

National Academy of Arbitrators  
HISTORY COMMITTEE INTERVIEW

Charles Killingsworth

NAA President, 1968

Interviewed by Dennis Nolan

May 29, 1989

CHARLES C. KILLINGSWORTH  
PRESIDENT OF THE NATIONAL ACADEMY OF ARBITRATORS  
1968 TO 1969  
INTERVIEWED BY DENNIS R. NOLAN  
AT  
THE CHICAGO HILTON AND TOWERS, CHICAGO, ILLINOIS  
MAY 29, 1989

**Dennis Nolan:**

This is May 29, 1989 at the Annual Meeting of the National Academy of Arbitrators in Chicago. I am Dennis Nolan and I am interviewing Charles Killingsworth, who was President of the Academy in 1968. Charles, thank you for coming and participating in this.

**Charles C. Killingsworth:**

Happy to do it.

Let us begin with some background, if you will. Perhaps you could tell us your origins, where you were born, where you were educated, when, what degrees you took, and so on.

I was born in a small town in Southwest Missouri, a town that nobody's ever heard of. Lived there several years of infancy then the family moved into Springfield, Missouri, which is a considerably larger town. I lived in Springfield through my adolescents. I attended a

small college that was within easy walking distance of our home. I had a double major, english and history. In the english department there was a debating team. I became quite interested in debating and researched the subjects rather thoroughly. And it happened that there were two major subjects, that were the subject of the debates and so I got a rather thorough grounding in labor economics and labor relations problems and so on. I wanted, after I had taken my BA degree at the small college, I wanted to go to the University of Wisconsin but this was the depression and it wasn't possible. So, I took the next best which is ... I attended, for a year, a place in Oklahoma, now called Oklahoma State University. I continued my research and reading in the labor field and I became more than ever convinced that I ought to go to the University of Wisconsin because that was probably the outstanding institution in the world, with regard to labor economics and labor problems. They had a fantastic faculty. About half of the faculty members in the economics department had a labor background and several of the law school people had a similar background. So, I was fortunate enough to get a Graduate Assistantship in the State of Wisconsin. It was roughly two and a half years.

When was this?

In the late 1930's. I believe I left there in 1941. I was offered a job in, at Johns Hopkins University.

Before we leave Wisconsin, who was there, at the that time you were there, that you worked with?

The Department Chairman was Edwin Witty and he was my major professor. Then there were people, Selig Pearlman, that was one of the big names. Nathan Feinsinger, in the law school. The Dean of the Law School, Lloyd Garrison, was also active in this field. And there were probably half a dozen faculty members whose main interest was labor problems and labor economics.

A very distinguished group at that time.

Very much so.

Now, you received a Ph.D. in Labor Economics, was it?

Sir, I got a BA from my undergraduate institution, picked up a Masters Degree in Oklahoma and worked toward a Ph.D.. I had all the course work completed and took the preliminary examinations but I was one of those unfortunate or ill advised people who left without completing my dissertation. So, it took five or six

years to do that but eventually I did and in 1946 I was awarded my Ph.D. Degree.

What was your dissertation on?

State Labor Relations Acts. My Masters thesis was on the National Labor Relations Act. For a Ph.D. thesis, I moved over to the State Labor Relations Acts at the suggestion and, indeed, urging of Edwin Witty. The dissertation was, in the next year or so, the dissertation was published by the University of Chicago Press. So, my name got to be a little bit known in the field. As I say, I left Wisconsin in 1941, went to Baltimore and taught and directed a research project at Johns Hopkins through the war years. At the end of the war, I'd gotten an offer from Michigan State University. To make a long story short, I accepted the offer and remained there for the duration of my academic career. I was Chairman of the Department of Economics. I was the Director of the School of Labor and Industrial Relations. I was also, aside from the many other things that I undertook, in 1947, I was fortunate enough to be named as a member of a panel of three arbitrators for Bethlehem Steel and the steel workers.

Was that your first contact with arbitration?

No, I had begun arbitration in 1943 and that was a result of my connections with the National War Labor Board. I was appointed as what they called the Public Panel Chairman for the parties up near Wilmington. And, to my surprise and great pleasure, they invited me to arbitrate some cases for them. Similarly, I received some assignments from the War Labor Board that involved the Bethlehem Ship Building operation, in Baltimore. As a result of that contact, I was named as one of the three members of the panel. We served in rotation—not together. I continued that activity, that assignment lasted for five years. At about the time that came to an end, I went to Washington for a time to serve with the, not the War Labor Board, the new National Wage Stabilization Board, which was set up during the Korean War days. I made other contacts. I was invited, after that assignment was over, I was invited to serve as the permanent arbitrator for one of the major rubber companies. I continued in the rubber industry for a number of years. I arbitrated for three of the major rubber, tire and rubber, companies.

Did you have any mentors, leading you into arbitration? Or was this a matter of sink or swim?

Well, I don't think that I could name someone as mentor,

in the sense that I served an apprenticeship under the individual. I was very fond of Nathan Feinsinger, whose name I have mentioned, at the University of Wisconsin Law School. He was also at the National Wage Stabilization Board. When I heard that a National Academy of Arbitrators was being formed, I called him and told him that I was, active in and interested in, arbitration. I think, because of his intervention, I was named as a charter member of the Academy back in 1947. I had the distinction of being the youngest charter member of the Academy. For a time, I believe I was the youngest permanent arbitrator in the United States.

How young were you at that time?

In my twenties. My late twenties. It was the unusual situation of the War Labor Board and the Wage Stabilization Board and the vast growth in the arbitration field during those years.

You mentioned the number of umpireships you were getting at that point. Did you do ad hoc arbitration?

I was doing some ad hoc arbitration.

Were you on the Triple A and FMCS lists?

I was on the Triple A list for, well, for two or three years, and it came to the point where my permanent umpireship caseload was so heavy that I couldn't take on any additional cases. You see, I was teaching, or uh, being an administrator at Michigan State University, during this time, in the fifties, on through the fifties and for a time up into 1960. And I had a full time job at Michigan State and the permanent umpireship for virtually a full time job, So, it was a real scramble to find the time to do all the things that I wanted to do.

Did you set out to establish an arbitration career, as it were? Or was it just a matter of taking on these umpireships and finding yourself a busy arbitrator?

More of the latter, than the former. I was surprised when I was invited to serve as an arbitrator for the first time in 1943, by these parties for whom I conducted a Wage Stabilization Board hearing. Of course, I was very happy to accept and very happy that things worked out, but things just seemed to drop in my lap, without any particular planning on my part.

And similarly, with your admission to the Academy, from what you said, was a matter of indicating that you were interested and then were designated a charter member. There was no application

process.

That was primarily due to Nathan Feinsinger, with whom I had corresponded about my interest in arbitration. And I was very pleased to learn that I was designated as one of the charter members of this new organization.

Were you immediately active in the Academy, or did it take a while for you to start getting on committees and taking on other assignments?

I was fairly active in the Academy during those early years. I was an early Chairman of the Education Committee, Education and Research Committee. And then I served in a succession of positions in the Academy. The Academy became a very important part of my life. It still is, for that matter, but not quite so much as back in those early days. Those early days, with a relatively small membership, most of us knew most of the other people who were active in the Academy. But, after the Education and Research Committee assignment, I then became a member of the Board of Governors, then I served as a vice president. In about mid 1960, I was, I helped to, I guess I was primarily responsible for developing the annual meeting, the program for the annual meeting. A very close friend, whose name was Adam Horowitz, he had

a very interesting habit of introducing me to other people as "This is Charles Killingsworth. The world's second greatest arbitrator." He then made it clear he was the greatest, but I was second.

It's still quite an honor.

Yes, and because of my being the program chairman, in the mid '60's, Aaron and I became good friends, and I think that it was his influence and activity that resulted in my being nominated for the presidency in 1967 to serve in 1968. So, that's the way that it worked out.

Before we turn to your time as President of the Academy, are there any particular highlights of your arbitration career, up to that point, that are, that should be mentioned at this point? You had some very distinguished umpireships at that time.

Yes.

I'm sure they must have involved some very important cases?

Oh yes. Yes. But, I'd say the most important cases came my way after the presidency, rather than before. Now, of course, in these umpireships there were fairly basic questions that had to be argued and decided. In the

steel industry, in particular, there was the so called Past Practice Clause, in the steel industry, that the industry side and the union side, for that matter, were just beginning to get acquainted with, and to explore the ramifications of it. In the rubber industry, there were some fairly basic problems of the relationship. That was an incentive industry and they had a high proportion of incentive cases. I was a member of the arbitration panel for Ford Motor and the U.A.W. for about three years. Then, a couple of steel umpireships again and so on.

No doubt you were quite busy ...

Oh my, yes.

When you were admitted into the National Academy and were active in your first years, do you think that had any impact on your arbitration practice?

That's hard to judge. It would be very difficult for me to say. Once in a while,, a case, an ad hoc case, would come along and one of the other parties would mention that my being a member, an active member of the National Academy, had influenced their decision. But mainly, these umpireships, of course, came to me not so much as a result of my Academy membership but the contacts that

I made through government service and attending Academy meetings, getting to know people.

Now, you were president elect in 1967?

Yes.

Was that the year?

Yes

What were your duties as President Elect?

I gave some thought to this and I can't recall anything in particular that had evolved on ... I think that the primary activities, so far as the Academy was concerned and I was concerned, was to be a kind of understudy to the president, who was Bob Fleming, one of the long time members of the Academy.

Also from Michigan, wasn't he?

Yes. I'm trying to remember. He was in Michigan for a time. He was in Wisconsin for quite a while. He was in Illinois for a while. I believe that he was at the University of Michigan for a time.

Served later as president of the University of Michigan, I believe.

Yes. That's right. He and I were close friends. We had a very good relationship.. He gave me a lot of tips that were helpful after I took over the presidency.

While you were serving as president elect, were you consciously thinking about what you would do when your time came?

Oh, yes. Oh, yes.

... committee appointments or tasks ...

Committee appointments, proposals to be placed before the Academy and that sort of thing. Thinking about the program for the annual meeting, which of course was the highlight of the year, as it perhaps is now.

Did you develop a list of things that you wanted to do or was it just a matter of thinking general thoughts to yourself about ...?

Oh, most of which was a matter of writing down a list of things to do, as the evolution of a program of action for the year of the presidency. And it worked out very well. I think I mentioned before, the Academy, right from the day of its formation has been a very important activity

for me. As one who's primarily an academician, I belonged to several different professional groups, but the Academy has always been most important to me. And I value the year of the presidency very highly because of that fact.

Were there any particular controversies going on at the time that Robben Fleming was president and you were understudying, that you were concerned with? Any major issues to be decided?

No, uh, I tried to think about this when I got the discussion outline. I think there was a continuing struggle within the Academy over dues policy. And undoubtedly, I don't have a specific recollection, but undoubtedly there were discussions of dues policy. In those early days, the amount of dues that a member paid was left primarily to his own conscious. And there was a minimum fee of twenty five dollars. There was some people who paid fifty dollars and others, a few, who paid a hundred dollars a year but a hundred dollars was about the maximum. There was a struggle within the Academy lasting over a number of years over the dues policy. I favored the voluntary approach and other members felt that there should be a standard fee for everybody and these were primarily the full time professionals in the field, whose entire income was from arbitration, and

looked upon the Academy as an organization somewhat akin to bar associations, which of course have quite high membership fees. There was this continuing discussion, as I say, year after year, and finally the full time professionals won out on the dues policy. But there was no action, specific action, taken on that during the time that I was president.

Did your nomination as president have any discernable impact on your arbitration practice? Was there more demand for your services because you had reached this point in your professional activity?

Yes, there was one major case in particular that I think came my way because I was, I had been the president of the Academy in 1968. One of the major airlines had a running dispute over the manning of a new type of aircraft, the B737, a two engine aircraft. The pilots union insisted there should be three pilots in the cockpit, which was the standard for most other types of aircraft, and the airline insisted that two people, for that matter under unusual circumstances even one person, could fly the airplane without the assistance of either the co-pilot or flight engineer. I and two other Academy members, one a past president of the Academy, we were named by the airline and the pilots union to arbitrate this case. It was one of the major cases in my career.

The company claimed that they were losing approximately, I think, 125 million dollars a year because of the third man in the cockpit. They made a very strong case for the safety of the operation when there were only two people. The union had a good many examples of contributions to safety, mainly, that were made by the third man in the cockpit. As I put it, after hearing, this was a very high pressure affair. I remember one, not entirely typical, but a day that was comparable to some others that we started at eight o'clock in the morning and adjourned the hearing at one thirty the following morning, being in continuous session with time out for meals. We wore out, I think, five shifts of recorders, reporters. But there was pressure, from the company in particular, for a decision on this matter because of what they later claimed they were losing 125 million dollars a year. I worked that out. It was an enormous sum per day, even, when you divided the days. We made a decision which was kind of an interim decision which was that because this was a new aircraft and because pilots, co-pilots and flight engineers had been trained by the company with emphasis on the interaction between the three people in the cockpit and because of the weather conditions in the places where the airline operated there should be, at least for the first two years of the operation, there should be a third man. And, at the end

of two years, the matter should be reconsidered, if the company wished that to take place. So that's what happened.

Before we turn to your time as president of the Academy, do you have any suggestions for future people that hold the office of president elect? You said that you did not have many duties, you were mainly an understudy. Is that correct?

Yes, that's right.

Do you think there's room for a greater role for the president elect or is it just enough to spend time ...

I think it's enough of a burden on the president elect's time that he is doing advanced planning for his term of office. And of course, I believe that the president elect sits in on the board meetings and makes a contribution in that way.. But I would not suggest that additional duties be established for the president elect.

When you took over as president in 1968, what were the major goals that you had in mind?

Well, one area of activity that I had given some thought to and had discussed with other members of the Academy,

was the establishment of a type of affiliation with the Academy called overseas correspondence. I did some preliminary work and some preliminary planning so instead of just a bare bones proposal we had some details to present to the membership. The membership approved of the idea in principle.. A committee was established to work out somewhat more detailed procedures and that has continued down to the present day and I think that has made a contribution to the development of the Academy. I also devoted a good part of that year to the development of the annual program. First, the selection of the, well, I think the place has already been selected by others. You have to make the selections three or four years in advance to assure getting space. And Colorado was the place that was chosen. It was a very successful choice and we went to the\* Broadmore Hotel, a famous old hotel, out in Colorado Springs. It was a marvelous site for a meeting. The weather was fine. We were favored by all of that. One of the things, that I set for myself, was to secure a really top notch speaker, as the outside speaker for the closing hours of the convention. I was fortunate enough to persuade Arthur Goldberg to be our guest speaker for that occasion. He was, of course, former Secretary of Labor and at the time that he accepted the invitation he was a Justice of the U.S. Supreme Court. He made an excellent talk. Tom Roberts,

the president, the current president of the Academy, reminded me last night that it was at my meeting that we first had the dinner dance, which has become quite an institution with the Academy. I'd forgotten that but ...

An important contribution to collegiality.

Yeah, that's right. Yes. As I said to the membership, at the last membership meeting over which I presided as president, the selection,, my selection by the membership of the Academy was really a landmark in my life. I was very grateful to the members for getting me the opportunity to develop this program.

Did you have any particular disappointments, things that did not, you did not succeed in doing when you were president?

I can't recall any I had. When I took on this assignment here, I dug back in the files and found a folder called 1968 Academy meeting. I put that on my desk and was preparing to study it and, when I was about one hundred and fifty miles away from home yesterday afternoon, I suddenly remembered I'd forgotten to bring that with me.

But surely, if there were something major it would have stuck in your mind.

IS

Right, right.

What took the most time when you were working as president?

I would say that overall it probably was the development of the annual program, for the annual meeting. Also, after the meeting, I had a running, continuing struggle, with one of the past presidents of the Academy, who had a candidate for the presidency that he was pushing very hard. And I had many telephone conversations with him because he wanted a commitment that I would name people who would be agreeable to nominating Mr. X. I was not willing to make that commitment and so it was a continuing source of difficulty and struggle. And finally, I did appoint a nominating committee that was without prior commitments,, as to who the next president would be.

Did they nominate Mr. X?

No. He was not nominated. He never has been nominated and probably never will be.

So your primary duties in terms of the amount of time consumed then were this problem of the successor and the ...

That was, other than the annual meeting program.

How about appointing committee chairmen, committee members, working with committees, did that occupy much of the time at that time?

A fair amount. Not a great deal of time. I think that in most cases the chairman who had been serving continued to serve and the membership of each committee remained relatively unchanged.

Were there any committees that were particularly important or particularly active during the time that you served as president?

Well, the Membership Committee, then as now, spent a very great amount of time on its screening of applicants for membership. The Ethics Committee, working under various modifications of that title, was also pretty active.

Did you have to get involved in any of these committee activities yourself or was that just a matter of general administration?

I don't recall anything in particular that I was asked to undertake or to participate in.

What, now that you've had some time to reflect on it, what qualifications do you regard as most important for president of the

Academy?

Well, I would say that past experience in the committee activities and perhaps a membership on the Board of Governors is a prerequisite of first importance. One must know the leading members of the Academy. One must know some of the background of, say, the code of ethics, the rules regarding membership and so on. And about the only way that you can do that is to be in the thick of things, either as a committee member or a member of the Board of Governors. This kind of past experience is important. Of course, acceptability to the membership. I think the Nominating Committees, in the past and up to present day, do consult with some of the leading members of the Academy, past presidents and so on in making the nominations for the president elect and the members of the Board of Governors and the vice presidents. That's a good system. It worked well in the past. I think it's continuing to work well.

Do you have any suggestions for people, who in the future, hold the office of president, as to how they might operate or what they might try to accomplish?

I think we have an embarrassment of the riches, so to speak. We have a number of people, I won't name names,

but we have a number of people that I think would be qualified to serve as the president of the Academy, who would be happy to do so. There are probably more people who are qualified than the Academy is going to be able to designate as the president.

Do you have any advice to those who hold that office?

The office of president? Hang on tight!

That's good advice for any professional activity, I'm sure. Let me go back a little bit now that we've ~~covered~~ your term with the Academy. Your career as an arbitrator has spanned virtually the entire modern era of labor arbitration in the United States.

Yes that's true.

Can you talk a little bit about how the environment of arbitration has changed from the time that you entered the profession? What are the most significant differences in arbitration practice now as opposed to, say, in the forties or early fifties?

Well, I would say that the most striking development, as I see it, in the last, say, five or six years have been the decline in employment and sometimes in the number of firms involved in the industries that thirty or forty

years ago were mainstays in the arbitration field.

Like steel ...

Like steel, like rubber, like automobiles and some others that, you could go on, but in general I think there has been a reduction in caseloads, both in the permanent umpireships and in the ad hoc arbitration. I was talking with two or three friends yesterday and they agreed that there had been a considerable reduction in caseloads, certainly in the industries like steel and rubber. They have been shrinking in membership and employment. There had been that development but then there has also been a development which operates, in a feeble way, against this first development and that is the opening up of new fields for arbitration.

Like public sector?

Public sector, anti-discrimination charges and so on. One of my friends I was talking with yesterday must be a strong optimist. He said that he thought that arbitration caseloads were going to climb in the next few years. I don't see it.

Have you noticed any change in what the parties expect arbitrators

to be or do? I get the impression, reading some of the early literature, that the old George Taylor school of activist arbitrators was, once upon a time, much more prominent than it is now. Is that your impression as well?

Oh yes, yes. There was a kind of struggle or an exchange of viewpoints during the early years of the Academy. George Taylor made a very vigorous forthright speech to the Academy in, I think, the first or second year of our existence. A man named Noble Braden, who represented the American Arbitration Association, fired back at George Taylor's ideas. Putting it in an over-simplified form, Taylor advocated that the arbitrators would stand ready to serve, to play the role of mediator, as well as arbitrator. Mr. Braden was opposed to that and argued that the arbitrators should serve strictly as a judge and have minimum contacts with the parties. There was some difference of opinion as to, as to, uh, positions taken and activities undertaken as well. I had the good fortune to be asked to write a review of a volume that had been put together, which reviewed the activities and views of George Taylor. As I said in the review, Taylor was very influential in the early days. One of his oversights, I think, and one of the weaknesses in his approach is very few people had the enormous talent of George Taylor, so when lesser mortals were asked to do

the things that George Taylor did so well, often they fell short. There was, in the earlier days, an insistence primarily by management but to some extent from unions as well, the arbitrator should confine his role simply to interpreting the agreement, refusing to decide a case on the ground it was not covered by the agreement.

Where in that spectrum, between the judicial model of arbitrator and the mediator model of arbitrator, would you place your own professional practice?

I would say, since a great deal of my experience, almost, well not almost all, but, a major portion of it, more than half, has been in permanent umpireships. I would be classified, I think, as an advocate of the judicial approach. Although, in the permanent umpireship, you develop a relationship with both parties and it is possible to give advice. It is possible for the arbitrator to participate a little more fully in the hearing and the development of particular cases without objection by the parties. For example, in one of my umpireships I emphasized very strongly that neither party should present anything in the arbitration hearing that surprised the other party. And, uh, that advice was taken seriously. So seriously that, I remember one

hearing in particular, in a rubber plant, where the local union president said "Mr. Arbitrator, I want you to know that I called Joe here at one thirty this morning to tell him about this new development in the facts of our case. I remember you said nobody should be surprised and I took it very seriously."

That's a very good rule for any arbitration relationship.

Right, right.

Do you have any final remarks that you would like to leave with those who have the pleasure of listening to this tape or reading the transcription of it, about the Academy, about your service as president, about arbitration in general?

No. No particular observations. I would say, as one of the charter members of the Academy, when practically the whole membership of the Academy would fit in a room not much bigger than this and there were face to face exchanges and relatively no emphasis on prepared papers and more on ad hoc discussions, debates, that was one kind of organization. Today, we have six hundred plus members, most of whom do not attend the annual meetings and many of whom know relatively few people in the Academy. I enjoyed the Academy more in those early days

than today because of the possibility of knowing virtually everybody who was active in the field. Today that's impossible for any individual to accomplish. But there are other areas such as this taping of the reminiscence of the past presidents, that make it very worthwhile and can be profitably undertaken by the Academy.

Well that's an appropriate note on which to conclude our interview. Thank you very much.

It was a pleasure.