

National Academy of Arbitrators  
HISTORY COMMITTEE INTERVIEW

Mark Kalin

NAA President, 1983

Interviewed by Dennis Nolan

May 29, 1989

MARK I.. KAHN  
PRESIDENT 07 THE NATIONAL ACADEMY OF ARBITRATORS  
1983  
INTERVIEWED BY DENNIS NOLAN  
AT  
THE CHICAGO HILTON AND TOWERS, CHICAGO, ILLINOIS  
MAY 29, 1989

Nolan           It's May 29, 1989. We are at the annual meeting of the National Academy of Arbitrators. I am Dennis Nolan and I am interviewing Mark Kahn, who was President of the National Academy in 1983-84. Mark, I thank you for your time and for this contribution to the Academy's history.

Kahn            I'm glad to be of assistance in this project.

Nolan           Mark, perhaps we can start with a little bit of personal background. Can you tell us where you were born and educated?

Kahn            Sure. I was born in New York City, Manhattan to be specific. I lived there until I graduated from Columbia College in the year 1942 with my Bachelor of Arts degree in economics and political science. I then participated in helping to win World War II.

Then with the help of the G.I. Bill of Rights – because I'd worked with various economists at one point during the war – I went to Harvard and there obtained a Ph.D. in Economics in 1950.

Nolan                   What was your dissertation on, Mark?

Kahn                   It was on industrial relations and the airlines, interestingly enough. The industry I later came to arbitrate a great deal in. That was a fortunate development that started about eight years after I had been arbitrating. I might say also that I spent a period of time with the Office of Strategic Services and mostly in 1942 and early '43 with a bunch of economists there. For you young people the O.S.S. was the predecessor to the C.I.A.

Nolan                   Appropriate training for an arbitrator.

Kahn                   Absolutely, and I became an expert on the Russian front. After about nine months of this and writing the first official prediction that the German forces were going to lose the strategic initiative in the Soviet Union, I was drafted and entered the armed forces as a private. I ended up as an aerial navigator. After I was commissioned as an aerial

navigator, I was picked up again by O.S.S. and sent to London where, working mostly with economists and other people, I was in a small group that was advising on economic targets for strategic bombing in enemy Europe. It was against that background that I decided to get an economics Ph.D. at Harvard. But my major interest within economics was in labor economics. Then my dissertation was directed by the almost legendary John Dunlop. The person who suggested I do a doctoral dissertation on the airline industry was Professor Jim Heely of the Business School, also a well known arbitrator. I think that kind of higher education exposure to labor economics and industrial relations was of course a factor in my ultimately moving into arbitration.

Nolan Now you got your degree in 1950, what happened then?

Kahn I had joined the faculty at Wayne University in Detroit, which became a state university in 1958. After being on that faculty until the summer of 1951, I was invited to join the Michigan Regional Wage Stabilization Board, Region 6-B. I decided that would be a great experience, and I worked for

that Regional Korean Wage Stabilization Board mostly as the director of case analysis for approximately for a little over a year and a half, until February 1953 when the Board was liquidated. During that period of time, as a neutral in that position, we weren't concerned with labor disputes. But I learned a great deal about wages, compensation, fringe benefits, data from all over the state and met union and management representatives and attorneys who were coming to the Board to get approval for adjustments in wages and fringes. I'm sure that this exposure to the labor relations community was an important factor in enhancing my subsequent acceptability as an arbitrator.

Nolan I'm sure. Then you returned to Wayne State?

Kahn Then I returned to Wayne. In addition to teaching courses in basic economics, I was teaching courses in labor problems and collective bargaining. At that point, the American Arbitration Association began to use my name. I began, slowly, to get some cases, which was very nice for a young assistant professor.

Nolan                   When did you first begin arbitrating?

Kahn                   1953.   And hard to believe but that was about 36 years ago.

Nolan                   Did you have any mentor that led you to arbitration?

Kahn                   In 1953, two members of the Academy Ron Haughton and Ed Cushman and I started a Detroit area chapter of the Industrial Relations Research Association. It was small of a beginning but really flourishing as a young organisation because it met an important need. It served as a vehicle, among other things, for arbitrators to meet each other. Detroit has always had a fairly active industrial relations community. I met a number of arbitrators who in one way or another, with whom I became involved, particularly Gabe Alexander one of our veterans and past Academy President and Secretary, Harry Piatt. These were perhaps the two I got to know the best professionally, and for each of whom I did some decision drafting back around 1953-54. I was particularly pleased to see a couple of those decisions get published by B.N.A. not under or over my name but it was nice to see what I had written

get printed by Labor Arbitration Reports. It was a community where, partly through the I.R.R.A. and partly through some of my direct relationships with some of them, I did have an informal kind of mentoring. I was never anyone's official apprentice. I shouldn't say this now, but I must tell you that much too my regret in fact I never did observe an arbitration hearing.

Nolan So your first one was . . . ?

Kahn When I started conducting arbitration hearings, I had never observed one, and I survived. Nevertheless, it's not the best way to go at it.

Nolan Do you know Byron Ripkins' fine article on the one-eyed man in the land of the blind? He conducted his first arbitration hearing with two parties, neither of whom had ever had an arbitration hearing before. A wonderful article in the Labor Law Journal.

Kahn My favorite recollection is that I did not know, for example - this is a time for true confessions - I was not aware when I started to conduct arbitration hearings,, although I'd read a lot about

the process of even such basic elements as the fact that cross examination may be more leading than direct. I learned about that the hard way: on the job. I think after a while I learned these matters. It would have been helpful to have had a more structured internship, to have attended a few hearings, to have talked about the procedure subsequently with whomever my mentor was. I was not fortunate enough to have that kind of organized experience. I am therefore glad that I survived this unstructured process.

Nolan

How did your case load develop?

Kahn

Slowly. I can tell you approximately the figures because I once had occasion to do some research on that. I had about four cases in 1953; about seven in 1954; about ten in 1955; about seventeen in 1956; and from there on it was as much as I could handle. I limited myself to what would turn out to be in retrospect about thirty-five cases a year. It was a heavy load but I did not, at that point, do any work for the University in the summer months and of course, I arbitrated more heavily in the summertime than in the rest of the year.

Nolan Did your cases come from any particular industry or was it pretty much across the board?

Kahn No, I'd have to say that at the time I started arbitrating all of my cases initially came through the Detroit office of the American Arbitration Association. That office was staffed and run by one lovely relatively older lady named Lou Herrscher. Her total volume of work, and this is 1953, was about 130 labor cases a year and nothing else. She did no other kind of work at that time. She was a remarkable lady. She was very helpful to all of us young arbitrators. It was with A.A.A. that I got all of these early cases for say the first three years. May be after that I began to get some cases directly and it was around that time, I believe, that I moved on to the F.M.C.S. panel and began to get cases through the F.M.C.S. as well.

Nolan Did you consciously seek to develop an arbitration practice or was this a matter of just cases having come your way?

Kahn I had no notion of serving as a labor arbitrator when I came to Michigan as a young member of the

economics faculty at Wayne University. Upon meeting some people who were arbitrating, I thought that "Gee" this would be kind of fun to do some day, but I had no sense of urgency. I became more familiar with the industrial relations scene through my work with the Wage Stabilization Board. About the time that was concluding, someone, I believe it was Ed Cushman, suggested that I apply for A.A.A.'s labor panel. I said well that will be nice and maybe I'll get a case here and there. It will be fun. That's what began to happen. Again, in retrospect, I think one of the fortunate things about the way at which I became an arbitrator was that I was a busy young economics professor, particularly in labor economics. What I was doing in arbitration, I felt gave me some good insights, especially for the institutional courses I was teaching. But I didn't have to make a living that way. I think that's a great way to become an arbitrator is to have another means of support, and not be anxious about the frequency with which you will develop a practice. As I say, it really took me about four years to get to the point where the arbitration was a significant activity.

Nolan

Did you have any permanent umpireships in the early

years?

Kahn

It seems to me that along about my third or fourth or fifth year I began to get the kind of permanent umpireship where you may never have a case or you may have a case once a year, certainly where there is no retainer. In my entire career, I've never had a retainer. I've been a permanent umpire as an individual in a few situations. But mostly, especially in the airline industry, I'm a member of many associated panels of arbitrators. But again with no commitment on either side to be available for any particular number of cases.

Nolan

When did you first apply to the Academy for membership?

Kahn

Well again, some of my local arbitrator colleagues, including Harry Alexander and Ron Haughton and Ed Cushman, just decided they wanted me to be in the Academy, which was sort of an awesome but pleasant thought to me. I believe that I applied late 1954 or early 1955, prematurely I should emphasize by our standards today.

Nolan

There was not a five year requirement then or

expectation?

Kahn                   There couldn't have been because I really started arbitrating in early 1953. I might have had one case in 1952 on leave from the Wage Stabilization Board but essentially I started in 1953.

Nolan                   And you were admitted at that time?

Kahn                   In 1955. I was in the first group to get their 30 year Academy pins in 1985 at the time we started that custom. At the time I don't suppose I decided more than about 20 cases. Really, if I had been on the membership committee, I would have had me wait at least another year.

Nolan                   But fortunately you weren't on the membership committee.

Kahn                   Yes, and I really hadn't initiated my own application. I filled out the form after others suggested I do so. I was very pleased to join this great group, but it was a little premature. Fortunately, I did continue to arbitrate and I've been delighted to be in the Academy ever since.

Nolan                    Were you immediately active in the Academy? Did you immediately start working on committees?

Kahn                    I think I was always active in the sense of never missing, as a practical matter, either local or national functions. I did look over some old membership directories and I can tell you that I served as Regional Chair in the State of Michigan from 1958 to 1960, a two year term. When I did that I was only a three year member.

Nolan                    What other committees have you served on? You do not need to go through each year.

Kahn                    Okay. I was on the Membership Committee in the 50's and in the 70's. Then I served as the Chairman of the Membership Committee from '79 to '82. I was on the Research Education Committee back in the 60's. Of course I was on the Board of Governors at one point and Vice President subsequently, the way you march toward the presidency I guess. I was on the Executive Committee over the course of that. I was the Chairman of the committee on the essay contest. I think I suggested we drop the idea. That was '70 - '71. I was the Arrangements Committee Chairman

when we met in Dearborn in 1979, a good grueling experience, but really it was a worthwhile experience from a learning point of view. I've been on a variety of committees. It was very rare that I have not been on some committee. I was Proceeding Editor for at least three volumes of the Proceedings I believe back in the '60's. I was on Professional Responsibility for a year. I have been recently on the Designating Agency Liaison Committee, which incidentally I created when I was President. I've been on the Archives Committee rather actively until we solved the problem of what to do with our archives: deposit them at Cornell. I was member of the Special Committee on Membership Standards in 1979-80. Currently, I am Chairman of the Auditing Committee. I guess I'll be continuing that. That touches on, I think, most of them.

Nolan Yes. You've been on a broad variety of committees.

Kahn One I'd like to mention that I guess I left out up to now. When Arthur Stark was President, he and I were talking about some of the Academy's structural problems. He asked me serve as the Chairman of the Special Committee on Regional Organization. It was out of that committee that we first added to our

Constitution in 1979 Article VIII which refers to and deals with regions. Until then, we had no mention of them. Even though we had all of these regions they were nowhere mentioned in our Constitution or By-laws. Subsequently, while I was President, the Committee brought before us and we adopted our By-laws of rather important provisions on regions that are in Article VIII. We will discuss those later if you like.

Nolan Did you detect any impact on your arbitration caseload from you membership in the Academy?

Kahn No. I've always believed, and still believe, that membership in the Academy does not have a significant impact on one's acceptability as an arbitrator. The people we accept into the Academy are people who obviously became arbitrators you might say without our help. Many of us, of course, participate from time to time in programs for new arbitrators or developing arbitrators or whatever. We've had a very active one in Michigan this past year to improve the quality of the arbitration that is being performed by people who are arbitrating but not yet in the Academy. I think that's very important, but the fact is that to become a member

of the Academy you have to have general acceptability as an arbitrator. You have to have developed that. You normally, as anyone would be who is young in this field, are on an upswing of caseload. Just because your caseload continues to increase after you've qualified for Academy membership doesn't mean that it's because you are a member of the Academy. I have, over the years, found that many parties knew very little about me. I would often come to an arbitration hearing and discover the parties would not know whether I was an attorney or not. They would not know even that I was a professor. Now, of course, this can't happen until you've been arbitrating a while, but once you're arbitrating while you are known primarily by your reputation as an arbitrator. A lot of that reputation I think is sort of hand and mouth. Advocates, business representatives and lawyers meet each other and talk about arbitrators and basically conclude if this person is okay or not okay. They may or may not refer to Academy membership, but I know some cases, for example, there's an arbitrator in Detroit who's extremely competent in arbitration who's a member of the Academy for several years and who felt that her law practice, and some of the things that she was

involved in could conflict with the Academy's view about no representation, even though some of us disagreed with her. She decided to do the prudent thing and not be bothered with possible conflicts of interest and resigned from the Academy. And I asked her "when you joined the Academy, did you notice any particular upswing and when you quit the Academy did you notice any downswing?" She said "No, it doesn't seem to have any effect at all." I'm pleased about that because I don't think a function of the Academy is to have anything to do with one's acceptability as an arbitrator. It's rather simply to improve ourselves in terms of how we practice.

Nolan

During the time you were developing your arbitration career in the 1950's until the time of your presidency, you began to pick up some rather significant arbitration assignments, particularly in the airline industry. How did that come about?

Kahn

I had been arbitrating perhaps six or seven or eight years, and I think I simply happened to run into some people who were familiar with the fact that I had done a good deal of writing about airline labor relations matters during the 50's who

were connected with the industry and who separately learned that I had been arbitrating for six or seven or eight years. It was in the early 60's that I first began - by direct selection not through any agency - to be invited to do some airline work. That was rather thrilling to me because it was the industry about which I had written my doctoral dissertation and published a number of articles about in the 50's and continued to be actively concerned with as a professor and researcher. Obviously to arbitrate in that same industry was a way of meeting people and gaining different insights. I was delighted. As the volume of airline arbitration invitations picked up during the 1960's what happened was, because I was still a professor and always intended to remain a professor who arbitrated, I began to turn down more other work in order to accept the airline invitations. I guess it's fair to say that by about the late 60's and ever since then most of my arbitration has been in the airline industry: somewhere around two-thirds of it.

Nolan

Let's turn now towards your period as President. You served first, of course, as President Elect. How did you happen to get nominated for that?

Kahn I don't know.

Nolan It just appeared one day?

Kahn The Nominating Committee called me one day and said "we would like to nominate you for President Elect if you are willing to accept." Of course, I was delighted. I was actually quite surprised. I might tell you, by the way, that I never did expect to be President of the Academy. There were some rumors that I picked up just before I was asked about being President Elect, but apart from that I never had any notion that I was on that track. I will tell you why because this isn't just a matter of humility. My general impression was the Academy either preferred to nominate the very distinguished sort of full-time arbitrator war horses - the auto-umpires like Alexander and Piatt, steel people like Seward and Garrett, the people who were really outstanding as full-time pros in this field - or if they were professors, professors who had written a great deal who had substantial reputation in terms of publishing about arbitration subjects like a Ben Aaron, if you please, a Robben Fleming, if you please. I didn't fit either of those categories. Most, of my writing was about labor

relations and collective bargaining. I've actually written, to this date, only one article dealing directly with grievance handling and arbitration and that dealt with the airline industry. That was written in 1969, and we're talking 1983. So I wasn't writing about arbitration. I didn't in my own mind fit the typical characteristics, I didn't meet the criteria, of people who were typically nominated. I think I know why I was nominated. This isn't particularly inside information or anything, but my impression is that the Academy was at that time experiencing some serious organizational problems. We're talking about 1982. We were running into a net deficit situation, which is astounding for an organization like the Academy to be in a net cash deficit. There were developments associated with the regions and the structure of the Academy. We had the very significant report of the New Directions Committee coming out, which contained a number of innovations. My impression is - you may want to check this out with other people - that the Academy felt that that year it needed to have a person who'd had a lot of nitty gritty organizational Academy experience. That is what I did have because I've always enjoyed whatever

Academy activities I had performed. I did a lot of Regional Chair a number of times and been part of the Membership Committee. I was at that time Chair of the Membership Committee which was a fairly prominent position. At the time that I became the Chairman of the Membership Committee, I understood there had been some preceding turbulence. As far as I am aware, there was no turbulence during my Chairmanship of the Membership Committee.

Nolan So by comparison you looked to be a good administrator?

Kahn I'd been an Arrangement Chairman for an annual meeting. I'd been on a variety of committees, including the Special Committee on Regional Organization which I'm still a member of. I think the feeling may have been that out of very talented people who could be our President, that we ought to be kind of concerned at this point with somebody with a lot of organizational experience within the Academy. That's my speculation.

Nolan Once you were chosen as President Elect, what were your duties? Did you have any other than just watching and planning for your own term of office?

Kahn

Essentially that was it. I played that role very actively, in terms of being on, of course, the Executive Committee whenever it met: by conference call or in person. I worked closely with Byron Abernethy who was an extremely devoted president and who was extremely thorough in everything he did.

With Byron, I learned some lessons, for example and this is meant constructively, but Byron didn't survey the membership for what committees they would like to serve on until after he became President. We talked about this together and he said "that was a mistake, I shouldn't have waited that long." Recognizing that, I think I may have been the one to institute the practice of surveying the membership for their committee activity preferences probably in March and getting the results in by April 1, so that I could catalog those. It was very difficult. We had something like 22 committees in the year that I was President, something like 190 or 200 Academy members serving on those 22 committees. To try to put that together, to do it right and to do it as President, I felt that every committee had to be composed by people who were mutually acceptable to the Chairman of the committee and to me. In each

case it was a joint discussion of looking at the people who had indicated that they wanted to serve or who were currently serving. I had all the committee chairman appointed before the annual meeting.

Nolan                    So that was a very substantial duty even before you were President?

Kahn                    Certainly starting in late March until the annual meeting itself, which as I recall is late May. They were two very busy months with tremendous amounts of time on the telephone. First identifying all of the committee chairs and then working out who would be on them. It wasn't all done by the annual meeting but I think it was all done within several weeks after the annual meeting. I learned that lesson from Byron who regretted that he had not done it earlier. It's very important to experience the opportunity of being the President Elect. It's extremely important to getting a good running start on being President and learning what you have to learn and having everything in shape by the time of the annual meeting.

Nolan                    Did your selection as President Elect have any

discernible impact on your arbitration caseload?

)  
Kahn

I think the answer is yes. I think not as much as the presidency but I would say I've always been rather ad hoc about my arbitration caseload. If I get invited to arbitrate a case, I look at my schedule and I say "well, I really can't accept it unless you are willing to wait 'X' months." Or I'll just turn them down and say I'm not available. My recollection is that I - remember I was a professor who did this part-time - probably arbitrated, instead of my usual 35 or 36 cases a year, probably about 25 cases. I might say also I'm in a fortunate position academically because I was teaching one course each semester and I was directing a program. With that directorship I had an office. It was understood that University was pleased that I was in this position. They didn't give me extra work that I didn't have to have that year or the year that I was President.

Nolan

Having had time to reflect on it, do you have any suggestions for people who take the office of President Elect? Is there anything perhaps that you would recommend that they do differently than you did to prepare for being President?

Kahn

No, if I didn't make this clear already, one of the things I did, of course, was to withdraw from all other committees. I ceased my term as Chairman of the Membership Committee. I withdrew from the Committee on Regional Organization and whatever else I may have been involved in. I think that's important because you get a different perspective as President Elect and you should be able to look at what the committees are doing as a receiver of their recommendations. I think you have to be prepared to study very carefully the rather substantial volume of papers that come out: to scrutinize minutely the minutes because there are little things in those minutes that you might miss if you glance at that them and the committee reports and so forth. You really have to be involved from the beginning as President Elect getting into everything that is going on. As time moves along, to thinking about what you want to do as President. For example, I created the Designating Agency Liaison Committee. We can talk about that a bit afterward, but I wanted to see a regular continuing Academy committee that would not only be there to express Academy views to the appointing agency but that would also keep the Academy informed about what developments were

taking place within the appointing agencies in terms of their policies and their procedures and what was happening that would be of concern to the profession of arbitration and what arbitrators would want to know about. A lot of people aren't quite aware that the appointing agencies are not arbitrators' organizations. They aren't necessarily oriented to protect the interests of arbitrators. American Arbitration Association certainly is a party oriented organization. I got my idea of creating that new special committee as a system that ties our acquisition of knowledge of what was happening as well as a vehicle for communicating Academy views to the agencies.

Nolan This was done after you became President?

Kahn The decision to do it developed while I was President Elect; that's my point. So that by the time of the annual meeting I had that committee appointed. To give you one other example, I still can't understand it, but there was a substantial sentiment in 1982-83 that we did not need to have an Auditing Committee. After all, we assume our Secretary is honest and whatever. The Auditing Committee we had apparently hadn't done much. As

President Elect I was looking at what was going on in the Academy. We've had some very unfortunate financial reverses. We lost \$39,000 at the Los Angeles meeting by transporting judges and their families from all over the country. It should never have been allowed to develop that way. I don't know the details at this point, but we had some poor investment policies which caused us to lose money. We were operating at a very high cost basis out of Rich Bloch's basement in Washington D.C. I don't mean he was charging us rent for his basement. He wasn't but Washington is an expensive town out of which to operate. Anything can cost money there like New York; everything is expensive. We were about to change Secretaries. Dallas Jones became Secretary the same year I became President. I could see the change in the Office of the Secretary bringing about a whole host of financial questions and concerns. Then I felt that an Auditing Committee shouldn't simply be an auditing committee but a committee that would take a broader look at the financial health of the Academy; at our trends; at our resources; and at delicate matters such as what should our dues be; and be there to kibitz if we were throwing money away unwisely. What I did as President – but this was developed

while I was President Elect – was to appoint what I consider to be a very strong Auditing Committee. I gave it a strong charge. I completely contradicted the move of this being just a committee on paper and do we even need it. I named Howard Cole to be Chairman of that first Auditing Committee, partly because in Ann Arbor close to the Secretary and therefore could get into the office and look at things. The other members at that time were Al Dybeck (now our President Elect) and George Nicolau (now a member of the Board). That was it.

Nolan A very high powered committee.

Kahn Yes. Strong and they did a thorough analysis of our financial position. They came up with some very substantial recommendations. I think they were very helpful as a basis for discussion. I might say that committee at that time was more pessimistic than the Board of Governors elected to be. So not all of their recommendations were adopted. That's fine, but there was a committee that was thoughtful and made recommendations that were within the basis of policy discussion before the Board. I might say, as long as we're on this

subject, that committee too had a cycle and recently became relatively inactive. One of the reasons it became relatively inactive was because when significant questions came up relating to finance, special committees were appointed. A Special Investment Committee was named a few years ago, which in effect displaced or did what the Auditing Committee might have been charged to do. Subsequently, Mickesy McDermott was named the Chairman of the Special Committee on the Executive Director, an assignment that could have gone to the Auditing Committee or to an augmented auditing committee. It may interest you to know while we're on this subject that this morning the Board of Governors endorsed a policy statement that the current Auditing Committee, which is now chaired by me developed, which said that this Academy needs a strong continuing auditing committee that should not be displaced by ad hoc committees on particular things but should deal with those things if necessary with augmented membership or with expert advice or whatever. Big things are going to happen. We're going to be changing the Office of the Secretary, for example with new implications for how we're going to operate at much greater costs probably.

Nolan                    So you're in the position almost to catch you own pass?

Kahn                    Yes, but the point is I said I would continue as the Chairman of the Auditing Committee only if it were agreed that we needed a strong Auditing Committee. It's bounced around now, and I am chairing the Auditing Committee for at least one more year but on this basis.

Nolan                    By the time you took over as President you must have had your own private agenda pretty well set, part of which was this Auditing Committee, part of which was the liaison operation. Were there any other particular objectives that you had when you took office?

Kahn                    Yes. Let me say that certainly a key matter was to restore the Academy to financial health. That's not just done with an auditing committee. I worked very closely with Dallas Jones who was fortunate, I think, that we were\* both from the same general area. I have a confession to make. Never during my year as President, which was Dallas Jones' first year as Secretary, did I get out to Ann Arbor to visit the Office of the Secretary.

Nolan                    You never crossed those few miles?

Kahn                    We did it all on the phone. Of course the phone bills were lower than if he had been in another part of the country. I saw Dallas but never at the Office of the Secretary. In any event, we needed to restore the Academy's financial health. There were a number of things that related to that. We needed to, as I mentioned before, accomplish our structural improvements to accommodate to the Academy's growth and increasing activity at regional and local levels. We had a very serious problem relating to developing a legal representation fund, which at that time we did not have. We also had a problem about the Code because until 1984 there was no procedure for amending it. It had never been amended since this Code was adopted in 1974. In addition we had the various and important recommendations of the New Directions Committee. One, for example, was a proposal for a fall educational conference, a national fall education conference limited to Academy members only. The first one took place in the fall of my presidency. Dana Eischen was the Program Chairman for that event. It was a very successful event with more than 100 members on hand as I recall. It

certainly set the precedent for what is now becoming an extremely well established important future. I don't know what your time is, but if you want to talk a bit about financial health I might have a couple things I might want to say about that.

Nolan Now to some of the particular subjects you had to deal with while you were President. Do you want to begin with some of the ways in which the Academy was brought back to financial health? That's obviously an important matter that we should spend some time on.

Kahn I think during the year of my presidency – and here great credit must go to Dallas Jones for his efficient and effective management of the move from Washington D.C. to Ann Arbor and also for husbanding our resources during that year – it was a year in which I recall we shifted from about a \$43,000 net deficit to a \$34,000 net surplus, which I might say since then has moved steadily upward and is today in the neighborhood of just over a half million dollars which is where it ought to be by the way. This doesn't mean we're rolling in money, but an organization our size with our levels

of activity and our importance to the profession needs to have reserve funds and needs to be in a position, for example, to deal with lawsuits that might arise, take on special committee functions that might arise. One meeting of a national committee of ten or twelve members from around the country convening at a time other than the annual meeting where people travel by themselves can easily cost the Academy \$10,000. If such a committee had to be convened, it is important that we be able to do it. At the same time it is important that we don't let the committees meet all over the place when they don't have to. We did a number of things. There were tight cost controls that we instituted. In any fairness, tighter than had been practiced. We cut many costs. We cut the cost of printing The Chronicle in half for example.

Nolan                      How did you do that?

Kahn                        We found a union printer in Detroit who charged half of what they charged in Washington. Detroit is a lower cost town than Washington. We took advantage of all of the economies the University of Michigan could offer, including a free office,

their Watts line telephone system, other kinds of equipment (duplicating and facilities that could take the overflow from what our own office couldn't handle) . We raised the dues. That happened at the time I became President; a \$50 increase in dues but it certainly helped. The annual meeting had a surplus. I don't, remember what it was now but I think it was in the order of \$20,000 to \$30,000 which helped.

Nolan                   Indeed a big improvement over the other meetings.

Kahn                   Over the L.A. experience, yes. Then we put the lid on committee meetings other than those that were absolutely essential. It was just really a matter of being very skimpy about how we managed the organization and that together with the dues increase. There was one other significant event that took place which contributed to our long term financial health. That was the adoption of the Legal Representation Fund, which was formally adopted in May 1984.

Nolan                   Let's go into the background of that a little bit. What prompted that? Were there particular instances of suits that the Academy felt obliged to

deal with?

Kahn

First of all, it's very difficult for Academy members, as such, to obtain any kind of liability insurance. At the same time, it was also clear that the Academy had a vital interest in protecting the principal of arbitrable immunity. Unless the Academy participated in efforts to encourage arbitrators to defend the principle of arbitrable immunity, the Academy itself might not be well informed as to what was going on. The main objective of this program^ which has a limit of \$2,500 per case, is not simply to have a means of saving members up to \$2,500 – most arbitrators can afford if they have to defend a lawsuit except that arbitrators might be tempted not to resist a subpoena they ought to resist if they are going to get involved in significant legal fees. More than that, in order for the Academy to know what was going on as an organization, we recognize that a legal representation program is the way to know what is going on because when the members come in and they say "hey there, I've just gotten this kind of subpoena and so forth" because they want to qualify for the Academy to defray up to \$2,500 of their costs, we become informed. We develop a

rather comprehensive record about developments that threaten the principle of arbitrable immunity. We now know, in general, when arbitrators are subpoenaed. We also at the same time worked out with the American Arbitration Association and its legal people, particularly Rosemary Page as the individual together with Mike Hollering, a means of consulting. Any member is welcome to call A.A.A. to consult Rosemary about something that has just happened. Rosemary Page will frequently intervene directly by calling the people, say, who have attempted to subpoena the arbitrator and explain to them what the situation is. I've had two occasions which Rosemary Page called the party that wanted to subpoena me as a result of which the party dropped the idea. In one case I had been subpoenaed and the other I was told I was going to get a subpoena. I said to the person, in a friendly way, who told me I was going to get a subpoena, I said "before you go ahead and subpoena me I would like to make a suggestion; why don't you call Rosemary Page at the American Arbitrator's Association because she is familiar with this whole situation about subpoenaing arbitrators and so forth." He did and he never subpoenaed me after that conversation. In any event, I mention this because they go together.

We pay the bill as an Academy for the time Rosemary Page spends giving advice to members of the Academy on these matters. That comes out of our Legal Representation Fund. We also defray the defense costs of members who have to get subpoenas quashed or otherwise defend themselves. We are not a liability insurance fund. If a member were ever to be socked with damages or something, that does not come out of the fund. We were milling around with how to deal with this package. One of the shrewd things I did, I think, was to appoint Milton Rubin to be the Chairman of the Legal Representation Committee. That was a good strong committee. During the year the scheme developed and it was adopted after considerable debate at the membership meeting in May 1984.

Nolan                   What was the debate about?    The idea seems unexceptionable.

Kahn                    There was a small minority, a very active group, that felt that we were illegally embarking on an insurance scheme that could even run afoul of the law. There were some very vociferous remarks to that effect at the business meeting. We had to be anticipating that. By the way our plan is not an

insurance program. It defrays costs up to a very specific limit in the interest of serving certain Academy objectives to members who comply with our procedures. It has clearly been determined that it is not the kind of thing which would fall under a state insurance regulatory policy. It's a private organizational plan for helping members meet certain kinds of costs if they should arise, not in an insurance way. There were a few other people who felt why should we get involved in this kind of activity. I think the overriding thing that enabled it to be adopted was not the money benefits that were to be paid but the knowledge that this would make the Academy an important instrument in protecting the principle of arbitral immunity, to the information it would gain, to the experience it would gain in knowing what was going on in this field.

Nolan

And also encouraging people to resist?

Kahn

Yes and thereby making us well informed. It worked out fine. It's been flourishing ever since then. It's been doing very well and has not incurred enormous costs. As you know we have a \$50,000 fund which is initially created by a \$100 contribution

by each member. That contribution was made right after my presidency on the basis of what was adopted in May 1984. Since then there have been a couple of assessments, very modest in amount because the \$50,000 itself earns interest and the interest off \$50,000 has generally been enough to cover the outlays. So it's been a fortunate thing. It is an underpinning of the Academy's financial security because it's a fund that's there and it is there by the way and available if the Academy itself were to be sued. It's accomplishing a useful purpose in a very quiet systematic way.

Nolan

Very much so. You mentioned a couple of the major accomplishments in your term as President. Were there any matters on which you were disappointed? That you were unable to accomplish what you set out to do?

Kahn

It's really a question of having to develop a certain reservoir of patience. Let me give you one example. There was a big tizzy going on back in the early 1980's about the whole business of the publication of awards. When should arbitrators raise the question with the parties? The F.M.C.S. had dropped its practice of asking the arbitrator

to ask the parties. A reading of the Code, as it then stood, made it perfectly evident that the arbitrator should not ask the parties for permission to publish prior to the award. Many arbitrators who were anxious to publish were failing to comply with this. Of course in earlier years they could point to the fact that the Mediation Service expected them to ask the question at the hearing; it's on the checklist. When the Profession Responsibility Committee came out with a self evident interpretation of the Code said you can't do it until the award was in. There were a lot of screams. Without going into details of that whole controversy . . . What we then realized was that nobody knew how to get the Code amended. It was drafted and adopted in 1974 by the people from the Mediation Service, from A.A.A. and from the Academy; a tripartite committee you might say. Then it was ratified and never since amended. The only interpretations of it had been made through our Profession Responsibility Committee. So talk about patience you see. A lot of us, including myself, felt there was room for improvement in the Code as it then stood on the matter of requesting permission for publication. But how do you amend the Code? What happened during my year as

President, which I regard as an accomplishment, is that we formulated and adopted in May the amendment to our by-laws which established a procedure for amending the Code. As our present Constitution and by-laws indicate, we amended our by-laws first in 1983 and then again in 1984. The key amendment I'm talking about was on May 23, 1984 when we adopted the procedure whereby amendments of the Code could be effectuated. The following year the Academy was then able to finally really reach a consensus throughout the Committee on Professional Responsibility. Therefore, if you now look at the current edition of the Code of Professional Responsibility you'll see at the bottom "as amended and in effect May 29, 1985." One year later the new amendment to the provision of privacy of arbitration was adopted changing procedures for requesting permission to publish. I am very pleased that also in May of 1984 we adopted what I think are very important provisions on Article VIII in the last section of the Constitution and by-laws. These proposals actually had been developed back in 1978 or 1979 by the original Committee on Regional Organization that I Chaired. The Academy wasn't ready yet to go beyond the two paragraphs that appear at the end of our Constitution. With

the rest being endorsed as policy, let's see how it works and so forth. As President I wanted to bring that to fruition. It was. The then Committee on Regional Organization probably redrafted it and perhaps revised it somewhat. They contained some very touchy, and I think significant, policy governing the structure between the National Academy and its Regions. That is a very important thing for any organization to pin down.

Nolan Can you give us a couple of examples of that?

Kahn Sure.

Nolan Perhaps explain why they were necessary?

Kahn The Regions have rather arbitrary or expeditious boundaries. The State of Michigan happens to be a Region. It includes maybe one member in the upper peninsula, a handful of members from out west, but mostly people from the Detroit area. Sometimes when we meet people will come up from Toledo, Ohio because they're closer to Detroit than Cincinnati. Some of the Regions were going off on their own to sponsor various kinds of functions or even to adopt positions on maybe state legislation. If something

was happening within the area of the Region we could understand. Arbitrators have a right to be concerned. On the other hand we were concerned that Regions should not appear to be speaking in the name of the National Academy of Arbitrators. If a Region wanted to propose to the National Academy a policy position even one affecting just a particular state, that would be fine. But we wanted the National Academy of Arbitrators in on policy, so that it then may be publicly expressed to legislatures or public statements of any kind. We adopted the rule in Section IV, "Regions shall not adopt a public policy position either as a Region or in the name of the National Academy of Arbitrators." It goes on to say they may request the National Academy through channels to adopt such a policy position. We at the same time were concerned that the National Academy have some role in controlling the kinds of public functions. Functions that would include invitations to advocates or to nonmember arbitrators. We were more concerned about advocates because we believed the Academy should not operate as a means of ingratiating members with advocates. So we adopted Section III which says "Regions shall not sponsor public functions either alone or in conjunction

with other organizations except with prior approval of the President of the Academy." There are certain exceptions to that, but these are very significant standards governing the relationship between the Regions and the Academy. The National Academy of Arbitrators must approve the by-laws of each Region if the Region wishes to have by-laws. Again this is done to make sure there is nothing in those by-laws which conflict with Academy principles. At that time, also, we agreed that there should be and there is a National Coordinator of Regional Activities. I think this is a good accomplishment of my year with a lot of input, obviously, from other people. It has kind of cleaned up the Academy's structure in a way that has stood the test of time, at least for five years.

Nolan                    Not an inconsiderable amount of time.

Kahn                    I've had some disappointments. This is I think because I tend to feel that committees should be active and to some extent even need to be aggressive in a diplomatic way. One example of this I've already discussed with you. That's the Auditing Committee. I think the Auditing Committee

should be a significant active committee concerned with the fundamental problem of how is the Academy doing. When will we need a dues increase? When will we need this? What happens when we have to pay our own office rent? Should we have a contingency fund? One of my disappointments for example has been the Designating Agency Liaison Committee. This is not intended as a personal reflection on any of its members. It was a distinguished committee of three past presidents. They were a devoted committee. But they never picked up on that part of my charge which said that you're to keep the Academy informed on what's going on with the agencies. They just did the other half of kind of being available to talk with the agencies. They did intervene and get involved with a few specific questions. A few years later Syl Garrett and I were added to the committee. The committee still retained its same fundamentally rather passive posture. I think it's getting a stronger charge this year from the new President, the incoming President. It is being continued although there were some suggestions that perhaps it should be discontinued. I think it's terribly important that a committee systematically keep the Academy informed on what's happening with the

appointing agencies. What are they doing? Are they adopting criteria that we should be concerned about whether it's for admission to the rosters or whether it's for how arbitrators are designated for particular panels or the procedures they have with regard to telling arbitrators how to bill. All that stuff. We have to know what's happening in addition to the other side of it which is we need a way of having a channel that can efficiently communicate our views to them especially if we are asked. Let me give you one illustration, it's very important. You're familiar, Dennis I know with the subject of cancellation fees. Have you a cancellation fee policy?

Nolan Yes I do.

Kahn Okay^I do too. Every arbitrator has a cancellation fee policy. The American Arbitration Association's case administration people recently drafted a statement on billing practices which fortunately they sent to us as individuals. They also sent it to the Designating Agency Liaison Committee for comment. We responded as individuals. We weren't speaking for the Academy. Just us as individuals telling the Arbitration Association what we felt.

There were a number of other comments we had and criticisms, but in particular let me tell you about this one. This statement said that to charge a cancellation fee for a day on which you then conduct another hearing is double billing in violation of the Code. We thought that was a serious error. Individually, and it turned out collectively, we so advised them. They are still clinging on to this but not so firmly. You will see in the statement they are about to publish in June in that quarterly newsletter for arbitrators, they're going to print this statement on advice to arbitrators on billing practice. I think it's not a very useful document frankly. Even on this matter of cancellation fees, they say that (1) the cancellation fee policy of the arbitrator should be stated in advance and known to the parties, which we would all heartily concur; (2) some parties have objected to arbitrators charging for a cancelled day on which they conduct another hearing. That's about the whole statement.

Nolan

It's a much more moderate statement.

Kahn

Yes. Of course my view is that the A.A.A. ought to say to those parties "well you're wrong." The

cancellation fee is a charge for having held the time and performed a service and being ready to arbitrate for you. It has nothing to do with what the arbitrator does on that day subsequently after you have cancelled. He may want to take the day off. She might want to spend the time writing on another case. That's not your business. You're being charged for the privilege of having had a day reserved for you until you cancelled it. Maybe because the arbitration was impending and you discovered a way to settle it. That's a service. I give you this really as an example of how the interrelationship between the Academy and designating agencies can be important. I hope to see this committee become much more active than it has been.

Nolan That encounters area of disappointment that not all of the committees have been as active as you think they should have been.

Kahn Right. All I want to say is no President can function without tremendous cooperation and help from the 200 people that are on the Academy committees. All of the chairs, even where I'm being critical, devoted a great deal of time to

what they were doing, and so did most of their committee members. Of course, I think most of the fun of being in the Academy frankly is to be an active member. I think Academy members who join and think they get their dues value because their name is printed in the directory are missing the most important part about being in the Academy. On the whole the Academy's financial health clearly improved. Its structure got stabilized. We figured out how to amend the Code where it needed amendment. The first Education Conference got off to a good start. It set a great precedent for all the ones we've had since.

Nolan

It's been very successful.

Kahn

Yes. Let me mention something else too about this business of time. Many things in an organization like the Academy properly take time to develop and have unusual consequences. One I'm very pleased with occurred last November. I was involved in that development. As a result of having the fall educational conference, starting in fall 1983 and becoming clearly a well established highly successful affair and rather slowly but steadily increasing attendance, it seemed time to raise the question of

whether we can now modify what had been another recommendation of the New Directions Committee, again one that had been implemented during my presidency because that report had come out just before then. You may remember that the Committee established the rule that to be admitted to the Academy henceforth you had to appear at an annual meeting. Of course going along with that was the creation of a New Member Orientation Committee. I created the first one. Arnold Zack did a great job as the Chairman of that first New Member Orientation Committee, which runs about a half a day and still does. Indoctrinating, you might say, permeating the new members with a feeling for what the Academy is all about who then of course stay on and participate in our affairs. We think that's very important. If after attending an annual meeting they don't want to come to anymore at least they will have made an informed judgment. Obviously most of them say these are great functions I'm going to continue to come. It meant that members were being admitted only once a year. This could be a hardship. First of all, that particular meeting may be in some remote location. If you have a low income Academy admission who really can't afford it from let's say Connecticut

or Vermont who would have to be admitted a year from now in San Diego. That's a burden. What about the person who happens to be in the hospital at the time of the annual meeting? Last year we had a Canadian member who was an outstanding Canadian arbitrator. He was all involved with mediating the National Canadian Postal strike at the time of our annual meeting. Under the old policy he would have then had to wait until the next annual meeting. Once this became well established and with the full approval by the way of Jack Dunsford the former Chairman of the New Directions Committee, the Board last year adopted a policy that was implemented for the first time last fall. The applicants who were designated for membership at the annual meeting could be admitted by appearing to the fall conference. Someone designated at the time of the fall conference's Board meeting could then be admitted at the annual meeting. So in fact, there would be a half a year wait rather than in many cases a full year. If for some reason a person can't get to a meeting it's only a half year wait beyond that. This is really a much more equitable way of dealing people who after all have qualified for admission. Incidentally, speaking of the Academy's financial

condition, when you admit a dozen people at mid-year you get a half year's dues out of each of them. It's just a small detail but it adds income to the Academy. That's again something that happened as a result over a period of time. First the new institution of the fall conference, now the decision that members are well off being admitted then as they would be at the annual meeting.

Nolan                    Could you estimate how much time you devoted during your year as President to Academy business?

Kahn                    Sure. First of all let me say that it is uneven. I can remember weeks in which I did nothing for the Academy business including before I became President when I was busy working on committees. If I have to give you an overall average I'd say about 40%.

Nolan                    That's a very substantial commitment.

Kahn                    Yes. Remember that you're dealing with a lot of committees, some of which have things happening all the time like Professional Responsibility. Some you're trying to keep on top of what is going on. My own organizational view was that I worked with

the Chairs, and I didn't ride herd on them. I always certainly encouraged them that if something happened that was a problem to let me know. I spent a lot of time on the phone just talking to one of the 22 committee chairs. The Executive Committee had fairly frequent meetings by conference call. Of course there is the time itself to Academy meetings that which the Board meets and the getting ready for those meetings, and a great deal of correspondence. Things happen you see that don't become generally known. I will give you a very small example. One great big law firm in violation of what our policy was wanted to have a party in Chicago; a hosted party which they wanted to invite those members of the Academy that they knew well. A member of the firm called me and we talked about it. Then we talked about it again. We probably spent an hour on the phone. I explained the policy thoroughly. They agreed they wanted to hold a party but they agreed they would do it in their own law offices. I said "I'm not encouraging you to have a party in your offices, but your offices are your offices and you can invite anyone you want to your offices\* we just don't want them in the hotel." They agreed. A month goes by and I get a letter from the firm.

It's an invitation to a party in the hotel. It was a pretty bad show and I decided not to sit back and just let this happen especially after the assurance I received. I got on the phone again. They cancelled it. They had it in their offices, but they shifted it from the hotel to their offices. That's a little thing but a little thing that takes several hours before you're done with it. If I went back over my notes, I could probably think of 50 little things that come up. Just because you're President people will call you for this or that. Another thing that happens when you're President and this may be worth mentioning. You are a person who because of your office gets a lot of invitations. As soon as you're no longer President "Bingo" you could be dead. For example, would I not come to a big arbitration day in New York and sit with the Directors of the AAA. Really it was no big deal, but the fact is you get that invitation because you are the President. I got a large number of invitations from the A.A.A. to speak at a luncheon or run a class or run a summer activity, all of these things. In addition you get invitations from Academy Regions. You accept what you can. I did have a delightful visit, for example, with the Southeastern Region which covers

about 13 states, which therefore has many Academy meetings. Were you there at that meeting?

Nolan

Indeed I was. In Atlanta?

Kahn

Yes, you were there, so you know what I'm talking about. It was fun. I mean I enjoyed it. But all these things take time. These invitations take time on top of a very heavy direct demands of being the President, handling the correspondence and everything else. When I say 40% of my time of course I didn't keep an accounting. That's an estimate, but it includes these extra things that happen to you because you are the President of the Academy that you really feel that you have to do. Speak to a region, accept an invitation, talk to other organizations. The University of Minnesota has a great annual industrial relations something or other. I was invited to go out there and talk to them. So I went,. It was fun. I was glad to get out there. I felt that I should accept. I knew that I was being invited, no matter what my own merits might have been, because I was President of the Academy. What I can tell you is that I haven't been invited back there since. This is not a criticism or complaint but because you are the

President of the Academy you have some extra demands on your time associated with what you feel is an obligation to respond to these invitations because you are representing the Academy. That's part of the job, and you have to allow for it. You have to make time for it.

Nolan                   What impact did that service as President have on your arbitration practice that year and then following?

Kahn                   I'm not aware of any. By the time I became Presidents which was--what--1984, I had been arbitrating for a little over 30 years. Precisely 30 years I became President in 1983. I had been fortunate enough to be steadily busy. At that time I was still a professor that arbitrated, which has always been my preferential way of functioning. I never use: to call myself an arbitrator. I was in the fortunate position of being simply as busy as I could be. I simply turned down more work while I was President Elect and even more work when I was President and probably less work after I stopped being President. I don't really think it had any significant impact one way or another. It couldn't on someone who is essentially busy full-time with

whatever he is doing, arbitrating or professing. I might mention, incidentally, that in 1985 I took early retirement from the University; not to become a full-time arbitrator, which I did do, but because I had differences of opinion with the University Administration over conduct of a program I was directing. After deciding I could not work those out with the Administration I decided to take early retirement. For four years now I have been a full-time arbitrator. I find that actually at my stage of the game a little easier in the sense that the time is more flexible because I don't have to build it around classes. I do not regret the 30 or so years I spent as a professor who moonlighted as an arbitrator. I think it's a better way to do it for most of your life if you have the opportunity to do it that way.

Nolan

Speaking as one who does, I'm glad to hear that advice. Now that you've had a good deal of time to reflect on all this, do you have any suggestions for people who in the future will hold the office of President? Is there anything that you would recommend that they do differently or that they would give particular attention to on the basis of what you've learned as President?

Kahn

No. I think the Academy does have a constraint or consideration that the Nominating Committees in particular ought to keep in mind. We don't have, on the one hand, a king along with a prime minister. We have a President and the President by the time he or she learns to be an effective President goes out of office. A one year term is really very short. It shouldn't be extended but it is a short period of time. Then in comes the President Elect who hopefully has learned something while serving as President Elect about how to be President. The Academy at different times probably needs different characteristics in its President. If we're in an era, for example, of stability where there's a Secretary who has completed three years of a probable six year term as Secretary and the management of the organization is stable and in good hands through that Secretary. Maybe that's the year in which we can take somebody who is perfectly a fantastic arbitrator and has a fantastic reputation and is a brilliant intellect. All of these characteristics which I greatly admire and which deserve recognition, but who might be a lousy organizational person. Simply not a person who will ride herd on the committees and appoint the right kind of people to serve as Chairs and so

on. There are such people. But they're fantastic in terms of their other qualifications and in terms of what they represent to the outside world of what arbitration is all about. I guess my comment is that if the Academy is facing a period of instability then the Nominating Committee should pay particular attention to the organizationally oriented person. If the organization is stable and the Secretary is managing well, fine. Then that's an opportunity for maybe giving special recognition through the presidency to someone who might not be a strong organizationally oriented person. That's the general comment I'm making. It might be-and maybe we're making some moves in that direction-that the Academy ought to create a different kind of position, some form of annual recognition of a greatly distinguished person who brings glory to us all because he or she is in our organization; who will make a magnificent speech of the year; who is just tremendous; but who couldn't manage the organization and who could be given this great honor which might even be made the equivalent of the presidency. It's something we might want to think about because the presidency is certainly highly demanding today and richly rewarding to the person who can enjoy that sort of thing. The very

demanding and very critical life of the Academy.

Nolan                   That's a very good suggestion.  Is there anything else you would like, to add before we run out of tape?

Kahn                   No, I think we've done fine.  I've enjoyed the opportunity to talk with you^Dennis.  I think that oral history while we're all around, live and kicking, is a good thing.  I think one other thing I'm interested in this organization that I might just mention.  I have observed it in many ways since I've been President.  It's one of those rare organizations in which past Presidents tend to remain consistently very active.

Nolan                   Indeed as your career shows.

Kahn                   Yes and I would like to think that that's good for the organization.  There are some disadvantages.  Too many past Presidents occupy positions which are positions of growth and recognition for potential presidents.  That's not good either.  The thing that I find very gratifying is that in general past presidents have been willing to serve.