Oral History of
DAVID B. ISBELL
SEVENTH SESSION - FEBRUARY 24, 2009

Sinclair: This is session seven of David Isbell's oral history tapes for the D.C. Circuit Historical Society. Let's take up your professional life during the period 1979 to 1995.

Isbell: All right.

Sinclair: And that period begins with Covington & Burling relocating to its present location at 1201 Pennsylvania Avenue, NW. Where had the firm been before that?

Isbell: For the previous eight years we had been in a building at 888 16th Street, in the first block north of Lafayette Park and next to the Hay-Adams Hotel. The building was a handsome one that had been designed and built for us, and the firm was the sole occupant of all but the ground floor, which was occupied by the Motion Picture Association. That building had been intended to accommodate us, at our then-anticipated rate of growth, for fifteen years, but long before that time was up, we had outgrown it and spilled over into a relatively new office building a block west of our main building, on the first block of Connecticut, just north of Lafayette Park, and the firm was clearly expanding at a rate that was going to continue. So the elders in the firm sensibly decided that we ought to start all over again and get a large piece of a larger building that would last us for a substantially longer time than that building had done. We wound up arranging to be the anchor tenant of a much larger building going up at 1201 Pennsylvania Avenue, NW, where we had a thirty-five-year lease with options for additional space that would accommodate the whole firm and its anticipated growth in that period of time. And it has in fact accommodated, along with some additional space in an adjoining building, the growth of what is now the home office of the firm for the last twenty-nine years, although in the course of that time we have established a number of branch offices, both in this country (in New

York City, San Francisco and three other locations in California), and abroad (London, Brussels, and most recently Beijing). That building, designed by the architectural firm Skidmore Owings & Merrill, is a pretty handsome one, though not as beautiful as the one we had on 16th Street.

There was some hesitation, some doubt, among the partners as to whether moving to Pennsylvania Avenue east of the White House was a good thing to do. Most of other big firms in Washington were north of the White House and west of 14th Street, and the general area we were moving to, on the north side of Pennsylvania, though opposite the buildings of the Federal Triangle, was not very new or attractive, though some redevelopment was under way, and there were very few decent restaurants in the area. But our move to 1201 Pennsylvania proved to be a farsighted decision, because most of the other large firms have followed our lead and moved to the area, and a lot of new office buildings have gone up in the area, along with a substantial proliferation of decent restaurants.

Sinclair: Pennsylvania Avenue is certainly a prime address to have for a law firm these days.

Isbell: Yes, and with the migration of law firms into this area, there's been a pick up in the general quality of the neighborhood on the north side of Pennsylvania, with handsome new office buildings and refurbished but preserved older, historic ones. And a site like ours on Pennsylvania east of the White House offers a good view of the inaugural parades up Pennsylvania every four years, and our rooftop terrace, and balconies on some of the firm's offices are splendid spots from which to watch the fireworks on the Mall on the Fourth of July. So it's really a very satisfactory place.

Sinclair: To what do you attribute the firm's expansion at this time?

Isbell: Well, we were attracting more business, so we were hiring more associates to help handle it, though we weren't yet actively promoting the firm or looking for new business in the fashion that's since become widespread, let alone pursuing partners in other firms who would fill a niche in our firm and bring new clients with them. We were still expanding internally. Virtually all our partners were homegrown, promoted from the ranks. We had always occasionally taken into the firm someone special, like John Lord O'Brien, who was generally considered at that time to be the Dean of the American legal profession; Hugh Cox, who came to the firm on his own initiative from the Cleary, Gottlieb firm, where he'd been a name partner in the firm's Washington office; Gerry Gesell, who had been recruited from a staff position at the SEC by Dean Acheson; former Senator John Sherman Cooper; Edwin Zimmerman, who'd been a professor at Stanford Law School and then Assistant Attorney General for the Antitrust Division at Justice; and Chuck Ruff who had approached the firm after serving as United States Attorney for the District of Columbia.

Sinclair: Was there a general uptick in the need for legal services at this time? Why do you think Covington was growing at the pace it was?

Isbell: I guess there probably was a general up tick in the demand for lawyers, because it's my impression that most other law firms were also growing at an accelerating pace.

At the time I started at the firm, and I think still when I became a partner, Covington was the largest firm in Washington, and it had been so for quite a while. However, during that period of general expansion of law firms, several other Washington firms grew faster than we did, and we lost our position as the largest (though not, of course, our position as the best, or at least one of the best).

Sinclair: Did there come a time when Covington started growing in a different way?

Isbell: Yes. The change came about slowly, but over time there were marked changes. We started actively seeking out new clients by such means as presentations about the firm's resources; expanding geographically by establishing offices in other cities in America, notably, New York (where we merged with a smaller firm already established in New York) and San Francisco, and in foreign countries—England, Belgium and most recently China; and recruiting partners and other senior lawyers from both other firms (who often brought clients with them) and government. The practice of law generally became a whole new ball game, and all the large firms (and many small- and medium-sized firms) play the game in pretty much the same fashion.

However, I don't think those changes in the nature of our practice had started at the time that we moved to what was then our only office but now is our headquarters office, at 1201 Pennsylvania Avenue.

Sinclair: Weren't there some partners in the firm who'd been recruited from other firms or from government even before the major change in practice that you've described?

Isbell: Yes. All of those I mentioned a while ago except Chuck Ruff preceded those changes.

Sinclair: Ruff was another laterally recruited partner, isn't that right? And I notice that we happen to be sitting in a conference room named for him.

Isbell: Well, he came to us laterally, but we hadn't sought him out; he was the one who initiated the contact, and we were definitely pleased that he'd done so.

Sinclair: What had been his background?

Isbell: I'm pretty sure he hadn't previously ever been in private practice. He was a graduate of Columbia Law School, and had taught at several different law schools, including one

in Liberia, which was where he had contracted the disease that left him wheelchair-bound. That disease was something of a mystery. Its effects were very similar to polio's, but he was told that it was not polio but some other disease that could not be identified. He then held a series of governmental positions. He was either the third or the fourth Special Counsel in the Watergate investigation, and immediately before he joined us, he had been the US Attorney for the District of Columbia.

Sinclair: Now, you had a role in bringing him to Covington, isn't that right?

Isbell: Yes, but not a very active role. He did not know me or anyone else at the firm, but a former colleague of his at the United States Attorney's office knew me from our days together as members of the D.C. Bar Board of Governors, and volunteered to contact me to ask whether the firm might be interested in taking him on. He did so; I made the appropriate inquiries, and Chuck was invited to join the firm, where he soon became a major partner, greatly respected by all of the lawyers. I had the good fortune of working on a couple of cases with him, and we became good friends. There came a time when Chuck left the firm to become Corporation Counsel of the District of Columbia (a position which has since been renamed, more appropriately, as Attorney General of the District of Columbia). From there, he was recruited to be White House Counsel under President Clinton, and of course he became famous for his brilliant and successful representation of Clinton in the impeachment proceedings. After his stint at the White House, he returned to a warm welcome at the firm, but before long died of a heart attack, on November 19, 2000, at the all too young age of 61.

Sinclair: What committees have you been a part of at the firm?

Isbell: Well, this isn't quite a committee but it's a major firm activity, and of course a vital one for the firm's continued growth and prosperity. I was much involved in recruiting after

I'd returned to the firm from the Civil Rights Commission, and for some years after I became a partner I was in charge of our recruiting at my *alma mater* Yale Law School. That didn't involve a firm committee, so named, but it was a large and frequently changing group of partners and associates who were interested in interviewing and evaluating possible recruits.

I was also for a time a member of what could appropriately have been called the Administration Committee, or the Housekeeping Committee, though I don't remember if either of those was in fact its name. I was also for several years a member of an Art Committee, concerned with both the art hanging on the office's walls and our periodic displays of the work of local artists on an interior balcony in the building's atrium that serves as a sort of art gallery. The decision-making involved in that committee's responsibilities is really better dealt with by a Czar than a committee, and that is in fact how it's now done.

A more significant committee I had a part in—indeed, a founding part—was the Public Service Committee, which was first established in the 1960's following the Management Committee's adoption of the formal firm policy on *pro bono* activities. In fact, I had drafted that formal policy at the request of the Management Committee, shortly after I became a partner, and then became the first Chair of the committee that was called for by that policy.

Sinclair: Was there some particular reason for the firm to adopt a *pro bono* policy at that time?

Isbell: Yes. The Management Committee had decided to develop a formal policy on that subject because our recruitment efforts were encountering a growing tendency on the part of law students, when they were interviewing law firms, to ask about the firms' *pro bono* policies and activities. I guess I was asked to draft such a policy because I had something of a reputation as a

pro bono enthusiast by reason of my having spent two years at the Civil Rights Commission and then become deeply involved with the ACLU.

Actually, I was first asked to prepare an account of the various *pro bono* activities that firm lawyers had engaged in, since that was one of the things that law student interviewees were expressing an interest in. At the time I prepared that summary, there was no official firm record of any of the *pro bono* matters that firm lawyers had engaged in, because *pro bono* activities and the time spent on them were not treated as official firm matters, and there was no category of reportable time for such activities. So the summary that I prepared was based on individual recollections, which I think I retrieved by a questionnaire sent to all the firm's lawyers. After that project was completed, I was asked to draft a firm policy on the general subject. I did so, and if my memory doesn't deceive me, it was approved by the Management Committee without significant change.

Sinclair: What were the significant provisions of that policy?

Isbell: Unfortunately, I didn't keep a copy of the policy as I proposed it, because it called for the creation of a Public Service Committee, and I was appointed as the first Chair of that committee, and my copy went into the files of that committee, and at some point got disposed of, no doubt because it was superseded by a somewhat more elaborate or otherwise modified policy. The fundamental premises of the policy that I wrote and got approved are stated in the current firm policy as follows:

> The governing premises of the Firm's policies regarding public service activities are: (1) that public service is an important professional obligation of the Firm and of each lawyer; (2) that each lawyer should have the widest possible latitude in deciding the nature and extent of the public service commitments to be undertaken; (3) that public service work represents a professional commitment of equal importance and dignity to paying work; and (4) that professional activities of the Firm's lawyers in this area involve issues that, to some degree, are matters of collective interest.

My recollection tells me that the way I phrased that first proposition (although this may simply be the way I now think of it) is the proposition that public service is (or should be) an integral part of the practice of law.

In any event, one of the recommendations in my proposed policy was that there should be a Public Service Committee, and such a committee was in fact established, and I was appointed its initial chair. One of the responsibilities of the Committee Chair was to approve proposed public service projects that individual lawyers wanted to take on or, of course, disapprove them if they presented a conflict with any subsisting representation by the firm, or if there was no partner able or willing to take responsibility for supervising the project, or it was not practical to muster sufficient lawyer help to do the project competently.

Sinclair: Did you have anything further to do with developing the firm's policies about *pro bono* work?

Isbell: Well, the position as Chair of the committee provided me an opportunity (indeed, an obligation) to make some decisions of a policy nature that weren't addressed by the formal statement of policy. The most important of these, as I recall, was my decision that individual objections to a particular *pro bono* client were not a ground for the firm's turning down an otherwise suitable *pro bono* undertaking. The particular matter in which that first came up, I think, was when an associate named Jim Cohen wanted to take on, for the ACLU, the representation of the American Nazi Party, which had sought to have a meeting in a public school facility ordinarily made available to civic organizations on a first-come-first-served basis when school was not in session. Several lawyers objected to the firm's representing such a thoroughly detestable organization, but of course Jim Cohen's interest in the case was the civil liberties issue it presented, not any virtue of the client. I ruled, in substance, that the decision as

to whether a particular *pro bono* undertaking was desirable (absent a conflict, of course), was a matter for the individual lawyer proposing the matter, not the firm, to decide, and the Management Committee backed me up.

Another interesting question came up in connection with the case of *Buckley v. Valeo,* [71] challenging on First Amendment grounds various statutory restrictions on contributions to political campaigns. That case was brought to us by a newly arrived associate from Yale Law School, who subsequently became a quite prominent political figure, John Bolton. As it happened, I disagreed with the position to be advanced in that case (and had argued against it—unsuccessfully—in meetings of the national board of the ACLU), but I nonetheless cleared it as an appropriate *pro bono* undertaking. A question raised by one of the partners about that case was, why was the firm representing without charge James Buckley, the lead plaintiff in the case, who after all was a very wealthy man. My answer to that was the representation was not of Buckley with respect to his private interests, but rather the principle for which, in this case, he was simply a nominal representative. Again, my position was sustained by the firm, and I later drafted a memorandum addressing generally the issue of when it was appropriate for the firm to provide free *pro bono* representation regardless of the ability of the client to pay for the representation, which was adopted by the Public Service Committee (of which I was no longer a member).

Sinclair: Were you involved in any other firm committees?

Isbell: Yes, there were two other committees: first, the Professional Responsibility Committee, and then the Evaluation Committee.

After several years as Chair of the Public Service Committee, I stepped down as Chair but continued as a member of the committee. But after a while I decided I should not be looking

[17] 424 U.S. 1 (1976).

over the shoulders of my successors as chair, so I asked to be appointed to the then recently-established Professional Responsibility Committee. I chose that committee because I had just finished serving for six years as a member of the D.C. Bar's Legal Ethics Committee, and had gotten quite interested in that subject. So I was appointed Chair of that committee, and served in that capacity until I got kicked upstairs to senior counsel status, which at that time meant I could no longer be Chair of a committee, though I could continue as a committee member, which I still am to this day. I had been Chair of that committee for roughly 17 years.

Sinclair: Were there any particularly interesting things happening in that field during that time?

Isbell: Indeed there were. In 1983, the ABA adopted a wholly new model code of legal ethics, changing from the Model Code of Professional Responsibility to the Model Rules of Professional Conduct, so I participated in planning and conducting a series of lectures which all the firm's lawyers were expected to attend, to describe the resulting changes in the legal ethics code.

During the time when I was chair, a number of firm policies on ethics matters were formulated, as well as model forms for such things as engagement letters, with variances to make them suitable to a variety of different circumstances. There were also established annual continuing Legal Education Programs which all firm lawyers who had joined the firm in the previous year were required to attend. As Chair of the committee I was involved in all of those activities, as well as frequently giving advice to firm lawyers about particular legal ethics issues.

Sinclair: And you mentioned one other firm committee that you chaired.

Isbell: Yes; that was the Evaluation Committee, which I chaired for three or four years, I think, in the early nineties. That committee, which had not yet come into existence at the time

when I became a partner, or for some years thereafter, annually collected evaluations of senior associates (that is, those in their fifth through eight year with the firm) from each partner or counsel for whom they had done any work in the previous year, and consolidated them into a message that the Chair of the committee would personally convey to that associate, appraising his or her strengths and weaknesses and suggestions for improvement, and providing a collective judgment as to how well the associate was doing with respect to possible election to partnership status. The committee also made its recommendations to the Management Committee about partnership for those associates who had stayed with the firm to the eighth year. That elaborate process had two great benefits: for the firm, it provided an important level of confidence in those critical decisions about admission to the partnership, and it provided a very desirable assurance that there would be no unpleasant surprises for those associates who decided to stay with the firm up to the day when the new partners were announced and welcomed into the partnership.

Sinclair: How did you first get involved with the D.C. Bar—in what capacity?

Isbell: Well, first of all let me tell a bit about the origin of the D.C. Bar. It was created in 1972. It was created by the D.C. Court of Appeals, which is, of course, the highest court in the local court system. The Court did this mainly at the urging of the Bar Association of the District of Columbia (BADC), which was (and is) a private, voluntary Bar organization. The new Bar organization was not a voluntary organization but a compulsory one, also sometimes called an "Integrated" Bar, or a "Unified" Bar in the sense that lawyers had to belong to it, and pay dues to it, in order to practice law in the District of Columbia. The last time I looked, about half of the American jurisdictions had a mandatory Bar, generally named the State Bar of whichever state was involved. I believe every State Bar was created by the supreme court of the particular state involved, save the California Bar, which was established by the state legislature.

The fact that a particular Bar is mandatory means, of course, that it not only has more members than a private bar in the same jurisdiction, but as a result of all those members having to pay dues to the Bar, it commands substantially more financial resources than any voluntary Bar organization drawing on the same pool of lawyers, and so can accomplish a great deal more by way of education, training, throwing its weight around about subjects like court reform, and so forth.

I think that in all likelihood the leadership of the BADC, the largest voluntary Bar Association in the District of Columbia, in urging the Court of Appeals to create the D.C. Bar, expected that they would also be the leadership in the new organization they had brought into being, but it didn't turn out to be quite that way. The Court of Appeals' order establishing the D.C. Bar had provided that all the lawyers then authorized to practice law in the District of Columbia (by reason of having been admitted to practice in the federal District Court here) would automatically become a member of the new organization, and that there would be an initial meeting at which all those lawyers were entitled to attend, and to vote in an election, to be held at that meeting, of the initial officers and members of the Board of Governors of the new Bar.

I attended that meeting, and have a quite vivid recollection of it, and particularly of the process of electing the fifteen members of the initial Board of Governors. I don't know whether the BADC leadership had made any coordinated plans about those nominations, but a group of activist lawyers, none of whom, so far as I was aware, had been involved in pushing for the creation of this new Bar, had met and done some planning in anticipation of that election. As a result, when the time came for the Chair of that initial membership meeting to call for nominations from the floor, there were a couple of nominations of individual lawyers, accepted

by the chair, and then one of the members of the activist group nominated a full slate of names all at once, most of them being well-known lawyers who were also activists, and the Chair accepted those nominations as well. The result of this was that the initial Board of Governors of the new Bar was pretty much in the hands of the activist wing of the organization, some of whose initiatives stirred up vigorous opposition, and led in several instances to the adoption of membership referendums that resulted in clipping the wings of the D.C. Bar. That is a separate story, which I will not pursue further here.

Sinclair: Were you a member of the activist group?

Isbell: Well, I was a sympathizer, and generally inclined toward an activist approach, but I didn't know about the plotting, and was not a participant in it, though I'm pretty sure I voted for the entirety of the activists' slate. Some years later, when I ran for election as President-Elect of the D.C. Bar, it had become customary for the Bar's Nominating Committee to propose two candidates, one relatively activist and the other more conservative, and in the case of my candidacy, I was the activist and my opponent, Jude O'Donnell, who had been a president of the BADC, was the more conservative candidate (which is not to say that he was a hard-line conservative).

Sinclair: I take it that sometime thereafter you got more actively involved in the D.C. Bar?

Isbell: Yes. It so happened that the third President of the D.C. Bar was John Douglas, who was a partner at this firm and had been Assistant Attorney General for the Civil Division, as it was then called, in the Kennedy Justice Department. John was interested in exploring what the Bar could do in the way of supporting *pro bono* activities, and he appointed me as Chair of a committee to consider that subject and report back with our recommendations. I don't remember the details, but the committee recommended that there be a program supported by Bar dues that

encouraged, in one facet or another, specified kinds of *pro bono* activities. That committee took maybe a year to complete its work.

Sinclair: Did that lead on to other involvement with the D.C. Bar?

Isbell: Yes. Not long after I'd presented that committee's report to the Board of Governors, the board decided to establish a Committee on Legal Ethics. And because I'd gotten to be known by the Board of Governors in connection with that earlier committee, I had the good fortune of being appointed to the newly established Ethics Committee. I knew virtually nothing about legal ethics at that time, and I'd guess my ignorance on the subject was not at all unusual at that time, since it was not a subject that was typically part of law school curricula. While I was at Yale, I had just one two-hour lecture on the subject, I think, late in the final year. My contemporaries at Harvard didn't even have that much exposure to the field. It just wasn't a field that many lawyers, including academics, studied, a situation that continued until, in the aftermath of the *Watergate* events, when a number of high-level lawyers (including Attorney General Mitchell) involved in that criminal episode or its cover-up went to prison for their conduct, and the ABA, in reaction, added a requirement that law schools have a compulsory course on the subject, as a requirement for accreditation. In any event, I soon found the subject of legal ethics a very interesting one, and so was an active member of the new D.C. Bar Legal Ethics Committee. The initial appointees to the committee drew straws to determine who would have an initial three-year, two-year, or a single year's appointment. I had the good luck of getting one of the three-year terms, and then getting reappointed for a second full term (which, after the first round, were all for three years). During the six years I served on that committee, I wrote more of the committee's opinions than any other member, and in the second term would likely have been appointed as chair, but by then I was also a member of the Bar's Board of

Governors, and the by-laws prohibited board members from holding any other position appointed by that board. The dual position of member of the Ethics Committee and board member did, however, serve the useful purpose of letting me serve as a sort of intermediary in the adoption of an expanded and improved version of DR 9-101 of the ABA's Model Code of Professional Conduct (the forerunner of Rule 1.11 of the Model Rules of Professional Conduct), addressing the problem of conflicts of interest for former government lawyers undertaking engagements in private practice that were substantially related to matters they had participated in while in government.

As I mentioned earlier, one of the results of those six years of experience on the D.C. Bar's Legal Ethics Committee was that when the annual time for expressing preferences about appointments to firm committees next came up, I chose to switch from the Public Service Committee to the Professional Responsibility Committee, and the Management Committee not only granted my preference but appointed me as Chair of that committee—a position in which I served for the next twenty-five-odd years—a period of enormous change in not only the ethical rules governing the legal profession, but in the manner in which law firms implemented those rules.

Sinclair: So from the D.C. Bar Ethics Committee, did you become the D.C. Bar President, or how did that come about?

Isbell: Well, first, as I mentioned in the discussion of my time on the Ethics Committee, I got elected to the D.C. Bar Board of Governors in 1981. I had had enough exposure to it in connection with the two Bar committees on which I'd served to decide that I'd find service on that board interesting. Actually, I had to run twice before I managed to get on that board. The first time, I wound up in a tie for the fifth and final slot with one other candidate for the final

open slot on the board; that tie was broken by a flip of a coin, and I lost. I ran again the next year, however, and that time I won handily—a result I attribute solely to the fact that the first run had made my name more familiar to the Bar's very large electorate—over 40,000 members, I believe, at that time.

Sinclair: So the next step up was to run for election as Bar President?

Isbell: Yes; though actually the election is of the President-Elect, who serves as a sort of vice-president for a year and then is elevated automatically to the position of President.

When I first agreed to stand for election to the Board of Governors, I was not yet thinking of going on to try for the presidency of the Bar; nor, as best I recall, was I entertaining that ambition when I ran for reelection to the Board of Governors. In fact, I'd been asked a couple of times by the Nominating Committee whether I'd be willing to run for President-Elect, and I'd turned them down. I was enjoying my experience on the Board of Governors, but I wasn't nursing any ambition to be promoted to the top spot in the Bar's hierarchy. Then, a year into that second term on the Board of Governors, I accepted another invitation from the Nominating Committee to be a candidate for President-Elect. But, truth to tell, I did so more out of a sense of duty than from any expectation that I would actually enjoy being President of the Bar.

Sinclair: Why was that?

Isbell: The reason was that a good friend of mine, Stephen Pollak, a friend from our law school days, had just been Bar President, and had had a miserable time in that position.

Sinclair: How come?

Isbell: I have to explain the general political background of what was happening at that time. For some while there had been a growing division between the activists among the Bar's members and what amounted to a conservative wing of the Bar, who tended to resist having a

bar organization in which they were compelled to be members, engaging in activities with which they disagreed. As I've mentioned, there had been such a division at the very founding of the D.C. Bar, which had resulted in some early referenda that trimmed the bar's wings. Steve had become President just as another referendum fight was going on, triggered by a board decision to ask the Court to raise the cap on Bar dues, but aimed more largely at reducing still further the scope of the Bar's permissible activities. Fighting that referendum occupied the whole year of Steve's presidency, and resulted in passage of the referendum and approval by the Court of Appeals of changes to the Bar's charter that diminished its scope. The President-Elect that year, Jim Bierbower, who should have been helping Steve as his second-in-command (like a Vice President), was a vigorous supporter of the referendum. Bierbower had declined the invitation of the Nominating Committee to be named by them as one of the candidates, waited until the committee had nominated three moderate candidates, and then got himself nominated by petition, so as clearly to stand out as the most conservative candidate and the one who would get the votes of the conservative wing of the membership. And his tactic was successful; he won the election, but with a plurality, and not a majority of the vote. So Steve had asked me, in effect, to be his substitute second-in-command and to help lead the fight against the referendum, which I did, and as I've said, that was a fight that we lost.

After that election, the Nominating Committee adopted for a while a practice of nominating just two candidates, rather than three, one of whom would be generally recognized as being relatively activist in view and the other as being relatively conservative. In the next election, the relatively conservative candidate was Jake Stein, a very well-known and capable lawyer, and among other things a former president of the Bar Association of D.C. Jake was certainly not reactionary, but also wasn't particularly interested in finding new activities to

which the Bar could devote its energies. I don't remember who his opponent was, but it was someone who was more of an activist.

So when, on the next electoral round, I was offered nomination by the Nominating Committee, I accepted it. I ran hard, seeking opportunities to speak to various groups of lawyers, including some of the smaller, ethnically-oriented bar associations. My opponent, happily for me, chose not to campaign. Anyhow, there were just the two of us as candidates, and I won the election.

Sinclair: Who was your opponent?

Isbell: It was Jude O'Donnell, also a former president of the BADC, who had been on the Board of Governors for at least one term while I was on it, and clearly was more conservative than me, though by no means an extremist or obstructionist.

Sinclair: You've indicated that, contrary to your expectations, you enjoyed your time as President, is that correct?

Isbell: I did, I really did, I enjoyed it a great deal.

Sinclair: Was it dealing with the challenges that was enjoyable? What part of it, exactly, was enjoyable to you?

Isbell: Yes, some of it was dealing with challenges, and I'll mention a couple of those. Some of it also was the potential for undertaking new and worthwhile initiatives, some of which I actually got started while I was still President-Elect. The Bar President during that year was Jake Stein, whom I've already identified. Jake wasn't himself much interested in taking on new initiatives for the Bar, but he was willing for me to do it, just so long as he knew about such things in advance and so had a chance to oppose my initiative if he was so inclined. There were, then, two such initiatives that I think got started during my time as President-Elect. One was to

get an Interest on Lawyers' Trust Accounts (IOLTA) Program adopted by the Court of Appeals for the District of Columbia; the other was to get the Court to authorize a new Rule allowing foreign lawyers to engage in the practice of law involving solely the law of the country where they were admitted to practice law.

There were also several challenging events during my year as President, one involving what amounted to a test of wills with the federal District Court, and the other such a test with the D.C. Court of Appeals. The one involving the federal court was prompted by a subpoena *duces tecum* that had been issued to the D.C. Bar seeking various records relating to a referral service sponsored by the Bar. The staff running that referral service were concerned that some of the records sought by the subpoena would contain materials subject to the attorney-client privilege, and asked the board to seek to quash the subpoena on that ground. I argued the Bar's motion to that effect before the district judge (I've forgotten which one it was), and I got nowhere. The question we then faced was whether someone—I would be the logical candidate, as representative of the Bar—should be held in contempt, in order to appeal the Court's ruling. The Board of Governors decided instead to go ahead and comply with the subpoena (though I assume it managed to get any privileged documents covered by the subpoena appropriately redacted to preserve the privilege).

Our test of wills with the D.C. Court of Appeals had a more favorable outcome. The Bar had instituted, before I became President (though while I was a member of the board), a program of collecting confidential evaluations of the judges of the Superior Court from lawyers who had appeared before them. Each judge would be subject to such evaluation every five years (the terms of office being fifteen years). The results of these evaluations were kept entirely confidential and disclosed only to the judges so evaluated, and to the Chief Judge of that

Court—despite which, it was generally understood that the judges themselves really hated that process. There was nothing that the Superior Court could do to prevent the Bar from collecting those evaluations, but the Court of Appeals, which had created and had supervisory power over the Bar, had the power to do so. That Court, though not itself affected, was sympathetic to the wishes of the trial judges, and clearly would have liked the Board of Governors to drop the whole judicial evaluation program. Knowing that, I did my best to persuade the board to drop the program, but I could not persuade a board majority, so eventually I wrote a letter to Ted Newman, the Chief Judge of the Court of Appeals, telling him that we knew of the Court's wish but that I had been unable to persuade the board to honor it, so that if the Court really wanted us to stop the program, it would have to order us to do so—a letter that Alan Morrison, then a board member, pronounced to be a masterpiece—and the Chief Judge in due course responded to my letter by saying that the Court would not issue such a letter.

The third interesting contest of wills involved a strike by the members of the CJA Bar, the local practitioners who took representations of criminal defendants who could not pay a lawyer and could earn modest fees for such representations under the Criminal Justice Act. The object of the strike was to get the hourly rate paid for such representations under the D.C. Criminal Justice Act at the same hourly rate as those who undertook such representation in the federal District Court. I thought, and persuaded the board, that the CJA lawyers' cause was a good one, and we supported their cause in the D.C. Council. I don't remember how that effort turned out; I do, however, remember that the Federal Trade Commission then brought an antitrust proceeding against the CJA bar organization, which resulted in a determination that there had been an antitrust violation, and, unhappily, that was sustained on appeal.

Sinclair: Were you involved in any way with the D.C. Bar after your term as President ended?

Isbell: Yes. First of all, I served another year on the Board of Governors in my *ex officio* position as Immediate Past President of the Bar, and after that I ran for election and then reelection as one of the D.C. Bar's representatives in the ABA House of Delegates (I had already been such a representative, *ex officio,* in my three years as President-Elect through Immediate Past President.)

I also was asked, over the course of some years, to Chair a variety of special committees of the D.C. Bar. One of those—I think the first—was a committee to consider and recommend changes in the system of admission to the D.C. Bar. If I remember correctly, that committee issued its report and unanimous recommendations in substantially less than a year, and its report was named as the best committee report for that year (although, I think, none of our recommendations was ever actually put into effect).

The last, and in my view the most important, Bar committee that I served on, not as chair, but as co-chair, was called a Task Force rather than a committee. Its subject was "Sexual Orientation and the Legal Workplace," and its charge was "to study the possible existence and extent of bias on the basis of sexual orientation in the legal profession encountered by members of the D.C. Bar, and to make appropriate recommendations based on the findings of the study." There had been studies of that subject done in several other jurisdictions, but only by non-governmental Bar associations, not by any State Bars—that is, "integrated" or compulsory Bars like the D.C. Bar, to which lawyers had to belong in order to practice law. So ours was the first Bar of that kind that had taken on that sensitive subject. One of the two co-chairs was a heterosexual man (me), and the other a gay, or rather lesbian, woman. The ten other members of

the task force were similarly split as to sexual orientation, though on the whole the gay and lesbian members tended to be more actively engaged in the matter than the straight ones (myself excepted; I was a very active participant in every part of the Task Force's work).

. We hired, as a consultant, Dr. Alan R. Andreason, a Professor of Marketing at the Georgetown University School of Business, to help us in designing, testing, executing, and analyzing the results of surveys by questionnaire of both lawyers and employers of lawyers in the D.C. metropolitan area, as well as in drafting and testing the questionnaires to be used in the surveys. I have a particularly sharp recollection of an amusing incident early in Dr. Andreason's work for the Task Force. He had done an initial draft of one of the questionnaires we were going to use in our surveys—probably the survey of lawyers. I am a particularly picky editor, not only of the work of others, but also of my own, and I went after Dr. Andreason's draft with my editorial impulses in full play, so that the draft that I returned to him was covered with my penciled editorial suggestions. Dr. Andreason took my markups with equanimity and good humor. When he next met with the Task Force to discuss his drafts, he showed them my markup and he said, "When I have students who complain of my marking up their papers, I show them this."

That Task Force was appointed in July 1995, and its work was meant to be completed in two years, but in fact it took substantially longer than that. Our Final Report was dated March 1999. There were several reasons why it took so long, one being that there were a number of disagreements within the group to be ironed out, and I was very anxious that we wind up with a unanimous report if at all possible. I was also insistent that we adopt no factual propositions on the basis of their being self-evident to some—or even all—of the members of the Task Force. I wanted to be able to say that we had documentary support for everything we said. And, as my

heavy-handed editing of Dr. Andreason's draft questionnaire suggested, I was very picky about details, as was one of the lesbian members of the group. Indeed, it was asserted as to her and me that we must have been "separated at birth."

Our finished product was in two volumes, one of Findings and Recommendations, and the other of Appendices. The Findings identified a number of circumstances where gay and lesbian lawyers were experiencing discriminatory treatment; those were set out under the captions *Hiring, Career Advancement, Compensation/Benefits; Daily Worklife; Other Workplace Issues; Anti-Discrimination Measures; Positive Workplace Experiences;* and *Respondents' Comments on the Task Force's Charge and Its Sponsorship By The D.C. Bar.* The Recommendations were largely addressed to law firms, and were set out under the captions *Hiring, Advancement, Compensation/Benefits,* and *Daily Work Environment.* There were also some recommendations directed to the D.C. Bar about publicizing the Task Force's Report and related matters.

The resulting report was, I believe, a first-rate product, and certainly one that I was and still am proud of. It was approved unanimously by the members of the Task Force, and in addition by a unanimous vote of the Bar's Board of Governors (with, however, one abstention).

Sinclair: What was the result of your report?

Isbell: Well, if you're asking what effect it had on the actual practices of law firms and other employers of lawyers, with respect to treating gay and lesbian lawyers differently from other lawyers, I don't know. I certainly hope that it brought about some improvement in the working life experience of such lawyers who had experienced discriminatory practices in their employment.