

Adler Interview 1

December 8, 2016

Interviewer: **FRED HOROWITZ**

Interviewee: **SARA ADLER and JIM ADLER**

FRED: This is Fred Horowitz. This is the interview of Sara and Jim Adler. I'll be the interviewer. The date is November 19, 2016, at the lovely Adler residence. Sara specified that this interview must include Jim because he's been a part of her life as an arbitrator since the beginning.

The first question I want to ask Sara and Jim is how did you meet each other?

SARA: That one is really simple. I was a law student at USC and Jim was teaching legal writing. I was assigned to him.

They were using practicing lawyers to teach legal writing at that stage. And fortunately, he did not grade me.

JIM: Very honorable.

FRED: How long did it take before there was a mutual attraction developed?

SARA: I think probably pretty quickly but because of the fact that we were teacher and student it didn't exactly develop very quickly. On the other hand, we had been working as

student and teacher off and on for months before we first went out in March, and then we got married that August.

FRED: That's wonderful. So how did each of you get interested in labor law? Jim, did your interest develop first before Sara's?

JIM: Well, maybe. I was at Princeton and there was a course in Labor Economics taught by Richard Lester. I took it and enjoyed it. When I went to law school at Michigan I had qualified for the law review and I had to pick a project for my note. The project that I picked was based on the Steelworkers case that was handled by Arthur Goldberg and his firm where they were challenging a Taft-Hartley Injunction sought by the Government to force the Steelworkers back to work. So this must have been in about '57, or '58, '59. Something like that. The Steelworkers had gone on strike. The government had gotten a Taft-Hartley Injunction and the Steelworkers challenged it on the basis that there was enough steel available despite the strike. And it went from District Court to the Court of Appeals to the Supreme Court in something like five days. I was impressed by the lawyering and enjoyed the substance and became interested in Labor Law because of that.

FRED: And you were married at the time?

JIM: No. This was before. This was way before.

FRED: How about you, Sara? How did your interest in Labor Law start?

SARA: Well, I always knew about unions because my father was a pediatrician whose practice was principally composed of steelworkers. In those days there were steel mills in Gary, Indiana and south of Chicago where we lived. When they would go on strike, which they did from time to time, we didn't have much income. So I knew about Unions and strikes at a very early age. I really got to know more about it and get interested in it because my parents didn't exactly believe in allowances. When I was 14 and 1 day, I got my work permit. I went to work for a cousin who was one of the prominent Union side lawyers in Chicago, Harold Katz with the firm then known as Katz & Friedman. I worked for them all through high school and all through college. I got to know a lot about the labor movement.

FRED: So why don't we just correlate where each of you were when you met and got married, just so we can set the scene.

SARA: I went to college at the University of Chicago, then moved to California with a former husband. I worked for a few years and went back to law school about six years out from college. That's where I met Jim. I went to college at the University of Chicago, **then** moved to California with a former husband.

FRED: When she graduated what were you doing, Jim?

JIM: I was lawyering at Munger, Tolles, Hills & Olson. I graduated from law school in '61. I clerked at the Supreme Court and then I worked for the Department of Labor, the

Department of Commerce and the Poverty Program in Washington. I came out here and started work in March of '65 for Munger, Tolles.

FRED: Doing management-side Labor Law from the beginning?

JIM: That was the biggest part of the practice. I started working with Rod Hills and that was the biggest part of his practice.

FRED: Then at some point you went to Irell & Manella?

JIM: 1982.

FRED: Sara, tell us about your journey from law school to becoming an arbitrator.

SARA: Well, I had a lot of jobs. When I graduated law school I worked for the Center for Criminal Justice Administration at UC Davis immediately out of law school. Then I worked for a solo practitioner.

FRED: What did he do or she do?

SARA: It was she. She went on to become a superior court judge. When I worked for her, she had just a neighborhood practice. The next job I remember was I went to work for a firm then called Wyman, Bautzer, Rothman & Kuchel, which eventually disappeared. But while

I was there it was a big business litigation firm that had a small labor practice. I did some of that. I hated litigation and needed to get out. Jim and I have different memories of how I came to know about Joe Gentile. but ultimately, Jim connected Joe and me together. He took me on as an apprentice.

FRED: What was Joe's reaction to taking you on? Because as I understand it you didn't have a lot of labor experiences as a practitioner or as a card carrying union member.

SARA: You'd probably have to ask Joe. But he was willing to try it out. On a number of grounds he suggested that I probably was not going to be successful but he was willing to let me have a shot at making it. When I started to do this I went to Ben Aaron who had been my labor law professor at UCLA and for whom I had worked when he was developing the employee relations ordinance for the County of Los Angeles. Ben thought it was the worst idea he had ever heard. I was a woman where there were no women in the field in Southern California. I was married to a management labor lawyer. I didn't have a strong background in labor law.

FRED: That's only three strikes.

SARA: He thought there had to be some other better way for me to get out of practicing law in a circumstance that I wasn't happy with. My belief was that Jim would keep us in food and shelter and the worst that could happen is I fell flat on my face.

FRED: Approximately what year was that when...

SARA: 1978.

JIM: I think you ought to give a nod to another important Academy member in this story. That's Syl Garrett. When I was at the Department of Labor, I was assigned to be like a law clerk to Syl Garrett who had been selected to decide the last remaining issues in the Chicago Northwestern-Telegrapher's Dispute which had been going on for years. I learned from Syl about the way he conducted his arbitration practice and that he had people who worked for him. They went out and did the hearings but he signed the Decisions. He reviewed the Decisions. So when Sara decided that she wanted to try labor arbitration I thought of Joe Gentile because Joe had a very busy practice. He had more than he could handle. I thought maybe this method of proceeding would appeal to Joe. Well, it turned out that Joe was very gracious but he was not comfortable having Sara do hearings or write his Decisions, but he took her to all his hearings and introduced her to all the people that he dealt with, which was a big part of the Southern California practice. It wasn't quite the way that Sam Kegel brought John in or that Syl Garrett broke in the stable of arbitrators that had their origins with Syl. But Syl was really sort of the father of all of this in a way that he wouldn't have imagined.

FRED: Before I ask you about getting started and how you were received back in those days, in 1979, there was a Labor Arbitrator Development Program at UCLA that Reg Alleyne proctored the academic portion and FMCS and AAA and a couple of Unions and the County Bar co-sponsored. Edna Francis, Ken Perea and I were 3 of the 20 people in that program. Did you know about that program?

SARA: I didn't know about that program when it was going on. At roughly the same time the ABA ran an arbitrator development program that Mei Bickner was in.

FRED: Maybe I got your spot then. That was a break. It was a wonderful program. It took about three years and I think Ken and Edna and I were the only ones who "made it". They were arbitrators right away and I had to wait a few years for other reasons before I made the switch. My experience interning with Tom Roberts was similar to yours with Joe of just meeting people until finally getting some cases. What was the break that you got and how were you received by those early parties? Because, again, you were the first, probably, woman, in Southern California that they had to deal with.

SARA: Well, I think I was. I was able to make the move differently and in some ways more successfully, because of Jim. Joe introduced me to a lot of people, so I had some halo effect from that. Jim was very well networked in the labor-management community and was very well respected by both sides. People, I think, figured that I wasn't stupid and maybe sensible about labor law. I mean it really was largely a halo effect from Jim that, I think, started me in a different way than many others. The very first case that I was ever selected for was a private sector case. It was with Paul Hastings and I am sure that that came because they thought well of Jim. It had nothing to do with me individually. Being the spouse of a labor lawyer is an issue for the now small number of us who are married to actively practicing lawyers. Some on the union-side and some on the management-side. You can tell what kinds of lawyers they are by whether or not their spouses are able to make it as arbitrators because those are not separate

factors in the labor-management community. The really aggressive or doctrinaire lawyers on either side have spouses that can't make it.

FRED: How long did it take you to feel comfortable sitting up there at the head of the table and managing these hearings?

SARA: Like a lot of people in my position, I spent a lot of time doing Civil Service work. Also, in those days the California courts had paid arbitration for smaller cases as a litigation alternative. I did a lot of those. I had an income almost from the get go. It was not final and binding authority. but it gave me a chance to develop skills as a neutral. I'd been trained in a litigation firm so I knew a lot about how the process worked, at least in court. I had been trained by some of the best litigators in California. I was first admitted to AAA's Commercial panel and from the very early 80's I was doing senior executive cases from that panel.

FRED: And you watched a lot of Joe's hearings? Joe Gentile's hearings?

SARA: I watched a lot of Joe's cases.

FRED: When I was a young lawyer I appeared before Joe. He had, and probably still has, a very aggressive and brusque style as a neutral. How did you view that style as it would apply to your own style of running a hearing?

SARA: Well, I started out knowing that I couldn't do what Joe did. I must say, over the years I've gotten more and more like him and less and less willing to let the parties just wander off on their own in paths and byways that I think are irrelevant. But at the beginning I was much more open to letting the parties do what they thought they needed to do knowing that I couldn't pull off the Joe Gentile style. The other really strong lesson I learned from Joe was to never make a bench decision. I was with him one day when he did. I'm under 5 feet tall and he's over 6 feet. He made a bench decision and I watched the Grievant come after him. I decided if a grievant would come after somebody who was over 6 feet tall and broad, there's no way I was going to take that risk.

FRED: Sara, among your many accomplishments in your career is being active in a variety of Labor Management organizations besides the Academy. I imagine you're active in other organizations as well. Tell us about how that interest developed.

SARA: Well, from my viewpoint it was sort of a no brainer. The Labor Management community is a relatively small community. The likelihood of a woman becoming acceptable or really any arbitrator becoming acceptable is to get to know the community and allow them to get to know you. One of my early cases was out at the Harbor at Todd Shipyard (that no longer exists). During my very first case at the Shipyard there was a flow at the back of the room. I finally asked counsel what was going on. They said, "everybody wants to know what a woman arbitrator looks like". I wasn't sure what they thought that could be. Also, Jim was involved with at least the LA County Bar's Labor and Employment Law Section fairly heavily. In fact, I followed him as President of the LA County Bar Labor Employment Section. I was also President of what was then the Los Angeles Chapter of the Industrial Relations Research

Association, IRRA, also after Jim by a few years. He was involved with the ABA and I came to that a little late. But with the ADR Committee (only it was then Labor Law and the Law of Collective Bargaining) while he was involved with other committees. I was Chair of that committee and the most useful thing I did was get the committee to take over doing Elkouri when the Elkouris announced that they were not doing any further work on the book.

FRED: I didn't know you were responsible for that. That's a major achievement.

SARA: It's in the first volume that I did. They acknowledged the fact that this was my project. It seemed to me that it was a good place for it to go. And a good thing for the committee to be doing. It gave us an additional focus.

FRED: In the course of that organizational experience, you are invited to be a speaker on panels. Is that an activity that you enjoyed or just felt it was a necessary adjunct of what we do in our profession?

SARA: Some of each. And again, in being an early woman in the profession, it had pluses and minuses. One of the pluses was that everybody was looking for a woman on the panel. So I got to speak more than probably most emerging arbitrators. They wanted to prove they were in the modern times or something.

FRED: When did other women begin seeking your advice on becoming an arbitrator?

SARA: It was probably 10 years into my doing it that people began to take me to breakfast and lunch and say “I want to do that too”. The vast majority of them, when I described the five years or more it took for it to likely for them to make any kind of income, real income on a reliable basis, found something else to do.

FRED: How were you received by the established women arbitrators when you started out?

SARA: With most of them they were very cordial. They were almost exclusively East Coasters. There were women in Northern California. Women arbitrators. But they weren't active in the Academy and I really had no contact with them. I knew they existed but there was no community. The women's community that I interacted with was here in Southern California. Mei Bickner, Edna Francis and I were all emerging, so to speak, at the same time. Mei was coming out of a program, if not the same program you were in. For a long time there was essentially a composite woman arbitrator, a merged “woman arbitrator” in Southern California.

FRED: Which is interesting because the three of you are so diverse.

SARA: We are very diverse in our totality, but all of a similar age and height. The parties were very open about saying something about some prior hearing they had had with you and it was clear that it was not you. It always sort of boggled my mind because I am Causaian. Mei was Chinese and Edna is African-American.

FRED: In my experience here in Southern California, Sara, you've been viewed by our colleagues, our arbitrator colleagues, as being the go-to person whenever there is an ethics question posed. Your advice is always solicited and appreciated. How did that develop and how did you become known as the go-to ethics person in California, if not the country?

SARA: You know, I really don't know. It's just an area that has always interested me. "The" top lawyer in the law firm I was in, Frank Rothman, was dead set that his people were going to practice with the highest ethical standards. So I was sort of tuned into it, I think, from the beginning of my real law practice. But then I started whatever my first stint as what's now called the Coordinator of the Legal Representation Fund. I discovered not only a job that I adored in the Academy but required that I pay some close attention to both the legal status of arbitrators but also the ethics of how to proceed in some circumstances. Those things intertwined. It's just been something that I cared deeply about.

FRED: I imagine because of Jim's activity in our Labor Management Community that you were conscious of the need to disclose and find out any tentacles that he or Irell & Manella might have so that you were certain that the parties would know that.

SARA: I was early into the full disclosure game and there were some clients that I simply could not work for. I knew that from the get-go. Only once did I have someone call who was a client of Jim's and say, we've done all the disclosures and we want you anyway. I wouldn't take the case. I didn't think there was any percentage, for them or for me, in dealing

with people who were Jim's clients, even if it wasn't something he was going to be representing them in.

FRED: Well understood by all of us. Jim, it's your turn. What I'd like you to do is talk about, briefly, your practice as a lawyer, Management Lawyer, all those years and then how you, yourself, have transitioned to being a neutral. I don't know if you can do it in less than two hours but give it a shot.

JIM: Well, I had a management labor practice where we were gentlemen. Clients self-select in that field. We advised with regard to all aspects and that included union elections. We would never advise a client to terminate somebody to intimidate the union. We believed you could have good relations with a union or without a union. That's a philosophy I probably inherited from Rod Hills, who believed that unions could contribute significantly to workplace justice and productivity. If the union was selected then that was the employees' choice and we would try to make the most of it. We had a reputation that was different than a union busting firm. The clients self-selected around that. I was doing arbitrations as an advocate almost from the beginning. Mediation came later. I learned about mediation at an early ABA program which featured a mock mediation that was led by Barbara Phillips. I fell in love with mediation right on the spot. So I began using mediation in my practice to resolve disputes whenever I could. When I was practicing, I can remember clearly a case where the other side wouldn't agree to mediation when they should have. In any event, I eventually actually mediated that case while I was in the firm. One lawyer in our firm was representing the Executive in that situation and another firm was representing the Respondent. I just shuttled between the two rooms, even

though I was at Irell and they knew the firm and I were representing the Executive. But it worked. Then I was selected to be one of the initial members of the Office of Compliance which was created by Congress to apply 11 major Labor and Employment Laws to Congressional employees. This is something that came out of the Gingrich revolution. This was a part-time position that was clearly neutral work. Then I began, while I was in practice, getting asked to be an arbitrator and got on the AAA Panel. At the time, AAA was looking to build its employment panel and was interested in attorneys who practiced in the field. But I'm sure being married to Sara helped because Sara got on the Panel first. As a result, AAA knew who I was. So I got on that Panel and then began doing AAA Arbitrations and doing mediations while I was at Irell. When I left Irell I just continued doing it.

FRED: And your practice now, is it more arbitration or mediation?

JIM: There are more arbitration cases on my docket but most of the arbitration cases settled. So I would say I have more mediations than arbitration hearings. Of course, the arbitration hearings tend to last longer.

FRED: Have you been asked to hear or mediate cases outside of the Labor and Employment field?

JIM: A few times. Not terribly often. I'm on the AAA Commercial Panel and I feel comfortable doing commercial cases, but not PI cases.

FRED: Sara, you've had a wonderful history with our Academy and you served productively in a variety of roles. Why don't you tell us about how you got interested and how your career within the Academy evolved.

SARA: Well, I got interested because Joe told me I should get interested in it. Frankly, I'd never heard of the Academy before Joe introduced me to it. They had one, as I recall, disastrous financial experience of meeting in Los Angeles and have never been back. But Joe did take me to that one. I think I attended one other meeting as an intern. I knew from Joe that that was something I should aspire to. It was always on my radar in my arbitration profession. For me it has been a wonderful place to get to know other people who do what we do and to learn to do it better. It's never been a principal place for me to find clients or build a practice or do any of that. That, I think, was important to some people in the Academy and maybe it worked for them. It never worked for me. The local organizations were much more fruitful in terms of building relationships and developing work. I reached the level of President in a way that, I think, was fairly unique in the sense that I never served on any major committee. I did the things in the Academy that I was good at and that I liked doing. I was on and chaired program committees and I was good at that. I was editor of the Chronicle for a number of years. In fact, I moved it from a newspaper to a newsletter, which I am very proud of even though some people still mourn the other. But, if you're going to take it with you to read it is a whole lot easier in its current format, although now, of course, you can read it online. I served off and on as the legal representation point person for the Academy, I think successfully. It's been a job I have enjoyed. I never served on CPRG. I never served on membership. I never did those kinds of committees. I always thought there were a lot of people who were better qualified to do those tasks and I was

really good at what I was doing. It's unusual in the Academy to move up from those sorts of lesser known committees or project assignments. Then I moved through the Board of Governors and Vice Presidency. I served on the Legal Research and Education Foundation and as its President. I was around and I was active. For me being active is the only way that organizations work. That's a hard lesson for people to learn. Some people come to one or two meetings and they don't understand why they're not one of this "in group" which isn't an "in group" except to the extent that people put in time and effort and have gotten to know each other. It's a great organization that may have been terribly important at an earlier stage and now I think it's nice for those of us who were in it. I don't think, with the exception of the places that Arnie Zach got it written into law, that membership is hugely important as a job-creating device. Most people in the field don't know what the NAA is or what it represents in integrity and experience.

FRED: I've always viewed the Academy, among other accomplishments, as being the gatekeeper of Labor Management Arbitration. Do you share that view?

SARA: I think historically it has been terribly important. Ben Aaron was in from the beginning and was local so I got to know more about the history from Ben than I did from maybe some of the other early greats. It started out being somewhat wild west. In fact, the Code of Professional Responsibility came from some group of the early Academy deciding that they had to have ethics rules because of what some of their members were doing. We now talk about how wonderfully ethical we are and how we enforce the rules of ethics and how we sort of drive it in Labor Management community. All of which is true. But at least if Ben is to be believed, and I do believe him on this subject, it's not because inherently all labor-management arbitrators were

always ethical all of the time. I think that the Code of Professional Responsibility has served us extraordinarily well. It serves us best when not only do we adhere to it but also when AAA and FMCS actively enforce it because they have a much broader reach than we do since it covers all of their panel members, most of whom are not and likely never will be members of the Academy.

FRED: When you were President or in another one of your leadership roles, what is your proudest accomplishment other than converting the Chronicle to a newsletter?

SARA: Hopefully the thing that will turn out was the most important thing that I did was to get started the NAA-University of Missouri's journalism website explaining the reality that "this is arbitration vs. this is mediation". Not only is it well done (which it is), but will get well known in the journalistic profession so that there will be more fact-based reporting and less of the kind of uninformed and too often sensationalistic reporting and/or confusion between arbitration and mediation. It drives me crazy, I think it drives most of us crazy, when a journalist uses the terms arbitration and mediation alternately or wrongly. Arbitration is a topic that is currently subject to enormous journalistic coverage.

FRED: At the time of this interview our University of Missouri website is just gaining some traction. It is relatively new. What was your role in creating that?

SARA: Well, it was getting the Board of Governors to agree to all of the bits and pieces that we had to commit to in order to get the project off the ground. That was during my

Presidential year. It was also a time in which it was beginning to be clear that arbitration was going to be under fire and, God knows, that's only gotten worse in the few years since. Jim you have an even stronger view of this than I do.

JIM: Yes. I'll come back to it but I was thinking also you were one of the early people in the Academy who was doing employment work as well as labor work and were sympathetic to the need for the Academy to be receptive to employment work.

SARA: Well, yes but that was a very hard and very slow process.

JIM: But an important one. I think that arbitration is a very important method of dispute resolution. I think that sometimes people who write arbitration agreements are what I would call pigs. They try to overreach and get too much and use this to get an advantage instead of just having a more efficient and more expert decision-making body which is what I think it should be. When it's done right and consistently with the Due Process Protocol or with the California *Armendariz* Decision, I think it's enormously beneficial. I think it's unfortunate that it's under attack from people who really don't understand most of the issues and fall in love with things like the fact that there is a repeat player and then they repeat that mantra as if it had significance. We know that in the labor field the repeat players are very common. When I was practicing, representing a lot of small employers as well as big ones, the small employers were always encountering arbitrators who had done more work for the union, which represented employees at multiple employers, and were more important to the union than they were to us for a one-off arbitration. But we didn't feel it was unfair and it wasn't unfair. I think in the employment field

the same thing follows. I wish people who wrote about this had a greater understanding and were more analytical and recognized that there are abuses by some users of arbitration but that doesn't mean the whole process is bad. They ought to be focusing on the abusers rather than on the process.

SARA: I think we both, and undoubtedly you, are concerned that the developments that have been and my guess will continue to be under the current political situation of barring class actions. It's just wrong. It's wrong on any number of grounds. But the single fairest objection to the way arbitration has developed in our society is the class action ban. It just doesn't make any sense. There are problems with class actions but there are other and better solutions than to prohibit them.

JIM: I agree with that. The Supreme Court said that unconscionability was a basis for precluding enforcement of an Arbitration Agreement and then, when California said it was unconscionable to ban class actions, the Supreme Court seemed to say, oh, but not for California. I think the California Supreme Court had it right.

FRED: Beyond endorsing the Due Process Protocol for Employment arbitration, the Academy has not reached a consensus on whether our Labor Management Umbrella ought to be extended to employment.

SARA: I think the reality is that it has been extended to employment. What it hasn't been is quite officially taken the last step. But it has taken the first 20 including adding

employment to the by-laws, creating Best Practices and Ethics Guidance. These steps have been holding and they have been over a long period of time. The reality is that because of the diminishment of Labor-Management work, virtually all of our younger members and many of our more senior members do work that is outside of the Labor-Management Community. It is neutral work. But it may be FINRA or maybe Civil Service work or it may be employment work. They are doing Non-Collective Bargaining Arbitration or Mediation or Hearing Officer work because that's how you make a living today. I would like to see the Academy be broadened to a workplace dispute resolution body and I think eventually we'll get there.

That reminds me of the period when I had concluded, as Chair of the Legal Representation Committee, that we should encourage our members to have neutral activity insurance and connect with an insurer to make sure it was what we needed. There was a segment of the Academy that felt we were not a trade association and shouldn't be doing any such thing. Fortunately we're far beyond that stage now.

FRED: I think the issue for the Academy is how do we extend our membership and our structure beyond Labor-Management. Of course, all of us are free to pursue these other activities but I think that's a discussion for another interview.