

National Academy of Arbitrators
HISTORY COMMITTEE INTERVIEW

James M. Harkless

President of the National Academy of Arbitrators

1998

Interviewed by Anna DuVal Smith

New Orleans, Louisiana

October 13, 2006

AS: This is Anna DuVal Smith interviewing James M. Harkless who has been interviewed a couple of times for this project. Those interviews are already in the archives. This interview will attempt to pick up where we left off, in particular his years as president of the National Academy. By way of review, those early interviews made note of the fact that Jim has attended every Academy meeting since 1971 and came into the Academy with a 1973 application. Thereafter he made many contributions to the Academy including serving as vice president (more than once), as a member of the Board of Governors and on numerous committees. The previous interviews were conducted in 1995 and 1996. Two years later he became president of the Academy, giving his presidential address in 1999 in New Orleans. So here we are, seven years later, back in New Orleans and we have on the program for the Fall Education Conference a topic that was very much alive in 1999. I'm hoping that we will hear

some of that today. But before we do that, there are several questions I have about your earlier years in the Academy.

First, with respect to your admission to the Academy, this was touched on somewhat in the 1996 interview – how it happened, the waiver of the 50-in-5 rule, etc. – but we did not hear about what impact admission may have had on your practice.

JH: I doubt that it had a lot of impact and I don't recall my previous interview. But at the time I was admitted in 1973 I don't believe there was a hard and fast 50-in-5 threshold standard and so I don't believe there was actually a waiver of that. It was unusual for someone to be admitted as quickly as I was. But because I had developed so many cases of such diversity of parties I really had done very well in just three years to gain general acceptability. That continued and probably snowballed, I suppose, by the time I did become a member of the Academy. One never knows what would have happened had I not become a member of the Academy. That is, I think I still would have had the same acceptability if I had not been admitted to the Academy for another two years because there was a lot of interest in me partly through word of mouth because of the way parties have of telling each other about emerging arbitrators. Being a minority arbitrator, I suppose, may have been very helpful in that regard. I think I may have mentioned in my prior interview that I had an experience in Pennsylvania—I don't remember when it was, but in the 70s—when I was involved in leading an AAA training session for advocates and afterwards a union advocate came up to me and said he had heard a lot about me. He said, "You won't believe this, but as many times as people told me about you, no one mentioned that you're black." So I'm sure that's a reflection of the fact that people were chosen by reputation...

AS: ...rather than by social characteristic.

JH: Right.

AS: Another topic discussed in the early interviews was some of your early committee assignments. Since then you've been president of the Academy and I wondered what you may have learned from some of those assignments that may have been particularly helpful to you when you did become president.

JH: Part of the culture of the Academy has been (and, I think, something that people don't talk about maybe as an unconscious kind of cultural trait) is that we're not a democratic organization. The way people progress within the organization is through being active and holding positions and developing personal relationships with other members. Members assess you in terms of your commitment to the organization and your ability in various ways as it might benefit or detract from the purpose of the Academy. Through my committee work from the very beginning I think my most important assignment early on was chair of the then relatively new committee on legal representation. I worked very closely with Arthur Stark who was then president and later Eva Robbins. Milt Rubin was on my committee. I got to know him quite well. Having served on committees and through that developing relationships with particular individuals was something I relied upon when I first became president in deciding on who should head the Designating Agency Liaison Committee.

I'm sort of jumping ahead of where I would like to go. I would prefer to start with how I first became aware I was going to become president. Let's go back and then come to this. I don't know if you're interested in hearing how I became aware that I was going to become president.

AS: Yes. How did that happen? That part of your history has not been covered and I've not heard it personally.

JH: It's interesting that my interviews with Clara were in '95 and '96 and I don't think we even talked about it. I would have to go back and look. It certainly wasn't in my mind at that time; nor was it in my mind in 1997. The nominating committee met as usual in the fall of 1996. My recollection is that sometimes I have sent in my suggestions to the nominating committee, sometimes I have not. I've served on that committee twice myself and then was chair; so through that experience I knew that though the nominating committee does take into account the suggestions of the membership, it also uses its good judgment in trying to assess who would be the best person at that particular time to fill the various offices. This year I did not send in any suggestions because we have good people on that committee and I know they are going to do a good job choosing good people. So it's very important. As I said before, we're not a democratic organization (and the membership has accepted that and has faith in what the nominating committee's nominations are). So if Barbara Zausner, whom I had known for a long time, calls me up on a Saturday morning it didn't occur to me she would be asking me if I were nominated, would I be willing to serve. Therefore, it really came out of the blue. I certainly realized at some point in my life I would be considered. I had some personal issues in my life at that time and I wanted to discuss them with my significant other, Eve. Barbara said, "OK, let me know as soon as you can." The same day about ten minutes later, after I had talked with Eve, I got a call from Arnie Zack who was on the committee and through that conversation he convinced me it was the right thing to do. It was a great honor, of course. Eve recognized it in that way. And then eventually it was announced at the fall meeting—I can't remember where—and I was formally

nominated and elected as President-Elect at the 1997 meeting in Chicago. Even before I became formally elected I recall I was invited—as soon as it was announced that I was to be nominated—to attend the executive committee meeting and that was good training on how the governance operated. Milt Rubin, actually, was president elect at that time. Then in June of 1997 he became president and I became the president-elect. Milt and I had developed a relatively close relationship over the years starting with that first exposure when I was chair of the legal representation committee. Of course, Milton was older and a long-time member of the Academy when I became a member. And when I became chair of that committee with that background it's a reflection of the beneficial way members of the Academy and the commitment they have to the welfare of the organization in the way in which older members make an effort to support the newer people coming into the organization. He was willing to accept my leadership as chair of that committee, but also was very helpful to me in making suggestions on how the committee ought to operate. At that time the legal representation effort...and I probably talked about it in my first interview...had not evolved into what it is now. We were just giving a stipend—I think \$25,000 a year—to AAA to give our members assistance. We could call upon AAA. One of the things our committee did—and I talked about this in the previous interview—was to give recommendations and eventually it evolved into the present system but became effective after I had left as chair and Milton had become the chair. In any event, we had a very good relationship. Milt's personality was one in which he was very...he was just very calm, a kind of an individual who just led without ...he was an accepting kind of leader. He would do ... just sort of let the organization run itself...

AS: ...and then support it...

JH: ...as president. We had a very good relationship during that year when I was president-elect and he was president. Unfortunately, I think that there was never an opportunity to interview Milt. I think that's one of the things that will be missed in terms of what his views may have been of his presidency. One of the issues that arose during his presidency was the concern and interest of Past-President George Nicolau in trying to get the Academy more visibility. This actually, I think, is one of the key underlying concerns among those who want us now to change the nature of the organization. They put it in terms of the Academy having more credibility. But there was a concern then, as there is now, that the general public doesn't know enough about the Academy and what it does. And so, during Milton's presidency, he set up a visibility committee headed up by George Nicolau which, I think during my presidency, came up with an action plan as to how we should increase our visibility. So that was a continuation of something that started during Milton's presidency.

Another concern during that year was about the Academy's finances. So when I became president, one of the first things...well, I'll go back before we get into that. The most important thing the president-elect does is to devote a good deal of time in making committee assignments. Milton devoted a great deal of time to that and I was able to sit in even before I became president-elect. So I saw how that process operated with him. During the next year, when I was president-elect I devoted a great deal of time to it, too. My recollection is I even reported to the membership in my first *Chronicle* report that there were 307 members—more than half of the membership—serving on committees.

AS: Amazing.

JH: The largest number ever. I tried to fulfill the interests expressed and to increase participation. There were a few members for whom I wasn't able to provide any of their requests. One or two had only one interest. I actually called up each of those whose first, second or third choice could not be granted and suggested another committee. Some of them were willing to accept that, some were not. I did a very good job of trying to get people more interested. Unfortunately, that wasn't reflected in the attendance in New Orleans. I think we had very good attendance at the fall 1998 conference in Kansas City. One of the concerns at that time was that—I can't recall the figures at the 1997 Chicago anniversary meeting but the attendance at the 1990 annual meeting was the highest in membership numbers. San Diego in 1990, I think, was the highest attendance. Since that time, attendance has fallen both in terms of members and guests. I wanted to try and do something to change that trend. Because of the concern about our finances and attendance, I set up one of the most important special committees, chaired by Nick Zumas, to study how we might cut costs of the annual meeting and increase attendance. I also appointed Lois Rappaport chair of the Auditing Committee with the view that she would work closely with Bill Holley, Secretary-Treasurer, to deal with the question of our finances. I selected Lois, again, partly because of my experience with her in past situations on committees. I cannot recall it specifically, but I was impressed with her ability. Also, you take into account not only getting members involved but also gender. You want to have genders represented in a positive way, and you also want to have members represented from all over the country involved in different ways. You want a cross-section of members on all your committees. Lois and Bill very quickly met with the accountant. At our fall meeting they made some suggestions, and they

made some changes on their own in terms of budgeting. Each committee was now required to submit a budget.

Also about that time, either just before I became president or just after, Chet Brisco had this idea of starting a listserve. He actually wrote an article in, I think, the spring *Chronicle*, making that suggestion. Somehow it was agreed that it would be started and Doug Collins would be the operator. From the beginning of that mail list I recall I was somewhat concerned about some of the ways in which members were communicating about various issues. I remember sending in a response when one of the members seemed to be asking for advice on a current case. It seemed to me to be inappropriate and so I expressed the view that we needed to be careful about that kind of issue. At the time, I recall, one of our members sent in a response that I was being "too pure." Since then that concern has been expressed several times by other members. But I made it a point, again, to take into account from the very beginning the issues and concerns that members were expressing on the mail list. It did prove to be a way of getting members to feel that they were more a part of what was going on in the Academy. Many of those who were most active on the mail list in the beginning were people who were frustrated by the fact that their voices were not being heard. Now, there's a hard core of members who have things to say all the time.

AS: Yes, isn't that the way. But then it's also true in face-to-face communications as well that a few people dominate the conversation.

JH: And someone commented about the different kinds participants, such as "lurkers" who hardly ever say anything but are paying attention. It has been a very useful tool for the Academy.

Early on, one of the big concerns expressed, particularly in one part of the country, was about changes taking place at FMCS. You may recall that this was after FMCS had a new person come in to take over the arbitration services operation at the top. As I recall, he was a person with no labor relations background and he wanted to reinvent the wheel without any background. He started making changes that were really upsetting to the membership. Actually, this started before I became president. Earlier in 1998, this person had indicated there were going to be certain kinds of changes and I knew this was going to be an important issue even before it came up on the mail list. And so one of my most important committee assignments was choosing someone to work on this. I selected Arthur Stark based upon my past experience with him and my real confidence in his approach to dealing with issues and problems. I made him chair of the Designating Agency Liaison Committee. At that time, Arthur was well on in years. It was not something he particularly wanted to do at that stage in his life.

AS: How did you persuade him?

JH: He really did it as a personal favor to me. It was a great choice as far as I'm concerned. I also put George Fleischli on it. I think the DALC was a bigger committee then. Again, when it became apparent on the mail list that this was going to be a real big, big issue, I met for dinner with Richard Barnes, Director of FMCS. My recollection is that I thought I was able to do this partly because of one of my important committee choices was Jack Clarke to be chair of the Program Committee. I'm not sure how much I had served on committees with Jack, but I had a very high regard for him as an arbitrator based on his published decisions. And in personal conversations with him. I thought he would be a very good person to fill that role. Jack, as it turned out, knew Richard Barnes quite well. It must have been partly through talking

with Jack about this FMCS problem that I knew or thought I knew that Barnes would be amenable to having a one-to-one discussion with me. So we had lunch and hit it off quite well. I told him about our concerns and he agreed that this was a problem that needed to be addressed and thought he would have a meeting in October of people representing labor, management and the arbitration community. He suggested I choose three people to attend that meeting. So I chose Arthur as Chair of DALC, George Fleischli and Dennis Nolan. Again, these choices were based on good relationships I had developed with them partly through committee work but also through attending meetings and getting to know them. Both George and Dennis are people I hold in very high regard. George, particularly, though, because we had worked closely on the CPRG where we had done some very important work in subcommittees. I had a lot of confidence in George's ability and good judgment, as well as Dennis's. That first meeting in October was held in Washington at FMCS headquarters with Barnes. At the very beginning of the meeting he said to me, "There is something I want to share with you." He thanked me for coming to the meeting along with my colleagues, but he said that he had something to show me and he pulled out these two envelopes that were sent to him anonymously by what had to be by different members. They contained messages from our email list that were highly critical of Barnes and the FMCS, and were really the kinds of remarks that an arbitrator should not make in my opinion. In fact, one of the members even attacked me on the mail list about something he thought I had said that he got through hearsay and didn't have the good sense to first call me and find out if it was accurate. So I had to deal with that on the mail list. I first called him up and told him I thought he owed me an apology. He agreed. One of the problems with that mail list early on was the tendency to just have a knee-jerk reaction and say something that you wouldn't as an arbitrator. You would not

say something before you thought about it carefully. For some reason or other, there are some members who forgot about where they were. In fact, I even said that we needed to be sure about how we are dealing with each other. It's not just a chat room, but a vehicle for us to communicate with each other as professionals and as colleagues. Of course, I was, and Arthur, George and Dennis were, too, completely taken aback by what Barnes had received, to be shown this by Barnes and to need to deal with it. But we got over that and we developed a good rapport. Barnes is really a terrific person. In fact, Jack Clarke knew of him through his experience as an arbitrator when Barnes was a union representative who had appeared before him. They had a mutual regard for each other. He's really a very good person and very much committed to what we do. We presented to him what some of our members' concerns were and he decided to form a formal focus group. George, Arthur, and Dennis were made part of that group. There were a few other arbitrators, too, who were not on our committee, but whom FMCS chose. One was a local Washington State arbitrator, Jerilou Cossack, whom I didn't know at the time. We had dinner with her after the meeting and got to know her, and I think I have a very nice letter from her expressing her appreciation for having had that kind of exposure with us. During that year, with that group through Arthur's leadership and with more members expressing their concerns through the focus group, FMCS revised its approach to one which was much more acceptable.

Also, in the fall, as soon as Dennis learned about Jack's choice of theme of "Quo Vadis" for the 1999 annual meeting program, he suggested, perhaps through Jack, that he wanted to do a paper on whether the Academy should become an organization of labor and employment arbitrators. I remember calling up Dennis and suggesting a subject that I thought would be

interesting. He still wanted to do his paper. Jack and his committee were working on their ideas for the program. One of the really great things that happened was Dave Feller was able to talk Archibald Cox into doing the Fireside Chat.

I neglected to mention one of the important things during the year I was president-elect in 1997 was that the Academy was in the process of filing two important amicus briefs. Dave was writing the Supreme Court brief in the Wright case and Don Weckstein along with Dave's support, was writing a brief in the Ninth Circuit. Being a member of the executive committee, I was privileged to review the drafts of both of those briefs. I knew Dave before that, going way back when I first came to Washington back in '61. Being from different parts of the country and he being a professor, we were never relatively close during the Academy meetings. But he actually accepted a few suggestions I made. He was a wonderful person. I had always admired him generally, but I considered his paper about the coming end of arbitration's golden age to be just one of the great classic papers in our fields. He was just a brilliant individual. So I got an opportunity to get to know him better and also Don Weckstein with whom I had been able to work when we were both on the CPRG. Don was a very talented individual. I was looking over that brief just this morning and it's very interesting that the Academy's brief had to deal with questions of whether Tonya Duffield should be required to arbitrate an employment issue dealing with her employment where she had signed one of these mandatory arbitration agreements. We argued this was unfair. I think that our argument was that kind of agreement should not be enforced. The Ninth Circuit agreed with us and so the question about Academy credibility in dealing with issues outside labor-management arena is, in my view, not a valid one because we've had credibility on issues of that kind as far back as 1997. In my presidential address I

pointed out that since 1993 when we amended the *Constitution* to include among our purposes the study and understanding of employment disputes, we've dealt with those issues in every meeting since. And, of course, many of our members do that kind of work so that we are already in a position and have been in a position to credibly speak on those issues.

When I became president in San Diego, Ted St. Antoine was president-elect. He was someone with whom I had not developed much of a relationship through my activities in the Academy. I'm sure it was the same for him because we hadn't served on committees together. We did not know each other very well. Therefore, at the beginning of my term, we had some miscommunication in the discussion on what I intended to do. One had to do with setting up a committee to deal with the future direction of the Academy. It took me a while to become convinced that it would be a good idea to have such a committee and because Dennis was writing that paper, I thought, this could be used to give the committee its charge. By that time, John Kagel had been nominated as the president-elect, and I knew John much better and so I started thinking about it. Since I had been in communication with Ted St. Antoine about it, I realized from my past experience with these kinds of committees, that it was the kind of committee that would be appropriate not only for the president but also for the president-elect, and the next person in line to join in. We sort of have a past history of that kind of approach and so I called up John and told him that I was thinking of setting up this committee to give him a heads up on it.

So, on March 4, after talking more with Ted and John about this, I sent out a letter to all the members announcing a special committee of the Academy's future. In it I said,

In early January, after discussions with President-Elect Ted St. Antoine and others I decided to establish the above special committee. This is in line with the *quo vadis* program theme for the annual meeting in New Orleans. The committee's charge will include considering whether to expand the Academy's membership to those who act as arbitrators mostly in cases involving employment disputes arising outside the labor-management field and, if so, how. The committee will receive its challenge from Dennis Nolan in his paper at the members-only session in New Orleans. In that address Dennis will review and explore the pros and cons of such a change. The committee also will consider other matters related to the Academy's future direction. Since the committee will begin its work as my term is ending and because it will need at least two years to complete its work, I asked President-Elect Ted St. Antoine and John Kagel, the nominee to succeed him in that role, to agree with me on the make-up of the committee.

Dennis, at the meeting, gave this really great paper. I did ask him to provide it to me ahead of time. I hadn't really decided what I was going to say in my presidential address. But after receiving his paper, I thought it was important for me to react to what he had said. There were other kinds of things I was considering, but this was just so appropriate, I thought, and what he had to say was so important, that I thought it would add to it for me to address in my way the issues he had raised; and that's what I did. Ironically, for some reason or other—I don't know why that happened—but because I received Dennis's paper not long before the meeting and because I am generally slow at what I do, I was working on that address up until practically the last moment. So it wasn't typed up or anything. For some reason or other—and I didn't make a point of making sure that the *Chronicle*—it was just an assumption on my part— that the *Chronicle* would be covering it—that it would be reported on in the *Chronicle*. Much to my surprise there was nothing. In fact, I think it's the only time, as far as I can recall, that the *Chronicle* came out after the annual meeting and the president's address, and it didn't even mention it. And I felt—and I still feel—my address is a very good speech. The things that I said I believe are very good and apply even now.

AS: That was a question I hoped that you would answer.

JH: I mentioned the fact that the Academy is made up of all these generations and how important.... Well, the theme of it was studying the past. I started with it's so important to know the past— where you came from. I just made it a point in my.... When I came into the Academy, started attending Academy meetings, I made it my business to know about the people who came before me. Of course, many of them I had appeared before as an advocate and then I got to know others. I wanted to know about these people because I respected them and wanted to learn even more from them and what this academy is all about. At the last meeting in Washington, you may recall they had this.... Were you there?

AS: No, I was not.

JH: Well they had this panel headed by Roger Abrams on *The Trilogy*. Roger Abrams is a professor and hasn't been all that active in the Academy. I got up to ask a question and I thought it was a very important question. I don't even think he knew who I was. I said, "It's surprising to me that..." You know he had this group of elders who were supposed to talk about *The Trilogy*, Ted St. Antoine and Rich Bloch, I think...a number of people who were very good. But I said, "It's surprising to me, as someone who actually was present when it occurred, that none of you has mentioned the influence Harry Shulman's piece on Oliver Holmes' lecture on "Reason, Contract and Law" had on the decision in that case. That is mentioned and footnoted in the decision as well as Archibald Cox's article. Would you like to make some comment on that?" In fact I said, "Everyone in this room should be aware of—if you're involved in this field, you should know—those two pieces. You should have read those two pieces." Abrams just went on to another subject. Several people said to me afterwards, "Well, that was a great answer to

your question.” But to me, it was just so different from myself that he doesn’t even know of a past president of the Academy even even though he’s a member. But he’s not really an active member. I feel its just so important that if you’re going to be active in the organization to try to know as much as you can. That’s one of the reasons I decided to be on the History Committee. Because I feel we’ve got this very good book that Gladys Gruenberg, Joyce Najita and Dennis Nolan put together on the first fifty years. I think they now give it to all the new members. We ought to make it required reading. So all of this very important.

That year, I think, was one of the most active years in the Academy. There were quite a number of cost-cutting measures. We had to deal with the deficit we were incurring. We had, you know, some very unusual expenditures related to the anniversary meeting in Chicago and publishing *The Common Law of the Workplace*, and things like that. Actually it was during that year, even though when I went in I knew that we had that deficit, I also knew that we were going to have to have a slight legal representation fund assessment. I wanted to avoid having a dues increase as well as that assessment. I even told the members in the first or second *Chronicle* article that I didn’t think that would have to occur. But then it became imperative and Bill Holley did recommend it later on in the year. And in the Spring, I think, the Executive Committee met and we decided there had to be a dues increase. I informed the Board of that before we met. That’s been one of the problems, too, in terms of communication between the Executive Committee which kind of runs the organization and the Board, to keep the Board members knowledgeable about what the Executive Committee is doing between the times that the Board gets together. So I let the Board know about our meeting earlier that year in 1999 and that one of the recommendations was going to be a dues increase. And then at the Board

meeting, much to my surprise, there wasn't any opposition. Also, at the business meeting, it just went through. I was so surprised because when we had the increase before, back in 1990, there was a lot of concern, I thought. That shows some maturation in the way the members look at the benefits of the organization.

AS: Yes. When I came in I was surprised at how modest the dues were. And they are even today.

JH: Well, there are some members who feel...They are more than the ABA, as I recall. I'm not sure how much.

AS: In thinking in terms of what membership in the Academy means and the benefits that are derived from it...

JH: I think that members appreciate what the organization has done. Most of them, not everyone. But we are an organization of very highly intelligent people. And it surprised me. Whatever you do there are going to be people who are going to find something wrong, even intelligent people. Some of them just never had to ... What time is it now?

AS: It's a quarter to five. Do you want to stop for awhile or...?

[RECESS]

JH: Just minor kinds of things in terms of cost-cutting. For instance, the Executive Committee, for the first time. Those committees that need to meet in the Fall like the membership committee and CPRG, and other committees where the Executive Committee determines that they need to meet. But mainly the Board of Governors, CPRG and the Membership Committee, traditionally we have paid their extraordinary expenses and those extraordinary expenses were tending to get out of hand. For instance, we would pay for the cost

of days spent at the hotel just to attend committee meetings. And of course a number of members would get the best rooms. Some people would go out to the most expensive restaurants. And there were other kinds of expenses. So we decided to define what extraordinary expenses would be, and would say you get X amount of dollars for your hotel.

AS: Federal rules apply.

JH: And that was a good cost-cutting measure. Traditionally, there was a Board of Governors dinner and we continued to have that, but then the Board agreed at the annual meeting when I was president that in the fall meeting that was coming up they would eliminate the Board of Governors dinner on a temporary basis. I think we no longer have the Board of Governors dinner. That was a fairly heavy expense. And even the President's Dinner, which used to be a dinner for past presidents and those people who were invited which generally was CPRG, Board of Governors, and membership committee members. The Academy paid for this. That was a big expense. Now all that we have is the President's Dinner which is open to everyone and you have to pay for. Those are some of the changes that have taken place over the years.

There was also come concern during the year from BNA about not getting enough quality decisions from Academy members for publication. Too few Academy members were submitting their decisions for publication. So I set up a special committee to consider that issue, which Joe Sharnoff chaired.

AS: What recommendations did they come up with?

JH: Their recommendations came in at the annual meeting and we didn't deal with them until after Ted St. Antoine became president. I think the Board shelved them.

AS: I don't remember hearing then, but I do recall that the *Common Law* was a project in

part to address the quality of decisions being published.

JH: Well, the *Common Law* was really more a project to educate the parties.

AS: Yes, because they were not getting educated through published decisions. At least that was my take on it through those involved—that it would create what is the body of experienced thought on decision-making in arbitration that is not being reflected in the reported decisions.

JH: In any event, nothing came of that committee. I think they may have suggested a form that arbitrators could use at the hearing or afterwards to give to the parties to seek their consent, letting them know that the National Academy of Arbitrators encourages publication.

AS: Matt Franckiewicz should have been on that committee, but I'm not sure he was a member yet.

JH: I think he became a member about that time.

AS: He has the distinction of being the most-published arbitrator, at least in recent years. So he knows to do that.

JH: I must say I haven't submitted any in recent years.

AS: Nor have I.

AS: Is there anything further that you wanted to talk about that we've not yet addressed?

JH: I can't think of anything at this point.

AS: We don't need to conclude the interview today. We can leave the record open and do an addendum. You are a marvelous storyteller and you've had some wonderful experiences.

JH: [laughing]

AS: Actually, I have a couple of questions about some things that I, personally, am

interested in knowing about and that perhaps others who are interested in the era, your life and your philosophy and participation in the Academy, would be too. You have talked about some of these already, but maybe not from the same angle.

One of the things that struck me when I reviewed the other interviews and your presidential address was, as we touched on at the very beginning, that a theme of your presidency and certainly the annual meeting's program and your presidential address—*Quo Vadis?*—is very much with us today. In 1999 you were, very wisely I thought, unable to support the proposed direction because there were so many unanswered questions. As the discussion that has been so active at meetings, on the email list and in publications shows, this is a huge issue even today. In light of that discussion, do you think we are beginning to get some answers to those unanswered questions that might indicate a direction in which you feel the Academy might move?

JH: Part of the unanswered questions was. I suggested in my address that we do a study as we did the late '80s which was the state of labor arbitration in America. This was a huge piece of research which I thought was very useful. In my view it would be useful to update that information and also to try to find out what was really going on in the employment area. How many arbitrators, how many are neutral, minorities, female, numbers of cases, methods of providing arbitrators, etc. We really don't know what is actually going on. If you're reading the email list, you may recall that I said that it was ironic to me that an organization of people who would never think of making a decision without being sure about the facts, is going to make a major decision without them. But Dennis's reply was that we have all the information we need. I'm willing to accept that the number of labor cases has gone down, but I'm still not satisfied that we know to what extent that is. His answer was that all we need to know is that it's going down.

I still believe it's useful information. To what extent are there, if that's the case, more direct appointments as a result of parties being dissatisfied with AAA and FMCS and going directly to their arbitrators. We've left out the facts. To what extent has FMCS's decision to charge for getting arbitrators affected their caseload? And AAA, of course, is charging more and more. I believe there are more direct appointments, but we just don't know. I did get Dennis to acknowledge what I think is one of the most important facts—not exactly a fact—but everyone tends to agree that there are hardly any people who are doing employment arbitrations of significant numbers who are not Academy members who are neutral. Everyone seems to agree there are very few of those people. I think that's an important fact that we have to take into account in considering whether we should change. And the people who were putting forth this proposal initially said it was because one of Dennis's major premises in his paper was the decrease in the numbers of our members. Of course, our membership has remained almost static for the last 10 years. Now that's not being used as an argument. The main argument now is that in order to be able to speak forcefully about issues in the employment area we need to encompass that field in terms of our membership. But I said earlier I believe we can already do that on the basis which we now exist; based on the experience of the organization itself. It's part of our purpose to study and understand that field. In fact, we have explored it in lots of ways since 1993 and before, so we're very knowledgeable in that area and our members do that work. Myself and a number of other past presidents have gone on record as being opposed to the proposed change. During the discussion of the membership standards, I was willing to accept a compromise position. If people really think it's more difficult for labor arbitrators to become members because of the declining caseload, to take that into account by permitting some

recognition of employment cases in the threshold to be considered for membership. However, there are strong feelings among many members that they don't want to do that. In my view, there's a really strong feeling among many members that unless we change the organization itself...and there's much to be said for that. I think we need to decide first whether we're going to change the nature of the organization before we change the threshold membership factors. It's like putting the cart before the horse. What that would mean from my perspective is that if we become an organization of labor and employment arbitrators then we ought to give equal credit to all kinds of cases.

AS: If it's 50 in 5, it could be 50 of either kind.

JH: Right. So we'll see what happens.

AS: Are you game for another question?

JH: What is it?

AS: As I mentioned earlier, I noted several times in the other interview and even today you mentioned you found inspiration and wisdom in the National Archives building in Washington. Is there something that you, as part of the past as well as the present, think a new president can learn from the past? In other words, what important things can a former president pass on to the tenure of new and future presidents.

JH: Well, that's a difficult question. Partly, I think, it's influenced by what is going on at that particular time. What happened during my tenure as president was very much influenced by the events that were occurring then. For instance, when Rich Bloch became president a good deal of his presidency was oriented towards the FTC problem. A president can't really anticipate what is going to happen.

AS: True. And when we elect our president-elect, we have no idea what is going to be.

JH: Right.

AS: Are there some personal qualities or a particular area of knowledge?

JH: From my perspective, I think its very important to the extent that a particular president can, to reach out to the membership. To try to get the membership more involved. One of the things I didn't talk about was I made quite a number of visits to the regions I could get to. That was a very important exercise. The very first thing I did was I was invited to a little picnic up in Philadelphia at the house of Charles Coleman, one of the members. It was an informal thing, but very good. Then later on that year I went to one of their meetings and to Boston. I was recently reviewing a note I received from Margery Gootnick after I had been up to a meeting in Rochester. One of the members, who is an active member, expressed the concern of many members that they didn't feel like they were involved enough and recognized enough as members. And since that time, we've developed...just this past year...a buddy system of designating buddies for new members.

AS: Is that right?

JH: And also the dine-around is supposed to be a way to help members get to know each other. There are some members who are more aggressive than others in terms of getting to know other members. Unfortunately, that's the kind of organization we are. Unless you're a kind of superstar no one is going to seek you out. Everyone has their own little or big ego and they're not necessarily going to seek out anyone new. I've always tried to make an effort to get to know everybody. The dine-around is a good way that allows members who don't know others to get together. This happened when we met. I just feel it is very important for the members to feel

that the president is accessible and interested. I did try to engage as many members as I could. I was disappointed that we didn't have better attendance by the members at the annual meeting in New Orleans. We actually that year had an increase in guests and a decrease in members and their spouses. I don't know if it was the location or what it was. I'm not sure to what extent this is useful to those coming on.

AS: Accessibility, I think.

JH: Yes. One of the things I did, for instance, to the extent that I could,...Well, in preparing that presidential address, I read every previous presidential address. I also read as many of the past issues of the *Chronicle* to see what former presidents had said. I think it's important to try to inform yourself on what has gone on before.

AS: Which, again, shows your respect for the past and the lessons that can be drawn from it.

I think the last thing I would ask you, if you have the stamina for one last question, is something that was left unanswered at the end of your previous interview and I really am curious about your answer might be. You talked then about your experience as an arbitrator and as a black person before, during and after the civil rights movement, which is a fascinating history to read. And it ends with a couple of interesting questions, which you didn't have time to answer then. Clara concluded by asking to what extent did being black affect your entrance into the profession, your success with it and your interpersonal relations with your colleagues. I would add to that, too, because it came up in several places, what might be done to increase diversity, in particular racial diversity. You see, when I first started attending Academy meetings in the '70s, I was a doctoral student participating in the Women Arbitrators Development Program headed by

Jean McKelvey, Eva Robbins et al. geared towards increasing the numbers of women arbitrators. That's how I got my start in arbitration. Without that program and the support of seasoned arbitrators in the Cleveland region when I hung up my shingle some years later it would have been more difficult for me to get established. A lot of the women in that program are in the Academy today. And if I look around the room at any meeting I attend, women are much more present than they were in the '70s and '80s. But the same cannot be said for people of color. So those that Clara put to you on this topic are questions that I would put to you now.

JH: This always has been a perplexing issue for me. To some extent, I regret not having directly taken it on in my presidential address. It's one reason I suggested a study of the current state of labor and employment arbitration in the U.S. However, this was too subtle, and it has not happened. Such a study would show the great increase in female arbitrators, at least in labor arbitration, during the last 20 years. It also would show the relatively modest gain in those numbers for minority arbitrators during that period. These changes are reflected in the increase in female Academy members from about 4 percent in the 1980s to almost 20 percent today versus the change in minority members from about 1.6 percent to about 4 percent in these years.

I'm not sure how this problem can be solved. In the past, there have been arbitral training programs directed to minorities. In the D.C. regional office AAA sponsored one in 1990 at Howard University Business School in which there were 20 participants. I and other local Academy members participated as trainers and mentors. However, it was difficult for some of the trainees to take time off from their full time jobs to sit in on arbitration hearings. Also, there is the dilemma of holding a full time job and trying to get started as an arbitrator. Recently the New York Bar Association and AAA have been interested in this, and are setting up programs to

address it. The Capital Law School in Columbus, Ohio, also has had several training programs for minorities to become arbitrators. Floyd Weatherspoon initiated this with AAA, and recently he became an Academy member. We've made slow and steady progress. However, there needs to be more emphasis now on dealing with this question.

END OF INTERVIEW