Oral History of
DAVID B. ISBELL
THIRD SESSION - AUGUST 14, 2008

Sinclair: This is the third session of David Isbell's oral history for the Historical Society of the D.C. Circuit.

We left off last time with you discussing your law school experience and we are going to begin today with three semi-simultaneous occurrences between your law school graduation and your actually settling down to practice law at Covington: your marriage, your trip to India, and your interview with Justice Black. So, with that said, pick up wherever you'd like.

Isbell: I'll take them in chronological order. The marriage, which came first, was to a young French woman named Michèle Mazeran, who had come to Yale—not the law school but the graduate school—on a Fulbright Fellowship to study business administration on a two-year course leading, I believe, to a master's degree. (Yale did not yet have a separate business school at that time.) We happened to meet, we became impressed with each other, and in due course we decided to get married. We were married twice—once civilly, and once in church—because under French law the only *legal* marriage is the civil one, but as a social matter, at least among the *haute bourgeoisie* like the Mazeran family, the only *real* marriage is the church wedding. The fact that two marriages were necessary had the happy consequence, from my point of view, that we could have the legal/civil marriage in the United States, and so allow some friends and family to attend who would not have been able to get to the later, fancier proceedings in France. So we had the legal/civil marriage and reception in the backyard of my Aunt Edith Isbell's house in Hamden, a suburb of New Haven. That simple proceeding was presided over by Judge Jerome Frank.

Sinclair: How did you manage to have Judge Frank perform the ceremony?

Isbell: He was a very approachable fellow. I'd had a class with him, and in fact he later offered me a clerkship, which I hadn't sought. Although I found the offer tempting, by the time he made that offer, I had already accepted the opportunity to make a three-month lecture tour of India for the United States Information Agency (USIA).

Sinclair: How long had you and Michèle known each other before getting married?

Isbell: Slightly less than a year. I met her soon after she arrived on campus, a week or two after the start of the fall semester in September 1955, the start of my final year in law school and what was to be the first year of her two-year course. (After we married, she gave up any thought of going on with the second year of the Fulbright Fellowship.) We had the civil marriage ceremony in late July or early August 1956, and then the much more formal and elaborate religious ceremony in September, at her family's estate in Meulan, a small town—actually, more of a village—some twenty-five miles west of Paris.

Incidentally, Michèle's father had concluded that we were going to get married long before I had so concluded; indeed, I don't think she and I had even discussed the possibility when he first raised it. We had an unexpected visit from him, sometime in late winter or early spring, expressly for the purpose of meeting me and making sure that if we married (which he had clearly concluded was going to happen), then we would of course come and live in France. I still spoke pretty fluent French at that time, and he didn't speak English at all, so the conversation was entirely in French. I made clear that I had previously decided, after trying the expatriate life in both France and England, that I needed to live and pursue my career in my native country, and that was where I expected we would live if Michèle and I did get married. Mr. Mazeran did not argue the point at that time, but he clearly did not consider the question to have been settled.

Michèle and I did, as her father expected, decide not long after his visit but before the end of the school year that we wanted to get married. I'm not sure we were really deeply in love, but we certainly were infatuated with each other, and expected to have a happy and interesting married life. Although I was still certain that I wanted to live and pursue my career in the States, and I think Michèle was reasonably content about that prospect, we both certainly expected also that we would often be visiting France, as in fact turned out to be the case.

Shortly after our civil wedding, Michèle left for France, and I followed two or three weeks later, joining her, her parents, and her brother Alain at the family's country place in Meulan. During the several weeks prior to the wedding and the accompanying celebrations, the Mazerans gallantly took me around to meet and dine with various elegant and interesting friends. I say "gallantly" because a day or two after I'd arrived, I had a wasp settle on my cheek as we were having breakfast in the garden. I made the mistake of slapping it instead of waving it away, and it managed to sting me before it expired. As a result, the left side of my face swelled up so that I looked like a battered pugilist from one side while looking perfectly normal from the other side, and the Mazerans had to show off a future son-in-law who looked a bit like a circus freak. Happily, my face was back to normal by the time of the wedding, an elaborate affair also at the Mazeran's country estate that included the marriage ceremony in the little country church in the village, presided over by a one-armed priest who had lost the other limb in the war.

Michèle and I then went on a two or three-week honeymoon in Italy, returned to Paris for a small interlude, and then left for India on my lecture tour for USIA.

Sinclair: What was USIA?

Isbell: The USIA was established in 1953 to engage in "public diplomacy"—to reach out to foreign audiences and to cultivate a positive impression of the United States. It survived until

1999. I suppose some other federal agency, perhaps the State Department, is still doing some of what USIA used to do.

At the time I did the lecture tour, the home office in Washington was called the Agency, and the field offices were called the Service, so the initials were USIA and USIS, although effectively they were the same organization.

Sinclair: In what capacity did you undertake this Indian tour for USIA?

Isbell: The tour was part of what USIA called (at that time, at least) the Leadership Program. The Program principally involved sending well-known public figures, singers, performers, maybe politicians as well, to tour and lecture or perform in other countries and subtly generate a favorable impression of Americans and the country they come from. The typical speaker sponsored by the Program would be middle-aged or older, but there had been an occasion, in 1952, when, for somewhat complicated reasons (see footnote), a much younger fellow named Stephen Schwebel, who was then a college student at Harvard, was sent on such a lecture tour in India under the Program.[6] His tour was deemed a success, at least partly because he was closer in age to the largely student audiences than the usual speaker, which seemed to make for better rapport between speaker and audience.

In any event, several years later, USIA decided to try sending another younger speaker on the Program lecture tour in India, and asked Schwebel if he could recommend a suitable candidate, and he recommended me. He had been two years ahead of me in law school, and

[6]Schwebel, while an undergraduate at Harvard, had been founder and president of the UN Council of Harvard, and in 1948 became national president of the Collegiate Council for the UN and then president of the International Student Movement for the UN, or ISMUN. He was succeeded as president of ISMUN by a student in India, where the ISMNUN convention was to take place in December 1952. Schwebel was asked to attend that convention, but neither he nor ISMNUN had the funds to get him there, so an appeal was made to the State Department that eventually resulted in USIA's offering to pay that expense in return for his doing the lecture tour of India.

we'd become (and still are) quite close friends. He's also had a very distinguished career, culminating as President of the International Court of Justice (often referred to as the World Court).

USIA asked me to prepare outlines of some talks that I could give, with the title of each talk starting with the introductory phrase "An American Student Looks At . . . " So I prepared one looking at the American election, which was going on in 1956, another looking at American foreign policy, one looking at the American race problem, which was the least popular of all these topics in India, one looking at the American educational system, one looking at my "heritage," and perhaps some others that I have by now forgotten.

Sinclair: The least popular in India?

Isbell: It was the least popular topic. It was chosen by the audience or the local sponsors only once, I think. The audience exercised some choice about the topic, and I suspect the reason it was not so popular was that it was just too sensitive a subject, given the still-pervasive race discrimination in India.

USIA evidently found my outlines satisfactory and took me on. That was a three-month tour. It came right after our honeymoon, so I liked to say, jokingly, that I was the only person I knew of who had a honeymoon trip paid for by the U.S. Government. That would always irritate my wife Michèle, if she was present, since the U.S. Government hadn't paid for her tickets between Paris and India, as it had mine; her father paid for her tickets there and back. The Government did, however, pay for her room, board, and travel during my lecture tour.

In all, we had three months traveling throughout much of India, getting to something like 11 different states, and having the opportunity to visit a number of justly famous spots: the Taj Mahal (whose beautiful Muslim architecture was actually designed by an Italian architect), the

Caves of Ajanta and Ellora, and a number of others, as well as major cities including Mumbai (then called Bombay), Calcutta, New Delhi, and Madras. It was a very interesting trip. Although most of the details of that trip have faded in my memory, the overall impressions remain quite strong. I don't think it's possible for a westerner to spend any substantial time there without coming away with lasting, vivid impressions. There is (or in any event certainly was during our visit) a striking mixture of great beauty, of structures, landscape and people alike, on the one hand, and abject poverty and squalor on the other (including beggars literally dying before your eyes in Calcutta). One feels a palpable weight of a culture even older than those of the Western world—indeed, a mix of such cultures—that embellishes but also in part resists incorporation into that world. I was particularly struck by the reluctance of the Indian government to do anything in a serious way about birth control (although it did allow the Rockefeller Foundation to sponsor a modest program in that area), because of the dead hand of Gandhi's dictum that the only proper method of birth control is abstention. (I understand, however, that since that time, the Indian government has adopted a more sensible view on the matter of population control.)

Sinclair: You lectured principally at Indian universities?

Isbell: Yes, the audiences were mainly university students, and the venues were typically universities, though there was one occasion when I spoke at a Rotary Club luncheon. I also remember one that involved an informal group of Indian businessmen, after which my USIS guide commented, a bit ambiguously, that I'd certainly captivated them with my "boyish charm."

Sinclair: How was your itinerary determined?

Isbell: USIS scheduled my talks, and a USIS staff person would accompany me to each performance. USIS had offices in most of the major cities, so I would be passed from one USIS agent to another. There was one particularly memorable incident during that lecture tour that I might mention here.

Sinclair: Please do.

Isbell: This incident occurred in the State of Kerala, in the southwestern tip of the Indian subcontinent. I was being driven, along with my USIS host, to a college where I was to give another of my talks, an exercise that by then Michèle had had enough of, so she was waiting for me back at whatever quarters we had been provided. On the way, we went across a low bridge over a river, where we noticed a crowd gathered at the railing of the downstream side. Looking beyond the crowd, we were stunned to see what was clearly a very young baby, floating face-up in the relatively swift-moving and turbid water. Without thinking, I asked the driver to stop, jumped out of the car, and started shedding my watch and outer clothing with a view to going after the baby. As I disrobed, I noticed a chauffeur-driven car parked next to that side of the bridge, with a well-dressed young woman and an older woman who was clearly an *amah*, or nanny, both in a state of evident distress. It was pretty quickly apparent that the young woman had just thrown the baby into the river—presumably, though I never learned the full story, because her husband had wanted a boy, and this baby had the misfortune of being merely a girl.

My USIS host, following my lead, also stripped down to his skivvies and dropped into the river after me. It wasn't more than a ten-foot drop, but I didn't dare to dive in head-first but instead went feet first because I had no idea how deep the river was. Once in the water, we both set off for the baby, by then some 50 yards from us but still afloat on the surface, and moving pretty swiftly downstream. I was the stronger swimmer, so I led the way. Apparently the

spectacle of our dropping off the bridge had caught the attention of a fisherman in a dugout canoe, downstream from the baby, and he paddled rapidly to her and picked her out of the water before I got to her. He headed to the shore, and immediately after getting there started giving her mouth-to-mouth resuscitation. That was something I had never seen before; it certainly wasn't then part of the standard Red Cross course in lifesaving for saving people from drowning, although it has since become a standard life-saving technique. Anyhow, the baby survived, with what turned out to be no more than ancillary and accidental help from us.

After the baby had been gotten safely to shore, my USIS host called out to say he was having trouble and needed help.

I asked the fisherman to paddle out to him, but he refused, I surmised, because perhaps he couldn't swim himself, and quite reasonably feared that my companion would overturn the dugout in the process of trying to get into it. So I went back for him, and without much trouble got him safely to shore.

The other memorable scenes were when we got back to the bridge railing. The distraught mother, still waiting in her limousine with the clearly mortified chauffeur and *amah*, asked me if the baby had survived, and was clearly greatly relieved and grateful when I told her that she had. Most striking to me was the crowd's reaction to this drama: they seemed mainly interested, not in the baby's wellbeing, or in who we were, but in asking us to confirm that, as seemed obvious enough, it was the mother who'd thrown the baby into the river. There were no words of appreciation for what loomed large for me at that moment—our dramatic, albeit incidental, part in the rescue. My sense was that the general view was that what we'd done was quite eccentric, and not something any sensible person would think of doing—undressing in public, and

plunging into unknown waters simply to rescue a baby. Our chauffeur certainly seemed thoroughly embarrassed by the whole thing.

My host and I put our outer clothing back on and proceeded, noticeably damp, to the school where I was to give my talk. We were, not surprisingly, a bit delayed by the incident on the river, and someone explained the reason for the delay. This explanation was greeted by what seemed to me a very brief and perfunctory applause, reflecting, I thought, the general sense that our conduct had been most peculiar. I must say that when I got back to wherever Michèle and I were staying, and recounted the adventure to her, her reaction seemed to suggest that she didn't think it was a very sensible thing for me to do. And as a practical matter, that viewpoint had some substance to it, since I did get a serious dose of the trots from my swim in the muddy river. But just the same, I'm glad I did it, since I think I assisted in saving that baby's life, and a dose of dysentery and a little disapproval from my bride were a price well worth paying for that. And, of course, if left me with a vividly memorable episode to recall and recount. I wrote a full account of it to my parents, who shared it with the rest of the family. I particularly remember my Aunt Jeannette writing me that she would gladly have given a quart of blood to witness the event.

Sinclair: Well, I can certainly understand why you found it memorable. Okay, so moving on, when did you return to the United States?

Isbell: I think the lecture tour in India ended in December 1956. Michèle and I returned to Paris, did some skiing over the Christmas season with her family in the French Alps, in a town named Auron**,** where the Mazerans had a house. We then returned to the States, found an apartment in Arlington, Virginia, and I finally reported to Covington in, I think, February 1957.

Sinclair: It was a good six months you'd been enjoying before you finally settled down to serious life!

Isbell: I can't disagree with that.

Sinclair: You had said that your father-in-law was sure that you were going to live in France. Obviously, you ended up living in the United States. Was there an issue with your wife?

Isbell: Not initially. When we married, I had already made a commitment to start my legal career at Covington; Michèle knew that and accepted it. We did spend a lot of time in France for vacations, and I enjoyed whatever time I spent in France. I also got along well with my father-in-law, though not equally well with Madame Mazeran. And on occasion I considered again the possibility of moving back to France. On one such occasion I briefly explored the possibility of a position in the Paris office of the Coudert law firm. But the more I thought about it, the more I became convinced that I would not be happy pursuing a career in France, even as an American practicing law there in an American firm.

Sinclair: Let's turn now to the start of your career in the United States in the winter of 1957. How did you come to meet with Justice Black?

Isbell: Soon after I finally arrived in Washington, I got in touch with other members of my law school class who were already there. One of them was Norbert Schlei, who had been the Editor-in-Chief of the Law Journal and was clerking for Justice Harlan, and doing well. But Norb, like all my colleagues on the Journal, I think, thought very highly of Justice Black.

Sinclair: Why did you all think so highly of Justice Black?

Isbell: Well, he was an outstanding Justice, obviously. A very forceful man. His positions on the whole appealed to the liberals in my class, and I would guess most of my class

were liberals. He also had been our speaker at our Journal banquet, and the officers of the Journal had had a chance to socialize with him some, and he was also a very charming fellow.

So, Norb Schlei, sharing my regard for Justice Black, had become quite friendly with him, even though he was clerking for a different Justice. He told me that although it was already February, Justice Black had not yet chosen his law clerks for the following fall, and he urged me to go and talk to the Justice about possibly clerking for him. He had already recommended me to Justice Black, I think; in any event, he had done so before I called Black's office to ask for a meeting to discuss the possibility of a clerkship.

I wasn't much interested in a clerkship as such because I felt, a bit idiotically as I now realize, that as I was already 28 or would be shortly (my birthday is in February), I was already somewhat old to be starting out as a lawyer. I reasoned that I ought not to pursue any more diversions, but instead should settle down and start being a lawyer or, at least, find out whether practicing law was really what I wanted to do for a career. However, I couldn't resist the temptation of talking to Justice Black, and I decided that if he offered to take me as a clerk I would accept. I made an appointment and went to meet the Justice

It so happened that Chief Justice Warren hadn't yet chosen all his clerks for the October 1957 term either, so I set up an interview with him as well, and I probably would have accepted an offer from him if I did not receive an offer from Justice Black.

When I met Justice Black in his chambers, he told me right at the start of the interview that he wouldn't even consider me as his law clerk unless I promised that if he chose me as a clerk I would not return after the clerkship to Covington & Burling. I was stunned by this; I'd never heard of any judge imposing such a requirement on his clerks and, I might add, I've never heard since of any judge doing so. Of course, I asked the Justice what his reason was for

imposing such a requirement, and he replied that it was because Covington had more cases before the Court than any other law firm, so that if after working at Covington I had a clerkship with him and then went back to Covington, there would be an appearance of impropriety in the intervening clerkship. Taken thoroughly by surprise at his condition on a clerkship, I told him I would have to think it over. I had already delayed my arrival at the firm for five or six months, and I wasn't sure I would feel comfortable telling them, in effect, here I am, I'll be here just a few more months and then I'll leave the firm for good.

I had also made an appointment to talk to Chief Justice Warren after I'd seen Justice Black and he, too, started out the interview by telling me that I would have to pledge not to return to Covington after a clerkship with him—clearly, a dramatic illustration of the influence that Justice Black had on Justice Warren. So I responded to Warren as I had to Black, saying that I'd have to think it over.

I went home and thought long and hard about whether to agree to Justice Black's threshold requirement. As I've already stated, I had some doubts about the wisdom of taking another detour before actually starting to practice law at Covington, and in addition, I felt that I'd already been stretching Covington's patience by my multiple postponements of actually starting to work at the firm. And finally, it struck me as simply too ungentlemanly, after so delaying my start, to announce to the firm that I'd only be there until summer, after which I would clerk for Black and then find a spot in some other firm. So anyhow, I phoned Justice Black to tell him my decision and my reasons therefor (and I also called the Chief Justice, and told him the same thing).

Looking back with the wisdom of age and hindsight, I now think my decision was not very sensible. I've been very happy with my career at Covington, but I think I probably could

have had a post-clerkship career with some similar firm—certainly Wilmer Cutler or Arnold & Porter, and doubtless some others—that could have been equally fulfilling, and I surely would have found a clerkship with Black thoroughly rewarding. Moreover, I don't think Covington would have been offended at all if I had told them that after a few months I was going to clerk for Justice Black and that he insisted that I not return after the clerkship. They would, I hope, have been disappointed, but I wouldn't have been the first—nor, certainly, the last—attractive prospect to slip out of the firm's grasp.

Within a few years after I'd declined to make the commitment that Justice Black had made a condition to his considering me for a clerkship, there were two other Covington associates who left the firm to clerk for the Justice while I was still an associate, and both were required to make the same commitment that Justice Black had required from me; both did, and both abided by it. I think of it as the Isbell Oath—Justice Black's Isbell Oath. The first Covington associate who took the Isbell Oath was Dick Howard, who ever since his clerkship with Justice Black has taught at the University of Virginia School of Law. I know for a certainty that he had to take the Isbell Oath because I've recently asked him and he confirmed it, although he didn't know that I had talked to Black about a possible clerkship, let alone that the promise not to return to Covington after a clerkship had first been required of me; indeed, had been invented for me. The other, slightly later victim of the Isbell Oath was Larry Wallace, who just a year or two ago retired as Deputy Solicitor General, a position he had been in for a long time, and where at the time of his retirement he'd argued more cases before the Court than anyone else in history. I think he went from his clerkship directly to the Solicitor General's office and spent his career there. And so far as I know, neither Howard's nor Wallace's departure from the firm engendered any ill will. Also so far as I know, no similar commitment has ever been required by

any other Justice who has taken on a Covington associate as a clerk, and no other Justice has objected to that clerk's returning to Covington after the clerkship—something that has occurred quite frequently. It quite often happens that Justices will take somebody as a clerk after they have been practicing law for a year, or sometimes two, and then let them go back to their firm. And there have been a number of instances when associates left Covington to clerk for Justices other than Black and have come back to the firm with no objection from their Justice.

Sinclair: Having decided not to clerk, you began your career as a lawyer at Covington. Could you describe your home life during those early years?

Isbell: Well, home life can be covered pretty simply. I settled into a marriage and started having children with my wife.

Sinclair: Where did you live?

Isbell: When we first returned to the United States, Michèle and I lived in an apartment in Arlington, Virginia. Soon after, though, we rented a house, also in Arlington, and it was while we lived there that our first two children were born. After several years in Arlington—I think in 1960—we bought a house in Chevy Chase, Maryland, and moved there. We lived in that house for the rest of the time we were married.

Sinclair: When was your first child born?

Isbell: In 1958. That first child was named Christopher Pascal but wound up being known as just Pascal. The second child, born in 1959, was a girl, Virginia Anne, but more generally addressed as Poucette, at least until her college years. The third and last one was a son, Nicholas Bradford, born in 1961.

Sinclair: Did your wife speak English?

Isbell: Yes, she spoke it very well, though she never lost entirely her French accent. Before we married, Michèle and I had a test of wills as to which of the two languages we shared would be the one in which we addressed each other. I wanted it to be French, so that I could keep up my fluency, but she wanted it to be English, so as to improve her command of that language. And she felt more strongly about it than I did, so she won that one.

Sinclair: Did your children grow up learning French?

Isbell: Well, they all wound up being thoroughly bilingual, but they started out in two different ways. Michèle, I think, always spoke only French to the children, and I started out with the first two, Pascal and Virginia, also speaking only French to them, thinking it would be easier for them if they learned one language first, and then added a second one, which, in a sense, was how I'd become bilingual when I was a somewhat older child. But then when those two older kids started going to school (or, more precisely, kindergarten) with American kids, I decided to put my thumb on the other, English side of the scales, to make the transition easier for them. That switch on my part resulted in our third child, Nicholas, being raised in a home where two languages were regularly spoken. And it turned out that that seemed to be a better way to become bilingual. Pascal and Poucette, when they started acquiring English, often mixed the two languages in a single sentence, as if they were trying to fuse the two languages into one. Nick, on the other hand, was slower to start speaking at all than his older siblings had been, but once he started, he was perfectly aware that there were two separate languages that he had to deal with. If he pointed to an object and then named it, he'd know that there were two words that applied to it, and he'd know both of them. Also, if he started a sentence in one language, he'd automatically complete it in that language.

Sinclair: Very interesting. Well then, having looked at your personal life during this time, let's turn to the law firm. You have mentioned Gerry Gesell. Why don't you give a little background on who that is.

Isbell: Gerry (Gerhard) Gesell was a partner in Covington & Burling and one of the most prominent and successful trial lawyers in the country. He was a graduate of Yale Law School (and of Yale College), and for some years, including the one in which I interviewed law firms, he was in charge of the firm's recruiting at the Law School. He was also the first partner I worked for when I finally joined the firm—something I considered a lucky break, since he was an interesting and enjoyable guy to work for.

His father was a famous pediatrician, Arnold Gesell—more than a pediatrician, indeed; he was the founder of a whole method of dealing with very young children. (My mother had taken me to his clinic when I was a baby.) When people suggested to Gerry that he had gotten the benefit of his father's theories about raising children, he was quick to respond that his father didn't develop his theories until after Gerry was out of the family nest.

Gerry had started his career as a lawyer at the SEC, and I think had been brought to the firm from there by Dean Acheson.

Sinclair: Was Mr. Gesell a Franklin Roosevelt New Deal lawyer, a member of the Roosevelt Administration? You said he served on the Securities and Exchange Commission.

Isbell: He was not a Commissioner. He was a staff lawyer and advisor to William O. Douglas, who was then Chairman of the Commission and, of course, later a Justice of the Supreme Court. While at the Commission, Gesell also conducted a major investigation of the New York Stock Exchange. He joined Covington in 1941, and soon thereafter served as staff

counsel to a joint congressional committee investigating the attack on Pearl Harbor and questions about advance warnings and preparations for such an attack.

From 1962 to 1964, he served as Chair of President Kennedy's Commission on Equal Opportunity in the Armed Forces. In 1967, he was appointed by President Johnson as a U.S. District Judge in the District of Columbia and he was a highly competent and respected district court judge and, I think, a little bit feared by lawyers who appeared before him, because he was so forceful, energetic, and impatient. Indeed, I had the impression, from the times I'd seen him argue a case before a trial judge, that he sometimes cowed even the judges. In particular, because of that streak of impatience, when he was appointed to the bench by President Johnson, I thought he would soon be bored being a judge—having to sit and listen to oral arguments by lawyers who were less effective advocates than he had been. But as it turned out, he wasn't bored; he obviously enjoyed being a district court judge, and he spent the rest of his life on the bench. I know he would have liked to be appointed Attorney General, and I think he would have enjoyed that even more than being a judge, but I doubt he ever complained about being the latter.

As I've mentioned, I had the good fortune of being assigned to work for Gerry on several matters when I finally arrived at the firm; he was a very interesting man to work with.

Sinclair: I was going to ask about that. He was the primary attorney who was giving you work?

Isbell: Yes. I think during my first two years he was almost the only partner I worked for, and it was all litigation, which I enjoyed. I was told after I arrived that the firm had planned to put me in its international law practice because of my European background, but that I was reassigned to Gesell when he took on a new case and had an urgent need for immediate help. For me, this seemed a stroke of good fortune, because I feared that had I gotten into the

international law practice, and if the firm established an office in Paris—something that was considered at a time while I was still an associate—I might have wound up practicing in Paris, where I'd have become part of my very possessive in-law family.

Sinclair: What was the firm like when you started there in 1957?

Isbell: It was a large firm, by the standards of that time. It had around 65 lawyers. That was big, in those days, when the perception of size for law firms was very different from what prevails today. Covington was when I joined it, and remained for the first twenty years or so after I joined it, the largest firm in Washington, and it was the twelfth largest in the country. (The biggest in the country was the New York firm Shearman and Sterling, which had a bit more than 200 lawyers.) When I became a partner, all the partners—maybe 15 or so—could fit around one relatively large table.

Sinclair: Did the firm have offices outside of Washington, D.C.?

Isbell: No, the only office we had then was in Washington. We didn't have an office elsewhere until the 1980's. Sometime in the mid-80's, the firm experimented briefly with a satellite office in the Virginia suburbs, but that didn't live up to expectations, and was soon closed. But then, in 1988, the firm took the major step of opening an office in London, which has grown and thrived. A Brussels office followed in 1990, and then in 1999 we opened first an office in San Francisco and then added a New York office by merging with the relatively small but very high-quality firm of Howard, Smith & Levin. More recently, we established two more California offices, taking on at those offices a number of lawyers from the dissolving firm of Heller Erhman. And the most recent expansion has been the establishment of an office in Beijing.

Sinclair: Were there any female attorneys at the firm when you joined?

Isbell: There were a few female associates but not yet any female partners. There was, however, a woman named Amy Ruth Mahan, a specialist in customs litigation and Court of Claims work, who had been the first of nine women lawyers who had been hired by the firm during the four years that World War II was going on, when male lawyers available for civilian jobs became increasingly rare. All the other female lawyers had moved away or given up lawyering for motherhood or other activities before I arrived at the firm, but Amy Ruth remained active in the practice. Her status was in effect that of a permanent associate, though she wasn't officially designated as such; I don't know just what her formal title was. In later years, she certainly would have been a partner. But the firm's culture wasn't quite ready for a female partner, even though it was on the whole a quite liberal culture.

Sinclair: Was the firm racially diverse?

Isbell: No, it wasn't. At the time when I arrived, in 1957, I'm pretty sure there were no black employees at all, at any level, and certainly not any black lawyers, secretaries or other supporting staff. Washington was at the time I joined the firm and for some years afterward still quite a southern town with respect to separation of the white and the black populations, and even though most of the firm's partners were quite liberal on political matters—and one of the major partners, Howard Westwood, was leading a campaign (ultimately successful) to get the Bar Association of the District of Columbia (for short, the BADC) to drop its barrier against black members—the Management Committee felt it had to proceed slowly in introducing blacks into a wholly white nonlawyer work force.

The firm's decision to start hiring black office assistants other than secretaries was made in 1963 and I was responsible for getting one of the first black administrative staff members, Jim Jones, hired by the firm in 1964, when he was referred to me by my friend and former fellow

ACLU board member Pat Harris, who was at that time Dean of Howard Law School, where Jim had been a student.

Apropos of Howard Westwood's campaign to get the BADC to drop its racial barrier to membership, I joined that organization soon after I joined the firm, specifically for the purpose of voting in its referendum on the issue. Just recently the BADC celebrated the 50th anniversary of that desegregation referendum, and I was invited to that event—together with some other old-timers—as a special guest, because I was one of the members who had voted back then to end the Association's whites-only policy.

I remember when the firm first considered hiring a black lawyer, in 1962. His name was Julius Chambers, and he had quite a distinguished academic background: first in his class at the University of North Carolina School of Law, Editor-in-Chief of the Law Review, and Order of the Coif. He seemed destined to become a competent and distinguished lawyer, and although he didn't reach quite as high a level of prominence as I expected of him, he was one of the founding partners and is now of counsel to Ferguson, Stein, Chambers, Gresham & Sumter, a large, racially integrated firm in Charlotte, North Carolina, that does a good deal of civil rights work. We interviewed Chambers at a time when he was about to enroll at Columbia Law School for a master's degree in law. I was one of a small group of firm lawyers who interviewed him and then participated in a discussion about whether we should offer him a position at the firm. In that discussion, there were some concerns expressed—I think genuine enough subjectively, though they don't really bear objective analysis—that if the first black lawyer the firm hired was unsuccessful, further integration of the firm would be more difficult, so that it was important to be sure that any black lawyer we hired would be likely to have an especially promising prospect of becoming a partner.

The first black lawyer actually hired by the firm, in 1968, was Tyrone Brown**,** who had just come from a clerkship with Chief Justice Warren. Almost immediately after he'd arrived, we hired our second black lawyer—and our first black woman lawyer—Sally-Anne Payton. Tyrone left us in 1969, I believe, for Caplin & Drysdale; he was subsequently a Commissioner of the Federal Communications Commission from 1977 to 1981 and is now of counsel at the prominent Washington law firm Wiley Rein LLP. Sally-Anne left us in 1971 for academia at the University of Michigan Law School, where she has spent the rest of her professional career. Since then, the firm has hired and continues to hire a number of black lawyers, and has black partners, both male and female.

Sinclair: What were your hours like?

Isbell: We didn't have a prescribed number of billable hours, nor one for overall hours. That didn't come along until much later. We did, however, report our time, and it was implicitly understood, as it is in most organizations, that everyone would put at least the time that was understood to be the normal office hours. The office hours may have been 9 to 5 for the secretaries, but for lawyers they were more like 9 to 6, although a lot of lawyers regularly came in earlier than 9, and even more of them regularly worked later than 6. Gesell was one of the relatively few partners (I think) who regularly came in earlier than the official start of the workday, and he was generally there by 8, so I tried, not always successfully, to be in as early as he was when I was working for him.

A regular part of the firm's work week when I joined was a half a day on Saturdays, and that was the prevailing pattern among Washington law firms. Many lawyers in the firm, including me, worked lots of extra hours beyond the standard business hours. But my sense of it was that they were only working extra hours because they had a lot of work to do, and wanted to

make sure their end product was up to the firm's standards, and not because they were being watched over for the number of hours that they reported.

Sinclair: Was it a sociable place?

Isbell: It was, in the sense that there was a good deal of informal socializing among associates and their spouses, and also a fair amount between partners and associates and their respective spouses. And there were formal social events from time to time to which all the lawyers or all the partners were invited. It was not sociable in the sense that there were compulsory meetings of all lawyers or all partners at any standard frequency, although when I became a partner there was a regular weekly lunch of partners at the Metropolitan Club—an informal one, at which attendance was neither required nor expected.

Sinclair: As a young associate, did you meet many partners?

Isbell: Yes, quite a few because a fellow associate in my class at the firm, Steve Pollak, and I decided to get to know some of the more distinguished partners by inviting them to go out to lunch with us. Steve was a law school classmate, a fellow officer of the Journal, and a good friend. We, and our wives, have become even better friends since. We two were the only young lawyers hired by Covington at Yale Law School in 1956, although Steve actually arrived at the firm at the normal time, in September, whereas, as I've recounted, I didn't get there until the following February. He and I did various things together, including some *pro bono* work and a stint organizing a picnic for the Yale Law School Association of Washington. At some point, one of us had the idea, to which the other immediately agreed, of inviting some of the firm's legal giants to lunch with us, one at a time.

And so we did it, and with quite a few of the senior partners. I have a particularly vivid memory in this connection of Dean Acheson, who'd come back to the firm in January 1953

(before we'd arrived, of course), after serving as Secretary of State in the Truman Administration. When I went to his office to extend our invitation, he was clearly delighted, for no young lawyer had ever invited him to lunch before. He accepted, and he certainly was an entertaining and impressive luncheon guest. Acheson also, somewhat later, moved each of our admissions to the Bar of the Supreme Court—a standard little formal ceremony that was relatively recently eliminated, at which the presenter would make brief remarks vouching for the eligibility of the candidate, and the Chief Justice (at that time, Warren) would individually welcome each candidate.

I know we also invited Charlie Horsky to such a lunch. He had a very impressive résumé, filled with good works of various kinds. He had argued, among other landmark civil liberties cases, the original *Korematsu* case[7] in the Supreme Court. Unsuccessfully, of course, but still on behalf of a worthy cause.

Sinclair: Justice Black wrote the Court's decision in that case, didn't he?

Isbell: Yes; a terrible decision.

Horsky had also argued, this time successfully, the *Lovett* case[8] regarding the bill of attainder clause and, on appointment by the Court, *Griffin v. Illinois*,[9] where the Court held that it was a violation of the equal protection clause of the Fourteenth Amendment to require an indigent defendant to pay a filing fee in order to file an appeal in a criminal case. All three of those cases were familiar to us from our Constitutional Law course at the Law School. He had also had a stint in the prosecution of the original Nuremberg trials of top officials of Hitler's regime.

[7] *Korematsu v. United States*, 323 U.S. 214 (1944).
[8] *United States v. Lovett*, 323 U.S. 303 (1946).
[9] 351 U.S. 12 (1956).

Horsky was, at the time I arrived at the firm, teaching a seminar in civil rights law at the University of Virginia School of Law, which he later turned over to me when he went to the White House as a special advisor to President Kennedy on National Capital area affairs. (I later broadened the scope of the seminar to civil liberties law.) He was also at that time chairing a committee that was conducting a study of the widespread police practice of arrests "for investigation" that was one of a long series of committees that were typically referred to not by subject matter but rather simply as the Horsky Committee. The two other members of this particular committee were William Bryant and Roger Robb, also prominent lawyers and both later federal judges, Bryant on the District Court and Robb on the D.C. Circuit. Arrests for investigation were a practice of sweeping up large numbers of people without a warrant or other legal justification and then sifting through them to identify and retain those in whom the police had some particular interest while letting all the others go. The work of that committee was largely being done by associates at the firm under Horsky's direction. Its report, which concluded that arrests for investigation were constitutionally impermissible, resulted in their immediate cessation in the District of Columbia and contributed to its ultimate disappearance almost everywhere.

So Horsky was an entertaining and inspiring fellow to lunch or otherwise spend time with.

I'm pretty sure that Steve and I also took John Lord O'Brien, who was then considered by many to be the Dean of the American Bar, to lunch, and, probably, Gerry Gesell, for whom we were both working, Howard Westwood, and Fontaine Bradley. And I'm sure there were others.

Sinclair: Did the firm have a structured system for its associates? Something like two years in litigation, then two years in tax, then two years in corporate work?

Isbell: It was not as rigid as that at Covington during my time as an associate. It still isn't, in fact, although the firm is now somewhat more compartmentalized, and systematized, than it used to be. During my time as an associate, what you worked on depended mainly on who needed associate help. You had some ability to get into fields you were interested in. You'd contact a partner who was practicing in a particular field you thought might be interesting, and tell him of your interest, and the chances were that he'd be able to find something for you to do. I didn't try to do that because I was quite content just doing litigation. But some associates did do it, and later on when I was counseling young associates, I urged them to do that—be in control of your own fate, make your own decisions (within some limits, of course).

Sinclair: Let's talk now about another lawyer in the firm during that period, Burke Marshall.

Isbell: Burke was a wonderful lawyer. I did some work with Burke because he, too, was working with Gesell. He had come up to Yale Law School, with Gesell, for interviewing the year that I interviewed. I remember being quite struck when Gesell told me in my interview with him that Burke, who was then just a fifth-year associate, was going to make partner. That obviously told me something about Burke—that he was outstanding—but it also said something about Gesell, which is that he was not necessarily discreet, and liked to say things that surprised people. You might say he was outspoken.

Sinclair: So was Burke a mentor for you, or just someone you worked with?

Isbell: Well, we worked together on one case. Burke was also a Yale Law School graduate—he'd been either Editor-in-Chief or Article and Book Review Editor of the Yale Law Journal in his time—so we had something of a tie there, and we became friends, but that one case was our only professional contact while at the firm.

Burke was mainly an antitrust lawyer, and soon after the Kennedy Administration came in, he was interviewed by Bobby Kennedy, the new Attorney General, about a position at the Justice Department. Burke was interested in possibly heading the Antitrust Division, but Kennedy picked him instead to head the Civil Rights Division, even though that was not a field in which he had any particular background. I think it may well have been precisely because of that lack of background, and consequently of well-settled views on the subject, that Kennedy chose him to fill that slot, which of course, as the civil rights movement gathered momentum, was going to become the hottest spot in the Department. And Burke proved to be an outstanding chief of the Civil Rights Division, and truly a hero of the civil rights movement.

Unfortunately, from Covington's point of view, Burke never returned to the firm. When Robert Kennedy resigned as Attorney General, Burke left the Department of Justice, too, to take a position, I think, as general counsel at IBM, which was headquartered in Armonk, New York. I asked Burke at the time why he made that choice, and he told me that he expected Kennedy to run for the Senate from New York, and ultimately to run for President, and he wanted to be in a position to help him when he did. Of course the assassination of Bobby Kennedy terminated the latter possibility, and Burke was then persuaded to come back to Yale Law School, where he was first offered the deanship but accepted only an appointment as a professor, and spent the rest of his career there.

Sinclair: We have discussed a fair bit about the firm; let's talk about you. What were you doing when you started here? What cases did you work on?

Isbell: In those first two years, one of the cases I was involved in was the representation of General Electric regarding an employee who was a labor organizer and was suspected of being a Communist. I think, but am no longer sure, that the company was trying to get rid of him, and we were trying to help. That was the case that I worked on with Burke Marshall. I'm afraid I don't recall much detail about the case, though I do remember writing briefs about that case in more than one court. I don't even remember how the case came out, though I'm pretty sure our client GE won.

There was a substantially larger case, with Gesell, in which we represented Scott Paper in an antitrust suit brought by the Federal Trade Commission. The most interesting memory I have about that case was a visit I paid to a factory where toilet paper was being produced. The manufacturing process was very impressive. Wood pulp in a very watery solution is sprayed onto a very fast-moving broad metal screen, through which the water drained off, leaving a thin layer of the wood pulp. After it had gone a certain distance, the film of wood pulp would be picked-up on the first of a series of heated cylindrical drums on an enormous machine that I think was called a Fourdrinier. The drums were also spinning at a high rate and they baked the remaining moisture out of what was now tissue-thin paper. The tissue was then fed onto machines that cut the wide strip of paper into thinner strips, punctuating it lightly at the intervals needed to allow a square piece or two to be torn off the roll by the ultimate user. Finally, it was loaded onto the little card board tubes in appropriate quantities. All of this was done at great speed by machines.

The firm at the time also represented Parke Davis in a wide variety of matters and I think Gesell was the principal firm lawyer responsible for them. There was a small suit that the company wanted to bring in Maryland—which had a law permitting manufacturers of brand name products to set the prices at which their products would be sold, something called a retail price maintenance law—against a chain of cut-rate drugstores called Dart Drug. Dart was owned by a guy named Herbert Haft, who had made a fortune with that enterprise. Gesell proposed to Parke Davis's in-house counsel that he let me handle that case, which I was delighted to do. I handled that suit virtually solo, though I had to have a Maryland lawyer to get me admitted to a Maryland court *pro hac vice* and to sit with me while I did the actually work. That case was tried to a judge, and I won it, along with the special pleasure of seeing that the court's opinion granting the relief sought for Parke Davis had copied almost the entirety of my brief verbatim, albeit without quotation marks or attribution.

Something else I started to get involved in during that time was libel work. Gesell was then the *Washington Post's* outside counsel, having presided over the *Post's* absorption of its principal rival the *Washington Times-Herald*. And the *Post*, I used to think, seemed to attract lawsuits the way a dog attracts fleas. There always seemed to be several libel matters that the firm was handling for the *Post*, and I got involved in as many of those as I could. Gesell wasn't, at least at that time, handling those cases; he handed them off to other partners, among them Jim McGlothlin, and Jim let me do most of the work on them. I found that a very satisfactory field to practice in. The cases involve strong emotions, but only on the part of the plaintiffs, and the harms they complain of aren't of a nature to make even a tender-hearted opposing lawyer feel discomfort or sympathy for his client's foe, as I suspect can be the case with a personal injury case, or a medical malpractice suit. In addition, the legal doctrine governing libel suits is quite

old-fashioned and complicated, yet easy enough to master. Moreover, there was a long stretch of time during which the Supreme Court injected First Amendment limitations into some aspectsof traditional libel law, increasing its complexity and its intellectual interest.[10]

Unfortunately, when I returned to the firm the *Post* had moved its libel work to a firm headed by former Secretary of State and Attorney General William Rogers, a now-enormous international firm called Clifford Chance. It then moved on to Williams and Connolly, and I don't know where the Post's libel work is handled these days.

Following my return to the firm, I did have a couple of leftover libel suits against the *Post* to deal with, and a very unusual one against the *U.S. News and World Report*, the only one it had ever had, at least up to that time. Regrettably, I've had no further practice in the libel area, and can no longer contend that I have any significant expertise in that interesting field.

Sinclair: Did you have any experience in criminal trial work during those first two years of practice with the firm?

Isbell: Yes, I did have one criminal case—in fact, quite a serious one, where the charge was arson. I hadn't yet even tried my first civil case, the one against Dart Drug that I just recounted, but I got this case by reason of being appointed by a judge of the United States District Court for the District of Columbia. Arson was not a federal crime, but in those days the federal District Courts—rather than the Municipal Courts, which were the local courts for the

[10] The first of that line of Supreme Court cases was *New York Times Co. v. Sullivan,* 376 U.S. 254 (1964), holding that the First Amendment provides a qualified privilege for defamatory statements about public officials with respect to their conduct in that capacity. The Court extended this doctrine to extend to public "figures" as well as "officials," in *Curtis Publishing Co. v. Butts,* 388 U.S. 130 (1967), and then in *Gertz v. Robert Welch*, 418 U.S. 323 (1974), holding that with respect to defamation claims by purely private persons, the only limitation imposed by the First Amendment is that there can be no liability without fault (whereas, so far as the common law of libel was concerned, there was absolute liability, with no requirement of a showing of fault, so long as a defamatory statement was false).

District of Columbia—handled felony cases, even if they were, like this one, for offences punishable under D.C. law. Moreover, also in those days—I think this was in 1958 or '59—there was not yet any public defender service for either the federal or the local courts in the District, so some federal judges, including the one who was to hear the arson case, simply appointed members of the D.C. Bar to represent indigent criminal defendants. This particular judge did not use a list of attorneys who had volunteered to take such appointments, nor did he require that lawyers have any minimum level of experience. He just took the next name on a list of lawyers who had been admitted to practice before the United States District Court for the District of Columbia or perhaps, as I suspect may have been so in my case, he tried to limit the imposition of court appointments on lawyers who'd already handled one or more cases on court appointment by putting the most recently admitted lawyers at the top of the list.

Mind you, the fact that I had no experience whatsoever yet in any court, let alone in a criminal defense on a felony charge, didn't bother me at all; that simply made it more of a challenge, and fun. One of my friends in my class of new associates at Covington, Alfred Moses, who also had not yet had a chance to try a case, volunteered to help me, but I pretty much wound up doing all the work myself, and simply consulted with him from time to time. I just don't remember whether he was with me at the brief trial of the case.

As I've said, it was an arson case. The fire had been in a shoe store, and the defendant who was charged with purposely starting it was named Charles Gibson. He was a meek and somewhat beaten-down looking fellow and he was one of the dozen or so employees in the store, almost all of whom had the same job: fitting and selling shoes to customers. All of them had regular access to the back room, where some of the shoe stock was kept and where there was a work bench. The bench held, among other things, a large quantity of highly volatile and

flammable glue, which I suppose was used mainly for re-attaching soles and heels to shoes. The employees were allowed to smoke in the workroom despite the potential fire hazard from that glue. I interviewed every one of the store employees, and none of them claimed to have seen Gibson do anything suspicious; none could identify any reason why he should be suspected as having started the fire; and none suggested any possible motive for his doing so.

On the basis of these facts, it seemed to me that there was a good chance of persuading the jury that the fire could have been started accidentally, and that there was no more objective reason for suspecting Gibson as the culprit than any of the other store employees. Moreover, one of the other employees was something of a drinker, and by the end of the workday would generally give every indication of having taken a snootful or two too many. I'd subpoenaed all the employees to attend the trial, and on the day of the proceedings found my spirits somewhat gladdened by the realization that that drinker was pretty clearly already bombed out of his mind.

The only problem that still stood in Gibson's way was the inconvenient fact that he had provided a written confession to having started the fire to the D.C. Fire Marshal. I interviewed the Marshal, who gladly provided me a copy of the signed confession, and boasted about how he had gotten Gibson to sign it. He'd given Gibson his solemn assurance that if he'd just put his signature on the bottom line, he could walk out of the building a free man. He told me that Gibson had repeated what the Fire Marshal had said, and asked if it was really true that he'd walk out a free man, and that the Marshal assured him that was the case. So Gibson signed, walked freely enough out of the office and then out of the building, but then, the moment he got outside, was arrested and hauled away. I'm sure the reader can envision the sort of argument I intended to make about obtaining a confession by that sort of deception, and how poor my chances of getting that evidence excluded would be.

So, there came the day of the trial. I make my opening statement, referring very early to my client as Charlie and being immediately upbraided by the judge for using a diminutive, which was forbidden in his court. Before long, I did or said something else that the judge snorted his disapproval of, together with the comment that I clearly didn't know what I was doing—a perfectly accurate observation, though not a very helpful thing to say in front of the jury. Then the prosecutor, after his opening statement, started to present his case by calling the Fire Marshal to the stand. After the Fire Marshal was identified and sworn but before he was asked any substantive question, I asked for voir dire. The judge granted it, and had the jury removed from the courtroom. I then asked the Fire Marshal whether he had procured from the defendant a signed confession and proposed to offer it in evidence. The judge then, to the surprise of everyone in the courtroom—and above all the prosecutor—announced that a fire marshal had no authority to take a confession, so it would not be allowed in evidence. He asked the prosecutor if he had any other evidence to offer. The prosecutor said he didn't, and the judge then dismissed the case, surely to my client's joy, but I must confess a little bit to my dismay, since I had lost the chance to actually try what should have been a pretty enjoyable case for at least one young lawyer.

After thus putting an end to the case, the judge then turned to a group of distinguished gentlemen in the spectators' seats in the courtroom, who turned out to be a group of visiting Philippine judges, and addressed them on the marvels of American justice, as just demonstrated by his refusal to allow evidence of a confession that had been obtained by a fire marshal. Under the uniquely civilized rules of this country, he explained, only the police had the authority to take confessions, and one obtained by a fire marshal could not be used to send even an otherwise guilty person to prison.