

National Academy of Arbitrators  
HISTORY COMMITTEE INTERVIEW

Alex Elson

NAA Vice-President, 1983 and 1984

Interviewed by Lois Rappaport

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LR This project is sponsored by the Academy History Committee in order to preserve the activities and background of special members of the Academy, including the founding members of the Academy. I'm talking today with Alex Elson.

First, lets talk about your personal background.

AE I was born in a small town near Kiev, Russia in 1905 and was brought to this country by my parents with five other siblings when I was about a year old. We went to a small town, Kane, PA, where my father's sister lived and after a few months we moved to Chicago, where I've lived ever since, except for short periods of time when I've worked in other cities. I had my schooling in Chicago and went to a public school for my elementary education, to the Francis Parker School for high school and to the University of Chicago where I received a Ph.B. and J.D. That very broadly covers my early years and education. I'm one of a family of eight children. Education was highly prized in my family. We were all afforded good educational opportunities.

LR After college and after you got your JD what area did you move into?

AE I think perhaps I should say a word more about why I went to law school, because it has to do with my interest in labor law. I took some courses when I was in college with Harry A. Millis. Millis was one of the early professors in labor economics. At the time I studied with him he was acting as an arbitrator for The Amalgamated Clothing Workers Union and Employers in Chicago. He was well known nationally in arbitration. At that time there was very little arbitration and he was one of a handful of arbitrators. My first course with him, was called State in Relation Labor, and as my thesis, I wrote a paper on the use of injunctions in labor disputes. It was my first introduction to law. I read federal court injunction cases which led to the Norris-LaGuardia Act. The federal courts were virtually tying up the unions all over the country. The right to strike was almost meaningless. I found the cases fascinating and disturbing and I decided I'd like to go to law school. By that time I had been awarded a fellowship in the Economics Department by Mr.

Millis; who was then Chair of the department. I went to him, told him I was going to law school, and asked him what I should do about the fellowship. He said to go to law school... "it would be good to have a lawyer with some economics background; as long as you take a few more courses in economics." So I went to law school.

Even though I had this great desire to be a labor lawyer, I didn't become a labor lawyer until 10 years after admission to the bar. In 1935 I was appointed as Regional Attorney of the Wage and Hour Division in the Department of Labor which administered the Fair Labor Standards Act. The region covered Illinois, Wisconsin and Indiana. For the first time I was close to something that had to do with labor, although it was far removed from labor relations as such. When I went to law school there were no courses in labor law. I did find a case book on labor law after I left law school which I read because of my interest in the area. It was written by Francis Sayer of the Harvard Law School. In December 1941 I was appointed Regional Attorney for the Office of Price Administration. OPA had little to do with wages at that time but we did work fairly closely with the War Labor Board. After I resigned from the OPA I was appointed Regional Vice Chairman of the War Labor Board in Chicago by Edwin Warren, Chair of the Board in Chicago. That was my first real introduction into labor relations.

It was a part time job, so I opened up my office as a lawyer at the same time. Shortly after I was appointed I was asked to arbitrate a case. In those days the WLB put arbitration clauses into all contracts and, of course, after a year or two there were grievances and demands for arbitration and there were few arbitrators around. Almost everybody was lassoed into arbitrating cases. My first arbitration case involved a relatively small bakery in Chicago. The hearing was highly informal, we sat around a table and the Employer explained he discharged the employee because he had been late to work on several occasions. I remember inquiring as to whether or not he'd ever given him a warning or any type of prior discipline. After some mediation, the man was put back to work without back pay.

When the War Labor Board folded up, Warren became Chairman of the United States Conciliation Service, the predecessor agency to the Federal Mediation and Conciliation Service. At that time, the Conciliation Service provided free arbitration to Employers and Unions and I was appointed as one of the arbitrators. We were paid \$50 per day. Most of the cases I heard involved Standard Oil Company of

Indiana. That company along with the Union paid nothing for my services. During the first year I arbitrated maybe 15 or 20 cases. Warren asked me if I would serve as a Regional Chair to the then Advisory Committee to the Conciliation Service, which I agreed to do.

We never really got around to having a meeting. Instead Ed Warren called a national meeting on April 25 and 26, 1947. There were about 37 arbitrators there. Most had been with the War Labor Board and had their introduction to arbitration the same way I did. It was an exciting meeting. Ed had set up a two-day program and everyone invited to the meeting took part in that program, as a participant on that panel. I still have the program. The subjects listed and speakers were:

Latest National Developments in Arbitration  
Carl R. Schedler

State Arbitration Laws  
Discussion Led by Panel Composed of:  
George Cheney, Chairman  
I. Robert Peinberg  
Clarence Updegraff

Fee Policy  
Discussion Led by Panel Composed of:  
Whitley P. McCoy, Chairman  
Aaron Horvitz  
George E. Strong

Use of Wage Criteria When Arbitrating  
Basic Contract Terms  
(Speaker to be announced)

Use of Technicians For Ascertaining Facts  
In Arbitration Proceedings  
William G. Brown

Should An Arbitrator Try to Mediate?  
Panel Discussion Led By:  
William Simin, Chairman  
Jacob Blair  
Clifford Potter

Should There Be Uniformity in Form of  
Opinion and Award, and Should Awards  
Be Published?  
Panel Discussion Led By:  
Saul Wallen, Chairman  
John Dwyer  
Alex Elson

There was discussion after each session. It was the first time any of us had a chance to sit down with a fellow arbitrator, so it was an exhilarating experience. At last, the problems that one stewed about, could be chewed over with someone who had a similar experience. It was the first real opportunity to exchange experiences and gain insight.

The panel I was assigned to involved the issue of whether awards should be uniform and whether they should be published. There was pretty general agreement that there was no need for uniformity of awards, but there was quite a difference of opinion as to whether the awards should be published. I took the position they should not be published. My view was influenced primarily by the position Professor Millis had taken. Millis believed very strongly that arbitration should be as informal, and as flexible as possible. He was fearful that the decision would get in the way of resolving disputes. So he never wrote an opinion in the cases he heard. He followed the practice established by the Boards functioning under the British Trade Dispute Act. These Boards do not write opinions. They simply render decisions just as the arbitrators do in commercial arbitration cases. Nevertheless, I felt these were pretty potent arguments, and I remember I was almost all by myself in opposing publication of Awards.

On September 13, 1947, the same group came together in Chicago with some additional arbitrators and that was when the decision was made to organize into a National Academy. I think the main thrust for the Academy was the good feeling we had of being able to talk over our problems. At the time we did not have any high flown ideas about raising standards; that came later. That original group was exceptional, Saul Wallen, John Larkin, Ralph Seward, Whitley McCoy, Clarence Updegraff, Bill Simkin and others like him,,

LR What were the first steps you took after you decided this was something you should do?

AE As to the organizing meeting which took place in Chicago, I was absent a good deal of the time because it was my home town and there were all kinds of demands on me. So I did not take a very active role in the actual organization. I was at some of the sessions. I recall we planned our first meeting to take place later in the year. That meeting was held in Washington, D.C. and approximately 100 arbitrators attended.

LR From the beginning of this founding meeting what has been your involvement in the development and growth and how have you been active throughout the years?

AE I have been primarily a practicing lawyer. I never aspired to be a full time arbitrator. I'm probably one of the few founders who did not go into full time arbitration. I've had a great interest in the law. There may have been years when I've spent as much as half of my time in arbitration but most of the years I've not spent more than a third of my time in arbitration. Along with my arbitration, I practiced law and did some part time teaching in various institutions. I took over a course at Northwestern University in labor relations which had been given by Bill Wirtz when he became Assistant Secretary of Labor under Arthur Goldberg. I taught this course for about five years at Northwestern Law School. I also taught other subjects at the University of Chicago Law School, Yale Law School, and Arizona State University Law School. I did count and went back to look at the number of arbitrations I had in 1947 and I think it came to about 20 cases. Over the years I think it ranged between 20 and 50.

I've been very active in the Academy from its inception, served on many committees and was a member of the Board of Governors and Vice President...

LR And now you're the Chairman of the CPR&G?

AE Correct. I also organized the Research and Education Foundation of the Academy and served as its first president for three years. I organized that when I was Vice President. When I say organize, what I did was to do the legal work necessary to establish the Foundation. We could do this work in our law office because we were engaged in setting up other 501(c)(3) organizations and for three years led the organization. I also was active in securing the support of the NAA for the foundation.

LR That's quite an accomplishment. In thinking over the times you were on various committees, would you say that the development or establishment of the Research Foundation was the highlight of one of your accomplishments?

AE I would say yes. But I would add one other area which was of great importance to me. In 1970 I was asked to

participate in a members only meeting in Los Angeles on a panel on arbitral ethics. I had been active just prior to that time with the efforts under way to strengthen the American Bar Association Code of Legal Ethics and had been ruminating on arbitrators ethics. The NAA Code at that time was still primitive and read more like a code of commandments than a code concerned with problems of professional responsibility - such as avoidance of delay, concerns about expense, competence, conflicts of interest and the like. The paper I gave was titled "The Case for a Code of Professional Responsibility." It was received enthusiastically by the membership and was followed by a vote of the membership urging the Board of Governors to launch a revision of the Code. The Board of Governors thereupon appointed a committee to revise the Code with Bill Simkin as chief draftsman, and that led to the Code of Professional Responsibility now in effect. Jean McKelvey in a paper she gave several years ago credits me for initiating the new code.

Because of this background I enjoy chairing the CPR&G. The work of the CPR&G lies at the heart of the Academy. The challenges are interesting, challenging and time consuming.

Another committee I found especially interesting was the committee which established the Legal Defense Fund. That involved quite a struggle. The first chair of that committee was determined that the plan which would be carried out by a private insurance company. The first recommendation was for a rather elaborate plan with a private insurance company. A number of us opposed this recommendation on the floor of the Annual Meeting. The subject went back for reconsideration. Finally we developed our present plan which I think is far superior than one could get from a private insurance company. While that was largely a rear guard action, whatever you want to call it, I think of that as an accomplishment.

LR It may have been a rear guard but it was a very forward thinking idea to come out with and I'm sure that the number of members who have used it have been reassured to call up and talk to whoever the chair is and know there is some support and guidance.

AE There were a number of us, I think Nat Lipson played a big role in connection with that, and was one of the early Chair of that committee. I have participated in Annual Meetings and probably have given seven or eight papers over the years. You'll find them in the index in the Proceedings. There were two annual meetings which I found

most interesting. The first had to do with the Rules of Evidence. We organized a Tripartite Committee in our region, and presented our conclusions at the first meeting of the Academy held in Puerto Rico. The second meeting was when Ted Jones was president. We had a similar tripartite committee on the decisional process. I chaired the panel on which there were two federal judges, a Federal district judge and a Court of Appeals judge, a management lawyer and a union lawyer. We had a good panel and a very interesting discussion, all of which is recorded in the Proceedings.

LR What do you think should be some of the goals of the Academy from this point forward?

AE I have felt the Academy's most important contribution is that of establishing and maintaining high standards. I think there has been a leveling of competence, maybe this is just an old man talking, but I don't have the same sense of confidence, that the level of arbitration ability is what it used to be. And so I say I still think the educational aspect is the most important function of the Academy along with maintenance of high standards of conduct. The Academy, is unusual in that it devotes considerable time and energy to the question of professional responsibility. As Chair of the CPR&G I find it rather remarkable we get so few complaints. I don't think it necessarily indicates we are above reproach...

LR It just means people haven't found access to the Committee.

AE Well, either that or there are reasons why the parties won't file complaints. We had an egregious case several years ago which was reported in the Federal Reporter. The case involving a NY arbitrator who violated rules of the appointing agencies and although he agreed to serve on a per diem basis he presented a bill for \$25,000 to the parties after the case had been heard. The interesting thing to me was that nobody filed a complaint. When I called the attorney for the Union to see whether he was interested in having us look into it he was just completely indifferent. Although he did make an effort to set aside the award, he was not interested in pursuing the ethical issue.

LR Now, how did it come to your attention?

AE It was published in the Federal Reporter. All the facts were found by the court and were there in black and white, and not a single member of the NY group or anyone else filed a complaint.

LR You started to say there was another one.

AE Will, I would like to stay on that case for a moment, because it was a complete eye opener. I thought a complaint should be filed and so I wrote a letter to the Chair of the NY region. Weeks went by without a response. In the meantime, we had a meeting of our own Committee and one of our members volunteered to file a complaint. That was the only way we could get a complaint on file. Because of my activity in that respect, I disqualified myself as the chair in that particular case. I should add that the arbitrator in question, had a stroke shortly afterward he heard the case and it may well have been egregious conduct completely inconsistent with his prior record. He had a good reputation and was a highly regarded arbitrator. That may account in part for the failure for anybody to come up and say anything.

When I meet with the representatives from the appointing agencies, I'm told that there are many more violations than we know about and I say, why don't they come to our attention. I don't get a very satisfactory response. But I could say on the whole that we can say that we have a good level of compliance with the Code, at least I like to think so.

LR I would think so. What do you think about arbitration and the Academy in this current economic climate and how over the years, what differences or what changes have you seen develop?

AE Dick Mittenhal's paper of last year or the year before traces what has happened to the arbitral process. We have moved in the direction of the court model, more formalism, and the like. I have serious doubts whether this augurs well for good labor relations. It certainly does not enhance arbitration as a dispute mechanism. I think this development may account for the growth of mediation. The parties' concerns for delay, expense, and rigidity led to reaching for more informal ways of resolving their disputes. The fall-off in arbitration load I believe is due to this trend. Of course, the primary factor for the fall-off of arbitration

is the decline in union membership. My guess is that the pendulum will swing in the other direction before too long but when it does I doubt that arbitration will continue to be the dominant form of dispute resolution.

LR Are there any other areas you can think of that you want to add in, or comment on?

AE No. I think not, I have no other insights at this moment.

LR Well, I think the comments about the founding of the War Labor Board, and the beginning of it, just the idea of a group of people wanting to get together to discuss a situation, because this is one of the greatest aspects of the Academy, being able to sit and talk to your colleagues. Because you don't really have anyone else to talk things over with.