ARNOLD ZACK
PRESIDENT OF THE NATIONAL ACADEMY OF ARBITRATORS
1994
Interviewed by James Oldham
at
Savannah, Georgia
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JO: This is Jim Oldham interviewing Arnold Zack in Washington, D.C. on the 25th of May, 2006. It has been now almost 13 years since the first stage of this interview which took place in Denver on June 3, 1993, as Arnie was assuming the post of President-Elect of the Academy. Many things have happened in the ensuing years and in this interview we want to cover at least the high points. They will be roughly in two categories. First, the activities by Arnie during his year as President of the Academy and then the sequel to that which will in significant part be related to the Due Process Protocol about which we will hear a good deal in just a moment. We might trace the life of the Due Process Protocol from its creation by Arnie to its adoption and expansion even geographically beyond these shores. That would be a nice segue for us to talk about Arnie's extensive and peripatetic international activities on behalf of the arbitration process or more broadly on behalf of alternative dispute resolution.

Back then to the beginning, let's talk, Arnie, about your year as President and the role you played in the Academy and in particular your creation of and advancement of the Due Process Protocol.

AZ: When I was President-Elect, John Dunlop was Chair of the President's Commission on the Future of Worker-Management Relations. I had been teaching dispute resolution at that point for 10 or so years at the Trade Union Program within the Labor and Work Life Program at Harvard Law School and had developed a pretty good rapport with Dunlop. He was going to come out with a report in the summer of 1994, but then the election of November 1994 looked foreboding and he said he wanted to wait to see the election results before issuing recommendations. Dunlop was looking at the politics.

JO: This was the era when labor management cooperation was in the air and Steve Schlosberg, was the assistant secretary of labor and was doing this study on worker management cooperation. This looked promising except for the fact that there were legal difficulties under Section 8(a)(2) of the NLRA because this looked like employer domination of a labor organization whenever the company dealt with even a committee of employees that had anything to do with collective bargaining or collective issues. The NLRB addressed that issue in the Electromation case and in the end that case became a problem for the worker cooperation push, and it remains a problem.

AZ: So Dunlop bifurcated his report in the expectation that if the Democrats won the election he could come up with recommendations for statutory change and that it would be much more

meaningful because he would have better sense of what the public would support in terms of changes to Section 8a2 National Labor Relations assuming a Democratic Congress. but being wary of a potential Republican victory But of course Gingrich' Contract with America prevailed, and it was a Republican Congress. When I read the first portion of the report, the day he got the printed copy, which was in September 1994, I had just become president-elect.

I spoke to him of my dismay about his reporting of employment arbitration, and said gee John you know this arbitration system is awful, I was very naive about what went on outside the collective bargaining sector because I didn't have any interest in it at all, I mean I was interested in labor arbitration and that was a lovely universe. I said why we can't you use what we have in collective bargaining and apply it to the non-unionized sector. He said go ahead put something together, as a taunt. And a lot of stuff was easy: the right of representation, the demographically diverse roster of potential arbitrators. They don't have grievance procedures so let's have this thing called discovery and depositions but let's not go wild on them and let's have a right of representation including a union rep if they want it to bring a guy into this employer-promulgated system. I couldn't figure out what to do with the manner in which the arbitrator was going to get paid because nobody had equal funding competence with management as in the union management context. So I made this proposal to him and he said yeah it's interesting. He then held a series of hearings around the country and I testified at one hearings and then the final report came out in November. I think there is some reference therein to my testifying and maybe some reference to what I had proposed.

Then came my Presidency and my question was what should I do as President; should I do anything with this? I was approached by Helen Witt, a member of the Academy, and a neutral member on the Council of the Labor Employment Law Section of the ABA and Bob Siegel whom I had known as a union lawyer in Boston and they both said to me you've got to come down and repair some bridges between the Academy and the ABA Labor and Employment Law Section. The Section had apparently been asked to make some comments on the revisions to the Code and when they finally got to doing so, the Academy said it was too late and they were really pissed. So I said all right; so I went down to New Orleans and spoke to the August 1994 meeting of the Labor and Employment Section Council as arranged by Chris Barecca and Max Zimny management and union liaisons between the Section and the ADR Committee of the Section. My pitch was that the issues raised by Dunlop regarding employment arbitration was not merely an arbitrator's issue, it was an issue for management and labor as well, i.e. this whole labor management family. We ought to do something to make sure there is fairness. And they said okay and so that led to the creation of the Due Process Task that included the Section, the ADR Committee of the Section ,the plaintiff bar, NELA, National Employment Lawyers Association, the FMCS because they are involved in this thing, because they provide a lot of mediation, we were going to cover both mediation and arbitration, the AAA because they are a main provider of labor management arbitrators and they are doing this in the employment field and the ACLU which was funding a workplace justice program run by Lew Maltby. So I said fine and ultimately we met over a period of nine months starting in September of 1994, and on May 9th of 1995 we had reached agreement on what to agree or disagree on. What we disagreed on was what

should be the triggering event for these standards. NELA and the union bar said it had to be a post-dispute agreement to go to arbitration and the management people said it has to be pre-dispute which indeed is what Gilmer had authorized. And so we were unable to agree on that point but put together this listing of these conditions we thought would be fair. I had called it the Protocol after pulling down my Word Thesaurus looking for a classy word for agreement or pace. When I chatted once with Secretary of Labor Bob Reich about the genesis of the Protocol, he asked "What is a nice Jewish boy like you using the word "Protocol"? and I explained how it came about.

At the meeting in New York where we went to sign it, Chris and Max who had been sort of running this thing through the ABA said well we should make this a tripartite chair so the three of us became the co-chairs, and I became the neutral co-chair although I felt that the NAA ought not to be a prime mover since we were only concerned with union-management arbitration. So we signed it and everybody was there and sweetness and light prevailed, and we had a wonderful time except for one person who came to sign from one of the institutions who had not been present in the other sessions and said you left out this, you left out that; you didn't have racial diversity among the people representing, etc. We said look, the institutions designated people to take part in this and they didn't care, thinking it a low priority venture. We were the ones who had been through this process and were the ones who on behalf of these institutions think this should be endorsed by the institutions, and he ultimately signed and we all went back to our respective institutions and got it endorsed with an up or down vote.

I recall that on coming back to the Academy for ratification, there was a big fuss because we didn't include this, we didn't include that and Ted St. Antoine said look I was the reporter on the model uniform arbitration proposal of the American Law Institute, and said I know what's it's like to deal with these people, if you can get anybody to agree on anything you've done as well as you can do and it's amazing you've got consensus And then an endorsement from Dave Feller carried the day and there was no opposition, and the thing passed.

JO: This occurred exactly when?

AZ: This was at the San Francisco meeting so it was May of 1995, which was at the end of my year. In talking to these other Task Force organizations I was trying to get the other organizations to make sure that they endorsed it and they all did. Bill Slate of the AAA told a group of us right after the signing, that he would provide a tear out in the next issue of the Arbitration Journal with the Protocol on it so people could pull it out as a handy guide, and that AAA, represented by George Friedman, and our host at the sessions, was on board. But still no endorsement came from the AAA. I called Bill and he said "Yeah I endorse it and we're going to hold a conference on this in September 1995 to talk about this whole area how the AAA is going to endorse the protocol and go into this". I helped him get people to serve on the panels when this big conference was to be held and then I discovered that the AAA had not endorsed it and I said "I'm going to pull the people out of the conference unless you get the AAA to endorse it". And he said "Well I endorse it personally but the AAA Board had not met". I said "well you

better get that endorsement", this was about a week before, so they held a conference call and they endorsed it and I don't think he ever forgave me for that. But they endorsed it too, so the thing happened. I guess getting all the endorsements was probably a greater achievement than the agreement on the substantive content of the Protocol itself.

JO: Backing up to the Academy for a moment, I was there and I recall this being the subject of your presidential speech. This would have been at the end of May 1995.

AZ: That's right and it just happened and we endorsed it that day. In fact when I gave my Address we had not yet endorsed it; it was to be endorsed the business meeting that was coming up so I had given the speech saying this is what I have done this year. Tom Donohue was my guest speaker. If you read Tom Donahue's distinguished visitor address, he attacks me for having gone to create standards outside when we should be dealing only with collective bargaining. We've since kissed and made up. That was one part of my presidential address. The other part of my presidential address of which I'm rather proud was saying that we had started what turned out to be the Common Law of the Workplace project.

Let me back up a little the initiation of both the Due Process Protocol and the Law of the Shop project was really traceable to the Beck report which dealt with the question of what we should be doing outside of labor management arbitration, should we stick to just union management disputes or should we go outside and mediate non collective bargaining disputesand the "what if" was part of the title. Beck urged we train our members to do outside mediation.

JO: When was the Beck committee?

AZ: Oh I would say the mid 80s. And it had said we have an obligation to train our members to deal with work outside - mediation activity outside of arbitration. And I had been, as we discussed in the last interview, in charge of continuing education, I had been doing some training in mediation and arbitration and when the Protocol came along I said to myself this is important for us to be involved in, not because it's more work for our members but because if our members begin to do work outside of union management arbitration and start getting involved in the non-unionized sector, we want to make sure that they don't get sucked into a procedure that is Draconian and unfair and so let's set standards of fairness. If you are going to start doing these cases make sure that there is right of representation, that employees share the right to select the arbitrator and all the elements I mentioned the precedents that we have in the labor management field. I know that we're not going to set up a grievance and arbitration system, we don't have those but at least the standards that are used and arbitrators deal with in dealing with discipline and discharge. What are the standards of fairness that we have evolved? So I said well let's put something together a little bit of a handbook to guide our members working outside, and to guide outsiders who want to provide fair procedures. I was being succeeded as President by Ted Weatherill, and I said well let's do this as a two-year project because it's rather big. I then called Ted St. Antoine who was at Oxford or Cambridge for the year and asked if he would come to the fall 1994 meeting which was of course in Boston my home town, and talk to us about managing

the effort as a two-year project. At that meeting George Nicolau got tapped for nomination to be President-elect, so I said let's make it a three year project so that it would culminate in the 50th anniversary of the Academy when George would be president in Chicago. So this thing progressed and then Ted St. Antoine went back to Oxford and when he got back to the States we put together the details, as to who was going to do the writing and the dividing up of the chapters and the book progressed and came out as the Common Law of the Workplace.

JO: Yes, and as you know, I have a small piece of that myself. I do remember that Ted had to deal with this controversy about the fact that some people thought it was a restatement of the law of the workplace in the form of the restatements that exist for the lawyers, and this was somehow thought to be inappropriate.

AZ: It came at an odd time. It came when I was half way through my presidency and I announced it as something that was indeed in process by the end of my presidency. But you know that being an ex-President I had no real role thereafter ,and so Ted picked it up and ran with it and it came out as it did when George was President. I'm sure elsewhere someone has chronicled about the issues that arose and our creation of an Ex-Presidents Advisory Committee to resolve issues of content within the volume and other problems, and I remember being knee-deep in those disputes all of which now seem to be terribly trivial. But in any event that was the process, and so out of my Presidency came those two accomplishments.

JO: You should be rather pleased with both of those; both of them have a continuing history. The Common Law of the Workplace has now reached a second edition, published in 2004 by BNA.

AZ: Which I hear is giving attribution to the four presidents under which it was created when there were really only three during whose tenure the project operated but only one President who initiated the idea.

JO: Well in any case it has achieved a greater measure of success than anybody anticipated. But stronger than that is the success that the Protocol has enjoyed. Tell us a bit about the Protocol's travels.

AZ: Well I don't know how global it is, I mean it is cited all over the place it's been cited by courts when our expectation was that it would be just for in-house employer-promulgated systems. What's the date of Alexander v. Gardner Denver?

JO: 1974, I believe.

AZ: So we knew from the Gardner Denver decision that the courts would deal with the statutory issues as distinct from the collective bargaining issues and we figured that maybe some time some court would look at the Protocol. Well, what has happened of course is that there has been a lot of writing about it and it has been cited in a number of court decisions. The one

that I should make some comment about is the Harry Edwards decision on the issue of compensation of the arbitrators, and the name of that the Cole case, And when Harry issued the decision I called him, and swore at him and said how can you do that, look what you've done to arbitrator neutrality, you've changed this whole idea. We're trying to get parity of payment in the Protocol. We realized we couldn't get plaintiffs to pay half but we created this admitted mirage that the money would be paid into the designating agency and the arbitrator would receive it, and so could claim he or she didn't know where it came from

JO: And for clarity's sake explain what Harry did that you were upset about.

AZ: Harry said that employment arbitration should be comparable to the courts, that courts are free to the claimant, and if we are going to be resolving issues that are statutory issues we should not impose a penalty on a claimant using arbitration. And so I protested, I said well having the employer pay for the whole thing creates a question in my mind as to the neutrality of the arbitrator, if the arbitrator is going to be paid for by one side and that is what Lisa Bingham in her article has referred to as the re-user tilt. Since you are never going to be used again by the terminated employee it's unlikely that you ever going to have any prospect of work from him or her again, so it's easy to decide who is going to be the deep pocket for your next case. So I was concerned about that so I raised Hell with Harry and swore at him and he swore back at me and said, well I won't say what he said but he swore back and me and said "Here, I'm giving credibility to the arbitrators by saying that arbitrators are beyond reproach as credible neutrals. They are above this crass concept of deciding cases based on future rehiring". And so that was the end of that. The rest of the protocol seems to have survived. It has been cited widely. It turned out that JAMS endorsed it, the National Arbitration Forum, a lot of organizations have adopted it and it's become because of its citations and adoptions sort of a standard. There have been efforts to try and redo the Protocol but we don't have the same players in the same positions. Some of the institutions like the ACLU have pulled out of it. Individuals who had been there such on behalf of the ACLU are no longer working for those organizations, and so you cannot unscramble the egg. As recently as 2001 or '02 Max Chris and I wanted to reexamine and expand it because we originally added mediation as an afterthought, and went through it to try and clean it up inserting mediation as well as arbitration coverage, and didn't do a very good job of it actually. We were not quite certain they were treated equally all along. And since a large number of these cases are resolved by mediation we wanted to make it much clearer as to what was intended but we couldn't get the people back together. Everybody agreed you could not reconvene the institutions and their representatives. There has been some discussion in the last few months about the Academy running a conference next year with the objective I think intentionally initially of redoing the protocol, bringing it up-to-date but we can't do it. And I think that's impossible. There have been a lot of studies of it and the question is what impact has this had on the Academy members and the rest of the world.

JO: Let me interrupt to say a word about that, and correct me if this wrong in any way. At the time the Protocol was in gestation, the anticipation was that arbitration may become a mechanism that has fairly wide application in the non-union workplace, particularly workers below the

supervisory level, workers whom we would call in the union context the rank and file.

AZ: Who had to sign this commitment to go to arbitration as a condition of employment or continued employment.

JO: Yes because that all links back to the Gilmer case and the recognition that this is something employers can do as long as their policy doesn't offend the contract law of the state in which they exist. That basically revolves around the unconscionability doctrine, a doctrine that's not too difficult to dodge. So one of the suppositions then was that this would be an expanding set of applications across the land. It is very relevant to the Academy now because the Academy still operates under that supposition and is apparently adjusting its standards to be more receptive to people who do employment arbitration in the non-union context.

AZ: Not apparently seeking to. It has succeeded in one respect.

JO: It has succeeded?

AZ: It has succeeded in one respect; the Academy changed its standards in one respect in this field and that is as a consequence of the Fleischli report that some weight should be given to employment arbitration cases. We wouldn't change the 50 and 5, where you have 50 cases over the most recent five years. But there would be weight given, attention paid, to cases beyond that 50 so instead of having a 100 cases you've got 50 in employment it might help, assuming one meets 50 and 5 as a minimum requirement. More recently there has been discussion about changing the membership standard of the Academy to reduce the 50 and to start giving credit to employment cases toward the basic 50. I am troubled by this because I don't think these people are doing arbitrations that are just like ours and I don't think they are just like us. There are a lot of our members who are doing employment arbitration and mediation, just say arbitration for these purposes. I don't know what percentage of the cases in employment arbitration done by our members, are management arbitrations, but I suspect a substantial percentage if not half or more of these cases are supervisory vice presidents, they are akin to commercial arbitrations more than union management arbitration. They do not involve the rank and filer.

The Protocol was aimed at the rank and filer, the person who could not go out and hire a lawyer, the person who did not have enough money to fund the process, did not have a lawyer who could change the structure under which they were forced agreed to go to arbitration. And the AAA administered those cases. I have not been able to get a sense of how many those cases there are and I've tried strenuously. I know the AAA has at different years said under the employment arbitration rules which they've created pursuant to the due process protocol as distinguished from their labor rules, they do between 1,500 and 2,000 cases. I think most of those are supervisory cases. Few of them are rank and file cases. JAMS does virtually none of those. National Arbitration Forum I suspect does some but not very many. I would have thought NAF would have done more because their structure as I understand it is they have a roster I mean they do this with credit card and telephone bill arbitrations which is the bulk of their caseload. They

have a roster and from that roster of arbitrators they will select three, the employer, the employee each have the right to strike one and the third person is designated as the mutual selection. But that's not really a demographically diverse roster from which each side has an opportunity to create a panel.

JO: But it's true isn't it that we don't really have any hard data about this?

AZ: We have none. EEOC convened a meeting which had all the designating agencies present and, for some reason, me. I tried at that point to find out how many cases are there. I would say maybe three or four thousand cases a year and half of those I suspect are supervisory or manager, they are not rank and file. So where are the cases going? I can't tell. I proposed the Academy do a study of this funded by the Foundation and that didn't happen, but I understand now that a study is to be supported by the Research and Education Foundation which I helped Alex Elson set up.

JO: We're now backtracking a bit to talk about the Research and Education Foundation because that is the source of some funding possibilities that we are referring to.

AZ: I don't remember the year in which it happened but Alex Elson and I were chatting about the fact that the Academy was not spending money to do certain things that we thought it should do in the education field in which I was involved, doing continuing education. So he came up with the idea of a foundation and so he did the legal leg work and created the Foundation.

JO: It's called the Research and Education Foundation.

AZ: He was the first president and I was the first vice president and I succeeded him as Foundation President and that has been a very flourishing organization although we had a hell of a time raising money at the beginning, but it's now an extant organization and has a bit of an endowment. Anyway the thought was that they might be involved in doing some of this research. The research was never put together. There have been anecdotal reports, Lisa Bingham has done some, Hoyt Wheeler has done a little bit, and nobody knows what is out there. I concluded the best way of finding out was talk to the management firms who have perhaps encouraged their clients to develop Gilmer programs on some of the national management firms and I've spoken to about a dozen. My conclusion is that there is no "there" there, that there are very few cases that go through the process. There are very few claims filed but those claims that are filed are usually resolved either by buying off or settling the case well before it goes to mediation. Some cases go to mediation not very many. And hardly any go to the arbitration.

JO: But preliminarily neither one of us knows how extensive the network of such creative programs such mandatory arbitration programs are.

AZ: I do have a figure on that. The American Arbitration Association gave me an estimate that there are six to eight million workers covered under Due Process Protocol type arrangements

that they administer. JAMS did not give me an exact figure of the number covered in plans they administer, but from what they said I would say it's probably little bit less than a million people who are covered. National Arbitration Forum: my guess from what was said was a couple million. So there are probably as many people covered by the Due Process Protocol conforming programs as are covered by collective bargaining agreements. And yet you have very few cases. 4,000 to 5,000 compared to 30,000 to 40,000 estimated under collective bargaining agreements.

JO: You offer a very startling figure as to the number of workers covered by these systems, especially given your intuition that very little is actually happening.

AZ: A word about the AAA endorsemnt of the Protocol and the creation of its employment roster. Before the AAA meeting in September 1995 it had not yet set up a roster for employment arbitration cases, and so there was a great feeling of camaraderie that our task force was going to help them to develop their demographically diverse roster. Sara Adler and I went around the country for the AAA doing the training of this roster once a month for two years, and we had local committees that were really demographically diverse providing advice to the AAA, I don't know whether they ever took it as to who was to get on the roster but the roster was not bad. As noted there are about six million people according to Bob Meade of the AAA who are working for employers who had signed onto the AAA because the AAA changed its rules when it endorsed the Protocol. Before the Protocol the AAA used to say it's an arbitration commitment between the employee and the employer, we will apply and implement any arbitration agreement under its commercial rules. We said you can't you can't do it if it's inconsistent with the Protocol.

And this was a giant step for the AAA, it was really important. I think we really did establish a side benefit of the Protocol that I had not anticipated. The AAA changed its rules. JAMS and the other designating agencies changed their rules, and they gave the right of representation and other Protocol benefits. Until that point they said you know if the employers form says there is no right of representation and the employee has signed onto that arrangement, we'll administer it. And now they said no, you've got to assure representation, limited discovery and depositions, follow the law, and have written opinions, etc. Before the Protocol, the AAA never required written opinions, a decision would be handed down by an arbitrator without a written opinion, so it couldn't be challenged in court. This is all changed. And the AAA was terrifically supportive in doing the changes.

JO: Yes. Time will tell. But perhaps some research will tell as well.

AZ: I would like to get someone to do the research but nobody wants to do it yet. I don't know how you would do it. It's very hard to do. Unless you start doing an index of all the different corporate Fortune 500 see who has such systems and thereby determine where the cases are. It would be a very useful research to find out how those cases are file and how they are resolved. If they are resolved by mediation that's terrific. If they are resolved by buy-outs , threats that "You know we're going to challenge you to the hilt, so take the $300 bucks" that's bad.

JO: Let's interrupt and possibly change directions. We've told the story of the Protocol that emerged during your presidency and also the Common Law of the Workplace. Both are quite signal achievements, but there is more to tell about your years since then. Moving from Academy activities to more international subjects on which you have a wealth of experience, first, Arnie, what about the idea of mediation and something of its future?

AZ: For the last 40 years I've been doing a lot of international activity for ILO and government consultancies and so on, and I've had a desire to have the Academy members involved in it. Because I think Academy members have enormous skills and particularly those who have had mediation and conciliation skills. There is an enormous need for those skills overseas. I have been involved a number of projects, one of which is trying to develop an international roster of mediators at the request of the ILO to help resolve complaints over violations of ILO Core 8 Conventions, which I'm doing in cooperation with the Permanent Court of Arbitration. In November 2004 my program at Harvard, I've been teaching at the Harvard Labor and Work Life program was very supportive of me in my international labor stuff. They funded, through Soros money the first international meeting at the London School of Economics to discuss the establishment of the Global Mediation Roster to help the ILO achieve compliance with its conventions. We brought together the ILO, the PCA, and major players together. I have been talking and writing on the topic for several years and am beginning to get the ILO to think beyond their 1919 style tripartitism to cooperate with the NGOs who increasingly, as unions decline, are assuming the union mantle as worker advocates. As recently as the Spring of 2006 at a meeting in Geneva, the union representatives at the ILO indicated a willingness to cooperate with NGOs such as Amnesty and Human Rights Watch who are doing wok on behalf of workers in Asia that one would have expected unions to be doing. One example of the usefulness of mediation in overseas labor disputes occurred in Cambodia in November 2005. There was a strike at all the hotels in Cambodia. That was sort of an offshoot of the development of a previous arbitration system for the textile garment industry and then the unions spilled over and organized the hotels. The Arbitration Council with which I had been working requested a mediator for the hotel disptue. I solicited on the Academy listserve for mediators who might be able to go immediately to Cambodia, who had some experience in hotel interest disputes. A number responded with experience in hotel interest mediation but would not be available for another week or so, and finally got a mediator from Australia on another list who went the next day. The result was that Academy members have demonstrated both in the Cambodian situation and the similar requests I sent out for Spanish-speaking mediators in Guatemala and a number of other instances that there are Academy members who have this experience who would like to help and work overseas. In 1998 and 2000 for example, I arranged to bring a group of National Academy of Arbitrators to go to South Africa to provide assistance to the Commission for Conciliation, Mediation and Arbitration and there were for two years two separate panels of eight Academy members who went over and sat in on mediation and arbitration sessions conducted by the CCMA with the understanding that the discussions would be confidential and they could speak to them without any presence of the CCMA people, so they developed an enormous personal rapport which carried on into e-mail connections thereafter; here is my draft arbitration award, what do you think. I was criticized by the CCMA jokingly for

their saying we don't know who wrote this decision whether it was finally written by an American or a South African arbitrator. We put together a mock arbitration case, we attended two of their national meetings, their annual conventions and we have been training both at the annual conventions and sat in at a large number of regional offices. We've been asked to that again. It's just a question of getting the funding for it to happen again.

JO: Small interruption: Several of us in the Academy had something of a prelude to that in going to South Africa and attending the annual meeting of the arbitrators before this became a government agency. This is back in the last days of Apartheid when the arbitration system was actually created and implemented by the private sector without any expectation that it would become part of the government. Yet it was a very successful system.

AZ: The existing government under apartheid did not permit blacks to join trade unions until 1982 and when they were allowed to join unions. The blacks did not want to join unions which were then controlled by whites, sort of their straw bosses. So they organized as did the US unions in the 1930s and demanded direct recognition by their employers in the mines, textiles, auto assembly, power transmission and local government. And the English employers in those industries, unlike the Boers were willing to deal with these new upstart illegal unions and grant them recognition. The student leaders in NUSAS (National Union of South African Students) went to work for the unions and ultimately became their go betweens to the employers

JO: But is it not correct that the ultimate result was that the system then in place was largely absorbed into the government and converted into the system that you then went and worked with?

AZ: Yes. I had been involved in that early training too. But the interesting element of that is the tripartite structure of black unions and white student leaders, academics and lawyer neutrals and the British employers were the triad that persuaded the Afrikaners that you could cooperate with black workers and that brought about the change in the constitution. on peaceful grounds .

JO: Well, it's an interesting business, and I know that you have done some promoting of arbitration and some training in other countries besides South Africa. I have as well spent some time in Indonesia doing some training programs on behalf of the Solidarity Center of the AFL-CIO, but I must say it was in the end somewhat discouraging because, although the training process I think was successful enough, there were essentially no customers. The problem was really how to get the business people to take the risk of experimenting with the system.

AZ: I would say again on the Cambodia thing, I've tried to extend this great luxury of doing overseas work, to the Academy as much as I can. And South Africa is part of it. In Cambodia we set up a library at the Cambodia Arbitration Council named in memory of Tim Heinz who was disposing of his University of Missouri law library labor stuff and he sent case after case of books to the Cambodia Arbitration Council. And I solicited among the members and a large number of members have sent their books to the Cambodia Arbitration Council as well.

JO: Talk a bit about the actual decision-making process in international contexts.

AZ: Internationally I primarily do the system design. I was brought in by the IMF to head a three person international team (the other two were from France and South Africa) to evluate and recommend changes to their internal dispute resolution system in 2000 or so. I've done some consulting for the Inter-American Development Bank in redoing their system. I've been consultant to the Greek government in setting up OMED, their organization for mediation and arbitration. I've done ILO work in training conciliators in the Philippines and Zimbabwe, and I've been asked by South Africa to help with the development of CCMA as well as in other countries trying to provide resolution assistance. One of my consultations was for a private company Rio Tinto in Spain. Rio Tinto employees were represented by six or eight unions and the head of Rio Tinto labor relations, Manuel Olarte whom I've known for years, English-speaking I don't know where I met him, became managing director. He said I want to set up a grievance and arbitration system because he didn't want to use the Spanish courts and he said he wanted to do with the Communists union because they are the most responsible union. So he asked me to come on out and help him put this things together so he could negotiate it with the Communist union. So I went to Madrid and we set up this system. We had training. We set up a grievance step and we had training of people to be arbitrators and even had some cases go through the process, and it got to the point where I was even talking to judges about deferring to the arbitrator's decision. It was a great success and a lot of people left the other unions and joined the Communist union which was providing this extra bonus and then in the course of this some Kuwaitis bought out Rio Tinto at which point they fired Olarte and decided they didn't need a Jewish consultant. That was the end of my of my wonderful first class visits four-five times a year three-four days trips to Madrid.

JO: You did a lot of work in Bermuda, I believe.

AZ: I used to. This was about the time I was President. I was Chairman of their Essential Industries Dispute Resolution Board. Bermuda has two labor courts. One is the Essential Industries Dispute Resolution Board which is for the hotel industry which is their only essential industry. And the other is Essential Services Dispute Resolution Board which is for police, fire, ferries, hospitals, libraries, all the public services. The first chairman of the Essential Industries Dispute Resolution Board was Ralph Seward, and he was succeeded by Bill Usery, and he was succeeded by Ron Haughton. When Haughton lost the job, he recommended me; I was following illustrious company. And I was there for ten years. The first case I had I had was the hotel contract three years after Ron who was to arbitrate, but since he was the ultimate mediator, he mediated these cases and I came on, I said no, I'm not going to mediate these cases because if I do, then every case will go to mediation and you should have the Labor Officer mediate and use arbitration only if you can't resolve the dispute, instead of coming to me every contract. I'm only going to arbitrate, and they are pissing and moaning, they wanted me to mediate which I love to do, I said no you better get someone else to do it because I'm just going to arbitrate, on the theory that fear of arbitration should induce settlement. And they didn't reach an agreement. And I wouldn't mediate, and finally issued my award. It was a case in which the employer had been

collecting gratuities and keeping them, 15 percent added on to the bill which the employer would keep, wouldn't give them to the employees. So I said you had to give the money to the employees. The Hotel Association hit the roof. But I handed my decision down, but didn't fire me. In subsequent negotiations, however, out of fear of my arbitrating, they reached agreement, they dared not come before me. So I had that job for about 10 years. And then I was appointed Chair of the Essential Services Board, and stayed there for a few years. I was there maybe ten - twelve years total, five years in one and ten years in the other. Then the government changed. And instead of a white controlled,"Oreo" government a black government came in, the people's government and the new premier called me into her office at government house and asked me, "Do you think it's appropriate that the head of two government agencies in Bermuda should be an American?". I said no, I don't think it's appropriate at all. And the fact was the prior government never trusted Bermudians to do it so I was then demoted to vice chairman; then I didn't do anything for about four years and then they dropped me from the Boards, but I continued to go back and do training. I've encouraged them to use local arbitrators, and I set up a whole arbitrator training program.

In answer to your inquiry about my work with other international agencies, after I did the IMF evaluation, I became involved with a group called the International Institute for Administrative Science which is an international organization of the HR people of all the international governments of which there are about 200. They meet once a year; I used to go their meetings and I talked about dispute resolution. And there was a guy who worked for the Asian Development Bank; he said you know, we want to redo our internal dispute resolution system, would you like to do it? I said I would love to do it. He said all right I'm going to put your name in. At the same time they had a vacancy on their court and so I got asked if I would want to be their judge. They asked, would you rather be the judge or would you rather redo the structure? I said I would rather redo the structure but that would be a one shot operation, and it would be more fun to be judge. And so I became a judge. So I'm at the end of my first term. I've got another year for my first term; I'm elegible for three terms. And then I'm also being considered for the Administrative Tribunals at the World Bank and the InterAmerican Development Bank, both of which have openings for Judges, but those jobs are fun. At the Asian Development Bank, the President of the court, is the former Chief Justice of the Philippine Supreme Court, there is also a justice of the Pakistani Supreme Court, a law professor from University of Tokyo and labor management lawyer from Belgium representing Europe, I have the western hemisphere seat. The cases are distributed in advance by e-mail and we write the draft decisions.

JO: Are these employment cases?

AZ: They are, yeah, they are the law of the agency, the government called the Inter-American Development Bank. They are pension cases, discrimination cases, promotion cases, job tenure cases, job classification cases, compensation cases, and the gamut of all HR issues. The agency has its own laws and we apply those laws, usually as an appellate body on paper submissions. Sometimes we hold a hearing an adversarial hearing of fact or challenge to credibility, but most

of the time it's done just on briefs.

JO: I take it for employees appealing to your body; you are the court of last resort?

AZ: Yeah. And the bank has to defer to our judgment. There is a lower level which will make recommendations for resolution of the dispute to the bank president who will accept or reject their recommendation. Then there is a right of appeal from the bank President's denial of a claim, to us. Our Tribunal is a very harmonious group. We get along very, very well and we've done some fascinating cases. A current case is working its way up now concerning the right of the bank to cut the health care benefits of retired employees.

JO: Now one other subject, and this is really quite surprising to think about as an alternative dispute resolution context, is the Hari Krishna.

AZ: There was a member of the Academy whose name was Bill Post, he was a next door neighbor on Martha' Vineyard. He had a grandson who was a Hari Krishna devotee and the grandson said to me "I want to go school and study dispute resolution because the Hari Krishna are filled with disputes, and I want make a contribution to resolve their disputes." That whet my appetite. I had never done a religious group before. And that has opened an incredible set of options and new ideas. So I said I would be interested in doing it. They had cases involving child abuse many years ago, when they were handing out books at the top of escalators they had day care centers for devotee book sellers where some people were abusing the kids, physical abuse, and sexual abuse all over the world. The Hari Krishnas are someone described them as the evangelical Hindus and they are about six million in number, located in 150 countries.

JO: Is there such a thing as Hari Krishna headquarters?

AZ: No, there is not because it's a very democratic outfit, which makes it very appealing because it's a very transparent temple-based institution. It was founded by an Indian in his 70s who was a business man in Calcutta, and he said I'm going to take Hinduism to the western world and he came to Haight Asbury and to Tompkins Park, had all the hippies in the 60s following him. And they became the guys in the saffron robes and a large number of whom were Jewish, by the way, because they claimed there is no mysticism in the religion at home any more, so they ate this stuff up. And they have stayed with the institution and 30 years later they are running temples in different cities all over the world. And they have an administrative general governing body which meets once a year in a town of Myapore India, where this guy, Prabhupaba, came from and they have an enormous temple there and that's where they meet once a year. It's a four and a half hour cab ride from the airport in Calcutta, it's an awful place to get to. And so I went there the first time and said "I'm fascinated by applying dispute resolution to your problems, you could resolve disputes between devotees, and you could resolve disputes between the governing body and the members. And what's most exciting you could give these people careers. You guys have a terrible image. You've got the image that you are a bunch of panhandlers. Wouldn't you rather have an image of here you people are trained mediators and

you make yourselves available to disputes outside Hari Krishna temples you know in your professional lives." Because they had gone from the monks to having families, they had become second generation Hari Krishnas bringing up youth devotees. And they had outside jobs. So I sold them this bill of goods, and they hired me as a consultant. I gave them two days a month; they would take me to their meetings and the condition was they paid my business class fare and that I staying at four star hotels and they took me in, and these are beggars who have no institutional income, merely passing the plate. So I would travel around to the different countries where they had me give pep talks to encourage them to set up mediation and an ombuds structure. So in looking for a Devotee trainer, I went on their web site and asked have any of you ever taken mediation courses, ever done mediation, ever taught mediation? There was a response from a woman from New York who was a devotee who is from Argentina and she said well my job for 35 years has been training peer mediators for the New York City public school system. She said I want to retire; I'm a devotee, I would like to do it full-time as my contribution. These are all really dedicated people who want to do service. Service is a very big thing. It's a nice religion. They are nice people. And so we set a training program to develop devotee mediators, first one in New Jersey, people came from all over the United States and we did another one in Rhadadesh which is a place they have in Belgium, and she's been traveling around a number of places doing training programs including Latin America. And then we have a group of about six people most of them live in the Krishna community of Alachua Florida outside of Gainesville and they've become trainers as well. And so they travel all over the world. So in four years of this we now have 500 trained mediators and they have mediated about 250 cases. When I went back to the second year or third year they made me one of their official gurus and they said one of the real accomplishments of this is we have far more disputes than we ever had before and we really think it's terrific because we now know where the problems are. We never knew that before. What did really surprise me is that real disputes came between the individual and the establishment. So being in Boston, the home of Mary Roe from MIT who is the head and founder of the Ombudsman Association of the United States I got these people connected and they went and signed up and took the ombuds course, so they are certified ombudsmen. We now have six ombudsmen around the world. And so we've set up the ombudsmen and they are around the world now. And they've discovered their biggest problems are between the temple and the individuals and so we have them for North America, for Europe and South America and Australia. And I'm trying to arrange for a training in their big temple in Durban where there are a lot of Indian Hindus and that some of these people might also become available to do some mediation for CCMA. And beyond employment mediation, one of the guys from Gainesville came up to me, he is a devotee, and asked can I use this in my outside work. I asked what do you do? He says I'm an environmental engineer, so this guy now has a full-time job mediating environmental disputes. He didn't even know that use of dispute resolution existed. I've got one guy in London after speaking at their temple in London which is in George Harrison's old house who comes up to me and says you know I took this training program and I don't know what to do with it. He was an Indian,and I asked him if he had spoken to any of the Indian groups around London recently. He said no I'd love to do some of this, so we got on the web site, pulled down Indian family disputes sites in London and now the guy is a full-time mediator on Indian family matters in the London area. Some are Hari Krishna issues, some are Hindu issues other are just

family issues. Then they said we have a hospital in Mumbai which has lots of internal conflict, so I went to Mumbai where they have a Hari Krishna hospital, one of the best in the state. And they wanted to set up an ombudsman structure so we did that.

JO: Where is Mumbai?

AZ: Bombay, which changed its name a few years ago to Mumbai. And we have an ombudsman there. We sought out people at the hospital who are generally acceptable, and found a surgeon whom everybody used to come to with disputes, gave him the training and he's now the ombudsman of the hospital. So while I'm out there and I'm giving a TV talk on this or interviews for papers at my hotel, the hospital association of Mumbai asks if I would like to do this for all the hospitals in Mumbai. And so, my Indian based "handler" and I are trying to set up an ombuds structure for a whole bunch of hospitals in Mumbai. The Hari Krishnas wanted to be very transparent and they really had terrible experiences with the child molestation and with law suits and bankruptcy, which they refused to mediate, by the way, which they really should have. A lawyer devotee said "no, we're going to go to court; we're going to win" and they lost. I was begging them; I said mediation is very appropriate in child molestation issues where the issue is often merely an apology, money is not as important. "No, we're going to win" and they lost which enhanced the appeal to mediation. It has worked quite well and people are beginning to mediate in other areas. We're now training, in fact I'm going next Tuesday, I'm going to the Gainesville and meet the people there, and we've got to start doing training nationally in local languages. We train internationally in English. For instance, we had a training program, I went to Moscow to do a training, talk to them and then they have someone to do the training. They brought in people from other cities in Russia, 80 communities where they have temples to learn about how to mediate but then it was all in English and now I want to do training programs in each of the 80 communities where they have temples and use their graduates of the English speaking course to train in Russian because you can't mediate through an interpreter into a foreign language.

JO: What communities?

AZ: Eighty cities in Russia have temples, and we're now trying to get them to do some training in Russian. Another thing I've started is developing materials for student or peer mediation so that they can go into the local communities and teach mediation in the schools. These guys are all over the world and they are all excited about the mediation process for their personal and ideological and religious views and so they really want to spread this thing.

JO: It's easy to see how it would have appeal.

AZ: Now there are two other elements to this. When I first was approached by them I didn't know anything about the Hari Krishna and I went to a friend of mine who was the dean of the school of theology at Boston University, a Methodist School. I said do you know anything about these Hari Krishna, are they a cult, are they liked the Moonies? And he said no, and it turns out this fellow, Bob Neville who was Dean of the School of Theology and is now Chaplain of the

University, is an expert on Indian religion and can even write Sanskrit. He knew and taught the Bhagavad-Gita which is sort of their main bible and was really an expert on the religion; he's the one that used the term evangelical among the Hindus. He said they are a good group. If you can set up a dispute resolution system for such a young religion it might have some impact on other religions. Fast forward to three weeks ago. We had a meeting at BU, my guys came in from India, we met with the BU faculty people and some from other Boston area theological schools and they're now seeking funding to do a study of dispute resolution within the various religious orders, various religions. And the next step would be to see how we could train mediators to resolve disputes in the different religions. And then we hope to set up at Boston University a training program for mediators to do religious disputes either cross religions or within particular religions. We're hoping to get funding from Sloan and that's pretty exciting. I'm trying to do the same thing at the Krishna center in Oxford UK. Felicity Steadman and arbitrator and mediator from Johannesburg, now lives in Oxford where the Hari Krishna run the Hindu library and resource center. I saw her the other day when she was in Boston. I said why you don't you do this for us.When you are back in Oxford, I'll get you together with the guy from the Krishnas in Oxford and start doing some training for people there. One of the guys from India when we had the meeting three weeks ago in Boston came to the US because he had been hired to do training of mediators for the Episcopal church at their Berkshire retreat. So, if we could spread the idea of mediation into different religious groups that would be a good way of spreading the labor experience and an opportuntiy for some of our members to innovate into other fields.

JO: It has been a long day for you, but are there other things you would like to say a word about?

AZ: The Alliance for Education and Dispute Resolution, I should mention some thing about that, and my effort to get mediation work for NAA members in the employment field. . How did that start? I was interested in getting universities involved in ADR training. I wanted to train mediators for employment disputes. I talked to Tom Kochen of MIT who is a good friend,about it. So he got me together with Dave Lipsky at Cornell and they had money and the money was to bring coordination among research centers and they were going to tap it for this. So I spoke with Lipsky and said well let's set up a program for a roster of mediators available for employment disputes and let's use our labor management mediators, give them a 40-hour training program and in we did that. We trained probably about 200 people and there is web site which is www.ILR.Cornell.edu/Alliance where all these people are listed and they have been getting work out of that. My hope was that this would become a place where users would go looking for mediators. Unfortunately Cornell was not really interested in pursing it as ADR useful on the wider scene; Cornell was really excessively committed to union management stuff and the ADR stuff was sort of uncomfortable for them. It's a state university that deals ..., it's a land grant institution dealing with labor, so it was difficult to make that expansion. I did get around one million one hundred thousand dollars from the Labor Department for this project to mediate statutory enforcement disputes for the Solicitor of Labor. We took our mediators and we offered them to the Labor Department's solicitor's office and said you can use these people to mediate enforcement issues and Scalia, Jr. who was then solicitor of labor bought into this, thought it was

a great idea. The DOL was enthusiastic, because if you can mediate for one day an ERISA case and settle the case, it will save a year of man hours to do the preparation of the case for ERISA trial. And so Cornell sort of took advantage of this and used a lot of the grant for their administrative overhead, and running around visiting all the DOL offices, and they didn't have enough money to pay my expenses, or the money they owed Georgia State's Usery Center for administering the DOL program, but they had enough money to go around visiting all the various solicitors' offices and talk them into this process. In the course of three years the final report that was done for the Department of Labor showed that we had a settlement rate of 86%. From the grant we would pay $500 of the mediator's fees on behalf of the government and the defendant would pay the other $500,so that the mediator received $1,000 a day. We took our people, they were mostly Academy people who were brought into this and if a person had had 20 mediation cases they didn't have to go through the one week long training program. I wanted to continue to spread the program to other enforcement agencies of the government but Cornell ran out of money and so the thing has come to an ignominious conclusion. It's still on the web site. I'm now trying to get it moved to another university. The goal was that this would be my goal if you could take this from Cornell; the problem was Cornell was only interested in labor; I wanted to take this to other government agencies. There is no reason why you couldn't go to the Department of Transportation which had a very large number of disputes of people who were denied their licenses for one reason or another, truck driver's licenses and says all right we're going to take these cases to mediation. I can't get anybody to do it but I'm trying to get Joel Crutcher Gershenfeld who has become the new dean of the ILR School at the University of Illinois to move it there. I would love to move it there. That was a very unfortunate relationship with Cornell but it was a very good program for developing, and it was something in which the Academy people were very much involved.

JO: We might mention the fact that in your spare time, since you are never busy enough, you manage to keep publishing books and to keep doing new editions of former books.

AZ: What's really nice about e-Bay, is that you can look up your books and find that they are back on the market and that you can buy them on e-Bay for twelve cents. No, the 12 books I have written have been fun, I've enjoyed doing it and more importantly I've gotten a lot of books from NAA members into the library in Cambodia. I don't write books like you do. You write really learned books. I write trade publications for an evolving corps of arbitrators.

JO: To bring this interview to a close, Arnie, let's come back to the Academy. I know you spoke earlier about your uneasiness about the apparent movement of the Academy to encompass employment arbitration, especially given the uncertainty about whether there are real cases out there for rank and file workers, as we discussed earlier. Apart from that do you have any reflections at the end of this interview that you might want to give about the future of the Academy?

AZ: I think the Academy is first of all, obviously, a very crucial part of my life. It has always been. It has given me the credentials that made people think I was a competent arbitrator. It's

true, the fact that I am a member of the Academy has given me credability, and all that means is that at case number 51 the clients come to me and say look you've done 50 cases, so you must be acceptable and competent, and you're a member of the Academy so you must be a bona fide neutral. And that's what's given me the work that has sustained me for 49 years. It's shame we don't really appreciate that impramature granted by membership as much as we should. And I'm very I'm troubled as I said earlier, about the fact that that number may be eroded in order to attract people in who do not have that commitment and who are paid solely by the employer. If our members do employment cases, they can afford to be impartial because they have the union-management base to fall back on, but if we admit employment arbitrators without that same level of fall back, we are opening the doors to arbitrators who's neutrality I question if their sole income and prospect for future cases, is from the employer side. Let me just add one other thing about what's going on in the discussion now within the Academy. I think there was an expectation, there has been an expectation that there is a lot of work out there and as the Academy membership has begun to drop a bit from 700 to what 600 now ...

JO: It's 650, I think, now.

AZ: It was 300 for the first 20 years that I was a member and we loved it. As an early NAA President said at dinner last night "I would love to go back to the days of 300 members". But anyway membership has dropped and I think some people are jealous and hear that there is work out there. The survey conducted by Cornell as to the frequency which NAA arbitrators did this work, shortly after my presidency, showed that employment arbitration by NAA members was very widespread but very shallow. I think there are now maybe 100 people who have done only one or two cases. My guess would be 30 or 40 members do 20 or so cases a year. Not very many, but the impression is there. There may be some who do 50-75, probably not more than that, doing 10 cases per year, people doing this employment work. And so this has whet the appetite of people who have been hit by the drop in union membership and say I want a piece of that pie. And their hope is that we can get it if we get the authorizations to go out and do this stuff because we'll get a lot of work and we should bring the people in. There is another group, some of same, who say we're dwindling in numbers, let's bring in some people who are neutrals and doing this other area and there is no reason we should just confine ourselves to labor management arbitration. I think this is a bit misguided because if I were a successful arbitrator in employer-promulgated employment arbitration I would not want to be bound by an NAA code of ethics. I would see no reason to join this organization. I think there is a bit wishful thinking that we are the ones to set the standards for the whole dispute resolution world even though we do a very small slice of available arbitration work. Disputes in employment world are resolved by employers with a little bit of probing by workers and by perhaps NELA. Employers have control, and the government and the courts certainly endorse that. So there is no reason that the people who are doing this work should want to come in with us. The problem I have is if there is work out there and I don't think there is, if there is work out there, how you determine what cases are to be counted. Do you take a case that is designated by National Arbitration Forum and say that surviving third person is indeed a neutral? Do you take anybody who is paid totally by the employer and say that person is a neutral? As I read it in the code that person could

more easily be identified as a consultant to management rather than as a neutral. How do you determine the caseload, how do you determine how they do the cases, are you going to do whether they settle these cases? My bottom line in this, and I close this out by saying my greatest credibility, as an arbitrator is that I'm a member of the Academy. It's not Arnold Zack but because Arnold Zack is a member of the Academy. So it's the Academy that gives me the imprimatur that makes me a neutral. And I value that very much. That's the only thing I have to go on. I do decisions and got fired by half my clients in the past, but it is the fact that I continue as a member of the Academy that makes me a credible neutral. And that of course is based on the assumption that I'm paid half by each side which I think is a very crucial and frequently minimized factor in assessing credibility, assessing neutrality. If the standard is changing you get on a slippery slope once you change the 50 and you reduce it to 35 or 40 or 25.

JO: I'm just interrupting to say that my impression at the moment is that there isn't a move to reduce the number now.

AZ: Yes there is.

JO: Well it depends on what is countable.

AZ: Well okay but if you are going to count employment cases as part of that 50 that's at that point when you start down that slope, if you say 50. I don't care about numbers don't mean anything but 50 labor management cases to me is the definition of a neutral. Because it means that someone has managed to be selected and decided some 50 or more cases in the past 5 years, they have hung in there and decided cases where they've been fired or they've had adverse decisions in 49 other cases and they've made it to 50 and they have maintained that acceptability. NAA membership is the certification of neutrality that's the Hecksher, the Yiddish word of the mark of being kosher and that make the person acceptable. If you cut that down to 35 and start adding employment stuff and you've got these people in, then they will indeed, if they want to join the Academy, say this is terrific let's cut it down to 30 because we are a majority of the Academy now, 25, 20. At that point if that happens I will have lost the benefit of Academy membership because it will not longer be based on the fact that I am a neutral among those others who have gotten into this organization. I decided 50 cases despite adverse decisions.

That's why I'm fighting so hard to retain that 50 because that's the standard that gives us the credentials that has made us people . . . like the session we had today, we had a session on international labor standard and you get the AFLCIO guy the general counsel, you get the SEIU person, you get a management guy because they respect the Academy and this is the forum for the exchange of those ideas. And that is a forum where we can do positive things internationally and with this due process protocol, the law of the shop, all because we have a standing of respect in the labor management community. Even though it's a shrinking labor management community and even though there are fewer jobs around fewer unionized jobs than there used to be, there is still a very substantial body of people who need service and need support and need a credible neutral institution. And we are it. Yes our membership dropped.

When I came in, I first became a member in 1962 I was 30 years and three months old and this institution has been my life, I've been a member, I've been to every meeting for 50 years and I remember when most of it was 300 people maybe even better than 600 people and this fear that we're going to get a little bit smaller is not nearly as important as retaining the credibility that we have in the eyes of disputants in the labor management field where we make our bread and butter and where the NAA was created to assure arbitrator neutrality for the paries collective bargaining system. The real reason for the creation was to monitor that relationship to create for the parties a cadre of credible neutals. The first committees set up by the NAA focused on ethics and training. Unions and management said come in here and give us a future supply of arbitrators for our relationship.

JO: Those of us in the senior column originally thought of this profession as, in some measure, a public service.

AZ: It's a trust.

JO: It was not an activity designed just to rake in money. To me that is one of the worrisome things about the employment arbitration because it's clear that a number of the cases, we don't know the actual data , but a number of the cases are upper level employees and these are essentially law suits involving top level management.

AZ: They are in essence, commercial arbitration.

JO: Nonetheless I do retain guarded optimism about this organization, and perhaps you do to. Things change, they always do, and perhaps the spirit of the origination can't be preserved indefinitely, yet it seems to me there is a nucleus of people in the organization who understand its heritage, and I am willing to trust that this will not be lost.

AZ: I think it's in good hands. I am a bit troubled in sitting in on the board of governors meeting as you did the other day and listening to the people who are pursuing this because they are not listening to the membership. They are the younger, they are the ones who do the cases, and the ones I think misguidedly think there is a lot of work out there. I've asked for surveys to be done, go have the Foundation pay to have someone survey the field let's do a survey of what cases are heard by our members, employment cases. I'll bet you that more than half of those cases are the top management cases. I don't think anybody in the Academy does the $300 a day cases that come out of NASD. Now that's probably as clean as any employer-promulgated system but its still where the employer pays the whole thing. Those aren't the cases that our people are doing and yet those are the ones that are going to be opening the door to have come in. And so I would love to see this take a deep breath and find out what the evidence is and the facts are there. You may not be able find all the agencies that administer theses cases. Somebody said today there are 50 agencies administering ADR programs. I have been pursuing this and I've looked in Google half a dozen times. I see the same maybe 10 agencies, the three or four that we've heard of and the others created by employers I'm sure who administer their own program. These cases

don't go to arbitration, they certainly don't go to arbitration before us and the cases that our members are hearing are the cases, at $300 - $400 an hour, those aren't paid for by the employer at an employer-promulgated system. Why do people want to do the work, they want to do the work because of prospect of those high hourly rates which mean cases involving the top level management, not the rank and filers.

JO: We'll close by saying, again, time will tell. And thank you. Who knows, perhaps in a few years we'll have Part 3 to the Arnie Zack interview.