the
15 education of the public and the people involved in the
16 process and the other is to keep the process honest and
17 to keep it going so that it's beneficial to the parties.

18 MR. WINOGRAD: The process of arbitration.

19 MR. KAGEL: Labor arbitration.

20 MR. WINOGRAD: Labor arbitration
21 specifically.

22 MR. KAGEL: Yes.

23 MR. WINOGRAD: So let's say we did a
24 fastforward about 10 or 20 years. Where is the Academy
25 then.

1 MR. KAGEL: Fastforward from where?

2 MR. WINOGRAD: Now.

3 MR. KAGEL: You mean what's going to happen in
4 the next twenty years?

5 MR. WINOGRAD: Right.

6 Long pause.

7 MR. KAGEL: Longer pause. Well, we've just
8 returned from the great effort that you had to put
9 forward about employment arbitration and whether or not
10 employment arbitrators are to be admitted in the Academy
11 and I think that is a turning point. As far as I'm
12 concerned, if somebody had only employment cases, they
13 should be eligible because that's arbitration.
14 Arbitration, to me, requires a certain fearlessness in
15 making a decision. You have to have a mindset that
16 says, they have asked me to do this, I'm going to do it
17 and that's it and there's no turning back from when you
18 do it.

19 MR. WINOGRAD: But 10 or 20 years ---

20 MR. KAGEL: I'm working on that. Give me a
21 second. You didn't send me this one in advance.

22 What is included now is the idea that you can
23 also include things that aren't arbitration, in my view
24 --- advisory arbitration factfinding, maybe turn to
25 mediation. If that's the case, then I'm very concerned.

1 I think that the Academy must do a couple of
2 things. One, it still has to be not a business
3 organization. It has to stay an academy where people
4 share ideas.

5 MR. WINOGRAD: Not a trade association.

6 MR. KAGEL: Exactly. That's the word I was
7 looking for. That's to say where people deal in ideas,
8 they deal with the techniques but that the primary focus
9 has to be arbitration, not arbitrators. I said that in
10 my speech. It turned out other people said it in their
11 speeches but I hadn't gone to other presidential speeches
12 to write my own. That is after I finished laughing at
13 you and Gil and it took me about twenty minutes to get
14 reoriented because you guys did such a great job.

15 MR. WINOGRAD: Good material.

16 MR. KAGEL: I'm afraid so.

17 If the Academy can keep that course, I think it
18 can stay pretty much as it is even if it diminishes in
19 its numbers. I don't think unions are going to go away
20 totally, I don't think arbitration is going to go away, I
21 think it's as strong as ever. Notwithstanding Dave
22 Feller's view that we might have to from time to time
23 deal with a statute, it hasn't seemed to diminish its
24 impact. I have some hope that over the next 10 to 20
25 years, people will realize the value of unions and unions

1 relations and collective bargaining will make a
2 come-back.

3 There are some younger labor leaders who I
4 found to be quite dynamic and can make it work if they
5 can get heard and I know they have organized people who
6 would have not organized on their own and by showing that
7 the effect of their organization, they have done a much
8 better job for their people than they could do by
9 themselves. I'm certain after experience in employment
10 arbitration that a unionized worker has a much better
11 shake than a nonunion worker does.

12 So the Academy in 10 to 20 years? I think it
13 will still be there. There's some good people and I
14 think in the end it's the people that make it up and,
15 frankly, the major value I've gotten personally out of
16 the Academy is the people I've met.

17 MR. WINOGRAD: The relationships.

18 MR. KAGEL: Absolutely. There's people I see
19 maybe once or twice a year but it's like going home and
20 I've really enjoyed that.

21 MR. WINOGRAD: I count myself fortunate to be
22 within that penumbra.

23 MR. KAGEL: You might have been anyway because
24 you're around.

25 MR. WINOGRAD: I'm around.

1 Let me ask you another question. You have had
2 a very full life as an arbitrator and otherwise. You had
3 public service, you worked on the Library Commission here
4 in Palo Alto ---

5 MR. KAGEL: Oh, that was terrific. That was
6 tough duty.

7 MR. WINOGRAD: Tough duty trying to preserve
8 reading and books.

9 MR. KAGEL: No, it was trying to get them to
10 build proper libraries so people could read the book.
11 Didn't work. Still hasn't.

12 MR. WINOGRAD: Going way back to college, you
13 were on the crew, championship crew team, is that right.

14 MR. KAGEL: We won two national championships
15 when I was there, although I was not on those boats. A
16 story I will preserve now for posterity is they had a
17 40-year reunion of the back-to-back national championship
18 crews about five or six years ago and they passed a mike
19 around to everybody and these are very successful people.
20 The crew was an elite group --- engineers, doctors,
21 people who have run major corporations --- and my wife
22 came away and said, that was the most boring thing I ever
23 attended with you.

24 MR. WINOGRAD: That's because she gets so
25 much satisfaction just being with you, John.

1 MR. KAGEL: Must be. Go ahead.

2 MR. WINOGRAD: I was just remarking on what a
3 full, terrific career you've had. In the field itself,
4 you and your dad became specialists on
5 mediation/arbitration, or at least you are given that
6 particular fathership, if you will.

7 MR. KAGEL: Well, what happened was I'm not
8 sure we were asked is to do it or we just did it in 1970.
9 You could write a story for the Monthly Labor Review
10 which is put out by the Department of Labor. I don't
11 know if they still do it. They don't pay you anything
12 but they send you a pencil with their name on it. So we
13 wrote one called, Two New Arbitration Techniques. One
14 was a factfinding procedure which Sam pushed and would
15 work if you could take the politics out of arbitration
16 where the parties, once they get a grievance, go out and
17 stipulate to facts, stipulate to the facts that are
18 agreed to and the facts that you don't agree to, and then
19 they have a screening of that themselves and do it very
20 quickly so maybe you have an arbitrator once a month, if
21 necessary. The phone company tried that for awhile and
22 worked very well until the people decided you didn't get
23 any political mileage out of settling grievances this
24 way, at least that's my view, either for the employer or
25 for the union. You know, you have to hold out and

1 struggle with these things rather than just resolve them.
2 So that was one of the things we wrote up. The other one
3 was Med-arb and Sam had, I don't know, a recent
4 experience where he had sort of done this without a label
5 on it. So my name was on it and I helped write it but he
6 was pretty much the principal author of it and still had
7 that license plate on his car until he passed away.

8 MR. WINOGRAD: And in fact it's been
9 incorporated in various jurisdictions as the law of that
10 jurisdiction, San Francisco being one of example.

11 MR. KAGEL: Yeah, but they always put a little
12 twist on it. In San Francisco, I just saw today a court
13 decision that they can't force a party into it without
14 going through the PERB without doing it.

15 MR. WINOGRAD: I missed that one. Came out
16 today.

17 MR. KAGEL: I just want you to know how I stay
18 up on these things.

19 MR. WINOGRAD: You are something, John.
20 How much longer are you going to do this? Your
21 dad did it we will into his '90's.

22 MR. KAGEL: I asked him how come he retired
23 and he said, "Because I'm 96." I don't know. It's a nice
24 job.

25 MR. WINOGRAD: Interesting.

1 MR. KAGEL: It's interesting, you get to meet
2 people, you're dealing with people, you are given an
3 authoritarian position. I know of no other outside of
4 maybe the pope where there's no appeal once you make a
5 decision.

6 MR. WINOGRAD: Which requires all the more
7 fairness and even-handedness and a sense of justice in
8 the way you administer it.

9 MR. KAGEL: Well, I like to think so but you
10 can't really pump that up. But if you don't have that, I
11 would assume you're not picked anymore.

12 MR. WINOGRAD: Well, John, as I understand
13 it, you used to put your cowboy boots up on the table in
14 the hearing room and you still are picked.

15 MR. KAGEL: Yeah, but I don't do that any
16 more, Barry. One of the things I've noticed --- and I'll
17 put this on the record --- is that I think the cases are
18 getting harder. There may be two reasons for that. One
19 is as you get older and more experienced, they are saving
20 those cases up for you. That could be one view. The
21 other is that they are hard and they have been hard all
22 the time but you were never smart enough to know it until
23 you got older and more mature.

24 MR. WINOGRAD: Which do you think it is.

25 MR. KAGEL: I like to think they are both.

1 MR. WINOGRAD: An element of both.

2 MR. KAGEL: Yes.

3 MR. WINOGRAD: Can you answer the question,
4 how much longer are you going to do this.

5 MR. KAGEL: Well, it's easy to say when you
6 have kids in high school, Barry, that I'll be doing it
7 for awhile.

8 MR. WINOGRAD: Because of college tuition.

9 MR. KAGEL: That's one, yes.

10 MR. WINOGRAD: You have grandchildren, too.
11 They will need to go to college.

12 MR. KAGEL: I went to some high school deal,
13 reunion kind of thing and all the people were bragging
14 how they are retired and I said, "I kind of like what I
15 do."

16 MR. WINOGRAD: You don't play golf.

17 MR. KAGEL: No, but I play racquetball every
18 week so I don't play golf and I don't think I'm going to
19 take that up.

20 MR. WINOGRAD: Racquetball is a little harder
21 on the joints and bones than golf.

22 MR. KAGEL: If you play with people old
23 enough, they have the same problems so you don't have to
24 worry about it. So you think you're getting better but
25 everybody is just getting slower.

1 MR. WINOGRAD: So you're going to keep doing
2 this.

3 MR. KAGEL: For awhile, as long as people will
4 pick me. I don't know if I am going to do it until I'm
5 96, assuming I'll live that long, but at some point what
6 I'd like to do is have periods of time where I am doing
7 other things like traveling. I like to travel a lot.

8 MR. WINOGRAD: You and Mary Pat do travel.

9 MR. KAGEL: We do travel but we'd like to do
10 it in more units of time and be able to arbitrate for
11 this period of time and then travel for that period of
12 time or do something else and then, obviously, gradually
13 diminish it as people find your mental faculties are
14 failing.

15 MR. WINOGRAD: That will take awhile for your
16 situation, John.

17 MR. KAGEL: I hope so.

18 MR. WINOGRAD: I've gotten to a point where I
19 am asked to conclude the interview in terms of the
20 instructions that I have been given -and perhaps it's
21 over our appointed time for the interview but let me ask
22 you an open-ended question: Is there anything else you'd
23 like to discuss.

24 MR. KAGEL: A couple of things on my career.
25 I did teach this course at Stanford and I enjoyed that

1 because I enjoyed the students. I did not like the
2 grading of the same paper over and over again, although I
3 must say the quality of students there, I would have
4 hired any of them if I was running a law office. We ask
5 all the students why they were taking the course. I got
6 various answers, some of them because it was a practical
7 course and they weren't getting any practical courses
8 otherwise, but one student who was the daughter of a
9 founding partner of now what's a national firm ---
10 although I didn't know that at the time, they weren't a
11 national time back in the '80's --- she said, "I took a
12 look at this course and I looked at arbitration and I
13 have a short attention span so I thought this might suit
14 me." Maybe that sums up my career.

15 MR. WINOGRAD: Well, thank you very much for
16 sharing your observations, your insights and this
17 history from a lover of history and again, on behalf of
18 members of the Academy, I thank you for your contribution
19 to our historical record.

20 MR. KAGEL: Barry, thank you for your efforts
21 in putting this together.

22 Mary Pat, thank you.

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