National Academy of Arbitrators

HISTORY COMMITTEE INTERVIEW

Theodore St. Antoine

NAA President, 1999

Interviewed by William H. Holley, Jr.

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Presidential Interview with Theodore J. St. Antoine

By William H. Holley, Jr.

Holley: Tell me about your background.

St. Antoine: I was born in St. Albans, Vermont, which lies in a beautiful valley between Lake Champlain and the Green Mountains. The population at the time was about 8,000. My father was a relatively big frog in that extremely tiny puddle. He was president of the local board of trade. He ran a music store, selling pianos, phonographs, and the old 78 rpm records. As an offshoot he built the first radio station in Northern New England, which sounds like quite a substantial accomplishment until you take a look at what's in Northern England. I remember feeling like a rather privileged little kid, with my father holding forth on his radio station every day. Then came the Depression and Dad lost everything - the store, the radio station, the works. He never fully recovered and the best he could do thereafter was to manage a sales office for other people.

I vowed and determined right then and there that when I grew up I was not going to be any part of the entrepreneurial world. I was going to be a professional. I was going to be a lawyer and practice on Wall Street and make $100,000 a year. Remember, we are talking 1940s dollars. I persisted in that belief until I went to college at Fordham in New York City and the good Jesuits got hold of me and introduced me to the social encyclicals of Popes Leo XIII and Pius XI. They turned me completely around and I decided to go into labor relations. I would work for Walter

Reuther and the UAW. My father's comment on that was, "Ted, you can do whatever you want, but you should know that most unions are either corrupt or Communist!" Nevertheless, I stuck by my plans.

Following law school at Michigan, I went into the Army during the Korean War and fought the battle of the Pentagon as a JAG officer. After *l}/i* years there I got released a little early to spend a delightful year at the London School of Economics. I furthered my interest in labor relations and started looking for a job. I was actually offered a position by the General Counsel of the UAW. I visited him in a somewhat seedy hotel in Washington DC and he said: "Mr. St. Antoine, I'm going to say two things to you. I'm going to offer you a job with our legal department in Detroit. Second, I'm going to recommend that you turn me down and stay right here in Washington. Walter Reuther doesn't particularly like lawyers; he likes economists. When an important legal issue comes up and he does have to deal with lawyers, he flies down to Washington and talks to the experts here. This is where you belong." I couldn't get over that kind of candor and generosity. It also happened, not insignificantly, that I was getting to know a lovely young lady in Washington who I am happy to say will be joining us here at the hotel later this evening.

In any event, I did not go to Detroit; I stayed in Washington. For a few memorable months I served on the staff of what was called the Board of Monitors, which was set up by the federal district court in DC to try to ride herd on Jimmy Hoffa and the Teamsters. Then I moved over for seven

very rewarding years in the Office of the General Counsel of the AFL-CIO. It was a small private law firm, just three of us, headed by a broad-gauged chap named Al Woll, a former U.S. Attorney from Chicago. I had the good fortune to be there ait an exciting time for labor and employment law. It was the tail end of the Eisenhower period and then came the Kennedy/Johnson administrations. Our position as counsel for the Federation constantly thrust us into important policy debates.

The first brief I ever wrote was for the U.S. Supreme Court, and that was heady stuff for a youngster. Then I did a fair amount of work with Congress on the Landrum-Griffiri Act in 1959, dealing with union democracy, and Title VII of the 1964 Civil Rights Act. At a dinner meeting one night while Landrum-Griffin was under consideration, I sat across the table from then-Senator John Kennedy, the floor manager of the bill. Two things about Kennedy stand out in my mind. First, how fragile the man looked physically, up close. My senior partner, Al Woll, was the host for the evening. Kennedy's office demanded that we provide him with a very bland dinner, not the thick steak and heaping potatoes the rest of us devoured. Second, I was impressed by what a quick and thorough study Kennedy was, despite Ms reputation back then as an intellectual lightweight. Before a dozen or so of DCs top labor law specialists, this nonlawyer more then held his own for almost an hour in working his way through the intricacies of Landrum-Griffin.

The last worthwhile contribution I like to think I made in those years was having a small hand in the passage of Title VII on equal employment opportunity. In my opinion, the AFL-CIO and its President George Meany did not receive adequate credit for their role in the enactment of Title VII. The Kennedy Administration's original draft of what became the 1964 Civil Rights Act did not contain a fair employment provision. Kennedy feared it was so controversial it would sink the whole proposal. Meany went to the White House and insisted an EEO title should be included. Kennedy said, "Surely, George, you can keep your own people in line." Meany responded, "Jack, that's just the problem; I can't. We need a law that we can blame."

By then, in some respects, the glow of Washington was beginning to taper off. I found that you often spent more time worrying about who was going to get what prestigious; position than about what substantive work was going to be done. One of my former classmates at Michigan Law School inquired whether I might be interested in teaching. I had never planned on being a teacher but I had done some guest speaking at Georgetown and George Washington and around the country. As part of my job I had done quite a bit of scholarly writing. I found I enjoyed both. It seemed as if it would be delightful to be able to speak and write without worrying whether some client's ox was being gored. Now, I don't recall ever saying or writing anything while I was in practice that was contrary to my own personal beliefs. But there were certain areas you carefully

avoided getting into so what you said couldn't be used against you in some subsequent legal confrontation. All this came together and I headed off to teach in Ann Arbor in the fall of 1965.

Holley: I'd like to fill in the gap between your Fordham days and law school. You went to Michigan for law school?

St. Antoine: Yes, the University of Michigan Law School. Maybe I should say a word about that choice. This story is about 75% true. Remember I came from Vermont. Vermont was one of the last states that did not require anybody to go to law school in oi'der to practice. To become a lawyer, you could read law in some attorney's office and then take the bar exam. About half the lawyers in St. Albans had gone down to that law school in Cambridge, Massachusetts. ITie other half hadn't gone to law school at all. From my wise and penetrating perspective of a 10- or 11-year-old, I couldn't see any difference between those two groups of lawyers. So I said to myself, when I grow up and go to law school, I'm going to a place that makes a difference. That eliminated Harvard from my consideration.

Then, in 1944,1 picked up the newspaper from my front porch. We had now moved to Burlington, the metropolis of Vermont with almost 30,000 people. The *Free Press* had put the heads of the two Presidential candidates, FDR and Tom Dewey, on the bodies of two boxers. Instead of the usual "tale of the tape," with weights and measurements of chests and waists and so on, they had brief biographical data. And one of the things those two quite disparate people had in common was that they had both

gone to Columbia Law School. That Law School obviously made a difference. So I decided that I too would go to Columbia. I applied to Columbia in my senior year at Fordham. For anyone who thinks I was being too blase about all this, I should mention that attending law school in the '40s or '50s was an easy matter. All the real academic types were going on to graduate school for Ph.D.s. Law was an unseemly philistine profession for anyone with intellectual pretensions. All you needed for law school was an undergraduate degree and the necessary cash.

At any rate, I was headed for Columbia Law School. My mother, however, kept telling me I was a very arrogant young man and I ought to apply to some backup school. I assured her I didn't need any backup school. But she kept harping on the subject until finally I said: "All right, Ma, you name any other school in the country and I will apply to it. But I'm going to Columbia." Well, she had done graduate nursing at Michigan and she understood they had a pretty good law school there. So I applied.

I got two acceptance letters. The one from Columbia was a single page, which stated: "You are hereby admitted to the class of 1954. If you do not register by such and such a time, we may give your place in the class to someone else." I thought that was a bluff as they probably didn't have anyone else available for the spot. But they added they would also cancel a scholarship they were awarding me, and that was more serious. Then came Michigan. Their letter read: "Welcome to Ann Arbor! We are looking forward to having you with us for the next three years." It went on

like that for two or three single-spaced pages. I was shocked. Columbia, my long-time ambition, had responded in this cold, formal fashion, while Michigan had come through with this warm welcome. I needed advice.

The person who handled placement at Fordham College got in touch with the Dean of Fordham Law School for me. He turned out to be a very nice man who did not ask an obvious but nasty question. Instead, he wanted to know how much time I had spent west of the Hudson River. He found it amusing when I reported that upon finishing final exams, I would head to the Palisades Amusemem: Park in New Jersey to celebrate. He warned me to beware of typical New England/New York provincial views and said I should expand my horizons. Coincidentally, he had just returned from an ABA inspection trip to the Michigan Law School, and was very high on the place. He said, "Even discounting for my cross-city prejudices against Columbia, I think Michigan is the better law school. At least it's just as good and will give you an entirely new perspective on the United States." So I took him at his word and headed west.

I must say that a wonderful man at Michigan, Russell Smith, taught me a great deal of labor law and a smattering of labor economics. He taught me even more about just how much it means to be a genuinely professional person who can also be a modest and caring human being. I have never met anybody with so many intellectual strengths who was so totally devoid of the arrogance arid self-centeredness that people with those powers often exhibit.

Holley: Do you consider him to be your mentor?

St. Antoine: Well, in some respects, yes. But I think Russ probably would have guided me into a good, safe job in a big, blue-chip corporate law firm if he had had his druthers. He was a moderate Republican about whose evenhanded, often anguished, judgment the students had created legends. His wife Bertha was active in the first Eisenhower-Stevenson election. She was a strong Stevenson supporter. The story was that, as they approached the polling place, Russ said, "Bertha, why don't we just walk around the block and talk this over one more time?" When I returned to the faculty, I finally worked up the gumption to ask Russ whether the story was true. He sort of laughed and allowed as how "the essence of it was."

Holley: Who would you consider your mentors or people who have influenced you?

St. Antoine: Quite a few people have had a significant influence on my career. I've got to give credit to that rather hotheaded young Jesuit at Fordham who first set before me the Papal encyclicals on social justice. They wound up having an enormous impact on my thinking. Russ Smith of course was influential in nurturing me during law school and introducing me to the labor law field. He didn't have much to do with my choice of the union side. But he inculcated a profound sense of respect for the person who tries hard to be fair and objective in resolving disputes among labor and management or among employers and employees. Russ had an attitude of openness and impartiality that has always stuck with me.

During my law practice I worked with a rather extraordinary person, a tall, imposing Southern aristocrat named Tom Harris. His family practically disowned him when he joined Arthur Goldberg as counsel for the CIO. He was the Associate General Counsel of the AFL-CIO, a one-person legal department, when I went with General Counsel Al Woll's separate law firm. Tom was very bright, a splendid writer, with a wry, often biting wit. He had gone to Columbia Law School and had clerked for Harlan Fiske Stone on the Supreme Court. He was as close to a true, all-around mentor as I ever had.

Shortly after I joined the Woll firm, Tom took me to lunch at a great little French restaurant near AFL-CIO headquarters, Chez Francois, which later moved out to Virginia and became a much more upscale establishment. It was a Friday. This was pre-Vatican II and, like the good Irish Catholic I mostly was, despite my French name, I was having my designated fish. Tom leaned over and spoke in his usual deep, somber tones, "Well, St. Antoine, I see you're conforming, like any proper Papist, to the requirements offish on Friday." There was a long pause. Then he said, "You know, I really do believe that I may be the only union lawyer in the District of Columbia who can eat pork on Friday!"

Holley: Do you recall the name of the Jesuit who had such an effect on you?

St. Antoine: I don't have any idea what his name was. Oddly enough, I didn't find him that special a figure. He didn't even strike me as a mentor. He

was overly zealous; he tried to convince us that the stock market was evil and played no useful economic role. Anyway, it was the social encyclicals and the other material he placed before us that counted. They emphasized the need for all persons to have an income that provides a good living for their families, and for working people to have the right to organize and achieve some balance of economic power and job security. That was what set me going.

Holley: Did you meet him after college?

St. Antoine: Oh, no. This was in a course at Fordham on Ethics. I only hope this revelation doesn't cost Fordham some rich endowment because of the ill effects its education may be producing on impressionable young people!

Holley: Were there others besides the Jesuit, Russell Smith, and Tom Harris?

St. Antoine: Let me stay with Russ Smith for a while. It was truly extraordinary how he treated me when I returned to Michigan to join the faculty. He was a national figure, a President of the National Academy of Arbitrators, and he had single-handedly produced what I think was the second major labor casebook after Archie Cox's. Both books were best sellers. Within a couple of weeks after my arrival, he came padding into my office and said: "Ted, Leroy Merrifield and I are planning a new edition of our labor law casebook. Now, you have to get your classes prepared and you will want to do some original research and writing. I don't mean to put the slightest pressure on you. But would you *ye* interested in joining Leroy and me on

our book?" Before Russ could change his mind, I immediately said, "Yes." Then Russ repeated, "I certainly don't wish to push you on this, so please don't hesitate to say 'No' if you'd rather not do it." And I kept insisting I was quite willing.

Russ continued: "Now, we must talk about royalties. Let me see if this would be agreeable to you. What I suggest is that Leroy should get 50% of the royalties and you should get 50% of the royalties." Completely flabbergasted, I could only stutter, "Russ, you know mathematics is not my forte but I do believe the way things add up, you have left yourself mighty little!" He said: "Oh, that's exactly the way I planned it. I am going to be the elder statesman and you're going to do all the hard work. In my view, that means you should get all the royalties. I'll look over your shoulder and just make suggestions." And then he added hastily, "Of course you won't have to follow my suggestions if they don't make sense!" And that was it. Russ was gone from his own work except that we retained his name and his organisational outline. The royalties put a couple of my kids through college.

Holley: Is there anyone else?

St. Antoine: I'm intrigued, Bill, by your interest in mentors and influences. I might have regarded myself as quite independent and self-sufficient but your questions have made me realize how much I am indebted to a number of people along the way. Most of them I would not think of as mentors in the usual sense but they either opened doors for me or were

outstanding models of the kind of professional person I aspired to be. Several of the latter are members of the National Academy or members of my own Law School faculty. They are very much alive and well and I wouldn't like to embarrass them by singling them out by name.

Once more, however, I can go back to dear old Russ Smith, now deceased. Shortly after getting me involved in his casebook, he suggested that I do some labor arbitration. He said, "I think you'll find this would provide some very practical insights and it would enrich your teaching and writing." But I said I feared my union background was going to disqualify me for some period of time. Then a fascinating thing happened. During my Washington days, my senior partner Al Woll was union co-chair of what in certain ways was the most desirable committee in the ABA Labor Section, the one covering NLRB practice and procedure. That put the committee members in direct contact with Board officials. We met a couple of times a year. As you can imagine, when it came to doing Al's portion of the committee's written product, that was mostly my job. So I got to work with a very brilliant and quite conservative Indianapolis lawyer, Fred Anderson, who was management co-chair of the committee. After I had been at Michigan for a while, Fred kept pestering me, "When are you going to start arbitrating, Ted?" I told him about the same doubts I had expressed to Russ. I felt I needed to wait a few years and let my union association wear off. Fred shot right back: "No, no, Ted, quite the

contrary. You let me know the minute you start arbitrating. I want to have you while you are still leaning over backwards to be fair!"

Holley: About what year did you have your first arbitration hearing?

St. Antoine: I started arbitrating in the late '60s or early '70s but not very much. I became Dean of the Law School in 1971 and at that point I suspended my listing with the American Arbitration Association. I retained my place on a couple of permanent arbitration panels but otherwise I maintained a pretty lean arbitration schedule while I was Dean. During that period someone else who plainly had a good deal of influence on my career was Robben Fleming. Bob was President of the University of Michigan at the time. He resigned from the United Auto Workers' Public Review Board because he had become a director at Chrysler and that created possible conflicts of interests in the eyes of the Union. He urged my appointment as his successor and indeed I got the position.

On the Public Review Board I met, among other splendid people, two of the noblest figures I have encountered anywhere. One was the Chair, Monsignor George Higgins, the famous "labor priest." The second was Frank McCulloch, former Chairman of the NLRB. In an often shoddy world, George and Frank were both solid 24-karat articles - stern and tough when necessary, but always deeply humane and committed. When George retired as Chair of the PF.B in 2000,1 succeeded him. So you can see how much I owe to Bob Fleming.

Holley: Is Bob Fleming still there?

St. Antoine: Bob is still living in Ann Arbor. He's long since retired from the University Presidency, of course. While he held that position he and I did a couple of seminars together at the Law School. That was great fun. Bob could crook his finger at almost any of the top union, management, or government officials in the country and they would be more than delighted to be a guest speaker at the seminar. Needless to say, I took care of such minor matters as reading and grading the seminar papers. But Bob added a large dimension, both intellectually and socially.

My wife Lloyd and I had one fascinating evening with Bob, Bob's gracious wife Sally, and Walter Reuther and his wife May. I don't recall anyone else. The two men had recently returned from separate trips to Yugoslavia. This was back in the heyday of Tito and Communism, when all manufacturing firms were theoretically owned by the workers. Fleming and Reuther both agreed that when you put those workers in the same big offices as the management people who had previously run the enterprise, the workers acted very much like any businessman running an operation. Bob was a strong believer in the notion that people are greatly shaped by the positions they occupy, and that for the most part ideology plays a smaller role once someone is firmly ensconced in a particular job.

I have to think that I kept some of my collectivist attitudes when I became an administrator at Michigan. I once gave a speech to a bunch of our Law School secretaries who were thinking of joining a union. I told them frankly that I would not mind at all it they voted for it. Indeed, the

chief secretary had told me she wouldn't mind either. She thought it would be a lot easier to deal with a single union representative rather than thirty or more overqualified secretaries, I did use the occasion, however, to pass along an insight on labor economics I had gleaned from Russell Smith. Unions don't have much to do with the total percentage of corporate (or institutional) income that winds up in the pockets of wage earners. This is the conventional wisdom of most labor economists from the days of Paul Douglas through Albert Rees. Over time, a pretty consistent 65% to 70% of corporate income has gone to the workers. Rees calculated that unions increase *rates* of pay, he first thought 10% to 15% and later 15% to 20%. But those increases in rates are generally offset by decreases in the number of employees.

In fact, contrary to the popular view, unionism increases the efficiency of most enterprises. Management makes the operation more efficient by employing fewer but better employees. That's how employers maintain that steady 65-70% income distribution despite the 10-20% increase in pay rates. One can argue a certain amount of unemployment is the unhappy byproduct for the working class as a whole. That was the message I conveyed to the secretaries for whatever use they might wish to make of it. A young chap sat in the front row taking copious notes. Afterwards he came up to me and introduced himself. He said: "I'm one of the 160 in your labor law class and so you probably don't know me. I'm the head of the National Lawyers Guild student chapter and I was hoping I

could catch you in an unfair labor practice. I regret I haven't been able to." I thought that was a rather nice compliment.

Holley: And the results of the election?

St. Antoine: I was afraid you'd ask that. My quasi-captive audience speech, as objective as I tried to make it, was apparently more "effective" than I ever intended. The Union won the Uni versity-wide clerical unit but the Law School, which had been a hot bed of organizing, voted against it.

Holley: Let's spend some time talking about your interest in the Academy and your admission into the Academy.

St. Antoine: After I had been arbitrating just a few years, the Michigan Mafia, as I fondly think of them, began to get after to me to join the Academy. Mark Kahn led the charge and I'm sure Russ Smith egged him on. At the outset the Membership Committee was a little tough. With deaning and all I couldn't handle more than half a dozen or so cases a year and initially I was turned down. But Mark kept after me and I edged up toward a dozen a year. Mark said, "We'll make use of that special provision for people who do scholarly writing and that should push you over the top." It did.

I belong to a lot of professional organizations and I'll simply repeat what Academy member after Academy member has said. There is a pride in the profession and a pride in their colleagues that is unparalleled. Some other groups may have the same sense of professionalism. But coupled with that is a personal warmth on the part of members toward one another that I have never found equaled in any other organization. Part of

the reason may be that arbitrators, especially nonacademic arbitrators, lead a rather lonely professional life. They can't easily share intimacies with other persons in the same general field, particularly not the largest group, the advocates who appear before them. But arbitrators can relax and not worry about being so discreet when they mingle with fellow arbitrators, and preeminently that means., naturally, the most experienced and highly qualified arbitrators, fellow members of the Academy!

In any event, I find the Academy an extraordinary institution. I'm always impressed listening to our discussions. Sometimes an individual member may go overboard in the middle of a debate. It becomes like a faculty debate. How can such bright people say such foolish things? Yet the end result is invariably a better result than I could have come up with if I had to resolve the issue by myself- well, that's almost always true.

Holley: After you were admitted, what type of committee work did you do within the Academy?

St. Antoine: My biggest early assignment was from Ted Jones, who made me program chair for the Washington DC meeting in 1982. He got me under a palm tree in Maui the previous year and of course I would agree to almost anything there. Perhaps perversely for an academic, I felt we should stay away from subjects that were too theoretical and try to make this a truly practical program. Our theme became the conduct of the hearing. Archie Cox moderated a session on due process and Ben Aaron gave one of his usual masterly presentations on the subject. Dick Mittenthal did a

marvelous job telling how to write an opinion. I only regret that Dick didn't mention he likes to compose his decisions with Mozart playing in the background. What better explanation could there be for the artful elegance of Dick's opinions?

For me the highlights of the program were the breakout sessions. We split into six groups to consider two different areas. One subject was procedural rulings during the hearing. The other was the admissibility of evidence. We had some top union and management lawyers role-playing in one scenario and used video tapes for the second. Issues were posed and then the audience, consisting of arbitrators and advocates, pitched in with impromptu solutions. We made audio tapes of all six breakout sessions on both subjects. Then I did something that was enormous fun. My good secretary and her colleagues at M ichigan transcribed and collated all the tapes so that it was as if you were reading the transcript of one big conference. Thus, all the questions and answers on any one subject were arranged in sequence, regardless of the breakout from which they were drawn. Then I edited the whole batch and selected the best comments for publication in the *Annual Proceedings.*

My greatest enjoyment came from the juxtaposition of remarks from the various breakouts, which of course were uttered with no knowledge of what was being said in a different room. For example, one distinguished advocate or arbitrator would say: "I don't even know why anybody would raise a question like that. The answer is so obvious; it's

'A.'" In another breakout an equally distinguished advocate or arbitrator, with a nice command of English, would have said, "The answer to that is exquisitely easy; it's 'B.'" I placed the quotes one after the other, just as if they had actually been said at the same time in the same meeting room. Then I sat back and awaited the explosion upon publication. None came. Most Academy members (and their annual guests) seem to be big people who can enjoy a laugh at their own expense.

Another committee I worked on dealt with arbitrator training. That's not the phrase Rich Bloch said I should use. He said it had the unpopular connotation of "training new [rival] arbitrators." I should speak instead of "arbitrator development." Ben Aaron was the initial chair of that committee and then I took over as chair. We came up with some strong proposals but they did not receive a warm reception for implementation at the national level. We finally compromised by recommending that the regions invite nonmembers from time to time to participate in their programs, with special attention being paid to minorities and women.

I still believe strongly that it's a mark of a profession to be less concerned about your own welfare than about the institution of which you are a part. We should have a tradition of making sure that fresh blood is flowing in on a regular basis. I realize it is a lot easier for a part-timer like me to hold forth in this way. I am not financially dependent on my arbitration practice. I can fully understand that many full-time arbitrators are worried about the decline we have seen in the labor movement and the

decline that may portend in the number of traditional union-management arbitration cases. But I cannot escape the feeling we have a professional obligation to assist young aspirants to move into the field.

Finally, among my major Academy activities, I must mention the editing of *The Common Law of the Workplace.* As you know, this is a compendium of some of the leading principles in labor arbitration that were developed over the first half century of the Academy's existence. The project was initiated by Arnie Zack during his term as Academy President. Three succeeding Presidents, Ted Weatherill, George Nicolau, and Milt Ruben saw it through. Some of the Academy's best scholars wrote the various chapters and several former Academy Presidents were advisors. In part *The Common Law* was designed to celebrate our 50th anniversary in 1997. It was also intended to serve as a basic guide for everyone involved in arbitration, especially the less experienced persons who were moving into the burgeoning field of nonunion employment arbitration. The hope was the latter would profit from absorbing the standards of more traditional union-management arbitration and would avoid any tainting of the whole process by novices' errors or misconduct.

Before authorizing the project, the Academy's Board of Governors insisted the book would have to state clearly that the views expressed in it were those of the individual authors, and not any official pronouncement of the Academy. Moreover, no one would be under any obligation to follow those views. Finally, when there was a division of opinion among

reputable arbitrators, all the differing positions would be fairly reflected. With those understandings, we went to work. Now, arbitrators tend by nature to be soloists, and not necessarily the best teamplayers. Somehow, however, I was blessed with the most cordial and cooperative crew imaginable. It was smooth sailing to the finish line and I feel we made a significant addition to the literature on labor and employment arbitration.

Holley: So you served on the Board of Governors, became a Vice President, and then became a President? Let's focus on your term as President.

St. Antoine: Every president of this kind of organization knows that the executive director, secretary-treasurer, or whatever the title may be, is the person who is going to run the opieration on a day-to-day basis. I owe you an enormous debt of gratitude for counseling me on the major decisions, then seeing that I made them and that they were properly implemented, and all the while keeping the regular business of the Academy on track.

Holley: It was a pleasure. Now, when you were elected, did you have any particular goals in mind that you wanted to accomplish?

St. Antoine: The thing I most wanted to do was to appoint a committee that would serve somewhat like the equivalent of our current Future Directions Committee, but with a less ambitious mandate. I was especially concerned about improving attendance at our annual meeting and about what kinds of persons we should be admitting to membership. Dennis Nolan had given a ringing address about the need to look for candidates beyond the group of

traditional labor arbitrators. I thought this was an issue that had to be addressed. Then my predecessor, Jim Harkless, proposed a similar committee fairly late in his term. So three of us got together - Jim, my successor-elect John Kagel, and 1 - and all of us had a hand in assembling that committee. Jim as the incumbent President made the excellent choice of George Fleischli as Chair.

I thought the committee came up with some very helpful views. They had fresh, imaginative ideas about sprucing up our meetings. They were more conservative about sticking with traditional qualifications for membership. On that score I think there has been a change in attitude, even though only a few years have passed since the Fleischli Report. We may now be more receptive to giving greater weight to experience in doing nonunion employment arbitrations.

Holley: Did you have any problems that you would like to address?

St. Antoine: The biggest substantive policy issue I confronted was whether the Academy should file an amicus brief in the *Circuit City* case in the U.S. Supreme Court. The immediate legal question was whether the coverage of the pro-arbitration Federal Arbitration Act (FAA) should be read broadly or narrowly. Specifically, should the *exclusion* of employment contracts from the Act be confined to the transportation industries or extended generally. The legislative history would suggest a broad exclusion and thus narrow federal coverage. But the statutory text, and I

thought the salutary policy of broad, uniform federal coverage, supported a limited exclusion of employment contracts.

For me, whether to apply uniform federal law to most arbitration agreements, rather than a crazy-quilt of diverse state laws, was an important question in itself. But looming behind this technical point was an even more fundamental issue. In the famous *Gilmer* case the Supreme Court had decided that under the FAA an employer could require individual nonunion employees to agree that all their workplace disputes would go to arbitration rather than to court. This meant that, as a condition of employment, workers would even have to waive their statutory rights to take civil rights claims before a judge or jury. This so-called mandatory arbitration outraged most academic observers. The National Academy had also adopted a resolution opposing the process.

Despite these theoretical objections, I felt differently on purely pragmatic grounds. Several studies indicated arbitration actually enables more workers to get some kind of "day in court." The EEOC does not have the staff to take most claims to court. It is estimated you must have a complaint approaching $200,000 in value to make it worthwhile for an experienced lawyer to go to court on a Title VII or other discrimination claim. Most rank-and-file workers have only a job and little money at stake. You can go to arbitration much more cheaply, even all by yourself if you have a little intestinal fortitude. Other studies show that employees actually have a better winning percentage in arbitration than in court.

In any event, I was opposed to the Academy's entering the *Circuit City* litigation. Mandatory arbitration as such was not at issue. I felt membership sentiment was divided on FAA coverage. Concededly, of course, limiting the scope of the Act would limit the scope of *Gilmer.* The upshot was I set up a debate on the question before the Board of Governors. Dennis Nolan and others made all the right arguments why we should support broad FAA coverage or else not file a brief at all. They had a most formidable adversary in the late Dave Feller. But when we recessed for lunch, I remember that you, Bill, thought Dave's proposal to file in *Circuit City* would fail. Dave was a magician at advocacy, however, and somehow during the noon hour he turned the Board around. I certainly would salute his debating prowess. But I still think it was a mistake for the Academy to enter the case and a mistake for it to take the position it did. Yet I couldn't gain much satisfaction from the 5-to-4 Supreme Court decision that sustained my position. All the Justices I would have liked to have for me were against me. So it was something of a Pyrrhic victory.

Another problem came to a head after my term as President had ended. A member had made what some persons regarded as a demeaning sexual allusion during his presentation at our fall educational conference. I investigated and concluded there was reason to take offense. An apology was requested but was refused on the grounds it was all good fun. The objectors threatened to take the matter to the floor of our forthcoming annual meeting. As a compromise they agreed to desist if I would get a

sexual harassment policy adopted. It was a clumsy document I drafted. I was primarily concerned about making a statement that we should not engage in any conduct at our meetings that would create a hostile environment for our women or minority members and guests.

When I had finished what I considered a quite innocuous pronouncement of general principle, I realized I had produced a toothless tiger. I then hastily and injudiciously added some language to the effect that enforcement measures could be taken, up to and including the termination of members or staff who violated these standards. My resolution went to the Board of Governors and was adopted with very little comment. After my term was; over, the resolution was distributed to the membership. It then blew up in my face.

All kinds of objections were registered. Several other categories of discrimination besides sexual and racial harassment ought to have been included. The whole resolution offended free speech. I ought to have required due process guarantees in enforcement. On the latter count I fear the critics were quite right. I was too heavy-handed. I should have made explicit what I simply left as implicit. I should have spelled out appropriate sanctions and procedures. That document was my biggest administrative gaffe and ironically it didn't develop until after my Presidency. I must confess to some resentment about the whole affair. Why, for example, didn't anyone: raise these objections when I still had some power and could have made adjustments?

Holley: Let's talk about the qualifications for President.

St. Antoine: You can certainly provide a list of Boy or Girl Scout virtues here. But one quality I think is terribly important and may be overlooked - and that is energy, pure energy. Energy is definitely not sufficient but it is necessary. There are times when things pile up on you. The Academy Presidency is generally not a terribly demanding job in terms of endurance. But there are occasions in any administrative position when you have a long siege of work and you simply have to hang in there.

Vision and imagination are important. A President needs to have some fresh ideas and an agenda, some goals he or she wishes to achieve. That should be coupled with a sense of diplomacy. For every new idea a President has, some very able members will think it's a bad idea. They would rather have things left as they are. So I think diplomacy and respect for other points of view are vitally important.

Finally, an essential quality is balanced judgment. That includes being able to listen to both sides of a position with a reasonably open mind, even if you naturally lean toward one side. You need to give the other side a fair opportunity to convince you that you are wrong. Since things are rarely all one way or another, you should try if possible to come up with a solution that includes some points from both sides. That can't always be done. Sometimes you do have an either/or decision to make. But even then I think it is terribly important to listen very hard to people on the other side. This organization is filled with strong-minded, able

individuals. They understand and can accept disagreement. But they resent having their ideas dismissed out of hand. The last thing a President ought to be is too quick to disregard anyone's thoughts just because the person disagrees with you.

Holley: Just a few minutes left. Is there anything else you would like to say?

St. Antoine: I think we have done a pretty good job of covering most of it.

Holley: It was very interesting. This is going to be a great project.

St. Antoine: Very good, sir. Good luck on the rest of the project.