Oral History of
DAVID B. ISBELL
NINTH SESSION - APRIL 14, 2009

Sinclair: This is the ninth and final interview of David Isbell's oral history for the D.C. Circuit Historical Society.

We're going to begin today with two interesting anecdotes relating to David's name—the first one relating to his middle name and the Daughters of the American Revolution, and the other relating to his family name. So with that introduction—

Isbell: My middle name is Bradford—so the full name, which I seldom use, is David Bradford Isbell. I generally just use only the middle initial. But the reason for the Bradford is that one of the New England Isbells, the first of whom came to Massachusetts in the 1630s, married someone in the line of heritage of William Bradford—*the* William Bradford, who was the first Governor of the Plymouth Colony. Over the years I've run into several other people whose middle name was Bradford for the same reason as my parents gave me that middle name—that is, they can claim descent from *the* William Bradford. (And my son Nicholas has that middle name, as does one of my grandsons—the one who, tragically, is autistic.)

One of those people was a man named William Bradford Reynolds, who rose to some prominence during the Reagan Administration. He was nominated and confirmed as Assistant Attorney General for Civil Rights, which didn't seem to be a particularly appropriate position for him because he was very conservative and not a vigorous proponent of civil rights. He was later nominated for promotion to the position of Deputy Attorney General, but that nomination stirred up a storm of opposition, and failed of confirmation by the Senate. I'm not sure, but I think the event I'm about to recount took place before the failure of that attempted promotion, but certainly after he had become widely known for his conservative views.

There came a time when I was asked whether Florence and I would be willing to host an evening get-together of the Yale Law School Association of Washington (of which, at one time, I had been President). The Association occasionally arranged such gatherings at the home of some member, where there would be light refreshments served and there'd be a guest speaker, who'd give a talk and then take questions from the audience. We had previously hosted such a meeting several times, and whenever asked we'd agree to do so unless we had some prior commitment for the date that was contemplated for the event. So we readily agreed to do it on this particular evening, without knowing who the special guest was going to be. When we learned that the guest was going to be Reynolds, Florence, who is a very committed supporter of civil rights as well as civil liberties, was appalled, but I wasn't about to rescind our acceptance of the request that we host the event simply because we disagreed with the proposed speaker, so we went ahead with it.

When Reynolds arrived at the door that evening, I recognized him immediately because his name and face had been much in the media. Of course, I introduced myself and welcomed him. A little later, in the light refreshments portion of the evening, I introduced Reynolds to someone else, identifying him as Bill Reynolds, and he said, "No no; that's Brad"—meaning that he customarily used his middle name instead of his first name. By coincidence, I had had occasion not long before that to make a calculation as to what portion of my gene pool would be attributed to this great-great-great-great-great-great-great-great-great grandfather—twelve generations back, I think—and I'd calculated that that number meant that unless there'd been some intermarriage among his descendants along the way, William Bradford's genes would have accounted for no more than 1/4096th of my gene pool. And so in response to Reynolds' insisting on being addressed as Brad, I said, "I'm sure your middle name is Bradford for the

same reason as mine is—namely that you're descended from William Bradford," and then I explained I had recently calculated how little of my gene pool was attributable to the Bradfords. He said, "Oh, I'm closer than that." Unfortunately, I simply laughed at that response, although it occurred to me afterward that a better response would have been along lines of asking if he was merely 11 generations away, and so could claim a 1/2048th Bradford component in his genetic inheritance, or even 10 generations, with a 1/1024th.

I had made that the calculation of the portion of my gene pool attributable to this distinguished ancestor in preparation for giving a talk in federal District Court in connection with the swearing-in of new citizens. It was, I guess, the standard practice in the District Court, that such swearings-in would be rotated among the judges of the District Court, and whichever judge had the responsibility for a particular year's ceremony would invite the incumbent President of the D.C. Bar to give a talk to the new citizens. So I had prepared a talk that made reference to the common trait of pride of ancestry among Americans who could claim multiple generations of American forbearers, in order to make fun of that kind of thing, which really doesn't deserve to be taken seriously. In that connection, I was planning to tell the true anecdote of Franklin Roosevelt's addressing the Daughters of the American Revolution. Have you ever heard of that?

Sinclair: I don't think so.

Isbell: Well, the Daughters of the American Revolution, or DAR, took great pride in being able to trace their American ancestry back to the 18th century. And, when Roosevelt had spoken before the DAR, he had tweaked them gently about that by addressing them as "Fellow Immigrants." I also planned to make self-deprecatory reference to my own ability to claim one

of the original Pilgrims who arrived in America in 1620 as an ancestor, by pointing out how minuscule a portion of my genetic inheritance could be traced to him.

As I entered the courtroom on that occasion, however, I noticed that sitting in the jury box were a group of women who can best be described as Helen Hokinson women. I don't know whether that name will mean anything to you, but Helen Hokinson was a cartoonist for *The New Yorker* whose cartoons always involved women of a certain age—sort of middle class, maybe upper-middle-class women, and generally with an ample bosom. These women in the jury box just looked like that kind of woman, and they all had badges on their chests. I looked closely and realized they were from the DAR. They were there to make a little speech of welcome to the new citizens. So, happily, I saw that before it was my time to speak and so was able to avoid making fun of the DAR, although I did talk about the statistics of my relationship with my ancestor, William Bradford.

Sinclair: Saved by the bell!

Isbell: Yes!

Sinclair: Now, the other interesting anecdote relating to your name has to do with your family name, and is referred to in your notes as "Extraordinary Circumstances." We've briefly discussed it, but I don't know the details. Please enlighten me.

Isbell: Well, this has to do with the relative rarity of the name, the family name Isbell. Have you ever met another Isbell?

Sinclair: I have not.

Isbell: Ever seen the name before?

Sinclair: It was not unfamiliar to me, but I couldn't place it specifically.

Isbell: Well, that could have been because the name got some public exposure when I was President of the D.C. Bar. Anyhow, most people I meet, unless they are from the Deep South, where the Isbell line seems to have been more fertile than in New England, where I came from, have never met another Isbell. And until the incident I'm about to recount, I had only met two Isbells who were not in my immediate family.

Sinclair: So what was that incident, and when did it occur?

Isbell: It occurred, probably, sometime in the 1970's, at a time when I was preparing a case for trial in Pittsburgh, and I called Florence from Pittsburgh to tell her when I was coming home. She, at that time, was the staff director of the local affiliate of the ACLU, and she had a private line in her office. I dialed the number of that private line, and a woman answered. I knew from her voice that she was not Florence, so I said, "I'd like to speak to Mrs. Isbell," and she replied, "This is Mrs. Isbell." It turned out that I had dialed the area code for Western Pennsylvania rather than the one for D.C., and I'd reached a woman in the Pittsburgh area whose phone number, aside from the area code, was the same as Florence's private line, and whose family name happened to be Isbell. So that was an interesting coincidence, but it was not the end of this story. About a year later, I was walking around the firm's offices for no special reason, and I noticed that there was a secretarial nameplate saying *Miss Isbell,* so I went into her office and introduced myself, and then told her the story about my phone call from Pittsburgh—and she said, "That was my mother."

Sinclair: Wow!

Isbell: You know, you could write that up as a sort of O. Henry short story, and you couldn't sell it. It's just too improbable!

Sinclair: Right, exactly. That's amazing!

Isbell: But it is a true story and that young woman is still at the firm. She's married now, no longer named Isbell, but when I run into her in the halls, I address her as Cousin.

Sinclair: Now, let's turn to the "taper-down and move to senior status period" in your career. Why don't you start by telling us about the firm's policy for tapering down and moving to senior status?

Isbell: The firm agreement, as it affected me and others of my seniority in the firm, provided that when a partner was going to reach the age of seventy during the firm's fiscal year, he will acquire senior status as of the start of that fiscal year—which is to say, on October first of the previous calendar year. That status meant he or she would no longer be a partner in the sense of sharing profits, or of having a vote on partnership matters. He or she would no longer be expected to practice law, although he could continue to do so if he wished to do so, in which case he bore the title of senior counsel rather than partner. He could also choose to give up the practice of law entirely, and would then be called a retired partner. In either case, he would be entitled to a pension whose amount was a specified fraction of the average of five years best earnings as an active partner. Prior to the age at which one became senior, there was at that time a five-year "taper-down" period, during which in each successive year, his take from the firm was diminished until, upon reaching senior status, it would be at the level of the pension.

So I started the taper-down process on October 1, 1993, the start of the fiscal year in which I would have my 65th birthday, and then five years later, in October, 1998, I acquired full senior status. After my class, and maybe one more class, the firm agreement was changed both to move up the compulsory senior status to age sixty-five, and to abbreviate the taper-down period to two years. Under both the earlier and this revised firm agreement, a partner could also take senior status earlier than the mandatory time. I'm not sure exactly where things stand now,

but I'm pretty sure the compulsory senior status is still sixty-five. I must say I was glad that it wasn't sixty-five at the time I reached that age.

Sinclair: Why?

Isbell: I rather resented being put out to pasture at seventy, and would have resented it the more if it had come earlier. But I must confess that I've gotten well adjusted to it by now.

Sinclair: During the taper-down process, were you working fewer hours?

Isbell: Well, since our take was reduced, I must confess, I reduced my time progressively too, although I have since heard it said that the idea of the taper-down period was that the partner would continue to do revenue-generating work at the same pace as before, and his reduced take would accumulate savings for the firm that would help to finance his pension after he acquired full seniority.

Sinclair: Did you enjoy the taper-down process?

Isbell: Well, at first, as I've said, I somewhat resented it. I didn't like the idea of not practicing, which was going to be the eventual result. But I think during that taper-down period I got accustomed to the idea and I found myself with a leisure that I wasn't used to having. That turned out to be pretty easy to get used to. In addition, I wasn't totally loafing during the taper-down period, and I'm still not doing so, though I have eased off significantly in the last few years. I had taken on two new good works projects in 1992, partly in anticipation of the upcoming taper-down period—the Veterans Consortium Pro Bono Program and the Disability Rights Council—both of which we discussed in our last session. Also, as we'll discuss later in this session, in 1995 I undertook the preparation of a summary of the law of lawyering in the District of Columbia, which was truly an enormous project. And, in 1996, I started teaching a course in Professional Responsibility at Georgetown, in the spring term, while continuing with

the Civil Liberties Seminar at the University of Virginia, so it hasn't been a totally leisurely and nonprofessional life I've lived since acquiring senior status.

Sinclair: Why, at sixty-five, did you still feel—Did you still have energy? You still had energy and you still wanted to do it? You didn't want to give it up? Was that it?

Isbell: Yes.

Sinclair: By the age of seventy, had you changed your mind? Were you a little bit more willing to let go?

Isbell: Yes, I can't say I was totally reconciled to the idea, but I was getting used to it.

Sinclair: You said there was an option to go retired or to go senior and still practice. Why did you choose senior counsel?

Isbell: Well, because I wanted to continue to at least have a hand in practice. I knew I wanted to continue to teach, although it really wasn't necessary for me to have kept my senior counsel status in order to teach. Teaching isn't the practice of law, so that a lawyer who's no longer admitted to a bar would be engaged in the unauthorized practice of law by teaching law. But I was also still handling matters that did involve actual practice, and billable time. I was interested in them and I wanted to keep doing them—and to stay being available to do them, too—although now I've finally gotten to the point where I'm more likely to refer a would-be client to a colleague in the firm or else to a lawyer in another firm.

Sinclair: Since the time you took senior status, about how much have you worked per year? How many hours or so?

Isbell: Well, I believe I reported to the firm somewhat more than 1,000 hours for the fiscal year ending September 30 of last year. That doesn't mean that number of billable hours, of course; most of the time I report is not billable—teaching, for example, or working with good

works organizations of various sorts—or, one of the things I'm now actively engaged in is, as a member of the Committee on Admission and Practice of the U.S. Court of Appeals for Veterans Claims, investigating possible disciplinary actions against practitioners before that Court.

So, I still report time, though the reportable time is seldom more than five or six hours in a day, and often much less, since not everything I do at the office is of interest to the firm at all.

Sinclair: Five days a week?

Isbell: It does continue generally to be five days a week, although my starting hours tend to be later and my departures earlier. I also feel free to take a particular day off or even a week or more off if I'm so inclined and the time in question hasn't already been committed for something that will require my presence at the firm. In fact, this last summer (2009), I took five weeks off, at home, to enjoy a series of visits by my son and my daughter who live in London and Paris, respectively, and by five of their six children.

Sinclair: Has your billable work mostly focused on counseling, or has it been litigation?

Isbell: I haven't done any litigation for some years now—in fact, the disciplinary matter involving the former federal Judge Abraham Sofaer, which I will describe a little later, which ended in 2000, was the last litigation that I handled. My avoiding litigation is largely due to my hearing having continued to deteriorate, and, of course, litigation really requires that you hear what's being said. So such legal practice as I engage is solely counseling.

Sinclair: Professional responsibility, is that it?

Isbell: Almost entirely, yes.

Sinclair: Can you describe, maybe give a couple examples, of some of the matters you've worked on?

Isbell: There's a small white-collar litigation boutique that has occasionally sought my advice about cases that they were handling or had been asked to handle; also, a handful of instances where I gave advice to lawyers and/or their firms about how to respond to inquiries from the Office of Bar Counsel, which ordinarily are triggered by a complaint by a third party. I've been consulted from time to time about ethical matters by a cause organization called the Government Accountability Project, and about issues in the same area by AARP, which is a paying client of the firm There is also a quite prominent tax firm that I've advised on ethical issues from time to time.

Sinclair: Your mentioned a matter involving Abraham Sofaer; what was that?

Isbell: That was a matter that came to me because of my expertise in professional responsibility, but wound up as litigation—and as I've said was the last piece of litigation I handled. That came to me while I was still in the taper-down period, and concluded, so far as my participation was concerned, after I was senior counsel.

Abraham Sofaer had had a very distinguished career. He was a United States District Court Judge, then he was the Legal Advisor in the State Department, in the Reagan Administration. While he was in the latter position, he was involved, in the sense of giving legal advice, in the President's decision to bomb Libya, in retaliation for Libya's responsibility for the bombing of a nightclub in Germany where American servicemen were killed and likely the targets of the bombing. I can't remember the exact year of that. In any event, the matter in which I represented him came up several years after he had left the State Department (in 1990) and gone back to the Hughes Hubbard & Reed law firm, where he had had his professional career before he was appointed to be a District Court judge and then Legal Adviser at the State Department.

The case in which I represented Judge Sofaer related to the bombing of the Pan Am flight 103 over Lockerbie, Scotland, in December 1988, killing all 259 people who were on the plane, and eleven persons on the ground where the plane's wreckage landed. (It should be noted that that tragic event occurred at a time when Sofaer was still at the State Department.)

There was, of course, a good deal of public outrage about that bombing, and the killing of all those innocent people (who included my son Pascal's best friend from college, and a brother of one of my partners). There were indications that Libya was responsible for the Pan Am 103 bombing, and that it had been done in revenge for the retaliatory bombing of Libya under President Reagan, so the public anger was largely directed against Libya (although the victims' families also brought a suit against Pan Am). Moreover, the United States managed to identify two secret agents of the Libyan government who had been involved in planting the bomb on flight 103, and the Justice Department, in 1991, indicted both of them for it. Both the United States and Great Britain demanded that Libya deliver up the two indicted culprits for trial, and that it pay substantial compensation to the families of the victims (who had also sued Pan Am and attempted to sue Libya).

Initially, Libya denied any responsibility for the Pan Am 103 bombing, and stuck to that public position for several years. However, in 1992 or '93, Sofaer was approached by intermediaries acting on behalf of the Libyan government, to ask if he would be willing to represent Libya in attempting to negotiate a settlement that would include both producing the two indicted Libyans for trial and payment of compensation to the families of the victims of the bombing.

Sofaer was admirably well qualified to undertake an engagement of that sort, and he persuaded the Hughes Hubbard firm to agree to taking on that challenging engagement. An

engagement letter was prepared, calling for Libya to pay the firm a fee of three million dollars a year, in quarterly installments, and a large staff of firm lawyers was assigned to work on the matter. Given the public fury against Libya generated by the Pan Am 103 disaster, the firm's management anticipated some adverse publicity when news of the firm's representation of Libya about that very event hit the newspapers, even though the object of the representation was to bring about the very results that the United States, the United Kingdom and the families of the victims of the crime were all demanding. Sofaer, however, evidently did not foresee the vehemence with which the firm's press release announcing the representation of Libya would be greeted by the public; indeed, he was so shocked by it that he decided to cancel the representation (and, among other things, return the first of the quarterly fee installments, which had already been paid).

It should be noted that negotiations of the very kind that Sofaer undertook to pursue on Libya's behalf did eventually occur, and resulted in Libya's producing the two indicted defendants for trial in Scotland (one of whom was acquitted and released; the other found guilty and sentenced to life in prison, though he was recently released, terminally ill with cancer, and allowed to return to Libya); and paying several billions of dollars in compensation for the families of the victims of the bombing. But Sofaer and Hughes Hubbard were not the ones who brought that settlement about.

The withdrawal of Sofaer (and Hughes Hubbard) from the representation of Libya was not the end of the story for Sofaer, however, for not long after that withdrawal had been announced, he received an inquiry from the D.C. Bar Counsel, who at that time was Leonard Becker, asking for information regarding that representation and suggesting that Sofaer's undertaking it might have violated Rule 1.11 of the District of Columbia Rules of Professional

Conduct, which prohibits a former government lawyer from accepting "other employment in connection with a matter which is the same as, or substantially related to, a matter in which the lawyer participated personally and substantially as a public officer or employee." It should be noted that the D.C. version of Rule 1.11 varies significantly from the version that appears in the ABA Model Rules and in the corresponding Rule of every other American jurisdiction (save California, which has no rule whatever on the subject), in prohibiting a former government lawyer not only from participating in the *same* matter as one the lawyer had participated personally and substantially while in government, but also from participating in a *substantially related* such matter. In no other American jurisdiction would Sofaer have been in ethical jeopardy for having briefly undertaken his representation of Libya.

It was at that early point in the dialogue between Sofaer and Bar Counsel (in July 1993), that I was retained as counsel to Sofaer. (Of course, Covington was also retained, but I was in charge of the representation.) That representation continued until 2000, and throughout that period it was the principal billable professional matter in which I was engaged.

In Bar Counsel's initially tentative view, the matter in which Sofaer had participated as a public officer or employee that was substantially related to his aborted representation of Libya was his involvement, while Legal Adviser in the State Department, in the decision to bomb Libya in retaliation for its bombing of the nightclub in Germany in which some American service members had been killed. Over time, as Bar Counsel and I exchanged information and argument, Bar Counsel changed his theory and found the necessary substantial relationship instead in the circumstance that Sofaer had still been the State Department Legal Adviser when the Justice Department was still investigating the Pan Am 103 bombing, and so had some knowledge about it that was not publicly known.

After considerable fact collecting and exchanges of views between Bar Counsel and me, he offered Sofaer a settlement in which he would find that Sofaer had violated D.C. Rule 1.11, but would impose as a penalty only an informal admonition—the very lightest of possible penalties, and one that at that time would not have been made a matter of public record (though it would have been reported to other jurisdictions in which Sofaer was a member of the Bar). That mildest of all possible disciplinary penalties was the most ever urged by Bar Counsel or approved by any reviewing panel or court, but Sofaer steadfastly refused to accept any condemnation at all, however mild.

So, the matter went to a Hearing Committee, which sustained Bar Counsel's view, albeit by a divided vote, and then an appeal to the Board on Professional Responsibility, which again upheld Bar Counsel's charge, though again by a divided vote, and then an appeal to the D.C. Court of Appeals, at which point Sofaer told me that although I had done an admirable job in representing him, he had retained Sam Dash, then a faculty member at Georgetown University Law Center, to brief and argue that appeal. He also asked me, however, to continue on the matter, assisting Dash in preparing his brief and arguing the case, albeit without pay. By that time I had gotten so engaged in the matter that I was quite willing to continue in that limited capacity, and I had considerable input on Dash's draft brief, though he declined to make one argument that I proposed and that I believed would have been a likely winner. A panel of the Court of Appeals unanimously approved the decision of the board, and a motion for reconsideration en banc, in which I had no involvement, lost by a tied vote, and ultimately, with other new counsel, Sofaer made an unsuccessful effort to secure review by the Supreme Court.

Sinclair: Switching subjects, I see your notes regarding your activities in this period of your taper-down and eventual senior status at the firm a reference to "Summer Associate Brunches." Tell me about those.

Isbell: In 1994, I was asked if Florence and I would be willing to host a brunch on Memorial Day for the summer associates. That was something of an innovation as part of the summer associate programs. There had previously been a practice of having some events (like visits to an art gallery) every summer to which all the summer associates and all the firm's Washington lawyers were invited, but none of those was repeated every year, as was proposed with these brunches. Earlier—indeed, in my first ten years or so as a lawyer with the firm—there had been a very large event to which all lawyers, summer associates and spouses were invited, at Eddie Burling, Jr.'s magnificent estate, Dinwiddie, in Middleburg. The proposed summer associate brunches would not similarly involve invitations to all the firm's lawyers and their spouses, since our house and garden, though probably larger than the average, were not big enough to accommodate that large a group, so only lawyers who were summer siblings to summer associates would be invited to these brunches.

Anyhow, we agreed to host a brunch, for the summer associates, which became a garden party and brunch. We did that for ten years, starting in 1994 and ending in 2003. It was quite a popular event and gave us a chance to meet a lot of summer associates. There came a time in 2003 when the powers-that-be decided that the party should be given by someone younger than this oldster and his wife. So it has been given since by a younger partner, Mark Lynch, and his wife, who have a nice garden, too, so it is also a garden party. The Lynches are always kind enough to invite us to their party for the summer associates, even though I no longer have the

pleasure of having a summer associate to be an adviser to (a position I refer to as a *summer sibling*).

Sinclair: Did you enjoy hosting those garden parties?

Isbell: Yes, I did. They were fun parties, and they gave me an opportunity to meet the summer associates.

Sinclair: Did Florence enjoy it?

Isbell: Yes, I'm sure she did and does; we give an annual garden party for our friends every Fourth of July.

Sinclair: Okay, would you like to talk about who here at the firm has been particularly important to you? I see your notes mention three lawyers.

Isbell: Let me try to be brief on that. In my notes I identified three colleagues who had been of particular importance to me, one of them being Charlie Horsky.

Sinclair: Why did you identify Charlie Horsky?

Isbell: I guess I'd heard something of Horsky before I came to the firm, but it wasn't until I actually arrived that I came to fully realize what an extraordinary career of good works and distinction as a lawyer he had. As I mentioned in one of our earlier interviews, he had argued the original *Korematsu* case, and of course lost that, but through no fault of his. As I've also mentioned, when I came to the firm, he was chairing a committee that got to be called the Horsky Committee—one of many such committees that he chaired, and that were so named—this one being concerned with the police practice of arrests for investigation.

So I decided very early that I was going to try to model my career on Charlie Horsky's. He was also engaged in a paying practice, making plenty of money for the firm, but managing to do all sorts of *pro bono* activities at the same time. I soon discovered, though, that I simply

didn't have the capacity to do anywhere near as many things at the same time as Charlie had. As I've previously mentioned, when he went to the Kennedy White House in 1962 to be Kennedy's advisor on national capital area affairs, he not only turned over to me the seminar on civil rights law that he'd been teaching at the University of Virginia, but he also dropped all of his other public interest activities, which included the chairmanships of the Bankruptcy Conference and of the American Civil Liberties Union affiliate of the National Capital Area, of which he was the founding chair; the (D.C.) Commissioners' Planning Council (of which he was President), and the United Negro College Campaign for D.C. (Chair). (He was also a member of the Board of Directors and later Chair of the Washington Horse Show, and at one time was Chair of the Democrats for Agnew (at the time that Agnew was running against a racist Democrat in the Maryland gubernatorial race.)) When Charlie was on a board or a committee, he'd inevitably be elected as Chairman, and he'd be an active chairman and not just a figurehead.

There came a time in the early 1990's when Charlie became quite incapacitated physically, though certainly not mentally, and had ceased coming to the office every workday in his 15- or 20-year old convertible. He was living alone at home, his wife having died several years before, and he was cared for by several women who had been hired by the firm for that purpose. He had to undergo dialysis every week, at home, and he came to be unable to use his lower limbs, and so had to move around in a wheelchair. I had become quite devoted to him, and so far as I could tell, I was the only firm lawyer who took the trouble to spend any time with him. I would take him out from time to time on weekends, simply to ride around in the car and see familiar places, and on one occasion I brought him home to join our large family Thanksgiving dinner. I also brought him to our house on several occasions for a more intimate dinner with colleagues from the firm.

Charlie was an avid reader, but I found that he was unacquainted with the series of books by Patrick O'Brien about the British Navy in the Napoleonic era, featuring an officer named Jack Aubrey, and his close friend, Steven Maturin, who was on his ship as a medical officer but also was involved in intelligence activities. There was a series, I think, of eleven books all about the same cast of characters. There was a movie made recently which was called *Master and Commander: the Far Side of the World,* with Russell Crowe as Jack Aubrey, based on two of those books that bore those titles. Anyhow, I'd enjoyed those books so much that I acquired and read each one as soon as it came out; I found that Charlie had never heard of them, so I brought them to him, a new one each time I came to visit him; and he enjoyed them, too.

Charlie died in 1997, at the age of 87, not long after having been the first recipient of the Charles Horsky Award, newly created by the Brennan Foundation at New York University—the last event to which I managed to take him.

The second partner I have listed as of particular importance to me is John Douglas, who had become a partner shortly before I arrived at the firm. He was a graduate of Princeton (where he'd played football) and of Yale Law School; he'd clerked for Justice Burton on the Supreme Court, and he'd been a Rhodes Scholar. While at Princeton, he'd been a roommate of Nicholas Katzenbach, who'd also been a Rhodes Scholar and was a professor at Yale Law School when I was there. When the Kennedy Administration came in, Katzenbach was appointed Assistant Attorney General for the Office of Legal Counsel (and subsequently Deputy Attorney General, and still later, Attorney General), and I think at Katzenbach's suggestion, John was appointed as Assistant Attorney General for what was then called the Civil Division. John invited me to join him at Justice as his personal assistant, which was a mightily tempting offer, but I had just come back to the firm from my stint at the Civil Rights Commission and had made the decision to

establish a base in practice from which I could later go to government service and to which I could then return, so I decided to stick with that decision.

After serving at Justice during the Kennedy Administration, John came back to the firm and he became something of a mentor to me. He also got me involved in Bar activities. As I've previously mentioned, John was the third President of the D.C. Bar, which was newly established in the early '70s. In that capacity he appointed me as Chair of a committee to Consider Possible Bar Support for Public Interest Activities in 1975. That committee submitted its Report (which I'm sure I drafted) to the Bar Board of Governors in 1976, recommending that the Bar provide support for various kinds of public service activities. That committee launched my career in the D.C. Bar, and, in due course, one in the American Bar Association as well, as I have recounted more fully in an earlier interview.

To get back to John Douglas, he and I remained in close contact during the times when I was pursuing the foregoing Bar activities, and occasionally I'd ask him for advice about something. He and his wife Mary became quite close friends of Florence and me. He was also active on the board of the Washington Lawyers' Committee, and Florence was an employee of the Washington Lawyers' Committee on Civil Rights Under Law for a while, so they got to know each other there. He had been, indeed, among the founders of both the National and the Washington Lawyers' Committees on Civil Rights Under Law. John was also for some period Chair of the board of the Carnegie Foundation, and he also served a term as Chair of the Yale Law School Association.

At the time that John, along with several other firm lawyers, was acquiring senior status, there was a gathering of the firm's partners at which one of us spoke about each of those senior; I spoke about John, and part of what I said then was the following:

> The word that came first to mind when I thought about proposing a toast to John Douglas was "exemplary." Two senses of the word seem apt for him. One is that of setting an example to be emulated and admired; and John, in his personal, his professional and his public life alike, surely does that—he is a man to look up to.
>
> The other sense of the word has to do with exemplifying—with embodying characteristics of some institution or collectivity. And John does this with respect to the institution that is our law firm, in two particular respects over and beyond the simple technical brilliance that of course we all share.
>
> One is unpompousness. I mean by this not simply unpretentiousness but a certain affirmative rejection of pretension. John . . . may, to be sure, sometimes carry this rejection too far. For example, in the domain of sartorial pretension, John has been known occasionally—particularly on the tennis court, to embrace what might be termed the Neo-Good Will Industries style of dress.
>
> I do not mean to suggest that Covington & Burling, or John, can't be formal, dignified or even elegant with the best of them, when occasion demands; nor, indeed, is there anything wrong with our doing so. I do suggest that we also have a tradition . . . of valuing the inner substance much more than the outward glitter. John carries on that tradition—exemplifies it—with characteristically modest gusto.
>
> The other characteristic of the firm of which John is an exemplar is commitment to public service. He has been, and remains, *l'Homme Engagé*, as André Malraux put it (or should have, if he didn't). [Here I cited his various posts and accomplishments].

The third lawyer that I consider to have had particular significance for me was Chuck Ruff, who became best known for having been White House counsel and represented President Clinton successfully in his impeachment trial. He'd had a career first in academia, teaching at four different law schools at different times. One of the law schools at which he taught was in

Liberia, in Africa. While there, he contracted the disease that left him confined to a wheelchair, which appeared for all the world to be polio, though he was told that it wasn't polio, but rather a disease that medical science could not identify. In any event, its effect was very much the same as if it had been polio.

However, that disability and confinement to a wheelchair didn't stop him from going anywhere or doing anything he wished to do professionally. He had a car that was equipped with hand levers that governed the brakes and the accelerator, and he would slide himself into the driver's seat from his wheelchair on a smooth board designed for that function, and then he would fold up the wheelchair and stick it behind him, between the back of his seat and the back seat of the car. He drove himself everywhere, and when he had to roll his wheelchair on a street, getting to or from his car and the building where he was going or had come from, he would wheel himself along fearless of the automotive traffic.

When he had to mount stairs to get somewhere (including the front steps to our house), he'd get a couple of men to help him roll the wheelchair backward up the stairs. On a trip I made with him to New York, the insurance company lawyer we'd gone to see there had his office in a building that had no accommodation at all for the handicapped. To get to the main floor, one had to get up a stairway over 15 feet in height. I found a doorman, and he and I, with Chuck also helping to roll the wheels, got him fairly quickly to the top, where we could get the elevator to our ultimate destination.

Chuck had been one of the successors of Archibald Cox as special counsel conducting the investigation of Watergate and the Nixon presidency's part therein. After that, he was appointed by President Carter to be the United States Attorney for the District of Columbia. When Carter was succeeded as President by Reagan, Chuck knew he would soon be replaced as

U.S. Attorney and not likely to be given another position in the Department of Justice, so he started considering going into private practice. The firm he was most interested in joining for that purpose, if he could, was Covington, but as it happened he didn't know personally any of the firm's partners through whom he could inquire about whether the firm would be interested in having him. He did, however, know a lawyer who knew me—one named Henry Greene, who had worked under him at the U.S. Attorney's office and was then appointed a judge of the D.C. Superior Court, but who knew me from having previously been a member of the D.C. Bar Board of Governors when I was either a board member or President of the Bar. So he asked Greene to contact me, which he did; I checked with Dan Gribbon, who was then Chair of the Management Committee, and who had a favorable impression of Chuck from some contact they had, and Dan decided that the firm should consider him. The upshot was that he came to the firm, I think as a counsel to be considered for partnership within some specified time, and he was indeed soon elevated to partner. Chuck turned out to be a most welcome addition to the partnership, and was soon elected to the Management Committee.

One of the first things he worked on here was the representation of the Baltimore firm then known as Venable, Baetjer and Howard (since simplified as Venable), which was being investigated by the Maryland Attorney General's Office on a matter involving the savings and loan crisis. It was part of that nationwide phenomenon of the savings and loan failures. I worked with Chuck on that. I also worked with him for a brief time on a fascinating case that came in to me early in Chuck's time at the office, involving a representation of Goodyear Tire and Rubber Co. That case related to an employee of Goodyear who'd been in some South American country where he'd been kidnapped by some rebel group and held for ransom—a widespread practice in some parts of Latin America at that time. Goodyear had not been as

prompt in responding to the ransom demand as the captors expected, so the employee was killed, and the family sued Goodyear for its failure to save the employee by either ransom or rescue.

Goodyear, which was not otherwise a client of Covington, had specifically asked that the firm put me in charge of that case. They had regular counsel in Pittsburgh, but the case was here and so they asked the managing partner of the Pittsburgh firm that was their regular counsel who he would recommend at Covington, and it happened that I'd had some dealings with him so he recommended me. When I cleared that case with Dan Gribbon, then the Chair of the firm's Management Committee, Gribbon asked me whether I'd had any experience with a jury trial, and I said no, and he suggested that I get Ruff to help me, since he had had plenty of jury experience.

The lead opposing counsel in that case was Irving Younger, a well-known lawyer, especially well known among young lawyers because of his riveting performance in an instructional video about cross-examination. He was a former judge, a very successful lawyer and a dramatic performer, and I looked forward to trying a case against him. He was also a very pleasant person to deal with.

The case went far enough so that we had a long interview of an expert in the field of rescuing captives from rebels in South American countries, which was an utterly fascinating new area for me. I also had a very interesting interview with a potential expert witness who had been both a judge and a professor in the Latin American country involved, who told us just about everything we needed to know about that county's law. I asked my partner Oscar Garibaldi, who is of Argentine birth but a graduate of Harvard Law School, to sit in on that interview, and was impressed by the fact that Oscar clearly had a better grasp of the pertinent law than this expert witness.

Much to my disappointment, that case got settled very quickly and so never went to trial—something that happened much too often to cases that I had a hand in, from my point of view, since it meant that I'd miss the thrill of the trial (though I eventually came to recognize that a settlement is almost always the best result from every point of view, including those of the parties and those of the system of justice).

Although Chuck was doing very well at the firm, and enjoying himself, he was asked one day by the then-mayor of the District of Columbia, Marion Barry, to be Corporation Counsel (a position whose title has since been changed to Attorney General), and he agreed to do so, out of a spirit of civic duty. I was the first person in the firm that Chuck told about his accepting the offer. As is well known, Chuck later was asked to become White House Counsel under President Clinton, and went there directly from the Corporations Counsel's office.

Chuck came back to the firm after his time as White House counsel, but he was not with us very long before he died of a heart attack. He had told me at some point not long before he left the White House that he was going to return to the firm, and that I was one of the reasons he was coming back to Covington. I was so struck by that statement that I didn't think to ask him what he meant, so I don't know how seriously I should have taken it, but of course I felt pleased and honored in any event. And I certainly always felt that there was some special contact between us.

So, those were the three men I was referring to.

Sinclair: I think there's only one more issue that we have not covered, and that is the Cornell Project.

Isbell: Cornell? Oh yes. Well, Cornell Law School sponsors a site on the Web where all sorts of legal information is available. It's called the Cornell Legal Information Institute. They

have the U.S. Code and a variety of other resources for legal research on the web. There came a time around 1995 when they decided that they would add to what they already had on the Web an American Legal Ethics Library, which would consist, first of all, of the ethics rules of every American jurisdiction, and in due course a summary of the decisional and interpretive authority of each jurisdiction on the ethics rules and related topics such as malpractice, disciplinary process and privilege. Cornell didn't have the staff to do those write-ups, but the idea was that they would recruit a law firm in each jurisdiction to undertake to do a write-up of all the authority with regard to that jurisdiction's rules.

The project contemplated starting with six major jurisdictions—of which the District of Columbia, with its enormous Bar membership, was one (the others being California, New York and, I think, Illinois and Texas), and someone suggested that the Cornell people talk to me about getting Covington to do the District of Columbia summary. This was in 1995, when I was in my taper-down period and on the way to senior status, so I felt I could find the necessary time to shepherd the project, and I certainly felt I had the necessary expertise in the field to turn out a decent product, so after proper clearance, I committed myself and the firm to doing it. It turned out to be a very substantial enterprise—even more so than I expected. I gave the ultimate product the title *Summary of the Law of Lawyering in the District of Columbia* (and will refer to it from here on as the Summary). As it stands now when printed out, the Summary is 750 single-spaced pages in length. In electronic form, it is available on the Web as part of the LII's American Legal Ethics Library; on the D.C. Bar's Web page, and on the firm's.

At the start of the project, I arranged to have each new associate coming to the firm assigned to work on the project for two weeks, in which he or she would write up the authority with respect to one of the District of Columbia's Rules of Professional Conduct, and I—or Bill

Allen, who had chaired the D.C. Bar's Legal Ethics Committee and is a splendid writer and editor, and volunteered to help—would edit the resulting product, giving all of the pieces of the project a consistent style. I also recruited a couple of other partners, Arvid Roach and Randy Wilson, to write up parts that did not focus on a particular Rule, and I wrote some of those also myself.

Someone had suggested using summer associates instead of or as well as new regular associates, but initially I rejected that suggestion, thinking the regular associates would do a better job because all of them would have had a compulsory course on legal ethics (a.k.a. professional responsibility) in law school. However, in the second summer after I'd taken on the project, I decided to try summer associates anyhow, because I wasn't altogether happy with the product I'd gotten from the new associates. I found, interestingly, that the summer associates on the whole did a somewhat better job with their summaries than the new associates had done, even though most of them had not yet had their required course in professional responsibility. I concluded the reason for that was that the summer associates knew they were going to be judged on what they produced, and they would be judged just as stringently on *pro bono* matters as they would be on payable matters, whereas the new associates knew there was a distinction there and tended to try less hard on this matter than they doubtless did on matters that they knew were for the benefit of firm clients or, if the particular project was a *pro bono* matter, it would ordinarily be one that they had volunteered to work on. (Mind you, the associates had all been newly arrived, and so perhaps not yet fully convinced that the firm gives public service work essentially the same weight as revenue-producing work.)

Anyhow, after three years, we completed the first edition, which I must say seemed to me of very good quality—a judgment in which my contacts at Cornell agreed. An aspect of the

project that I'm not sure I was fully aware of when I launched it was that if it was to continue to be useful it would have to be kept up-to-date, reflecting new authority and in addition changes to not only the District of Columbia Rules of Professional Conduct but also of the Model Rules (since one of the points covered with respect to each D.C. Rule was a comparison with the corresponding Model Rule), as to both of which there were, over time, quite numerous changes. So I undertook, in 1998, to update the whole thing. I think I did all of that myself; in any event, it was completed in December of 1999. I then undertook, at the request of my Cornell contacts, a summary of the federal and District of Columbia statutes and regulations addressing conflicts of interest involving prospective, current, and former government employees and problems arising from the differing interests of the public and the private worlds. That was completed, and added to the *Summary of the Law of Lawyering in the District of Columbia*, in October 2001. I completed a third update of the rest of the Summary in May 2004, and then a fourth, and for me final, revision in 2007. I had by then gotten a younger lawyer with an interest in ethics, Michael Rosenthal, who had been sharing my Professional Responsibility course at Georgetown, to agree to take over responsibility for maintaining and updating the Summary, and he did half of that 2007 update.

All in all, I think the Summary is a very useful document—a useful way of getting into authority or as a first step in your research. I have often used it myself, in connection with advising both clients and lawyer in the firm on D.C. Ethics matters, and I know that both the people concerned with legal ethics on the staff of the D.C. Bar and staff members of the Office of Bar Counsel have found it useful. I also have long thought that there are probably a good many of the sixty-eight thousand active members of the D.C. Bar who would find the Summary useful but are not aware of its existence, so I have tried to get the D.C. Bar to make the Summary

known to its membership. But I had to press the D.C. Bar for a couple of years before they finally agreed to make the Summary available on the bar's website, and although eventually it was put there, this was done without any particular effort to let members of the D.C. Bar know about its availability. (I think that reluctance stemmed from an understandable concern that promoting the Summary would be seen as promoting the firm that had produced it.).

Sinclair: Well, that wraps up our interviews. It's been an interesting journey.

Isbell: I've enjoyed working with you and recovering all those memories, and I've appreciated your patience and perseverance, in what's turned out to be a more strenuous effort than I'd envisioned when we started out.