CHAPTER 13

REMINISCENCES

I. INTRODUCTION

JOHN E. DUNSFORD*

In the past several years, ever since its initiation, the Fireside Chat has established itself as a delightful interlude in the proceedings of our Annual Meeting. This portion of the program offers a golden opportunity to listen to, and learn from, some of the giants of the profession.

Our guest today, Alex Elson, is a remarkable man who was one of the founders of the Academy, a distinguished lawyer and arbitrator in the grand tradition, and a person whose name is synonymous with the highest standards of integrity and ethical probity.

II. FIRESIDE CHAT

ALEX ELSON**

Thank you for your gracious introduction. I am taking the liberty of adding several important facts. In July, I will be married to Miriam for 64 years, without whom I would not be here today. We have two daughters, five grandchildren, and one great-grandchild, whose name is Hazel.

John E. Dunsford: I think it is very telling that you mention it right off the bat. Now, let's begin with a recounting of your origins, your personal background.

Alex Elson: I was born in the Ukraine, in a small village about 50 miles from the city of Kiev. I was the sixth child to be born. My father, about a year after I was born, decided he wanted to leave Russia, and he gave quite a lot of consideration as to where to go.

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It came down finally to the United States or New Zealand, both countries providing public education through high school. Since my father was a teacher, education was a very important factor. Fortunately, we did not go to New Zealand.

I have a few memories of my early childhood, but they do not include the trip from Riga to Ellis Island. There is a family legend about this trip. The family was traveling in steerage. My three older brothers got into mischief while playing, and the steward came to my father and asked, "Are these your boys?" And he said, "Yes." The steward asked, "How many children do you have?" My father replied, "I have six." The steward asked, "How much money do you have?" My father answered, "I have $50." The steward said, "If I were you, I'd jump overboard."

Well, we spent a short time in Pennsylvania with an aunt, and then went on to Chicago where I have lived all these years except for short periods of time. I attended the elementary grades in public school and the Francis Parker High School on a scholarship. From there, I went to the University of Chicago where I received my undergraduate and law degrees.

John E. Dunsford: What led you to entertain a career in law? Why did you go to law school?

Alex Elson: Well, it all came about more or less by chance. I majored in economics in college. I took several courses with Harry A. Millis, who was at the time an influential labor economist. He was also an arbitrator, impartial chairperson, for the men's clothing industry in Chicago. He was one of a handful of labor arbitrators. Later on, as you may know, he became the first chairperson of the National Labor Relations Board as well as the first umpire under the General Motors/United Auto Workers contract. One of the courses he gave was called "State in Relation to Labor," and, as my thesis, I wrote a paper entitled, "The Use of Labor Injunctions in the Federal Courts." Several years later, Felix Frankfurter and James Landis wrote a book with the same title. I am not suggesting that they stole the title.

In any event it was my first introduction to law. I read federal court injunction cases that led to the Norris-LaGuardia Act. The federal courts were virtually tying up the unions all over the country. The right to strike was almost meaningless. I found the cases fascinating and disturbing, and I decided I would like to go to law school. By that time, I had been awarded a fellowship in the Economics Department by Mr. Millis, who was the chairperson of the department. I went to him, told him I was going to law school,

and asked him what I should do about the fellowship. He advised me to go to law school, adding, "It would be good to have a lawyer with some economics background. The fellowship is yours if you agree to take two more courses in economics." So I went to law school, got my degree, and was admitted to the Illinois Bar in 1928.

I should add a further note about Professor Millis. Three other distinguished members of the Academy were his students about a decade after my courses with him, and all have said they were inspired by him to enter the field of labor relations. They are Arthur Stark, Martin Cohen, and the late Martin Lieberman.

John E. Dunsford: I know you finished law school in 1928 just before the Great Depression. What was your experience in getting a job?

Alex Elson: It was hard to get a job, even harder than today, and today is a very hard time. And I interviewed many lawyers. One of the lawyers I interviewed was Clarence Darrow, one of the great trial lawyers of that period. I had a letter of introduction to Darrow from Jane Addams.[1] At the time, Darrow was between two big cases and was officing with a friend, William H. Holly, who later became a federal judge.

When I came in, he was sitting in the reception room with his feet on the desk, smoking a cigar. He was very casual, very relaxed. I remember him saying there were only two areas of law worth practicing: representing the poor or defending the accused. "Everything else is taking money from one pocket and putting it in the other."

John E. Dunsford: You have indicated that you went into law because of your interest in labor relations. Was there a specialty in labor law at that time?

Alex Elson: When I went to law school there was no labor law course. My recollection is that the first labor law casebook was published several years later. It was written by Francis Sayre of Harvard.

Even though I had this great desire to be a labor lawyer, I did not become one until 10 years after admission to the bar. In 1938, I was appointed as regional attorney for the Chicago regional office of the Wage and Hour Division in the Department of Labor, which administered the Fair Labor Standards Act. The region covered Illinois, Wisconsin, and Indiana. For the first time I was close to

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[1]Jane Addams was a renowned social worker and writer and founder of Chicago's Hull House.

something that had to do with labor, although it was far removed from labor relations as such. In December 1941, I was appointed regional attorney for the Office of Price Administration (OPA). OPA had little to do with wages at that time, but we did work fairly closely with the War Labor Board. After I resigned from the OPA, I was appointed regional vice chair of the War Labor Board in Chicago by Edgar Warren, chair of the Board in Chicago. That was my first real introduction to labor relations.

For the first time, I learned what went into a collective bargaining agreement. I had no idea about all these provisions or the size and length of the collective bargaining agreement.

John E. Dunsford: Did you go into private practice at some point?

Alex Elson: Well, at the time I started the job with the War Labor Board, it was a part-time job as vice chair. I opened my law office at the same time. So I should say that at the War Labor Board I had my first experience in arbitration.

John E. Dunsford: Now how did it come about that you would get a case in labor arbitration?

Alex Elson: Well, as you know, the War Labor Board put in a grievance procedure terminating with arbitration in every contract. And after a year or two, there just were not enough arbitrators around so that almost everybody in the office was dragooned into arbitrating cases.

My first case involved a small bakery on the west side of Chicago. When I got there, there was the employer and the grievant; we sat around a table. The employer stated that he had fired the grievant because he had come to work one day an hour late. The grievant did not deny this, and it occurred to me to ask the question, "Well, did you ever warn your employee that if he came in late that he would be discharged?" I got a negative answer. So, I wrote a one paragraph award in which I reinstated him, and both the employer and the employee were greatly relieved to have it all over with; the employee went back to work that day. It was the only case in which I had such instantaneous feedback.

John E. Dunsford: Was there anything in your mind at that time that would distinguish between the two processes, mediation or arbitration, or was it just getting to solve the case, however you did it?

Alex Elson: I do not know that at that particular point I had the distinction too clearly in mind. I never had a course in labor law. I have learned all about these things while doing them, so to speak.

When the Labor Board folded up, Ed Warren became the chairperson of the U.S. Conciliation Service, which was the predecessor agency to the Federal Mediation and Conciliation Service. He appointed me to the panel of arbitrators provided by the U.S. Conciliation Service. The Service provided our services free to the parties. We were paid $50 a day plus expenses by the U.S. government.

John E. Dunsford: The government paid the arbitrators?

Alex Elson: That's right. Most of the cases I arbitrated involved Standard Oil of Indiana and the Oil Workers Union, and they did not pay a nickel for my service.

I was also practicing law at that particular time. My practice then was more of a family law practice. I was doing counseling, writing wills, estate planning, some litigation, but not a great deal. I began representing one corporation as general counsel, a company that I represented for many years.

John E. Dunsford: So this was kind of a forecast of what you would do throughout your life—practice law and arbitrate. Is that right?

Alex Elson: That's right.

John E. Dunsford: How was the arbitration going at that time?

Alex Elson: In 1946, I had about 20 cases. Towards the end of 1946, I was appointed by Ed Warren as a regional chairperson to serve on the Advisory Committee to the Conciliation Service.

John E. Dunsford: Did you call any meetings of the region?

Alex Elson: Well, before I had a chance to call a meeting, Ed Warren called a meeting in April 1947 in Washington of all the people on the panel of the Conciliation Service. We met at the Department of Labor Building. There were about 37 arbitrators at that meeting. Most of them had been with the War Labor Board. Except for Warren, I knew none of the arbitrators. In fact, I had never really talked to another arbitrator before that time, so it was really quite an exciting event.

Warren had in mind a pretty structured two-day meeting. There was a printed program and practically everybody there took part in the program either as a participant or an active questioner afterwards. We owe a great debt to Byron Abernethy because he saved a copy of that program and gave me a copy a few years ago.

The subject matter of that meeting included: "Latest National Developments in Arbitration"—that was discussed by Carl Schedler who was, I think, administrative assistant to Ed Warren. "State Arbitration Laws"—the chair of that was George Cheney with Bob

Feinberg and Clarence Updegraff as discussants. Clarence and Whitley McCoy, you may remember, wrote the first book on labor arbitration.

And then there was a panel on "Fee Policy." The discussion was led by Whitley McCoy; Aaron Horvitz, "the world's greatest arbitrator," and George Strong were the discussants. Then there was a panel on the use of wage criteria when arbitrating basic contract terms. The speaker was not announced at the time and I do not remember who it was.

"The Use of Technicians for Ascertaining Facts in Arbitration Proceedings"—that was a paper given by William Brown. I should not say paper because there were no papers. "Should an Arbitrator Try to Mediate?" Have you ever heard of that subject before? Bill Simkin was the chair of that panel, and Jacob Blair and Clifford Potter were the discussants. The next panel, "Should There Be Uniformity in Form of Opinions and Awards and Should Awards Be Published"—Saul Wallen was the chair of that panel, and John Dwyer and I were the discussants.

John E. Dunsford: What did it mean, "Use of Technicians for Ascertaining Facts in Arbitration Proceedings"?

Alex Elson: The most common problem at the time was determination of piecework rates. Industrial engineers were called to the plant to time operations and sometimes to testify at arbitration hearings.

John E. Dunsford: What about "Use of Wage Criteria When Arbitrating Basic Contract Terms"?

Alex Elson: Well, that is an old theme. Basically, you are always confronted with criteria you are going to apply in an interest dispute. If you are dealing with wages, you would look at the wages in the area, wages in the industry, wages in comparable jobs, cost-of-living factors, and the like.

John E. Dunsford: So this would be more in the area of interest arbitration.

Alex Elson: This was definitely interest arbitration.

John E. Dunsford: About which I know less than nothing, which is no doubt why I asked the question. Do you recall anything about what was said on "Should an Arbitrator Try to Mediate"?

Alex Elson: Well, I think both points of view were presented. The Taylor group basically was sympathetic to the idea; McCoy, Updegraff, and others were very much on the other side of that issue.

John E. Dunsford: That they should not?

Alex Elson: They adopted a strict Braden approach;[2] in fact, they preceded Braden by a long shot.

John E. Dunsford: As I remember Simkin, I would imagine he would say, "Whatever it takes to get it done."

Alex Elson: That's right, that's right.

John E. Dunsford: And then what about your participation in this topic on "Should There Be Uniformity in Form of Opinions and Awards and Should Awards Be Published"?

Alex Elson: I think we all agreed that there should be no attempt to regulate the form of awards, and uniformity was impossible and not even desirable.

On the question of publication, I took a position opposed to publication. I was influenced in that largely by Professor Millis. Millis never wrote an opinion; he just wrote an award. He believed in the processes used under the British Trades Dispute Act where decisions were given without any opinion. He felt that writing an opinion sort of got in the way of the relationship, that in the relationship there should be maximum flexibility, and that putting something written in stone, so to speak, might seriously interfere with the next round of discussions or the next grievance that would come up. That was the position I took. Right after the session, there was a show of hands. And I think there was only one other person who agreed with me.

John E. Dunsford: Do you still have that same view today?

Alex Elson: No. I have changed my view. I would say, so far as a written opinion is concerned, that I have learned from my own experience that writing an opinion is a disciplined way of reaching a decision because you really are compelled to look at the record, consider the contentions, put it all down. I think that is very important. As a matter of fact, these days when a colleague asks me about an arbitration clause in a contract, I usually suggest that they stipulate that there be a written opinion. I have sometimes speculated about what would happen if we did not have written opinions. Just think of all the days of study and preparation of the award that arbitrators would not have charged for over the years.

But going back to the question of publication. What has happened over the years is that a great body of helpful principles has been established. I do not know how things would have worked out

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[2]J. Noble Braden "viewed arbitrators as private judges employed by the parties solely to interpret the collective agreement." Gruenberg, Najita & Nolan, The National Academy of Arbitrators: Fifty Years in the World of Work (BNA Books 1997), at 53–54.

without publication. I suppose every arbitrator coming into a situation would decide on his or her own basis. We now have a great body of decisions upon which to call. Our current discussion of the common law of the shop would not have been possible without published opinions. So, by and large, while I am not crazy about precedents—do not like to have them cited to me as they are so often, and I seldom use them in my awards—I think we are stuck with publication.

Going back to the Washington meeting, I just wanted to say that there was a discussion after every session. It was the first time any of us had had a chance to sit down with a fellow arbitrator, so it was an exhilarating experience. At last, the problems that one stewed about could be "chewed over" with someone who had a similar experience. It was the first real opportunity to exchange experiences and gain insight.

Byron Abernethy reminds me that on the Saturday morning after the session, a group of us got together and talked about how important it was to get together more often and that we ought to have some sort of organization for that purpose. I cannot fully describe what this meeting meant to everybody there.

The age of the participants at the group meeting in Washington ranged from about 40 to 60, roughly. There may have been a few people younger than that; I was 42 at that time.

John E. Dunsford: All right, now where do we go from there? You all go back to your regions. Was there specifically any talk about forming an organization?

Alex Elson: Just very informally that morning and then in September a group got together to form the organization. I should say that in a sense the father of the Academy was really Ed Warren. I do not think he has had sufficient recognition in that respect. He was the one who called these arbitrators together and took a very active role in the organization of the National Academy. Carl Schedler, his administrative assistant, spent a lot of time on it.

I think most of the people who were at that first meeting were invited to the second meeting. It took place in Chicago at a time when I was very much occupied with some other matters. I think I put my nose in once or twice just to hear what was going on, but did not take an active part.

There was some discussion about developing a constitution, bylaws, and the rest of it. I would say the primary impetus was just getting together, that was very important. The lofty goals of the organization were all stated in the constitution, and everybody

believed in them, but I think we just wanted to have a place to get together.

John E. Dunsford: Now the Academy is formed, you are still practicing law. You are also arbitrating. How did you tend to divide your time between these two professions?

Alex Elson: Well, I would say I have been primarily a lawyer. I never aspired to be a full-time arbitrator, although I very much enjoyed doing arbitration work and still enjoy doing arbitration. I guess I'm probably one of the few founders who did not become a full-time arbitrator. I have had a great interest in the law. While there may have been years when I spent as much as half-time in arbitration, for most of the years I have very seldom spent more than a third of my time doing arbitration work. Along with my practice, I did some teaching at Northwestern University and the University of Chicago Law Schools. I also did some writing and found time to be involved in various other activities.

As for the Northwestern Law School assignment, it was a time when Bill Wirtz was called to Washington to be Assistant Secretary of Labor, and I was asked to take over one of his courses at Northwestern University Law School. I taught that course for about five years; Bill never came back!

I have a related story. I had agreed to be one of the commentators on Dick Mittenthal's[3] celebrated article on past practice, which was to be given at the Santa Monica meeting in 1961. My Northwestern teaching assignment made it impossible to attend the meeting. Bill Wirtz agreed to read my comments at the meeting. I am told he began his remarks by saying, "I am here as a Shabbos Goy."

John E. Dunsford: You were around this time doing some work—I know from your résumé—involving civil rights and the McCarthy years, were you not? You received an award for some of that work.

Alex Elson: Most of the cases were referred to me by other lawyers. The hysteria of the times caused many lawyers to be fearful of undertaking representation. The loyalty board proceedings fell somewhere between an inquisition and a trial, in which the presumption of innocence was abandoned, the right to confront and cross-examine witnesses denied, and the burden of proof placed

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[3]Mittenthal, *Past Practice and the Administration of Collective Bargaining Agreements*, in Arbitration and Public Policy, Proceedings of the 14th Annual Meeting, National Academy of Arbitrators, ed. Pollard (BNA Books 1961), 30.

on the employee. We battled a mysterious file that sat in front of each board member, but which was not made available to the client or to me. The Board's questions, concerning matters that were not even referred to in the letter of notification, created an uneasy, Kafka-like atmosphere in which we were fighting an amorphous force.

I was also retained by the University of Chicago to represent faculty summoned by the Senate Committee on Internal Security, which was headed by Senator Jenner of Indiana. Time will permit only a brief reference to the two most noted witnesses—Ernest Burgess, one of the leading sociologists in the country, and Anton Carlson, a biochemist, preeminent in his field and a revered figure for generations of University of Chicago students. Burgess was regarded as a dangerous man by the committee because he was a member of the Council for Soviet-American Friendship in the 1930s. Carlson was called because he was the faculty sponsor of the student Communist Club. When asked about this by Senator Jenner, he responded, "Would you want them to meet secretly in some basement?" In the private sessions, both Burgess and Carlson answered the $64,000 question negatively and, in a feisty way, attacked the committee's methods. The committee lost interest and stated it would not call them publicly as witnesses. Having publicly branded them as security risks, the committee lost credibility when it refused them a public hearing. The result was that the *Chicago Tribune* had a headline in which it charged the committee with abusing the rights of these professors and chided it for not having a public hearing. And that was the end of that particular investigation.

John E. Dunsford: Turning back to your activity in the Academy now, I know that one of your achievements in the Academy involves the creation of the Code of Professional Responsibility. Would you give us a little background on that?

Alex Elson: Well, I do not think that is accurate; you are giving me too much credit. My interest in arbitral ethics goes back a long time. I was a member of the first Committee on Ethics which Nate Feinsinger chaired. Nate was a professor of labor law at the University of Wisconsin and also very well-known nationally as a mediator and an arbitrator. Our committee only met once at the first annual meeting. At this meeting, we agreed that there should be a Code of Ethics and generally what should go into it. The next year Lloyd Garrison was appointed as the chairperson of a committee to draft the first code.

My next involvement with ethics was when Dick Mittenthal asked me to give a paper at a members-only meeting. I think it was about 1971 in Los Angeles. I had been involved before that on the revision of the Code of Ethics for Lawyers, and I was very much interested in the whole subject. So I wrote a paper called, "A Case for a Code of Professional Responsibility." I reviewed a lot of criticism of the existing Code that had been published over the years and also what should be in a code, issues with reference to impartiality, conflict of interest, competency, delay, and expense. These issues were not being addressed by our Code. I gave this paper at the Los Angeles meeting,[4] and, somewhat to my surprise, there was an enthusiastic response to it and a motion was made from the floor calling for a Code of Professional Responsibility to be drafted and created. And that was adopted by acclamation. The following year, Bill Simkin was appointed to draft our present Code of Professional Responsibility.

My latest involvement with the Code has been as a member of the Committee on Professional Responsibility and Grievances (CPRG). I became a member when Art Stark was chair. Working with Art was a very enjoyable experience. Following that, I was appointed as chair of the CPRG for a three-year period, after which George Fleischli was appointed.

John E. Dunsford: I think there would be no argument that the three chairs you just mentioned—Art Stark, yourself, and now George Fleischli—have just been outstanding chairs of that committee, which is really a central committee within the organization. What was your experience as chair there?

Alex Elson: Well, I found it very interesting, I found it challenging. We had a very good committee, and, as a result, we were able to do quite a bit. We did develop a Code of Procedure—which we never had before—setting forth the manner in which a complaint against a member should be handled. What impressed me then, and what impresses me now, is the small number of complaints. George Fleischli reported this morning there were no complaints filed against a member last year.

Now I do not think we are that perfect and I have always speculated as to why we do not get more complaints. You know,

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[4]Elson, *Ethical Responsibilities of the Arbitrator: I. The Case for a Code of Professional Responsibility for Labor Arbitrators*, in Arbitration and the Public Interest, Proceedings of the 24th Annual Meeting, National Academy of Arbitrators, eds. Somers & Dennis (BNA Books 1971), 194.

when I sat down with the representatives of the approving agencies, they gave me the impression there were a lot of complaints. In all likelihood they involved people who were not members of the Academy. And I like to believe that the fact we do not have any complaints is a reflection of the high standards of this Academy.

John E. Dunsford: Well, this action today of the Academy in passing the amendment to the bylaws would now allow the retired past president, as I understand it, to bring a charge if there are circumstances indicating that something ought to be examined by the committee but there is no complainant to bring the charge. Did that situation arise at any time in the days you were on the committee?

Alex Elson: We had one case, a very egregious case. I got a letter from Ben Aaron bringing this case to my attention. There was a published opinion in the *Federal Reporter*, involving a member in New York who had been appointed by the American Arbitration Association. The arrangement for fees was a per diem of which the parties were informed in advance. At the conclusion of the case, he submitted a bill for $25,000 and held back his award until he was paid. This became the subject of an attack on the award, and it was spelled out in the court decision. We were surprised we received no complaint. Well, I called the attorney for the union to see what their attitude was and he was indifferent to the whole thing. I then called the chair of the region in New York. I asked him if they would be interested in looking into it and possibly filing a complaint. We received no response from him. When I advised the committee of these facts, one of the members of the committee volunteered to file a complaint. Because the case was so bad, we decided to do it on an ad hoc basis. I withdrew as chair for the purposes of this particular case since I had given the opinion there was probable cause before the case had been investigated.

It turned out upon investigation that, shortly after the award, the arbitrator had had some kind of a breakdown, and this possibly accounted for his bizarre behavior. Well, it is that kind of a case that led us to think we should have some provision in our bylaws so that a situation involving something as notorious as that could be investigated when there was no complaint.

John E. Dunsford: What are some of your other activities in the Academy? I know that through the years you have given six, eight papers at Academy meetings. Are there any particular meetings that stick in your mind as having been meaningful to you?

Alex Elson: Well, there are two meetings that I think I enjoyed the most. One was the meeting in Puerto Rico devoted to the rules of evidence.[5] Now the background of that was that each region had a separate committee consisting of two members and a representative of management and a representative of unions. Each committee met and drew up a statement about the rules of evidence. We did that in Chicago, and we had four or five meetings of the smaller committee and prepared a report for presentation in Puerto Rico. That happened in all the regions in the country. The result was that we had really a very lively and I think a very productive session.

A second meeting was convened by Ted Jones when he was the president. The meeting was held in Los Angeles and was devoted almost entirely to the decisional process.[6] We had a similar arrangement as for the meeting on the rules of evidence. In our region, I chaired our committee with both employer and union representation and two judges—a federal court of appeals judge and a federal district judge. We prepared a report in advance, and that was also done in other regions of the country. I thought that meeting in Los Angeles was one of the best we ever had.

I have enjoyed other meetings. It is true that many meetings are simply variations on the same old themes, but you come away with something new almost every time. And I enjoy the meetings particularly where we have really good humor. I am thinking of Peter Seitz, Lew Gill, Jim Hill, and Ralph Seward.

John E. Dunsford: What about your involvement as a member with the old question of providing some kind of legal defense for members?

Alex Elson: Well, we had a rather unusual experience there. The committee, I think, had only one meeting, and then the chairperson presented a report to the Academy at the annual meeting. He recommended that we enter into a rather elaborate plan with an insurance company. Many of us were opposed to that. First, we thought insurance companies would tend to want to settle cases and that would affect the doctrine of immunity. Second, it would

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[5]Elson, *Problems of Proof in the Arbitration Process: Report of the Chicago Area Tripartite Committee*, in Problems of Proof in Arbitration, Proceedings of the 19th Annual Meeting, National Academy of Arbitrators, ed. Jones (BNA Books 1967), 110.

[6]Elson, *Decisional Thinking: Chicago Panel Report*, in Decisional Thinking of Arbitrators and Judges, Proceedings of the 33rd Annual Meeting, National Academy of Arbitrators, eds. Stern & Dennis (BNA Books 1981), 62.

be expensive. When this was presented on the floor, we got up to oppose it. It was quite a floor fight. That was the first time I met George Nicolau. At that meeting George got up and smoothly and diplomatically made a motion that the whole matter be referred back to the committee, which was adopted, and that saved the day. I think the president appointed a different chairperson, and our present legal defense fund—a plan far superior to any we could get from a private insurance company—came into existence. Nate Lipson was active and the prime author of the private plan. Marty Cohen was also very active in that.

John E. Dunsford: I have a personal memory about that that I cannot resist telling. In that vigorous floor fight you mentioned, I sat on the sidelines waiting for it to end so that I could present the report of the Future Directions Committee. And we were all very concerned in the Future Directions Committee as to what the members would do with our report because it involved a variety of suggestions. We were afraid we would get beaten to death. But after the vigorous floor fight, they called for lunch. People went out, had lunch, and came back. They were all worn out; they were like pussycats, and we were able to put the Futures Directions report right through without any major problems.

You mentioned earlier your activities in the legal field, and I have looked at a résumé of your work. And I just cannot resist indicating some of the things you have done in your career, which I might mention now is approaching 70 years as a lawyer. The ideal of the lawyer has always been to be a public servant and a good citizen. Looking at this résumé, I just stand in awe.

You started off in 1934 as an attorney with the Legal Aid Bureau where you organized the Illinois Committee on Wage Assignment Legislation. You drafted and lobbied through the Illinois legislature the first law in Illinois regulating the use of wage assignments. You drafted the first wage claim collection law for that state. While you were practicing with the firm of Tolman, Chandler & Dickenson of Chicago you drafted bills for the Illinois Committee on Child Welfare Legislation. You were one of the drafters of the first proposed revision of the Illinois criminal code sponsored by the Illinois State Bar Association. While you were working in that job at U.S. Wage and Hour Division, you argued cases that set precedents that were basic to that time.

In 1941 you were in charge of drafting the first rationing regulation in the history of the country. You were supervising a staff

of over 100 lawyers and more than 1,000 investigators in a five- or six-state area of the Midwest.

In 1945, after resuming the private practice of law, you interrupted your practice for a year to serve without compensation as chair and public member of the Temporary Community Rent Commission of the city of Chicago. Of course, your practice in the corporate field is well-known. You also have served as counsel for railway labor unions.

You have mentioned teaching at Northwestern. You also taught at the Yale University Law School. Incidentally, that was back in 1946, a Seminar in Federal Economic Regulation and the Wage and Hour Law. You have taught at the University of Chicago and Arizona State University. You have been a consultant to the Ford Foundation, you have been a fellow of the American Bar Foundation, and a life member of the American Law Institute.

Alex Elson: You mentioned the Temporary Community Rent Commission. I remember one thing that happened there. We had a lot of disgruntled landlords, and they finally met in Mayor Kennelly's office. The mayor asked me to be there, and a number of the landlords took off after me very vigorously. And the mayor said, "Don't be so hard on Mr. Elson, he's a dollar-a-year man." And with that a voice from the back said, "He's being overpaid."

John E. Dunsford: Back to the Academy for a minute. You are credited with really being the creator and/or promoter of the Research and Education Foundation of the Academy and serving as its first president. Give us a little bit of the background on that if you would.

Alex Elson: Well, Jack, you should know a lot about that because you were the president that year. Without your support and your promotion, we would not have a foundation today.

The original idea was that of Dallas Young of Cleveland who some years before had made a suggestion. It was a good idea; its time had not come, and I brought it up again. And I think you asked me to put it in the form of a written proposal and that proposal was adopted by the board. My law firm prepared the papers to qualify the organization as a 501(C)(3) charitable corporation. So we got off to a start. The purpose was more than just to provide a vehicle for obtaining charitable contributions. It was important to have a focus on both research and education because certainly education is one of the primary purposes of the Academy. And the foundation has helped a great deal in some research projects, for example, the

study of the arbitrator and the profile of arbitrators in this country, which the Research Committee undertook financed by a grant from the foundation.[7]

Then there were a series of teaching tapes in the area of ethics that were paid for out of foundation funds. Well, I think over the years it is going to come to be a very helpful part of the organization. It has been up to now.

John E. Dunsford: What is your opinion of the profession, the organization, and the process? What thoughts do you have as to how it has developed? What might its future be?

Alex Elson: First, looking at the Academy institutionally, I think the first 10 years were really very rough. We were dedicated to the purposes of the Academy, but we were not ready to put in the institutional provisions we needed. Our dues were fixed from $10 to $100, and each member determined for himself what category he fell into. There was no real follow-up, and we eventually ran into a situation where members did not pay their dues. The president and the Board of Governors received no compensation or reimbursement for expenses. And the secretary—we had a migratory secretary. The office of the Academy was the office of whomever happened to be the secretary. It was not until nine years after the organization was formed that we bought our first piece of property, which was a file cabinet.

It was not a miracle, but it certainly was quite remarkable we survived the first 10 years. The only reason we survived was that we had a great group of dedicated leaders. Our presidents and board of governors were people who were willing to lay out their own money, time, and energy to establish the Academy.

Once we got past that period, well, actually, we have not had a paid secretary—except for the last—in maybe 15 years. Up to that time, the Academy imposed on members who served as secretary.

Now turning to the substantive side of the Academy, in the early days, the members were largely War Labor Board alumni and had a very strong interest in the collective bargaining process. In fact, we used to say that the success of arbitration would be marked by the elimination of arbitration, and that all disputes should be disposed of in the grievance procedure. That was the real ambi-

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[7]Bognanno & Coleman, eds., Labor Arbitration in America: The Profession and Practice (Praeger 1992).

tion. I remember Arthur Ross[8] presenting a paper early on about sick grievance systems and what could be done to improve on that. There was a really great concern about it.

There was also a public interest outlook. Bill Wirtz[9] and Robben Fleming[10] wrote some seminal papers on due process in arbitration because they were concerned about the grievant. I do not know whether that kind of public interest concern still exists. I think perhaps the work that has been done, such as Arnold Zack's work on the Protocol, does represent a public interest in the sense of trying to protect workers who are basically without any real protection. I do think we are still moving in the right direction, even after two-and-a-half generations of arbitrators.

John E. Dunsford: At this point, I'd like to invite any of you who have a question for Alex or even a memory to share to please stand up and be heard.

Arthur Stark: I was looking through some papers last year that my wife had saved up from her days at the University of Chicago. And I came across a program of the University of Chicago Symphony Orchestra and looked through the program and the names of the musicians. And among the cellists was one Alex Elson. This is in 1933. And among the bass players was one Dorothy Copeland who ultimately 20 years later became my wife. And I sent Alex a copy, and I think he has probably some recollections of those days, and he has been a cellist all his life. Something that he apparently did not tell Jack here.

John E. Dunsford: He said he was hiding something.

Arthur Stark: Okay. The second thing I wanted to say was that, I think, in a sense, Alex represents the greatest mistake that the Academy ever made. He should have been president a long, long time ago. He was asked, I might say, several times and maybe the last time was about six or so years ago, and he said, "Oh, you know I'm too old for this kind of thing, and I'm not going to be around that long." But we urged and pushed, and he resisted. We made a

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[8]Ross, *Distressed Grievance Procedures and Their Rehabilitation*, in Labor Arbitration and Industrial Change, Proceedings of the 16th Annual Meeting, National Academy of Arbitrators, ed. Kahn (BNA Books 1963), 104.

[9]Wirtz, *Due Process of Arbitration*, in The Arbitrator and the Parties, Proceedings of the 11th Annual Meeting, National Academy of Arbitrators, ed. McKelvey (BNA Books 1958), 1.

[10]Fleming, *Due Process and Fair Procedure in Labor Arbitration*, in Arbitration and Public Policy, Proceedings of the 14th Annual Meeting, National Academy of Arbitrators, ed. Pollard (BNA Books 1961), 69.

mistake by not drafting him. I think we all owe him a terrific debt, and I would like to by acclamation say, "Honorary President."

Ellen Alexander: I would like to say, first of all, if I ever had 10 percent of your energy I would be feeling myself enormously successful. And I still have on my bookshelf in my law office a text that is probably 20 or 30 years old, Elson and Lasser's *Civil Procedure*, I believe, or *Civil Practice Forms*. I do not know if the audience here knows to what extent that book was really standard for Chicago attorneys for many years.

My first question is whether you consider that arbitrators still have any responsibility to try and keep hearings from being overly legalistic.

Alex Elson: Well, let me say that I have in the past few years noted that a great many cases get settled after I have been appointed. I thought that was directed to me, but in talking to a number of my arbitrator friends I find that the number of settlements of that character has grown a great deal. I suppose that may mean we are approaching the great ambitious goal we had originally of eliminating arbitration. But, basically I think what is happening is that parties are becoming more sophisticated. They are able to predict the arbitrator's decision and settle the case on that basis. I think arbitration is becoming too legalistic. I think the parties are going to turn away from it and go to mediation, which is a rapidly growing field. Mediation can be handled in half a day. We have not done enough to simplify the arbitration procedure. Some efforts at expedition have been successful, but we could do a great deal more toward encouraging expedition. For example, we should not be writing opinions on disciplinary matters that do not involve discharge. It is ridiculous to have a written opinion on a five-day suspension. But, I suppose we always defer to the parties. Since this is what they want, we give it to them.

Ellen Alexander: This is the tougher question. Do you want to express an opinion today as to this new project, the Academy project, on the Common Law of the Workplace and where you think that might lead us? And what do you think we should watch out for since we are going full steam ahead with it?

Alex Elson: Well, I think the danger there would be that it may come to be treated as a bible. If arbitrators do not comply or do not go along with what is in this book on the workplace, they would be regarded as essentially not following the law. So it gets back to the whole issue of rigidity and lack of flexibility. It should be clearly

identified as a source material, like Elkouri and Elkouri.[11] If that were done I would have no objection to it. But if it comes to receive any kind of an official imprimatur, I think it would be really a very risky business.

Eli Rock: Alex, you have revived a lot of old memories, and those early War Labor Board days were a very special time. A lot of the young guys, including myself, went to Washington in early 1942 to help administer the wage and price controls and the no-strike pledge, which meant we had government compulsory arbitration. That was an incredibly talented group of young people. Some of them are here such as Ben Aaron and Bob Fleming, and some are not here such as Ted Kheel and Lew Gill. It brings to mind one anecdote about Lew Gill who, unfortunately, could not make it here. I told this story about him recently. It was at the height of the War Labor Board crisis, when the Board almost went under because it could not agree on wage controls. It eventually agreed on the Little Steel formula. Nevertheless, we all wondered whether we would have a job very much longer. Then, one day I had occasion to walk down the corridor to ask Lew, our boss, some question. I remember that as I approached him he was pacing back and forth in front of his office, and I remember saying to myself, "This young guy," who was perhaps then in his late 20s, "he is number two on the staff," Ralph Seward was number one, I guess, "and look at him pacing back and forth, wondering what is going to happen to us." And as I approached him, he saw me coming, and he raised his hand, "Ah," he said, "just the man I want to see. In that baseball game tonight between us and the clerks, should I pitch Ben Aaron or Ted Kheel?"

Alex Elson: Eli reminds me of my great disappointment of never having arbitrated a baseball dispute. I came close to one, my wife tells me. She was observing a game in which three of my grandsons were playing baseball. At one point, there was a big dispute about whether or not the catcher had his foot on the bag when he tagged out the runner. Everybody sort of erupted, and my six-year-old grandson, Ben, said, "We should arbitrate. That's what my grandpa does."

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[11]Volz & Goggin, eds., Elkouri & Elkouri, How Arbitration Works, 5th ed. (BNA Books 1997).

John E. Dunsford: Did I mention that Alex has 40 articles, essays, and comments, two books on the practice of law—I think Ellen mentioned one—18 reviews, 19 professional reports that he has authored, and 6 single-spaced pages of cases on which he has been counsel of record.

Alex, in so many ways you have been an inspiration to us all. You have our gratitude, our deep respect, and our love. Thank you, sir. Thank you very much.