

INTERVIEW WITH DENNIS NOLAN, INTERVIEWEE  
BY BARRY WINOGRAD, INTERVIEWER  
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**BARRY WINOGRAD:** IT'S MAY 19, 2009. THIS IS BARRY WINOGRAD AND I'M INTERVIEWING DENNIS NOLAN, AS PART OF THE HISTORY PROJECT FOR THE NATIONAL ACADEMY OF ARBITRATORS. DENNIS, STATE YOUR NAME AND GIVE US YOUR ADDRESS.

**DENNIS NOLAN:** And state my position with the company, something like that?

**BARRY WINOGRAD:** YES.

**DENNIS NOLAN:** Dennis Nolan. I'm now living on the ocean on St. Helena Island, or actually a small island, Harbor Island next to St. Helena in South Carolina.

**BARRY WINOGRAD:** FIRST QUESTION IS HOW DO YOU GET TO ARBITRATIONS FROM ST. HELENA ISLAND?

**DENNIS NOLAN:** I have to drive an hour and a quarter to the Savannah Airport and then fly. Most of my arbitrations involve overnight trips, anyway, so I can fly out of any airport. This one's just a little farther than where I used to fly out of.

**BARRY WINOGRAD:** SAVANNAH IS NOT A HUGE CITY. YOU HAVE TO CONNECT SOMEPLACE.

**DENNIS NOLAN:** Almost always in either Charlotte or Atlanta, depending on which airline I'm taking.

**BARRY WINOGRAD:** THIS IS THE ADVANTAGE OF BEING RETIRED.

**DENNIS NOLAN:** Well, one advantage: you can live where you want; the disadvantage is I spend a lot of time traveling. But, the advantage to the disadvantage is that I charge travel time.

**BARRY WINOGRAD:** ALL RIGHT. LET ME DESCRIBE WHAT I WAS THINKING WE COULD DO IN THIS INTERVIEW. FIRST, I WANT TO THANK YOU FOR LETTING ME HAVE THE OPPORTUNITY OF WORKING WITH YOU. I THINK THIS IS A GREAT PROJECT. I'M SURE THAT YOU WILL HAVE MANY GOOD INSIGHTS DRAWN FROM YOUR EXPERIENCE AND YOUR ACUMEN IN THE FIELD TO SHARE WITH OTHERS. I'D LIKE TO COVER SOME THINGS ABOUT YOUR FAMILY, SOME THINGS ABOUT YOUR ACADEMIC EXPERIENCE. YOU WERE A PROFESSOR FOR OVER 30 YEARS. RIGHT?

**DENNIS NOLAN:** Indeed.

**BARRY WINOGRAD:** AND, SOME THINGS ABOUT YOUR EXPERIENCE WITHIN THE ACADEMY ITSELF. THEN, TIME WILLING, WE'LL HAVE SOME INSIGHTS FROM YOU ABOUT THE STATE OF AFFAIRS IN THE WORLD.

**DENNIS NOLAN:** Oh my.

**BARRY WINOGRAD:** BY THAT TIME, WE MAY HAVE FINISHED MOST OF THE BOTTLE OF WINE.

**DENNIS NOLAN:** Well, it'll probably be necessary. Fire away.

**BARRY WINOGRAD:** ALL RIGHT. DID YOU GROW UP IN MILWAUKEE?

**DENNIS NOLAN:** I did.

**BARRY WINOGRAD:** FOR YOUR WHOLE CHILDHOOD.

**DENNIS NOLAN:** Whole childhood, till I went away to college. Then I came back after law school and practiced for a while.

**BARRY WINOGRAD:** ALL RIGHT. YOU WENT AWAY TO COLLEGE AT GEORGETOWN?

**DENNIS NOLAN:** Right.

**BARRY WINOGRAD:** THEN LAW SCHOOL AT HARVARD?

**DENNIS NOLAN:** Right.

**BARRY WINOGRAD:** A NEW STRUGGLING INSTITUTION SEEKING TO GAIN ITS FOOTHOLD.

**DENNIS NOLAN:** They no doubt accepted me to boost their reputation.

**BARRY WINOGRAD:** NO DOUBT. ALL RIGHT. GROWING UP IN MILWAUKEE, IN THE LATE FORTIES AND FIFTIES, WHAT DID YOUR PARENTS DO?

**DENNIS NOLAN:** My father worked for most of his adult life for a railroad. In fact, my whole family has railroading on both sides three generations back. A lot of my uncles and cousins worked there.

**BARRY WINOGRAD:** DID YOU EVER WORK ON THE RAILROAD?

**DENNIS NOLAN:** I did, for summers during college. That was how I helped pay the bills.

**BARRY WINOGRAD:** WHAT DID YOU DO?

**DENNIS NOLAN:** I was working at what was called the signal shop. We repaired railroad signals. I wasn't very good at it. I don't think they would have kept me on permanently. But in those days, hiring children of workers for summer jobs was the norm, one of the perks.

**BARRY WINOGRAD:** ARE YOU A HANDYMAN?

**DENNIS NOLAN:** Not in the least, that was one of the reasons I wasn't a very good signalman.

**BARRY WINOGRAD:** THERE WERE NO ACCIDENTS CAUSED BY YOUR WORK?

**DENNIS NOLAN:** Only a little property damage. At one point we used forklifts to move the signal boxes around. The railroad had recently paved the roads around the signal shop and I was moving a signal box on a forklift across this newly paved area. It sank into the tarmac.

**BARRY WINOGRAD:** WAS IT A HOT DAY?

**DENNIS NOLAN:** It was a hot day and it was still relatively new. The bad part was that I didn't want to admit my mistake. I went and got a second forklift to lift the first one out and got the second one stuck as well. Just at that moment a delegation of senior executives came to see how beautiful the new paving was and I was discovered.

**BARRY WINOGRAD:** WHAT WAS THE DISCIPLINE THAT WAS IMPOSED?

**DENNIS NOLAN:** I got a verbal tongue-lashing. But since I was represented by the union at that time, I didn't get fired.

**BARRY WINOGRAD:** WAS YOUR DAD ACTIVE IN THE UNION?

**DENNIS NOLAN:** When he began work, he was in the bargaining unit, but never particularly active. He got moved up mid-career to an entry-level white-collar job, a technical job, and he wasn't in the bargaining unit anymore.

**BARRY WINOGRAD:** WERE ANY OF YOUR EXTENDED FAMILY ACTIVE IN THE UNION?

**DENNIS NOLAN:** Not active in the sense of taking leadership positions. But a number of them were attentive members of what was going on. In those days, many railroad unions were not exactly democratic operations, so members weren't very involved.

**BARRY WINOGRAD:** THAT WAS THE SIGNALMAN'S UNION? IS THAT NOW PART OF UTU?

**DENNIS NOLAN:** No. As a matter of fact, it's still an independent union. I met at one of our Academy meetings the President and some other officials of the union, who were very surprised to find an arbitrator who had been a signalman.

**BARRY WINOGRAD:** DID THEY SEEK TO COLLECT BACK DUES OR ANYTHING?

**DENNIS NOLAN:** No. But, they suggested I might want to get into railroad arbitration. I declined.

**BARRY WINOGRAD:** ALL RIGHT. DID YOUR MOM WORK OUTSIDE THE HOME?

**DENNIS NOLAN:** She had a few jobs, sort of Tupperware sales and things like that. But she died when I was very young. I was just seven.

**BARRY WINOGRAD:** DO YOU HAVE SIBLINGS?

**DENNIS NOLAN:** One brother, who was career Air Force, and retired in Colorado.

**BARRY WINOGRAD:** OLDER OR YOUNGER?

**DENNIS NOLAN:** Older by nine years.

**BARRY WINOGRAD:** A NINE-YEAR SPREAD, YOU ALMOST GREW UP AS AN ONLY CHILD?

**DENNIS NOLAN:** Very much like it because at age eighteen, he went off to the Air Force. I was nine at that point.

**BARRY WINOGRAD:** THEN THE REST OF YOUR TEENAGE YEARS WERE IN MILWAUKEE? WERE YOU A SPORTS FAN, A BASEBALL FAN?

**DENNIS NOLAN:** A little bit of baseball when the Braves were there. When they left, I lost my interest in baseball without a trace.

**BARRY WINOGRAD:** YOU GREW UP IN YOUR TEENAGE AND PRE-TEEN YEARS WITH ONE OF THE GREAT TEAMS OF BASEBALL.

**DENNIS NOLAN:** Indeed. That was a great team for a while. Hank Aaron and,

**BARRY WINOGRAD:** (INTERRUPTING) COULD YOU NAME THE STARTING LINE UP FOR THE 1957 MILWAUKEE BRAVES?

**DENNIS NOLAN:** Well, no. But, I could remember I think a few of these players. Warren Spahn was a big pitcher at the time. Hank Aaron was there for a while. Andy Pafko was a great outfielder. You don't hear much about him. But, he had these famous diving catches. Eddie Matthews was on third base and Joe Alcock on first. And my hero at the time was a catcher by the name of Del Crandall.

**BARRY WINOGRAD:** WHY WAS HE YOUR HERO?

**DENNIS NOLAN:** I have no earthly idea. His understudy in his later years, I believe was Joe Torre, who went on to bigger things.

**BARRY WINOGRAD:** HANK AARON WAS CERTAINLY SOMEONE WORTHY OF ATTENTION AND DEVOTION. ALL RIGHT. SO OFF YOU WENT TO COLLEGE. GEORGETOWN. WHAT ATTRACTED YOU TO THAT?

**DENNIS NOLAN:** I'd have to backtrack a little bit. I went to a fairly normal, neighborhood Catholic grade school. At one point in my eighth grade, one of my teachers suggested that I join the group of people who were going to take an entrance exam for a Jesuit high school, Marquette High School. I really had no plans at all. I didn't come from a family that particularly valued education. I took the exam, got accepted and went to a Jesuit high school. It turned out to be just the right environment for me at the time.

**BARRY WINOGRAD:** ARE YOU THE FIRST PERSON IN YOUR IMMEDIATE FAMILY WHO WENT TO COLLEGE.

**DENNIS NOLAN:** I would be the third person who went. My dad started college during the Depression but had to go back to work and only completed a year. My brother started college, but then went off to the Air Force and, by some twist of fate, he and I graduated in the same week from college, he from Maryland and I from Georgetown.

**BARRY WINOGRAD:** WHAT ATTRACTED YOU TO GEORGETOWN?

**DENNIS NOLAN:** The Jesuit connection was a big part of it. I was interested in going away. Milwaukee was a nice place, but I really felt the need to go elsewhere. Georgetown ended up providing a very generous scholarship.

**BARRY WINOGRAD:** AND WERE YOU ATTRACTED TO POLITICS THEN?

**DENNIS NOLAN:** I was very interested in politics then, much more so than now. Being in Washington was certainly a big attraction.

**BARRY WINOGRAD:** WERE YOU, ALSO, A BIG FAN OF HISTORY AT THE TIME?

**DENNIS NOLAN:** Not as much as I became. When I was in college, I was more interested in political science, political theory in particular. You have to know history and learn history along with that. I got more involved in history after law school when I started taking some courses and ended up getting a Masters while I was practicing.

**BARRY WINOGRAD:** I WANT TO COME BACK TO LAW SCHOOL IN A MINUTE. I WANT TO KNOW WHETHER YOU HAVE SOME REGRET THAT YOU DID NOT BECOME A HISTORY PROFESSOR, BECAUSE YOU WERE DESTINED TO BE ONE WITH YOUR GRADUATE SCHOOL STUDIES?

**DENNIS NOLAN:** Actually, the near miss was becoming a political science professor. I was very interested in political theory. I had a mentor who was a very helpful advisor. Ever since high school, I thought about being a lawyer. But when I got captivated by political science, I thought of going to graduate school for political science. I went to my mentor, who was very frank.

**BARRY WINOGRAD:** WHO WAS THAT?

**DENNIS NOLAN:** His name is George Carey. He's an American political theorist, just retiring this year, I believe. A very, very frank guy, and he said, "Given the choice between law school and graduate school in political science, go to law school because there aren't any jobs in political science." So I went to law school and don't regret it, but you can see the tug toward academic life.

**BARRY WINOGRAD:** (INTERRUPTING) YOU DID GO TO GRADUATE SCHOOL IN HISTORY.

**DENNIS NOLAN:** In history.

**BARRY WINOGRAD:** (CONTINUING) -- AT WISCONSIN AFTER LAW SCHOOL.

**DENNIS NOLAN:** That is true, and that was an accident. I had a two-year military obligation. We'll get to that in a bit. I knew I was going to have some G.I. Bill benefits. It didn't take long, not more than six months in practice, to realize that my mind would shrivel up if all I did was practice law. I decided to take some courses just for fun, but learned I couldn't get G.I. benefits unless I signed up for a degree program. At the time in Milwaukee, there were two universities, Marquette and the University of Wisconsin at Milwaukee, and neither of them offered a graduate degree in political science that would fit my schedule. The nearest I could come up with was history.

**BARRY WINOGRAD:** DID YOU DO THAT AT WISCONSIN-MILWAUKEE OR AT MARQUETTE.

**DENNIS NOLAN:** At UWM. I took a few courses there, and then I had to go off on my military experience. I might want to say a word or two about that.

**BARRY WINOGRAD:** I'D LIKE TO TALK TO THAT.

**DENNIS NOLAN:** I ended up at D.C.

**BARRY WINOGRAD:** BUT, LET ME DETOUR BACK.

**DENNIS NOLAN:** Sure.

**BARRY WINOGRAD:** YOU WENT OFF TO HARVARD FROM GEORGETOWN.

**DENNIS NOLAN:** Yes.

**BARRY WINOGRAD:** BASED ON PROFESSOR CAREY'S SUGGESTION THAT YOU'D HAVE A BETTER FUTURE, AT LEAST IN TERMS OF JOBS.

**DENNIS NOLAN:** Right.

**BARRY WINOGRAD:** (CONTINUING) -- IN THE LAW. YOU WERE AT HARVARD BETWEEN 1967 AND 1970. DO I HAVE THAT RIGHT?

**DENNIS NOLAN:** That's right. Exciting years.

**BARRY WINOGRAD:** AND VERY TUMULTUOUS YEARS. IN FACT THERE WERE DISTURBANCES ON THE CAMPUS, THERE WAS A VERY STRONG ANTI-WAR MOVEMENT THERE, BUT THERE WAS ALSO DISCORD. WHAT REFLECTIONS DO YOU HAVE ON THAT PERIOD?

**DENNIS NOLAN:** It was, in retrospect, a very exciting and intellectually growing time, but it disrupted the educational experience quite significantly. For example, in the spring of my freshman year, Martin Luther King was assassinated and the campus was in an uproar. The second year, protesting students took over University Hall and the University shut down after police removed them. In the Spring of my third year, there were riots in Harvard Square and my studying for exams was interrupted by tear gas coming through the windows. A small group of protestors disrupted our commencement ceremony in 1970. There were at various times student strikes, takeovers of buildings, other sorts of disruptions. As I say, exciting. But it was not the level course of education that I had anticipated.

**BARRY WINOGRAD:** AND YOU WEREN'T A CARD-CARRYING MEMBER OF STUDENTS FOR A DEMOCRATIC SOCIETY?

**DENNIS NOLAN:** No. That was not me, Barry. You know me well enough. As a matter of fact, I took great pride in crossing a picket line to go to class.

**BARRY WINOGRAD:** DID YOU?

**DENNIS NOLAN:** I didn't think that picket lines were appropriate for interrupting education. I had no qualms about that at all. Had it been a labor dispute, my grandparents probably would have disowned me for crossing a picket line. But, education was important.

**BARRY WINOGRAD:** DID YOU SUFFER ANY RECRIMINATIONS BECAUSE OF THAT?

**DENNIS NOLAN:** Some. The left is not generous with people who don't follow the party line. And anyone who dared to continue an education process while there were important things like pickets lines going up outside was considered off the charts. There were various nasty terms applied.

**BARRY WINOGRAD:** YOU COMPLETED YOUR EDUCATION THERE?

**DENNIS NOLAN:** I did, and later graduated.

**BARRY WINOGRAD:** YOU REFER TO HAVING A TWO-YEAR MILITARY OBLIGATION. I TAKE IT YOU WERE NOT DRAFTED, EITHER IN A DRAFT OR THE LOTTERY. WAS THIS AN ROTC OBLIGATION?

**DENNIS NOLAN:** It was an ROTC. When I was in my --

**BARRY WINOGRAD:** AND FOR THOSE YOUNGER FOLKS READING THIS, THAT'S RESERVE OFFICER TRAINING COURSE.

**DENNIS NOLAN:** Yes. Most universities used to offer an opportunity for college graduates to become officers. The theory was officer training programs would benefit the military having a leavening of college graduates and benefit the universities by adding military people to the academic mix.

**BARRY WINOGRAD:** YOU WERE IN ROTC AT GEORGETOWN?

**DENNIS NOLAN:** As a matter of fact, I was not. Here's how that happened. I had no plans to go into the military, and at that time there were deferments for graduate students. I believe it was in the winter of my first year in law school, the government abolished graduate school draft deferments. People who were in graduate school had to look for something to do. Some went off and joined the Peace Corps. Some went into the National Guard --

**BARRY WINOGRAD:** (INTERRUPTING) SOME GOT MARRIED.

**DENNIS NOLAN:** (Continuing) Some got married. There were a number of marriages. You might remember that Bill Clinton found his way to the National Guard as a way of avoiding the draft. I decided to look into ROTC. There was an ROTC program at Harvard back then. I went and applied. I don't know how they made the selection. I think it was a lottery because they were swamped with graduate students, business school students, divinity school students, law students.

**BARRY WINOGRAD:** (INTERRUPTING) WHAT A TREMENDOUS OFFICER CORPS.

**DENNIS NOLAN:** It was a great officer corps. I got selected, and about two days later, I got a call from the officer who was in charge of the ROTC unit. He said, "We made a mistake." One of the rules for this program that you've signed up for, which was a condensed version of ROTC, was that you could not have had the opportunity to take ROTC undergraduate. If you had that opportunity and passed it up, you're not eligible on the campus that offered the graduate one. I said, "Oh, okay." The next day he called and said, "I looked into it and it would be more trouble to fill out the paperwork to get you out than to let you go through. So I'm going to let you go through."

**BARRY WINOGRAD:** THERE'S AN ARMY EXPLANATION. DID YOU DO BASIC TRAINING?

**DENNIS NOLAN:** The program involved two summer sessions, about six weeks each. I had to go through both of those.

**BARRY WINOGRAD:** IS THAT BASIC TRAINING? SUMMER SESSIONS?

**DENNIS NOLAN:** It was something like it. It was not the basic training that the complete draftees or enlistee would get. Particularly in the program that I was in since it was a compressed one, they ended up, as I said, with graduate students, business school students, law students.

**BARRY WINOGRAD:** DID YOU HAVE TO CARRY A PACK AND TRAMP OVER A SWAMP?

**DENNIS NOLAN:** Yes. I had to do that sort of thing. I still have hard feelings toward Columbus, Georgia, where I did my first basic training session, because it was an awful experience.

**BARRY WINOGRAD:** YOU DON'T LIVE TOO FAR FROM THERE NOW.

**DENNIS NOLAN:** True, but, I'd never move there.

**BARRY WINOGRAD:** AFTER THAT, HOW DID YOU END UP WORKING FOR THE UNDER SECRETARY OF THE ARMY?

**DENNIS NOLAN:** It's another case of who you know. When I was working in law school, I knew they were going to call me up after my first year of practice when I was working in Milwaukee. I decided that I would try to find a decent job in the Army. I was in the Armor Branch and the life expectancy of Armor Lieutenants in Vietnam was not quite as long as I would have liked. So, I thought maybe there's a better way to use my talents. I got on the phone and called the Personnel Branch of the Armor Branch in Washington, D.C., and talked to a very nice officer there. He looked around. He said, "Well, you're a labor lawyer and all this sort of thing. Here's what we can do. We've got an opening for the Assistant Personnel Management Officer in Fort Knox, which is the Armor School." And I said, "Oh, well, that sounds a heck of a lot better than driving a tank in Vietnam."

After I got off the phone with him, I said, "Well, maybe I can do a little better." I had a friend who was a year ahead of me in law school, Irv Yoskowitz, who had gone off to work at the Pentagon as one of McNamara's Whiz Kids. (Look it up in Wikipedia.) I called him and asked, "Irv, how do you get one of those cushy Pentagon jobs?" He said, "Well, funny you should mention that because I just heard about an opening. The Department of the Army is worried that the pointy-headed intellectuals in the State Department are about to sell off the Canal to the Panamanians. They want a lawyer in the Department of Defense to supervise the negotiations from the Army's perspective, the D.O.D. perspective." He said, "It's only a

temporary job. It's supposed to be done in six months and then we'll wrap up that treaty and you'd have to go off and do whatever you."

**BARRY WINOGRAD:** (INTERRUPTING) IT TOOK ANOTHER DECADE FOR CARTER TO NEGOTIATE THAT --

**DENNIS NOLAN:** A little less. I went into the Army in 1971 and left in 1973. The Carter Administration finally negotiated a treaty (two treaties, actually) in 1977 and the Senate ratified them in 1978.

**BARRY WINOGRAD:** RIGHT. DID YOU WORK ON CANAL ISSUES?

**DENNIS NOLAN:** I did. Not only work, but I got what I think was the very best job for a Second Lieutenant in the entire United States Army. I was in the Deputy Under Secretary of the Army's office in the Pentagon. It was DUSA-IA, the Deputy Under Secretary for International Affairs. I shared with my boss, a Lieutenant Colonel, an outside office overlooking Arlington Cemetery, with a private bathroom and our own secretary. Within a matter of a couple weeks from the time I reached the Pentagon, I was sent for my first inspection tour of Panama. The Zonians, as the Americans in the Panama Canal Zone were called, knew that the people involved in the negotiations were very important to their future. One of my colleagues and I arrived for our tour and found ourselves treated like visiting dignitaries. We were presented with an engraved invitation from the Governor of the Canal Zone to a cocktail party in our honor that night. We had our own car and driver. Everybody we met opened doors and told us all of the things they wanted us to hear. I had a wonderful time. I spent two years working on treaty issues, environmental matters, a little bit of employment law, some other odds and ends, sitting behind a desk in the Pentagon. I got three inspection trips to Panama. Then, by coincidence, I had two arbitrations there after I got out of the Army.

**BARRY WINOGRAD:** WITH THE PILOT UNION THERE?

**DENNIS NOLAN:** One of them was the pilot union and the other was with the technical branch.

**BARRY WINOGRAD:** YOU ALSO HAD BEEN WORKING AT FOLEY & LARDNER AFTER LAW SCHOOL, RIGHT?

**DENNIS NOLAN:** Right.

**BARRY WINOGRAD:** WHILE YOU WERE ALSO DOING THE GRADUATE WORK?

**DENNIS NOLAN:** Right.

**BARRY WINOGRAD:** YOU WERE A VERY BUSY FELLOW?

**DENNIS NOLAN:** I probably wasn't as busy in practice as I should have been because I was taking graduate courses.

**BARRY WINOGRAD:** WERE YOU DOING LABOR LAW WORK?

**DENNIS NOLAN:** I was doing labor law work. That, too, was an accident as is all of life. I applied for a summer job at Foley during my second year of law school. My only career plan at that time was to go back to Milwaukee and practice law.

**BARRY WINOGRAD:** YOU WANTED TO GET AWAY FROM MILWAUKEE.

**DENNIS NOLAN:** For education. But, it was home. Relatives were there. It's always a nice city.

**BARRY WINOGRAD:** YOU AND FRAN WERE NOT YET TOGETHER.

**DENNIS NOLAN:** No, we were not. That came about while we were in D.C. She was my war bride, you might say.

Let me also explain just one thing, because you asked about labor law, I didn't want to miss that point. Foley offered me a summer clerkship after my second year. I didn't have anything particular in mind to do. As a matter of fact, if you had asked at that point, I'd say I probably wanted to do constitutional law. I naively assumed there would be constitutional law work to do in Milwaukee.

**BARRY WINOGRAD:** IT'S A BOOMING AREA NOW.

**DENNIS NOLAN:** Now, it is, but not then. One of my friends in my dormitory that year was a fellow by the name of Bill Kilberg. He was politically connected and very interested in labor law. He had gone to the I.L.R. School at Cornell and has had a great career as a labor lawyer in D.C.. He said, "Why don't you ask the firm if you can do labor law." So I wrote off and said, "Can I be attached to the labor team?" One thing led to another, and I was. Then they hired me afterwards and I practiced labor law. Since that was the only thing I knew when I went into teaching, I taught labor and then ended up doing everything else.

**BARRY WINOGRAD:** HOW DID YOU DECIDE THAT YOU WERE GOING TO GIVE UP THE PRACTICE OF LAW IN A SUBSTANTIAL FIRM? I MEAN, EVEN THEN IT PROBABLY WAS ONE OF THE LARGER FIRMS IN --

**DENNIS NOLAN:** It was the largest in Wisconsin, by far.

**BARRY WINOGRAD:** HAD YOU ALWAYS WANTED TO GO INTO TEACHING?

**DENNIS NOLAN:** No. There had been a couple of hints. My flirtation with graduate school. When I was in grade school, one of my nicknames, one of the nicer ones, was "professor." There were a couple of little hints, but never any serious thought of academics. Before I left the firm, I was realizing more and more that this really wasn't the life I wanted to

spend. One of my predecessors in the firm, with whom I had crossed paths, was a fellow by the name of Mike Zimmer. Mike Zimmer left the firm about the time I went into the Army for my two-year stint, and went off to teach at the University of South Carolina. As I do when I have to make decisions, I called somebody I knew. He was the only one in the business. I said, "Mike, how do you get into this cushy teaching business?" He said, "Funny you should mention that. I'm going on leave next year. Would you like to come down to South Carolina?" One thing led to another and there I was. Mike has gone on to be one of our best employment discrimination academics.

**BARRY WINOGRAD:** NOW, UNLIKE MOST FOLKS IN ACADEMIC LIFE, WHERE THERE'S A LOT OF MOVEMENT UP THE LADDER AND THEN SIDEWAYS IN ACADEMIC LIFE, YOU STAYED AT ONE INSTITUTION YOUR ENTIRE CAREER EXCEPT FOR VARIOUS SABBATICAL EXPERIENCES IN THE U.S. AND OVERSEAS.

**DENNIS NOLAN:** Right. At the time, I think you spotted it right, the normal attitude, I suppose, and the attitude I had was, this is where I'm starting and then I will climb the academic ladder and go somewhere else. I've always kept my eyes and ears open. That was one reason for several visits that I've done. I had some very attractive job offers, but they inevitably came at the wrong time for my purposes or there were some other problems with it. As a result, I kept going back like a bad penny to South Carolina. For instance, I'll mention two of them. I was offered a very nice position at the University of Illinois that is now held by Matt Finkin, and one at Chicago-Kent that's now held by Marty Malin.

**BARRY WINOGRAD:** EACH OF THEM IS FOREVER IN THEIR DEBT TO YOU FOR NOT TAKING IT.

**DENNIS NOLAN:** You'll have to ask them about that. In each case the school ended up with a better person than I would have been.

**BARRY WINOGRAD:** OKAY. YOU SAID YOU MET FRAN WHEN SERVING IN THE SERVICE IN WASHINGTON.

**DENNIS NOLAN:** Right, at a party.

**BARRY WINOGRAD:** WHAT WAS SHE DOING THERE?

**DENNIS NOLAN:** She had two jobs. First, she was working at a rental truck place. Then she quickly moved into construction with Bechtel. She was managing a field office, while Bechtel was building the D.C. Metro. We met at a party and ended up hanging out; stayed together more or less ever since.

**BARRY WINOGRAD:** TELL EVERYBODY A BIT ABOUT YOUR FAMILY, YOUR KIDS, YOUR GRANDCHILDREN. BECAUSE YOU'RE NOT JUST ALL WORK.

**DENNIS NOLAN:** No, I try not to be, not anymore. We have one daughter, Michelle, who for reasons I've never quite understood, decided to move back to the Midwest after we raised her in the South. She now lives here in Chicago. She's married. She has two kids, perfect grandkids, eleven and eight.

**BARRY WINOGRAD:** IS SHE WORKING HERE IN CHICAGO?

**DENNIS NOLAN:** She was working for a small non-profit organization and then took off to raise kids at home. That's what she's doing now.

**BARRY WINOGRAD:** HERE IN CHICAGO YOU GET TO SEE THEM?

**DENNIS NOLAN:** That's one reason for coming to Chicago for meetings. Yes.

**BARRY WINOGRAD:** DO THEY EVER GET TO VISIT YOU DOWN ON THE SHORE?

**DENNIS NOLAN:** As a matter of fact, we have a rental unit, a townhouse on our island, which we loan to Michelle and her family for the month of August.

**BARRY WINOGRAD:** DO YOU OWN THE ISLAND?

**DENNIS NOLAN:** No, just two places on it. We have our house and we have the one that was once our vacation home. I had assumed when we bought our retirement home, that we'd sell the vacation home to pay for it. My wife had other ideas. She said, "You don't want the kids staying with us for a month, do you? Why don't we just keep our old place, the vacation place, put it on the rental market and then have the kids come and visit us."

**BARRY WINOGRAD:** DO YOU USE THAT AS AN OFFICE, TOO?

**DENNIS NOLAN:** No. It's a rental property for eleven months a year and then reserved for Michelle and the kids for one month. I have an office in my home. I watch the dolphins and shrimp boats go by when I should be writing awards.

**BARRY WINOGRAD:** DID YOU HAVE ANY DIFFICULTY RELOCATING FROM THE UNIVERSITY CAMPUS ENVIRONMENT TO THIS VACATION ENVIRONMENT?

**DENNIS NOLAN:** No, not really. We had the vacation home on the island for a long time so we gradually spent more time there. I also signed up for a retirement program in 2003 that gave me an incentive to sign on the dotted line committing to retire five years hence. I had five years to get psychologically ready for the move. Given the way higher education was going and my school, in particular, I was more than ready to move on by the end of that five years.

**BARRY WINOGRAD:** WHAT DO YOU MEAN BY THAT, THE WAY HIGHER EDUCATION AND YOUR SCHOOL, IN PARTICULAR, WAS GOING?

**DENNIS NOLAN:** Legal education, in particular, but I think other branches as well, has become much more numbers driven than it used to be, much more competitive in some ways, and not as close to the ideal of liberal arts education that I once had in my mind.

**BARRY WINOGRAD:** YOU MEAN ON THE ACADEMIC QUALIFICATIONS LEVEL THAT LAW SCHOOLS ARE LOOKING FOR PEOPLE WHO NOT ONLY HAVE A LAW DEGREE, BUT PHDS IN ECONOMICS OR --

**DENNIS NOLAN:** There's some of that. But what I had in mind was the tremendous pressure now to publish in terms of quantity. When I started, the publication demands for tenure were relatively modest, and the assumption was you'd take your time and do really good, thorough stuff. I did what I was supposed to, and I got tenured and promoted and got a chair and all that. Now, there's tremendous pressure for people to hit the ground and start writing before they know what they're writing about.

**BARRY WINOGRAD:** YOU NOT ONLY FULFILLED YOUR RESEARCH OBLIGATIONS, BUT YOU WENT FAR BEYOND AFTER GETTING TENURE. YOU'RE A VERY PROLIFIC AUTHOR. YOU'VE WRITTEN EIGHT BOOKS AND DOZENS OF ARTICLES, I THINK.

**DENNIS NOLAN:** I credit a lot of that to the fact that I had wonderful co-authors. One of my classmates in law school was Roger Abrams. He ended up in labor law and went into teaching around the time I did. We connected in terms of scholarship because we had both talked to West about putting out a nutshell in labor arbitration. When I got that assignment from West, he said, "Hey, would you like to start doing some work together?" I think we ended up publishing thirteen articles. With a good co-author, it's a lot easier to write articles than it is by yourself.

**BARRY WINOGRAD:** SOME OF THEM ARE LANDMARK ARTICLES. I KNOW THE ARTICLE ON ARBITRATOR IMMUNITY, AMONG OTHERS, IS STILL A TERRIFIC RESOURCE. IT'S 20, 25 YEARS LATER NOW?

**DENNIS NOLAN:** That's a long time. That was a case of making lemonade out of lemons. A law firm on behalf of a management client, who had lost in arbitration, subpoenaed me to testify. The subpoena was a rather nasty piece of work because the counsel for the union had been a student of mine. I had introduced her at the beginning of the arbitration, but didn't do it on the record. Nobody objected. When the company lost the arbitration, they decided to challenge the arbitration award, and the hook that they hung it on was "undue influence." The implication was that there was a relationship between this former student and me. I was furious. I said, "I am not going to stand for this." First, I did a little background reading on arbitrator immunity. Then, I hired a different former student of mine to represent me, and refused to testify when subpoenaed. By prior agreement, we marched down to the federal courthouse to test arbitral immunity. I won the first case on arbitral immunity in the Fourth Circuit. I said,

“Well, now that I’ve done all of this stuff, I’ve written a brief for my former student on my own behalf, I might as well turn it into a law review article.”

**BARRY WINOGRAD:** AND THERE IT IS. OF ALL OF THE BOOKS YOU’VE WRITTEN, WHICH IS THE BOOK THAT YOU TAKE THE GREATEST PRIDE IN?

**DENNIS NOLAN:** Well, I guess with this occasion, I should say, The History of the Academy.

**BARRY WINOGRAD:** AND, IF IT WASN’T THIS OCCASION?

**DENNIS NOLAN:** If it wasn’t this occasion, I might say the ADR in the Workplace book, that Laura Cooper and I did the first edition of. Laura, Rick Bales and I did the second edition together.

**BARRY WINOGRAD:** THAT IS SATISFYING, THE ADR BOOK, BECAUSE IT’S AN AREA THAT WAS RELATIVELY UNDEVELOPED AT THE TIME.

**DENNIS NOLAN:** It was. There was one other casebook that had gotten seriously out of date and we knew there was a need for another one, or at least a desire for one. We went to work. It was just a lot of fun and, if I do say so myself, a pretty good casebook.

**BARRY WINOGRAD:** OF THE ARTICLES, ARE THERE A COUPLE THAT REALLY STAND OUT IN YOUR MIND SO THAT THE READERS OF THIS INTERVIEW WILL GET THEMSELVES INTO THE PROCEEDINGS OR SOME OTHER LAW?

**DENNIS NOLAN:** Because most of the people who will read this interview are arbitrators, I’ll say that the two that I did for the University of Florida about the history of labor arbitration would probably be the best starting place.<sup>1</sup>

**BARRY WINOGRAD:** WRITING A LOT OF ARTICLES AND BOOKS IS TOUGH DUTY. COMPARING IT TO AT LEAST MOST ARBITRATION DECISIONS, THE DECISIONS ARE A PIECE OF CAKE IN TERMS OF THE DISCIPLINE, RESEARCH AND CARE WITH WORDS THAT IS REQUIRED. DO YOU LIKE WRITING DECISIONS OR IS IT A COME DOWN FOR YOU?

**DENNIS NOLAN:** No. I like decisions. They can get a bit tiresome if it’s yet one more routine absenteeism case. In cases presenting novel issues, I’ve often approached the subject like an academic investigation: I put in a lot more time to learn the field and then try to boil down and summarize what’s been done, so that I can make a statement in the award that will have some impact. I wrote one, for instance, about interest on back pay at a time when almost

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<sup>1</sup>*American Labor Arbitration: The Early Years*, 35 UNIVERSITY OF FLORIDA LAW REVIEW 373 (1983), and *American Labor Arbitration: The Maturing Years*, 35 UNIVERSITY OF FLORIDA LAW REVIEW 557 (1983), both with Roger Abrams.

nobody awarded interest. That's gotten some attention. Now I dare say it's at least a debatable question.

**BARRY WINOGRAD:** I REMEMBER SEEING A DECISION OF YOURS WHEN I WAS STARTING OUT. I FORGET THE EMPLOYER. IT MIGHT HAVE BEEN A PHONE COMPANY CASE. YOU ORDERED AN INDIVIDUAL WHO HAD MENTAL ILLNESS ISSUES, OR MAYBE IT WAS DRUG ISSUES, INTO A REHAB PROGRAM REQUIRING A CERTIFICATION. DO YOU REMEMBER THE CASE?

**DENNIS NOLAN:** I think I remember the one. It probably was the paper company case. Was this the employee who had a gun?

**BARRY WINOGRAD:** MIGHT HAVE BEEN. KIND OF A DISTURBED EMPLOYEE WHO NEEDED HELP.

**DENNIS NOLAN:** A very disturbed employee. That got me fired temporarily from a nice relationship with the company. The employee was, indeed, disturbed. He had clear mental health issues. The company put him on leave for those reasons. He and his wife drove back to the plant so his wife could go in and collect his lunch box and belongings. While he was in the car waiting for her, he pulled out a pistol, which fortunately was not loaded, pointed it at the window where the Human Resource office was, and pulled the trigger. Nothing happened, thank goodness. Needless to say, the company, when they learned about this, fired him. After hearing the case, it seemed terribly obvious to me that this was a health issue more than a disciplinary issue. I said the company did not have to take him back if he were not able to work safely, but that it should have dealt with this as a fitness for duty case rather than a discipline case. I directed them to determine whether he was medically able to work and could do so safely. That was the end of that. I had no idea what happened to him.

**BARRY WINOGRAD:** YOU GOT FIRED, THOUGH.

**DENNIS NOLAN:** The company did not need my services after that. As happens, what goes around, comes around, and a few years later, I started getting some more cases with that employer

**BARRY WINOGRAD:** IN LOOKING BACK, DO YOU HAVE ANY REGRET THAT ONCE YOU STARTED ARBITRATING, YOU JUST DIDN'T PICK UP THAT BALL FULL TIME AND RUN WITH IT?

**DENNIS NOLAN:** No. There are so many other things that I enjoy in life, that I would have forfeited. You're the perfect one to ask that question, because I know that you have stayed active in academic life yourself, teaching at Michigan and doing that sort of thing. There's a certain thrill that comes from working with students, being in the classroom. There is a certain satisfaction from writing, which I wouldn't have the time to do if I were arbitrating full time. There was the camaraderie of academic collegueship. Arbitration, as you know, is a very

lonely profession in a lot of ways. And I would have had to forfeit all of that, plus the salary, the fringe benefits, the pension --

**BARRY WINOGRAD:** (INTERRUPTING) THE RETIREMENT.

**DENNIS NOLAN:** The retirement and all of that. And, I thought it would be possible to do both and that's what I ended up doing. It was from time to time, very, very demanding. And, I probably suffered in some other respects because of it.

**BARRY WINOGRAD:** WHAT KIND OF CASE LOAD COULD YOU CARRY AS AN ARBITRATOR WHEN YOU WERE TEACHING?

**DENNIS NOLAN:** That varied. What I could carry and what I did carry were not always the same. After a few years, once I got established as an arbitrator, and particularly when I was doing postal service work, I had far too many cases. Almost every week I was off, flying off somewhere to do something. I might have five, six hearings a month, something like that. In addition to all the academic work, I had a very understanding Dean, who allowed me to put my classes on Monday to Wednesday, and then go off and do other things Thursday and Friday. His attitude was as long as you do what you're paid to do and do it well, I'm not going to question what you do at the other times, whether that's playing golf or sleeping or whatever.

**BARRY WINOGRAD:** YOU MANAGED TO KEEP UP YOUR PROLIFIC WRITING, POST-TENURE, WHICH MANY TENURED PROFESSORS DO NOT. YOU HAD THAT BENEFIT AS WELL.

**DENNIS NOLAN:** That is true. It was not so much because of the external demands of the university. It was my inner demons. I drive myself much more harshly than anybody else would drive me.

**BARRY WINOGRAD:** NOW THAT YOU ARE DISENGAGED FROM THE ACADEMIC WORLD, YOU'RE LIVING, OR YOU AND FRAN, YOU'RE DOWN ON THE OCEAN. YOU HAVE TO TRAVEL DISTANCES. ARE YOU ARBITRATING MORE?

**DENNIS NOLAN:** First, one correction. I haven't entirely disengaged, certainly not to the extent that I expected because I end up with writing projects, new editions of casebooks, giving a talk that will be a paper at the University of Missouri in October. I've already committed to writing an academy paper at the 2010 meeting.

**BARRY WINOGRAD:** (INTERRUPTING) BUT, YOU'RE NOT TEACHING COURSES?

**DENNIS NOLAN:** I am not teaching. I've sworn off that for a while. I had anticipated and hoped that my arbitration load would stay about the same as it had been, rather than increasing or decreasing. This past year it's actually increased pretty substantially.

**BARRY WINOGRAD:** HOW MUCH OF YOUR ARBITRATION WORK NOW IS TRADITIONAL LABOR, GRIEVANCE ARBITRATION, OR INTEREST ARBITRATION OCCASIONALLY, VERSUS NON-UNION EMPLOYMENT ARBITRATION?

**DENNIS NOLAN:** In terms of case numbers, it is still overwhelmingly labor; probably 80 percent traditional labor arbitration. In terms of the time spent and that translates, of course, into income, it's probably becoming closer to 50-50 or 60-40 in favor of labor.

**BARRY WINOGRAD:** DO YOU LIKE ONE MORE THAN THE OTHER?

**DENNIS NOLAN:** I like both for different reasons. The employment cases tend to be a lot more demanding and more challenging, in many respects. But I'd never give up the labor. I like that too much.

**BARRY WINOGRAD:** YOUR PRACTICE IS FAR-FLUNG AND HAS BEEN FOR SOME YEARS, ALL OVER THE COUNTRY?

**DENNIS NOLAN:** It is. The bulk of my work is in the southern quadrant of the country, roughly from Virginia west to the Mississippi and south to Louisiana. In South Carolina and surrounding states, unions are very weak on the ground so southern arbitrators have to travel pretty widely. I also do airline work and that means you have to go where the airlines are and they don't care where you live. I fly off to Phoenix or Chicago, or other places like that. Cases for power companies and telephone companies also take me out of the Southeast. Once in a while I even get a Caribbean assignment.

**BARRY WINOGRAD:** ARE THERE MOUNTAINS YOU WOULD STILL LIKE TO CLIMB IN THE FIELD OF LABOR ARBITRATION? OR, DO YOU JUST WANT TO KEEP THE STEADY FLOW YOU WERE DESCRIBING?

**DENNIS NOLAN:** In terms of ambitions for mountains, no. I mean I've done pretty much what I want to do. I hope that I will keep turning out decent arbitration awards that people would like. If there's something new in the field, I'd like to learn about it to keep my mind active. But I don't feel the same need that I did when I much younger to accomplish defined goals.

**BARRY WINOGRAD:** YOU ARE COMING UP ON 65.

**DENNIS NOLAN:** Almost the average age of the Academy members.

**BARRY WINOGRAD:** WHAT'S YOUR MONTH OF BIRTH?

**DENNIS NOLAN:** June '45.

**BARRY WINOGRAD:** YOU WERE BORN A MONTH-PLUS BEFORE THE ATOMIC BOMBS WERE DROPPED ON JAPAN.

**DENNIS NOLAN:** It was about that time; yes. I don't think I had anything to do with it.

**BARRY WINOGRAD:** DO YOU THINK IT'S AFFECTED YOU IN ANY WAY, BEING BORN INTO THE ATOMIC AGE?

**DENNIS NOLAN:** I suppose that in a dynamic period, by that I mean probably everything from the Industrial Revolution on, each generation has exciting, changing events during its era. Mine happened to be the post-war era and everything that's happened since. My parents were the Depression era. My grandparents would have been World War I. I don't know if I can compare that with any other generation's experiences, except to say that it was different. I don't buy the Brokaw notion that there is any generation greater than any other generation, if that's what you're getting at.

**BARRY WINOGRAD:** BEFORE WE MOVE ON TO THE ACADEMY SUBJECTS, THERE IS ONE ADDITIONAL AREA I WANT TO TRACK BACK TO, WHICH CONCERNS SABBATICALS THAT YOU TOOK. YOU SPENT TIME IN AUSTRALIA AND NEW ZEALAND?

**DENNIS NOLAN:** Australia, New Zealand and Ireland.

**BARRY WINOGRAD:** YOU'RE IRISH BY BACKGROUND?

**DENNIS NOLAN:** I'm Irish by background. One of the greatest advantages in the academic life is the ability to go off to exotic places, have a lot of fun, get paid and have it count as work.

**BARRY WINOGRAD:** DO THE IRISH KNOW YOU REFER TO THEIR ISLAND AS EXOTIC?

**DENNIS NOLAN:** At the time I was I was there, that term applied. I was in the west of Ireland for my first sabbatical in 1981-82. We lived in Galway. That was before Ireland became the Celtic Tiger, and it was still very similar to what Ireland had been for many, many years past. Compared to living in the United States at that time, it was exotic.

**BARRY WINOGRAD:** DID YOU VISIT ANCESTRAL GROUNDS?

**DENNIS NOLAN:** At that point, I was not sure where the ancestral grounds were. While I was there, I did a little bit of research and came up with a pretty decent idea. On a later trip -- I've been back several times -- I found what I think was the exact village and stomped in the family stomping grounds.

**BARRY WINOGRAD:** AND FOUND SOME NOLAN GRAVESTONES?

**DENNIS NOLAN:** There were lots of Nolans around, but the linkages were so distant that it would have taken a lot more work than I put in. But just to flush out the background a

little bit, I should say that the Nolans have almost a stereotypical American inter-generational change aspect that I'll cover. My great-grandfather came over from Ireland just after the famine as a very young boy. As far as we know, he was illiterate and probably a peasant living an agricultural life.

**BARRY WINOGRAD:** BY THE FAMINE, YOU'RE REFERRING TO THE 1840s?

**DENNIS NOLAN:** Exactly, the end of the 1840s. He came over in 1854. Somehow, possibly by working his way west on the railroads, he went from New York where his ship docked to Milwaukee. There he got a job listed in one of the later census records as Stationary Fireman. My guess is that was the guy who shoveled coal into a boiler. That's the first generation of Nolans in America: illiterate peasant, manual labor. His son, my grandfather, became a blacksmith on the Milwaukee Road. A blacksmith was one of the top craft trades at that time. His son, my dad, got a little bit of college and ended up in an entry level white-collar job, also on the Milwaukee Road. His sons, my brother and I, both ended up going to college and getting graduate degrees and having professional careers. What could be more stereotypical in the American success story?

**BARRY WINOGRAD:** NOW YOUR CHILD WORKED FOR A NON-PROFIT.

**DENNIS NOLAN:** That's right. Despite her two degrees, there's a certain economic regression, but she produces good grandchildren. That counts a lot. John Adams had a wonderful statement about how each generation works to better the next, with practical work eventually permitting artistic endeavors. He didn't want his descendants to do just what he did.<sup>2</sup>

**BARRY WINOGRAD:** THAT'S COMPENSATION. I WANT TO ASK SOME QUESTIONS ABOUT THE ACADEMY, BECAUSE OUTSIDE OF LAW SCHOOL AND OUTSIDE OF YOUR ARBITRATION PRACTICE, I KNOW YOU'VE BEEN ACTIVE IN CERTAIN ACADEMIC ORGANIZATIONS. IS IT FAIR TO SAY THAT THE ACADEMY HAS BEEN YOUR HOME AWAY FROM HOME, INTELLECTUALLY, AND, IN TERMS OF THE WORK?

**DENNIS NOLAN:** Yes. That certainly is true.

**BARRY WINOGRAD:** I DON'T WANT PEOPLE READING THIS TO THINK THAT IT'S BEEN ALL WORK AND NO PLAY. I WANT TO ASK YOU TO SHARE WITH THE READERS A PARTICULAR EXPERIENCE THAT I READ ABOUT. THERE WAS ONCE A BET THAT YOU HAD WITH DAVID FELLER ABOUT THE CIRCUIT CITY CASE. THIS

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<sup>2</sup>"I must study politics and war that my sons may have liberty to study mathematics and philosophy. My sons ought to study mathematics and philosophy, geography, natural history, naval architecture, navigation, commerce, and agriculture, in order to give their children a right to study painting, poetry, music, architecture, statuary, tapestry, and porcelain."

IS CIRCUIT CITY V. ADAMS DECIDED IN 2000, IT'S A 5-4 DECISION. WHY DON'T YOU TELL EVERYBODY ABOUT THAT BET AND HOW IT WAS PAID OFF.

**DENNIS NOLAN:** It is a wonderful story because I have admired very few people in my entire professional career more than David Feller. He was an amazing fellow, certainly the greatest labor lawyer of his generation. David was an Academy leader after he left practice to go into teaching and eventually joined the Academy. Like many of the Academy people, he was adamantly opposed to employment arbitration when it first began to develop around the time of Gilmer. He was particularly concerned with the case that we were all following on its way to the Supreme Court, the Circuit City case that had to do with the ability of an employer to require employees to arbitrate employment disputes, including discrimination disputes.

**BARRY WINOGRAD:** THE VERY NARROW QUESTION WAS WHETHER CERTAIN TYPES OF WORKERS WERE EXCLUDED FROM FAA COVERAGE.

**DENNIS NOLAN:** With that background, the case was headed toward the Supreme Court. The Academy frequently submits amicus briefs to the Supreme Court, and occasionally to lower courts, on cases that we think are important for the field of arbitration, not for one side or the other, but for the field of arbitration. David Feller proposed to the Executive Committee submitting an amicus brief on the employee side saying, in essence, that most employees are excluded from the FAA. Tim Heinsz and I disagreed. I had two bases for my disagreement. One was that I didn't think it ever appropriate for the Academy to submit amicus briefs unless we had a consensus, not unanimity, but a consensus on the position that we would take, lest we pull the Academy apart. There was then no sign of any consensus within the Academy on the Circuit City question. The second thing was that I thought David was wrong on the law. I thought that the law was very clear by that time. All of the circuit courts, except for the Ninth Circuit, had come down in favor of what I understood to be the narrow interpretation of the FAA exclusion, Section 2. They held that the statutory exclusion for "other workers engaged in interstate commerce" meant transportation workers because the specific categories mentioned in Section 2 were seamen and railroad workers. Only the Ninth Circuit said that "interstate commerce" meant the same thing it does in terms of federal jurisdiction under the Constitution. So, I thought David was wrong on the law. I feel like I should be struck by lightning ever to say that, but I thought he was wrong. I therefore didn't think it was an appropriate case for the Academy to take a position.

Ted St. Antoine, who was more sympathetic to employment arbitration than most Academy leaders back then, asked David on the one side and Tim Heinsz and me on the other, to present our respective positions to the Executive Committee to decide whether they should go ahead. We did. David, to no one's surprise, won the argument. The Executive Committee voted 3-2 to submit a brief on the employee's side. Ted asked David to submit his draft to me and to Tim for suggestions. David was perfectly agreeable to doing it.

In the course of discussing his draft, I said to him, "David, I think we're on the wrong side of this issue and I think we're going to lose." He said, "No, we are on the right side and we are going to win." I said in a fax, because David didn't have email at that time, "I'll bet you a

dollar to a donut that we lose." He said, "Let's up the ante to a baker's dozen." I said, "Okay." I didn't spell it out but I assumed he meant thirteen donuts to thirteen dollars, and I was willing to risk thirteen dollars.

Sure enough, the decision came down and the Academy side lost. Without a moment's delay, I faxed David. I said, "David, my favorite are the cinnamon donuts from Dunkin Donuts." I never got a reply to that fax. The Academy meeting that followed the Circuit City case was coming up, and I checked into my hotel room. Waiting in my hotel room was an enormous package: thirteen boxes, each with a dozen cinnamon donuts from Dunkin Donuts. I burst out laughing and then spent the first part of the meeting walking around with boxes of donuts to hand them out to anyone who would take them.

**BARRY WINOGRAD:** WERE YOU ABLE TO UNLOAD ALL THE DONUTS?

**DENNIS NOLAN:** I ate more than my share of them, but I did unload the rest.

**BARRY WINOGRAD:** NOW, I WANT TO PICK UP ON THIS. I THINK THE MEETING YOU'RE REFERRING TO IS, THE TAMPA MEETING, WHICH WAS A FALL EDUCATIONAL CONFERENCE. WE HAD A PANEL AT THAT CONFERENCE THAT YOU ADDRESSED. ONE THING THAT I RECALL -- I DON'T KNOW IF YOU RECALL IT -- BUT I REMEMBER YOU SAYING THAT THE DECISION WAS THE CORRECT OUTCOME, AT LEAST BASED ON GILMER AND OTHER EMPLOYMENT PRECEDENT, INCLUDING THE WAY THE CIRCUITS HAD SPLIT, EVEN THOUGH YOU BELIEVED THAT THE DISSENT HAD THE BETTER ARGUMENT AS A MATTER OF HISTORY, IN TERMS OF THE LEGISLATIVE ORIGINS OF THE FAA IN THE 1920S.

**DENNIS NOLAN:** Your memory is remarkably correct. That really calls for a little explanation because down the road people aren't going to be aware of this. I think I drew the distinction between academic history and legal history at this point. And here's how it goes: if you look to the official legislative history of the FAA, the only things that would count for a court are committee reports, the actual text of the language, and maybe debates on the floor of Congress. That's legislative history. But behind those, there are other things that contribute. For example, an influential individual interested in an issue may write to a legislator or testify before a committee. That is certainly part of the academic history of the law but it wouldn't normally count as legislative history so the courts wouldn't consider it as evidence of Congress's intent. Looking at the official legislative history, it seems to me pretty clear that there was no stated intent to exclude all employees, or even all unionized employees, from the FAA.

There was one significant issue of that non-legislative history sort. That was a concern on the part of the Seaman's Union, and perhaps the railroad unions, that the FAA might somehow mess up their private dispute resolution procedures. They sought an exemption from the new law. The exclusion thus refers to seamen, railroad workers, and other workers engaged in interstate commerce. That, to me, on the official legislative history, was the narrow sense of interstate commerce, people involved in moving goods rather than the subsequent broadening of

interstate commerce to include your local hot dog stand because the buns come from out of state. That's the official legislative history.

Matt Finkin, who is one of the Academy's most brilliant members and certainly its best historian, did some work looking at the actual correspondence and communications between interested parties and the legislators. He came to the conclusion that, as matter of history — historian's history rather than legal history — Congress really wasn't concerned with labor matters at all, and was perfectly willing to get the unions off their backs by excluding all labor relationships from the FAA. If that were admissible, chances are the court would have gone the other way, leaving aside little questions of ideology and politics and things like that.

**BARRY WINOGRAD:** LET ME MOVE ON. IN YOUR ACADEMY HISTORY, DENNIS, IF THERE WAS AN AWARD TO BE GIVEN TO THE INDIVIDUAL WHO'S BEEN ON THE MOST COMMITTEES, DO YOU THINK YOU WOULD GET IT? I COUNT OVER THIRTY APPOINTMENTS AND YOU WERE ONLY ADMITTED TO THE ACADEMY IN 1985. IS THAT THE RIGHT YEAR?

**DENNIS NOLAN:** That is the right year. I don't know if that would be true. There are several people, mostly by virtue of longevity, who have had an opportunity to serve on more committees.

**BARRY WINOGRAD:** THIRTY IS A PRETTY GOOD NUMBER.

**DENNIS NOLAN:** I have never counted the exact number. There was a bit of duplication in there because I was on the History Committee at the same time I was on writing the history, and that's two lines. Yes, I've been on a lot of committees. Should we talk about the history of the Academy history book?

**BARRY WINOGRAD:** PLEASE.

**DENNIS NOLAN:** I realize, talking to you, that most of my life has been serendipity rather than planning.

**BARRY WINOGRAD:** YOU DIDN'T KNOW THIS BEFORE?

**DENNIS NOLAN:** Not as clearly as now because I've never thought carefully about so many various steps in my life. I knew in a broad sense, of course, that accident plays a big role in history. What happened was this: At some point in the 1980s, the Board decided it would be nice to have a little pamphlet to hand out to new members about the Academy history. They asked Gladys Gruenberg, who had done a bit of history work, including a book about one of her arbitration mentors, if she'd be willing to do it. She started down that road.

When she started showing the Board what she had, the Board got grandiose notions. They said what we really need is not a pamphlet about the Academy history; we need a book. At that point, they decided to up the ante. I think it was Tony Sinicropi who asked if I would serve on a committee with Gladys to produce a history book. Then we decided to add Joyce Najita to

the project. So poor Gladys, who had a very small project in mind, ended up doing a book. She did really the heavy lifting, the work in the Academy archives and that sort of thing. But the three of us worked well together. We each contributed our separate roles. Gladys did the basic research on Academy matters, Joyce added the industrial relations context, and I handled the legal aspects and much of the editing. It turned out to be a wonderful project.

**BARRY WINOGRAD:** THE OBVIOUS QUESTION IS WHEN DO WE GET THE EPILOGUE? OR, PART TWO?

**DENNIS NOLAN:** Somebody else may actually have to write that because you don't want an epilogue very quickly after the first one. You need some distance.

**BARRY WINOGRAD:** ANOTHER FIFTY YEARS?

**DENNIS NOLAN:** I would hope not that long. I would think maybe every 25 years the Academy might want to look into updating the history. By that time, maybe I'll be gone.

**BARRY WINOGRAD:** WHAT WOULD YOU SAY WAS YOUR MOST SATISFYING EXPERIENCE IN THE ACADEMY? WAS IT BEING PRESIDENT, SOME OTHER POSITION? IF IT'S TOO HARD TO PICK ONE, WOULD YOU PICK A COUPLE?

**DENNIS NOLAN:** There were several for different reasons. I'll mention a couple of them. One is being able to give the early papers that I did for the Academy, particularly with Roger Abram. Those were the first times I stepped up before this group and talked to them about our common subject.

**BARRY WINOGRAD:** YOU GET NERVOUS, DON'T YOU?

**DENNIS NOLAN:** Very nervous. Out in the audience are people like Dick Mittenhal and David Feller and Ben Aaron, and lots and lots of others like that. I was a very junior member. Who am I to tell them anything about arbitration? Those were exciting. I think we did pretty well, with a couple of missteps.

Some of the committee work turned out to be very interesting, the history committee being an obvious one. Probably the most demanding single committee job I've had, at least before the New Directions Committee, would have been the Designating Agency Liaison Committee. As chair of that committee I had to deal with the FMCS and the AAA, and learn an awful lot about the practicalities of the arbitration assignment process, the selection of arbitrators, and related matters.

**BARRY WINOGRAD:** AT THAT TIME, YOU ALSO HAD TO DEAL WITH THE ISSUE THAT FELL IN YOUR LAP WITH AAA AND THEIR MANDATORY TRAINING REQUIREMENTS. THAT CAUSED SOME DISRUPTION, OR DISPLEASURE. YOU MANAGED TO SAIL THROUGH THAT EXPERIENCE.

**DENNIS NOLAN:** Sail through might be a bit much. Survived would be a more accurate term. We managed to get the AAA to moderate its training requirements for NAA members and to count some NAA meetings toward the requirements.

Around the same time, the FMCS was completely redoing its assignment process, drawing boundary lines on maps. Many of our members were affected and feared that they would be geographically cut off from their major clients. The DALC received many fervent complaints. Just to give you one example, a member from Cincinnati called me and said, "I can look out my window and see Kentucky across the Ohio River. But the FMCS will no longer assign me to Kentucky cases because the regional border is drawn at the Ohio River." Naturally, we had to deal with that. Unfortunately, we had little or no leverage with the FMCS. They could do what they wanted regardless of our preferences. Nevertheless, Walt Gershenfeld, my predecessor as DALC chair, managed to convince the FMCS to set up a focus group to get feedback from parties and arbitrators. I served on that focus group for several years. The final plan the FMCS adopted was much better for our members and the complaints disappeared overnight. Today even those who protested the FMCS actions would have a hard time remembering just why they were upset.

**BARRY WINOGRAD:** AS PRESIDENT, WHAT WERE THE ACCOMPLISHMENTS OR THE CONTRIBUTIONS YOU FELT WERE MOST IMPORTANT IN YOUR EXPERIENCE? I KNOW THIS IS KIND OF A SOFT BALL.

**DENNIS NOLAN:** Yes. Let's leave the NDC aside for a separate discussion, for just a minute. I don't want to leave the impression that the NDC alone consumed my years as president-elect-designee, president elect, president, and immediate past president.

I tried to do several other things during that period, some with more success than others. One was to reform our committee structure to replace committees where the chair did all the work with a single coordinator. We did that for future meeting site selection and for regional activities. One person or a very small committee is oftentimes a lot more effective than large committees. We have a history in the Academy of trying to make people happy by assigning them to committees, even though they might never come to meetings, never do any work and just gunk up the process. I also tried to reform committee appointments by appointing only those people who regularly came to meetings and who committed to attend meetings during their service. That was one change. We also created a couple of new committees, the Technology Committee being an important one. One of these days, it will complete its work. We'll have a redesigned website. We revived some committees, the History Committee being a wonderful example. It had virtually disappeared when it had one uninterested chair. Nancy Kauffman took over and proved a veritable dynamo. The history committee today is better than it ever has been.

**BARRY WINOGRAD:** YOU HELPED ORGANIZE THE CONFERENCE ON THE DUE PROCESS PROTOCOL.

**DENNIS NOLAN:** That was very, very important, against some opposition that more or less replicated some of the opposition to the New Directions Committee. I thought it was

extremely important because the Protocol was drafted in the early days of modern employment arbitration. The Protocol came out of a very limited process. It did what it did well, but it was nowhere near adequate once employment arbitration expanded and new problems arose. No one had seriously focused on what else needed to be done. I said, "Let's have the Academy do it." And indeed, they did. Marty Malin and Hoyt Wheeler put together a wonderful conference.

**BARRY WINOGRAD:** LET'S TAKE A LOOK AT THAT, AND THEN ALSO LOOK AT THE SUBJECT OF YOUR PRESIDENTIAL ADDRESS.<sup>3</sup> IN THAT ADDRESS, IF I CAN PARAPHRASE, YOU ADVISED THOSE IN ATTENDANCE, ACADEMY MEMBERS AND GUESTS, THAT THE RAW NUMBERS IN THE UNION POPULATION WERE DECLINING, AND HAD BEEN DECLINING, THAT THE ERA OF GREAT UNION GROWTH WAS REALLY THE EXCEPTION RATHER THAN THE RULE -- AND WE'RE REFERRING TO THE PERIOD FROM THE LATE 30S TO THE MID-50S, WHICH WAS MUCH RELATED TO THE FORM OF CORPORATE AND ECONOMIC ORGANIZATION IN THE COUNTRY, AND THAT WE SHOULD JUST FACE FACTS YOU SAID. ALTHOUGH THE NUMBER OF UNION PEOPLE IN THE POPULATION MIGHT REMAIN SOMEWHAT STABLE, THE DENSITY WOULD BE GOING DOWN AS A PERCENTAGE. THIS WAS AN INCREMENTAL PROCESS, WERE THE WORDS THAT YOU USED. WHERE IS THAT GONG TO LEAVE THE ACADEMY TEN YEARS FROM NOW, TWENTY YEARS FROM NOW?

**DENNIS NOLAN:** My message was unusually blunt and serious for a presidential address. Just the year before, Margery Gootnick gave the most entertaining presidential address in all my years in the Academy. I couldn't hope to compete with her, so I reverted to my academic background and delivered a somber message. In short, traditional labor arbitration could not fare better than unions, so we had all better start thinking of how we can provide workplace justice in other contexts.

Whether my predictions about the loss of union density and membership will come true depends on what happens outside the Academy in ten or twenty years. For example, if Congress were to pass in the current form the so-called Employee Free Choice Act, it could very well change union density.

**BARRY WINOGRAD:** BY A PERCENT OR TWO?

**DENNIS NOLAN:** Maybe by significantly more than that. For instance, imagine that the recession goes on for a long time. The Depression gave rise to the vigorous labor movement and to the National Labor Relations Act, and then to the subsequent union growth. A very long recession conceivably could do that, particularly if unionization were made much easier through

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<sup>3</sup>*Workplace Justice: The Incremental Crisis and Its Cures*, 60 PROCEEDINGS OF THE NATIONAL ACADEMY OF ARBITRATORS 1 (BNA Books 2008).

card check and if they can have a decent chance or even a guarantee of a contract after the fact, through mandatory arbitration.

Leaving that possibility aside, let's just assume that the economy comes back and Congress does not pass the card check part of the E.F.C.A. In that situation, I think we're likely to go back on the same track. The parts of the economy that are growing are likely to be the non-union parts, both geographically and in certain industries. The knowledge industries, as they are sometimes called, are very, very hard to unionize. The declining parts of the economy continue to be manufacturing and some of the allied fields such as mineral extraction.

**BARRY WINOGRAD:** WHERE DOES THAT LEAVE US, THE ACADEMY?

**DENNIS NOLAN:** That leaves us exactly where I said we were in 1999, when I gave my paper at the New Orleans conference, suggesting that we should broaden our scope.<sup>4</sup> That is, we are tied to a shrinking segment of the workforce and becoming a shrinking organization as well.

**BARRY WINOGRAD:** YOUR WORLD VIEW OF THE ACADEMY, TELL ME IF I'M WRONG: ON THE ONE HAND, YOU CONTRAST SOME FOLKS WHO BELIEVE THE ACADEMY IS REALLY THE DISPUTE RESOLUTION ADJUNCT TO A LABOR MANAGEMENT RELATIONSHIP, LABOR ARBITRATION BEING THE OUTGROWTH OR A PART OF A SYSTEM OF INDUSTRIAL DEMOCRACY, SELF-ORGANIZATION, ETC. THERE ARE OTHERS, AND I THINK YOU'RE IN THAT FIELD, WHO SEE THE ACADEMY AS PART OF A LARGER ARENA OF WORK PLACE DISPUTE RESOLUTION PROVIDERS WHERE OUR FUTURE IS NOT TETHERED TO A PARTICULAR SEGMENT OR SLICE OF THE WORKPLACE. IS THAT FAIR?

**DENNIS NOLAN:** That is very accurate. One reason that it is accurate is because of something that occurred to me probably in the middle 1990s, as I was working over statistics on union density, union membership, the number of arbitrations and so on. I did a chapter in a book that Joyce Najita and Jim Stern put together, Labor Arbitration Under Fire. That made me look at the numbers for the first time. Here's what it is. When I entered the field, and since the beginning of the Academy before that, when one said "workplace dispute resolution," what one meant was collective bargaining, negotiation, and ultimately arbitration. The terms were synonymous.

By the middle 1990s, it was becoming clear to me that workplace dispute resolution meant a lot more than that. Labor arbitration was a big chunk of it, but it meant more. There were lots of workplace disputes that simply weren't encompassed by collective bargaining and labor arbitration. It seemed to me that the reason our forefathers in the arbitration business focused so heavily on labor arbitration in 1947 and following was because that was where

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<sup>4</sup>*The National Academy of Labor and Employment Arbitrators?*, 52 PROCEEDINGS OF THE NATIONAL ACADEMY OF ARBITRATORS 52 (BNA Books 2000).

workplace disputes were being resolved. If the same young, energetic, open-minded people were around in the middle 1990s and subsequently, they would probably say, "labor arbitration is important but we're talking about importance for 12 percent of the workforce. What about the other 88 percent?" At that point, they might ask "Is there some way we could take the skills that we've developed and apply them to other sorts of workplace disputes?" That's the attitude that I tried to take. I fully understand people who grew up in one environment thinking that it's the be-all and end-all – that unions are great and non-union workplaces are bad. Of course, people are going to be very attached to the labor arbitration model. The problem is that the earlier model no longer fits the vast majority of the workforce.

**BARRY WINOGRAD:** WHAT DO YOU THINK OF THIS PERSPECTIVE IF, IN THE CURRENT PERIOD OF TRANSITION, WITH THE NEW OBAMA ADMINISTRATION AND CONGRESS, IF THERE IS A LAW PASSED THAT OUTLAWS MANDATORY ARBITRATION THAT IS A CONDITION OF EMPLOYMENT THAT PROVIDES WORKPLACE DISPUTE RESOLUTION OPPORTUNITIES? WHAT HAPPENS THEN?

**DENNIS NOLAN:** That's a question that I've been thinking about recently. Let me give you a couple different answers to that. Answer number one, the NDC as it evolved realized there were several forms of dispute resolution in addition to traditional labor arbitration and employment arbitration.

**BARRY WINOGRAD:** PARTICULARLY IN THE PUBLIC SECTOR.

**DENNIS NOLAN:** Particularly in the public sector, where there's fact-finding, there's interest arbitration, mediation, government agencies, teacher tenure disputes, things like that. I think one of the lasting accomplishments of the NDC, even if pre-dispute employment arbitration is outlawed, would be broadening to cover those fields.

Second, although Gilmer was a mandatory pre-dispute arbitration agreement, and the subsequent cases that we've been talking about have been of that sort, I am seeing more cases where employers are offering employment arbitration as an option. That is, post-dispute. It may well be that post-dispute arbitration can serve a valuable function by providing a forum to people who might not otherwise have one and by providing a more efficient and less costly forum to some who might have other options. If so, parties may continue to use arbitration, although not necessarily in the same numbers as they were with the pre-dispute agreements.

**BARRY WINOGRAD:** DO YOU SEE A POSSIBILITY OF SOMETHING AKIN TO A LABOR COURT IN THIS COUNTRY, A PRIVATIZED LABOR COURT WITH ARBITRATION.

**DENNIS NOLAN:** At one point, I thought seriously about that. In the early 1970s, a friend of mine was running for Congress, and asked me to do a position paper on labor court. I thought maybe there's something there. Then a bit later on, there were several academic articles suggesting that the labor court model in Germany or England was a good model for the U.S.

Nowadays, I'm more skeptical. For contract-interpretation issues, labor arbitration is better than court actions, as Justice Douglas said so forcefully in the Steelworkers Trilogy. Employment arbitration, if left to grow, might some day prove as valuable. For purely statutory issues, the current combination of administrative agencies like the NLRB and the EEOC and the regular federal courts manage to solve most employment disputes reasonably well. There are good reasons to prefer generalist courts to specialized courts. Moreover, interest groups get used to their particular regimes and resist radical innovations, so abolishing current procedures and sending cases to new labor courts would be hard to get through Congress. Most importantly, there's simply no interest group pushing for such a change. That said, if Congress were to establish a labor court, I'm available for appointment.

**BARRY WINOGRAD:** THERE'S ALSO THE QUESTION OF JUST CAUSE.

**DENNIS NOLAN:** And just cause. Different rules would apply. If we just incorporate the statutory end of it, then presumably we are going to keep the same burden of proof, the same burden of persuasion, that we would have under the statute. That wouldn't change things enormously, as the Supreme Court emphasized in Gilmer. It's a different forum; it's not a different law.

**BARRY WINOGRAD:** IF THE ARBITRATION FAIRNESS ACT PASSES, I'M NOT SURE WHERE IT GOES.

**DENNIS NOLAN:** The essence of the so-called Arbitration Fairness Act is simply that it would outlaw pre-dispute arbitration agreements, not post-dispute ones. I think that the pre-dispute end of it will disappear and a good chunk of what is now employment arbitration would go with it, but, not all employment arbitration.

**BARRY WINOGRAD:** LET ME TURN TO THE NEW DIRECTIONS COMMITTEE. BY WAY OF DISCLOSURE, YOU WERE PRESIDENT-ELECT, PRESIDENT, AND PRESIDENT-POST. I WAS THE CO-CHAIR OF THAT COMMITTEE, AT LEAST IN ITS GENESIS. IT HAD A LONG AND I WOULD SAY NOT TRANQUIL HISTORY WITHIN THE ACADEMY. WHY DON'T WE TAKE THIS OPPORTUNITY FOR YOU TO SHARE SOME OF YOUR OBSERVATIONS WITH THE READERS ABOUT THAT EXPERIENCE IN ACADEMY HISTORY.

**DENNIS NOLAN:** Okay. Let's talk about the origins of it, first, because that's going to get lost in the history unless it's recorded. Probably the point we have to go back to is what was then called the OPC, the Organizational Planning Committee.

In 2002 or 2003, the Academy belatedly decided that we could use some strategic planning. Why an organization of this scope hadn't realized that in its previous 40-odd years of existence is a story in itself. We had never engaged in strategic planning by that name or anything else. We'd just appoint committees and do new things. One of the points that the OPC focused on, prompted in part by my 1999 talk, was Academy membership numbers, which at that point were going down. It looked like it was going to be a troublesome matter. The OPC, in

addition to making recommendations about how we conduct meetings and how we make our decisions, pointed out various options to deal with membership numbers.

The Board decided to have a retreat in 2005 to consider whether to adopt the OPC recommendations and, if so, how. We met in Chicago. The Board members talked about it at length, and, I must say, were not very receptive to most of the major OPC recommendations. They simply rejected them. When the discussion turned on the second day to the more general question of whether we should broaden the Academy's scope, the discussion took a very surprising turn. I was, at that point, President-elect-designee. (I think that's the term that we use for a person selected by the nominating committee as President-Elect but not yet elected to that office.) I was trying to sit in the back and not participate because I was there by gracious invitation rather than by any right to be there, and because, frankly, I didn't think the Academy was going to do anything exciting. It had pretty much ignored my 1999 recommendations and I didn't detect any signs of change.

The OPC was not a radical report by any means. It didn't touch on really controversial matters, so I didn't think the Board would either. But as I was sitting there, several people began to comment about how we really needed to look to the future, realize that union arbitration wasn't the only thing in the field, and that we should therefore take a leadership role in other forms of dispute resolution. My ears began to perk up. I said to myself "Something's going on here," because this group was a very conservative group on those issues. One of the key players is our good friend, Jeff Tener. Jeff, who started off as a very traditional labor arbitrator and never did employment arbitration. I don't think he even does it to this day. He certainly had no love for it at all. But he said, "You know, we've really got to do something about this. There's this deal going up and we've got to participate." It was almost as if a dam had been blown up at that point. Other people began to say the same thing. It was clear, toward the afternoon of the second day of our retreat, that there was a consensus forming that we really should do something to broaden our scope.

That led the Three Presidents, as we called ourselves, myself, President-Elect Margery Gootnick, and President George Fleischli, to caucus and decide that we needed to appoint a committee to take on this task. That was the birth of the New Directions Committee. To reflect the newly-forming consensus, we appointed you and Jeff as co-chairs. The two of you had previously been on the opposite ends of the debate, so it was important the NDC show how the positions were merging.

**BARRY WINOGRAD:** THAT WAS THE ORIGIN. LET'S LEAVE SOME FOOTNOTES OUT OF IT FOR A MOMENT. THEN THE COMMITTEE EMBARKED ON ITS TASK OF EXPLORING OPTIONS. I WORKED WITH JEFF AND WE DEVELOPED A MODEL OF WORKING GROUPS TO STUDY MEMBERSHIP STANDARDS, PROFESSIONAL STANDARDS, THE CANADIAN ASPECT, AND INTER-ORGANIZATIONAL AFFAIRS. WE HAD FIVE OR SIX DIFFERENT WORKING GROUPS. WE MOVED FORWARD AND STARTED DEVELOPING ONLINE PARTICIPATION. I THINK THE FIRST TIME IN THE ACADEMY'S HISTORY WE REALLY USED THAT ORGANIZATIONALLY. I'D LIKE

YOU TO COMMENT BOTH ON THE PROCESS THAT WAS USED FOR THE NDC AS WELL AS THE SUBSTANCE OF WHAT ULTIMATELY HAPPENED. WHY DON'T WE DO PROCESS FIRST.

**DENNIS NOLAN:** Process is extremely important. What you and Jeff came up with, by way of process, is going to serve as a model for every future, major Academy issue. Not to put it a fine a point on it, you democratized the process, you and Jeff and the technology. You announced very early on that we were going to have as wide a participation as possible, as full a communication as possible, and that's exactly what you did. The working groups in particular were a very important element of that.

**BARRY WINOGRAD:** YOU DON'T THINK IT WAS A PANDORA'S BOX?

**DENNIS NOLAN:** It was. But, democracy is a Pandora's box.

**BARRY WINOGRAD:** WE HAD SOME NASTY DEBATING IN THE COURSE OF THIS EXPERIENCE.

**DENNIS NOLAN:** In retrospect, there was a relatively limited amount of nastiness. Let's say there was a very vigorous debate that sometimes went below the level that I would hope that we would have. I don't think that vigorous debate in an organization every 60 or 70 years is necessarily a bad idea.

**BARRY WINOGRAD:** THERE WERE EFFORTS TO KEEP THE HIGH ROAD HIGH. I SUPPOSE IN THE END YOU COULD SAY THAT MANAGED TO BE SO.

**DENNIS NOLAN:** I think so. I'm particularly proud that the pro-NDC forces consistently refused to lower themselves to the level of a few vigorous opponents. At every point, we tried to respond politely with facts and reasoned arguments. I'm sure the professionalism of NDC supporters influenced many undecided members, particularly because it contrasted so dramatically to what they sometimes heard from the other side.

**BARRY WINOGRAD:** THE PROCESS ULTIMATELY CONCLUDED FIRST IN SAN FRANCISCO WITH THE ADOPTION OF A RESOLUTION THAT HAD BEEN CRAFTED FOLLOWING THE WORK OF THESE WORKING GROUPS. THEN IT WENT TO OTTAWA FOR APPROVAL AS A CONSTITUTIONAL AMENDMENT.

**DENNIS NOLAN:** I think that's very important to make clear. Once the NDC decided to democratize its process and have relative transparency, a lot of people knew what was going on, to one degree or another depending on how much they were interested. A lot of them participated, particularly in the Membership Standards Working Group with 40-odd Academy members participating.

**BARRY WINOGRAD:** THE PROFESSIONAL STANDARDS GROUP HAD A SIMILAR NUMBER ALSO.

**DENNIS NOLAN:** That was relatively surprising, but a very positive development. The downside, the Pandora's box, to transparency and democratic participation, is that people do know what's going on. In the normal pattern of Academy history, if we have a committee appointed to investigate something, there might be one public forum. Then they submit a report to the Board. The Board adopts the report or does whatever it's going to do. Maybe some of the reports will be presented at the business meeting a day or two later. Then the Academy will adopt it.

This is not a backroom deal. The good thing from a governance prospect of the old way of doing it is, nobody knew enough about what was going to have any serious objections. So when the grandees made a proposal, it was routinely adopted without significant debate, with very few exceptions, over the Code and things like that. The new process enabled everybody to know what was going on and participate. That meant that they could organize opposition, as indeed some people did.

That led to our two-step process. You'll recall that we first thought we could put the whole thing up to a single up-or-down vote on changes in our Constitution and By-Laws. The opposition to the New Directions Committee initiative, as I refer to it, proved quite vigorous. It turned out in the end not to be as numerous as we might have thought, but very, very vigorous. One persistent line of criticism was that we were putting the cart before the horse by working on amendments before we knew the sense of the Academy. That caused us to decide to do it in a two-step process. We would first vote on a general resolution at the 2007 meeting in San Francisco; if that resolution passed, we would then vote on amendments to our governing documents at the 2008 meeting in Ottawa. I don't think I told you at the time, but I was secretly pleased by that decision because a resolution only required a majority and the amendments would require a 2/3 vote. I didn't think we could reach 2/3 by the San Francisco meeting but thought we might be able to do so in another year.

That is just how it worked out. We had a long and passionate debate in San Francisco, after which the Academy adopted the resolution by a seven-vote margin, if memory serves me.

**BARRY WINOGRAD:** LET ME BACK UP AS A PREDICATE TO THE NEXT QUESTION. BECAUSE WE MAY, GIVEN OUR FAMILIARITY WITH THE TOPIC, HAVE LEFT SOME BEHIND. THE CORE SUBSTANTIVE ISSUE WAS WHETHER ANY NON-LABOR ARBITRATION CASES WOULD BE CONSIDERED IN THE CONTEXT OF AN APPLICATION FOR MEMBERSHIP, AND SPECIFICALLY, WHETHER THOSE CASES MIGHT INCLUDE SOME EMPLOYMENT ARBITRATIONS IN THE NON-UNION SETTING. THERE WAS SOME RESISTENCE TO CHANGING THE CASELOAD COUNT MECHANICS THAT HAD BEEN IN PLACE FOR A COUPLE OF DECADES, AND FURTHER RESISTENCE TO CHANGING THEM TO INCLUDE ANYTHING OTHER THAN SOMETHING RELATED TO COLLECTIVE BARGAINING AND LABOR ARBITRATION.

**DENNIS NOLAN:** Slight correction there. You said count non-labor arbitration cases. I think a better way to put it, to keep in mind the broad focus, was non-traditional labor cases, when we talk about things like fact-finding.

**BARRY WINOGRAD:** (INTERRUPTING) POINT IS TAKEN. ON THE EMPLOYMENT ARBITRATION, THAT WAS REALLY THE NUB OF IT, IN THE END, BECAUSE OF A MATHEMATICAL CHANGE, UPPING THE NUMBERS FROM 50 TO 60 AND PROVIDING THAT NO MORE THAN 10 OF THOSE COULD BE EMPLOYMENT ARBITRATION IN A NON-UNION SETTING, THAT ARGUABLY SATISFIED THE OBJECTION OF SOME OPPONENTS WHO DID NOT WANT TO DILUTE THE 50 LABOR ARBITRATION COUNT STANDARD. IT PASSED IN OTTAWA A YEAR AGO.

**DENNIS NOLAN:** The resolution passed in San Francisco as a concept without the details. We should say a bit about both of those. The numbers are very important. Passing the resolution gave us a year's breathing space in which the NDC could continue to work to try to build a greater degree of support. Had we proposed the amendments in San Francisco, they would not have received the necessary 2/3 vote and that would have been the end of the whole process.

**BARRY WINOGRAD:** EVEN AFTER SAN FRANCISCO, LOOKING FORWARD, YOU DID NOT EXPECT THAT IT WOULD PASS IN OTTAWA.

**DENNIS NOLAN:** As a matter of fact, by the time we got to Ottawa, I was resigned to losing. I thought we'd probably get a majority, maybe even a little bigger majority than we had in San Francisco because we had made enough compromises, and people had had more time to think about it. But, I never really thought we would get the two-thirds.

**BARRY WINOGRAD:** THERE WAS A FURTHER COMPROMISE BETWEEN SAN FRANCISCO AND OTTAWA, WHICH PROVIDED FOR THE RETURN TO THE GENERAL MEMBERSHIP OF ANY FURTHER TINKERING WITH THE NUMBERS THAT HAD BEEN ADOPTED BY THE BOARD OF GOVERNORS. THEY WEREN'T IN THE PRINCIPAL RESOLUTION, BUT HAD BEEN ADOPTED BY THE BOARD. THAT FURTHER TINKERING HAD BEEN GUIDED BY BARBARA ZAUSNER WITH GEORGE FLEISCHLI AND GEORGE NICOLAU, AND RESULTED IN THE REVERSAL OF POSITION BY CERTAIN DISTINGUISHED PAST PRESIDENTS OF THE ORGANIZATION, AND AT LEAST LAID THE GROUNDWORK FOR A FRESH LOOK IN OTTAWA.

**DENNIS NOLAN:** That is correct. I guess we should talk about the role of the former presidents. At a couple of points in Academy history, when we've had vigorous debates, former presidents have weighed in. In essence, they were playing the appeal to authority card, which is a very legitimate card in an organization like ours. They were saying that we, as very distinguished, long-time serving members of the Academy, conclude X. To the extent the people respected them, they might be more inclined to favor X, whatever it was they wanted. We saw that a couple of times with Code amendments on advertising and that sort of thing.

In the lead-up to San Francisco, sixteen former presidents -- an unusually large number -- signed a letter urging the Academy to abandon the New Directions process entirely. That came in the fall before the summer meeting in San Francisco. That was very, very forceful, the names on it are the ones I've mentioned before and a lot of others. People who were undecided would be very likely to say, gosh, if all of those wonderful leaders of this Academy, people who have given their professional lives to it, are opposed to this, it must be pretty bad. That was a very, very significant factor. Although most of the more recent presidents — Ted St. Antoine, Walt Gershenfeld, Margery Gootnick, and so on — supported the NDC, we lacked the numbers and many other important names. Thus trying to get a counter letter would have shown our weakness.

Nevertheless, we got that seven-vote majority. Looking back, several factors enabled us to overcome the force of the presidents' letter. One was timing. Had they waited until just before the San Francisco meeting, their letter would have had a far greater impact. After six or seven months, its impact had dissipated. Another was our ability to come back again and again to address the substantive fears expressed in that letter. A third factor was that most of the former presidents took no further role. That left the opposition in the hands of a few people who were less skillful and did not carry as much credibility.

So we eked out our seven-vote majority. Because positions on both sides were pretty firm by then, I couldn't figure out how we could get the additional votes we needed to pass the amendments. I'm sure about one of the reasons we did so, but I have to speculate about some others.

The obvious one was the further compromise that you mentioned. We agreed to a complicated method of counting cases for membership applications that was intended to address various concerns we had heard. We raised the total number of cases required, for example, in order to refute the argument that we were lowering standards or debasing the NAA brand. We agreed to count cases that were labor-based but non-traditional like fact-finding and teacher tenure disputes. We also agreed to try to give some credit for railroad cases and probably picked up some votes from people who work in that field. Marty Malin and Dan Nielsen created that Rube Goldberg device. No one was really happy with it, but politics is the art of the possible.

The final step was to agree to let the membership vote on any further increase in the number of employment cases counted toward membership. I disagreed with that on organizational grounds: the Board of Governors is supposed to make decisions like that. But the strongest remaining argument against the NDC initiative was that some future Board could go wild and allow people with no labor arbitration background to join. That argument struck me as silly, but sometimes you have to address people's fears even if you think them baseless.

Once we made those compromises, George Fleischli played an indispensable role. He had voted against the San Francisco resolution, so he had credibility with NDC opponents. He went to the sixteen signers of the former presidents' letter and told them that the compromise was fair and the Academy needed to adopt it in order to regain our unity. In the end, he

convinced thirteen of the sixteen to sign on. Two former presidents remained in opposition and one said "I'm just too old and too ill to participate either way." Thus George was able to say in Ottawa that the thirteen were on board and that the group should come together to support the final recommendations. Had that not happened, we would have lost.

**BARRY WINOGRAD:** IN OTTAWA BY A QUIRK OF FATE, IN THE COURSE OF THE DEBATE, THERE WERE COMMENTS MADE WHICH WERE TAKEN BY SOME AS DISPARAGEMENT OF OUR CANADIAN COLLEAGUES, RESULTING POSSIBLY IN SOME VOTES GOING IN FAVOR, IN REACTION. IT PASSED BY TWO VOTES.

**DENNIS NOLAN:** By two votes over the two-thirds we needed. Two votes seems like a small margin, but those two came on top of two-thirds, a very significant majority. Any little thing could have caused three people to vote the other way. The comments you refer to were made in the context of arguing that we should wait until the 2009 meeting in Chicago, where we might have a larger number of members attending. One vigorous NDC opponent suggested that Canadian members didn't have a stake in U.S. employment arbitration and thus shouldn't vote on the amendments. Some Canadians may have taken that remark as meaning that Canadians weren't really full members. If so, that may have provided just the number we needed.

That's speculation, of course. I was more interested in the much larger number of people who had opposed the San Francisco resolution but supported the amendments in Ottawa. One member, referring to John Kerry's famous gaffe in the 2004 election ("I actually did vote for the \$87 billion [in funding for the Iraq and Afghanistan conflicts] before I voted against it"), whispered to me during the vote "I was against it before I was for it." I'd like to think that our patient, reasoned arguments convinced enough people that we were right all along.

More likely, the result stemmed from a number of different factors, not least of which was the Malin/Nielsen compromise. One of those factors went almost unnoticed. Barbara Zausner, President during the Ottawa meeting, ruled that the proposals had to be voted on as a package. That prevented opponents from forcing a vote on each component. Like any legislative compromise, this one contained controversial elements that might not have passed on their own. People were willing to put up with some things they didn't like in order to get those they did like. I don't know whether Barbara was correct as a matter of parliamentary procedure but had she not made that ruling, opponents would likely have been able to unravel the compromise.

**BARRY WINOGRAD:** I REMEMBER WE LOOKED AT EACH OTHER IN SURPRISE THAT THIS THING HAD PASSED.

**DENNIS NOLAN:** We did. I doubt if anyone in the room was more surprised than I was. I'm Irish and that means I'm burdened with a sense of fatalism. Former Senator Pat Moynihan once said "I don't think there's any point in being Irish if you don't know that the world is going to break your heart eventually." So I fully expected to lose the Ottawa vote and see all of our three years of work be consigned to the dust bin.

**BARRY WINOGRAD:** IT'S CONCLUDED. THE MEMBERSHIP COMMITTEE HAS BEEN CHARGED THIS YEAR WITH IMPLEMENTING THE 60 CASES IN SIX YEAR STANDARD ACCORDING TO A FORMULA PRESCRIBED BY THE BOARD OF GOVERNORS. WE'LL SEE HOW THAT UNFOLDS.

LET ME ASK YOU ON REFLECTION, BECAUSE WE ARE APPROACHING THE END OF THIS INTERVIEW, DID WE MAKE A MISTAKE? SHOULD WE HAVE EARLY ON ABANDONED THE IDEA AND GONE WITH "PLAN B," WHICH IS TO LET ANOTHER ORGANIZATION UNFOLD? IS THE ACADEMY THE ONLY GAME IN TOWN, OR SHOULD ANOTHER ORGANIZATION FORM? THE ULTIMATE, SUBSTANTIVE CONCLUSION IS REALLY A VERY MODEST TINKERING WITH THE NUMBERS. IF THE ACADEMY HAS BEEN AND REMAINS A LABOR ARBITRATION ORGANIZATION AT HEART, WHAT DO YOU THINK OF THAT PROPOSITION?

**DENNIS NOLAN:** It's a very good point that I've ruminated on. First, you have been perhaps more attentive to what we were giving away to end up with a relatively minor tinkering in numbers. All along, my main concern has been principle; in particular, the principle of whether the Academy is going to become a leader in the important fields of workplace dispute resolution. The big thing about the amendments to me, is not the numbers that we ended up with in the Board resolution, but the fact that we now have changed our constitution and bylaws to recognize that principle. Whether we implement it is a different matter, and that's for our successors. If employment arbitration and other non-traditional forms of workplace dispute resolution continue, and if the Academy continues to lead in those fields, then I would say, "No, we didn't make a mistake." If non-traditional forms of dispute resolution implode or if future Academy leaders lose interest in them, then there would not really have been much point in doing what we did. We could have saved ourselves a lot of heartburn.

**BARRY WINOGRAD:** THIS HEARTBURN WAS, IF YOU WILL, IN A GOOD CAUSE, BUT WHERE DOES IT GO AS AN ALTERNATIVE TO THE ACADEMY JUST DRIFTING AWAY BY ATTRITION GIVEN SOME OF YOUR OTHER COMMENTS ABOUT THE DECLINING UNION MEMBERSHIP?

**DENNIS NOLAN:** That depends on what our successors pick up and do. Let's assume for sake of argument that there's no revival of unions and that there continue to be workplace disputes in the non-union sector. If the Academy continues to educate about that, participate in projects like the Protocol or subsequent decisions about fairness and procedure, contribute amicus briefs, welcome people who have an interest in those subjects, and so on, then it may well be that we will become what I hoped we would become: the recognized leader in workplace dispute resolution, generally. If we don't follow up with that, as I said a minute ago, the effort would have been largely for naught.

**BARRY WINOGRAD:** IT MAY BE SOME OTHER FOLKS WHO PICK UP THE BATON.

**DENNIS NOLAN:** Yes.

**BARRY WINOGRAD:** LET ME CLOSE THE INTERVIEW BY ASKING FOR SOME GENERAL REFLECTION, IF YOU WOULD CARE TO SHARE IT, ABOUT THE ACADEMY AND ITS ROLE IN YOUR LIFE, PROFESSIONALLY, INTELLECTUALLY, IN TERMS OF SOCIAL COMRADESHIP. ANY FINAL THOUGHTS YOU WOULD SHARE WITH THE READERS?

**DENNIS NOLAN:** That's a good point to conclude with. When I first joined the Academy, particularly when I started reading a lot of Academy history, presidential interviews, and things like that, I was struck by how emotionally attached many of senior members were to the institution of the Academy and of course to people who were part of that institution. This was not just a professional association. There was almost an identity between the individuals and the organization and their colleagues. That fascinated me. It helped to explain why I ended up putting so much of my own effort and time into the Academy, and lo and behold, that has turned out to be true. Some of my most exciting intellectual endeavors have been with the Academy. Some of the best public service efforts I've made have been through the Academy. Some of the best friends that I've made in my life I met through the Academy. I couldn't over-emphasize how important the Academy was to my professional and personal development. I hope that our newer members find it just as rewarding as I have and a lot of our predecessors.

**BARRY WINOGRAD:** IN A FEW YEARS, YOU'LL GET A THIRTY-YEAR PIN.

**DENNIS NOLAN:** Oh, my God. I hadn't thought about that, but that's right. That's coming up.

**BARRY WINOGRAD:** THAT'S A GOOD NOTE, I THINK, TO END.

**DENNIS NOLAN:** A very good note to end.

**BARRY WINOGRAD:** THANK YOU VERY MUCH.

**DENNIS NOLAN:** My pleasure, Barry. Thank you.