

National Academy of Arbitrators  
HISTORY COMMITTEE INTERVIEW

James M. Harkless

NAA President, 1998

Interviewed by Clara Friedman

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CF: This is Clara H. Friedman interviewing James M. Harkless who is still a very active member of the National Academy of Arbitrators and throughout his time in the National Academy has made many contributions to the Academy, including the two one-year terms when he served as Vice President of the Academy in the early 1980s. And since there is so much that is worth hearing in what Jim has to say, let's begin right at the beginning. And would you start, Jim, with talking about your background before you became an arbitrator, your education.

JH: I'll start at the very beginning. I was born in Detroit, Michigan in 1931 and I have two older sisters, one who is nine years older and another who is 11 years older. And so by the time I reached their ages they were in college. So about the time of nine and onwards I was living almost as an only child.

CF: Always a favored role.

JH: And of course I was the only male. I rather suspect, since my parents were older when I was born, that I was considered to be a great gift. My father had a tremendous influence upon what has happened to me, in terms of my present career. My father was born in a small place in the country; Downs, Alabama which is not too far from Tuskegee, Alabama. He attended Tuskegee Institute and he was in the class of 1914. That was when Booker T. Washington was still alive, and he was a product of Booker T. Washington's philosophy that

blacks should learn skills. My father was trained to be a millwright, and during his college years he actually went up to Detroit during the summers and worked in the automobile industry. I have a picture of his college class on my office wall. It was not a big class. I haven't counted the number of people but it was probably 50 or 60, both males and females. Their class motto was "Climb, though the rocks be rugged." My father probably was one of the first black foremen at Ford Motor Company during the 1930s, when I was a young boy.

CF: Was this while you were still living in the south?

JH: No, I grew up in Detroit, actually. That was the point I wanted to make. Everyone has, underneath their photo in this picture of the class, where they are from; my father has Detroit, Michigan, so he obviously intended to leave Alabama as soon as he could. And that is what he did. He went to Detroit where he met my mother a few years later; she was from Houston, Texas.. For most of his life he worked for Ford Motor Company and for most of my life was a foreman in the foundry.

CF: That was unusual. This was pre-World War II?

JH: One of my early memories is that when the UAW was organizing the plant my father did not come home for about a week. He was in the plant. Of course I didn't appreciate it as a young person; I didn't realize what was going on, just knew that my father was away. My father was a person who

believed in the work ethic. I'm sure he was a hard worker on the job. I never saw him at work but he was a hard worker at home. And he insisted that I work from a very early age.

CF: Well, you certainly owe him a debt of gratitude for that, if nothing else.

JH: I think my first regular job was as a paper boy at about the age of 10 or 11. Then when I was about 12 I worked for one of our neighbors who was a Tuskegee graduate. He owned a shoe repair shop on Hastings Street in Detroit, which was a major business street for both black and Jewish businesses. Back in those days, it was called "Black Bottom." I would go down on Saturdays to the shoe repair shop, and sweep the floor and wash the windows, shine shoes. I was exposed to people that I would not have exposed to ordinarily. I moved on from there to work on ~~the~~it same street in the A&P. By that time I think my sister was married, my older sister and her husband's brother was the manager of this A&P. I again was in a work environment with people. I remember there was a bar right next door; all day long the song on the juke box would be "See, See Rider," which was a very popular song in those days.

And later on I worked when I was in high school. I had summer jobs. One summer the city provided employment for students. I got a job through the Urban League, sending out tax bills at City Hall. Then I graduated from high school in

January, and I had to do something until I went to college. By that time X had been admitted to college. At first, I was a bus boy at the original Kresge store downtown on Woodward Avenue. A few months later, my application to be a Page at the main public library was approved and I worked in the reference section there until the fall.

I grew up in a family where my parents did not preach to me about anything. I guess I was a good kid. But my father just set a good example, and I was to follow it. And I was always a very good student and I developed a great deal of self confidence and self esteem. We had a very rich cultural life. My father started the Tuskegee Alumni Club there, and they had a lot of social activities. We went to church every Sunday. The church we attended, Second Baptist Church, is the oldest black congregation in Michigan, started in 1837. It actually is a historical landmark. The church is downtown in Detroit. You may or may not know that Windsor is right across the river from downtown, and the church was an underground railroad station. Many runaway slaves would be brought there and hidden, and then they would steal across the river at an opportune time to Canada.

CF: I think I remember vaguely reading that in my history books. A fine tradition.

JH: At any rate I grew up listening to some of the great black preachers, Mordecai Johnson, who was the president of Howard, was also a minister, I heard him speak. Nannie

Burroughs who was a great black woman and educator, she was a great preacher, as was Benjamin Mays, the president of Morehouse, too Many, many of the great black speakers of the day—I sat and listened to them. Then on Sunday afternoons we had the black YWCA; there was a forum at which speakers would come, and I actually heard W.E.B. DuBois speak and Walter White. So that I grew up exposed to people who are an important part of history in this country.

My father was also a well educated man. He would be in the bathroom shaving and reciting poetry. One of his favorite poems was Invictus. I remember the beginning and end: "Out of the night that covers me. Black as the pit from pole to pole. I thank whatever gods may be for my unconquerable soul. . . It matters not how yfr<sup>^</sup>f the gate. How charged with punishment the scroll. I am the master of my fate. I am the captain of my soul." So I've always had a high level of self-esteem, self-confidence, I guess as a result of the way I was brought up. I also sing, and was quite talented. When my father asked me what I wanted to do about college, I said I wanted to go to Harvard. My father laughed but he was kind of amused and he didn't discourage me. That was actually the only place I applied to go to school, and I was admitted. This was in 1948.

CF: You must have been among a very small group.

JH: The class was about 1,400 students and there were four of us blacks in class. Years later, in my 20th reunion I

commented on the change just in that one aspect because by then the class of '75 had more than 100 black members.

Well, I just wanted to go to what I thought was the best school. I somehow or other thought that Harvard was the best.

CF: I think you are probably right but in terms of general recognition—I'm sorry I interrupted.

JH: In the 20th reunion report I commented that this was one measure of changes that had taken place during that time period. Yet there were still so many more things we needed to do.

CF: What was your experience in your college years as one of four black students in an overwhelmingly white college campus?

JH: The first aspect of it was that having chosen to go to Harvard, and knowing that it would be a predominantly white school, I expected that I would be a minority. They went through a process, before you went there, of asking you about the kind of person you would like to live with. They give you various choices: do you want someone from the same area that you live in, all kinds of questions, such as the same areas of interest in studies. I said I wanted someone from the east coast, someone who is interested in history, those kinds of things. However, I did not expect that I would have a black roommate. When I showed up with my parents; we drove to Harvard, I was introduced and my

roommate came in—one of my best friends, still—we both were surprised to see each other as roommates. Ironically the other two black students were housed together; the two of us were in one room, and the two other fellows were in another room. One of the nice things about it: there were very few black students, but very early on a couple of the upperclassmen, the black upperclassmen, came by and visited us and told us about social activities among the black students from all over the area. Back in those days there were so few black students they all knew each other, from Wellesley, Boston University, Simmons and other colleges. There were a group of boys who came up from Brown as often as they could, on weekends, to socialize. I remember one young woman she was going to Putney, in Vermont; she was still in prep school. I got to know her but the upperclassmen sort of chaperoned us, took care of us.

CF: Well, what about the white students? Did you have relationships with them?

JH: In our dormitory system we had a lot of social interchange. There was a great deal of the usual rapport, with the rap sessions that you have in the dormitories. We would get together when we were tired of studying and talk about everything under the sun and we were from different cultures. I remember one of the boys who lived across the hall was a very doctrinaire Catholic; and I'm one of those who challenges people about their views. We got into very



strong arguments and almost came to blows . . . But no, the relationships with the students generally were quite good.

CF: You didn't experience overt racism or neglect or anything unpleasant?

JH: Some of the unpleasant experiences were: once a group of us, white and black, went to one of the places—I think there was sort of a tobacco store called Levitt and Pierce near the school. On the second floor of Levitt and Pierce they had pool tables—and we went over there to play pool. My recollection was they allowed us to play, but they asked us not to come back. And we did not make an issue out of that.

However, a group of us started what we called the Harvard Society for Minority Rights, which was a chapter of the NAACP. There was some discussion or controversy among the group, both white and black actually as to what we should call it. I guess partly because it was a white and black group, (we had a number of liberal white kids, and I think partly because of that they didn't want to identify it completely as NAACP) it was the Harvard Society for Minority Rights.

CF: I think <sup>in</sup> one those years the NAACP had a lot of white members.

JH: But for some reason or other they wanted to have that name. One of the things we did, (I'm not sure we did it as that organization, or just as a group of students) back in those

days, we just went and saw the freshman dean and we had a meeting with him, and we told him we did not think that the housing policy was a good policy. We also complained about the small number of black students. It was too late to do anything about in '53, but the class of '54 actually had 13 black students.

CF: They probably didn't have as big a pool to draw upon as they do now.

JH: That's probably true also. They did change the housing policy. Also the policy was only for the first year. Because after the first year you chose your own roommates. And so the second year my roommate and I and one of our white friends wanted to live with us, we lived together. He went to study in France for the junior year, and so there was just the two of us together again that year. Then in my senior year we split up and I was roommates with another white friend of mine and a German student who came over as a visiting student. They've all been my friends for the rest of my life.

One of the interesting experiences, of course (I guess I shouldn't dwell too long on college years) interracial dating back in those days was something that didn't occur. A few times I had some interracial dates. Then in my senior year I started dating the woman who became my wife, who is white. She was in my class at Radcliffe. I remember one time one of my very good friends--in fact I had two funny

experiences. The first, when I was in the glee club, one of my very good friends was Peter Reich. I think you may have heard of his mother, she started the Little Red Schoolhouse in New York, a private school; his brother is—I can't remember his first name now, he wrote the Greening of America—Charles Reich.

CF: Oh no, not Charles from Yale. I hope Peter had more sense than Charles.

JH: Well, Peter is a very successful psychiatrist and I think he still teaches. He lives in Belmont, Massachusetts.

JH: Well at any rate, I was dating this very lovely black girl from Emerson College. She told me she had a lovely white friend, a roommate, and did I know someone who could go out with us on a double date. So I chose Peter and we went out. The roommate I think was from Argentina; I didn't know back in those days, I was not knowledgeable enough, probably her family may have been immigrants from Germany, Nazi Germany, At. any rate we were having a very good time. We were walking afterwards—you know how the ladies go to the ladies room—and we were walking them back to the dormitory. I was walking in the front with Shirley; I asked her what her friend thought of Peter. She said, "He's very nice. But he's Jewish, isn't he?" I had never thought of him in those terms, and I first started to say, "No." But then I realized I really didn't know. And I got extremely angry with her. I said, What difference does that make one way or

another?" This is a black girl, saying this to me. It was something I couldn't understand. I actually was so angry with her that I stopped dating her for having that kind of attitude.

Later on I had another experience with another white friend, a very good friend. We had a double date, just for drinks. I came along with this beautiful white student, and it was just so foreign to his experience it really upset him physically. He's white, a very fine young man—but he actually literally had to go to the bathroom and he actually threw up, it was so upsetting to him. But at any rate it was difficult, socially. I've always believed in living an integrated life; you wanted to have social relationships. The glee club; we traveled, the elite group would travel and give concerts. I remember one year we did a joint concert series with Radcliffe. I remember when we took the bus, the first part of it, to New York. Actually that may have been just the men. One time we sang at Carnegie Hall, which is a great experience. I sang a solo, and just to sing in that place by yourself is such a wonderful feeling. But on the bus it was kind of lonely being the only black. I remember this one young woman who went out of her way to be friendly, and I've always appreciated her offer of friendship. But by and large my experience was very positive. By my senior year, I was elected president of the glee club and I won the Boylston Speaking prize as a sophomore. Also, some friends

asked me to be a member of Hasty Pudding. I was the second black student they accepted. It was a very good education. A place like Harvard you are very much on your own; you don't even have to go to class if you don't want to. At the same time there was a discipline. Back in those days at meals you had to wear a coat and a tie, which actually made things very civil even though you might dress less formally otherwise. Because you had to wear a jacket and tie at meals the tendency was to dress that way during the day.

CF: By the time my older son was in Yale, and Charlie Reich had come out with his manifesto, the boys were still required to wear jackets and ties. But under those jackets and ties were the scruffiest jeans and T-shirts, and it was really a travesty.

JH: I had some wonderful professors. Arthur Schlesinger, Sr.: I actually took his American history course the last year that he gave it.

CF: I think he was regarded as an even better historian than his son.

JH: The son—I didn't like him when I was a student. One of my favorite professors was Charles Hughes, another history professor. He was an English historian, and he was at that time up for tenure. He had written a book, Schlesinger, Jr. and (I can't remember his name now) another young Harvard professor who became very influential in the Kennedy administration. He was about the same age as Schlesinger,

Jr. They were in their early thirties and he became (I think) head of the Ford Foundation after he left the Kennedy administration. (The name will come to me.) But they panned Hughes' book and he didn't get tenure. Then he went to Stanford, and some years later came back to Harvard. He was a wonderful teacher. He was not only a good scholar but a good lecturer. Not all the good scholars were good lecturers. John Fairbanks and Edwin Reischauer also were stimulating in their course in Asian history. We called that rice paddies. This was 1950-51, and we were taught back in those days that Ho Chi Min was a great patriot and great friend of America. McGeorge Bundy. He was the one who went along with Schlesinger, Jr. I didn't like either one of them for what they did back in those days. There was a Professor Jones in American literature. (I can't remember his first two names.) He was the person who exposed us to the great American writers; Faulkner, Wolfe, Hemingway.

<^CF: You've mentioned the names of the some of the greatest figures in the academic world.

JH: Right. Then I went on to Harvard Law School. Law school for me was foreign; a lot of courses—like property law just were completely foreign to my experience. The course that most interested me was labor law; Archibald Cox was teaching it. That was when he was doing his most important writing in the field. We had an excellent course. We started out at the beginning with a history of the craft unions, going

back to the late 18th century and early part of the 19th century, the growth of the AFL. We studied it from the beginning; the mine workers, and then the Sherman Antitrust Act, the Clayton Act.

CF: Even if you weren't familiar with labor law that kind of introduction would excite your interest.

JH: Labor law back in those days wasn't as extensive as it is now. We were exposed to all of the important concepts in arbitration and the NLRB decisions.

CF: What years were you in law school?

JH: I was in the class of '55 and I wrote my senior paper in labor law. I took the labor law seminar also in my senior year, with Cox in which we looked at a number of issues. Antitrust was one of the issues we looked at. I wrote my paper on rights of the individual under a collective bargaining agreement. How should they proceed? What was the relationship of the union? Were they third party beneficiaries?—that kind of thing.

CF: You really never had any labor union contact in your own experience?

JH: Actually that was one of the things I left out from my college years. It was one of the things I wanted to mention, by talking about my father: from the beginning, his insistence on my working. During my college years, after my freshman year, I worked for the first time at the Ford Motor plant as a blue collar worker. And of course I

was required to join the union. Then, in my sophomore year, my father died; in January of 1950. The next summer I think it was by chance that I was assigned to work in the foundry where my father had been the foreman. So I was able to actually be in the work environment where he had spent most of his work life, and to see what it was like.

CF: It must have been very interesting for you.

JH: Right. Not only that, but also to work in the plant gave me what I feel is one of my great assets as an arbitrator. Because I know what it's like in an industrial environment, what goes on. I know what the workers are like. I know what a hard job that is. Once you get accustomed to it, however, you learn ways of making it less arduous. I think I have a realistic when I'm asked to look at jobs. Perhaps I may be less impressed, somewhat, than someone who has never been exposed to laborers' work. I have experienced the tedium. My job in the foundry was in the core-making area; I was working on the oven and I put the cores in the oven, with a partner; the oven was very hot. It was so hot we would only work two hours, and then we would have an hour off, and then come back and work two hours, and then have another hour off. But the workers who were making the cores worked at what they called the merry-go-round; they would have to stand at the merry-go-round. Each one of the probably 20 workers around the merry-go-round performing a different function had to stand there all day performing



that one function as the merry-go-round went around. It was a very difficult kind of thing to do; so the workers would try to find all kinds of ways to have breakdowns of the machinery.

CF: The whole dehumanization of the work force seemed so efficient and so rational, and yet it was destructive.

JH: And then I worked in automotive plants in other summers.

There was an automotive plant in Somerville, Mass., where I worked one summer. I worked just putting the tires on the rims, to be put on the cars as they went by on the assembly line. I had very good experiences working in the plants, getting to know the workers. But at any rate in my senior year as a student in law school the big event in my life was to sit in the Holmes lecture when Harry Shulman came to speak and gave that great talk on reason, contract and law in labor\_\_\_\_\_, It was one of those events when you're sitting there (at least for me, and I assume for others) you realize something really significant was going on. Of course it proved to have a tremendous influence upon what happened, the steel trilogy of decisions of the Supreme Court . . . when they wrote then a lot of it was grounded in what Shulman had to say.

I married during my first year in law school. After I finished, I went back to Detroit that summer to take the bar exam in Michigan. The exam was in September. I'm not sure how I happened to end up both studying for the exam and

working in the office of a firm that did labor work. The name of the firm was Goodman, Crockett, Eden and Robb. George Crockett was the black lawyer who later on became a congressman. My recollection is that Harold Bledsoe, a long-time legal practitioner who had a successful black firm, suggested I talk to Crockett because of my interest in labor law. In those days it was considered to be a left wing firm. They were very active in the National Lawyers Guild, they represented the United Electrical Workers and other unions. I had a very good experience working in the firm. I was doing mainly research brief-writing, and going around with them.

That is the first time I saw Dick Mitterthal, at one of the arbitration hearings. Dick may have been arbitrating but he was the assistant to Harry Platt. He was just sitting there in the hearing room. I think at that time Platt was the Ford umpire, but I'm not sure. I don't think this was a Ford case. I can't remember what plant it was. I took the bar exam in September, and during that summer I actually went around interviewing. I went to the UAW and I think I met Kurt Hanslow who was on their legal staff. I went to Chrysler labor relations. I went to some of the white firms. Back in those days no one was interested in me except Goodman, Crockett, Eden and Robb. This was 1955.

JH: As I mentioned, my wife was white; it was an interracial marriage. To live in Detroit in those days in those

circumstances would have been very difficult. So I decided to go back to Massachusetts. She had stayed there anyway, while I was studying for the bar exam. Her field was music. During my law school years she had a job working as an assistant, sort of research, for a doctor. She was very bright. When I went back to Massachusetts, I interviewed again. Just by chance one of the judges of the Massachusetts Supreme Court was looking for a clerk. I was referred to him, through the student employment office at Harvard. He selected me, Arthur Whittamore was a wonderful man. He was a Republican . . . .

Around November I started working for Judge Whittamore. I then had to take the Massachusetts bar exam in January. Because I was working every day as a clerk with Massachusetts law I didn't take any bar review course. I remember however that both my bar exams were unusual in different ways.

It turned out that some people had gotten hold of the Michigan exam. Someone confessed this—at least this is my understanding—to a priest, and gave the priest the right to disclose it. Which he did. The authorities didn't know what they were going to do about the results.

Then on the day that I took the Massachusetts exam it was the coldest day of the year. The exam was given in a high school, and there was no heat in the high school. I remember going there, and I just assumed that the heat was

going to come on. I knew that I had to pass that exam, given that I'm working for a judge. There is no way that I'm not going to pass that exam! I took off my coat, I sat down, I took the exam. I think the exam was 3 or 4 hours; I finished an hour early and left. Other people had their coats on, and they were shivering. I guess the exam was only 3 hours, but I learned later that they gave everybody an extra hour.

Because of the problem in Michigan I was actually admitted to the Massachusetts bar before I found out about Michigan. They did, one way or another, decide they would go with the results. I then got admitted to the Michigan bar.

But partly because I started at the Massachusetts Supreme Court during the court year and didn't have a full year, the judges ask me to stay another year. They made me the chief clerk the second year. That was an extremely good experience for me.

After I left there I interviewed with the firm of Grant and Angoff, which is the major firm representing unions in New England. I don't know whether it's a true story or not, but last year I went to the AAA conference up in New Hampshire that they give in the summer, and Bob Manning who is one of the partners of the firm was there. He was joking with some people about the fact that I had been in the firm. "The only way he got in was the Chief Justice of the Supreme

Court called up Grant, and told him he had this young fellow that he wanted to work in our firm."

CF: I should think that would be a high recommendation.

JH: I don't know if that's true or not; I never heard that. But at any rate I did go to work for that firm. It was just a small firm. They had a tremendous amount of work in every aspect of labor law. I did everything; I participated in negotiations, I presented many arbitration cases before some of the leading arbitrators of the day.

CF: Who were they? Do you recall?

JH: One I remember particularly (since I got to be good friends with him afterwards, years later) was Abe Stockman. We used to get a number of arbitrators from New York; Peter Seitz, Lloyd Baler and of course Bill Fallon; I think my first arbitration was before Bill Fallon. He was the chairman of the Massachusetts Board of Conciliation and Mediation, which provided arbitration services, I think it probably still does. I am almost certain that my first case I presented was before Bill.

CF: You certainly had a chance to see what high level arbitrators were like.

JH: Right. Actually the office of the firm was in the same building as the AAA. So on occasion, when one of the other members of the firm was presenting a case (I think that was before I was really getting a chance to present them myself), if I had the time I would go up and sit in. I

remember sitting in on one case where Lloyd Bailer was the arbitrator; he was a very successful arbitrator. One of my interesting experiences was about a year later; I was sent down to Connecticut for a hearing and Lloyd Bailer was the arbitrator. The union representative and I went out for a beer. He said, "that firm of yours has everything. We have a Jewish arbitrator; they send down Goldman. They have an Irish arbitrator, they send down Manning. They have a WASP arbitrator, they send down Pyle. Now we have you." I said, "What do you mean?" He said, "Don't you know that Bailer is colored?" (That is the way he put it.) I said, "As a matter of fact, I didn't know that." Then I looked up his bio, and the interesting thing about it was that he was from Detroit. Well, he was much older than me, but I knew the Bailer family because he had some young brothers and I knew one of his younger brothers. Later on I had another arbitration with Lloyd Bailer in Massachusetts. After the hearing I told him that I was from Detroit. It was even later, after I left the firm, that I got to be pretty good friends with Lloyd.

I also handled cases in the court of appeals. I appeared several times in the First Circuit. However, it wasn't just labor law. My first jury case was a dental malpractice case which eventually became a leading case in the American Law Reports. American Law Reports has sort of a treatise on various legal issues. They have all kinds of

subjects, including labor law and on dental malpractice. This was many years ago, and I am sure they have had many other articles on that subject since then. But it's kind of interesting non-labor situation. During the trial the judge was very much against me. I was representing the plaintiff, who was the patient. The dentist had left roots in her gums. He was removing some molars. She got a serious infection and lots of problems, ended up in the hospital. I had an oral surgeon as an expert witness. But the judge was just against me all the way. He called us in, and said, "I'm going to direct a verdict against you, because you don't have enough evidence." I said, "Oh, your honor, I believe that I have." I asked him to direct a verdict against me with judgment reserve, but still let it go to the jury. Then if the jury were to rule in my favor wouldn't have to retry the case, if I appealed and won. But he refused to do that. So we didn't have a jury verdict. I did appeal and the Massachusetts Supreme Court said I had enough evidence. And that is the leading case in the ALR. Well, I've always had a question in my mind about the judge's motivation.

Back in those days one of the unions that the firm represented was the IUE at General Electric. During that period, General Electric almost uniformly took the position that no grievance was arbitrable. So we always had to go into court to force them to arbitrate. This was before the

Trilogy. So I was going into U.S. District Court right off, and trying to force G.E. to arbitrate.

I also represented some unions which were charged with unfair labor practices. My first case was a secondary boycott in the First Circuit, where I argued against Arnold Ordman. He was sent up by the general counsel of NLRB to argue the case. I represented the union in that argument. I also drafted the complaint in a case that eventually went to the Supreme Court: the Dowd Box case. It actually didn't get there; until I left, the firm. My recollection is that it involved the issue of the concurrent jurisdiction of the state courts with federal courts, to enforce collective bargaining contracts.

CF: How long were you with the firm?

JH: I was there until about end of 1961. No, it was really the end of 1960. In 1961, right after the Kennedy administration came in, I had a chance to go to Washington and work for the House Education and Labor Committee. That's when Adam Clayton Powell became chairman of the committee.

CF: Were you counsel to that committee?

JH: What happened was—it's kind of a funny story. I had read in the Afro American newspaper that Powell was going to become chairman of the committee after Kennedy won the election and the Democrats were going to control the Congress. The article said Powell was going to scour the country for the best black legal talent. I sent in my



resume. Well, that's the whole point: it didn't catch his attention, because I was somewhat naive. If I had put in the resume that I attended Second Baptist Church in Detroit, it would have caught his attention. But I went to Harvard College, Harvard Law School, I was working for a white firm in Boston. So I didn't hear anything from him.

In February, right after the inauguration I was at a legislative conference of the IUE in Washington, D.C. I stopped in to see Congressman Diggs from Detroit, whom I knew. I mentioned to him, just in passing, only telling him what was going on in my life, "I wrote to Congressman Powell and I never heard anything." Charlie Diggs didn't say anything at all. But that same afternoon I was at a cocktail party at the legislative conference in the old Willard Hotel. Someone said, "Congressman Powell is here. Would you like to meet him?" I said, "yes, I would like to meet him." I was introduced. And Powell (being a New Yorker you know the kind of person he was) said, "Harkless, I've been looking all over for you." He said. "Speak to my assistant general counsel here." Well, Diggs had called him; as a result, a few weeks later I was selected to be counsel of an ad hoc subcommittee that they set up to study NLRB.

CF: That must have been one of Powell's best choices.

JH: I'm not sure that it was. But it was an interesting experience in the sense that this subcommittee was to

conduct a study of the National Labor Relations Board. The motivation for setting up the committee was that there were a lot of union complaints about the Republican board and how it had been mistreating unions. Kennedy had just appointed Frank McCullough as chairman of the board. And so the word came down that "maybe we don't want to do too much with this committee." What actually happened was that we conducted a scholarly study of the NLRB. Some of our recommendations were adopted, one of which was that administrative hearing officers should become judges. I can't remember exactly what they were called in those days, but they now have a more judicial stature.

And there was a reorganization of the board at that time. I remember we even changed chairs of the committee because it became less sexy politically. Congressman Dent was the original chair, and then Congressman Pusinski from Chicago became the chair. I remember going with him. He had wanted to testify, or been asked to testify, before the Government Operations Committee on this reorganization bill that the President wanted. (I think that included this change, which had come out in our hearings, with regard to the administrative law judges.) So I accompanied him, to tell them about what we had done and were doing in our study.

I didn't particularly like the Hill though. Back in those days the Hill was still very strongly controlled by

southerners. It was very unusual to see a black professional; there were very few black professionals. This was 1961 and the environment was not open; you were an oddity, just walking along the hallways in business attire back in those days.

Then the way that Powell operated, I was quite amazed. A chairman of a major committee has tremendous power, because they have a large appropriation for their work, and they have the ability to choose how they will dole out that money to other members of the committee. The members of the committee were very willing to get on their hands and knees to get these plums. Powell played it to the hilt. Also his operation as I perceived it,, even with his own staff who had been with him for years: they always were uncertain about their security. The environment that was created was one in which he got people to come to him, and try to ingratiate themselves, by telling him what was going on with regard to other staff members. Which was not a very pleasant environment.

CF: He was a very flamboyant, very interesting individual.

JH: Right. And also he was extremely intelligent, a very very bright man. I had one experience with him. I was asked to go up to one of his hearings in New York and after the hearing he beckoned me to come over. When I came over, he asked me to speak to this person who was speaking to him; it turned out he was a young black man who was at Walter Reed

Hospital, he was in the service. He had a cane, and since he was in Washington I made arrangements to have him come in and talk with him in Washington. To make a long story short, he had a lot of complaints against the way he was being treated by the hospital.. The information that I received later was that he was neurotic, and there was no physical basis for his problems. I went in to report to Powell what I found out. I started to diplomatically tell him about what I had encountered about this young man. And he said, "Oh, that guy is nuts;." Very quickly he had been able to perceive that this fellow had a neurosis.

CF: He was a very savvy guy. And after all there were fewer blacks in Congress than there were at Harvard. He had his own problems.

JH: Oh, there is no question about that. The way he had been treated himself--and that was one of the reasons he played it to the hilt when he became chairman, because he had been so mistreated up until that time. It was extremely difficult to be a black Congressman back in those days.

CF: It sounds as though your family life really stabilized you for your movement through American society of those years which younger people today simply can't visualize. You're talking about something that occurred some 30 years ago which is ancient history for young people today. It's certainly a life experience that has a very maturing effect.

JH: One of the things that had happened in college (I guess it was senior year) was when the glee club went on one of our spring tours. One of the places was Washington. My roommate was from Tacoma Park. This was in 1951 or probably the spring of 1952. I stayed with him at his house, and he then proceeded to give me a tour of Washington. We were both very naive. He had gone to prep school, had gone to Phillips Exeter Academy and his father was a colonel in the army. And so my white roommate hadn't spent a lot of time in Washington himself. It was time to go to lunch and he said, "Let's go to so-and-so restaurant." Of course we weren't able to get in that restaurant in 1952. So I had a kind of a sour view of Washington.

But then in 1961, when I went to work there at the committee, I could see that Washington was changing. At that time I had left the law firm and was deciding about what I was going to do. I decided I would come to Washington, full-time, on a permanent basis. I went to work for the NLRB as an appellate court attorney. I think that I was the first black to have this kind of position--sort of surprising to think that, as late as 1962. But I'm certain that it is true. It was very competitive to be selected there because the appellate court section of the General Counsel's office is sort of the elite section. (At least I think it's always been regarded as such.) These are the attorneys who go into the courts and argue for enforcement.

The General Counsel then was Stuart Rothman. Having done the work that I had done\* @n the Hill, it was easy for me to be chosen. Rothman had appeared before our committee. So they were glad to have me as an attorney. About a year »r^ Arnold Ordman was appointed General Counsel. So I ended working for Arnold. I continued there until 1964.

However, I knew a man by the name of Hobart Taylor, through two different ways. He was a very brilliant black attorney from Detroit; was from Houston originally. His father was a contemporary of my mother, who also was from Houston. So he knew my family in that way. And as an attorney in Detroit he knew of me.

His father was very active politically in Texas, and was a big supporter of Lyndon Johnson. When Johnson became vice president, Hobart became his counsel. You may recall the Plans for Progress was one of Johnson's programs—it was the precursor of affirmative ciction, really. It was a way that Johnson encouraged large companies to upgrade blacks in the work force.

CF: That poor maligned Johnson really did so many good things.

JH: When Johnson became President, Hobart moved to the White House with him. At some point someone will write about him; he had a tremendous influence back in those days. Hobart Taylor asked me to go work as assistant to the commissioner of customs (his name was Philip Nichols) who wanted to bring about some change in the Customs Service; getting more

minorities, primarily blacks in those days, into the Customs Service; and in those areas like New York City, which was a large port and had a relatively decent number of blacks employed, to move them up the ladder. I went over to work with Customs, doing that.

CF: Were you Washington based?

JH: Yes, at headquarters. Customs is an interesting organization, because it's the first federal agency. When the nation was first formed that was the way we raised our revenues (we didn't have an income tax), mainly through customs duties. It has a protid heritage. It's really the perfect bureaucracy—at least it was back then. I set up a plan shortly after I got there, as to what I thought the approach should be. I literally studied the personnel folders of everyone at headquarters. Headquarters was small enough back in those days so that it could be done—it may have been 200 people. I could see there were people at very high levels at headquarters, who were high school graduates.

CF: When you say everyone do you mean all employees, not simply blacks?

JH: Well, there were black employees in the mail room. There were a few exceptions, but there may have been one lawyer. The problem was to get some people in headquarters. I knew that there were people at very high levels who were just high school graduates. I also looked at the jobs that were available. Customs inspector's jobs were very good jobs,

partly because of the overtime arrangement that they enjoyed (which has just recently been changed). When they worked overtime they made a lot of money.

CF: When you say "good job" do you mean good financially?

JH: "Good financially," right. A lot of people wanted to get into Customs. I found out that the way they got into Customs was not competitively. All you had to do was be a federal employee, and then you transferred over from another agency. They had what they called "federal service entrance exam" to become an inspector. All you had to do was pass that exam; you didn't have to be one of the top three, on the Civil Service register,, if you were already a federal employee. You could transfer over, and they never took anyone off the top three of the roster. So I said, Well, let's use this system for everybody. If that's the system then make it available to everyone. I want to make sure we are making it available for everyone.

I was able to get a lot of black employees in the Postal Service, for instance, to transfer over. And because it is such a perfect bureaucracy, by and large most of the Customs collectors went along, Back in those days the collectors were political employees; they were presidential appointees. There was one collector down in Tampa--again a similar experience to the one I had in college. I remember we had our first regional meeting of Customs officials in Laredo, Texas. In those days in Texas they had a system



where places that served liquor were private clubs. You had to be admitted as a member, but of course everyone could be a member except minorities. In the hotel where we were having the meeting, there was no problem to become a member, for me or anybody else. The rule didn't apply to us; But I remember going into the bar, by then I knew a number of the collectors and I could see them having a discussion; then they invited me to have dinner. What they were doing was trying to convince the collector from Tampa to go along with it. He went to dinner, but the trauma of sitting down to dinner with me was just so much for him that he could not hold his food down and he had to leave. He was also one of the few collectors who would not go along with my program; I had to put pressure on him through the Commissioner. Yes I had tremendous support from the Commissioner and we accomplished numerous gains for blacks by adding more of them as inspectors, and customs agents, as well as promoting them to higher level positions. We even had a story back in those days in Ebony magazine, about what we had done. One of my proudest accomplishments is that I noticed in reviewing the personnel folders that a GS-2 black employee in the mailroom at headquarters had learned a special skill in the military service. I had him come to my office and asked why he wasn't doing that kind of work. He told me he had tried and tried, but couldn't get a job in that area. We didn't have them at Customs, but I located an

opening at the Treasury Department and he started at about Grade 4. Several years later, I saw him on the street and he told me he was a Grade 11. Just the opposite end of the spectrum was one of my favorite people (who I really regret that I lost contact with) was a collector by the name of Marian Baker, the collector in Savannah. Savannah was in those days a very small port; they may have had about 10 employees. And there were four in Brunswick, Georgia, one of the supports. I looked at Marian Baker's figures: four people in Brunswick, and two of them were black; 10 in Savannah, and maybe four were blacks. Very shortly after I was at Customs, (she was a lovely woman) she was visiting Washington. She came in with her southern drawl and she said, "I want you-all to come down to visit Savannah." I always take people at face value, and I said, "Mrs. Baker, I certainly will do that." Mrs. Baker was not a priority in my work, so it was about a year later after I had been to many, many places I got around to going down to Savannah to meet her. She came out and met me at the airport and made arrangements for me at the hotel. (I neglected to mention one of my experiences with NLRB, which I want to mention was that staying at a hotel in the south was difficult.) The next day she invited the business and trade community to meet with me.

I may have told you that yesterday I was at a meeting in Savannah. I went over to the Customs House and I asked

after Mrs. Baker. I said, "I don't know if she's still alive, she would be quite old by now." They said, "Oh yes, we remember her very well. Unfortunately she just died about a month ago." I really regret that I did not seek her out earlier.

CF: People like that are rare, and should be acknowledged. Jim, I hate to say this—because\* it's so wonderful— but we're not going to be able to finish today.

JH: Right. I do want to go back to this one NLRB experience, in my first year in the Fifth Circuit in New Orleans, for my first argument as an appellate court attorney, probably the end of 1962 or early 1963. President Kennedy had asked the hotels to voluntarily open up the big chains; I made arrangements to stay at the Sheraton there, and when I arrived I wasn't able to get it. This was New Orleans, and Sheraton was right on the fringe of the French Quarter. I had made alternate arrangements, anyway.

The next morning I went to the hearing, and the Fifth Circuit was temporarily sitting in the building of the State Bureau of Fisheries and Wildlife because the federal building was being renovated. I walked into the building and there were two water fountains; one said "colored" and one said "white." This was either late 1962 or early 1963. The same with the rest rooms. Then I went up to the fourth floor where the Court of Appeals was sitting on that floor they did not have the signs. Back in those days that Court

was the Court deciding the most important civil rights cases and the judges when they came in had to walk by those signs.

[END OF TAPE]

TAPE 2

JH: Just within the last few years one of my neighbors was a law clerk to Judge Wisdom in the Fifth Circuit Wisdom. Judge Wisdom (he's still an active senior judge) was visiting Washington, and he invited us over for drinks. I said to Judge Wisdom, "Judge Wisdom. I'm almost certain this is true it was such a long time ago but I am certain that in 1963 or 1964 I argued before you." He said, "Yes, I was sitting back in those days." Then he recounted some of his experiences back in those days.

CF: And yours were not singular?

JH: That happened to him. And the abuse that they had to take as judges! Fortunately he had credibility, because his wife is from one of the most prominent families in New Orleans. But a lot of people did not like what the judges were doing.

I neglected to mention that when I was with the NLRB I was able to argue in all of the Circuits except the Eighth and Ninth. So it was a wonderful experience.

# Invictus

by William Ernest Henley; 1849-1903

Out of the night that covers me,  
Black as the Pit from pole to pole,  
I thank whatever gods may be  
For my unconquerable soul.

In the fell clutch of circumstance  
I have not winced nor cried aloud.  
Under the bludgeonings of chance  
My head is bloody, but unbowed.

Beyond this place of wrath and tears  
Looms but the horror of the shade,  
And yet the menace of the years  
Finds, and shall find me, unafraid.

It matters not how strait the gate,  
How charged with punishments the scroll,  
I am the master of my fate;  
I am the captain of my soul.

This is Clara H. Friedman on June 25, 1996, beginning the second session of the oral history interview with James M. Harkless. We are meeting in Washington, D.C. at Tun's office; I've come in from New York City to continue the interview we began and did not conclude on November 10, 1995. Jim's interview is part of the oral history series of the National Academy of Arbitrators, launched in 1978. Interviewees are former National Academy of Arbitrators presidents and other national officers.

We're starting today at 11:00 a.m. As it happens, we won't conclude until 6:00 p.m. It's turning out to be a long day.

CF: You had finished describing your career prior to becoming an arbitrator and discussing your experience at the U.S. Customs Service where you were based in Washington, D.C. and served as an assistant to the Commissioner, who was Philip Nichols. I think you said what's coming next is your service in the Office of Economic Opportunity. So do you want to begin with that?

JH: Yes, there are a few other things I could say about Customs in that I was also involved in the reorganization of Customs when it set up regional offices for the first time. By then Frank Johnson had succeeded Nichols who became a judge in the Customs Court.

CF: It had not had regional offices?

JH: It was a very small agency. It was beginning to get larger.

I can't recall (if I hadn't, I did want to mention it) if it was in the transcript already, that one of the individuals whom I had selected or encouraged was from Indianapolis, a black Customs employee in a very small port (I think Indianapolis only had about four people) I identified him as someone who was highly regarded and I asked him if he wanted to compete for an opening in headquarters.

CF: He was an inspector at the time?

JH: I'm not quite sure whether he was an inspector. He probably was, when he was selected for a low-level management position at headquarters. Then when Customs was regionalized, he was chosen to be District Director in Washington, D.C., and a few years later he became Regional Commissioner in Chicago. The Collectors of Customs who were appointed by the president were no longer in existence. They became District Directors after regionalization and were career employees. .

CF: He wasn't the first black to reach that position of District Director, was he?

JH: Yes, he was. Another one of my proud accomplishments in this kind of job advancement for able individuals involved a very highly regarded black supervisory inspector whom I met on one of my trips to Detroit. When I learned there was an opening in Customs for a technical advisor in Laos, I contacted him and asked whether he would like to be considered. He was selected, went to Laos, and had a very, very fine experience. When he came back, he was given a headquarters position, later he became District Director in Washington, D.C., when that Director (who had come from Indianapolis, as I mentioned earlier, was promoted to Regional Commissioner in Chicago.

CF: It is very interesting, in the comments that you have made about various agencies, and how you were able to identify promising people and assist them to move up the career ladder— notwithstanding that these were years when equal opportunity was not the big thing. It makes me realize that equal opportunity is not a rhetorical matter; the way to get people into a good or better career path is to have someone (as you were functioning in these situations) who is sensitive to an individual, can spot someone of promise, can take

the time to identify where he can be used. And it is not only effective in terms of the individual's advancement but, it seems to me, it's the best way of doing it. A person like that isn't moved just to fill a slot and claim an advance. It's getting someone who is able to work effectively and then be a role model and be the kind of person who will dispel any talk that "well he's just there because he's a minority."

JH: In all of these situations the people I talked about were very well qualified for the positions for which they were selected; they had something I want to touch upon later in talking about one of the reasons we've gotten into difficulty in more recent years in the affirmative action approach. There are so many things that did happen at Customs. I don't think I mentioned that part of my responsibilities was to answer complaints that citizens would file when they were disgruntled about the way they were treated by Customs. For a period, the Commissioner asked me also to temporarily take over rulings on obscenity and pornography.

CF: For materials being imported into the country?

JH: Right. There is a law which prevents that (at least at that time, and I think it probably still exists). But certainly back in the sixties there was a law against the importation of articles for the prevention of conception and matters that were obscene or pornographic.

CF: Were you following the Justice's dictum that he can't tell what pornography is but he knows it when he encounters it?

JH: Well, the reason I was asked to handle that was because the Commissioner felt that the people at headquarters who were making those rulings were not in tune with the more recent Supreme Court rulings. He wanted to have a person in New York who had been



involved in these matters come down and take over. That person wasn't able to do it right away, so I was asked to do it.

There were some amusing kinds of things that occurred. I remember one complaint by a woman (I think she was from Sweden and was coming over to meet her fiance to be married). She came by ship. In the port of New York the inspector was looking through her luggage; he saw a diaphragm and asked what it was and made her throw it the river. She was quite amused by this and only complained because when she was telling that story to someone at a cocktail party in Cambridge, Mass where she had gone to meet her fiance, someone there said, " That is outrageous, you should complain." So she did.

CF: I guess this Customs inspector would interdict anything related to sex.

JH: Right. Back in those days one of the ironic (well anomalous) things going on was that Customs was banning books for importation even where the American version was already on the bookshelves. I remember there was one from Denmark called "The ABZ of Love" in the English version, which was available here. Yet if someone had gone to Denmark and bought the same book they couldn't bring it in to the United States. So we were changing that approach.

One of the more interesting people whom I met was a woman by the name of Harriet Pilpel.

CF: She's a very well known lawyer.

JH: I have a good memory yet I had forgotten about it. But my memory of it was renewed when I was going through some old papers. She had contacted us, representing- I can't

remember the organization that she represented-- to change our rulings on articles being brought in for prevention of conception. The way it was being interpreted, a wholesaler could bring condoms in through Customs, but an individual could not. The idea was the wholesaler wasn't doing it for the purpose of prevention of conception, whereas the individual obviously was.

CF: You can bring them in, but you can't let anyone use them?

JH: I met with Ms. Pilpel and recommended to the commissioner that we change the regulation which we did. The reason this came back to my memory was that about three or four years ago I flew in to LaGuardia and was waiting in line for a taxi. There were several of us and it was suggested that we share a cab. This very distinguished woman agreed to share the cab with me. As we were driving along, I said "I'm sure that I have met you." We were trying to remember where, and she told me her name. It didn't ring a bell with me at the time. She was probably in her seventies. Not long after that I was going through these papers and refreshed my recollection. I wrote her a note, saying that "you may remember we shared a cab, and I said that I had met you." Then I reminded her of our meeting at Customs in the sixties. "I'm only sending this to you in case you are at the stage of your life where you are writing memoirs of your distinguished career, this perhaps might be a footnote." She wrote me back a very nice letter also.

CF: She became a very prominent public figure in the Republican administration. I think she was appointed to the U.N.,

JH: I had seen her on television on some talk shows, but it was some time ago in the seventies. Well that's sort of an aside.

Another kind of amusing ruling that I had to make responded to a handwritten appeal from a gentleman in Nebraska. It was very wavery writing and said "Dear Sirs: I am a happily married 75-year-old man. My wife and I have been married for 50 years. We decided to try out these French ticklers because we thought it might bring some stimulation into our lives. We really would like to have them." Of course they obviously weren't bringing them in the purpose of prevention of conception, so his appeal was allowed. Customs is a wonderful organization. I may not have mentioned that I got a chance to go to all the major ports. The appraisers' stores in New York are just an amazing place. There was no Customs duty on an original work of art. Whereas if it was not original you had to pay a duty. So people buying expensive paintings had to rely upon the appraiser's determination as to whether or not the work they had bought was authentic. I remember the appraiser showed me a Modigliani painting once and said, "My determination is going to make the big difference to this individual as whether I say it's really an original."

CF: Were the appraisers really qualified art critics?

JH: Oh yes. This person was considered to be one of the best in the country. He was a very unusual man, very learned about art. I really enjoyed spending time with him. Customs also employs chemists and physicists who analyze materials to determine what they are. These are very interesting positions.

But going on from Customs, because I had been doing work somewhat in line with what Sargent Shriver was looking for as an executive secretary, Louis Martin at the White House asked me to apply for that position at OEO. Although I enjoyed very much

what I was doing at Customs, to have a chance to work with Shriver and a new government agency, the Office of Economic Opportunity was very inviting. I decided to go for the interview, and I was selected. Also it meant further advancement for me in terms of personal career, because it was a higher-rated position.

CF: You were still Washington-based?

JH: It was here in Washington. I was very pleased also to receive the Bureau Honor Award for my work on leaving Customs. Shriver's deputy was Bert Harding, he was a career IRS person, and I think the White House had sent him to OEO to make the organization more like a traditional agency in terms of management. There was a lot of criticism of OEO in Congress because of some of the things that the OEO employees were doing, and the OEO programs were highly controversial. In OEO's community action program, after I got there, Shriver came up with the interpretation of something in the statute that had to do with maximum feasible participation by the persons being served. (Those are not the exact words of the legislation.)

CF: The idea was community involvement, wasn't it?

JH: Community involvement, right. "Maximum feasible participation of the poor", I think may have been the words. During that period I think this was interpreted to be one-third, as I recall, of those individuals on the board of community action programs. It was highly controversial at the time.

CF: Did you come across George Nicolau during that time?

Yes. My recollection was that George was the head of the CAP (Community Action Program) in the New York region. I did meet George at that time.

CF: He was not an arbitrator then.

JH: No, and my job was OEO executive secretary

CF: And neither were you an arbitrator then.

JH: No. The executive secretary's office was the funnel to and from the director and the deputy director. Everything was supposed to come to the executive secretary before it went to the two top individuals. And everything was to come back through the executive secretary's office, so there would be some control over what was going on. I had a relatively large staff; I don't remember the exact number but there were probably about 10 people. I had a deputy, there was secretarial assistance, and there were about five or six staff people whose main job was to review correspondence sent out under Shriver's name or the deputy director's name. There was also a Congressional Relations office which handled correspondence with Congress. Their responses to letters had to come for approval through my office. It was really amazing, some of the things that came to me. Particularly I remember some of the Job Corps correspondence. The Job Corps was a highly controversial program, having to do with the costs. Many Congressmen were saying we are spending all this money on these individuals, and what is it worth.

CF: You could send them to Harvard for less money?

JH: Right, for less or at least for the same amount. The staff working on those programs were somewhat naive as to the response to such criticism that was appropriate. Approving responses to Job Corps questions, before such letters could go out, was an important responsibility for me.

Also, I set up a new system to make sure that matters did come through my office, and to make sure there was follow-up on any directives that were sent out by Shriver, and to make sure that something to be done was done. I also was in charge of the weekly senior staff meeting at which the senior people would make reports to the director.

CF: You mean "senior in the agency?"

JH: Senior in the agency, right, such as director of CAP, director of legal services, Job Corps director. It was a good position for me because people were vying to be on the agenda, so they could get whatever they wanted. Shriver is a very energetic person; I would be sitting next to him, and he was always moving his hands or his head. He was always in motion. He is extremely intelligent. I could tell when someone was really in trouble: when Shriver stopped moving.

I was able to put before him some things that he did not necessarily want to hear about, but that were important for him to deal with. For example, Mississippi Star was one program which was extremely controversial. Also, Head Start down there was an integrated program against this "maximum feasible participation of the poor"-- in a state like Mississippi where the power structure didn't like to deal in that way. Another controversial program was the one in California, providing rural legal services. Governor Reagan did not like that program.

CF: The program involving farm workers?

JH: Right. Shriver was just so sharp at being able to deal with these controversial matters. He had a wealth of acquaintances, and he used it very effectively. I remember OEO had Project Upward Bound, which gave high school kids a chance in the summer to go to a

college or university (I guess they were juniors or seniors before going on to college); OEO would give grants to colleges and universities. When one of those grants was approved, one of our responsibilities was to find out who was on the board of trustees of the university; we got their names and Shriver sent them individual letters, telling them about the grant, just the program itself. One of the things I thought was so effective in a huge organization, letters to someone that Shriver knew did not go out under Mr. So and So, or Mrs. So and So; it was our responsibility to find out if he knew that individual and personalize it. On many of the letters he would write notes, saying, "This is a great program, but your Congressman doesn't think so. I think you ought to let him know about this."

CF: I think that was Shriver's great strength, his personal approach wherever possible.

JH: Right. He was a good pitchman for the program. One of the things I did not like, however, was that it was extremely difficult to bring order out of an organization of this type, particularly since everyone wanted to have personal contact with Shriver. They did not want to go through the executive secretary. Shriver to some extent encouraged this by making himself available to people. There were some individuals who were considered to be stars, very bright people. He had special assistants. I remember Edgar Cahn and his wife Jean.

CF: The ones who live in that Frank Lloyd Wright house?:

JH: I don't remember. Edgar Cahn and Jean Cahn (I think when they were law students together at Yale) wrote about the legal services kind of approach, that's really where the idea came from. Edgar was a special assistant at OEO, and I think Jean was also an

advisor. Another thing that Shriver did was to have advisory committees of citizens on all the programs; these were professional people. It would actually involve business people and union people on these committees to get their support, and also to educate them about these programs. It was a very effective way to operate.

CF: That's a good way to marshal public opinion and get the talents of people who know something about such areas.

JH: But even though it was an exciting place to be, I was a little bit frustrated there with the knowledge that too many people were not falling in line with what they were supposed to be doing. They were doing their own thing at the agency, they were off doing their own thing; it was very detrimental to the program.

CF: It was the atmosphere and the style in those years.

JH: They were bright people; many of them thought that on their own they could make better decisions about what should be done in a particular situation. That was not always the best approach, particularly from a politically sensitive point of view.

CF: What you found objectionable or problematic was the free-wheeling individual?

JH: It was just so different from Customs where, if the Commissioner issued a policy statement, or a position about something that should be done, it was carried out. (Although in my program at Customs where I was trying to bring more minorities into Customs, one individual collector was a problem for us. That was unusual. He was a presidential appointee, so he felt that he could be more independent.) The career people were very, very loyal to the organization; even though they did not necessarily agree with everything, they did go along. That wasn't the case, in my view, at OEO.



But I had the opportunity to move from OEO with a friend of mine, Leo Kramer, who had been at OEO. I think he was still there when I first came; he had been one of the top people at OEO. Later he left OEO and started his own consulting firm. (I had met Leo years ago when I was working as an attorney in Boston. At that time Leo was regional director for AFSCME in New England; then he became one of the top AFSCME people in Washington.) He's a very bright person. When the president of AFSCME was defeated, Leo had to leave, and that was about the time he went to OEO. He was doing some exciting things such as training of VISTA volunteers. He was involved in job programs of one type or another. One of the things that he was doing in which I became involved was funded with an adult basic education grant through the Office of Education. The Laborers Union in Columbus, Ohio set up a learning center in their union hall. Laborers would come there on their own time and learn their ABCs, learn how to read and write, and do math. Many of them were able to move on to higher-skilled positions. It was a very nice little program.

I joined the Kramer firm about the time the Comprehensive Employment Program was being set up by the Manpower Training Act, and CEPs were being established at various locations throughout the United States. I set up a sort of learning center in Hoboken in New Jersey and Rochester, New York.

We had also developed a way to find growth industries where they were likely to be looking for new employees. It was really done in a statistical way, but when applied to a local community it almost always worked. I remember going to El Paso, Texas where we identified the printing industry as a growth industry. Right down the street from the

agency that we were working with ( a lot of the people in the program were Latino) was a Baptist publishing company of religious materials. The publishing company was looking for people and we were able to identify qualified people in the training agency.

In Mississippi, working with the Star agency which had expanded into job placement and training, we were able to work out a program with Ingall Shipbuilding to train individuals for positions opening there. I met some very interesting people on the staff there. One of these young black men later became the mayor of Mound Bayou, a small black town in Mississippi. I spent a lot of time with them when I went down to Mississippi. Even in 1968 Mississippi was changing in terms of its racial attitudes. They asked if I wanted to meet Robert Clark, the first black person in this century to be elected to the state legislature. I said "Sure, I would love to meet him." This is in Jackson, Mississippi, the state capital. These fellows were always very jovial and joking blacks, native Mississippians, very very affable people. I really enjoyed them. When we drove up and parked outside the state capitol, all of a sudden it became very serious. It was almost like we were going to a funeral or a very solemn occasion.

I thought about it afterwards, and my assessment was that they had not been able to walk into their state capitol before as citizens. This is 1968; they have never had any representation there and there was no reason for them to even go there. And if they had tried to go there four or five years earlier they would not have been welcomed. For them this was a really important thing to do.

CF: Such reactions are not something that young people can fathom today. Arthur Stark tells a story from his early experience with conducting the NLRB elections in the south. In

one election he handed a ballot to a young black and motioned him to the voting booth; this fellow went all around this little booth and then climbed up to go inside. He was looking for the entrance for colored people. Who would think of that now? But that was the way that black people were used to being treated and they just accepted it and never thought of walking right into the booth. It was a revelation for Stark, a young northerner; it really shook him up.

JH: I was able to get a little bit of exposure to what life was like in Mississippi. I can't remember the name of the organization. It was a research center that was kind of connected with the university.

CF: Ole Miss?

JH: Right. They were very much interested in job training and placement. Somehow or other I made contact with them and worked with them. My recollection was that they liked our programs. Actually it was sort of funny, in Mississippi, we not only identified Ingalls Shipbuilding but also the needle trades and were able to find jobs for training black females in small companies.

JH: One of my last projects with the Kramer consultants was a study conducted in Miami. We had a contract with EDA, which is the Economic Development Agency (in Commerce, I think). They wanted an economic study of conditions in the Cuban and the black communities in Miami.

CF: The relations between the two communities?

JH: No, just in terms of the kinds of jobs they held, probably their educational backgrounds, that kind of thing, and how long they had been in the Miami area. Leo got the idea that

since we were going to be in Miami with interviewers going into the community house-to-house with pre-set questions, perhaps we could piggyback on that. Remember that 1968 was a time we had the riots, particularly in Detroit, that were devastating, involving racial conflict. Leo was thinking there ought to be a way to find out where there is a potential for that happening, so that it could be headed off. We had some contact with the Community Relations Service in the Justice Department. Roger Wilkins was the head of it at that time. Justice was quite interested in doing this attitudinal study, and they funded us to do that along with the EDA study. At that time I met Jim Laue, who was with the Community Relations Service. I think he may have been the person who was directing the project. Another person involved was Ronald Gault, who is Charlene Hunter Gault's husband. He's a very interesting person, knowledgeable in that area. I was in charge of that aspect of the study.

A number of years before that, when I was in school in Boston, I had a very good friend Matilda Moore. Her son was at Harvard with me. She was with the Unitarian Universalist Service Committee and had done work with the Navajos. A wonderful woman, she and my mother became very good friends. (They almost died together in an automobile accident, driving back to Detroit one time when they had both come to visit us at school.) Matilda Moore introduced me to Hylan Lewis, who was a very well known sociologist. He had an academic background, a Ph.D. He had a whole wealth of experience in that field. In 1968 he was associated with Kenneth Clark. Hylan Garland Lewis was his full name. Garland, one of his ancestors, was a very prominent black person in the 19th century. (I can't at this time recall what he actually did.) But Hylan is a very

distinguished person and as far as I know is still alive, living in New York but probably retired. At that time he was with Kenneth Clark at the Metropolitan Applied Research Center, (MARC it was called). Hylan worked with us to develop these questions that we were going to ask people in Liberty City. (The blacks lived in Liberty City. That's part of Miami, which in more recent years actually did become an area where riots occurred. You may recall a motorcycle policeman who shot a black individual, and that caused a riot.) The study selected another area which was predominantly Cuban. We asked the Cubans and Blacks same types of questions: how they perceived each other, the amount of social contact or lack of social contact, how they each perceived the other, whether they would want to date, marriage questions, how much antagonism if any.

CF: Oh, it was there. Even without a survey, it was recognized.

JH: Back in 1968, however, our study showed that blacks were much more tolerant at that time of the Cuban community than developed afterwards. I think if the study had been done ten years later the results would have been different.

CF: The 1968 study did not disclose overt hostility between Cubans and Blacks?.

JH: There was some hostility but not something one would necessarily be concerned about. At the same time that we did this study in the neighborhoods we selected community leaders in Miami whom I interviewed about how they perceived what was going on.

CF: These were pillars of society, *not* ethnic leaders?

JH: I'm not sure whether one interviewee was actually the president of Pan Am but he was a high officer in Pan Am. Another one was the president of Burdick's, the big department store. There was also the white newspaper editor, a black newspaper editor, the Catholic

monsignor, (the Catholic church was very much involved with the Cuban community, particularly in assisting them to adjust to life in Miami). I also interviewed a black Episcopal minister, not right in Liberty City but in the black community just outside of Miami. The minister was very highly regarded, very knowledgeable, and I talked with an NAACP leader.

One of the things that was quite revealing to me was that at Pan Am there was very little knowledge about what was going on, and very little interest. In contrast the president of Burdick's knew more about what was going on and the views and attitudes inside both communities than, the white newspaper editor. The black newspaper editor was quite knowledgeable.

One of the people I talked to was involved in the garment industry in Miami. In talking with him it became apparent that the industry favored Cuban women as against black women for employment. I asked him why they had that policy. His answer was that the black women didn't have very good finger dexterity. By contrast in Mississippi, where we had been working, employers felt that black women had lots of dexterity.

While I was at the Kramer firm, just by chance I had lunch with Sy Strongin. He had worked with me at the NLRB in the early 60s, and had left about the same time that I had left in '64 to go to Customs. He had gone to work with Ralph Seward as an arbitrator. By that time Sy was quite a successful arbitrator. While we were having lunch and catching up on each other's activities, I just happened to say "You know you are doing exactly what I would like to be doing." Sy said, "I never knew that. There might be some possibility for you in arbitration. I'll look into it and get back to you."

Sy was apparently aware that Sandy Porter, who was in the Bethlehem-Steelworkers office that Ralph ran as the national umpire for Bethlehem, was about to go off on his own as an arbitrator. Ralph was looking for someone to replace Sandy. Sy got back to me and asked for a resume, which he gave to the parties. I was interviewed by George Moore, head of labor management relations at Bethlehem, and by Ben Fisher who was in charge of arbitration for the steelworkers union. In 1970 I was selected by the parties. At that time I was making a pretty good salary with Kramer. I had been made a vice president. My title also was general counsel but that didn't amount to very much in terms of legal work.

CF: That's a nice title.

JH: The parties arranged with me to guarantee my income at the same level for three years.

CF: I think that is most unusual.

JH: Right. It was a nice arrangement. I don't know whether they have done that for others. I think it depends probably on the circumstances. At that stage of my life, in my early forties with children and a wife, I could not have made that career change if I had to risk earning an equivalent income as an arbitrator. However, I was able to catch on very quickly as an arbitrator. Even though I had been away from the labor-management field for a number of years, the good experience I had in Boston and up on the Hill and with the NLRB had lots of affinity to the arbitration work in steel. At the beginning I sat in on hearings with Ralph Seward.

CF: That must have been a very interesting and valuable experience.

JH: It was a wonderful way to get started. I was able to observe how Ralph handled hearings and of course I was able to learn a lot. During the first few months I went around with Ralph and sat in on his hearings I was very much influenced by observing him. Of course, how a hearing goes depends upon the circumstances. One of the very positive aspects of arbitration is that we, (at least myself, as an arbitrator) have no set way of handling cases, other than a framework that everyone usually follows. Sometimes I can be a very passive arbitrator, and sometimes I can be a very active arbitrator.

CF: But I imagine that consistently you are polite and patient.

JH: I try to be. But often there are situations where attorneys may be very litigious and go into every kind of detail, that's one kind of hearing. As I've gotten more experience, I have thought it helpful to the parties, if they want to pursue a certain line, that rather than have the other side prolong the hearing in problematic directions, I will say, " I'll hear it, but I want you to know that I probably won't give much weight to it."

Within the first few months, the parties were assigning cases to me. Bethlehem at that time had a very, very busy docket of cases in many locations. Back in those days there were over 100,000 employees at Bethlehem.

CF: They sure have shrunk.

JH: Right. The very first hearing that I had was at Sparrows Point. I took the train up to Baltimore, was met by a limousine, and taken to the plant. At many of the places where Bethlehem had plants, there were management clubs that were very much like country clubs. Hearings were usually Tuesday to Friday. The parties had a tradition of entertaining the umpire at least once during the stay. One night the Union would take the



umpire out to dinner, and another night the company would take the umpire out to dinner. Often the company's hospitality was at the management club. They were very, very nice clubs. The Hotel Bethlehem in Bethlehem, Pennsylvania was a very old and grand hotel back in those days.

CF: We were there many years ago.

JH: I would stay there. My recollection was it was owned by the company,. The restaurant was quite nice, had a wonderful French chef.

CF: There was a nice community there; buildings and olden times demonstrations, things like that.

JH: It was a very nice place. Very early on I started to get cases. By the end of a year, certainly into the second year, I was earning the amount that the parties were guaranteeing me. I was also being selected for ad hoc cases through AAA and through FMCS; I was on those panels and also on the NMB list and doing railroad cases. I was a very hard worker and apparently people became aware of my ability and I was being selected. Some of my decisions were published in BNA.

One of the interesting things about Bethlehem in those days was that most of the cases were contract interpretation cases, incentive cases, job classification cases, pay -r issues, very few discipline and discharge cases. I think I was well into the caseload before my first discipline or discharge case.

One of my early experiences was; with safety cases. In the steel industry they had a rather unique provision whereas if a condition changed from what had been going on normally, and the employees felt the change was unsafe, they were not required to work

under the changed condition until it was determined in arbitration (if the parties could not agree directly). There was a provision for immediate arbitration, which meant as soon as the arbitrator could get there; that was within one or two or three days.

My first safety case involved the Cornwall ore mines in Pennsylvania. Bethlehem not only was in the steel business but had their own mines. In this particular situation the skip car that transported the miners into the mine had broken down. The supervisor had ordered the employees to walk down into the mine. They refused, claiming that it was unsafe. By the time I got there, which was two or three days later, the skip car had been repaired. But the parties still wanted a determination in case this occurred again. One of the clues to the decision in that case was that: although we had many participants in the hearing it was decided that only one representative from either side would go down into the mine, and I don't think either was one of the advocates.

CF: A little too rough for them?

JH: Now that I look back on it, I'm not sure at my age now (65) even though I am in very fine condition, I would make it down those steps.

CF: And a very daunting experience!

JH: Imagine going down into a pitch black mine with only a light on your helmet; and a small steel pipe railing which I was able to hold on to, and steps in many places that were like a slide. It was very muddy and wet. It was quite an effort to keep one's footing, and we had to walk a good distance down into the mine.

CF: And you had to walk back?

JH: I can't remember now if we walked back; we probably did. I would have had to walk back, because I had to determine whether it was safe to go down and to come back..

CF: I suppose that it is one of the genuine virtues of arbitration, that the decision is based on such close observation.

JH: In the steel industry particularly I 've had many occasions to go and observe the operation, not only in safety cases but also in job classifications.

CF: It can make a difference. One can't get the same impression by reading, or hearing a description, as one gets by actually walking that slippery path.

JH: Right. Just recently I had a subcontracting case in the steel industry which involved contracting-out the fabrication of a steel platform. I didn't follow my usual practice because the parties were kind of firm in wanting to proceed in their own way. I went along with it, but felt at the time it was probably not the best thing to do.

CF: What was the usual way?

JH: It's always been my view and my practice that the arbitrator should first hear the testimony and the description of the problem before direct observation.

CF: If nothing else, it permits you to be more aware of what should be observed.

JH: That's right. It makes you know the things to really look for based upon the parties' concerns in terms of their expression to you. In this recent subcontractor case the parties said, "We will arrange right now, at the beginning of the hearing, to go look at the platform, and at other platforms that the employees had fabricated themselves."

Although I thought it was probably not a good idea, I did go along with it. I would have

been more comfortable had I heard the evidence first, and then observed the objects that were in dispute.

CF: You knew enough to be able to decide?

JH: Yes, it was a case that was tried in great detail. The employees themselves, who were riggers, did a very fine job of drawing to scale the various platforms involved. So I had exhibits that I was able to bring back with me, which were reminders of what I had seen. But I still would have preferred to have observed this after hearing the testimony.

Some of my most interesting cases in the steel industry involved either safety or job classification. Early on, when they still had the old open hearth furnaces, I had a job classification case involving a nozzle setter. That individual goes down into the huge steel ladle after the steel is poured, and the nozzle has to be rebuilt. The bottom of the ladle is punched out for the steel to flow. Those ladles are very huge. This particular one was 70 or 80 feet high, the nozzle setter had to climb up to the top on a very high wooden ladder, maybe 50 feet. And of course I had to do what the nozzle setter does so that I could see what the work was like. It's the kind of thing that I had an easier time doing back in those days than I probably would have today. The safety cases were really very interesting because usually they were filed in good faith by the employees; the operation stopped and it didn't start again until there was a determination by the arbitrator..

CF: Was there a time limit for issuing a determination?

JH: The determination was usually made right away, or as soon as possible. I don't think I ever made a bench decision. Usually the next day we would inform the parties by telegram what the determination was: pro or con. A decision in writing would follow.

But of course one does have to go through the decisional process before sending the telegrams. It's not always that easy to reach the decision.

CF: I think the written award is as helpful to the arbitrator as it is to the parties.

JH: Right. I had a subcontracting case that I just decided. I really didn't decide it until I was well into writing it.

CF: I think that is usually the case.

JH: Not always, but certainly that was a real tough decision to make. One safety case was the only one that I have ever had which was filed by the employees because of a bad management decision rather than a real safety concern. It was a Bethlehem plant where, in the early 70s, the steel industry was beginning for the first time to hire females.

CF: In the early 70s?

JH: Right—at least that's my experience of when females began working in the mill.

CF: In jobs that traditionally only men had performed?

JH: Yes. In this situation the employees filed a safety grievance and refused to work.

CF: The male employees?

JH: The male employees claimed that it was unsafe for them to travel through their assigned work area to another area where the company had rebuilt their changing room and restroom. The restroom in their immediate work area, which male employees had traditionally used, was assigned instead to the two or three new female employees. So there now were about 20 males who had to walk some distance, and they were claiming that it was unsafe to traverse the machinery. They weren't actually going through the

machinery, just around the machinery, just passing by and walking across a road inside the plant that had some vehicle traffic but certainly was not unsafe.

But I couldn't understand why management had decided to reassign this huge changing area that the men had been using, and give it over to the two or three new female employees, and have some 20 males go over to another location, rather than just dividing up the space into separate male and female areas. At any rate I felt that the men's walk to their new restroom was not unsafe and I ruled that the new restroom did not create an unsafe condition.

An amusing aspect of that case occurred when the top Union person at the plant accompanied me to view the restroom area. One of the new female employees happened to be nearby. She was dressed like any other steelworker in steel helmet and shirt and pants and steel-toed boots. She was about 5 feet 5, and her shoulders were like a linebacker on the Washington Redskins. She was quite a substantially strong individual. The Union rep (who knew me well enough to call me Jim) took me aside and said, " Jim, we're not really sure this really is a female. We're still checking that out." I suppose today that would not be the kind of remark that would be acceptable.

CF: No, I say that would be grievable.

JH: Fortunately she did not hear it, and it had no influence on me.

Another interesting safety case gave me some insight into the physical effect that sound has upon individuals. It was a case involving a steel operation in which the coil of steel runs through the machine at a very fast rate, hundreds of feet per second, very, very fast. Occasionally the coil will break or tear, and when that occurs the employees have to

jump out of the way to avoid injury. In this case the company was doing some construction work nearby and jack hammers were tearing up the concrete floor.

CF: That can get pretty noisy.

JH: It was extremely noisy. The employees declined to work under that condition because,, they said, they could not hear the machine. They were accustomed to listening to the machine, which had a very high pitch, they could tell by the sound of the machine when one of these breaks was likely to occur. The company's suggestion was " We will give you ear plugs or ear muffs, and you could use those and you will be able to hear the machine. It will block out the noisy sound of the jack hammers and there won't be any problem."

The employees tried that. But they didn't think that ear plugs were sufficient. So there had to be an arbitrator's determination. We had expert testimony on the decibel levels, and how the ear plugs would operate, and what the decibel levels were—not only of the machine but also of the construction operation. My recollection is that the construction sound was very low decibel, and the machine sound was very high decibel—or vice versa. The effect of the the ear plugs was to block out the low sound and muffle it. While overall you could hear better, you were still not able to hear the high decibel—warning sound of the machine.

This case gave me some insight into how sound affects one physically. When I went down into the area, there was this noise going on from the construction, (like walking by construction sites where it is so noisy, and some people are more uncomfortable than others), and the relief that I felt when I put on the ear muffs and

muffled out the sound, gave me this insight into the physical effect that sound has upon people.

CF: It can be devastating.

JH: As I think I mentioned earlier, I had quite a good caseload with Bethlehem. They had a very heavy docket of cases, so I was traveling around from plant to plant; I was very busy. Then during my second year, I was beginning to receive cases through AAA and also FMCS. I had gotten on the NMB (National Mediation Board) panel for railroad cases.

CF: Were you doing airline cases then?

JH: No, not at that time. But by the middle of 1973 I had a sufficient number of cases from Bethlehem and also through these other sources, so that Ralph suggested I apply for membership in the Academy—which I did. Ralph was still the Bethlehem umpire. It was about that time that there was a change in the office; the parties decided to change Ralph's title to Chairman, sort of like the U.S. Steel operation, and Sy Strongin became the umpire.

CF: Ralph and Sy were issuing decisions and hearing cases?

JH: Both were issuing decisions and hearing cases. My view of it (without the benefit of any direct knowledge or discussion with the parties, because I wasn't privy to that) was that Sy was a very good administrator, and the office needed good administration as well as good umpiring.

CF: Then he should have been named the chair.

JH: I don't know how old Ralph was at that time, but he was getting on, must have been in his sixties back at that time. And the parties reserved the right to have him hear any cases



that they wanted him to hear. I think they wanted to take some of the workload away from him and the worry about running the office, and keep the opportunity to hear whatever cases he wanted to. Of course Ralph was not in the position of the associate whose decisions were always reviewed by the umpire. Sy did not review Ralph Seward's decisions. We all had a good relationship in the office in those days, but there probably was some strain between the two of them in bringing about that kind of transition. But it was not something that I was concerned with.

At any rate, I think I was talking about my being accepted as a member of the Academy. My recollection is that at the time (and certainly I wasn't aware of it) there was minimum standard of 50 cases in five years that the NAA Membership Committee used. But if there was, they certainly didn't adhere to it in my case.

CF: You must have had a very large number of cases with Bethlehem alone, and you were also getting cases from other designated agencies.

JH: I also think the Committee probably received some good letters from people whose names I sent in as references.

CF: My recollection that that five/fifty was a rule that grew out of applicants who were accumulating cases very slowly.

JH: That's not very many cases. I think also the five/fifty is partly because not all arbitrators are full-time. Many of them are academics, so that kind of caseload for a busy academic is not really small.

CF: It is more understandable. There were a lot of people who were applying who called themselves academics but weren't full-time professors either.

Okay, let's hear what happened next in your arbitration career.

JH: From the very beginning of my association with arbitration work, and the Bethlehem's umpire's office, I began to attend the Academy meetings. From 1971 on I attended every NAA annual meeting.

CF: They were very interesting meetings.

JH: Right. The Academy has been a very special activity for me as an arbitrator, for a number of reasons. At the very beginning, when I began to attend, I held many of the long-time members in great respect. I was able to meet them at the meetings. Many of them were very helpful and friendly and encouraging.

Did I mention my experience with Saul Wallen in Boston when I was practicing law there? Back in those days was the first time I met Arnie Zack, while I was a law clerk for the Massachusetts State Supreme Court Justice. Arnie was a very good friend of Ruth Reardon who also was law clerk to a State Supreme Court Justice. She and Arnie had been classmates at Yale Law School. (Ruth Reardon is now, and for some time has been, Ruth Reardon O'Brien. Her son, Kevin O'Brien, is on the Late, Late Show. He's the fellow who replaced Dave Letterman.) Ruth is a very fine lawyer. I think she became a partner in Ropes and Gray in Boston.

I had a chance to know Saul a little bit when I was a young lawyer in Boston, and had a great respect for Saul. He died before I became a member of the Academy, while I was a consultant at the Kramer firm. As it turned out, shortly before Saul's death, I met with him in New York. I was trying to establish an apprentice training program in the construction industry for blacks. I went to New York to talk with Saul. At that time he

had given up arbitration to head the newly formed Urban Coalition in New York City.

He was such a wonderful man, and so suave and knowledgeable.

CF: And so driven.

JH: Right. He was extremely helpful to me. We weren't able to work out the idea that I had brought to him. But he put me in contact with people who might try to develop that plan. I was glad that I was able to renew that acquaintance with him before his death. After I became an Academy member (which was after Saul's death) his wife Mary continued to come to the NAA annual meetings, and I got a chance to see her. For a few years I was a member of the board of the Saul Wallen Fund at Cornell which I still support.

In NAA I met Syl Garrett. The thing I liked so much about Syl was that he treated me as an equal, as a colleague. He didn't act as though he was superior in any way.

CF: I think the top-flight people are that way. The ones who lord it over others have nothing to be lordly about.

JH: The Academy was such a good place for me at the beginning for that reason, and it continues to be as more people have become associated with it.

CF: Of course you yourself have grown somewhat into the role of older statesman.

JH: Right. It's hard for me to think of myself in those terms, but I know many of the younger members view me as one of the old-timers.

CF: I think it's very good that interests you have expressed for the Academy affects your activity and your helping newer people. You are performing the same functions that years ago others performed for you.

JH: One of my concerns about some of the newer members in the last years has been a feeling that many of them have not come into the Academy with the same attitude that I had. Some of them, with whom I have had personal contact I have encouraged along those lines, to be more respectful.

I will give you one example. I suppose it's all right; he probably wouldn't mind if I used his name. I don't remember when it occurred, exactly but it probably was in the mid 80s. Robert Creo, a new member from Pittsburgh, wrote me a note, probably because I was on the Academy Board of Governors at that time. He expressed concerns about some of the activities of the AAA; he felt that the Philadelphia office in particular was showing favoritism. He was concerned too about the direction of the Academy; he didn't feel it was in tune with the needs of a new era. I remember writing to him and answering some of the things that he had said. I pointed out that the Academy had recently established a Future Directions Committee which had made recommendations for change. I ended the letter by saying one of the things that I value, living in Washington, is the National Archives here. I like driving by or walking by that building because there are two statues, one on each end of the building, one says "Past is prologue", the other says "Study the past." And I believe that an arbitrator must know what has gone on before in order to apply oneself to the problems of today. The problems do change, but I think it's important to learn what those who have gone before us have to say.

CF: Otherwise we are always reinventing the wheel. Like me you probably have seen some of our less experienced colleagues expatiating on something that is brand new to them but has been around a long time.

JH: Right. I had been an Academy member for a couple of years when Rolf Valtin as president asked me to be regional chairman in the Washington region. Back in those days the regional chair was appointed, rather than elected. I took on that role for two years. We had quite a collegial group in those days. Back then the region had dinner meetings and I arranged them mostly in Georgetown. There were more members in the region who had offices in Washington; now there are very few members located right in Washington. They are out in the suburbs in Maryland or Virginia; and of course the region actually extends even further, to Baltimore. Not only did we have the regional activities in Washington on a relatively regular basis, but this tradition also of tri-regional meetings in the fall, with the Philadelphia and New York regions. The tri-regional meetings lasted until the Academy began its continuing education meetings. Many people regretted giving up our tri-regional meeting, but it wasn't possible to have both. I think that the continuing education meeting has sort of taken on more of the flavor that the tri-regional meetings had. Many members would bring their families to the tri-regional meetings. My children were not quite grown by then.

CF: I remember that Annapolis meeting years ago.

JH: That was the one that I arranged very successfully. We had one in Philadelphia that was quite successful and I think there was one in New York that I missed. All of those meetings were very highly regarded. There was some resistance to moving instead into the continuing education; many people really liked that tri-regional activity.

After my regional chairmanship ended, Dick Mittenthal asked me, in 1978 when he was president, to become chair of what was then called the Legal Protection

Committee. Dick's letter to me said, "There won't be very much activity other than keeping liaison with the AAA." AAA was then in the second year of a program providing legal advice and service to NAA members involved in litigation arising from arbitration. The Academy was paying AAA for these services. It very quickly turned out that this program was expanding. There was beginning to be more and more activity. AAA had begun to pay outside counsel, and the costs were rising. The Academy wanted to have some control over that, so that we had to negotiate with AAA. AAA wanted to be paid more for some of the things they were providing; they didn't feel that all of their costs were covered.

So Legal Protection became quite an active committee and an active responsibility. Activity was increasing, in terms of members being subpoenaed to testify in cases, or being made parties when their awards were taken into court. And arbitrators who were doing ERIS A cases faced legal problems.

CF: I think some of them were being hit with very large sums.

JH: That was where we started to incur higher legal costs in this Legal Protection program. The NAA executive committee and board became quite concerned. At one point Arthur Stark and I met with Jerry Aksen who was the general counsel of AAA. The next year Eva Robins and I met with him to discuss the problems. Because costs were rising, the Board of Governors wanted to change the arrangements. By that time we had changed the name to the Legal Representation Committee. About 1981 our financial picture in the Academy was kind of bleak, and legal representation was taking a fairly substantial percentage of the Academy's funds.

The Legal Representation Committee (its new name) was asked to come up with recommendations for change. We looked into the possibility of group insurance for members, insurance which would only pay the cost of legal counsel. There was very strong feeling by many members that we shouldn't have liability insurance. Arbitrators have immunity and we didn't want to encourage litigation by parties knowing that we had liability insurance; insurance companies of that type have a propensity to settle cases rather than fight them on, which would encourage people to bring cases against arbitrators for their settlement value. The committee looked into that arrangement and decided that it was better to continue with the kinds of services that AAA was providing. We suggested, on a one-time basis as an experiment, to have members assessed \$50 to pay for these costs.

CF: Was that the first time the Academy levied a special assessment?

JH: It was the first time one had been recommended. When we made the recommendation in 1981, I was also a member of the NAA Board of Governors. In 1980 I was elected to the Board of Governors, and I can't tell you what kind of experience that was for me. It was so unexpected, Number One. I remember Martin Wagner was the chair of the Nominating Committee, and they don't tell you anything beforehand. He stood up, and announced\* the people who were going to be on the Board. I don't know if you know Martin, but he has a very pontifical kind of voice, and he mentioned my name—and it was just such a wonderful feeling to be recognized in that way, when I wasn't expecting it all. I was on the Board at the same time that my Legal Representation Committee had made its recommendation.

CF: I thought you couldn't be on the Board, and a committee chairman at the same time.

JH: I think this was one of the reasons this has changed. It was an embarrassment to me personally when I presented our committee recommendation to the Board. There was a lot of opposition to this recommendation. Part of the opposition was because the Executive Committee at the same time wanted the Board to vote for a substantial dues increase, because of the Academy's financial needs. The Board voted down the recommendation.

Then at the business meeting, after the Board meeting, I made the report of the Legal Representation Committee and had to report that the Board had turned down, the committee's recommendation. There was a substantial outcry from members as to why the Board would take such an action. This caused the Board to ask us to come up with some other plan. The matter came up before the members again and they strongly believed the Academy should continue with the arrangement we had with AAA. The Board really wanted to move away from any kind of legal services for members.

In 1982 I left the chairmanship of the Legal Representation Committee and P.M. Williams became the chair. Byron Abernethy was Academy president at the time. He asked me to stay on a few months until he chose a new chair, which I did; then he asked me to stay on the committee, which I also did.

During the next year the committee devoted itself mainly to doing a historical perspective on the program from 1976 on, and looking into the various insurance options. There was no action taken, one way or another, that year,



Milt Rubin had been a member of my committee throughout. I have to give Milt credit; I think the idea for the assessment was something that he put forward, perhaps among some other members. But I remember Milton in particular. He became chair of the committee. It was during his chairmanship, after a survey of the members, that he came up with the present assessment program, which is very much like the assessment we had originally recommended. By that time the Board had been able to get through the substantial dues increase, that almost doubled members' dues. The assessment has been a very important part of the Academy's legal representation.

I want to backtrack to 1975 at the annual meeting in Puerto Rico when I was a relatively new member. The members were presented with a report from the Valtin committee, which looked into what could be done to increase the number of females and minorities in the Academy. One of the recommendations the committee made was that there should be a tilting factor for females and minorities.

CF: How was that expressed?

JH: I can't recall exactly.

CF: Was it admission to membership with a lesser number of cases?

JH: It was probably that kind of approach. My recollection was that it would have meant females and minorities would be admitted under a standard not applied to others. A number of us got up at the meeting and spoke against this proposal.

Reg Alleyne had just become a member. I didn't know Reg at that time, but I got to know him quite well. Years later, he told me that he was appalled, when he had just

gotten into the Academy, by this approach. Harry Edwards, who was a very active member spoke against it. Marcia Greenbaum spoke against it.

I didn't know Bill Murphy at that time. I didn't know anything about his background, or many of the wonderful things that he had done as an individual in the civil rights field. At the Academy meeting he got up, with his southern accent; the first words out of his mouth were: "This just goes to show from some of the remarks made earlier that those who got it made, don't want to help out those who haven't." I felt that was an affront to those like myself, who felt that a lower standard was not the right approach. And I still feel that it was not the right approach.

It was not applied; it was turned down. But even after Bill became president and made a very good presidential address—I congratulated him on it, I think it was one of the best addresses that we've had—he still referred to that situation, back in those days, as "affirmative action" and the right approach.

CF: Those were really the buzz words in those years.

JH: Affirmative action in my view should not operate with a lesser standard. I suppose there are people who have applied it in that way. But it certainly is a mistake, in my view, to have minorities or females accepted where the majority white male population feels that they are being given something they don't deserve, with lesser qualifications/requirements than apply otherwise.

CF: I think it inevitably degrades the standard.

JH: So does being treated more favorably than others, just on the basis of their gender or their race. Certainly these are aspects that should be taken into account, but there needs to be a

basic standard that is applicable to everyone. And then there are other considerations; there are all kinds of considerations that one takes into account in choosing between one person or another. Of course Academy membership is not a question of making a choice of one person over another; it's a question of whether an applicant is qualified under the standards that the Academy has to become a member. And those standards should apply, I think, without regard to gender or race.

CF: Do you want to mention your other committees?

JH: I have tried to be a very active member of the Academy. After serving on the Board of Governors from 1980 to 1983 I became a member of the Membership Committee; I guess you and I served together on that committee for at least one of the years I was on that committee. I went from there to the Continuing Education Committee and in that capacity was on several of the committee's programs. In 1987 I became vice president and was again back on the Board of Governors for two years.

CF: Did you mention the CPRG as one of your assignments?

JH: That came later in 1992. In 1980 or 1981 I was on the Nominating Committee for the first time; again, when Milt Rubin was chair in 1989, I was a member. More recently in 1994 I was asked to be the committee chair. (Perhaps I wouldn't have been asked to serve again if Arnie had known I had served on the committee twice before.) I also served on the Long Range Program Planning Committee which Dick Mittenthal chaired.

Another one of the more important committees was the Committee on Governance that Ben Aaron headed. Many of the committee recommendations were adopted by the Board and by the membership.

CF: Could you indicate briefly what those were?

JH: One of the big changes was we expanded the Nominating Committee from five members to seven. The idea was to have broader representation of the membership on the committee. The Governance Committee grew out of discontent among many members, primarily newer members. They felt that the Academy was not run in a democratic way, and that it was an elite organization in which only a few people ran the show. Ben Aaron is a wonderful person to work with, and the make-up of the committee was a fairly good cross-section of the membership. There were some older members, some (like myself) who were becoming older but hadn't been in the Academy as long as people like Ben or Jack Dunsford. Dave Feller was on the committee. The newer members, representing the views that brought about establishment of the committee, were Dave Peterson and Jonathan Dworkin who had been very vocal about these concerns. And the committee reached a very good consensus and made good recommendations.

One recommendation barred simultaneous appointment to the Board of Governors and to chair any of the committees. There was also a limitation on the number of years one could serve on some of the major committees. The Governance Committee emphasized that any member could be nominated for office, by adding to the procedure the Academy had always used whereby the Nominating Committee made nominations. The addition was to open the floor for additional nominations. In the history of the Academy only one instance occurred where someone was nominated from the floor. It was probably around 1985 when Marvin Feldman from Cleveland was nominated for the Board. In the contested election,

where the members voted, Marvin was not elected. That's the only occasion when there was a nomination from the floor.

The Governance Committee also recommended that members could nominate themselves to the Nominating Committee. One or two did, when I became chair of the committee.

To backtrack about my personal career during the time I was still with Bethlehem in 1974 the Mayor of the District of Columbia asked me to become chairman of the D.C. Board of Labor Relations; the Board was set up by Executive Order was a mini-NLRB for public employees of the District. We had a very fine Executive Director, Bruce Waxman; Board members served on a part-time per diem basis. Because the Executive Director was such a good worker, and very knowledgeable in the field, he was able to carry much of the workload for the Board. The board handled representation and, unfair labor practice matters for District employees. Jack Gentry was one of Board the members. He never became an Academy member. None of the other Board members were members of the Academy, or even active arbitrators. Gentry was the only active arbitrator, had been with the Department of Labor, and then he became associated with Willard Wirtz in a sort of a consulting firm.

Walter Washington was Mayor at that time. The Board faced two key situations. One, around 1975, was an impasse between the Teacher's Union and the Board of Education I was asked to be the Fact-Finder, as Chairman of the Board of Labor Relations. There were just a few issues on which the parties were apart. My recommendations were accepted.

The other situation was an unfair labor practice case involving the Police Department. The Board ruled that an unfair labor practice had been committed. The Chief of Police refused to carry out our order. The Board had no enforcement powers, so I requested the Mayor to instruct the Chief to comply with our order. The mayor was undecided about what to do; he wanted the problem to just go away, and thought that I would forget about it. I periodically reminded him; finally he turned it over the Corporation Counsel for advice. The Corporation Counsel sat on it for a long time.

While this was going on, the City Council was considering legislation to make the Labor Relations Board a statutory board. Bruce Waxman and myself (more Bruce than myself, but he consulted with me as to his activities) were active in steering that legislation through the City Council. But at the time I was Chair the statutory proposal was going through the deliberative process in the Council.

Finally, probably around 1976 or 1977 the Corporation Counsel came down with a ruling adverse to the Board. He found some way to advise the Mayor that he shouldn't move forward. The Corporation Counsel, even though a very fine lawyer, had no background in labor relations. Myself and the other members of the Board were appalled by his decision. We all resigned as members of the Board. Within the year after that, the Council passed legislation setting up the D.C. Public Employee Relations Board. It is a statutory board, and has enforcement powers through the courts in the same way that the National Labor Relations Board does.

CF: And is actively used?

JH: The board is relatively active. I have occasionally served as hearing examiner in some cases. One was an unfair labor practice case involving the University of the District of Columbia and their faculty employees; I found there was a refusal to bargain. There may have been one other case that the Board asked me to handle as a hearing examiner.

For a brief period also I was a member of the Prince Georges County Public Employee Relations Board. A similar situation arose there, where the Board became politicized and again a number of us resigned in protest. That board was set up in panels: negotiations, unfair labor practices and impasses. I served on the impasse panel and did some interest dispute mediation. In the spring of 1979, after I had left the D.C. Board of Labor Relations, the local school teachers went on strike during negotiations for a new contract. Judge Gladys Kessler ordered them to return to work and to submit their dispute to fact finding. There was to be a tri-partite board, and the parties selected me as the neutral chair. You may recall that the Teacher's Union selected your brother-in-law Mavin as their member on the fact finding panel.

The parties had over 50 contract provisions unresolved. There also was the prospect that the Judge would fine the Union for going on strike. The media had a great deal of interest in the fact finding and the papers covered the hearings. I had to request the Judge for an extension of the July date she had set for the report. In order to complete it, I took a hotel suite where I worked day and night. I also held an off the record meeting with the Union President and the Superintendent before completing the report. Also, I requested the partisan members of the panel not to participate in the findings to increase its acceptability to both sides.

We held a press conference which was carried on TV to issue the report and announce the major findings. Although the Union did not accept it right away, the parties used it as a framework for a final agreement as I had suggested and they reached agreement shortly before the schools were scheduled to open. It turned out very successfully.

CF: And during this period were you involved with the Ford/UAW arbitration system?

JH: In 1974 the UAW and Ford management approached me to talk about my becoming an additional umpire under their collective-bargaining contract.

CF: Who was the chief umpire at that time?

JH: Jim Healey was the umpire. I had met him years before when I was in Boston. After I became an umpire with Ford, we talked on the phone and wanted to get together but it just never worked out that way; it's one of the things I missed. I wasn't able to renew my brief acquaintance with Healy. I knew him in Boston as a member of the Industrial Relations Research Association. When I was a young lawyer I joined the IRRA and having joined around 1957, it made me one of the older members of that organization. I didn't keep my membership straight through, but after becoming an arbitrator I again became a member and continued membership since.

I was very pleased to become an additional umpire with Ford because that was where my father had worked, and I had worked there also. They had a busy schedule of cases, exclusively discipline and discharge. I traveled to most of their locations, which were as far away as Los Angeles. They had a number of plants in the Louisville- Kentucky area, Cleveland, Detroit. (I had a lot of cases in Detroit involving the Rouge plant and other plants



in the area) Cincinnati, Buffalo, (a small operation) Jacksonville, Florida. The cases were a variety of discipline situations.

One of the most interesting cases (I suppose it's all right to mention it at this stage, although the parties did not want to have their decisions published)

was a discharge. At one of the Kentucky plants, a male employee refused to work for a female supervisor as a matter of religious conviction. The company went through the usual process of oral warning, written reprimand, one-day and three-day suspensions and discharge. The union's argument was that the company should make a reasonable accommodation to the employee's religious belief by having him work for a male supervisor. The company's response was, "We have a program, by law and under our collective-bargaining contract, where we don't want to discriminate against females. We are moving females up in the workforce to management positions. It would be a denigration of our female supervisors to say that someone wouldn't have to work for them on the basis of religious belief. We might even be subject to suit by a female for discrimination on the basis of sex, if we did so." The company also said, "A person could have a religious belief that they didn't want to work for a black, or a Jew."

I believed this employee had a good faith religious belief. There was evidence that this individual not long before had applied for leave for a week or two to do missionary work in accordance with the tenets of his faith. It was a very fundamentalist religion.

So I not only had to apply the basic "no discrimination" provision in the agreement, but also look at the way the Supreme Court handled cases of reasonable accommodation of religious beliefs. The Supreme Court had never decided this kind of case; they still haven't

decided one. I found that the company was not required to make that kind of accommodation for religious beliefs. I enjoyed the work at Ford. I had some affinity and considerable knowledge of relationships in the auto plants, having worked there personally. I was disappointed when the time came, some ten years later, that I had to leave.

CF: Ten years is a long stint in the career of an arbitrator.

JH: The end probably grew out of one case I had handled that could have been better resolved if the parties had been more sensitive to what was involved.

The case involved a discharge for theft. The star witness for the company was an employee who testified against other employees as to what had happened.

CF: A union member?

JH: Yes, he was. There was no objection to his testimony on the part of the union. But as this individual was testifying, he would continually make mistakes that one wouldn't expect, such as getting names wrong. There was; just something wrong with him. On cross examination everybody except me knew what the situation was. I thought this person was nervous, and I tried to make him more comfortable by asking him if he wanted to take a break. From my point of view, there was something wrong with this individual. On cross examination the union representative, who was a very old-time shrewd representative, showed this fellow his written statement to the company; it was signed by an X. He asked the fellow if that was his statement, and got sort of an ambivalent answer; he asked in several ways, and finally I asked whether he could read. The witness got very upset at that question, and asked, "What difference does it make to you?" I said, "It doesn't make any difference to me.

I just want to know the facts, one way or the other. Can you, or can you not, read" He just blew up at that, and we had to have a recess. During the recess I talked with the parties. Having had that regular relationship with them, I expressed my concern about this fellow. For the first time, the company representative said, "Look, Jim [we were all on a first-name basis] we had the same concerns about him that you probably have, but what it is, is that he's retarded." They knew his low I.Q. It seemed to me in that where there is a continuing relationship with an umpire, and where both parties knew about this witness's incapacity, they should have alerted the umpire beforehand. But they didn't, and it turned into a very unpleasant situation.

CF: Sounds like it.

JH: It was embarrassing for everyone involved.

CF: Coming up to the present, are there other permanent panels on which you served?.

JH: In 1975 I was selected for the American Airlines/Flight Attendants Panel. That probably was the longest relationship I ever had.

CF: That began when?

JH: That began in 1975, and continued until about two or three years ago. Sometimes they don't tell you when you have been dropped. I had many cases with them so I assume that not receiving their cases anymore meant I was off their panel.

CF: Their financial problems have affected the volume of arbitration.

JH: I understand they are not doing a lot of arbitrating now. There is a new group on both the management and union side. I also was national arbitrator for the U.S. Postal Service and the

Rural Letter Carriers as well as the Mail Handlers, In addition, I have been on many other permanent panels and am currently on several in various industries.

CF: I was about to ask whether you wanted to make some philosophical observations on the Academy and your concerns.

JH: One of the things I suggested while I was on the Committee on Governance, was not adopted by the committee. But I still believe it is a valid point. It certainly was a disappointment to me, when I was Vice President, that I did not serve on the Executive Committee. The Executive Committee is made up of the President, the President-Elect, the Secretary/Treasurer, the past President, and a member of the Board of Governors selected by the President. It seemed to me that the vice presidents ought to be members of the Executive Committee. Vice presidents really have no duties as such; it's just an honorary recognition for service given to the Academy and puts one in line to become President-Elect. Service on the Executive Committee would better serve an individual to be considered for President-Elect. I suppose one of the reasons it's done that way by the President is to select an individual convenient to get together with for meetings. But in this day and age people can communicate by telephone. The present selection method can have an element of favoritism.

I had mentioned earlier how important I believe it to be for members to have a good grounding in the history of the Academy and an interest in it, particularly at this time when the Academy is in a period of transition. The arbitration field itself is in a period of transition. For me, and I suppose for other members who have been arbitrating for many years, my practice is still a traditional practice. I haven't found the caseload to be going down; I

continue to have a very heavy caseload. For newer members apparently that is not happening. The newer members are looking more and more into areas of alternative dispute resolution, particularly employment arbitration where there are no unions involved. More and more employers are providing this kind of procedure for their non-union employees, in a wide variety of arrangements. Often it's part of an understanding with new employees that they will use that kind of procedure if there is a dispute. AAA is encouraging employers to enter into such arrangements and to utilize the services of the AAA and arbitrators on various AAA panels. I was concerned three or four years ago, when I learned that AAA in some offices was advising non-union employers that they probably wouldn't want to use the traditional labor-management arbitrators because they were so steeped in the "just cause" standard.

CF: As you know, there have been changes in AAA, and they are still feeling their way.

JH: This whole area is still evolving. I am a very traditional kind of an arbitrator, perhaps conservative from the point of view of those interested in these newer areas.

CF: You find traditional labor arbitration still has validity? Is that what you mean?

JH: Right, and I suppose that's not the trend. We may very well see a new leadership in the AFL-CIO, and new beginnings in the non-union sector. It probably will be a slow process. But I expect that in the rest of my professional life I will continue to be involved in the type of arbitration I have always done.

CF: Where one has a heavy or adequate caseload in collective bargaining situations, there is not much of an incentive to go look for other things. Where that kind of activity is shrinking, and the other kind has been growing, that's where people are interested.

JH: Other than California, I'm not sure just how much is going on.

CF: In Massachusetts a recent change provides that AAA. statutory remedies will go to arbitrators in the ADR procedure. I asked Arnie Zack how many such cases there were. Thus far it's a low figure, something like 25.

It's a very interesting and significant development but hardly something so big that at this stage, it replaces traditional labor/management arbitration. Yet undoubtedly things are going to be different Arbitration isn't exempt from any of the changes. But I think there is much less going on than is talked about.

JH: One of the areas that is growing is the public sector. In Florida there is a lot of activity among arbitrators in the public sector, particularly in mediation. I think one has to be certified down there, and mediators are court appointed. A number of our members who have retired and now live in Florida are doing that kind of work.

CF: I think we have to stop for today.

JH: There's not much more to add.

CF: We have been talking about your personal experience as an arbitrator and as a black, and today we are not going to be able to talk about it. I'm just wondering whether it's something that we can incorporate in a more focussed examination of what has occurred, and what might be done to expand diversity in the arbitration profession.

JH: I suppose we can. Over the years I participated in training programs, including one that the AAA set up with the cooperation of Howard University, at its business school, for training black arbitrators. That was quite a number of years ago. Over these years I have sat down one-on-one with many young blacks, both male and female, who wanted to become arbitrators.

CF: You came into the practice of arbitration not as a black arbitrator but as an individual who, like virtually everyone who has become an arbitrator, had the kind of education and background and training and experience that moved one into this profession. The extent to which being black affected, your entrance into the profession, or your success in the profession, or your personal experiences in the profession with your colleagues, is something which might appropriately form part of this interview. But I think we don't have the time to do it now. Let's leave it as something to be done. We can't do it before the Baltimore continuing education session, let's put it down for that.

JH: All right. Fine.