DAVID B. ISBELL, ESQUIRE

Interviews conducted by:
William N. Sinclair, Esquire
June 26, July 17, August 14, September 4,
October 7, November 24, 2008;
February 24, March 17, April 14, 2009
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NOTE

The following pages record interviews conducted on the dates indicated. The interviews were electronically recorded, and the transcription was subsequently reviewed and edited by the interviewee.

The contents hereof and all literary rights pertaining hereto are governed by, and are subject to, the Oral History Agreements included herewith.

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PREFACE

The goal of the Oral History Project of the Historical Society of the District of Columbia Circuit is to preserve the recollections of the judges who sat on the Courts of the District of Columbia Circuit and lawyers, court staff, and others who played important roles in the history of the Circuit. The Project began in 1991. Interviews are conducted by volunteers, trained by the Society, who are members of the Bar of the District of Columbia.


Such original audio tapes of the interviews as exist, as well as the original diskettes of the transcripts (in WordPerfect format) are in the custody of the Society.
Oral History Agreement of David B. Isbell

1. In consideration of the recording and preservation of my oral history memoir by the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter "the Society"), I, David B. Isbell, do hereby grant and convey to the Society and its successors and assigns all of my rights, title and interest in the edited transcript of my interviews by William H. Sinclair and the computer disk containing the same, including literary rights and copy rights thereto.

2. I also reserve for myself and to the executor of my estate the right to use the said transcript and computer disk containing it as a resource for any book, pamphlet, article, or other writing of which I or my executor may be the author or co-author.

3. I authorize the Society to duplicate, edit, publish, including publication on the internet, and permit the use of said transcript and computer disk in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

[Signature]

[Date]

SWORN TO AND SUBSCRIBED before me this 28th day of February, 2010.

[Notary Public]

My Commission expires: 6-30-10


[Signature]

Stephen J. Pollak

DC: 3480515-1
Schedule A

Transcript resulting from nine interviews of David B. Isbell, conducted on the following dates:

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The transcript of the nine interviews is contained on one compact disk.
The Historical Society of the District of Columbia Circuit

Oral History Agreement of William N. Sinclair

1. Having agreed to conduct an oral history interview with David B. Isbell for the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter, "the Society"), I, William N. Sinclair, do hereby grant and convey to the Society and its successors and assigns, all of my right, title, and interest in the transcript and computer disk of my interviews with Mr. Isbell, as described in Schedule A hereto, including literary rights and copyrights.

2. I authorize the Society to duplicate, edit, publish, including publication on the internet, or permit the use of said transcript and compact disk in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

3. I agree that I will make no use of the interview or the information contained therein until it is concluded and edited, or until I receive permission from the Society.

SWORN TO AND SUBSCRIBED before me this 22nd day of February, 2010.

William N. Sinclair Date

Schedule A

Transcript resulting from nine interviews of David B. Isbell, conducted on the following dates:

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The transcript of the nine interviews is contained on one compact disk.
Sinclair: It’s June 26, 2008. My name is Bill Sinclair. I’m an associate at Beveridge & Diamond, P.C. I am at the law offices of Covington & Burling LLP at 1201 Pennsylvania Avenue, Washington, D.C., and I’m speaking with David Isbell. We are going to begin recording his life biography for the Historical Society of the D.C. Circuit.

Please tell us your full name and the name of the firm in which you are senior counsel.

Isbell: My full name is David Bradford Isbell, and I am indeed senior counsel at Covington, a position I’ve been in for the last twelve years.

Sinclair: Very good. Let’s get on the record with a few essential facts about your immediate family.

Isbell: Sure.

Sinclair: Your wife’s name?

Isbell: It’s Florence Bachrach Isbell.

Sinclair: Your children’s names?

Isbell: I have three children. The oldest is Pascal. His full name is Christopher Pascal Isbell, but he’s generally just known as Pascal. He has just turned fifty. I also have a daughter, Virginia Isbell, who is forty-eight, and a son, Nicholas Isbell, who is forty-six.

Sinclair: Any grandchildren?

Isbell: I have seven of those. Pascal has three sons, one of whom, unfortunately, is autistic. The oldest of his sons is Mark Antonin Isbell, who is sixteen. The middle son is Alexander Bradford Isbell, who’s fifteen; it’s he who is autistic. The youngest one is Matthew Isbell, who’s fourteen.
Sinclair: The oldest was Mark Antonin?

Isbell: Yes. That second name is spelled A-n-t-o-n-i-n, and that’s a name he happens to share with Justice Scalia, though there is absolutely no other connection there. Then my daughter has a daughter, Alice Topaloff, who’s eighteen, and then twins who are seventeen, a girl and a boy, Lucy and Gabriel Topaloff. Finally, my son, Nicholas, has just one child, a daughter, Sophie, who’s eight.

Sinclair: Okay. Where does everyone live?

Isbell: Most of my descendants live in Europe, unfortunately for me. My son Pascal and his three kids live in London; my daughter and her three live in Paris; and only Nicholas is here. He lives in the District of Columbia. Florence has two children. We are both retreads, so we each brought children to the marriage. She’s got a daughter, Peggy, and a son, Richard, and each of them has two daughters; and happily for us they all—children and grandchildren—live in the District of Columbia, so we see them frequently.

Sinclair: What was your wife’s maiden name?

Isbell: It was Bachrach.

Sinclair: Okay, good. We’ll talk more about Florence later, but for now, let’s start in the beginning, learning about your parents, your childhood family, and your childhood.

Isbell: My father, whose name was Percy Ernest Isbell, generally known as Peter or Pete, was an architect. He went to Yale College and then the Yale School of Architecture. At the start of his career, he was quite successful and had a good job with a large architectural firm, James Gamble Rogers. The firm designed and supervised the building of a large number of new buildings at Yale, including residential colleges, the library, the graduate school, and the law
school. My father also was allowed to have a practice of his own, in which he designed several private houses and a fraternity house at Yale.

However, in the early thirties the Depression hit architecture hard, and Dad’s practice dried up and the large firm that he worked for could no longer keep him, so he went into private-school teaching, as my mother did also. Initially he taught at a sort of a boys’ junior prep school called Eaglebrook School, in Deerfield, Massachusetts, and my mother taught at an elementary school in the village of Deerfield also.

After a couple of years of that, my parents had an opportunity to be counselors in an American children’s camp in the French Alps on Lake Annécy. They took it. They were successful as counselors, and as a result, they were offered jobs as teachers in an American school in Saint Cloud (pronounced in English as, roughly, “San Clue”), a suburb of Paris. Like the camp, the American school was owned by and bore the name of a couple named MacJannet. So, our parents sent for my sister and me, and we went over to France, and we were students at the school while our parents taught there, and the whole family lived at the school.

We stayed there for two years, attending both the school and the camp in the intervening summer, but then my parents saw the war clouds gathering in Europe, and decided we should all return to the States. My father got a job with a smaller architecture firm in New York and started all over again, right on the bottom rung of architecture, as a draftsman. He continued to work as an architect until he finally retired, but my sense is that he had more or less lost his nerve as a result of having had his career kicked out from under him by the Depression, so he never reached as high a standing in the profession as his early career seemed to promise.

Sinclair: Now, tell us about your mother.
Isbell: Yes. Her maiden name was Dorothy Mae Crabb. She was the oldest of four children. In those days a common view was that it’s no use wasting money sending a girl to college because what are they going to do with the education? They’re just going to get married and have children. So, my mother had one year of college at Syracuse, but her father did not think it was worthwhile to spend the money for more education for her, so that was it.

Sinclair: Okay. Let’s go back to your father. Where was he born?

Isbell: He was born in New Haven, Connecticut, and so was my mother. And, for that matter, so was I, though my sister was born in New York. I might observe that it seems to me quite unusual in America for a middle-class family to have both parents and also a child born in the same city. We have such a mobile society.

Sinclair: Absolutely. And your father’s background, was he first generation, second generation?

Isbell: Not at all. The Isbells go back a fair number of generations. I understand that the first Isbell of the New England branch of the family, one Robert Isbell, arrived in Massachusetts from England in 1636 or 1637. The first of my mother’s family, the Crabbs, came here from England in the middle of the 19th century, so she and her siblings were third or fourth generation Americans so far as the Crabb line was concerned, but I don’t know how far back in this country Grandma Crabb’s family, the Nicolses, went.

Sinclair: Your father lived in New Haven for the first 30 years of his life?

Isbell: I’d guess it was closer to twenty-five years. In any event, he certainly lived all his early years in New Haven. I know my mother did, for the first 23 of her years, with the exception of that one year at Syracuse.

Sinclair: How did your parents meet?
Isbell: I don’t believe I was ever told exactly how my mother and father met. They were four years apart in age, and so four classes apart in the public schools that both of them attended, but they both were from middle-class families and both of their fathers were fairly prominent in New Haven, and I have the feeling that the middle-class population of New Haven pretty much knew, or at least knew of, everybody else in the middle class.

I think my father’s family was probably considered a notch above my mother’s family in the social scale because his father—my grandfather—was a very successful lawyer in New Haven. He had gone to Yale Law School, and graduated in the class of 1900, although at that time it wasn’t necessary to have a college degree in order to get into law school, and he never did go to college. He was also active in Republican politics, and at one time was majority leader in the Connecticut Senate, and at another time the founder and first commander of the Connecticut State Police. That grandfather had also been a colonel in the National Guard, and when the United States entered the First World War, he was the Commandant of the 102nd regiment, which came from Connecticut, and was part of the 26th Division, known as the Yankee Division.

Sinclair: Did he go to Europe in that war?

Isbell: Yes. He went to France as commandant of that regiment, although shortly after arriving in France, he was detailed to some sort of other assignment and relieved of the command of that regiment. Earlier, as a major, he had been involved in our problems with Pancho Villa in Mexico. Incidentally, after he died, sometime in the mid-thirties, he was buried in Arlington Cemetery.

My other grandfather—my mother’s father—had been a successful jeweler and active in local Democratic politics. He also had something of a military background, having been a major
in a local group called the New Haven Blues, which drilled and paraded, but I think had no formal governmental status. By the time I knew him, he had retired because of a heart problem, though was still a member of some municipal body, either the Board of Aldermen or the Finance Board. He had been a member of both at one time or another, and after retirement he continued as a member of one of them.

Sinclair: Do you know when your parents were married?

Isbell: Yes, in 1925.

Sinclair: Do you have a memory of any stories from your parents’ wedding or their early life together that you’d be willing to share with us? Anything that was passed down to you later—funny events, sad events? Anything from between the time they were married and when we get to you?

Isbell: Well, one family story of sorts relates to my parents’ marriage. It had been said by someone at the time of their marriage that the red-blooded Crabbs had married their daughter to one of the blue-blooded Isbells.

Sinclair: Okay. Let’s talk about your siblings. How many siblings do you have?

Isbell: Just one sister, an older sister.

Sinclair: And what’s her name?

Isbell: Her name was Michal Joan.

Sinclair: That’s spelled M-i-c-h-a-l?

Isbell: Yes, the male name Michael but without an E. That was not actually the name that she was christened with. She was christened, and listed on her birth certificate, as Vivian Joan. As I understood the family story, my mother liked the name Michal, and wanted to name her daughter Michal, but she felt social pressure of some kind against that because it was such an
unusual name for a girl. It’s biblical, you know—the wife, or perhaps one of the wives, of King David was named Michal. But my sister didn’t like the name Vivian, and like Mother she liked the name Michal. So there came a time that my parents and I started to call her Michal Joan or just plain Michal, though she continued to be called Joan by other family members and acquaintances. Sometime in her early teens she insisted on getting her first name changed legally from Vivian to Michal.

**Sinclair:** And she was born in 1926?

**Isbell:** Yes.

**Sinclair:** And there were no other siblings?

**Isbell:** No.

**Sinclair:** Earlier, you mentioned your grandfathers. What were their names?

**Isbell:** The Isbell grandfather’s name was Ernest Lockwood Isbell, and the Crabb grandfather’s was Frederick Gardner Crabb. I don’t think grandfather Isbell had any siblings; at least none who survived to adulthood. On the other hand, Grandpa Crabb was one of ten children, only five of whom survived to adulthood, and he was the only one of them who had children. He had had to retire because of cardiac problems by the time I knew him, in the early 1930’s, when he would have been in his sixties, but he lived to the age of 88.

**Sinclair:** What were your grandmothers’ names?

**Isbell:** My Isbell grandmother’s maiden name was Edith Hauschild Beers. My Crabb grandmother’s maiden name was Grace Mae Nichols.

**Sinclair:** Did you have aunts and uncles?

**Isbell:** Yes. Each of the grandparental couples had four children, in each case two boys and two girls, so I had six aunts and uncles—three of each. That count just includes the ones
who were blood relatives. Most of them got married, so we had some additional aunts and uncles by marriage.

My mother was the oldest child in her family, followed by two boys and then another girl thirteen years after my mother was born. That last-born girl, whose name was Jeanette, was closer in age to my sister than she was to my mother, and she was Michal’s and my favorite among those aunts and uncles.

The older of the two boys was Frederick Gardner Crabb, Jr., always known in the family as Gardner to distinguish him from his father, who of course was also Frederick Gardner, and addressed as Fred by friends and relatives of his generation, and by Grandma. However, I discovered later in life that Uncle Gardner actually preferred to be called Fred, and that was how he was known and addressed by his Army friends and his several successive wives.

The other son in that family, Richard, who was the third of the children in age, did not, unlike his older brother, get a chance to go to college. Gardner had gone to West Point—but Dick got married, and soon had a son, and so had to go to work to support his young family. That made starting serious life a lot rougher for him than it was for his brother. However, although he started out as a milkman, he worked his way up to a position as a pretty high executive in the National Dairy Company.

Sinclair: How about your father’s family?

Isbell: My father had two older sisters and a younger brother. Edith, the eldest, graduated from Vassar and became a school teacher; she never married but she wound up as head of the English department at New Haven’s main high school. Ethel, the younger sister, went to what was then the newly established Connecticut College for women; she was in the first class to graduate from that college. She married and had two sons (both of whom went to Yale
College, as had their father). She and her husband, Allen Hubbard senior, got divorced and she did not marry again. I must have seen the senior Allen Hubbard when I was small, but had no recollection of him before I met him one time in the sixties or seventies at a meeting of the Association of Yale Alumni in New Haven, at which my wife Florence asked me if I didn’t have a relative named Allen Hubbard, pointing out that a man whose nametag showed that name was sitting directly behind us. I turned around and introduced myself, and we both took pleasure in that highly coincidental meeting. Allen had married the widow of some distinguished professor at Yale, and we dined with them both on a couple of occasions.

My father came third in order of age in his family, and he had a younger brother named Roger, who seems to have been thought to be the more promising of the two brothers—or at least more sociable and outgoing; he was apparently very popular with members of both sexes. He, like my dad, went to Yale, but got his degree in engineering. Roger’s story, however, was a tragic one. There was a deadly epidemic of what was called Spanish Flu in 1918, which killed millions of people all over the world. Roger got that flu and survived it, but apparently because he’d been weakened by the flu, was felled by a disease—encephalitis—that in those days could not be effectively treated, and he gradually became ever more disabled, both physically and mentally.

Before that disease had developed very far, he married a remarkable, bright, and charming woman named Eleanor Collins, a magna cum laude graduate of Smith College. We were told that Aunt Ellie, as we knew her, had gone into that marriage knowing that Roger had that disease, that it was incurable and that it was going to become increasingly disabling. She evidently thought that somehow they would manage to beat the disease, which in fact couldn’t then be done.
She worked with several prominent sociologists, the most notable of whom was Gunnar Myrdal, the Swedish sociologist who produced, with Ellie’s help among others, the monumental study of the American race problem titled *An American Dilemma*. She then went to work for the Social Science Research Council, a national organization headquartered in New York City, in an administrative capacity rather than a social scientific one. She stayed there throughout her working life and, I gather, wound up pretty much running the place in quite a high position in the organization, which was fortunate, for she had to support Roger, who had soon become unemployable, for most of his remaining but mercifully short life. He eventually died quite young—in his forties or fifties.

Ellie was another much-loved aunt, by Michal and me, and also by our children. She retired at age seventy or so and moved from New York to a small house in Columbia, a small town in eastern Connecticut, where she had been born and had a number of devoted nieces and nephews. She ultimately died at the age of ninety-four.

**Sinclair:** You discussed your relationships with your aunts and uncles, but I don’t think we discussed your relationship with your grandparents. Tell me about those relationships.

**Isbell:** Well, I never really knew my grandfather Isbell, though I must have seen him a couple of times in my early childhood. He died when I was six or eight; and so I didn’t have much of an impression of him except from pictures of him looking stern in his Army officer’s uniform. I really had no relationship—no personal connection—with him. My grandmother Isbell died when I was two or three, and there’s a photo of me as a baby on her lap, but I have no recollection of her at all. So I really didn’t know those grandparents. I heard from my father a fair amount about his father who was an avid outdoorsman, fisher and hunter, and a national
champion pistol shot. My sense was that he was also a martinet, and that my father really didn’t like his father—and probably that the feeling was returned.

**Sinclair:** A martinet in what sense?

**Isbell:** In the sense of probably treating his children as if they were soldiers under his command.

However, I was very fond of my other grandparents—particularly my grandmother, though I got along fine with Grandpa Crabb as well. They were still living in their familial house on Barnett Street, in the Westville area in New Haven, when I was a freshman at Yale and there were several occasions when I brought college friends to meet them. Regrettably, I was not yet mature enough to ever think of asking them questions about their families or their past lives. Grandma Crabb was very deaf, so you had to talk very loudly in communicating with her, and as children, we’d yell rather than talk when we communicated with her. She and Grandpa Crabb seemed to speak as little as they could to each other; I gathered that theirs was not a very happy marriage. They weren’t engaged in open warfare, but they really didn’t seem to have very much in common.

I was told that Grandma Crabb had been a very gifted keyboard player—on both organ and piano—but by the time I knew her, her deafness had progressed to a point where she really couldn’t hear the music the way she knew it should sound, so she’d given up playing music altogether. She was a lovely, warm person. When I was a kid, except for the two years when we were in France, we would have family gatherings twice a year, for Thanksgiving and for Christmas, at the Crabb grandparents’ house, which were just wonderful events. My memory of those events really presents my sense of an ideal, multi-generational family gathering.

**Sinclair:** Can you describe why it was ideal?
Isbell: It—well, it was a happy time to see our cousins and our aunts and uncles, and we—my sister Michal and I—were fond of them all, and it just imbued me with an ideal image of what should happen on occasions like Thanksgiving and Christmas—there should above all be an assemblage of as many relatives as possible, especially if the relatives like each other. In my mind’s eye I saw those occasions as rather similar to the Normal Rockwell paintings of similar large family meals.

Sinclair: That’s a nice segue into your childhood. When were you born?

Isbell: I was born on February 18, 1929.

Sinclair: Where?

Isbell: In New Haven, Connecticut.

Sinclair: Okay, and what was the address of your first house? Do you remember?

Isbell: The first house I lived in was an old, small, oddly designed house on Edgewood Avenue in New Haven proper. The house is just a few blocks west of Davenport, the residential college at Yale where I lived in my college years—and, indeed, my last two years in law school—so I saw it fairly frequently. I last visited it in September of this year [2009], when I was in New Haven in connection with getting my granddaughter Lucy enrolled as a freshman at Yale, and noted both the street address, 61 Edgewood Avenue, and a historical marker saying the house was built in 1798. I have just one recollection of that house from the time when my family lived there: it’s a memory of being held in my mother’s arms as a parade went by. I told Mother about that memory on some occasion, and she remembered that parade, and told me that I had been just six months old at that time.
We moved from the Edgewood Avenue house to a neighborhood called Spring Glen in Hamden, a suburb of New Haven, where we had a substantially larger house on Haverford Street, which was also still there when I was last in New Haven.

Sinclair: When did you move? How old were you?

Isbell: I think I was no older than two—indeed, I may still have been a babe in arms—when we moved to the house on Haverford Street. And I think we lived there for three or four years. I remember we had a big metal tank that served as a wading pool. I don’t know where the tank came from, but it certainly wasn’t designed as a pool.

Sinclair: And that was your second home?

Isbell: Well, that’s correct in a temporal sense, but it wasn’t an additional home.

Our next move was from Spring Glen to Deerfield, Massachusetts, where my father had taken a job as a teacher at Eaglebrook School. There, we lived in the main school building of Eaglebrook School. After two years there, as I’ve already recounted, we moved to France, where again we lived at a school—this time MacJannet School—where my parents were teaching and Michal and I were students. When we came back to the States, two years later, we lived in New York City, in an apartment on 121st Street, which is near the Columbia University campus.

Sinclair: Let’s return for a moment to your early childhood. You already gave one very early childhood memory of the parade.

Isbell: Yes.

Sinclair: Do you have any other memories from before you started school?

Isbell: I have some memories of our time on Haverford Street in Spring Glen, which were probably before I had started school. I had an imaginary playmate, whose name I don’t
recall. In those days, grocery stores as well as milkmen delivered food to houses and often just
left the deliveries on people’s front porches or steps, and for a short period, swiftly terminated by
my parents, I took up appropriating edibles like carrots from other people’s grocery bags, and
eating them. Also, I had a tricycle and on one occasion fell off it and suffered a major cut on one
of my lips. Our family doctor, Dr. Wakefield, who was a prominent pediatrician, though I think
he really hated children, but who like most physicians in those days made house calls, came to
stitch the lip up, without even local anesthetic despite my screams.

I also remember family reunions centered around my Crabb grandparents and their home.
Grandpa had two brothers who were still alive in my pre-school years. Both of them were
lifelong bachelors, although one of them eventually married a nurse who cared for him during
his final, fatal illness.

Sinclair: Grandfather Crabb?

Isbell: Yes. One of those brothers was Uncle Steve, who had a photography studio and
was quite wealthy. All the formal family photographs of that time were made in his studio.
He’s the one who married on his death bed. The other brother was Uncle John, and I don’t know
what he’d done for a living, but he had a farm in Woodbridge, not far from New Haven, and
there would occasionally be some sort of summer event at his farm, the main feature of which
for me was that there was always a barrel full of ice cream. In those days, of course, ice cream
was not as common or as readily available as it is today. So it was always a treat to go to Uncle
John’s place.

Incidentally, one of my memories—probably from my pre-school days—is of one of
those family gatherings where Uncle John lay down on a couch and just peacefully died—I
assume of a heart attack. That was my first first-hand acquaintance with death.
Sinclair: Wow, that is certainly not something you hear every day. Okay, well those are some good recollections from before you started school. Now, let’s move on. What was the first school you attended?

Isbell: I may have attended a nursery school or kindergarten when we lived in Spring Glen, but the first school I remember was called the Bement School. It was a kindergarten and elementary school in Deerfield Village, which I attended, and which my sister attended also—and at which my mother taught art classes—during the time that my father was teaching at Eaglebrook School in Deerfield. I guess I probably did a year of kindergarten and then first grade there, and the next school was MacJannet School in Saint Cloud in France. We were there two years, and I must have done second, third, and fourth grade in those two years.

Sinclair: During your two years in France, at the MacJannet School and Camp, did you learn French?

Isbell: I did. And I became quite fluent—probably about as fluent as a French kid my age would have been. But then when I got back to the States, I suppressed it all. Kids would say, “Oh, you speak French? Speak some French for us.” And I’d refuse; I didn’t want to be taken for an oddity by my peers, so I simply suppressed my command of French, and managed to forget it. However, later, in college, I got the idea that I’d like to spend sometime living the expatriate life, preferably in Paris, à la Fitzgerald, Hemingway et al. I chose French as my required foreign language course and signed up for an intensive course in that language, which was one of several foreign languages that Yale and other colleges were offering, using a method inspired by the immersion techniques by which the military had trained people in foreign languages during the war. It involved two three-hour classes a week, and counted as two courses toward the required five per term, and I did well in it. I found that I didn’t remember any of the
vocabulary, but the accent came back to me, so I had reason to be glad for the time I’d spent in a school in France, even though it was an American school, where most of the classes were taught in English. French must have been one of the subjects taught there, and there may well have been some other subjects that were taught in French; anyhow, as I’ve said, I’d managed to become quite fluent in that language.

Sinclair: Do any other memories stand out from your time at the MacJannet School?

Isbell: Yes. One of my memories is of visiting an outdoor stamp market on the Champs Elysées on Sunday mornings, where I mainly engaged in looking, but occasionally made some minor purchase. (On a visit to Paris not long ago, I noticed that Sunday morning stamp market was still functioning.) Another memory is of a bicycle trip with my parents and my sister down the Loire Valley, exploring the various picturesque chateaus. A few years ago, Florence and I made a similar excursion down the Loire, though this time by car, and as we parked and set off to explore one of the chateaus, we were approached by a young woman with a clipboard, doing a survey of visitors, presumably on behalf of some sort of tourist agency. She asked us (in French) whether we had been there previously, and I responded, “Yes—fifty years ago.”

I also have memories of two performances in which I had a leading role. One of them involved my playing Puck in a performance of Shakespeare’s Midsummer Night’s Dream. The MacJannet School put on a play every year, and that was it in one of the two years I was there. I was drafted to play the part of Puck, possibly because I was the smallest student in the school, or perhaps because I was something of a joker and troublemaker; but I don’t think I ever asked, or was told, why. I do remember that I had made a mess of my copy of the script, and was worried that my stern English teacher, Miss Pegg, would be angry about that; but on the contrary, she was pleased with my performance, and forgave me for ruining my script. We have a copy of a
still photo of the cast of that performance, but in those days Mr. MacJannet was in the habit of also taking movies of significant events involving the school or the camp, 16 millimeter movies. Some years later, when, as will be recounted, I was back at the MacJannet Camp at Lake Annécy, this time as a counselor rather than as the youngest camper, I asked him if by any chance he had a movie of any part of the *Midsummer Night’s Dream* performance. I really would have liked to see what I looked like, prancing around as Puck. Of course, he wasn’t recording sound in those days, but just the visual part of any movie film of that performance would have been interesting. Unfortunately, however, Mr. MacJannet told me that if he’d made a film of that particular event, he couldn’t find it, so I never did get to see what my performance looked like.

The other performance I remember involved the whole school giving a song recital in front of a large assembly of French boy scouts. One of the songs we sang was the Negro spiritual *Swing Low, Sweet Chariot*, and I was picked to sing the solo part in my clear boy soprano voice.

**Sinclair:** What came next in your education?

**Isbell:** When we returned from France, we lived on 121st Street in New York City. The first year we were there I attended a private school, Lincoln School, which was three or four blocks from the apartment. I don’t know how my parents, who didn’t have a lot of money, managed to afford that private school—or Michal’s, which was a different school, Saint Agatha, but also a private school.

At Lincoln School, I was placed in the fourth grade, even though I had already done fourth grade work at the MacJannet School in France; so there wasn’t anything that they were teaching in the way of normal academic subjects that I didn’t already know, but it was a very
progressive school, and a lot of things were taught about that were not standard subjects for fourth grade.

**Sinclair:** In what sense?

**Isbell:** Well, for one thing, we had cooking classes, and one of the items in my scrapbook is a photo that appeared in an article about the school in the *New York Times*, of me stirring up a dish of some kind. A particular memory I have of that class is of accidentally sticking some fingers into an electric mixer, and coming out of it with a lot of blood and some handsome scars on the fingers involved.

Another of our fourth-grade activities in that school that I particularly remember was our writing and then performing a play called *How Boots Befooled the King*. We were given the general plot but had a competition to write a script for the play, which the class then performed. It seems to me we also studied the sex life of frogs. The only normal subjects I remember our having were arithmetic and English. In the arithmetic class, we were doing long division and long multiplication, and since I’d already learned both of those in my previous school, I was given the task of teaching them to my classmates. As it happens, there was another boy in that class who had come from abroad, in his case not from France but from China, where his father was a missionary teacher, and he also had done fourth grade work before. So the two of us did that arithmetic teaching together.

There is an interesting sequel to the story of this other kid in fourth grade in Lincoln School having come from abroad and taught fourth grade arithmetic with me. When I arrived at Covington after law school and a few diversions, in early 1957, there was a guy in my class of associates who had spent much of his youth in China, and was still fluent in Chinese, and he used to take us fellow associates for lunch at a local Chinese restaurant, where he placed our
orders with the waiters in Chinese. He introduced us to oddly-named dishes like Twelve Precious Mongolian Stoves. After a year or so, it occurred to me that the given name of the kid in fourth grade at Lincoln School with the Chinese background was Henry, though I didn’t remember his family name, and my law firm colleagues was Henry Sailer, so I asked him whether he had been that kid in fourth grade, and, indeed, he was the very one.

At about that time I was rummaging in a trunk where I stored my memorabilia and found a copy of a story that Henry had written that fourth grade year, titled *Emil the Turtle Goes Wandering* (further evidence that we did have a class in English, or perhaps one in writing plays and short stories), so I brought it to the office and presented it to Henry, who in the meantime had remembered somewhat bitterly that my script and not his had been chosen for the class production of *How Boots Befooled the King*.

That has always struck me as an extraordinary coincidence, to run into somebody that you had been in fourth grade with and hadn’t seen since, and in addition to find yourselves colleagues in the same law firm.

**Sinclair:** Had he gone back to China after fourth grade?

**Isbell:** I think so; though I know he later came back to the States as least in time to attend Deerfield Academy, then Princeton and, after sometime on Wall Street, Harvard Law School, where he was Article and Book Review Editor of the Law Review the same year as I had the same position on the Yale Law Journal (and of course we graduated from our respective law schools the same year). Henry did very well at Covington, making partner a year ahead of everyone else in his “class” at the firm, but sometime in the late eighties or early nineties he took early retirement for health reasons, and he’s still around. When I see him next, I’ll try to
remember to ask him whether he returned to China after than one year we shared at Lincoln School, and if so, why he was here for just that year.

Sinclair: Well, the story of your meeting in fourth grade at that school in New York, both of you having just come from abroad, and then meeting again as associates in the same law firm in Washington is amazing! Absolutely amazing!

Isbell: Yes, and for all I know I may well have crossed paths with other people I’d known earlier in life, without realizing it. Having gone to so many different schools, I made a lot of friends that I didn’t keep track of when I went on to the next one, and my paths may well have crossed theirs without either of us being aware of it. In the case of girls I knew in schools, their family names are likely to have changed from marriage, making it the more unlikely that I’d recognize them.

Sinclair: Let’s continue on now with your education. Did you remain at Lincoln?

Isbell: No, I didn’t. After that initial year, I guess, my parents couldn’t really afford private schools for both Michal and me, so I started fifth grade in a regular public school in New York. There was an occasion when I came home and complained that the teacher had corrected my pronunciation of some word. I can’t remember the details, but she spoke a dialect of New York-ese, or at least had a New York accent, and wanted me to pronounce a word with that accent, which bothered me. I told my parents about that, and they yanked me out of that school and sent me for the second half of the school year back to Lincoln School, with my tuition this time being paid by a teacher at the school named Rose Khoury, who had become a family friend.

I finished fifth grade at Lincoln School, and then I was sent to a public school for rapid learners. New York had then, and I think still has, a number of those highly competitive schools. This particular one was called Speyer School but it also had a public school number, and it was
under the general supervision of Columbia Teachers College. But once again it was rather like Lincoln School (which I think Columbia Teachers College also had some sort of hand in). I don’t remember anything concrete that I learned at Speyer School, but I do remember our doing things like putting on a circus and studying some ancient people, and again I had the feeling I just wasn’t in a serious school, where I would be learning something concrete and intellectually challenging. So I was not terribly happy there, and was not an enthusiast of so-called “progressive” education. I guess I had a good enough time there, and got along fine with my fellow students, but I didn’t think highly of it as a school.

I guess my parents weren’t too happy with Speyer School, either; in any event, for eighth grade they sent me to live with my Crabb grandparents in New Haven and to go to the Susan S. Sheridan Junior High School, which was in their neighborhood. My parents had evidently concluded that a standard New Haven public school would be better for me than even the special New York school where I was skipping grades but not really relating to the curriculum that I was being offered there. Sheridan was, at last, a regular school, and quite a good one, and I enjoyed that school and that year. Among other things, I had two male cousins of about my age, both of whom I liked and enjoyed being with, and both of them were at that school.

Happily, sometime during the summer of 1941, my parents bought a house in Connecticut. It was in a part of Greenwich that at that time was called East Port Chester, reflecting the fact that it was right across the border, marked by a river, from Port Chester, New York. That part of Greenwich has since been renamed Byram, which has a somewhat classier ring to it. The place they bought had been a stable, carriage house, and caretaker’s house, all in one building, on a large estate bordering Long Island Sound that had been owned by a Standard Oil magnate named Mallory. The caretaker and his family had lived there, in bedrooms on the
second floor. The ground floor had a kitchen, but mainly consisted of a large room where the carriages were kept, which became our living room, and a somewhat smaller room, with a horizontally split door that clearly had served as a stable for one or two horses, and that I used for a somewhat undersized basketball court (with a low ceiling that required that the basket be a foot lower than the standard ten feet).

The house came with two acres of land that had also been part of the Mallory estate, part of it wooded and part meadow, with a brook running through it that marked one edge of our property, and a large vegetable garden that the previous tenants, an Italian family, had cultivated. And I think my parents bought that house for just $2,000, and put another $2,000 into remodeling the house, mainly to make the ground floor into human living space. (I think all of the money was from a bequest to Mother from Uncle Steve, though most of his estate went to his deathbed wife.) I was delighted by this move from a New York apartment to a house with all that outdoor space, but above all I was delighted that I was going to spend the next four years at one school—Greenwich High School. That was particularly welcome to me because I’d never spent more than two years continuously in any school, and I felt I really hadn’t made much progress over the course of my education. I’d picked up all sorts of odd bits of knowledge, but nothing very systematic. For example, I’d never learned anything about English grammar—which is not to say that I spoke ungrammatically, but only that I couldn’t explain why it was grammatical; I didn’t know the names of the parts of speech, let alone the rules that apply to them. They may well have been taught at one or more of the schools I’d attended, but not in a year when I attended it. Indeed, I didn’t learn anything about the structure of a language until I took German and, particularly, Latin, in high school. So I was very happy to be absorbed
into Greenwich High School. And it was a reasonably good school—not least, because it had a pretty good group of students.

Sinclair: Public school or private?

Isbell: Public. And I did very well—not only academically, but also in acquiring some social maturity as well, during those four years.

Sinclair: Tell me about some memories from high school—friends, societies, sports.

Isbell: Well, as to friends, I developed two different—and quite separate—groups of friends. One group were from the neighborhood where we were living, whose parents were mainly blue collar or tradesmen types; the other group were schoolmates, virtually all of whose parents were solidly middle-class: professionals or white-collar businessmen. I did have a very active social life. I suddenly became very sociable, had a lot of friends. I had a very enjoyable time.

As to sports, my best sport was swimming, and there was a beach on Long Island Sound fairly close to our house, as well as better beaches in other parts of Greenwich. But although I was fairly good at it, I was never of competitive quality as a swimmer. My principal other sports were pick-up basketball and football, played only with neighborhood friends and acquaintances, but I was simply too young and too small (and not gifted enough) to have any thought of trying out for the high school teams.

We lived in that house from 1941 to 1945, throughout my high school years (and the Second World War). As I’ve mentioned, there had been a large garden—a vegetable garden—which our predecessor occupants had kept up. We enlarged that garden so that it measured a hundred feet square—which is to say 10,000 square feet in all, which gives you a better sense of how much work it was to turn it over by hand, one spade or fork at a time. We
planted every square foot of it with annual plants of all sorts, almost all of them vegetables, but with a sprinkling of flowers and decorative gourds as well. People were encouraged, as part of the war effort, to grow as much of their own food as possible, in what was called a “victory garden,” and we certainly did more than our share of that. I participated enthusiastically in that whole operation—planting things and seeing how they grew. I was even an enthusiastic participant in the wearisome task of turning over that enormous garden, one shovelful at a time, every year. Also, on one particularly memorable occasion, I helped my father dig out the decomposed and no longer odorous or even recognizable contents of our septic tank, and spread it as fertilizer on the garden.

The garden produced a good deal more food than we were able to consume, and what we were unable to give away to friends and neighbors, my parents canned, for wintertime consumption—the one part of the gardening operation that I had little or nothing to do with. (I think that when my parents sold the house, it came with a fairly full larder of home-canned vegetables.)

Our family enthusiasm for growing edibles extended, at least one year, to tapping sap in the early spring from our several maple trees, and boiling it down into maple syrup—a long and tiresome process, particularly with the improvised equipment we used for the boiling-down process (at the end of which you have to stop just in time so as to have a sufficiently syrupy product but before it suddenly turned to sugar and then burned up.) The resulting product was sweet enough to use on pancakes, but it didn’t taste quite like the real maple syrup because ours were not sugar maples (which did not grow naturally in our climate), but Norway maples. I also tried raising chickens for a while, and then turned more successfully to raising rabbits. The presumed point of doing that was to eat them, and we did try eating one, which my father was
brave enough to slaughter, but no one could manage to enjoy eating it, so that was the end of that adventure, at least as a source of food.

I played pickup games of football in the backyard, which was spacious enough for it, though there was a piece of vacant property next to ours—another remnant of the Mallory estate—which was even better for that purpose, and which we used if someone else hadn’t commandeered it before the group I was going to play with did.

As to the house, what had been the carriage room became our living room, with a fireplace and chimney that we had had added to the front of the building, replacing what had been a large entrance for the carriages. The room was about forty-five feet long, with a picture window that we had had installed at the other end of the room, looking out onto our property. It was a great place for parties.

Sinclair: For your parents or for you?

Isbell: Both, I guess, but especially for me, since I was exploring a whole new social life—or, more accurately, two separate social lives, one with local kids and the other with classmates from school. But we also had one wedding there. Our Aunt Jeanette, the youngest and closest in age of our blood-related aunts, got married there, in a ceremony for which we imported Reverend Newton, the longtime Pastor of the Crabb family’s Congregational Church in Westville (where I had also sung in the choir during my year when I did eighth grade at the Sheridan Junior High School and lived with my grandparents).

Sinclair: I want to focus a little bit more on high school but before I do that, I’d like to close the loop on pre-high school. Do you think that the Great Depression had any effect on your family and your childhood? You’ve already spoken a bit about your father and the effect the Depression had on his architectural career. It also seems that you moved around quite a lot.
Isbell: Clearly, all my moving around reflected the effect the Depression had on my father and therefore my family, and the moving around meant for me that my friendships didn’t have time to develop roots, so I didn’t stay in touch with people that I’d become friendly with. I think I was always reasonably sociable, but until my high school years, I just never developed a circle of friends with whom I had an interest in keeping in touch. In high school I was also very sociable, though I must confess that after I went off to college, I lost touch with most of those friends as well.

To the extent that I had problems resulting from frequent changes of my surroundings, though, I think the pertinent changes were not only the family’s moves—from Massachusetts to France, then New York, and finally Greenwich—but also the changes of schools.

Of course, the Depression had a marked effect on my family’s income and style of living, but I assume that’s not what you’re asking about.

Sinclair: Turning back now to high school, were you involved in the student council or other school activities?

Isbell: I don’t remember anything about a student council, but the school yearbook for our senior year shows that we had one (called the G.O. Council, but I don’t remember what those initials stood for) and that I was a member, though not an officer. I was also involved in all sorts of other things: my yearbook entry lists, in addition to the G.O., the Debating Club, the Dramatic Association, the Film Critics Club, the National Honor Society, the G.H.S. News, the Victory Club, and, most importantly, *The Green Witch*, which was the name of the school literary magazine, of which I was elected as editor. I don’t recall anything particular that I did as editor; and, thinking back on it, I don’t think I was a very impressive editor, though no one complained about me or suggested that I improve myself in some way. In any event, *The Green Witch*
regularly won a prize for best high school magazine in some annual event in New York, and we won it the year I was editor, too. And, I’m reasonably sure, it won again the year after I was editor.

I recall two other extra-curricular activities that didn’t merit mention in the yearbook, but on which I spent more time than on some of those that were listed there: one involved a group of four guys, including me, who from time to time prepared and performed for a school assembly a sort of comic act, of roughly the degree of sophistication later shown by The Three Stooges, but nonetheless well enough received by our student audiences that we did more than one of them. I don’t have a precise memory of this point, but I think those comical skits were generally one of the acts in a talent show, where other students would sing, dance or perform in other ways. And there was a period when I was heavily involved in organizing one of a pair of “political parties,” called, as best I remember, the Blues and the Reds. The members wore ribbons of one or the other color, and the one I helped organize put out a broad sheet.

**Sinclair:** What did the Blues and Reds signify?

**Isbell:** Nothing in particular, so far as I can recall; the idea of identifying the two national political parties by those colors hadn’t arisen yet; and in any event, these school political parties were concerned with issues having to do with the school, not the outside world. It was really nothing but a game that we had made up, which became popular for a while and eventually lost its novelty and therefore its interest.

**Sinclair:** What were your great loves? History, Shakespeare, Science?

**Isbell:** I think I loved all the subjects, especially Science and Math, and I got A’s in every academic subject but Mechanical Drawing, where I got only B’s, and demonstrated that I didn’t have the basic ability to draw a straight line, even using a ruler, and so was not a likely
candidate for either engineering or architecture as a career path. (I also got mostly B’s in Physical Education, but I don’t think those counted for the academic ranking.) Schoolwork was really a breeze for me; there was always a one-hour study period in the school day, and I almost always managed to get all my homework done in that hour. So I virtually never brought any homework home. I had Latin (I think as a required course) for two years, and I really loved it, partly because it (along with a course in German) provided my first exposure to grammar and the parts of speech; as I’ve mentioned, somehow, in my previous bouncing around from school to school, I’d totally missed any instruction at all in the structure of a language, and I was enchanted with that.

I signed up for an optional third year of Latin, and soon found that it was more demanding than any other course I’d taken; and if I was going to do it properly, I was going to have to take my Latin assignments home and do them there. That seemed to this self-indulgent kid too much of a price to pay, so I persuaded my father to write a note to the school to get me excused from continuing with third-year Latin, on the ground that I had too many other things on my schedule. Looking back on this, I think it was the one serious mistake he made as a parent, at least with respect to me; it would have been better for me if he had insisted that I continue that course. I can’t really resent him for it, though, because he had this kid who was doing straight A’s in almost everything and who was fruitfully engaged in extra-curricular activities, so I must have been difficult to turn down. Nonetheless, I later came to regret that he yielded to me, because with the exception of that one course, everything went too easily for me, and I never really learned to study in a disciplined way.
I recognized later, when I got to college, that I hadn’t ever learned to study because I’d never had to. The standard by which I was being tested, of course, was much tougher in college than in high school.

Anyhow, I wound up with the second best grade average in my high school class. I was also the next to youngest in that class, and was only 16 when I graduated.

I should mention that there was a girl in my class, Anne Garvey, who had an even better grade average than I and who was even a few months younger than me. She was voted the class’s Most Brilliant, and I was voted the Class Baby. I don’t doubt, now, that was a reasonably just reward for my having done a good deal of clowning around and acting the fool, though it surely stung a bit at the time.

Sinclair: Did you work during high school? Did you have a job, any job?

Isbell: Yes, I did—a variety of them. I had part-time jobs during the school year, and full-time ones in the summer, and the only one of those part-time jobs that I remember was working in a bakery where it smelled of the freshly baked bread, a heavenly fragrance. I also engaged in various money-raising ventures. I sold mail order Christmas cards, to be imprinted with the names of the customers to whom I sold them, lugging around a big suitcase containing a wide variety of sample cards, from a variety of different companies, from door to door in the neighborhood. I did pretty well financially with that.

I also sold magazine subscriptions in the same rounds as for Christmas cards, and that was quite profitable, too; so much so, that there came a time when I asked the school librarian if I could make a bid on the school’s subscriptions to magazines. I was allowed to do that, and the bid I submitted was significantly lower than the price that their previous purveyor offered. So I got the contract, but then discovered, too late, that I’d made a serious mistake in calculation, and
I was going to be losing something close to two hundred dollars on the contract, instead of the profit of half that amount that I’d been expecting. I’m sure I felt a bit like Icarus when he found he’d flown too close to the sun, but my subsequent fall was of course not as serious a matter as his.

It was, nonetheless, very humiliating and disappointing, though in the longer run, instructive, too. I did manage to get the school to forgive part of what I owed by letting me charge exactly what the competing outfit would have charged instead of the lower amount that I had bid for the contract and that the school had accepted. Still, that left me with an out-of-pocket loss of about $100, which I paid out of my savings from other, more profitable activities.

Another quite lucrative enterprise my closest high school friend Dick Walker and I cooked up was running a coat-check concession when there were school dances. With the school’s permission, and without any charge beyond a requirement that we clean it up afterward, we used a classroom for that purpose, and charged some modest fee like 25 or 50 cents per coat. Since we had no expenses, it was all profit, and as best I recall, we would each make $20 or more in an evening, which was pretty good money in those days. I think that that was something that Dick and I thought up; I don’t think it had been done before (though I’m sure it continued to be done by others after we had graduated). I actually also attended some of those school dances, but I don’t remember how I reconciled that with running the cloakroom.

**Sinclair:** Did you travel at all as a child—I know you went to France—but any other notable travel?

**Isbell:** Well, my parents, though they never had much money, always managed to take a summertime vacation somewhere in New England. One summer my mother and my sister and I
did a three- or four-week bicycle trip in Vermont or New Hampshire, staying at youth hostels along the way.

Another time, while we were still living in New York, the teacher and family friend who’d paid my tuition at Lincoln School for the second half of fifth grade lent us her country place in Connecticut, where the whole family stayed for much of the summer. I also spent one summer at Putney camp in Vermont. But aside from our sojourn in France, we didn’t travel very far. The longest trip I took was a two-week hitchhiking trip to Florida in, I think, the summer between the junior and senior years in high school, with Dick Walker, the friend with whom I had conducted the coat-checking concession at school dances, and who was also a member of the foursome who performed skits in school talent shows.

Sinclair: What impact did living in France have on you? Did it broaden your view of the world?

Isbell: Well, I’m sure that spending time in a foreign country broadens the mind some, just as visiting parts of this country does, but I don’t think of those two years in France as having had any particular effect on me, beyond perhaps having something to do with my wanting to go back to France after college. And as I’ve mentioned, my early exposure to French had left me with a good accent when I set out to learn the language again.

Sinclair: That makes a good transition to a discussion of college. When did you start thinking about college? In sophomore year of high school, junior high school, elementary school?

Isbell: I really don’t remember when. But it was surely earlier than my high school years. I just always assumed—in part, surely, because my parents always assumed—that my sister Michal and I would go to college. I was such a glutton for knowledge that there was no
reason for them to doubt that I would want to go to college, and although Michal may not have been as gung ho as I was about it, Mother was certainly anxious that her daughter have the full four years of college that her own father had denied her.

In addition, I had always assumed I’d go to Yale. My father had gone there both for college and for architectural school; a couple of my uncles had gone there; and my Isbell grandfather had as well (though only to the law school). And Yale was, of course, in New Haven, where my Crabb grandparents were still living, and with whom I had lived on a couple of occasions.

So I expected to go Yale, and when the time for college applications came, I just applied to Yale, and happily I was accepted.

Sinclair: Yale was the only college you applied to?

Isbell: Yes. I don’t think I ever even considered applying to any other college, though I might very well have had a better time, and an easier time getting adjusted, at some smaller and less prep-school dominated establishment. But I just didn’t consider it, and I don’t think anyone ever suggested it to me.

Sinclair: Was there an entrance exam?

Isbell: Well, in those days there were a cluster of exams that were called College Boards. One was a general scholastic aptitude test; the others were in particular subjects, and a student would have some latitude of choice as to which ones he or she would take. But I had won a four-year scholarship for college under a program established by Pepsi Cola. Pepsi Cola had a very public-spirited CEO, Walter Staunton Mack, Jr., and the Pepsi Cola scholarships were his baby. They might well be viewed as a forerunner and perhaps part of the inspiration for the much later-instituted National Merit Scholarships. The program offered full four-year
scholarships at any college you could get into, plus $25 a month and the cost of travel to and from the college. There were two scholarships for each state, and in addition, an extra two for black students in each state that had a segregated education system—which in those days, of course, was every one of the former Confederate states and a few others besides.

**Sinclair:** Wow!

**Isbell:** Pretty enlightened thinking for that time, which was 1945. The scholarships were awarded solely on the basis of a competitive exam; there was no consideration given to the degree of financial need (and so no recognition of winners unaccompanied by the financial benefit, as with the National Merit Scholars). To be eligible to take the exam, however, students had to be elected by their classmates as among the five best students in the class. So five of us were so chosen by our classmates at Greenwich High School and took the exam, and the two scholarships awarded for Connecticut were both to students at Greenwich High School. I was one of them, and a classmate and friend was the other. I don’t remember who the three others were who also took the exam.

**Sinclair:** The winners were you and the girl who was even younger and had a better grade average?

**Isbell:** No, the other winner was a boy named David Shapleigh; a friend though not a close one, and the one I thought of as my principal academic rival throughout my high school years.

Appropriately enough, David went to Harvard and I went to Yale. He went to divinity school after college, and was a minister for some years, though eventually he gave that up and became a banker.

**Sinclair:** What was the name of the scholarship, do you remember?
Isbell: I think it was just called the Pepsi Cola Scholarship. We weren’t required to do any publicity or anything promoting Pepsi Cola; we weren’t even expected to drink it, or prefer it to Coca Cola.

Sinclair: What did the scholarship exam cover?

Isbell: I don’t have any recollection of that at all.

In any event, that scholarship program went on for at least ten years, by which time the Pepsi Cola Company would have been supporting more than five hundred scholarships every year. So it would have been pretty darned expensive for the Pepsi Cola Company, and eventually it was discontinued, probably after the enlightened Mr. Mack had retired.

In any event, that scholarship didn’t take care of all the expense of going to a college like Yale. I also worked for my board as a “bursary” student. The one significant expense that wasn’t otherwise covered was my room; and that, I’m pretty sure, my parents paid for. I worked every summer to raise spending money—mostly as a common laborer for a construction contractor, since that paid better than any other available possibility.

Sinclair: Before we go there let’s start with college. Do you have memories of the first day of your freshman year? Do you have memories of moving in and of where you live

Isbell: I do. As I’ve mentioned, I had a good friend in high school whose name was Dick Walker. We were quite close buddies. We’d hitchhiked to Florida together during high school; we were partners in the coat-checking venture; and we were both members of the proto-Three Stooges. Dick had applied to Yale and gotten admitted, and naturally enough, we opted to room together. We were assigned to a suite with a third roommate, a veteran whom we didn’t know and never developed a friendly relationship with. And, strange to say, during that first college year Dick and I just grew apart. We reacted differently to college life, and were
interested in different things. So by the end of the year we were hardly talking to each other, nor with our third roommate, and I had not enjoyed college all that much. It was a strange, new experience for me.

**Sinclair:** In what way?

**Isbell:** I liked the classes well enough, but I hadn’t developed many new friendships, and, callow youth that I was, I hadn’t quite adjusted to the relatively mature and sophisticated world of an Ivy League college, or one where a large portion of the students were graduates of private prep schools rather than public high schools, like me. Part of the problem may well have been the fact that our freshman class was assigned directly to a residential college (Davenport), where we were mixed in with upper-classmen as well as other freshman, rather than spending freshman year on the Old Campus, where, before the war and after that first post-war year, all the freshmen were housed. In the all-freshmen residence halls, the newcomers received some guidance and support from graduate students acting as “Freshman counselors”—of which I was one later, when I came back to go to the law school.

In any event, I was sufficiently unhappy with that freshman year that I considered joining the Navy for a couple of years (since the Navy would accept enlistees at 17), instead of going on directly to sophomore year, just as a way of getting away from that atmosphere, and perhaps getting better prepared to deal with the challenges of college life. However, after some calm deliberation, I decided not to do that after all. I had arranged to room for my sophomore year with three guys with whom I had a lot of interests in common, and the four of us did get along very well. We four roomed together through graduation.

And from sophomore year on, it was all fun—or at least, it seems so in retrospect.
Sinclair: During freshman year, what courses did you take? What scholastically interested you?

Isbell: I had four courses, each for a full year, one of which was that intensive French course, which counted as two courses. The other three, which, like the French, fulfilled distributional requirements, were Classical Civilization, Biology, and English.

Sinclair: What about outside of the classroom?

Isbell: Outside of the classroom, although as I’ve said, I did not yet feel thoroughly at home, I did start to enjoy some of the pleasures of the good ole college life. For example, I joined Mory’s.

Sinclair: What was that?

Isbell: Mory’s was a drinking and eating club, one that was not very exclusive, since every undergraduate was eligible to join for a one-time cost of $25 (a fair but not exorbitant amount at that time), and it had a distinctly Yale cachet about it. It was certainly more affordable than joining a fraternity; the drink and the meals Mory’s served were cheap; and there was an atmosphere of college jollity and camaraderie and tradition about it. The walls were hung with photos of Yale athletic teams of various sorts, and all the tables bore the carved initials of earlier generations of undergraduates. The Whiffenpoofs, the oldest and best known of Yale’s many singing groups, had its own table and serenaded the guests from around it every Monday evening. It just reeked of Old Blue atmosphere.

I’m sure you know the Whiffenpoof song: “To the tables down at Mory’s, to the place where Louis dwells, to the dear old Temple Bar we love so well . . . .”

Sinclair: I’m familiar with that.
Isbell: And it may well be that it was at Mory’s that I drank an alcoholic beverage—probably beer, though I soon got familiar with hard liquor as well—for the first time in my life, at the age of 16. (I had previously tasted an alcoholic beverage—rum—but only in combination with lemon juice and honey, in a home-made cough and cold syrup that was probably a traditional home remedy from one of the grandparental households.) As to my college drinking, it was illegal to serve minors then, as it is now, but nobody in the college community seemed to pay any attention to that. The legal drinking age in Connecticut was then 21 (and that is still the case, though I gather that the disregard of that law is no longer prevalent at Yale today), so even when I graduated from Yale, at 20, I could not legally drink any alcoholic beverage there.

Sinclair: Was your drinking a bad experience, a good experience, or just kind of a typical college experience?

Isbell: Well, I had some bad experiences with drinking. I over-indulged a few times, and paid the penalty with whirly bed, which is one of the least pleasant experiences I’ve undergone, and from that I learned pretty early what the limit was on my capacity for alcohol consumption. After I’d learned that, on the whole I enjoyed alcohol in various forms, together with the group jollity and camaraderie with which it was almost always associated. I didn’t do any drinking by myself, or surreptitiously (as had been the case with cigarette smoking, which I took up at the age of 13 or 14).

A major activity of mine in college, which certainly started in that freshman year, was singing, group singing of various kinds. There were so many singers among the somewhat overfilled college enrollment that there were three different glee clubs—the varsity Glee Club, the Apollo (I’ve forgotten the full name) and the Gentlemen’s Catch Club—in that order of
status, with each of which I sang at one time or another. There were also a number of
established four-part harmony barbershop quartet-type groups, almost invariably a good deal
larger than a mere double quartet, of varying degrees of prestige, with the Whiffenpoofs at the
pinnacle of that pyramid. There was also a good deal of informal singing at parties and other
get-togethers. I’d sung in quite a few church choirs in my childhood, and in at least two school
choruses, but I’d never sung in a quartet or other small group, nor done any informal
harmonizing, before I got to college.

Sinclair: Were you involved with any of those college groups?

Isbell: In my freshman year, I think, only one of the glee clubs.

Sinclair: Closing the loop on your freshman year, does any big experience jump out, any
girls, good friends, the Yale/Harvard football game?

Isbell: Oh, well, I went to all the football games—that is, all the home football games. A
very enthusiastic spectator.

Sinclair: Was that at the Yale Bowl?

Isbell: All the home games were in the Yale Bowl. I didn’t get to all the away games,
though I did get to some of them, including both of the games with Harvard that were held in
Cambridge during my college years.

Sinclair: Any good friends from freshman year, or girlfriends?

Isbell: I don’t think I had any girlfriends or dates in New Haven that first year, though I
did have a girlfriend back in Greenwich whom I’d see during the holidays and the summer.

Sinclair: Yale was not co-ed?

Isbell: Certainly not. Indeed, I’m not sure that that was yet even a gleam in any Yale
eyes at that time.
Sinclair: This is session two in Mr. Isbell’s oral history for the Historical Society of the D.C. Circuit. In the first session, we covered Mr. Isbell’s history from pre-birth to the end of his first year at Yale College. We’re going to begin today with his second year at Yale College and going as far as we can in the time allotted. So with that said—

In our last interview we covered your first year of school pretty thoroughly and you described your freshman year as a mixed bag, good and bad.

Isbell: Right.

Sinclair: And we’d set the stage for what was to come at Yale. And so, you might begin by talking about the summer following the freshman year, if there was anything about that summer that helped to change your view of Yale.

Isbell: Well, one thing I did that summer was decide not to join the Navy after all, but instead to go back and give college life another try.

In the summer breaks in college as in high school, I always got a job of some sort, because I needed all the money I could get—particularly in college. And as I’ve said, the jobs that were best paid generally involved physical labor. However, the first part of that particular summer, following freshman year, I departed from that pattern because I’d answered an ad seeking a young man to be tutor and companion to two boys while they and their parents went to a dude ranch in Wyoming. The ranch was a family-run working sheep ranch, so we had very fresh and tender lamb chops from time to time—the first lamb I’d ever had that I really enjoyed eating, since most of the supposed lamb I’d had at home had really been mutton. We stayed at the ranch for two weeks. I had a great time, and so did the boys, but as soon as we all got back
to Greenwich, I was paid but then told that I had not been a satisfactory tutor and companion for my charges—I had focused on enjoying myself, rather than entertaining or teaching the kids—and I was fired. I must say I realized that that criticism was well-founded; I really wasn’t yet mature enough to do that sort of job properly. I don’t remember just what I did for the remainder of that summer, but it probably involved manual labor of some sort.

In any event, sophomore year seemed very different from freshman year. None of the things that bothered me in freshman year seemed to have any bite in my sophomore year.

Sinclair: Was that evident from the very beginning of your sophomore year, or did it take a while to settle in?

Isbell: I think it was almost immediate. For one thing, I was rooming with three guys with whom I was already acquainted and felt comfortable with, though I had not yet shared living space with them. The four of us got along very well, and I became particularly close friends with the roommate with whom I shared a bedroom, Roland Hoover. Most of the rooms in the residential colleges at Yale were in three-room suites, with two bedrooms and a shared living room. I think they were originally intended for occupancy by two men per suite, but with an extra large student body right after World War II, they became four-man suites, with two beds in each bedroom. I think that pattern has continued ever since.

In addition, I enjoyed all my courses—with one exception in the freshman year—and enjoyed the fact that I could choose my courses from a dazzling array of possibilities. The academic part of the college experience was enormously exciting for me.

Sinclair: Why so?

Isbell: Well, the subjects were interesting, and the teachers stimulating—particularly the lecturers, who, because they were so good, had larger classes.
Sinclair: You mentioned singing in connection with your freshman year; did that continue for the next three years?

Isbell: Yes, indeed. In those days—and I think it’s still the case—there was a lot of singing at Yale. There were not only the glee clubs and the several overgrown double-quartet-type groups, but also a great deal of informal quartet singing. At virtually any party a few of the participants would burst into song. There was a Yale songbook, which included a number of songs that everyone who sang knew, and the songbook was designed for four-part singing, showing not only the melody (ordinarily the second tenor) but also three harmonizing parts, so everyone knew the melody of the songs and a lot of guys also knew at least one of the harmonizing parts as well. Since I was a tenor, I generally learned the first tenor part and would sing it when someone else in an ad hoc group was carrying the melody.

In my junior year, not having been invited to join any of the established small groups—all of them overgrown double quartets—I established a double quartet of my own. Unlike most of the other small groups, the one I established had just eight members, and I named it The Augmented Seven. That was a little play on words, since an augmented seventh is a musical chord, and that name, in a double-entendre, also described our number.

Sinclair: I’m a musician myself, so I understand.

Isbell: Instrumental or vocal or both?

Sinclair: Well, I sing, though not well, but rather, pride myself on my guitar playing. I also dabble with the piano.

Isbell: Good for you. Well, I took up piano while I was in college. My parents had forced me to take piano lessons for a while when I was a kid, but I was resistant, so they let me drop it before I’d gotten very far with it. All of that singing in college, however, generated a
desire not only to know more about music generally, but also to play some musical instrument, so I took up piano more seriously. And I’d learned enough about music from my piano lessons to be able to arrange songs, which I did for The Augmented Seven. That group wasn’t terribly impressive musically in its initial years, but it had no problem finding appreciative audiences. Nonetheless, it lasted for a few years after I’d gone, and I’ve been told by people who were at Yale later and involved in singing (including one of our present partners, who was in the Whiffenpoofs) that it became quite good.

Sinclair: Now was all of the singing of Yale-related songs or were you doing popular numbers of the day?

Isbell: The informal singing generally involved Yale songs, which is not to say that they were all necessarily about Yale; they were favorites that became popular enough at some point to be included in the Yale Song Book. Maybe there was some singing of popular songs, too, but my memories are mainly otherwise. Each of the smaller organized groups had songs of its own, however, and some of those songs might well have been popular songs.

Sinclair: Now at the time Yale was all-male, correct?

Isbell: It was, and so all the singing groups were also all male.

Sinclair: Were you involved in any other extra-curricular activities at Yale?

Isbell: Yes. One such activity that I got fairly heavily involved in from my sophomore year on was a newly created and relatively short-lived organization called the Miniature Tree Growers Association, or MTGA, which devoted itself to satirizing things that were going on at Yale. You might say it devoted itself to pricking balloons of pretentiousness, of which Yale had a goodly share. The MTGA had meetings once a month, open to the Yale community, and generally quite well publicized and attended, at which there would be several performances of
one kind or another that mocked or otherwise made fun of someone or something at Yale. Not only were those monthly performances fun, but I met a good many bright and interesting young men through it.

The most memorable of those performances for me, you won’t be surprised to hear, was one that I put together, making fun of William F. Buckley, Jr., the late famous conservative, who was a year ahead of me at Yale. Buckley was editor-in-chief of the Yale Daily News, the college newspaper, which made him a major figure at the college; and he had written an editorial on the general theme of the book he published five years later, titled *God and Man at Yale*, which first brought him fame. That theme was that there were too many teachers at Yale who were undermining the religious beliefs of young and vulnerable students. And this particular editorial attacked an anthropologist named Kennedy, who taught a very popular course on the subject, and to whom Buckley’s editorial referred as “Dear Old Jungle Jim Kennedy.”

I was inspired by that editorial to write and perform a parody of it, purporting to attack one of the more sanctimonious faculty members—a parody that got a good, appreciative audience.

**Sinclair:** Who was the faculty member?

**Isbell:** He was a professor named Theodore Greene, who I think taught philosophy. I don’t believe I took any course with him for credit, but I either audited one of his courses or perhaps sampled a few classes to see whether I wanted to take it. He was a nice enough fellow, and he was also the Master of Silliman, one of the residential colleges, but as a teacher he sprinkled his lectures with phrases that seemed to me both pretentious and religious in tone. So whereas the Buckley editorial had talked about dear old Jungle Jim, my parody spoke about dear old Tiger Theodore. In my parody, I started out by quoting a favorite saying of his, from a poem
by Shelley: “Life, like a many-colored dome of glass, stains the white radiance of eternity.” And then I recited a verse from T.S. Eliot titled The Hippopotamus. Let me see if I can retrieve that from my ever-fading memory:

At mating time the hippo’s voice
Betray inflexions hoarse and odd,
Yet every week we hear rejoice
The church, at being one with God.

There was more to my performance than that; it took ten or fifteen minutes to deliver, but the foregoing catches the general tone of it. It was well received, and I was told that word of my parody got back to Greene, and that he expressed himself as delighted with it.

Another performance of sorts that I did for the MTGA was on some day of college-wide celebration, such as Derby Day, when the MTGA had a party at which their music was provided by a calliope; by a pick-up brass band (including my roommate Roly Hoover) in various costumes who called themselves the German Band and played an oompah-pah sort of music; and by The Augmented Seven, the singing group I had organized, singing what amounted to a parody of the Yale Anthem, Bright College Years (commonly referred to as BCY). The melody of that stirring song was taken from a German patriotic song called Die Wacht am Rhein; as a result, it was said, when Marshal Foch visited Yale after the First World War, and attended a football game at the Yale Bowl, BCY, which would ordinarily be sung at some point during the outing, could not be sung on that occasion, lest the good Marshal be offended. BCY had two verses, and at the MTGA event I’m recounting, I sang the first verse solo, with the rest of my group providing an oompah-pah sort of chorus, using the words of the first verse of Die Wacht am Rhein. We all then sang the normal second verse of BCY, with its traditional waving of handkerchiefs along with its concluding words, For God, for Country and for Yale.
I should mention that the MTGA’s very name involved a bit of self-mockery, since we had nothing to do with trees, let alone with bonsai trees or the special techniques of miniaturizing them. We did, however, have a “Kilmer clause” in our charter, decreeing that no one related by blood, marriage or cohabitation to Joyce Kilmer, the journalist, poet, lecturer, editor and namesake of an army base in New Jersey, who was responsible for the poem titled Trees, was eligible for membership. The first (or perhaps only) verse of that poem is:

I think that I shall never see  
A poem lovely as a tree.

A tree whose hungry mouth is prest  
Against the earth’s sweet flowing breast,

A tree that looks at God all day,  
And lifts her leafy arms to pray;

A tree that may in summer wear  
A nest of robins in her hair;

Upon whose bosom snow has lain;  
Who intimately lives with rain.

Poems are made by fools like me,  
But only God can make a tree.  

Sinclair: Were you involved in any athletic activities?

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1An incidental but amusing note: when I started teaching the Civil Liberties at the University of Virginia School of Law, the school was housed in a building that had a large entrance hall with a very eye-catching mural, evidently one that had been done by an artist who was a particular favorite of the benefactor who had given the building to the University, with the stipulation that that painting would remain where it was.

The eye-catching feature of the painting was that it included a number of attractive human figures, both male and female, engaged in various mundane activities, but many of them completely nude, and shown frontally as well as from other angles. Among these was a figure of a man hugging a tree trunk; and a copy of that particular figure was published in an issue of the law school’s newspaper with the caption, obviously borrowed from Kilmer’s verse, saying “Only God can make a tree.”
Isbell: Well, I did some intramural swimming and some intramural soccer. I also played a good deal of squash, but with friends, not as part of a team. I’d never played it before college, but it was convenient to play because there were squash courts in the basement of most if not all of the residential colleges, including Davenport, where I was housed. Sometimes in the evening, when I needed a break from studying, I’d go down to the squash court and hit the ball around by myself—something you can’t really do with tennis. But I was no great athlete.

Sinclair: Singing and intramural sports were your extracurricular activities?

Isbell: I guess that’s right, but with emphasis much more on singing—and on the MTGA—than on sports.

Sinclair: Debate society?

Isbell: No; not in college.

Sinclair: Well then let’s talk about academics. You said that during your sophomore year you really began to enjoy academics. What in particular, what classes did you like? Were you beginning to think about the future in your sophomore year, or—

Isbell: I’m not sure that I can place them by year. One of the lecturers whom I recall particularly was Norman Holmes Pearson. He taught a course that I took in American Literature and was a marvelous lecturer. He had a twisted body, and looked somewhat hunch-backed. As I learned much later, he had been one of the few Americans at Bletchley Park, where the English broke the code of the Germans’ Enigma cryptographic system.

Another remarkable lecturer was Cecil Driver, an Englishman who, rumor had it, actually had no advanced degrees. He taught a course in political science, I think, and was an entertaining speaker, with interesting turns of phrase, of which I recall just one, which I have occasionally found useful as a gesture of false modesty, to the effect that he didn’t “mean to
stand three feet above contradiction.” The most memorable event in his course was his having
as a guest speaker one day Alexander Kerensky, the Russian Socialist revolutionary who was
prime minister in the provisional government set up after the February 1917 revolution.
Kerensky had served as prime minister from July to November 1917, when he was ousted by the
Bolsheviks.

There was one class I took in the sophomore year that I found disappointing—not
because of the teacher but the subject matter—namely, economics. I had started college thinking
that I might major in economics, because that seemed to be a subject that might be of practical
use when I got out into the post-college real world. But after just one introductory course in the
subject, in sophomore year, I decided that economics was indeed the gloomy science that Carlyle
had called it, and I switched my focus to history instead, despite the fact that it would not be of
much practical utility unless I aimed for an academic career, which I was not yet considering
seriously. And there were some wonderful teachers in the history department. So that became
my major.

**Sinclair:** Did they require a focus at that time? Such as American history, European
history, world history?

**Isbell:** No, as best I can recall, that sort of concentration in a particular branch of a
subject wasn’t required for a major in undergraduate school. But the courses I took did tend to
concentrate on intellectual history.

**Sinclair:** Were there requirements that came along with that? Did you have to take a
certain number of courses, for instance?

**Isbell:** There were some requirements. You had to take some minimum number of
courses in whatever your major was. There were distributional requirements, as I’ve mentioned,
and there was an overall requirement of a minimum number of course credits. But I didn’t find any of the requirements oppressive. I found something interesting in every subject except economics, and even there, I learned something. And there was no general requirement that you do a senior thesis unless you sought to graduate with honors. Of course I wanted to graduate with honors if I could, so I did undertake a senior thesis.

Sinclair: Yes. Let’s talk about that.

Isbell: I chose Evelyn Waugh, the English author and satirist, to be addressed from the point of view of intellectual history. And I did a poor job on that thesis. I did it during my senior year, I think in place of one course in one of the last two terms.

Sinclair: Did you have a faculty advisor for the senior thesis?

Isbell: I did have an assigned advisor—a graduate student, who had a heavy foreign accent that I couldn’t identify, and who was encouraging without being a usefully constructive critic.

When I got my completed thesis back, with a grade and comments from the senior professor to whom it had been assigned for grading, I was shocked and seriously shaken. Grading was numerical at that time. A passing grade was 60 and a perfect score was 100. I’d never had a grade below 80 up to then, but on that paper I got a grade of 60. And the reviewer’s comments were very caustic. He said he was only giving me a passing grade because someone in authority had allowed me to undertake the topic, which I clearly wasn’t yet intellectually equipped to do.

That was a serious but very instructive disappointment, I must say. All my other grades were quite respectable, and some excellent, but that one near failure pulled down my overall average significantly, and would not have been helpful if I’d decided to do graduate work in
history. If I’d managed a really good grade on the senior thesis, I thought I might have graduated with *Philosophic Orations*, Yale’s then equivalent to *Summa Cum Laude*. Instead, I wound up with the lesser honor *High Orations*—the equivalent of *Magna Cum Laude* or plain *Cum Laude*.

But as I’ve said, that disappointment was certainly instructive. As time went on, I came to realize that the reviewer had been quite right. I knew at the time I was writing it that I hadn’t started early enough or allocated the time to it that was required—and I’ve never again made that mistake with any other major project I’ve undertaken. I sensed as well that I wasn’t sufficiently knowledgeable; I didn’t have a wide enough acquaintance with either the literature or the history of the period to write a serious scholarly piece. And the paper really was a piece of trash. I went back and read some bits of it ten years or so later, and realized that it was so bad I’d be ashamed to let anyone else see it.

Apropos of the academic aspect of Yale, I should mention that in addition to taking the required number and distribution of courses, I also audited at least two courses during my two final years—one a philosophy course taught by Paul Weiss, a very prominent philosopher who had taught at several other universities in addition to Yale. (I’d also taken a course in philosophy from Paul Blanchard; I think that was the course in which I got my best grades.) The other course I audited was a lecture course on History of Art, taught by a then brand new instructor named Vincent Scully, who was even then, I think, the best—most interesting and mind-opening—lecturer at Yale.

So that takes care of college, unless you have other questions.

*Sinclair:* What was your home life like during college? Would you go home during the summers? Would you go home during the vacations?
Isbell: I did go home during the summers, with the partial exception of that first summer’s excursion to the Wyoming dude ranch, and I went home on holidays as well. We were living in Greenwich, which is just 50 miles or so away from New Haven, so I would frequently come home on weekends—generally hitchhiking both ways. And I’d often bring friends home with me. So my parents really got a significant taste of my college life from me and my college friends.

Sinclair: Did they approve?

Isbell: They certainly approved of my roommates and other friends that they met, and of the Augmented Seven singing group, which my father particularly enjoyed, for he was a very good singer and a better musician than I was, and had been in the glee club when he was in college at Yale.

My roommates and some of my other friends whom I’d invited home on weekends also got to be quite fond of my parents, as did one of my professors, Fred Cahill, with whom I’d had a course in Political Philosophy. I don’t remember just how it came about that I introduced him to my parents, though I do remember his telling me that my father was one of the most delightful men he’d ever met, and he kept in close touch with my family while I was away in Europe. So my college experience proved to be a source of pleasure for my parents as well as for me.

As for summer vacations, with the exception of the brief dude ranch fling that first summer, I spent every summer at home, and always got a job nearby, working as a manual laborer on a construction project, which paid better than any other available summer work.

Sinclair: During your senior year or maybe before you must have been thinking about your future.

Isbell: I was.
Sinclair: What were your thoughts?

Isbell: I knew I wanted and needed more formal education. But I also knew that I didn’t want to go right on to graduate school or a professional school.

Sinclair: Why?

Isbell: Principally, I wanted a little relief from intense academic life. And, at 20 years old, I still felt a little young to be starting out on a serious career path. So my first thought was to find a way to spend sometime in England, France or somewhere else in Europe. The main opportunities for doing that at that time were various fellowships or scholarships for study in Europe. I was quite willing to go on with academic life if it also meant spending a year or two in Europe.

So I tried for a Rhodes scholarship, but never got beyond the first interview. I also tried for a somewhat similar scholarship for which only Yale students were eligible, providing for two years of graduate studies at Clare College, one of the colleges comprising Cambridge University. I tried for that but did not get it. The guy who did was the top-ranked student in the Yale Class of 1949—pretty stiff competition. That Fellowship had been created and funded by Paul Mellon, who had himself spent two years at Clare College after graduating from Yale. I believe he also had funded a reciprocal fellowship for a Clare College graduate to study at Yale.

That year—1949—was when the Fulbright Fellowships started. And I thought of applying for a Fulbright, but I was, foolishly, a little discouraged by missing out on both the Rhodes and the Clare College Fellowship, and decided it was not worth applying for a Fulbright Fellowship. In hindsight, that seems to have been a mistake, because that first year, I think, practically everybody who applied for a Fulbright Fellowship got one. There had been quite a lot of those fellowships available, and not an awful lot of applicants the very first year.
So I may have made a bad judgment in deciding not to try for a Fulbright, but I can’t say I now regret it, because I managed to get to Europe and have an interesting and enjoyable time anyhow. I got the taste of expatriate life I wanted, spent time in the two countries I was most interested in—France, for its glamour and the chance to really polish up my command of that language; and England because I’d admired the way it had stood alone against the Nazi juggernaut, and perhaps a little because my family’s roots had been there, albeit from quite a long time ago. Moreover, among the history courses that I’d taken and particularly enjoyed and done particularly well in, was one on English History. As things worked out, I had a chance to sample expatriate life in both of these countries.

Sinclair: When did you make the decision to try out the expatriate life?

Isbell: I can’t pinpoint it, but it was sometime during my college years. My taking the intensive course in French to fulfill the foreign language requirement doubtless helped, because although I’d lost all the French vocabulary I’d acquired during those two years my family was in France, I found that the accent came back to me, and that was an incentive for spending some more time in France.

So, I lined up a position as a counselor for the summer of 1949, at a camp for French and American kids on Lake Annécy in the French Alps. I mentioned that camp in the first interview, in connection with my family living in France for two years.

Sinclair: The MacJannet Camp, yes. We talked about the time when your parents had been counselors at the camp and then teachers at MacJannet School.

Isbell: Well, the MacJannets had reopened the camp not long after the war, although they never reopened the school. They still owned the land where the camp was, near Talloires on Lake Annécy, and the various camp structures—the swimming deck, the dormitories, the dining
room, and so forth—were all intact. (They are still there, in fact; Karen Adler, one of Florence’s
granddaughters, spent some time in the summer of 2008 living with a French family in Talloires,
which is near the camp grounds, and she visited them.)

But the arrangements regarding campers and counselors, that summer when I returned
there, were quite unusual, and very different from what they’d been when my parents had been
counselors there and my sister Michal and I were campers. Those unusual arrangements
reflected the fact that France was still recovering from the war. Half the campers were French
and, in effect, on scholarships—that is, they didn’t pay—and the other half were American and
they did pay, or rather their parents did. There were also both French counselors and American
ones. I believe the French counselors were paid, and I know the American counselors paid for
the privilege of being counselors.

**Sinclair:** Interesting setup.

**Isbell:** However, I was given a special dispensation as a counselor because of my former
status as a camper and my parents’ as counselors at the camp and teachers at the related school.
I wasn’t paid, but unlike the other American counselors, I didn’t have to pay the MacJannets for
the privilege of being a counselor, and the only expenses I had to pay were the cost of getting to
Europe and then to Lake Annécy, and, later, the cost of very modest living in Paris while looking
for a job, and those costs were not great. I flew over on a plane—a Douglas DC 4, I think—that
was chartered by an organization called Youth Argosy, and tickets for which were dirt cheap,
and that flight, with many stops, took its planeload of students from Bradley Field near Hartford
and Springfield to Geneva. It was my first flight in a commercial airplane—a voyage that took a
total of 30 hours, in part because we had to turn back not long after departure to deal with an
engine that was getting overheated, and in part because we had to stop at several intermediate
airports on the way for refueling.

I should mention that I really loved that summer—loved the physical setting, loved the
camp life, loved being a counselor (and found I was good at it). In fact, I enjoyed it so much that
the next year I spent two weeks of vacation back at the camp as head counselor (because the guy
they’d expected to do that had had to cancel at the last moment) getting the camp organized and
selecting my successor to take over when I left.

As it happened, among the American campers at the camp that first summer were two
sons of Professor Milton Katz of Harvard Law School, who was then one of two American
ambassadors stationed at the Marshall Plan headquarters in Paris and charged with supervising
the European operations of the Marshall Plan. Averell Harriman was initially the senior of the
two ambassadors, but when the Korean War broke out, Harriman was summoned back to
Washington, and Katz became the senior Ambassador. When Ambassador Katz came to visit his
two camper sons, Mr. MacJannet, who knew I wanted to get a job and stay in Europe,
recommended me to Katz. The thing MacJannet said about me that impressed Katz most was
that I had made the latrine cleaning squad the most popular work assignment among the boy
campers (although the reality is that it’s not all that impressive an accomplishment to get a bunch
of pre-teenage boys interested in cleaning latrines). MacJannet reported to me that Katz had
responded by saying, “Well, that’s just the sort of person we need.”

Sinclair: Did that recommendation by MacJannet bear any fruit?

Isbell: Apparently so. When the camp closed at the end of the summer, Katz sent a
member of the ambassadorial protocol office with a limousine to pick up his two sons and bring
them back to Paris, and I was offered the chance to go with them, which of course I gratefully
accepted. I spent the next month and more exploring Paris, living in a dirt-cheap hotel room and, along with my sightseeing, looking for a job. Finally, just as my money was about to run out and I was going to have to either sell my ticket home or use it, I got a call from someone at the Marshall Plan headquarters in Paris saying that there was a position open for a clerk/messenger in the London office, and if I wanted to take it I must get there right away. Of course, I accepted, and flew over to London the next day.

The fact that the job of clerk/messenger was a pretty lowly position for a college graduate didn’t give me a moment’s hesitation; my summer jobs had left me well prepared for low positions, and I’d have been willing to put up with something even lowlier, just for the chance to see England and London. Moreover, although I was also quite accustomed to living in an economically modest manner, the salary for that clerk/messenger position, as best I remember, was around $5,000 a year, which was a pretty substantial amount for that time and place. I think the pay scale was higher than it would have been for comparable government positions in the United States because it was abroad, and therefore it was assumed that the cost of living would be higher, although in those early post-war years in Europe that was surely not the case.

An unusual aspect of the Marshall Plan was that all of the employees except chauffeurs had to have a security clearance. And to have a security clearance they had to be American. The powers that be had realized early on that there were a lot of American college graduates—often with graduate degrees—in Europe and enjoying the expatriate life, and generally, like me, needing some sort of employment in order to continue to lead that life. This meant that there was a labor pool of educated Americans in situ that, even if hired for a low level job, might be qualified for promotion to a junior executive position when one became vacant. The result, I do
believe, was that the Marshall Plan had the best educated guard and messenger force of any government agency ever.

I should mention that the head of the London office of the Marshall Plan was not at all happy about getting another college graduate as a clerk/messenger. The reason was that my predecessor in that slot, also a college graduate, had taken some classified documents home with him—clearly forbidden and probably a criminal offense. He’d then taken them to the home of some English friends, to discuss their contents with them—no doubt another, separate offense. And finally, he’d left the papers at his friends’ house—probably still another offense, and in addition an extremely stupid thing to do, because his English friends, worrying that he might get in trouble, did an almost equally stupid thing, and brought the classified papers back to the Marshall Plan office. As you can imagine, that guy was shipped back to Washington without delay, no doubt to be subjected at least to some serious questioning if not serious punishment as well.

Sinclair: And you were a clerk/messenger.

Isbell: Indeed I was.

Sinclair: What did that entail?

Isbell: Carrying messages from one place to another, doing clerical work. Nothing requiring a college degree. But still it was a job that had a pretty good salary, especially in a Europe that was still recovering from the war. And although it was four years since the end of the war, prices were still controlled in England, a manifestation, it seemed to me, of the typical English willingness to bear a current hardship as a tradeoff against a future benefit. One feature of the price control regime was that no restaurant could charge more than five shillings for a meal. Even the best restaurants could not do so.
Sinclair: Wow.

Isbell: You paid extra for a beverage and probably extra for dessert, but you still could get an excellent meal, at an elegant restaurant, at a very modest price. And so, even though I was in the lowly position of clerk/messenger, I lived a wonderful life in London. Also, theatre, ballet, opera and concert tickets were easy to obtain and very inexpensive for an American living on a salary of $5,000 a year and without a family to support.

Sinclair: Where were you in London?

Isbell: I lived in a house on Bryanston Square, which is not far from the Marble Arch and within easy walking distance of Hyde Park and its Corner that is famous as a forum for public speakers and hecklers. All the rooms in the house were rented out. There was no central heating, but each of the bedrooms had a little coin-fed electric heater, so you paid for your heat by the hour, at a not too extravagant rate—something like a shilling for an hour of heat. There were a couple living there who managed the house, but they weren’t the owners. Most of the tenants were young professionals like doctors or lawyers, or training to become such. Almost all of them were English, though there was one Australian girl; I don’t remember there being any Americans there. It was quite a nice old house on one of those typical London squares, with a gated garden in the middle of the square. At least one of the buildings on the square had been destroyed by a bomb during the war, and had not yet been replaced.

Sinclair: Was your work schedule Monday through Friday?

Isbell: Yes, it was just Monday through Friday, nine to five or maybe six.

Sinclair: Were you able to get out of the city at all?

Isbell: Yes, I did get out of the city and to nearby places like Cambridge—where I looked up a friend from college who had been the founding father of the Miniature Tree Growers
Association; Oxford University, and, not far from Oxford, Blenheim Palace, home of the Duke of Marlboro, and Winston Churchill’s birthplace. And on at least one weekend I rented a car with a friend who was a fellow tenant in the Bryanston Square house and was apprenticing in the chambers of a very prominent barrister, and toured the Cotswolds, including Shakespeare’s Stratford-upon-Avon. All in all, it was a very enjoyable life.

I had some general plans to do some more ambitious traveling in England and possibly Scotland and Ireland, but after eight months or so in London, I got promoted and transferred to Paris, to the Marshall Plan headquarters in Europe. My new job was in the protocol office, and my position there was as an aide to the ambassadors. Principally, that meant handling VIP visitors to the Paris office. We’d go out to the airport, meet their planes, whisk them through Customs, and get them safely to the hotel where we’d made reservations for them.

There was a certain glamour to that job, I suppose, since we were dealing directly with the ambassadors, their wives, and a stream of distinguished visitors. On the other hand, although I knew why these distinguished visitors were coming—because I read all the cable traffic, including classified traffic—it was not part of my role to discuss business with them, and I don’t recall any of them doing so with me. So although the job had some interest just because of the people we met and provided services to, and paid enough so that I could live in a fairly spacious apartment in an elegant neighborhood near the Parc Monceau, I didn’t really find it substantively satisfying except in one respect—it involved speaking a lot of French, not only in connection with the job but also because I’d developed friendships with a group of French contemporaries. By the time I came back to the States, I’d become truly fluent—to the point that a quite sophisticated Frenchman with whom I happened to converse in a restaurant was surprised to learn that I was American; he’d actually thought I was French.
Sinclair: The ultimate compliment.

Isbell: Very high praise, especially from a Frenchman—and especially in those days. Nonetheless, I was eventually ready to give up that glamorous but substantively unfulfilling expatriate life.

Sinclair: Why?

Isbell: Well, I concluded that I really was not going to be able to stay in Europe and get involved in civic matters, which I felt that I had a need to do. I felt that I needed to live in a country where I could be involved in civic matters and make some contribution to the society I was living in. And it was not just the fact that I was not a native of the country where I was living that made that difficult; neither France nor England has the same sort of strong tradition that we have, of civic involvement by ordinary citizens, and of a large number of nongovernmental organizations doing civic good works of various kinds. So by the end of 1950 I felt it would not be long before the time came to give up my lotus-eating sort of life, and return home to pursue a serious career.

The specific trigger for my departure, however, was the Korean War, which had started in the summer of 1950 and was still raging. It occurred to me that my Draft Board would be looking for me at some point. Although I assumed that they could find me easily enough through my parents’ address, it also occurred to me one day that my draft card said that its holder had a duty to keep the Draft Board notified of his current address. I had never notified the Draft Board that I was abroad, or where or what I was doing. So I sent the Draft Board a letter telling them where I was and what I was doing, and by return mail I got a notice to report for a pre-induction physical—a somewhat prompter response than I had expected. I was able to defer
reporting so as to wind up things in Paris in an orderly way, but it was nonetheless a somewhat more abrupt end to my career as an expatriate than I had been contemplating.

**Sinclair:** How did you feel about being called home to serve in the military?

**Isbell:** I didn’t mind being summoned back to the States since, as I’ve said, I felt the time was coming for me to do so; and I didn’t mind the prospect of military service, since I’d been a teenager during the Second World War, and it had come to seem a natural part of a young man’s expectations to do some military service—especially when the country was engaged in a serious war. It also helped that this was a war that I considered amply justified; indeed, for a good many years it seemed to me to have been the last of the good wars the United States had been involved in (since joined in that category by the First Gulf War, and maybe to be joined in due course by our current efforts in Afghanistan).

**Sinclair:** You mentioned that by the end of 1950 you had begun to feel that it was time to return home. Had you by this point begun to entertain the possibility of law school?

**Isbell:** I knew that I wanted to get an advanced degree of some sort, pointing to a career path, and the three possibilities that I had in mind were law school, business school and graduate school. I think I was inclined toward law school—if nothing else, because my grade on the Law School Aptitude Test was better than the one on the Graduate Record Exam, I think there was also a comparable test for business schools, but I hadn’t taken it. At some point during my military service, however, I decided definitely on law school, and as will be recounted, I managed to get an early discharge from the Army in order to start law school a year sooner than would otherwise have been the case.

**Sinclair:** So you returned from Paris to the States early in 1951, and you ultimately headed for officer candidate school (OCS)?
Isbell: Yes. When I got back to the States, I looked around for opportunities to do something more interesting and challenging in fulfilling my military obligation than being just one more private in the infantry. I settled on a program that involved your enlisting in the Army, going through regular basic training, then a leadership school (a school to train noncoms), and finally to OCS. If you survived that, you were commissioned a second lieutenant, and committed to serve as an officer on active duty for another two years; on the other hand, if you didn’t make it through OCS, or changed your mind about going through all the harassment and other nonsense that that long process involved, then you were discharged but put back into the draft pool.

OCS enlistees had to choose one of the three combat branches of the Army—Infantry, Armor (tanks), or Artillery. I chose Artillery, partly because it’s somewhat less hazardous than the infantry (though not very much less, for a junior officer serving as a forward observer at, or flying over, the front lines). In addition, I’m too claustrophobic to like the idea of spending time cooped up in a tank, and artillery had some intellectual content to it, since it involves a fair amount of trigonometry for surveying and determining distances and angles for aiming the artillery pieces.

So I chose field artillery OCS, which was at Fort Sill, Oklahoma, but I didn’t get there until I’d finished the better part of a year of infantry basic training, leadership school, and a few weeks of doing nothing in a holding unit for those who were headed for OCS, all at Fort Dix, New Jersey. Once I got to OCS, I found it considerably more interesting than the two preceding schools, though it had plenty of wearying moments, particularly in the battery to which I was assigned, because the captain, the lieutenant and the two sergeants (collectively referred to as our “TAC Officers”) in charge of our unit were intent on making our experience as unpleasant as
possible, so as to get the faint-hearted, or those who simply wouldn’t put up with all the nonsense that we were subjected to, to quit. Among other things, at least once and maybe several times, in the course of the twenty-two weeks of OCS training, we were ordered to write brief, confidential evaluations of each of our fellow candidates. These resulted in the immediate discharge of a few of our loudmouths, complainers, and clowns. On another occasion, when we returned from our classes, we found on each bunk a resignation form ready to be filled out. We were also subjected to a lot of pure physical harassment, like being required to do pushups or squat jumps at the whim of one of our TAC Officers, or of any upperclassmen who caught us anywhere when we were not in formation; or being woken up in the middle of the night and required to empty our barracks of everything but the bunks and then put everything back. Measures like these succeeded in winnowing the class that started with 109 candidates down to 52 who received their commissions and little gold shoulder bars on May 14, 1952.

I’ve learned since that the attrition rate in our unit led to a Congressional investigation, which in turn led to some moderation of the harassment aspect of OCS training, at least at Fort Sill. Of course, that news added a little further boost to the pride of those who made it through. My pride had gotten a separate boost also from having been one of five “honor graduates,” and the one with the highest grade average and second highest ranking overall.

Sinclair: What was the course of your military service after you’d graduated from OCS?

Isbell: My first assignment after OCS was, on my request, back to Fort Dix in New Jersey, where I was involved in infantry basic training, but this time as an instructor and leader rather than as one of the “grunts.” I had chosen that assignment mainly to be close to home and family during the six months or so that we could expect to be stateside before heading for Korea, but I also found the work relatively pleasurable. I enjoyed teaching substantive classes in basic
training, like how to aim a mortar so as to hit a target that is out of view (which is what the artillery do regularly), as well as leading a group of trainees on a forced march—four miles in 52 minutes—and then having them march the last 50 or 100 yards back to the starting point in perfect order and lockstep. (On one of the latter occasions, one of the senior officers observing the proceedings said to junior officers who were awaiting their units’ turn on the forced march, “Are you going to let yourselves be shown up by a wagon soldier?”—a derogatory term used by infantrymen in reference to artillerymen.)

After I’d been at Fort Dix for a month or two, someone up the line of command in the Pentagon decided that it was not appropriate for an honor graduate of field artillery OCS to be assigned to an infantry unit, so I received an order to report instead to an artillery unit at Fort Bragg, North Carolina. It was an atomic artillery battalion, formed to handle a brand new weapon, a 280 mm barreled gun that was designed to fire atomic shells as well as regular artillery shells. There were two such battalions and they were both getting staffed up. Before I’d been at Fort Bragg very long, I, and I think all my OCS classmates save one who had been killed in an automobile accident, received an order to report to a post on the West Coast, from which we would be shipped off to Korea. A couple of weeks later, however, my order was rescinded, without explanation. I have always assumed, but still do not know, that the reason for the change in my order was simply that the atomic artillery unit I was in was understaffed and still being built up, so it had been decided that I was more valuable there than I would have been as one more second lieutenant of artillery in Korea.

Because our atomic artillery battalion was so short-staffed, after a while I had the good fortune of being put in command of the headquarters battery of the battalion, a job that would ordinarily call for a captain, with the assistance of at least a couple of lieutenants. I did have the
assistance of a warrant officer, but I was the only commissioned officer in that battery—a second lieutenant but exercising the authority of a captain. I had been told by my uncle Fred Crabb, who was a career Army officer, that the best job in the Army is that of a battery or company commander, because that’s the highest rung on the promotion ladder where you’re still dealing directly with the men under your command. And it was a wonderful job, which I thoroughly enjoyed. I was the unit’s leader, teacher, father confessor, disciplinarian and drill master to a unit of around a hundred men. I found it very challenging and very satisfying. I explained my feelings about that job in a letter to my old friend and college roommate Roly Hoover in a letter dated September 2, 1953, when I was still awaiting word on whether I would get an early discharge in time to start law school two weeks later:

In the meantime I am mightily, and happily, busy. Today’s preoccupations, for instance, include: consideration of what I can do to get one of my men out of the hands of the local constabulary, who are holding him for a $575-odd fine, or nine months on the county roads in forfeit thereof; cheering my softball team (my battery’s softball team, I should have said) on to victory in a game this afternoon and another one this evening; trying to scrounge up $60 worth of property which I must account for before I can turn my battery over to my successor; getting one of my men fixed up with a loan from the Red Cross so that he can be home in Texas for the birth of his so-far illegitimate child; punishing a man for being AWOL for guard duty; and assorted other things.

**Sinclair:** Did you have any particularly memorable experiences during your time in the Army?

**Isbell:** The most memorable event in this period of my service was watching, from quite close, the first and only explosion of an atomic shell fired from one of these new 280 mm guns. We were shipped—I guess the whole battalion, and perhaps some other troops as well—by troop train to Las Vegas, which was near one of the atomic testing grounds. That train trip was pleasant and leisurely, and we saw a lot of the American countryside on the way.
At the demonstration itself, we could see the gun some 16 miles away, atop a slight promontory rising from the otherwise very flat desert. We were in trenches that, if I recall correctly, were fifteen hundred yards from the spot that was going to be ground zero. We could see the gun go off, and knew just how many seconds it would take to get to the spot one thousand feet above ground zero where it would be detonated. We were told that by the time it exploded we should be well down in the trench so as to have at least three feet of dirt between us and the explosion, those three feet of dirt being sufficient, so we were told, to protect us from the two most lethal effects of an atomic explosion—radiation and heat—both of which dissipate in the first three seconds after the explosion. If anyone was outside the trench when the explosion occurred, we were told, he would receive both a fatal dose of radiation and severe burns. We were also told to stay in the trench for a stated number of seconds before climbing out, so as to let the shock wave from the explosion (traveling at the speed of sound) pass over us. Several of the participants forgot or simply ignored that warning, got out of the trench and, sure enough, were blown back in by the shock wave, though without any serious harm. (However, I think we had been told that if an atomic bomb were exploded in a city, the shock wave would have been the most destructive of the bomb’s effects because for a mile or more from ground zero, the shock wave involved an air pressure per square inch that no building could withstand, though the human body could.)

When the bomb went off, even though we were looking down in our trench there was a brilliant flash of light, almost blinding even as it briefly illuminated the trench around us. And it would indeed have been blinding to anyone who had been looking at the bomb when it went off. When, after those key three seconds, we looked up to see the fireball, it was brilliant white-hot and was about a thousand feet above the ground, which is where the shell had exploded, but it
started rising very rapidly (we were told, if I remember correctly, that it would be at a rate of 30 miles an hour) simply because it was extremely hot, and as it rose it drew up a column of dust stirred up by wind drawn into the space where the fireball had been, which made the stem of the mushroom cloud.

As the fireball rose it gradually turned from an intense white to pink and then bright red. When it got to the stratosphere it presented another sight that was truly astounding; it started to form an icecap on top of the fireball because moisture that had been vaporized and carried up with it was being condensed and then frozen by the cold of the stratosphere. But you could still see that the center of the fireball was red hot.

After we’d been given an opportunity to watch the fireball rise and go through its metamorphosis, we were walked through an area close to but not squarely on ground zero. A few years later, there were newspaper reports of veterans suffering from various effects of too much exposure to radiation from some of the military exercises with atomic weapons at the Nevada proving grounds, and I subsequently learned that the soldiers who had handled the atomic shell that was fired in the exercise that I participated in had suffered from overexposure to radiation. I never saw any report of radiation problems among the troops that had observed that explosion, however, and I have never experienced any.

Sinclair: When did your active military service end?

Isbell: I got an early discharge, in September 1953. By that time, the Korean War had started cooling down, and the Army began reducing its numbers. Among other things, in the summer of that year contract officers in my position were offered early discharge, before their two-year commitment was up. I was enjoying my job as a battery commander, and would probably have continued in that position if I’d served out my full commitment, which would
have expired in November 1953, but that would have meant waiting until the fall of 1954 to start
law school, and I hadn’t thought of any way of making fruitful use of the interim. On the other
hand, if my application for early discharge was granted in time for me to start law school in
September, I’d be able to start and finish law school a year earlier. So when the opportunity for
an early discharge arose, in August 1953, I decided to apply for one, hoping that the Army would
act promptly enough on it to let me start law school on September 14. Happily, my application
for an early discharge was granted just in time for me to join the class of 1956 on the first day of
classes.

Sinclair: When did you decide on law school rather than business school or graduate
school?

Isbell: I don’t remember exactly when, but it was at some point during my time in the
Army.

Sinclair: Now let’s turn to your choice of law school. You’ve said that you only applied to
one college and that was Yale.

Isbell: That’s right.

Sinclair: Was the matter of choosing a law school the same situation?

Isbell: Not quite, though I did only consider two law schools, which were Harvard and
Yale. I’d gotten a very good grade on the LSAT and I figured I could probably get into either
one, even on short notice. I had visited Yale Law School sometime in the spring of that year,
liked what I saw and so applied and got accepted, although as I must have told the Yale
authorities at the time that I wasn’t expecting to actually enroll until the fall of 1954, and I don’t
know why I bothered to apply so far in advance of the time when I would likely be able to start.
(The reason for my visit to the law school may well have been that I was in New Haven to visit
some friends who were still studying or teaching at Yale.) In any event, when it looked as if I might be able to start law school a year sooner than I’d previously expected, I decided I ought to consider Harvard, too, because I understood it was generally considered the preeminent law school at that time, and because most of my college classmates who were going on to law school had chosen Harvard. In addition, I thought there was something to be said for doing my advanced studies in a different institution than the one where I’d been for college. Moreover, Cambridge and Boston looked more interesting than New Haven, which I was thoroughly acquainted with—and certainly offered more opportunities to meet interesting young women than New Haven did.

So I arranged, on very short notice, to go up to Cambridge and visit a college friend who was at Harvard Law School, who showed me around and arranged for me to talk to a couple of professors there. I don’t remember who they were, but they both struck me as quite stiff, unfriendly, and a bit patronizing. I don’t remember which faculty members I had talked to at Yale Law School, but I had found them more relaxed and welcoming.

**Sinclair:** Had you already applied and been accepted at Harvard when you visited there?

**Isbell:** No, I hadn’t, but as I’ve said, I felt reasonably sure that I’d have no difficulty getting admitted at the last moment.

**Sinclair:** So what was your decision as between the two schools, and the reasons for it?

**Isbell:** Despite the several good reasons for choosing Harvard that I’ve ticked off, I wound up choosing Yale, and so never did formally apply to Harvard. Yale seemed to be a more relaxed, laid-back place. And there were some incidental advantages to it, as well. For one, I could get a position as a freshman (undergraduate) counselor, which would pay the whole cost of my room for my first year at the law school. (And although I couldn’t have anticipated it when I
enrolled, the next year, I was invited by Dan Merriman, the Master of Davenport College, where I’d lived during the college years, to be a fellow of the college, which also provided me with a free room and some free meals in the college dining room as well.)

Another advantage of Yale was that I had contacts there with some faculty members from my undergraduate days, and with some former undergraduate friends who were now in the graduate school. So it was a bit like coming home, even though the law school is very separate from the college. It had a character of its own. And a side benefit—though I’m not sure I was aware of this at the time I made the choice of schools—was that Yale Law School had a singing group with the best name ever for such a group: the Oversextette. It was a double-quartet type group; there were generally 12 or more members. And, of course, in those days it was all male.

Sinclair: Very clever name.

Isbell: Well, I can’t claim any credit for naming it. But it was irresistible to me, since I’d enjoyed that kind of singing in college but hadn’t done any for four years. So I joined the Oversextette at the start of my first year. The guy who led the group that year, whose name I can’t recall—a very talented musician and pianist, and one of the few people I’ve known who had perfect pitch—graduated at the end of the school year and named me as his successor. So I led it for the next two years, in the course of which I arranged a number of pieces for the group. The Oversextette had a captive audience of sorts: the law school had dances every few months, and the intermission entertainment would be provided by the Oversextette.

Another bit of musical entertainment I got involved in that first year was a Gilbert & Sullivan operetta, Ruddigore. The entrepreneur who brought that about was a third-year student

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2As to other expenses, the GI Bill paid most if not all of my tuition, and of course that would have been the same had I chosen Harvard.
named Allard Lowenstein, who I believe had produced two other Gilbert & Sullivan pieces the
two previous years. He was subsequently a Congressman and a major player in the successful
effort to discourage Lyndon Johnson from running for a second full term as President; one of a
number of interesting characters I met in law school.

Sinclair: So ultimately you were content with your choice of Yale Law School?

Isbell: Yes, very. In addition to the miscellaneous extracurricular advantages that we’ve
been discussing, Yale offered an academic experience I truly enjoyed. An interesting, and
rewarding, aspect of the law school was the relationships between the students and the faculty,
with a lot of informal socializing between them.

Sinclair: More so than when you were in college?

Isbell: Yes. And it had a much smaller student body and smaller classes.

I might add that the atmosphere in the classroom was quite different from that in the halls
or elsewhere in the law school. The teachers were tough and demanding, and the students, after
they’d gotten accustomed to the place, felt free to give the teachers a hard time in return. It
sometimes seemed to me like an atmosphere of open warfare in the classroom.

As a general matter, the law school truly did have a character of its own. It was and is
highly competitive but it didn’t generate a feeling that as between you and another student, only
one of you is going to make it. It’s competitive just because everybody else is very good and
you want to be good, too.

Sinclair: Earlier you said when you graduated from Yale College you didn’t feel ready to
go on to graduate work. Did you feel prepared for Yale Law when you went in? Did your years
in the Army and your time in Europe prepare you? Did you feel more comfortable?
Isbell: Oh yes. I’d been out of college for four years, during which I’d had a number of interesting and challenging experiences, and I had matured a good deal. I’d also had the time off from academia and was ready to tackle it again. When I arrived at Yale, I was prepared to start working hard.

Sinclair: Were there any women in your class?

Isbell: There were, but only three in the graduating class of around 120.

Sinclair: What was the most memorable event in your first year at the law school?

Isbell: The most memorable event occurred early in the first term, in the Contracts class. The great Yale Contracts scholar, Arthur Corbin, was still alive, and kept an office at the law school, though he was no longer teaching regularly. However, there was a custom of having him as a guest lecturer for one Contracts class, which would be attended by all the members of the first-year class (although the subject was being taught in smaller sections for the rest of the term). We were told in advance that when he called upon a student he liked to have the student stand up when responding. And I, foolishly (and inexcusably), did not bother to read the materials for that class. I figured that since there were 120 of us, the chances were very poor that Corbin would call on me. But in fact I was the very first student he called on. And he asked me a single, simple question: what does it mean that a contract is liquidated? As I hadn’t prepared for the class, and only knew what liquidated meant when applied to an inventory of goods or the commission of genocide, I had no idea what it meant in the context of contracts, though I’d seen it used in a fashion that excluded the possibility of its meaning canceled, or wiped out. So I had to say, “Unprepared,” and sit down, blushing, I’m sure, becoming a shade of rue. Happily, I eventually lived that down.

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3 The professor who taught my contracts class, Grant Gilmore, had told us that when Corbin’s treatise on the Law of Contracts first appeared, the Williston treatise on the subject was no longer worth the paper it was printed on.
Sinclair: How did Professor Corbin respond? Did he just move on to the next student?

Isbell: I don’t remember. I think he probably just asked somebody else. Obviously he was disappointed by my performance, but he didn’t make me stand in the corner. I had embarrassed myself enough that nothing more was needed.

But aside from that embarrassment, I found law school abundant in intellectual riches and I greatly enjoyed it. When I started at the law school I had no particular desire or previously formed interest in joining the Law Journal. But before long I got caught up in the spirit of competition, and I did join it as soon as I was eligible.

Sinclair: How did the Law Journal choose its members?

Isbell: That changes from time to time—indeed, the Journal officers in my senior year (of which I was one) adopted a different method than the one that had applied to us. When we had joined the Journal staff, the invitations depended solely on grades. My grades were good enough to get me invited—not after the first term (though my grades were just on the margin for that) but after the first full year. When my class’s board of officers took over, however, we changed the method of selection to a competitive one, requiring that would-be members of the Journal submit a draft student Note on a designated case; I don’t think grades came into the picture at all.

At the end of my class’s second year, the Journal’s officers for the next year were chosen by the officers that they would be replacing. There were just six Journal officers in those days—the Editor-in-Chief, three Note and Comment Editors, an Article and Book Review Editor, and a Managing Editor. I was chosen as the Article and Book Review Editor. Only one editor was responsible for both articles and book reviews, and that was pretty much the standard arrangement with student-run law reviews. I made the decisions as to acceptance or rejection of
all the articles as well as doing the editing of all but one of the articles that we published during our time as officers, and most of the book reviews as well. I passed responsibility for a single article to my friend and colleague Norbert Schlei, who was the Editor-in-Chief, and several of the book reviews to non-editor members of the Journal staff.

However, the situation of articles editors in those days was very different from the one they face today. Our challenge lay in coping with a drought of possible articles; their challenge today is dealing with a flood of potential articles. I’d like to think that I did the work of six, or eight, or ten, but in my day there weren’t the hundreds—let alone thousands—of scholarly articles being produced and offered to student law reviews that someone must read in order to winnow out the few that the review is willing to publish. Nor did I face the problem, common today for my counterparts on modern-day student-run law reviews, of fending off the other law reviews to which the same piece would also have been submitted and that had expressed an interest in publishing it. Quite to the contrary, I had to dig for reasonably decent articles to publish—and I’m sure that was so of all the law reviews, with the possible exception of Harvard’s.

And, frankly, most of the articles that we wound up publishing—generally after much editing—were not all that good as submitted, so they had to be substantially changed to put them in decent, publishable shape. I worked hard—I mean really hard—on my editing, and generally got a result that was reasonably decent. I think that that experience pretty well made up for the terrible experience I’d had with my senior thesis in college.

I also got compliments from quite a few of the authors that I had edited—compliments that the author typically addressed directly to the Dean, with a copy to me. But I also got complaints from a few, including one fairly prominent scholar who told me that the fruit of my
editing of his article was a good and interesting article, but it simply was no longer *his* article; on that one, I had to undo most of my suggested changes, and then publish it in close to its original form.

**Sinclair:** I’d have been surprised if you hadn’t got a few complaints.

**Isbell:** Yes. And I did get some. There was a tradition of heavy editing, as my predecessor had taken pains to show me. But I also had an experience very early on that made it clear that there are limits to such editorial license. One of the very first pieces I handled was a book review that had been solicited by my predecessor from Louis Loss of Harvard, who was at that time the preeminent scholar on the securities laws. And he wrote beautifully. He had submitted a book review and I had tinkered with it. I believed then and I still believe that every piece of expository writing, no matter how good, can be made still better. Even the perfectly written piece, in other words, can be made yet more perfect. So I perfected Loss’s perfect book review and sent him the edited version *in galley proofs*!

**Sinclair:** In galley proofs?!

**Isbell:** Yes, galley proofs.

I got a furious letter back from Loss, followed by a furious letter from Dean Griswold of Harvard. In response to Loss’s complaint, I apologized, put his original version into galley proofs and sent it to him. He had nothing further to say about it. I was just happy that he didn’t withdraw it and send it elsewhere, and it was printed in the next issue of the Journal in exactly the form in which we had received it. But that was the only time I sent my edited version of an article or book review to an author in galley proof. After that, I was always careful to send the author a typed copy of the result of my editing. I did not, however, do what I understand editors do today, which is to have a dialogue with the author and make suggestions, rather than redoing
the piece and showing the author the result. I would just edit the piece and send the result to the author, and I generally got away with that. The only face-to-face editing I did was with an article by one of my classmates. That classmate, Layman Allen, who has been on the faculty at the University of Michigan Law School since we graduated, tells me, whenever we meet at a class reunion, that everything he knows about legal writing, he learned from me. A nice and always welcome compliment, but clearly not something to be taken seriously.

There was something of a happy ending to my very poor start in my relationships with both Louis Loss and Erwin Griswold. I later had an opportunity to work quite extensively and on a very friendly basis with Loss in connection with his preparation of a draft of a comprehensive revision of all the American securities laws for the American Law Institute. He didn’t seem to remember the incident of my sending him my edited version of his book review in galley proof, and of course I didn’t remind him. Similarly, I later had quite a friendly relationship with Dean Griswold, when he was a Commissioner of the Civil Rights Commission and I was on the staff; indeed, he later wrote a letter of recommendation on my behalf when I sought to join the Cosmos Club. Again, neither of us mentioned that earlier *contretemps*, and hopefully he had forgotten it, though I certainly hadn’t.

**Sinclair:** Was your most interesting experience as an editor of the Yale Law Journal that incident involving Loss and Griswold?

**Isbell:** Well, I guess not. I think an even more interesting experience (though also a disagreeable one) as an editor was dealing with an article by John F. Kennedy, who had recently become a Senator, but was clearly aiming for higher office than that. He had proposed legislation to revise the Federal Regulation of Lobbying Act, the first federal legislation aimed at putting limitations on—or, more precisely, exposing to public view—the activities of legislative
lobbyists. That Act had been adopted in 1946, and was soon challenged on First Amendment grounds. The challenge wound up in the Supreme Court, which upheld the Act’s constitutionality, in an opinion by Chief Justice Warren, with Black, Douglas and Jackson dissenting. Warren’s opinion, stretching the text of the Act in order to save it, left it in a form that was obviously still vulnerable to challenge. It was clear, after that decision, that although that particular legislation had been badly drafted, there was still an important issue as to whether the influence of lobbying on legislation should be subject to some of the transparency of the formal legislative process itself, and if so, how that could be best accomplished.

Various amendatory proposals had been aired before Kennedy’s, and had gotten nowhere, so there was still a need for substantial improvement in the regulation of legislative lobbying, and Kennedy’s proposed bill deserved serious consideration, and it could be fairly presumed to have some steam behind it simply because of the identity of its sponsor. The paper explaining and justifying Kennedy’s amendatory proposals was not, however, either impressive or persuasive. It was only fifty typewritten pages long, and quite a bit less lengthy and substantial than most of the articles we published. However, at the time we received the Kennedy submission, we were having trouble finding enough decent articles to fill the next issue, and I figured that this one could, with considerable editorial effort, be made into an interesting piece. In addition, it was on a subject with which I already had some familiarity, as the Supreme Court’s decision in the case was a recent one that I had read with interest, and the central issue of the constitutionally permissible limits on legislative lobbying was one on which I had a few thoughts of my own. Although it would need a lot of work before it would meet my standard for

publishability in the Law Journal, the Kennedy article addressed a subject that was interesting and timely, and would have some additional interest by reason of the identity of its ostensible author.

So I accepted Kennedy’s piece and set about putting it into proper shape as to both substance and form. I figured it would take two weeks to edit—two solid weeks, I mean, doing little else aside from attending classes, eating, and sleeping. After the first such week of intensive effort, however, when I was halfway through my rewriting of the article, I picked up the Sunday Times Magazine and found there Kennedy’s piece, in exactly the form in which it had been submitted to us. Not a word changed, not improved at all. And I was truly burned up. I sent the submission back, in its untouched original form, to Kennedy’s administrative assistant, Lee White, with a brief note explaining the rejection. I had a call in response from White, who I suspect had at least a hand in writing the article. He told me he found it hard to understand the Yale Law Journal’s thinking that it could be preempted by something that had been published in an entirely different sort of publication. He was assuming, I suppose, that nobody—or hardly anybody—who read the New York Times would also be a reader of the Yale Law Journal. He clearly hadn’t thought through the preemption point, however, for among the very few who might read the Yale Law Journal, surely all would likely be readers of the New York Times.

In any event, I was so irritated about Kennedy’s article that if the Republican candidate running against Kennedy in the 1960 election had been Nelson Rockefeller or some other liberal Republican, rather than Nixon, I’m pretty sure I would have voted for him instead of Kennedy.

Sinclair: Really? Wow.

Isbell: I was very mad at Jack Kennedy.
Sinclair: Well, let’s go back a little bit into law school. I want to talk about your first summer. What did you do during your first summer of law school?

Isbell: Sometime before the summer of 1953, while I was in still in the Army, my parents had bought a summer place in East Dover, Vermont, about fifteen miles from Brattleboro, which I managed to visit a couple of times for a few days of leave. On one occasion, I even drove some six hundred miles each way to Vermont and back to Fort Bragg on a three-day weekend. I loved that place, and hadn’t managed to spend nearly as much time there as I would have liked, so I decided to spend the whole summer after my first year in law school there in Vermont.

I did get a job for the summer—still an economic necessity and something I’d done every summer before my interludes in Europe and the Army. The job was in a grain mill, and it entailed the sort of hard physical labor that, as always, was the most remunerative possibility for summer employment. The wage scale was lower in Vermont than in Connecticut, however, and I was paid just a little more than two dollars an hour—not bad wages for Vermont at that time. It was heavy work, consisting of collecting eighty-pound bags of various mixes of grain for animal feed from chutes where the completed bags came down from the mixing floor above, stacking ten such bags onto a two-wheel hand truck, and then transporting them to railroad freight cars and, finally, stacking them in the freight cars. I calculated that I moved twenty tons of grain a day in this fashion. It was quite tiring work.

I had also inquired about a possible job helping to clear out woods for a ski run, in what turned out to be the Mount Snow ski resort. But the developer of that project was paying his workers a paltry seventy-five cents an hour. I chose grain and the better wage.

So I spent the summer doing nothing law-related at all; just making some money, and doing it the hard way.
Sinclair: What sort of job did you take after your second year of law school?

Isbell: That second summer I found something law-related to do, though it was a little more exotic than the standard summer clerkship at a law firm. It involved translating a legal treatise on French commercial law, by two French lawyers named Chambaz and Le Blanc, into English in a fashion that would be useful to American lawyers. A graduate of the law school named Edgar Church had asked the then-Dean (Gene Rostow, I think) if any of his students could translate a French legal treatise, and the Dean mentioned me, since I’d spent time in France and was still fluent in French, and he also mentioned a classmate and friend named Gabriel Orechkoff, who had been born in Bulgaria but had spent his teen years in Paris, gotten a French law degree, and then come to America with the aim of making his career here. The two of us started the translation of the treatise, and got about a third of the way through it that summer. The work was completed by a couple of other teams of French-speaking students at the law school in subsequent summers. (A grace note here: My friend Orechkoff referred to Mr. Church as Monsieur de L’Eglise.)

When that project was ultimately completed, and published, Mr. Church sent me a copy, and I was astonished to see that the title he’d given it was Church’s Text on French Commercial Law, and not as what it was in fact—simply an English translation of Chambaz & LeBlanc. Church’s volume gave some credit for the assistance provided to the purported “author” by the students who had helped with the translation, but it did not recognize that all they had done was translate the French treatise. I seriously doubt that Church himself made any contribution to the product at all, beyond the entrepreneurial ones of getting someone to write it and someone to publish it.

Sinclair: Somewhat surprising, somewhat shocking.
Isbell: It was, and more than somewhat. And while it had been interesting work, it also left me without any experience in the practice of law during my law school years. I waited until my third year to begin interviewing law firms.

Sinclair: Let’s talk a little more about that. The process today for joining a law firm typically involves application to a law firm after the first or second year of law school for a position as a summer associate; completion of a summer’s work, and if one performs well, receipt of an offer of a position of regular associate. Was the process similar in your time as a young lawyer?

Isbell: I think it was, although in those early years the summer law students were called summer clerks rather than summer associates. (Of course the latter sounds more impressive; I sometimes joke that the next step will be to call them summer partners—or, more modestly, summer counsel.) As I’ve recounted, I didn’t do a summer clerkship at all, but I don’t think that was unusual at the time; it probably is more so now.

In those days, as now, law firms looking for young lawyers to recruit would often send one or more lawyers to visit law schools and interview interested students, and of course that process has continued and expanded as more and more law firms need more and more recruits. But in my “olden days,” at least some of the major New York firms also sent invitations to law students inviting them to visit the firm’s offices without first interviewing them on campus—which I don’t think is done any more. I got such a “blind” invitation from one of the big New York firms (I don’t remember which one), and I did visit their offices, as invited, but by then I had pretty much decided that I didn’t want to go to New York, where the practice seemed to be a very high-pressure enterprise. I didn’t want to live there, either. I had lived there for five years as a kid, and then I’d lived in Greenwich, which is virtually a suburb of New York, for
eight years, while I went to high school and then college, so I had seen a lot of New York. But I had decided I really preferred Washington.

**Sinclair:** Why did you prefer Washington?

**Isbell:** I had visited Washington a few times, and I found I liked the looks and the feel of Washington, both of which reminded me quite a bit of Paris—the broad avenues, the height limitations on buildings, the sprinkling of little parks around the city. It appealed to me as a place both to work and to live in. I also had the impression—albeit from afar, since I hadn’t yet had even a taste of Washington practice (or, indeed, practice anywhere else), that practice here would be more interesting than anywhere else in light of the fact that the country’s government was here, so there would be a heavier proportion here than elsewhere of public policy issues in a lawyer’s practice. That impression, I believe, was quite correct.

**Sinclair:** So you decided to consider only D.C. firms?

**Isbell:** Exactly. I initially focused on just two firms. The principal one was Covington, which seemed to be generally considered the premier firm in Washington, and seemed to have something of a tradition of combining the practice of law with public service. Most notably in this connection, it had been home to Dean Acheson, for whom I had (and still have) a very high regard. It also had a strong connection with Yale Law School, largely because of a Covington partner named Gerry Gesell, who was a Yale alumnus and an active recruiter at his alma mater.

The other firm that I found interesting was Arnold, Fortas & Porter, as it was then named, before it lost Fortas to the Supreme Court. It, too, had a strong connection with Yale Law School, since both Thurman Arnold and Abe Fortas had been faculty members there. And that firm seemed, somehow, to be a collection of interesting characters and quirks. Their offices were in a building on 19th Street that had been a private residence, with a garden around it with a
resident turtle, where, it was said, the firm had a cocktail party every afternoon (or perhaps that was every week). That firm was a good deal smaller than Covington, which was not in itself an advantage in my view, since I liked the idea of being in a larger firm.

There was a third firm in Washington, this one even smaller than Arnold, Fortas & Porter, where I interviewed, not, like A&P, because of what I’d heard about it, or because like Covington it regularly sent a recruiting team to Yale, but because one of its four name partners, Lloyd Cutler, made a point of coming up to Yale and arranging to meet a couple of the Journal officers, and inviting them to come to Washington to be interviewed by the other partners. That firm, which turned out to be a predecessor of Wilmer, Cutler & Pickering, was then named Cox, Langford, Stoddard & Cutler.

So when I came down to Washington to interview at Covington, I also made an appointment for that purpose at the Cox, Langford firm. I didn’t enjoy the interviews there very much, and I never warmed very much to Lloyd Cutler, though he was certainly a very gifted lawyer and good citizen, so I was not disappointed when I learned that the one spot they were trying to fill had been filled by a former Supreme Court clerk—a credential that I didn’t have.

That left only Arnold, Fortas & Porter to be considered as an alternative to Covington. They didn’t send anyone to interview at Yale, at least that year, so I decided to call them up during my visit in Washington to visit the other two firms, and ask if I could visit them. Whoever I talked to told me that the firm was not planning to hire anyone that year; indeed, they were hoping to stay exactly the size they were then—with 14 lawyers. He said they’d be delighted to meet and talk with me just the same, so I went to their mansion/office and in the course of a couple of hours talked to almost all fourteen of their lawyers. I enjoyed the conversations, and so far as I could tell they did, too, but they still weren’t going to take on any
more lawyers that year, so my choice of firms was narrowed down to one, which offered me a position that I was happy to accept.

Thus I wound up at Covington, and I think that even if Arnold & Porter had been recruiting I still would have chosen Covington because it was significantly larger. It was, indeed, quite large for that time. It had about sixty-five lawyers when I joined it, and was the largest firm in Washington and the twelfth largest in the country at that time.

**Sinclair:** Why did that appeal to you?

**Isbell:** I thought that in a really small firm everybody would be aware of what everybody else was doing at all times. You would be in a family. And I preferred the idea of a little bit of anonymity and privacy. Part of this, I guess, was that I knew that I would want to engage in some civic activities, possibly including political ones, and I thought that a larger firm would likely mean that there would be a wider array of viewpoints about such activities, and in consequence greater tolerance of differing views on such subjects than in a smaller firm—a proposition that I now know is by no means necessarily the case

**Sinclair:** Did Covington in fact afford you the sort of anonymity for which you’d hoped?

**Isbell:** Yes. I wasn’t doing anything furtively or that I was hoping would escape the notice of any particular partner, but I had the pleasant sense that not every partner was aware of everything I was doing professionally at all times.
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. 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

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 Ehrman. 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.

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\(^{7}\) *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 cardboard 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 aspects of traditional libel law, increasing its complexity and its intellectual interest.\(^\text{10}\)

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

\(^\text{10}\) 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.
Sinclair: This is the fourth session of David Isbell’s oral history. We are beginning today with the discussion of Mr. Isbell’s time on the Civil Rights Commission. So, let’s get some background. What is or was the Civil Rights Commission? Tell us a little bit about that.

Isbell: The United States Commission on Civil Rights was created by the Civil Rights Act of 1957 as a bipartisan agency to study civil rights problems and to report on them to the President and Congress. Originally created for a two-year term, it issued its first comprehensive report in a single volume in September 1959. A week after that report was issued, Congress renewed the Commission’s life for another two years, at the end of which the Commission issued a five-volume report on the status of civil rights in the United States. That two-year period was the one during which I was on the staff of the Commission, and I had a major hand in the resulting report. The Commission’s life was subsequently extended for several further two-year terms and the Commission eventually was, I believe, turned into a permanent agency; at any rate, it is still in existence.

The Commission was not a law-enforcement agency; its functions were purely investigative. It conducted fact-finding, it reported its findings, and it made recommendations for remedying the problems that it identified.

Sinclair: How did you get involved in the Commission’s work?

Isbell: Sometime in the fall of 1959, not long after the Commission had been reauthorized for a second two-year term, I was asked if I’d be interested in doing a pilot study for the Commission. The Commission had undertaken to study race discrimination in the fields of voting, education, and housing and the purpose of the pilot study was to determine whether
there was sufficient indication of race discrimination in the field of administration of justice to warrant the Commission’s taking on that subject as a fourth major area of investigation. It was estimated that the pilot study could be satisfactorily completed in a period of either six weeks or three months—I simply don’t remember which of those it was—but whichever it was, that was the period for which I was hired.

Sinclair: How did it happen that you were invited to do that pilot study?

Isbell: Well, the person who extended that invitation to me was Berl Bernhard, whom I’d known in law school, where he was two years ahead of me. Berl was at the time the Deputy Director of the Commission, and by the time the 1961 report was issued, he had become the director.

Sinclair: Did he seek you out, or was it you who initiated the contact?

Isbell: Berl was the initiator. I wasn’t looking for a new pro bono project, though I was receptive to the idea of doing this pilot study because I was interested in civil rights as well as civil liberties. Moreover, the fact that it was a discrete project, limited in time and scope, seemed to me more likely to make it acceptable to the firm. I’d only been at Covington for two and a half years, and I didn’t want so soon to request leave of absence for any longer-term pro bono commitment.

Sinclair: What was the firm’s attitude about your taking on that project?

Isbell: It was very supportive. They gave me a leave of absence for whatever the period was—without pay, of course, since I’d be paid for the pilot study.

Sinclair: How did you set about conducting the pilot study?

Isbell: I don’t remember much about that, beyond the fact that I reviewed pertinent statutes and case law and I interviewed a number of people who were likely to have information
and insights on the subject, including Thurgood Marshall, then Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc. (generally referred to as the Inc. Fund), Roy Wilkins, who headed the NAACP; and Patrick Malin Murphy, at that time the director of the National ACLU. I presume I would have talked to academic types as well.

**Sinclair:** Did the study have a particular geographical focus?

**Isbell:** No, its focus wasn’t limited to any particular state or region, although the Southern states with a history of legally enforced segregation understandably may have gotten more attention than others.

**Sinclair:** So, what was the result of the pilot study, and what did you do when it was completed?

**Isbell:** Well, as I’m sure you’ll have guessed, the pilot study, which was completed on schedule, made clear that race discrimination in the administration of justice was definitely a problem in at least some locations, and that the subject deserved to be included in the Commission’s studies.

Before that pilot study was completed, though, there was a more dramatic development affecting my status at the Commission. One of the three assistant directors of the Commission

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11 As the name suggests, the Inc. Fund was created by the long-established NAACP (the National Association for the Advancement of Colored People) as an organization falling under §501(c)(3) of the Internal Revenue Code (IRC), meaning that charitable contributions to it were tax-deductible to the donors, unlike the NAACP itself, which was ineligible for such treatment because it devoted a substantial part of its resources to legislative lobbying, and therefore came under § 501(c)(4) of the IRC. It was still itself tax-exempt, but not capable of benefiting from tax-deductibility as well.

The basic idea was that litigation in support of the NAACP’s activities would be done by its offspring organization. However, the Inc. Fund was set up with a corporate structure that made it entirely independent of its parent organization. The ACLU and other organizations that copied NAACP in setting up such § 503(c)(3) offspring to conduct their litigation learned from this to make sure that the offspring organization was created in such a corporate form that its activities were fully coordinated with the policies of the parent entity.
resigned, and I was offered the position he had left. Specifically, the division that assistant director supervised was titled Laws, Plans and Research—in effect, the substantive part of the Commission’s activities, including the conduct of hearings, legal research, and report-writing. The other Assistant Directors dealt respectively with State Advisory Committees and with supervising a team of investigators. So, when in the fall of 1961 the Commission issued its five-volume report on the status of civil rights in the United States, I was both the author of some of the report’s chapters and a principal editor of the whole report.

I hardly hesitated a minute before accepting that offer. Of course my taking on that commitment for a substantially longer period than my contemplated leave of absence from the firm required severance of all my formal connections to the firm. That separation was friendly enough, and it left open the possibility of my rejoining the firm after I’d finished working for the Commission, but there was no assurance that the firm would take me back—or that I would seek to return to the firm, although that was my inclination at that time.

The Commission’s assistant directors were at the G-16 level, so the promotion, in addition to giving me much broader substantive responsibility, also involved a substantial rise in pay. As a result, despite the fact that I was in government service, my salary was somewhat above what I would have been earning at the firm at that time. Two years later, however, when I left the Commission and was accepted back at the firm without loss of seniority, associate pay had pulled ahead of level of my government salary, so I happened to have the unusual good fortune of getting a raise in salary both when I moved from private practice to government service and again when I returned to the private sector.

Sinclair: What was your day-to-day role at the Commission, as Assistant Director for Laws, Plans and Research?
Isbell: Well, I supervised 23 lawyers, and prodded or coaxed their work along, as needed; I also edited their work product, and from time to time undertook to draft portions of whatever report they were working on. I also designed a study of something that was called the Black Belt, and wrote the Commission’s report on that, and I assisted in the preparation and conduct of hearings—most notably, one in New Orleans, which I’ll have more to say about.

Sinclair: What was your most interesting experience while you were at the Commission?

Isbell: My most interesting experience during my two years at the Commission involved the hearing by the Commission in New Orleans that I just referred to, looking into discrimination in registration of voters. I think a principal focus was on Plaquemines Parish (a Parish being Louisiana’s equivalent of a county); in any event, what I remember best about it concerned that Parish, which is close to New Orleans. The boss of the Parish was a man named Leander Perez. Have you ever heard of him?

Sinclair: No.

Isbell: Well, Perez was a fairly prominent political figure in Louisiana politics, and particularly in the effort to resist desegregation of the races. He had designed a number of schemes for disqualifying blacks from voting—all intended to present an appearance of perfect propriety although actually serving as means of disqualifying blacks while allowing whites to register. Perez had made it known that he had invented these devices and would share them with any other Parish that was interested in making use of them. Two of Perez’s devices were

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12 I had first learned of Leander Perez and his role in massive resistance to civil rights in Louisiana in a New Yorker article by A.J. Liebling about Earl Long, who had been a relatively liberal (in a somewhat surreptitious way) governor of Louisiana. Long was also, more famously, the lover of the striptease artist Blaze Starr, as told in the Movie Blaze, where he was portrayed by Paul Newman. The Liebling article recounted an incident in which Long had said to Perez, “What are you going to do, Leander? The Feds have got the A-Bomb.”
employed in Plaquemines Parish, and the portion of the Commission hearing in New Orleans in which I had a particular interest and role involved exposing those two devices.

One of those devices was a 5x7 inch registration card, with questions to be answered on both sides of the card, a number of them susceptible to quibbling about the answer. One in particular that stood out as a potential trap required that the applicant state his or her age in years, months, and days. More prominently, there were also a number of questions clearly intended to embarrass, and possibly disqualify, registrants, addressing, among other things, criminal record, living in “common law marriage” with another person within the five previous years, and giving birth to or fathering an illegitimate child.

There was a Registrar of Voters in Plaquemines Parish whose name was Mary Ethel Fox, who administered the process of registering, obviously under Perez’s close supervision. She had been subpoenaed to testify at the hearing, and she was to be the first witness at the hearing. Robert Storey, the Commission’s Vice-Chairman, presided over the hearing in place of Chairman John Hannah, presumably because he was a lawyer and Hannah was not, and perhaps also because he was a Southerner. He was also the head of the Southwestern Legal Center and a former Dean of Southern Methodist University Law School. Storey asked Fox a few preliminary questions, and allowed her to read into the record a prepared statement (obviously written by Perez), and then he turned the proceedings over to me. I conducted the questioning in a low-key, non-adversarial manner, occasionally interrupted by objections from Perez.

I had had that elaborate registration card blown up onto a poster board about 3x5 feet in size, the two sides reflecting exactly the two sides of the card, and I had mounted that on an easel, with a sheet of clear plastic over it, on which I could write Ms. Fox’s answer to each question on the application form as I read them to her, as if she was an applicant for registration
as a voter. I had Ms. Fox authenticate the exhibit as a true and correct copy of the registration form, asked a number of questions about what was expected as a correct answer to each question and the pertinent margin of error, and then asked her to give me her own answer to each question on the form as if she was herself registering. As she answered, I wrote her responses in the appropriate spot on the plastic sheet. The key question in this examination turned out to be, as I had hoped, the item requiring the applicant to state his or her exact age in years, months, and days. I first asked Fox whether that calculation required including or excluding the current day, and how much of a discrepancy it took to be disqualifying. Her reply was two days. I then asked her what her age was in years, months, and days, and after recording her answer in the appropriate spots on the blown-up form, went on to the remaining questions on the application, without taking the time to see whether the trap I had laid had caught her. I did notice with pleasure, though, that some of the Commissioners were making that calculation. I then had Miss Fox provide a brief description of the other of Perez’s disqualifying devices that she applied to applicants in the registration process, which I will describe in a moment.

Shortly after I’d completed the questioning of Miss Fox on both of Perez’s disqualification devices, Berl Bernhard said, “Miss Fox, I believe you’ve made an error in the calculation of your age.” It turned out she had indeed erred, and not by one or two days but by almost a month. She had said her age was 37 years, 8 months, and 2 days, whereas it was actually 37 years, 7 months, and 6 or 7 days (depending on whether the current day was counted). So she had flunked her own exam pretty badly. Her erroneous calculation was doubtless due, at least in part, to nervousness from being on the witness stand and to the focus of so much presumably hostile attention; but the typical black would-be voter trying to register to vote in Plaquemines Parish would likely have been at least equally nervous, albeit for somewhat different reasons.
When this dramatic exchange occurred, Perez, who was sitting as near her as he could get without being on the level of the witness’s seat, took up a pencil and paper, made the calculation himself, and threw up the paper and pencil and stalked out of the hearing room, muttering about, among other things, “a bunch of Commies.”

We had a grizzled veteran of the Department of Justice’s Civil Rights Division with us to protect us in case we got sued in a Louisiana court. He told me, after the testimony of Ms. Fox, “Dave, you can practice law for another 50 years, and you’ll never have that happen again.” His prediction has certainly proven to be the case.

Incidentally, those hearings were recorded by a local TV station, and I had visions of my examination of Ms. Fox appearing on national television that evening. Unfortunately, however, that day happened to be the one on which Alan Shepard became the first American in space, and that just pushed news of the hearing in Louisiana off the TV screens. Some twenty years later, I had the thought that maybe the TV station’s film of the hearing was archived somewhere and that I might get a copy of it. I spent a while, ultimately futilely, trying to track down that possibility. I found out where the TV station had sent its old tapes—one of the universities in New Orleans. I called there and talked to the librarian, who said that yes, they had all the station’s tapes, but they had never been catalogued, so there was no way they could identify the one I wanted without wading through the collection, and they were not about to do that. So I never did get that tape.

**Sinclair:** What was the other device of Perez’s that was employed in preventing blacks from registering to vote?

**Isbell:** That was an arrangement under which each applicant would have to demonstrate his or her understanding of fundamental law by providing a correct interpretation of two out of three provisions of either the Louisiana or the Federal Constitution, printed out on a card the size
of a playing card. There were 25 cards, each of which had on its face three such provisions; these would be spread out, face down, before the applicant, who would choose a card, sight unseen, and attempt to provide explanations of two of the three constitutional provisions shown on that card. Perez had provided the Registrar with what he considered the correct explanation of each of the constitutional provisions on the cards.

Perez was quite proud of his invention, and had seen to it that his Registrar kept meticulous records of how his system operated; and as it turned out, he had thereby laid his own trap. The records that the Registrar kept regarding this knowledge-of-the-law device showed which card was chosen by each would-be registrant, in addition to the name and race of the applicant. We had sent two of the Commission’s staff lawyers to examine those meticulously kept records in the Registrar’s office to see if there was a race-related pattern to the card selections. The study those lawyers conducted was done under the watchful eye of Perez himself, who jollied them up and presumably sought to distract them with offers of she-crab soup and the like.

The staff lawyers’ study of the records showed a very clear racial pattern, and an unmistakably wrongful one. They had examined the test cards of 2,384 applicants, together with the race of the applicant who had picked each card and whether the applicant had succeeded or failed to interpret two of the constitutional provisions on that card. This study disclosed that the cards chosen by black applicants manifested a normal random distribution in their selections of cards; on the other hand, 86% of the white applicants had somehow chosen one or the other of two cards, numbers 2 and 8, both of which—surprise, surprise!—just happened to share two of the same constitutional provisions, one dealing with freedom of speech and the other with freedom of religion. It was self-evident that most if not all of the white applicants had been
somehow pointed to one of those two cards. Fifty-nine black applicants had taken the constitutional card test. Two had passed and been registered; the rest had flunked and been rejected. Only two of the fifty-seven rejected black applicants had received either of those two cards so overwhelmingly chosen by the whites.

**Sinclair:** What brought about the New Orleans hearings?

**Isbell:** I think that hearing had been probably scheduled and roughly blocked out before I took office as an Assistant Director. The Commission had a lot of investigators. Although it took no effort to turn up the fact that Louisiana was one of the States where there was organized resistance to desegregation and to allowing blacks to vote, it did take some investigation to turn up witnesses and information that would deserve exploration at a public hearing.

**Sinclair:** Were these like Congressional hearings?

**Isbell:** They were much like Congressional hearings. The Commission had subpoena power, and of course that was exercised in the Louisiana hearings. Testimony was taken under oath, and was recorded by a court reporter. The proceedings also had the look of a Congressional hearing: you had the five Commissioners on a dais. Staff lawyers would call witnesses, conduct questioning, sometimes provide testimony as to what they had found, as in the case of the constitutional law test for voting in Plaquemines Parish, as I’ve recounted, and so forth. A transcript of the whole proceeding was published by the Government Printing Office and submitted to Congress and the President along with our reports. The Commission was an independent agency, however, not part of either the Executive or the Legislative branch. And it had no law enforcement responsibilities or authority.

**Sinclair:** What was the feel when you were in New Orleans at the hearings. Other than Perez’s calling you a Communist, was there a tension in the atmosphere that you could feel?
Isbell: In New Orleans itself, we didn’t feel any tension. I’m pretty sure New Orleans hadn’t adopted any of Perez’s mischievous devices; I think the phenomenon of organized resistance was found elsewhere in the state, and in rural areas in particular. I remember interviewing some of the blacks who were going to testify at the hearing, all of whom came from Parishes other than New Orleans, where the atmosphere was very oppressive for blacks. I felt that it took them some courage to go public in this way.

Sinclair: You’ve said you were involved in something called the Black Belt study. What was that?

Isbell: The title of that study, which constituted a separate part of the volume of the 1961 report dealing with the right to vote, was *Civil Rights in Black Belt Counties*. It was a systematic survey of the status of civil rights in a swath of 153 counties in Southern States in which the 1950 census had shown that a majority of the population were black, but in which the Commission’s first Report, in 1959, had found that the proportions of blacks registered to vote were generally even smaller than was the case in counties where the racial balance tipped to the whites. The introduction to that part of the 1961 report described this group of counties as follows:

> Extending from Tidewater Virginia down the coast of the Carolinas, and westward across Central Georgia and Alabama to the Mississippi Delta, the Black Belt stretches up through Mississippi and Louisiana into Tennessee and Arkansas. It also touches Florida and Texas.

The term Back Belt could be understood as referring to the black majority populations involved, but I think it was used mainly to refer to the nature of the soil—a black loam, especially welcoming to cotton as an agricultural crop, and cotton proved in the study to be a major fact in the socio-economic dynamic of the counties under study.
The study showed that in a few of the black-majority counties, a substantial portion of the blacks were registered to vote; in a much larger number of those counties, however, fewer than three percent were registered. The study undertook an in-depth examination of seventeen of the “non-voting” counties and four of the “voting” ones, considering economic and other statistical factors, anecdotal information regarding attitudes among both the white and the black segments of the population, the particular histories of the individual counties studied, and the general state of civil rights in other areas in both sets of counties studied. The purpose of the study was to discern what factors, aside from sheer numerical predominance in a county’s population, determined whether the majority racial group in a county had effective access to the ballot.

The Commission concluded that in the Black Belt counties, “[t]he facts of economic life have a significant bearing on civil rights generally, and the right to vote in particular.” The dominant fact was that almost all of the non-voting counties continued in the economic pattern of the plantation days, with one-crop agricultural economies, and the black populations, while no longer slaves, nonetheless remaining in an economically dependent position, as tenants or sharecroppers, or farmers of small farms, whereas in three of the four “voting” counties, the economies were diversified, and the blacks were not in the same dependent position. As the Report put it, “where the Negroes do not vote, they are for the most part subservient to crop, land and landlord.”

The black residents of the “non-voting” counties, the Report found, feared retaliation in the event that they attempted to vote; their economic dependence made them vulnerable to reprisals not rising to the level of violence. Another factor was indifference, or “apathy,” which the Report attributed principally to the overall history of the treatment of blacks in the South.
A surprising finding of the Report was that there was only a slight difference between the “voting” and the “non-voting” counties with respect to such other civil rights-sensitive areas as quality of education, housing, access to publicly supported libraries and public accommodations, and participation in the administration of justice. The one area in which the Report found a significant correlation between blacks’ access to the right to vote and their exercise of broader rights was in the area of participation in the political process generally—that is, having white candidates solicit the votes of blacks, and blacks run for, and sometimes attain, public office.

The foregoing summary does scant justice to this particular part of the Commission’s 1961 Report, but it is the part I am proudest of, for while the idea of a study of this kind had been suggested by the Commission’s 1959 Report, it fell to me to implement that recommendation, and I had principal responsibility for its design, its implementation, and the writing of the resulting report. So I took particular pleasure in The New Republic’s calling the Black Belt study, in that magazine’s review of the 1961 Report as a whole, “brilliant.”

Sinclair: Did the Department of Justice follow-up on the 1959 and 1961 Reports?

Isbell: That’s a good question. I don’t know whether there was any specific follow-up by the Department of Justice on either the Commission’s hearings or its reports. I am sure that the Department of Justice did not allow the discriminatory voter registration practices in Plaquemines Parish and other Louisiana parishes to continue, but how and when that was accomplished I don’t know.

Sinclair: You also participated in the preparation of a report on the civil rights of American Indians?

Isbell: Yes, there was an occasion when the Commission was holding a hearing in California about discrimination in schools and workplaces, and one of the witnesses turned out
to be an American Indian—Native American, as political correctness has it now—who lived on a reservation fairly nearby and had a complaint about discriminatory treatment he’d received on some matter off the reservation. Anyhow, he complained about the same sorts of discrimination as black witnesses were complaining about. The Commissioners, after hearing him, agreed that they should pay some attention to civil rights problems of American Indians, rather than focusing exclusively on discrimination against blacks. So they authorized a pilot study somewhat similar to the pilot study I’d done on the administration of justice.

I supervised, and presumably edited, though I did not conduct or write, that American Indian pilot study. The lawyer who researched and wrote that study, and whom we had hired specifically for that purpose, knew nothing at the outset about Indian rights; I don’t think any of us did. But he looked into the field and soon realized that it’s a whole different subject from the customary one of discrimination on the basis of race, religion, or national origin. It has to do with Indian rights to land—tribal rights, resulting from treaties between tribes and the United States, generally when Indians were uprooted from their traditional homelands and moved to newly formed reservations—and including rights of self-government within the reservation. It was a good thing that the pilot study was conducted because if we’d just gone into the subject blindly we really would have had our hands full with a whole new and quite different area. So when the report on that pilot study was completed, it provided a summary of the kinds of problems that the Native Americans deal with by reason of their identity as a separate part of the fifth and final volume of the Commission’s 1961 Report.

That report on the pilot study is quite a good summary of the history of the relationship of American Indians to the successive waves of white invaders of their historic tribal territories, starting with the French and the English and then with what had become the Americans; their
ever-evolving legal status; and their many resulting problems. The complexity of all this is aptly summarized in the following passage from that report:

In the course of time there have accumulated 389 treaties, more than 5,000 statutes, some 2,000 federal court decisions, a raft of Attorney General opinions, numerous administrative rulings, 141 tribal constitutions, 112 tribal charters, a gigantic set of regulations, and an encyclopedic manual—all especially applicable to Indians, all bearing witness to their complex and unique legal character.

An Indian is three things: a tribal member, with cultural, social, economic, religious, and political ties to tribal life; a “ward” of the Federal Government; and a citizen with most of the same rights and privileges possessed by other citizens. His tripartite status has been recognized, but not clarified, by the courts.

Sinclair: Who were some of the memorable personalities from the Civil Rights Commission?

Isbell: The most memorable for me was Father Theodore Hesburgh, a Catholic Priest and a longtime President of Notre Dame. Father Hesburgh was during his long career involved in all sorts of public good works, serving as a member of a great variety of commissions, including the six-member Civil Rights Commission. He was a marvelous man. He was also very informal in his dealings with staff, asking us to address him as Father Ted.

Another memorable Commissioner was the Chair, John Hannah, who was the President of Michigan State University and later the director of the U.S. foreign aid program. A very forceful figure, clearly the sort of man who inspired the feeling that he could run an organization of just about any size, without having to raise his voice or pound any tables.

A third member of the Commission when I joined the staff was named George Johnson, then the Dean of Howard University Law School. He was succeeded both as Dean and as a Commission member by Spottswood Robinson, who was subsequently a judge and then Chief Judge of the U.S. Court of Appeals for the D.C. Circuit. He seemed a somewhat shy man, a little uncomfortable with social intercourse, but determined to overcome it nonetheless. He
encouraged people, including Commission staff lawyers, to address him as “Spotts,” which always struck me as a somewhat absurd nickname, but he was a good man and a good and extremely careful lawyer and judge.

The Vice-Chairman, as I’ve mentioned, was Robert G. Storey, a former Dean of Southern Methodist University Law School, who struck me as the most dependably conservative member of the Commission, and with whom I most often found myself in disagreement. I don’t doubt he had something of a reciprocal distaste for me.

There were several other distinguished Southerners who served brief stints as Commissioners during my time on the staff, but I have no particular recollections of any of them.

A Commissioner who replaced one of them, served throughout my remaining time at the Commission, and made a considerable impression on me as well as on the Commission generally was Erwin Griswold, at that time the longstanding Dean of Harvard Law School (and subsequently appointed as Solicitor General in the Justice Department). I found Dean Griswold to be quite a breath of fresh air. He said exactly what he thought of things, without hesitation or doubt; the other Commissioners—with the exception of Father Ted—tended to be more cautious in the way they expressed their views.

There’s a wonderful anecdote involving Griswold that concerned an event that occurred shortly after I left the Commission. The Commission—which is to say, one of the Commissioners—would be summoned to a Congressional Committee from time to time to report on what the Commission was doing, and one of the Senators who had to be dealt with was the then-Chairman of the Senate Judiciary Committee, Sam Ervin (who later became widely known on television in connection with the investigation of the Watergate scandal).
Sinclair: Senator from North Carolina?

Isbell: Yes, and Senator Ervin was quite a showman. He had a way of sending a clerk off to get some volume of law like *Corpus Juris Secundum* and he’d read a sentence from that and add a sentence from something else and wind up articulating a legal proposition of some kind, and he’d ask the witness, “What do you think of that?” This true story goes that he did that once when Griswold was testifying and Griswold answered his question by saying, “C plus.”

I later got to know Griswold in a quite different connection, as a fellow delegate to the ABA House of Delegates. One day when we were sharing a meal at an ABA meeting, I asked him about the Ervin story, and he said that it was true. He also explained that Ervin had been a student of his at Harvard Law School.

Sinclair: Let’s discuss what happened at the end of your two-year period at the Commission.

Isbell: Although I had greatly enjoyed my time at the Commission, I had to decide at that point whether to stay on in government or go back to practice, most likely to Covington, if the firm would have me back.

Sinclair: This was during the Kennedy Administration?

Isbell: Yes, it was in the first year of the Kennedy Administration. The opportunities for someone interested in doing something for their country, as suggested in Kennedy’s inauguration address, really were glorious. There were all sorts.

Sinclair: What were the opportunities?

Isbell: Well, if I had stayed on with the Commission, which I could easily have done, I would probably have succeeded Bernhard as Staff Director. If I hadn’t stayed at the Commission, and even if I had stayed at the Commission for another two years, there would
have been other opportunities to go on to. A number of my friends spent time at the headquarters of the Peace Corps. And after Johnson succeeded Kennedy as President, there were the Civil Rights Act of 1964 and the Civil Rights Act of 1965, and the War on Poverty. Those years were a very heady time to be in government.

So the completion of the Civil Rights Commission’s 1961 Report left me at a decision point, and if I was going to go back into practice and develop a position from which I might go back and forth between government and the private sector, the best possibility for doing that would be to go back to Covington at that point, for when I talked to my contacts at the firm, they told me I could probably come back without loss of seniority, but not if I stayed in government any longer. So I really had to fish or cut bait about rejoining Covington.

Sinclair: You had maintained relationships with people there?

Isbell: Yes, but mainly just socially; I had kept no continuing formal connection with the firm. I knew that if I stayed away longer than two years I would not be welcomed back, at least without loss of seniority. Moreover, I was later told that there had been some partners who were opposed to taking me back at all, just on the general basis that I had shown a certain disloyalty by leaving in the first place. Anyhow, I had to choose what to do and I decided the thing to do was take the long view, and in that perspective it seemed more sensible to go back into private practice—to get a base to which I could return if I chose later to go back into government for a while.

Sinclair: Did you have to broach that with the firm or was there an assumption on their part that you would return?
Isbell: I was very much in a position of asking, not of considering an outstanding offer to rejoin Covington. Maybe some partners had such an assumption, but I’m pretty sure it was not generally held.

Sinclair: Did you wind up pleased with the decision to go back to Covington rather than staying in government?

Isbell: Well, I’ve been very happy with my career at Covington, which has been varied, interesting and fulfilling, though one of the expectations that had been a factor in my decision to go back to the firm when I did was that there would be opportunities later on in my career to go back into government service for a few years, and that expectation was not fulfilled, because of a turn of events that I hadn’t anticipated, although I clearly should have—namely, a change in the political character of the Administration. I did eventually get to the anticipated point in my career where I had a base in practice that I might leave for a couple of years in government and then return to, but by then the political climate had changed. The Republicans were back in power and, of course, they stayed there for quite a while. There was no chance of my getting a job at a level of responsibility comparable to the one that I had had in the Commission, let alone something at a higher level. There would be a political aspect in the choice of people to appoint to positions at that level in the government.

Sinclair: The Democrats of course eventually regained the White House, in 1976. Did you consider then a return to government service?

Isbell: I did, very briefly. By that point in my life, however, family obligations made it necessary for me to remain in the private sector.

Sinclair: So what was it like coming back to the firm? Did it feel like going home?
Isbell: I must confess that it was a bit like a cold shower—not because I didn’t feel welcomed, or comfortable, or that I didn’t enjoy the practice of law; in fact, I have enjoyed almost everything I’ve done in practice—but that the substance of what I was doing in practice didn’t provide the same sense of advancing the public interest as I’d felt at the Commission; nor did it afford the level of responsibility that I had shouldered at the Commission. As I’ve mentioned, when I was an Assistant Director at the Commission, I’d been in charge of 23 lawyers—significantly more than I’ve supervised at any time since. On both of these counts, coming back to the firm as a mere mid-level associate was necessarily something of a comedown. I did, however, manage to engage in a fair number of outside activities while also practicing law, including work with the ACLU, which did provide an opportunity to work in the public interest.

Sinclair: Let’s talk next about the period from when you came back to the firm until you made partner. You mentioned the ACLU. When did you first become involved with the ACLU?

Isbell: Actually, I’d done a little bit of pro bono work for the National ACLU before I went to the Commission. There was a representative of the ACLU in Washington and I got in touch with him and did some small things. It was after I got back to the firm, though, that an official ACLU affiliate was established here in D.C., and Charlie Horsky, a major figure at Covington, became the first Chair of the affiliate’s Board. When that affiliate came into being, I started taking on some of the affiliate’s cases as a volunteer attorney.

Before long, a splendid lawyer and civic activist named David Carliner, who succeeded Horsky as Chair of the affiliate, asked me to take on the task of screening cases—that is, evaluating possible cases to see whether they seemed worthwhile for presentation to the board for a decision as to whether the affiliate should take them on—and in addition, when the board
approved a case, finding a volunteer lawyer to handle it. In effect I was a part-time legal
director. While I was in that position, my name would appear on all the briefs the volunteer
lawyers filed—not because I had necessarily had a significant role in writing the briefs (and I
generally didn’t), but simply to provide a way to get the ACLU’s name onto the court papers. So
the volunteer lawyers’ briefs would show me as David B. Isbell, of counsel, and under that,
ACLU of the National Capital Area, and then its address.

An amusing consequence of the way my name appeared as of counsel on all the ACLU
affiliate’s briefs was that when I first met Judge David Bazelon, then the Chief Judge of the D.C.
Circuit, he recognized my name because it had appeared on so many ACLU briefs on cases that
got to his court, and he commented he didn’t understand how I could manage to spend all that
time on the affiliate’s cases while I was also practicing law for the firm. Unfortunately, I had to
deflate his assessment of me by explaining that I didn’t generally have much to do with the
briefs beyond finding volunteer lawyers to write them; that my name appeared on the briefs as of
counsel, followed by the name and address of the affiliate, solely for the purpose of indicating
that it was an ACLU case.

Anyhow, since I appeared before the affiliate board frequently in the role of screener of
cases, I soon got elected to the board and I served on it for 27 years. During my time on the
affiliate Board, I was almost always a member of the Executive Committee and the Nominating
Committee, and I served a term as Chair and several as treasurer. There ultimately came a time,
though, when I was starting to feel that I was something of a dead hand of the past, looming over
the discussions of the Board, with my opinions given undue weight simply because of my
seniority. I felt it was not healthy for the board to have me dominating it and perhaps inhibiting
the development of other leadership, so I resigned from the Board—or, more precisely, declined
to run again for reelection. The only connections I retained with the affiliate were as a significant financial donor (with my wife, Florence) and so a member of the “President’s Committee;” as a faithful attendee (also with Florence) of the affiliate’s annual dinners (now lunches); and, until early 2009, as a member of the Litigation Screening Committee, which meets more or less monthly to consider possible new cases to recommend to the affiliate board. I’d been on that committee ever since it was established, around 1965, except for the two years I served as affiliate Chair. My withdrawal from the Screening Committee, as you will have guessed, was one more withdrawal prompted by my ever-diminishing hearing acuity.

Sinclair: Did your ACLU activities involve the national organization as well as the affiliate?

Isbell: Yes. Each affiliate was allowed to appoint one member of the National Board of Directors. In 1964, I was chosen by the affiliate’s board to be the affiliate’s representative on the Board of Directors of the National ACLU. I continued for a few years as the affiliate’s representative on the national board, but then decided to run for re-election to that board as an at-large member.

Sinclair: How large a body was that board?

Isbell: There were (and are) two categories of members: some 30 at-large members and, in my time, roughly 40 representatives of affiliates—the latter number being one that grows as new affiliates are established. The affiliate representatives, of course, are chosen by their affiliate boards; the at-large members are chosen by an electorate consisting of both the incumbent at-large board members and the board members of all the affiliates. I won that first at-large election and thereafter I continued to run for and win re-election each time my three-year term was about to expire. I remained an at-large board member until 1992, when I decided
it was time for me to step down. As with the affiliate board, I didn’t resign, but simply chose not to run again, for several reasons. One was that Norman Dorsen, who had been a wonderfully effective President of the ACLU for most of my time on the board, was stepping down, and I had worked closely with him. Another was that it was becoming increasingly unlikely that I could get re-elected as an at-large member of the board, not because of any failing on my part, but because the ACLU had adopted a number of affirmative action policies, generally accompanied by quotas, and I do mean quotas. Being a lawyer was a negative, as were being white, being male, and being straight, so I’m not sure that I could have gotten re-elected one more time. Since then, most of the other old-timers like me who hung on eventually got shed in the same way as would probably have happened to me.

Sinclair: What are or were the Biennial Conferences? Were they an activity of the ACLU?

Isbell: Yes. As the name indicates, there would be a large gathering every two years, generally over a long weekend, in some location other than New York City, where the national headquarters were, which would include the members of the national board but also representatives from the affiliates. It was the closest thing the National ACLU had to a grass roots gathering of its members. The main utility of the conferences, in my view, was the workshops, in which accomplished staff members of both the national organization and the affiliates could teach new staff and affiliate board members the nuts and bolts of how to run an affiliate. There would be a big dinner with some distinguished speaker, and sometimes distinguished speakers at other points in the conference. There would also be papers and discussion sessions on new issues that might be of concern to the ACLU, and the most interesting events were plenary meetings, where there would be debates about proposed new
ACLU policies, which would require approval of the national board before they were put into effect.

I have two principal memories of those conferences. One of them is of the two distinguished speakers, each an icon of sorts, with a long record of involvement with civil liberties, who spoke at a sort of welcoming event for the first Biennial Conference I attended after I got elected to the national board. That one was in 1966. The first speaker was Norman Thomas. Do you know who he was?

**Sinclair:** No.

**Isbell:** Well, he was, for many years, a leader of the Socialist Party of America, which was not socialist in the Marxist sense but in fact anti-Communist. Starting in 1928, Thomas ran six times for President as the Party’s candidate. The Socialist Party was not very radical, though it was surely well left of center. I have read at some point that every provision of the Republican Party’s Platform in 1940 had been included in the Platform of the Socialist Party twenty years before. Thomas had also been among the founders of the National Civil Liberties Bureau, a precursor of the ACLU. My mother told me that she had voted for him once, although in general, both of my parents were pretty reliably Republican.

At the time Thomas spoke at this Biennial Conference, he was 82, and was totally blind, so he had to be guided to the lectern. He was a tall man, quite handsome, and a very impressive speaker. He had a wonderful voice, really a voice like a trumpet that could carry to a large crowd without the need for amplification. He spoke, of course, without notes, and he didn’t need them. He was a very eloquent speaker. I found him quite inspiring.

At the same conference, another speaker who had an even more intimate history with the ACLU was Roger Baldwin, the founder and the first director of the ACLU. Baldwin was 80 at
that time; although Thomas died two year later, Baldwin lived to be 97. For a long time after the founding of the ACLU, he dominated it, but sometime before my first exposure to him, at the 1966 Biennial Conference, the board of distinguished directors that he recruited exercised the power of a corporate board to replace him as Executive Director. The board members hoped to change the direction of the organization, to orient it more toward increasing membership and the establishment of semi-autonomous affiliates. Despite the mutiny by the board, Baldwin was still around and following closely the progress of the organization he’d created for a good many years after that, and over time I became quite friendly with him. Anyhow, at that same biennial conference, Roger Baldwin spoke right after Norman Thomas, and he was another speaker from another age. He wasn’t blind, but he had no notes, and he never needed any notes. He spoke very eloquently and he also had a wonderful voice, much like Thomas’s, that didn’t need amplification when he was addressing a large audience.

Sinclair: What is the other memory of those Biennial Conferences that you mentioned?

Isbell: It was a debate about what position the ACLU should take about the draft. Should the country’s armed forces, when they are involved in a war—this being at the time of the Vietnam War—consist solely of volunteers, or should they also be raised by conscription? The lead speakers in that debate were a lawyer and national board member named Marvin Karpatkin, against the draft on general civil liberties grounds, and me, supporting it, also on civil liberties grounds. Marvin’s argument was that conscription involved a serious deprivation of rights on the part of those drafted, and in consequence the ACLU ought to oppose it in all cases. My argument was that military service involves the same core deprivations of liberty, once the servicemen were enrolled, whether they were volunteers or conscripts; they are in either case subjected to an involuntary servitude that would be prohibited by the Thirteenth Amendment if it
were not understood to have no application to members of the armed forces. The key civil liberties issue, I argued, is how this burden should be spread among the young men who are suitable for armed combat when the country is at war and someone has to make the sacrifice of personal liberty and possibly life or health, in order to defend the country. That burden, I argued, should be shared at every level of society, and not fall disproportionately upon those who are economically vulnerable and therefore likely to have chosen military service as a livelihood. In addition, I argued that, as the resistance to the Vietnam War was demonstrating, making the middle class share the burden, and not merely the poor, provides something of an assurance that the country will not engage in wars that are not supported by the American citizenry at large.

I lost that argument, quite resoundingly. I did get some comfort from the fact that Senator Ted Kennedy was taking the same position at that time.

Sinclair: While we’re discussing your connections with the ACLU, I’d like to turn to Pat Harris. Who was or is Pat Harris?

Isbell: Patricia Roberts Harris was an active member of the Democratic National Committee and a good friend of ours. She was an African-American woman, the daughter of a waiter on a railroad dining car. She was bright and very handsome, with a sharp mind and a great deal of charisma. President Johnson appointed her as Ambassador to Luxembourg, and President Carter later appointed her as Secretary of the Department of Housing and Urban Development, making her the first African-American woman to hold a cabinet position. After two years in that position, she was appointed, again by Carter, as Secretary of what was then the Department of Health, Education and Welfare (a department whose name was changed during her tenure to Health and Human Welfare, because Education had become a separate, cabinet-
level federal agency). Pat was also, at various times, the Dean of Howard Law School, a professor at the George Washington National Law Center and, in 1982, a candidate (unfortunately unsuccessful) for Mayor of the District of Columbia. She was also, before any of these roles, on the board of the local ACLU affiliate, and it was there that Florence and I came to know her. Florence and I became quite good friends with Pat and her husband, Bill Harris.

Each ACLU affiliate was entitled to appoint a representative to sit on the national board, and the National Capital Area affiliate chose her as the affiliate’s first such representative. When she was appointed to be Ambassador to Luxembourg, however, she had to withdraw from both the affiliate board and the national one, and I was elected as her replacement in the latter capacity.

The reason Pat’s name occurs in my notes and so occasions your question is that there was an amusing incident involving Pat and me during the time she was Secretary of HUD. This occurred in late summer, a time when a lot of the lawyers in the firm were likely to be on vacation. One of the firm’s clients, a trade association having something to do with real estate, was seeking a regulation or a ruling of some kind from HUD, and representatives of the client had arranged to meet with the Secretary to discuss the matter. The client wanted someone from the firm to accompany its delegation to the meeting—not to rattle any swords but as a sort of symbolic presence, suggesting an implicit threat that, if HUD didn’t shape up, there would be litigation, and Covington would be handling it. The Covington representative was not expected to say or do anything, just be present and identified as a Covington lawyer and, presumably, to look stern and capable. I happened to be back from my summer vacation and available and willing to go along with the group. The client delegation not only didn’t expect me to do anything, they didn’t even bother to explain to me in any detail just what they were seeking to
accomplish. They just were happy to have a warm-bodied, presumably capable lawyer with them. So along I went, in this very passive capacity. We were ushered into a very large conference room in the new HUD building on Constitution Avenue, and after a short wait, Pat swept in with her retinue in an almost royal way—a handsome woman, as I’ve mentioned, exquisitely well dressed, and overflowing with charisma. She was introduced all around, one by one, to each of the members of the delegation. When she came to me, at the end of the line she looked up, and cried “David!” and flung herself into my arms saying, “How are you? How is Florence?” Our clients there, I’m sure, were deeply impressed by what a well-connected young man they had with them.

That was for me, surely a moment to prize.

**Sinclair:** Did you do any work for her, or it was just a—just a connection?

**Isbell:** No. We were just friends. There was a time, when she was running for mayor, that she called me to ask if I had any suggestions to offer regarding the conduct of her campaign, but I wasn’t following the election closely enough to have any useful thoughts on that subject. I may have contributed some money to her campaign, but I have no recollection one way or the other about that.

Pat did not get elected as mayor, which I think was a shame, because she surely would have been a good one. Not long after losing that election, she developed cancer and died of it in 1985, at the much too young age of 61. That was, I think, a sad loss to her friends but also to our larger polity.

**Sinclair:** What impact, if any, did your membership with the ACLU have on your career at Covington?
Isbell: I don’t think it had any impact on the career; that is, it didn’t advance me, and I don’t think it retarded my progress in the firm. On the other hand, my presence on the board of the affiliate and the presence of some other firm lawyers on that board (one of whom, John Vanderstar, also served a term as Chair of the affiliate board) tended to give the firm as a whole a connection with the ACLU that resulted in our becoming a favorite resource for the affiliate, and then later the National ACLU, for finding volunteer lawyers. So that was something of an indirect effect of my being on the boards of the ACLU entities. I might note that the affiliate’s Litigation Screening Committee has long held all its monthly meetings in one of the firm’s conference rooms.

There was just one occasion that I recall when the national board had to decide a matter of ACLU policy that was of great interest to clients of the firm who were involved in the radio and television business. By that time, I’d developed a fairly influential voice on that board, and might have pushed the board in a direction favorable to the firm’s clients, but of course I simply declined to participate in the discussion of that issue.

Sinclair: Let’s turn now to your connection to the University of Virginia. How did you come to teach at UVA’s law school?

Isbell: I have mentioned Charlie Horsky, a highly esteemed senior partner in the firm. Horsky managed to have a regular paying practice but also to engage in all kinds of public service activities. In 1956, the University of Virginia invited him to teach, as an adjunct professor, a seminar on civil rights. He agreed, but since he also had a number of other extracurricular commitments (and was in a position to dictate his own terms of the arrangement), he said he’d do it provided he wouldn’t have to require either papers or an exam from the students; he’d grade solely on class participation. That’s an unusual thing in law schools—it
was at that time and probably is even more so now. The Law School agreed, however, and the seminar was born.

In 1962, Charlie was asked to go to the White House as Presidential Advisor for National Capital Area Affairs. In taking up his new position, he dropped all of his outside activities, which included being Chair of the recently-established ACLU affiliate; Chair of the National Bankruptcy Conference; President of the Washington Planning and Housing Association; Chair of the D.C. Commissioners’ Planning Advisory Council; Chair of the United Negro College Fund for D.C.; and Chair of the D.C. Commissioners’ Committee on Police Arrests for Investigation. Two further organizations that he chaired but apparently did not similarly resign from, presumably because he perceived no possible conflict between them and his possible responsibilities in the White House, were the presidency of the Parent-Teachers Association at his daughter’s school and of the annual Washington Horse Show.

**Sinclair:** Quite an accomplished man.

**Isbell:** Yes, and with a very wide array of interests. The list of things he resigned from when he went to the White House merely begins to suggest the full range of public interest-related activities that bejewel Charlie Horsky’s *curriculum vitae*.

Anyhow, after I’d returned to the firm from my stint at the Civil Rights Commission, Charlie invited me to come down to Charlottesville with him as a guest lecturer several times, so he knew I enjoyed both the subject matter and the teaching. When he went to the White House, he asked me if I’d be interested in taking his place teaching the seminar, and I leapt at the chance, though I also checked with the-then Managing Partner of the firm, Newell Ellison, who

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13 The Commissioners were a small group of presidentially-appointed governors of the District of Columbia before the days of an elected Mayor and City Council.
told me that in his opinion teaching was one of the sorts of things that firm lawyers should do. I was uncertain whether the Law School would be willing to take me on as Charlie’s replacement, even as a temporary fill-in (though he wound up staying at the White House for five years). I was not a partner yet, and had few mentionable accomplishments, whereas Charlie was a man and lawyer of great distinction and wide recognition. Happily, though, the Law School accepted me nonetheless, and with the tacit understanding that the grading system would be the same as it had been under Charlie. The question of how the seminar would be graded, and whether any written papers would be required, was never even discussed; I simply continued doing the seminar the way he’d done it.

I’ve taught some or all of the seminar ever since then; when I teach it again this fall (in 2009), it will be for the 48th time. I should confess that it’s been some years since I did the whole fourteen—now down to twelve—two-hour classes of the seminar. The pattern has always been that pairs of classes are taught on alternate weeks, one class Friday afternoon, and the other Saturday morning, with each pair devoted to one particular subject within the broad subject of civil liberties. For some years, one pair of those sessions has been taught by Peter Hutt, now a fellow senior counsel in the firm, and another by Peter Byrne, a former firm associate and now a professor at Georgetown. Moreover, some years ago I brought in as a co-adjunct a truly brilliant young partner, Christopher Sipes, to share my class load and to make sure that when I’m no longer able to teach the seminar it will still be in the hands of Covington & Burling.

**Sinclair:** Has your teaching had an effect on your career at Covington?

**Isbell:** I don’t think so. Teaching at a law school continues to be, as Newell Ellison had told me in 1962, one of the things the firm thinks appropriate for its lawyers to do, so long as the
lawyers can also carry a normal workload. There are quite a few firm lawyers who have taught or are still teaching as adjuncts at one or another of the local law schools.

**Sinclair:** When Horsky returned from the White House to the firm, did he resume any role in teaching the UVA seminar?

**Isbell:** He did. When he came back from the White House, in 1967, I offered him the seminar back and we sort of Alphonseed and Gastoned and he said no, you keep it, and we wound up dividing the classes, with my taking four pairs of classes and his taking the other three. Over time he handed two of his pairs of classes to Peter Hutt and Peter Byrne, mentioned above, and then the infirmities of advancing age required him to withdraw from the other pair of classes he’d been teaching, so I took them over and wound up with five of the seven.

**Sinclair:** Have the aspects of civil liberties addressed in your seminar changed over the years?

**Isbell:** Yes. The only one of the particular civil liberties topics addressed in the seminar in recent years that has been the same as any taught in at least the first twenty years of the seminar (though the case law on that topic keeps developing) is Freedom of Religion. All the other topics have changed over time as new areas of constitutional law have developed, and others have ceased or slowed development (an example of that is legislative malapportionment), or else development of the law has become mainly a matter of legislative rather than constitutional change (for example, regarding the legal status of women). The pairs of classes Messrs. Hutt and Byrne teach—civil liberties aspects of governments’ dealings with the problems of alcohol and drug abuse, and academic freedom, respectively—stay the same, though developing case law in the latter changes the reading material from time to time. As to the classes Chris Sipes and I have been leading, other than religious freedom, two address quite
recent legal and other developments: civil liberties problems relating to sexual orientation, and to our government’s response to the threat of terrorism.

**Sinclair:** It seems that you’ve enjoyed your experiences with teaching.

**Isbell:** I’ve always loved teaching. As far back as I can remember, at least after college, any experience I had that involved teaching was enjoyable and challenging.

**Sinclair:** Did you ever think about becoming a law school professor full-time?

**Isbell:** I’ve thought about it a little bit from time to time. I think I might have been able to stay on at Yale Law School after graduation, as one of the more prominent professors approached me to ask whether I’d be interested in doing so. But I don’t find the idea of full-time academia anywhere near as pleasurable as just plain teaching. The scholarship aspect of it does not attract me. I’ve done it, but it isn’t as interesting or enjoyable to me as teaching. And I’m not sure I’d like to live in the academic environment. It seems to me somewhat closed. Moreover, I’ve always enjoyed the practice of law too; so I’ve been glad of the opportunity to make a career that included both of the two activities. But anyhow, the question of a full-time career in academia has never really come up as a serious one.
Sinclair: This is session five of the David Isbell oral biography for the Historical Society of the D.C. Circuit. We are beginning today with the period when Mr. Isbell had become a partner at Covington & Burling and one thing we’re going to start talking about is your family life at this time, the late 1960s. Let’s talk about your parents first, during that period.

Isbell: Well, the most important event in my parents’ lives in that time was my mother’s death, on September 5, 1966, prematurely, since she was only 64. The cause was a cancer that had metastasized before it was detected. She’d had a cancer of a different kind some 15 years previously, which was timely detected and cured by surgery, but this time she was less fortunate, and when the cancer was discovered it was already in an advanced stage, so she died within a few months. The prevailing practice among doctors dealing with cancer in those days was not to tell the patient that it was cancer; and the doctor who was treating Mother managed to find a disease that had symptoms similar to what she was experiencing, and told her that that was what she had. So everyone in the family knew she was dying except her (and our small children). I suggested to my father that he get an extended leave from the architecture firm where he was working, but to tell Mother that he had retired, so he was able to be with her continuously to the end.

That was the first death of someone that close to me, and the first in which I had been in constant contact with the one who was dying and felt responsible for practical aspects of the process. I took it hard; although, rather curiously, watching her dying somehow eliminated a fear I’d long had of dying myself.

Sinclair: Why do you think that is the case?
Isbell: Well, I suppose I had vicariously experienced Mother’s death, and come to recognize it as a natural end of life. We hope that it won’t come to us prematurely, and we hope that when it comes it won’t be too painful for us or our survivors, but it’s a part of life that we’ll all experience in due course.

Anyhow, I arranged a memorial service in the church in the Westville section of New Haven to which she and her family had gone in her childhood (and where I’d sung in the choir the year I lived with my Crabb grandparents), at which I had the minister read a remembrance of Mother that had been written by a college friend, Paul Welles, who was very close to her, a document that was set in beautiful type by another college friend and roommate, Roland Hoover, who was once the official Printer of Yale. That remembrance now hangs over the fireplace in the central ground floor room in our house in Chevy Chase.

Sinclair: Were your parents still living in Greenwich at that time?

Isbell: No; they had moved away from Greenwich at about the time they bought the summer place in Vermont, and by the time of Mother’s death they had sold the Vermont place and acquired instead a summer cottage in Centerport, on Long Island, near a beach on the southern coast of Long Island Sound, a daily commute for my father, who was still working in New York City, and much less of a commute than his weekly trips to Vermont. They had an apartment in Bronxville, New York, where they spent the colder months. They were living in Centerport when my mother died.

My father then resumed work at his office, but within a couple of years he had to retire, for reasons of health, triggered by a bleeding gastric ulcer that required removal of half of his stomach. He spent a year or so with my sister and her family in Charlotte, North Carolina, recuperating from that operation, and then returned to his apartment in Bronxville, having sold
the beach cottage in Centerport. He had no family nearby, and few friends, since it was Mother and not Dad who did the finding and cultivation of friends, and he surely wasn’t enjoying that lonely life, though I never heard him complain about that (or, for that matter, about anything else).

Michèle and I were then still married, and we had hit upon the idea of getting a country place where my father could live, but one near enough to Washington and spacious enough that we could use it also as a weekend place to take the children to. So I spent a fair amount of time on weekends driving around the countryside within an hour or two of Washington in every direction, sometimes with my father and sometimes without, looking for a fixer-up house with enough land for privacy, preferably with a view and preferably also with some water; a stream or a pond, or both.

Although I did most of the exploring, it was actually Michèle who found a place that fitted our specifications perfectly, in Berkeley Springs, West Virginia, just a hundred miles from our then-house in Chevy Chase. Michèle happened to find it in the course of a weekend she’d spent without me at some sort of weekend gathering at a resort named Coolfont in the Berkeley Springs area, where there was a real estate agent’s office planted very noticeably opposite the entrance to the resort.

The property was an old farmhouse, in quite poor repair, with no heating save that from one fireplace and possibly electric heaters, since it did have electricity (and telephone service). It also had running water, but only in the kitchen, and the toilet facilities were in an outhouse that happened to get blown over by a strong wind the day my father moved in. But it had 76 acres of land, mostly wooded but with one meadow with a splendid view, and not one but two spring-fed ponds. Something had been farmed there at one time but I don’t know what. The
main crop that we found there was poison ivy. There was also a crop of abandoned automobiles on the property, which a state agency was glad to remove, without charge.

My father and I bought the place jointly, and took possession of it in February 1969. He moved in as soon as some basic improvements, like installation of a furnace and a bathroom, and considerable painting and patching, had been done. And soon afterward, I started a routine of bringing my children out there for the weekend, every other week.

Ironically (and rather sadly), although Michèle had found the place, and at a time when it was our shared intention not only that my father would spend his remaining years there but that we would take the children there together on weekends, by the time we actually took possession of the property, we had separated. We had, however, agreed that I would have custody of the children every other weekend, and my having this place where I could take the kids on the weekends when I had custody with me was an unexpected blessing for me, since I couldn’t very well keep them overnight in the one room apartment where I was living. However, it also meant that Michèle never got the chance to enjoy the property she’d found for us.

Sinclair: A bit of good luck for you, and poor luck for her.

Isbell: Indeed. And it was certainly a great boon to my father, who lived there for almost ten years, until he finally was too mentally deteriorated to live by himself. When he reached that point, we brought him in to live with us, sold the West Virginia property, and used the proceeds to build an addition onto our house in Chevy Chase which served as his quite separate apartment. And then, when he had to be put in a nursing home, it became our large “West Wing” living room. Dad told me, at one point while he was still there on the West Virginia property, that it had been the happiest period of his life. He certainly loved being in the country, and he also
It was also a great boon to my children. Ideally, I think, every child ought to have the opportunity to spend some time in the countryside, to see and enjoy nature, and my kids certainly enjoyed the times we spent there. I bought the boys a trail motorbike, and with my daughter bought an interest in a horse, of which we took custody on each weekend when we were there. And, finally, it was a boon to me, not merely for the sheer pleasure of being in the countryside, but also in the chance to be in my children’s company without the static that tended to accompany communications when Michèle and I were still together.

Sinclair: Switching gears, tell me about the separation from Michèle and meeting your new wife.

Isbell: Well, I’ll try to make this brief. By the time we separated, Michèle and I had been married for 13 years, although it had become clear to me (and, I think, to her as well) after five or six years that we had made a mistake. Our marriage had been based on a reciprocal infatuation which didn’t survive the realities of married life and parenthood, and as time went on it became increasingly clear that we really weren’t well suited to each other. We kept trying to improve things, mainly by seeing a marriage counselor, but we were not making much headway. There came a time when Michèle decided, perhaps with the encouragement of the marriage counselor, that we should separate for a while—that is, that I should move out—the idea being that with such a separation we might get a different perspective on our differences and then be able to get back together and have a less stressful relationship. I resisted the idea of separating because I was afraid we would simply stop trying to make our relationship work; centrifugal forces would take over and the trial separation would become a permanent one. Michèle was
quite insistent that we give separation a trial, and I finally agreed, thinking that maybe, after all, she and the marriage counselor were right and I was just being unreasonably stubborn in my resistance.

So, after making sure that I would have access to our three children every other weekend, I did move out and took up residence in a one-room apartment in the boastfully named Imperial House, near Dupont Circle. And soon after taking that major step I realized that my apprehensions about a trial separation had been well founded. I felt liberated, and had no desire at all to resume that marital relationship, though I did want to keep in contact with our children. I told Michèle of my decision, and she eventually accepted the fact that my unwillingness to resume our marital relationship meant that we were going to get divorced, and that would require that we negotiate about a separation agreement that would govern the terms of the divorce. We quickly reached agreement on what amounted to joint custody, but an accord on the financial terms of the divorce was a harder nut to crack. That negotiation was a prolonged one, lasting well beyond the twelve months of mutually-agreed separation that would be sufficient for purposes of a consensual divorce in the District of Columbia, but we eventually reached agreement, and got divorced on July 20, 1971.

**Sinclair:** You subsequently remarried?

**Isbell:** Yes. During the period of our separation, and negotiation of the terms of our divorce, I’d formed a close relationship with Florence Bachrach Robin, whom I’d first met through the ACLU, in 1968, when I was in New York for a meeting of the ACLU national board and looking for a replacement for the Executive Director of the ACLU of the National Capital Area. She had just moved from Atlanta, where she had founded and run the Georgia affiliate of the ACLU, to Baltimore, and was in New York looking for another ACLU job that she could
handle from Baltimore. I was impressed by both her ACLU background and her obvious competence, and tried to hire her as my affiliate’s Executive Director, but the National organization had already hired her as an assistant to the organization’s first full-time representative in Washington, a wonderful man named Larry Speiser. She later became the director of the Maryland affiliate, and then was lured to our local affiliate, not by me but by our legal director, Ralph Temple.

Florence’s husband, Fred Robin, had died in August of 1969, and she, having no further reason to stay in Baltimore, which required commuting to her job with the ACLU affiliate in Washington, moved to Bethesda, to be closer to her job. And, as I’ve said, by the time my divorce from Michèle came through, we had formed a serious relationship; indeed, we had decided to get married. However, at the end of the week in which my divorce became effective, I was scheduled to leave on a five-week, five thousand mile tour of the West with my three children and my retired father, in a self-propelled motor home—a great big bus, with a shower, air conditioning, toilet, cooking facilities and space for six to sleep and lounge. That was something I had scheduled before I knew that my then marriage was going to break up. Now the breakup had occurred, and I was going to remarry, but I was also determined not to cancel or postpone that long-scheduled trip, so the question arose whether Florence and I would marry in haste and she would join my family on that western voyage, or we would postpone our marriage until after that trip, and then take a proper honeymoon trip by ourselves at some future time. I put the choice to Florence, and without hesitation she chose to make that trip, and let it serve as our honeymoon. So my divorce came through on Wednesday of that week, we were married by a justice of the peace in Virginia on Thursday, and we all left for the western jaunt on Saturday
of that week, on what was surely a honeymoon trip unique enough to deserve mention in Guinness’s Book of Records.

Sinclair: You rented the vehicle?

Isbell: Yes, rented it, picked it up in Denver and returned it there. I had taken a trial-run, a shorter trip, just to Canada and back, with my kids and my father, the summer before. Michèle did not want to go on either the shorter experimental trip or the longer trip, most likely because I intended to take my father along, who had never been west of the Alleghenies, except for one visit to Detroit, as well as the children.

As it turned out, that trip went extremely well. It gave my children and Florence a chance to get to know each other without any interfering influence of their other parent. And Florence was very good at getting along with kids; she’d been a camp counselor. And it was a wonderful trip from the touristic point of view. Marvelous scenery, comfortable traveling and utter independence of movement. We generally stopped overnight at camp grounds designed for such vehicles, but there were a few times where we’d just stop in the woods somewhere. Florence and I generally slept outside the vehicle, in a two-person sleeping bag with an inflatable mattress, but sometimes all six of us slept within the bus, and sometimes we all spent the night in a motel, to get the benefit of a more hefty shower than was provided in the bus.

Sinclair: Now after you and Florence married, did her children live with you?

Isbell: Florence’s son Richard was in college, at Georgetown, so he was out of the house. Her daughter Peggy was in her senior year of high school at Bethesda Chevy-Chase High School and was living with Florence, and then me as well, in an apartment on East-West Highway just across the street from her high school, where I joined them. The next year she went off to college.
Sinclair: So when you two married, it was just the two of you even though you had five kids?

Isbell: If you’re asking about our living accommodations, that’s right except for that first year when Peggy was finishing up at BCC, although when we finally found and bought the house that met our requirements, one of those requirements was that there be six bedrooms, so that all five of our collective children could be accommodated at the same time: mine during the times when I had custody, and Florence’s when they needed a respite from college (or, in Richard’s case, graduate school).

Sinclair: Well, I think that does a good job of covering your family life during the late 1960s, so let’s talk about your law practice at that time. You became a partner at Covington and Burling.

Isbell: That’s right; I became a partner in the summer of 1965.

Sinclair: Was there a junior/senior system back then?

Isbell: Yes; when associates were elected to the partnership, they were initially junior partners.

Sinclair: What did that mean? Or what does that mean?

Isbell: It didn’t mean much as a practical matter. You had the rights of a partner, you got copied on reports to the partnership, you attended partners meetings and voted on partnership matters, including elevation of others to the partnership, and you didn’t have to attach the label junior when dealing with clients or third parties, and it didn’t appear on your business cards. But there was still a certain implied tentativeness in the label partner being modified by the term junior. The junior status lasted two years, I think; it may have been three. In any event, after I had done my standard period of qualified partnership and felt free to speak up about it at a
partners meeting, I started campaigning against having this fictional period of, in effect, probation. Nobody had ever failed to graduate from junior to senior, so it was just a sort of tentative reservation about you which really wasn’t serving any useful purpose. And I can’t say that my agitation on the subject was responsible, but in due course, that feature was dropped from the partnership process.

Sinclair: So as a young partner, what kind of work were you doing? Were you litigating?

Isbell: I’m trying to think what I did at that time. One of the things I did was serving as outside counsel to the American Institute of Certified Professional Accountants (AICPA), which was a long-standing client of the firm, with the lowest (and therefore earliest) client number I ever saw—that number, I remember, was 630. Up until the time I took on that role, it hadn’t been a major client at all. The AICPA was headquartered in New York. And what the firm was currently doing for them before I got involved was merely to provide an associate who from time to time helped to conduct a disciplinary proceeding. Individual members of the AICPA would occasionally get charged with some sort of misconduct that violated the organization’s code of ethical conduct. There would be an investigation and then a possible disciplinary hearing at which the heaviest penalty available would be expulsion from the AICPA, which would likely be followed by a state regulatory office that could revoke the miscreant’s license as an accountant.

But at the time that I got involved with the AICPA, the accounting profession was facing a growing problem of third-party liability—exposure not merely to suits by clients but also by people who had made use of or relied upon audited financials. Such suits, against both small and, with more publicity, large accounting firms, were becoming a major feature of the world of certified public accountants. The Institute’s management decided that they needed to have a firm devoting attention to the problem of accountants’ legal liability. Covington was then their
only outside counsel—they had an inside counsel too—and they asked Covington if it would take this on. Gerry Gesell, who was the partner responsible for that client, said the firm would undertake that responsibility and he designated me as the lawyer who would be principally responsible. I’m pretty sure that happened while I was still a senior associate, but when I became a partner that was the principal client for whom I worked, and I was the partner in charge of it, reporting to no one else.

I found it a very interesting representation. I advised the governing board of directors from time to time, worked with the committees at AICPA that were dealing with professional standards of various kinds, gave talks about developments in the law affecting CPAs at annual meetings of the membership, prepared and filed amicus briefs on the Institute’s behalf in cases involving possible changes in the law affecting the legal responsibilities of CPAs, and I became quite widely known in the accounting profession, as a result of which I started getting asked by individual accounting firms to represent them in litigation involving claims of accounting malpractice.

Sinclair: So you had a mix of counseling and litigation work for accountants?

Isbell: That’s right. It’s a very satisfactory mix and I enjoyed the counseling although my first love was still litigation. There was an aspect to the representation that I think of as having a sort of academic quality since it involved projects sponsored by the American Law Institute (ALI). Because of my representation of the Institute I got involved in a project of the ALI involving a comprehensive revision of all of the federal laws dealing with securities. I have mentioned that project in connection with my experience with Louis Loss, the Harvard Law professor who was the reigning expert on securities laws at the time, in connection with the first book review I handled as Article and Book Review Editor of the Yale Law Journal.
Sinclair: You’re talking about, for example, the Securities Act of 1933 and the Securities and Exchange Act of 1934?

Isbell: Yes, those two were the principal statutes, but there were and still are a number of others. My interest in it—more fundamentally, my client’s interest in it which occasioned my participation in the ALI project—had to do with the liability provisions of the proposed revised securities law.

Sinclair: Now, was that paid work?

Isbell: The firm was paid by the AICPA for the time I spent on that work, yes. And I’m sure Loss knew I was acting on behalf of the AICPA.

Isbell: A somewhat similar project of the American Law Institute that I was briefly involved in was the *Restatement (Second) of Torts*. The AICPA’s particular interest there was in a single provision that addressed liability to third persons for negligent misrepresentations, which is to say liability for misrepresentations not made directly to the third person but rather made to a second person but foreseeably relied upon by a third person. Of course the accounting profession’s interest—and therefore the AICPA’s interest—arose from the circumstance that accountants, in their capacity as auditors of corporations, issue opinions on the financial statements of publicly-owned companies which make representations about the accuracy of the financial statements that are foreseeably relied upon by persons who are considering whether to acquire or dispose of securities of the audited company.

Because of the Institute’s interest as just explained, I arranged a meeting, along with my then associate Jim Strother, with William Prosser, the premier figure in the field of Torts, who was the reporter for that project, to discuss the language of section 552 of the *Restatement*, dealing with liability to third parties for negligent misrepresentation. (Professor Prosser, too,
was well aware that we were representing the AICPA.) The granddaddy case in this area was a decision written by Cardozo in 1931, when he was Chief Judge of the New York Court of Appeals, holding that the maker of a negligent misrepresentation is liable only to a person to whom the representation is addressed, or to a third person if that person is one specifically contemplated as the one who would rely on the representation—the *primary beneficiary* of the representation.\(^{14}\) This doctrine had been gradually eroded by the courts’ recognition that a larger class of third-party users of erroneous professional representations could be injured, and not only those for whom the representations were primarily intended.

The burning issue in this area, with respect to liability of accountants, was whether their liability for merely negligent misrepresentations with respect to an audit report on erroneous financial statements could extend not merely to those persons who were specifically expected to rely on the auditors’ assurances with respect to the financial statements (such as a bank that, as a condition of a loan, had required audited financials of the borrower), but also to the much larger group of potential claimants, such as stockholders of the audited company, who could well be considered foreseeably to rely on the audit reports, rather than intended ones. The federal securities laws made a distinction between the standards of care applicable to auditors in cases where their audit reports related to financial statements in an offering of securities (where the standard was negligence),\(^{15}\) and in routine periodic public filings by companies subject to the federal laws (where the standard was intentional or reckless misstatement).\(^{16}\)

The issue the ALI was addressing at this point was whether the court-made common law that the *Restatement* was trying both to encapsulate and to shape, as applicable in common law cases—that is, ones not governed by the federal securities laws—would draw a line, with respect

\(^{14}\) *Ultramares v. Touche*, 255 N.Y. 170 (1931).
to third-party responsibility for negligent misrepresentations, that extended to a smaller group of foreseeable reliant stockholders than the federal securities laws, yet to a somewhat larger group than would result from Cardozo’s primary beneficiary formulation. Our effort to suggest language for the ALI’s Restatement in this regard was successful. The black letter provision of section 552, as recommended by Prosser as reporter and adopted by the ALI, reads as follows; the key language, suggested by Jim Strother and me, is italicized:

§ 552. Information Negligently Supplied for the Guidance of Others

(1) One who, in the course of his business, profession, or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining of communication the information.

(2) Except as stated in Subsection (3), the liability stated in Subsection (1) is limited to loss suffered

   (a) by the person or one of the limited group of persons for whose benefit and guidance he intends to supply the information or knows that the recipient intends to supply it; and

   (b) through reliance upon it in a transaction that he intends the information to influence or knows that the recipient so intends or in a substantially similar transaction.

The key word in our formulation, of course, was the word “limited.” We also suggested several hypothetical illustrations involving accountants that were included in the Restatement, showing how the key language would apply in circumstances of particular concern for accountants. Realistically speaking, I have no idea to what extent we changed what would otherwise have been the shape of the Restatement, and in consequence of the case law, but I remember thinking at the time that we had performed a valuable service for the accounting profession, although I’m confident that Prosser adopted our proposed language because he thought it had merit—as did, presumably, the ALI members who voted to adopt it as well as the many other changes to the Restatement (Second) of Torts that Prosser recommended.
Sinclair: Is it a foreseeability test? If you could you foresee a third-party's reliance, then you could become liable?

Isbell: Well, it was sort of a limit on the foreseeability, where the representation at issue was only negligent. Anyhow, it’s a good formulation and Prosser adopted it, and the ALI adopted it. My little contribution to posterity.

Sinclair: Now at this time as a young lawyer did you feel a great pressure to bring in new business to the firm?

Isbell: No. The firm didn’t make a big point of bringing in business at that time. It was obvious that if you brought in business that would be helpful and you would be rewarded for it along with other contributions you made to the firm’s welfare, including building up the business from an existing client. It was not an eat-what-you-kill arrangement, however. Some firms have a very clear arrangement like that, under which the only profits that you get to share are those generated by a client that you brought in. That was not, never has been, I hope never will be the view of the firm.

Sinclair: Tell me about the Metropolitan Club and the Cosmos Club. How do they fit into your life story?

Isbell: Well, not long after I became a partner, I decided I ought to belong to some club to which I could take my hopefully many visiting clients, though I didn’t actually have any out-of-town clients that I dealt with face-to-face in my office; that kind of meeting would more often occur in the client’s offices. In fact, I think the typical Washington practice such as Covington’s didn’t generally involve much entertaining of clients here. You wouldn’t be dealing with them here, you’d typically be dealing with them where they are located. But just the same, it seemed to me that all the senior partners as well as some of the younger ones belonged to some club that
served lunch and dinner, and most of them seemed to belong to the Metropolitan Club, which was then and I think still is the preeminent “power” club. It has a pleasant ambience that smells of establishment, power, importance and money; all, of course, in a genteel, understated way. Have you ever been there?

**Sinclair:** I never have.

**Isbell:** Well, go there sometime if you have the opportunity. I think you’d share that impression. It’s a very pleasant impression, one that makes you feel you’d rather be in the club than out; at least I found it so. Moreover, the partners had an informal lunch together at the Metropolitan Club every week.

However, at that time the Metropolitan Club did not have any black members. Moreover, it did not even allow black guests brought by members of the Club, believe it or not! This was in the 1970’s, mind you, and not all that long after the *Brown v. Board of Education* decision and the civil rights legislation of the Johnson era.

Let me take a slight detour here. There were two major partners of the firm who at that time were carrying on a campaign to get the Metropolitan Club to drop its racial barrier.

**Sinclair:** Who were those partners?

**Isbell:** Howard Westwood and Charlie Horsky, both very liberal guys who nonetheless belonged to this racist club. They were doing what they thought they should do in those circumstances, rather than noisily resign; namely, bore from within. And what their campaign consisted of was from time to time to invite, as a luncheon guest, some very distinguished black person, like an ambassador or a cabinet member. They wouldn’t be physically barred at the door, but they would get a note from the Metropolitan Club management afterwards drawing their attention to the fact that they had recently disregarded the Club’s rules with regard to
guests. They’d write back, asking “What rule was that?” and knowing that there was no written rule or bylaw requiring the exclusion of blacks. So they were gradually wearing away at the Club’s racial exclusionary practice.

Although I figured that if I did apply to the Metropolitan Club, then probably by the time I got to the head of the waiting list, this racial barrier would be no longer operative, but I couldn’t bring myself to apply to a club that was still discriminating at the time I applied. So I asked Gerry Gesell whether there were any reasonably respectable clubs that didn’t have a racial exclusion policy, and he pointed me to the Cosmos Club, which had quite proudly admitted a distinguished black journalist as a member a few years previously. So I decided to apply to the Cosmos Club. That Club, which had been founded in 1878 by John Wesley Powell and a group of men who were “distinguished in science, literature and the arts,” had a reputation as a club of intellectuals. It was located at the time I applied for membership (and still is) in a quite large and beautiful mansion on Massachusetts Avenue at its intersection with Florida Avenue and 23rd Street. One of the walls on the way to the dining room displays photographs of Nobel Prize winners who were Club members, and a room opposite that spot similarly displayed photos of Pulitzer Prize winners who were Club members.

So I got a friend from law school, Stephen Schwebel, whom I’ve mentioned in connection with my tour of India (for which he’d recommended me to USIA), and who was already distinguished enough to have gotten admitted to the Cosmos Club, to sponsor me for membership in the Cosmos Club. To be considered for membership, one had to “have done meritorious original work in science, literature or the arts,” or “though not professionally occupied in science, literature or the arts, [be] well known to be cultivated in some field thereof,” or be “recognized as distinguished in a learned profession or in public service.” My application
sought to fit me into that final category of eligibility, although my claim to be recognized as
distinguished as a lawyer was a rather tenuous one at that time, for the truth was that I was not
yet recognized at all by very many people. I managed to get letters of support from some quite
distinguished people including Erwin Griswold, the former Harvard Law School Dean whom I
had known from the Civil Rights Commission, and who, in his letter of support, said that if I had
stayed at the Commission, I would have become its staff director, and the then-Executive
Director of the AICPA, who said that I was the most distinguished lawyer he’d known.

In my initial effort to get elected to the Cosmos Club I was interviewed by a member of
the Admissions Committee, a very conservative fellow whose name I have mercifully forgotten,
but who seemed to be shocked that someone seeking to be a member of the Cosmos Club should
have been as involved in the ACLU as I had been. He was also not at all impressed by the fact
that I had been an assistant director of the Civil Rights Commission or that I was editor-in-chief
of its five-volume 1961 Report and the author of a portion of that Report dealing with civil rights
in the Black Belt, which the New Republic had judged to be “brilliant.” So I suspect he
blackballed me.

Steve Schwebel, however, is not one to give up easily. He tried again and re-submitted
my application, perhaps this time with some additional back-up letters. This time I had evidently
had the good fortune of being considered by a somewhat more enlightened member of the
Admissions Committee. So I did get admitted.

Let me hasten to confess that when I applied for membership in the Club, I was well
aware that the Cosmos Club did not admit women as members. They did give widows of
members most of the benefits of membership, but they weren’t members, entitled to vote as
such. Moreover, the Club’s old-fashioned sexism had been carried to the point where they had a
separate entrance through which women had to arrive. At the time I got admitted to the Club, in March of 1970, there was just beginning to be a rising tide of public consciousness, a really striking phenomenon of increasing recognition that discrimination against women is akin to racism, a phenomenon that I believe was kicked off by the inclusion of sex as a forbidden ground of discrimination in the Civil Rights Act of 1964, a wholly unintended consequence of a proposed amendment to the Administration’s bill that became that Act that Congressman Smith of Virginia had proposed in the belief that that would doom the legislation as a whole. Anyhow, I found myself in the awkward position of having joined the Club because it wasn’t racist, only to come to the realization that it was almost equally bad for being sexist. Florence refused to go through the separate entrance for women, and pretty soon, she refused to go to the Club at all, and I found that some other people that I invited also were not willing to go to there because of its official policies toward women.

Not long after those first rumblings, an effort was made by a group of members of the Cosmos Club to get the by-laws amended to eliminate the men-only provision. The by-laws could only be amended by a vote of the membership, which vote had to be taken at a meeting in which the vote was by those members who were physically present. Since a large portion of the Club’s membership live elsewhere in the country, this meant that they could only vote if they traveled to Washington, which few were likely to do. There was a meeting called to consider the proposed by-laws amendment. I went to that meeting. I can’t say I contributed to the debate but I listened to the debate and was appalled by some of the things the opponents of the change said—not quite articulating the proposition, but effectively expressing the view that women are simply not intellectually equal to men, and so not fit for membership in the Cosmos Club. There was also a sort of sub-theme to the effect that men of distinction wouldn’t be comfortable in the
company of women—other than their own wives, of course, whom they had to put up with. The proposed by-laws amendment failed to be adopted.

The proponents of change tried again a couple of years later, and this time failed by an even larger margin. I think there was then a third effort, that was equally ineffective, and that, for me, finally broke the camel’s back, and I resigned from the Club, with a long letter explaining my decision—a good letter, but one that would have been better if sent a good deal earlier. The date of that letter was January 20, 1984.

A few years later, however, the Cosmos Club, the Metropolitan Club, the Sulgrave Club (an elegant and exclusive women’s club) and, I suppose, a lot of other private clubs in Washington dropped their sex-based exclusionary rules—not by reason of a sudden burst of enlightenment, but under the threat of losing their liquor licenses. Not long after that, I received a charming letter (doubtless sent to all those who had resigned for the same reasons as I had) from some official of the Cosmos Club inviting me to rejoin the reformed Club, and stating that I would not have to re-establish my eligibility to become a member. I found that letter so charming that I decided to rejoin the Club, and I have been a member ever since.
Oral History of
DAVID B. ISBELL
SIXTH SESSION - NOVEMBER 24, 2008

Sinclair: This is session six of David Isbell’s oral biography for the Historical Society of the D.C. Circuit, and we are beginning today with a discussion of the Federal City Club, following up on our discussion in the last session of eating clubs generally and the Metropolitan Club and the Cosmos Club in particular. The one remaining club mentioned in your notes was the Federal City Club, so let’s turn now to that. What is or was the Federal City Club, and what was your involvement in it?

Isbell: Well, the Federal City Club came into being early in the Kennedy Administration, as a result of Kennedy’s withdrawal of his application for membership in the Metropolitan Club. I’m not sure of the exact chronology, but I think Kennedy had made that application shortly after winning the election, but then withdrawn it before the Club had acted on it. My understanding was that someone in Kennedy’s entourage had pointed out the Metropolitan Club’s exclusionary policy and the potential political problems that his belonging to such a club could present for Kennedy. That withdrawal also served as a warning to others who were destined for high positions in the Administration, and in consequence the withdrawal of Kennedy’s application was followed by a number of resignations from the Metropolitan Club.

The Federal City Club, as I understand it, was organized by a journalist named Charles Bartlett, who had been a roommate of Kennedy’s at Harvard, as a refuge for those who had resigned from the Metropolitan Club. Membership was also open to others than the refugees from the Metropolitan Club, and of course the new club did not discriminate against blacks as either members or guests. As a club, it had a quite limited physical scope. It had no building of its own, and offered no overnight accommodations—let alone a barber shop or squash courts,
like the Metropolitan Club. It rented space from a hotel; initially, the Sheraton Carlton (now called the St. Regis) which, conveniently, was on the next block and across the street from Covington’s offices at that time, and offered lunch there, but neither breakfast nor dinner. It also offered on occasion at lunchtime quite interesting speakers about various current events.

I joined the Federal City Club at some point, but I’m not sure exactly when, though I’m reasonably sure that it was before I’d gotten admitted to the Cosmos Club. After becoming a member of the Cosmos Club, I kept up my membership in the Federal City Club because it was more convenient to get to from the firm’s office for lunch than the Cosmos Club.

Sinclair: Are you still an active member of both of those clubs?

Isbell: Well, I’m still a member of the Cosmos Club, but I dropped my membership in the Federal City Club sometime after I rejoined the Cosmos Club following the club’s recognition of the error of its ways with respect to the treatment of women, as I’ve previously recounted. The Federal City Club eventually dissolved in January 2006. During the time I was still actively engaged in the practice of law, I didn’t use either club very often, but since acquiring senior status at the firm, I have used the Cosmos Club fairly often for both lunches and dinners.

Sinclair: What benefits have you derived from membership in those clubs?

Isbell: The main benefit has been the ability to have a good lunch (and, in the case of the Cosmos Club, dinner) in an agreeable, uncrowded, and reasonably quiet dining room in which I have some sense of proprietorship. The Cosmos Club also offers a wide variety of intellectually rewarding activities—duplicate bridge, chess tournaments, lecturers at occasional lunches or dinners, classical movies and so forth—but I have never partaken of any of them, initially
because I simply had too full a professional and family schedule, and more recently because of my ever-worsening hearing problem.

Sinclair: Okay, let’s talk about the Southeast Neighborhood House, which is also mentioned in the notes that you’ve provided me. What is or was the Southeast Neighborhood House?

Isbell: That was one of my earliest pro bono activities after I’d rejoined the firm following my time at the Civil Rights Commission. It’s been a long time since I was involved in it, and I don’t know if the organization is still in existence, or if so whether it still bears that name. My guess and hope is that it is still operating, in some form or other. The historical name for that sort of place was a “settlement house,” established by the “settlement movement,” a liberal reformist social movement born in England in the nineteenth century, with the goal of getting the rich and the poor to live more closely together. The settlement houses were established in poor urban areas, and provided various services, including food, shelter, and sometimes legal representation and education for the poor. They were funded by wealthy donors and staffed by social workers. The movement spread to other countries, including America, where the most famous settlement house was Hull House, in Chicago, established by Jane Addams in 1889.

The settlement house whose board I joined was one of several such institutions in Washington, and the poor neighborhoods they served were predominantly, if not invariably, in Anacostia. The chairman of the board was Crosby Roper, a partner in the firm with whom I was doing some corporate law work. Other members of the board, all of them white, and from middle- or upper-class neighborhoods, included Francine Temko, a lawyer with whom I had worked at the Commission and who was the wife of Stanley Temko, a partner in the firm with...
whom I was also currently doing some work; Jean Warnke, the wife of a then-partner, Paul Warnke; and Marion White, whose husband was Justice Byron White. The organization had an exceedingly able director named Ralph Fertig.

Southeast Neighborhood House, along with all the other settlement houses in D.C., became part of the Poverty Program launched as part of President Johnson’s War on Poverty, which not only provided new, governmental funding for settlement houses, but also gave a new focus to their activities, in the form of “community action”—which is to say, getting local people to organize and agitate and take charge of efforts to improve their situation and that of the neighborhood generally, rather than relying on leadership from the boards of upper- and middle-class directors. Eventually, all the white members of the board of directors of Southeast Neighborhood House withdrew and were replaced by people from the neighborhood, so the organization was put in the hands of community activists—a very desirable development, in my view. We weren’t kicked out, but we felt we weren’t needed any more. I haven’t followed the fortunes of Southeast Neighborhood House since that time, and I don’t know what effect the termination of the Federal Poverty Program had.

**Sinclair:** What did you contribute to Southeast Neighborhood House?

**Isbell:** Well, I was an active member of the board, and had some dealings with the local community activists, but I don’t have any recollection of any specific thing I did except organizing and running a fundraising event, an evening event in a large hall somewhere whose name and location I don’t recall. It offered food and drink, dance music provided by a disc jockey, and a performance by a then well-known entertainer named Tom Lehrer. An unusual feature of that event was that we had a two-level pricing system for admission: people from the neighborhood paid a quite modest entrance fee, while others paid much more for their tickets.
Despite the unusual pricing system, the event actually did generate a significant profit for Southeast Neighborhood House.

**Sinclair:** Your star attraction was named Tom Lehrer?

**Isbell:** Yes. Have you never heard of him?

**Sinclair:** I don’t think so.

**Isbell:** I guess it’s a generational thing. At the time I first heard of him, Tom Lehrer was a doctoral candidate in Harvard’s mathematics department. He subsequently bounced around academia, teaching at a number of other universities. As a hobby of sorts, he composed and performed—that is, he sang, accompanying himself on a piano—amusing songs, all making fun of some institution or other. He got to be widely enough known to have his songs collected on records that were available at music stores everywhere. I was in law school when I first heard of him, but by the time I graduated I’d guess that just about every college or post-college student in the country, and certainly a lot of older adults, at least among the bourgeoisie, knew of him, and most also had his records. I think by the time of that funding event, I knew most of his songs by heart, including all the verses, though I can’t make that claim today. I do, however, remember snippets of some of his pieces. One of them was a mock-Irish folksong, which went in part—

\[
\begin{align*}
  &About a maid I’ll sing a song, \\
  &Sing rickety tickety tin; \\
  &About a maid I’ll sing a song \\
  &Who didn’t have her family long \\
  &Not only did she do them wrong, \\
  &She did every one of them in \\
  \ldots \\
  Her mother she could never stand, \\
  Sing rickety tickety tin; \\
  Her mother she could never stand, \\
  And so a cyanide soup she planned \\
  Her mother died with the spoon in her hand \\
  And her face in a hideous grin.
\end{align*}
\]
He had one about Boy Scouts, of which the following are excerpts:

*Be prepared, and be careful not to do*

*Your good deeds when there’s no one watching you*

.* . .

*If you’re looking for adventure of a new and different kind*

*And you run into a girl scout who is similarly inclined*

*Don’t be flustered, don’t be nervous, don’t be scared*

*Be prepared*

And from one about the Wild West:

*Amid the yuccas and the thistles I’ll watch the guided missiles*

*While the old FBI watches me*

*Yes, I’ll soon make my appearance, soon as I can get my clearance*

*‘Cause the Wild West is where I want to be.*

So we were able to land Tom Lehrer to perform at our fundraiser, without fee (though we doubtless paid his travel expense), because the husband of one of our board members had been his roommate in college. He came down from Harvard without pay and was quite an attraction for those, at least, who’d heard of him. I would guess that most of the board members and other middle-class people we managed to attract to the event had heard of Tom Lehrer, but I’m not sure the neighborhood people had, but I assume they would have enjoyed Lehrer’s performance, too.

That fundraising party was the only concrete contribution that I recall making while I was on the Southeast Neighborhood House board, though I was an active member of the board, and probably would have succeeded Crosby Roper as Chair if the decision hadn’t been made to turn the whole operation, including the board of directors, over to people in the neighborhood.

**Sinclair:** Let’s talk about Florence’s family.

**Isbell** Florence had two children from her previous marriage—a son, Richard Robin, and a daughter, Peggy Robin. They’re each now in their fifties, though when Florence and I
married Richard was in college and Peggy was just finishing high school. Each of them has since married and each has two daughters, all very bright. Each of the older daughters has just started college this fall (2009). Both families wound up living in Cleveland Park, so we’re able to see a good deal more of Florence’s descendants than we do of most of mine, all but two of whom live in Europe.

**Sinclair:** What do Richard and Peggy do?

**Isbell:** Richard is a linguist, with a specialty in Slavic languages, and he’s got a wonderful aptitude for languages, picking up new languages very quickly. I understand that that talent for language manifested itself very early. He invented a language, taught it to his sister, and the two of them were able to communicate in a tongue that their parents didn’t understand. Richard is particularly interested in Russian; he’s the Chair of the Russian Language Department at George Washington University, and he’s co-author of the pre-eminent teaching textbook for the Russian language. He’s certainly a very talented teacher. If you ask him to explain something, he does it in a step-by-step fashion that gives you a perfectly clear, concise explanation.

Peggy, Florence’s daughter, is an author of non-fiction books, and with her husband Bill Adler runs a small publishing company, which mainly puts out paperbacks on practical subjects whose principal market is impulse buyers at airports and railroad stations. They also run a kind of community blog (if that’s the correct term) for Cleveland Park. Peggy also is a community activist, and one of the books she’s written and published is a sort of handbook on how to get things done as a community activist. I’ve forgotten what the title is, but I remember the dedication was to Florence, which read, “To my mother, who taught me how to lie down in front of bulldozers.” She served for seven years on the Advisory Neighborhood Commission that
covered Cleveland Park, one of whose accomplishments was to preserve the small Park and Shop shopping center of small, low-rise stores on the east side of Connecticut Avenue in Cleveland Park from developers who wanted to tear it down and replace it with high rise buildings. This was accomplished by creating a Cleveland Park Historic District, which had the effect of requiring a hearing before any building within the District could be torn down.

An interesting thing about Peggy is that after she had her two daughters, she decided that they should have the benefit, which she had not herself had, of in-depth exposure to Jewish culture and tradition. Florence has always been totally nonobservant, and so had her husband Fred Robin, the father of her children, and they had never sought to imbue any consciousness of Jewish tradition in their children.

**Sinclair:** Is Florence of Jewish extraction?

**Isbell:** Yes, she’s Jewish, as both of her immigrant parents were (and their language at home was, initially, Yiddish), but she’s never been observant; in fact, she prides herself as being a militant atheist. Her parents weren’t observant Jews, either, although her father became a prominent member of the local synagogue, more as a matter of social prestige than of religious conviction. Her parents also hosted, in Florence’s early years, a Passover Seder. I think that was the only religious occasion that they celebrated, and theirs was, from her description, more of a wonderful cultural event than a religious one, with a variety of interesting regular participants, who would recount stories about their lives and their escapes from Russia, and sing traditional songs with the words changed to refer to the culture of their new American lives. That’s a whole separate story, which I won’t try to tell further here.

What I was aiming at in mentioning the Jewish traditions was that only Peggy, and not Richard (nor Florence, when she was raising them), was anxious to expose her two daughters to
Jewish tradition. So Peggy started giving a Passover Seder, which all the family attends, including her in-laws, Florence and me, and whatever descendants of mine are around. In addition, Peggy sent her two daughters to a Hebrew pre-kindergarten, and they both chose to have a bat mitzvah, though the synagogue where they did this (and which conducted the kindergarten) is a sort of nontheistic synagogue, which really concentrates on Jewish tradition, as distinct from the Jewish religion. Their nonreligious congregation meets at a Unitarian church.

Sinclair: How have Florence’s children and grandchildren gotten along with yours?

Isbell: They’ve always gotten along beautifully. In the case of the grandchildren, like blood cousins.

Sinclair: Are they similar in age?

Isbell: Florence’s children are somewhat older than mine, but my two older children married at a younger age than Florence’s, so the grandchildren/cousins are almost all in the same range of ages.

Sinclair: So, when you married Florence, whom did your three children live with—you or your ex-wife?

Isbell: They were mainly living with Michèle, but we had an agreement about custody that amounted to joint custody, so I had them with me every other weekend, plus one midweek night. I think I also had them during my vacation time, though she would have them the rest of the summer, and usually went to France for that period, so I had somewhat less than half of their summer vacation time.

Sinclair: Now let’s get a little more detail about your children.

Isbell: Well, the oldest is Christopher Pascal, though he generally goes only by Pascal. He is now (in 2009) 51 years old. He got his college degree at Connecticut College, which had
just become co-ed (and shortened its name from Connecticut College for Women), so that he was in the first class that included males. He did well—Phi Beta Kappa and summa cum laude. He then got an MBA from Wharton and wound up as an investment banker of sorts, living in London with his wife Virginie, the daughter of a French family of whom we’re very fond, as we are of Virginie. Pascal and Virginie have three sons, one of whom, tragically, is autistic and deeply dysfunctional; the other two are fine, and the oldest is in the process of applying to colleges in both England and the United States.

My middle child is Virginia (more generally known as Poucette or simply Pou), who has just turned 50, and who, although she attended Yale College, has lived for most of her life in Paris. She is a serious and quite successful painter. She has three children from a former marriage with a French psychoanalyst, Michel Topaloff, from whom she is now divorced: Alice, now 20, who has just started at a French Grande École called Agro Paris, and 18-year-old twins, Lucy, who has just started as a freshman at Yale, and Gabriel, who is attending a graduate school of design in France.

My third child, Nicholas, who will be 48 this December, spent his college years first at Duke and then, after a junior year abroad at the Hautes Études Commerciales (the prime business school in France), at Harvard, from which he graduated with a bachelor’s degree. He then successively earned an MBA from Wharton, an MA in international relations at the Johns Hopkins School of Advanced International Studies, and an MA in History of Art from UCLA. He now is making use of only the MBA background as an analyst at Fannie Mae. Somewhat tardy on the matrimonial front, compared to his siblings, Nick married late and has fathered just one child, Sophie, who is now 9, and the youngest of all of our grandchildren. Nick and
Sophie’s mother, Martine Burkel, are divorced, and Nick has recently remarried to a French woman, Rose Villard Marsico.
Sinclair: This is session seven of David Isbell’s oral history tapes for the D.C. Circuit Historical Society. Let’s take up your professional life during the period 1979 to 1995.

Isbell: All right.

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

Isbell: For the previous eight years we had been in a building at 888 16th Street, in the first block north of Lafayette Park and next to the Hay-Adams Hotel. The building was a handsome one that had been designed and built for us, and the firm was the sole occupant of all but the ground floor, which was occupied by the Motion Picture Association. That building had been intended to accommodate us, at our then-anticipated rate of growth, for fifteen years, but long before that time was up, we had outgrown it and spilled over into a relatively new office building a block west of our main building, on the first block of Connecticut, just north of Lafayette Park, and the firm was clearly expanding at a rate that was going to continue. So the elders in the firm sensibly decided that we ought to start all over again and get a large piece of a larger building that would last us for a substantially longer time than that building had done. We wound up arranging to be the anchor tenant of a much larger building going up at 1201 Pennsylvania Avenue, NW, where we had a thirty-five-year lease with options for additional space that would accommodate the whole firm and its anticipated growth in that period of time. And it has in fact accommodated, along with some additional space in an adjoining building, the growth of what is now the home office of the firm for the last twenty-nine years, although in the course of that time we have established a number of branch offices, both in this country (in New
York City, San Francisco and three other locations in California), and abroad (London, Brussels, and most recently Beijing). That building, designed by the architectural firm Skidmore Owings & Merrill, is a pretty handsome one, though not as beautiful as the one we had on 16th Street.

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

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

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

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

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

Isbell: I guess there probably was a general up tick in the demand for lawyers, because it’s my impression that most other law firms were also growing at an accelerating pace. At the time I started at the firm, and I think still when I became a partner, Covington was the largest firm in Washington, and it had been so for quite a while. However, during that period of general expansion of law firms, several other Washington firms grew faster than we did, and we lost our position as the largest (though not, of course, our position as the best, or at least one of the best).

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

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

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

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

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

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

Sinclair: What had been his background?

Isbell: I’m pretty sure he hadn’t previously ever been in private practice. He was a graduate of Columbia Law School, and had taught at several different law schools, including one
in Liberia, which was where he had contracted the disease that left him wheelchair-bound. That disease was something of a mystery. Its effects were very similar to polio’s, but he was told that it was not polio but some other disease that could not be identified. He then held a series of governmental positions. He was either the third or the fourth Special Counsel in the Watergate investigation, and immediately before he joined us, he had been the US Attorney for the District of Columbia.

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

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

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

Isbell: Well, this isn’t quite a committee but it’s a major firm activity, and of course a vital one for the firm’s continued growth and prosperity. I was much involved in recruiting after
I’d returned to the firm from the Civil Rights Commission, and for some years after I became a partner I was in charge of our recruiting at my alma mater Yale Law School. That didn’t involve a firm committee, so named, but it was a large and frequently changing group of partners and associates who were interested in interviewing and evaluating possible recruits.

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

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

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

Isbell: Yes. The Management Committee had decided to develop a formal policy on that subject because our recruitment efforts were encountering a growing tendency on the part of law students, when they were interviewing law firms, to ask about the firms’ pro bono policies and activities. I guess I was asked to draft such a policy because I had something of a reputation as a
pro bono enthusiast by reason of my having spent two years at the Civil Rights Commission and then become deeply involved with the ACLU.

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

Sinclair: What were the significant provisions of that policy?

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

The governing premises of the Firm’s policies regarding public service activities are: (1) that public service is an important professional obligation of the Firm and of each lawyer; (2) that each lawyer should have the widest possible latitude in deciding the nature and extent of the public service commitments to be undertaken; (3) that public service work represents a professional commitment of equal importance and dignity to paying work; and (4) that professional activities of the Firm’s lawyers in this area involve issues that, to some degree, are matters of collective interest.
My recollection tells me that the way I phrased that first proposition (although this may simply be the way I now think of it) is the proposition that public service is (or should be) an integral part of the practice of law.

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

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

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

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

Sinclair: Were you involved in any other firm committees?

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

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

\[17\] 424 U.S. 1 (1976).
over the shoulders of my successors as chair, so I asked to be appointed to the then recently-established Professional Responsibility Committee. I chose that committee because I had just finished serving for six years as a member of the D.C. Bar’s Legal Ethics Committee, and had gotten quite interested in that subject. So I was appointed Chair of that committee, and served in that capacity until I got kicked upstairs to senior counsel status, which at that time meant I could no longer be Chair of a committee, though I could continue as a committee member, which I still am to this day. I had been Chair of that committee for roughly 17 years.

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

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

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

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

Isbell: Yes; that was the Evaluation Committee, which I chaired for three or four years, I think, in the early nineties. That committee, which had not yet come into existence at the time
when I became a partner, or for some years thereafter, annually collected evaluations of senior associates (that is, those in their fifth through eight year with the firm) from each partner or counsel for whom they had done any work in the previous year, and consolidated them into a message that the Chair of the committee would personally convey to that associate, appraising his or her strengths and weaknesses and suggestions for improvement, and providing a collective judgment as to how well the associate was doing with respect to possible election to partnership status. The committee also made its recommendations to the Management Committee about partnership for those associates who had stayed with the firm to the eighth year. That elaborate process had two great benefits: for the firm, it provided an important level of confidence in those critical decisions about admission to the partnership, and it provided a very desirable assurance that there would be no unpleasant surprises for those associates who decided to stay with the firm up to the day when the new partners were announced and welcomed into the partnership.

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

Isbell: Well, first of all let me tell a bit about the origin of the D.C. Bar. It was created in 1972. It was created by the D.C. Court of Appeals, which is, of course, the highest court in the local court system. The Court did this mainly at the urging of the Bar Association of the District of Columbia (BADC), which was (and is) a private, voluntary Bar organization. The new Bar organization was not a voluntary organization but a compulsory one, also sometimes called an “Integrated” Bar, or a “Unified” Bar in the sense that lawyers had to belong to it, and pay dues to it, in order to practice law in the District of Columbia. The last time I looked, about half of the American jurisdictions had a mandatory Bar, generally named the State Bar of whichever state was involved. I believe every State Bar was created by the supreme court of the particular state involved, save the California Bar, which was established by the state legislature.
The fact that a particular Bar is mandatory means, of course, that it not only has more members than a private bar in the same jurisdiction, but as a result of all those members having to pay dues to the Bar, it commands substantially more financial resources than any voluntary Bar organization drawing on the same pool of lawyers, and so can accomplish a great deal more by way of education, training, throwing its weight around about subjects like court reform, and so forth.

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

I attended that meeting, and have a quite vivid recollection of it, and particularly of the process of electing the fifteen members of the initial Board of Governors. I don’t know whether the BADC leadership had made any coordinated plans about those nominations, but a group of activist lawyers, none of whom, so far as I was aware, had been involved in pushing for the creation of this new Bar, had met and done some planning in anticipation of that election. As a result, when the time came for the Chair of that initial membership meeting to call for nominations from the floor, there were a couple of nominations of individual lawyers, accepted
by the chair, and then one of the members of the activist group nominated a full slate of names all at once, most of them being well-known lawyers who were also activists, and the Chair accepted those nominations as well. The result of this was that the initial Board of Governors of the new Bar was pretty much in the hands of the activist wing of the organization, some of whose initiatives stirred up vigorous opposition, and led in several instances to the adoption of membership referendums that resulted in clipping the wings of the D.C. Bar. That is a separate story, which I will not pursue further here.

Sinclair: Were you a member of the activist group?

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

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

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

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

Isbell: Yes. Not long after I’d presented that committee’s report to the Board of Governors, the board decided to establish a Committee on Legal Ethics. And because I’d gotten to be known by the Board of Governors in connection with that earlier committee, I had the good fortune of being appointed to the newly established Ethics Committee. I knew virtually nothing about legal ethics at that time, and I’d guess my ignorance on the subject was not at all unusual at that time, since it was not a subject that was typically part of law school curricula. While I was at Yale, I had just one two-hour lecture on the subject, I think, late in the final year. My contemporaries at Harvard didn’t even have that much exposure to the field. It just wasn’t a field that many lawyers, including academics, studied, a situation that continued until, in the aftermath of the Watergate events, when a number of high-level lawyers (including Attorney General Mitchell) involved in that criminal episode or its cover-up went to prison for their conduct, and the ABA, in reaction, added a requirement that law schools have a compulsory course on the subject, as a requirement for accreditation. In any event, I soon found the subject of legal ethics a very interesting one, and so was an active member of the new D.C. Bar Legal Ethics Committee. The initial appointees to the committee drew straws to determine who would have an initial three-year, two-year, or a single year’s appointment. I had the good luck of getting one of the three-year terms, and then getting reappointed for a second full term (which, after the first round, were all for three years). During the six years I served on that committee, I wrote more of the committee’s opinions than any other member, and in the second term would likely have been appointed as chair, but by then I was also a member of the Bar’s Board of
Governors, and the by-laws prohibited board members from holding any other position appointed by that board. The dual position of member of the Ethics Committee and board member did, however, serve the useful purpose of letting me serve as a sort of intermediary in the adoption of an expanded and improved version of DR 9-101 of the ABA’s Model Code of Professional Conduct (the forerunner of Rule 1.11 of the Model Rules of Professional Conduct), addressing the problem of conflicts of interest for former government lawyers undertaking engagements in private practice that were substantially related to matters they had participated in while in government.

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

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

Isbell: Well, first, as I mentioned in the discussion of my time on the Ethics Committee, I got elected to the D.C. Bar Board of Governors in 1981. I had had enough exposure to it in connection with the two Bar committees on which I’d served to decide that I’d find service on that board interesting. Actually, I had to run twice before I managed to get on that board. The first time, I wound up in a tie for the fifth and final slot with one other candidate for the final
open slot on the board; that tie was broken by a flip of a coin, and I lost. I ran again the next year, however, and that time I won handily—a result I attribute solely to the fact that the first run had made my name more familiar to the Bar’s very large electorate—over 40,000 members, I believe, at that time.

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

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

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

**Sinclair:** Why was that?

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

**Sinclair:** How come?

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

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

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

**Sinclair:** Who was your opponent?

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

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

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

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

**Isbell:** Yes, some of it was dealing with challenges, and I’ll mention a couple of those. Some of it also was the potential for undertaking new and worthwhile initiatives, some of which I actually got started while I was still President-Elect. The Bar President during that year was Jake Stein, whom I’ve already identified. Jake wasn’t himself much interested in taking on new initiatives for the Bar, but he was willing for me to do it, just so long as he knew about such things in advance and so had a chance to oppose my initiative if he was so inclined. There were, then, two such initiatives that I think got started during my time as President-Elect. One was to
get an Interest on Lawyers’ Trust Accounts (IOLTA) Program adopted by the Court of Appeals for the District of Columbia; the other was to get the Court to authorize a new Rule allowing foreign lawyers to engage in the practice of law involving solely the law of the country where they were admitted to practice law.

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

Our test of wills with the D.C. Court of Appeals had a more favorable outcome. The Bar had instituted, before I became President (though while I was a member of the board), a program of collecting confidential evaluations of the judges of the Superior Court from lawyers who had appeared before them. Each judge would be subject to such evaluation every five years (the terms of office being fifteen years). The results of these evaluations were kept entirely confidential and disclosed only to the judges so evaluated, and to the Chief Judge of that
Court—despite which, it was generally understood that the judges themselves really hated that process. There was nothing that the Superior Court could do to prevent the Bar from collecting those evaluations, but the Court of Appeals, which had created and had supervisory power over the Bar, had the power to do so. That Court, though not itself affected, was sympathetic to the wishes of the trial judges, and clearly would have liked the Board of Governors to drop the whole judicial evaluation program. Knowing that, I did my best to persuade the board to drop the program, but I could not persuade a board majority, so eventually I wrote a letter to Ted Newman, the Chief Judge of the Court of Appeals, telling him that we knew of the Court’s wish but that I had been unable to persuade the board to honor it, so that if the Court really wanted us to stop the program, it would have to order us to do so—a letter that Alan Morrison, then a board member, pronounced to be a masterpiece—and the Chief Judge in due course responded to my letter by saying that the Court would not issue such a letter.

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

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

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

The last, and in my view the most important, Bar committee that I served on, not as chair, but as co-chair, was called a Task Force rather than a committee. Its subject was “Sexual Orientation and the Legal Workplace,” and its charge was “to study the possible existence and extent of bias on the basis of sexual orientation in the legal profession encountered by members of the D.C. Bar, and to make appropriate recommendations based on the findings of the study.” There had been studies of that subject done in several other jurisdictions, but only by non-governmental Bar associations, not by any State Bars—that is, “integrated” or compulsory Bars like the D.C. Bar, to which lawyers had to belong in order to practice law. So ours was the first Bar of that kind that had taken on that sensitive subject. One of the two co-chairs was a heterosexual man (me), and the other a gay, or rather lesbian, woman. The ten other members of
the task force were similarly split as to sexual orientation, though on the whole the gay and
lesbian members tended to be more actively engaged in the matter than the straight ones (myself
excepted; I was a very active participant in every part of the Task Force’s work).

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

That Task Force was appointed in July 1995, and its work was meant to be completed in
two years, but in fact it took substantially longer than that. Our Final Report was dated March
1999. There were several reasons why it took so long, one being that there were a number of
disagreements within the group to be ironed out, and I was very anxious that we wind up with a
unanimous report if at all possible. I was also insistent that we adopt no factual propositions on
the basis of their being self-evident to some—or even all—of the members of the Task Force. I
wanted to be able to say that we had documentary support for everything we said. And, as my
heavy-handed editing of Dr. Andreason’s draft questionnaire suggested, I was very picky about
details, as was one of the lesbian members of the group. Indeed, it was asserted as to her and me
that we must have been “separated at birth.”

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

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

Sinclair: What was the result of your report?
Isbell: Well, if you’re asking what effect it had on the actual practices of law firms and
other employers of lawyers, with respect to treating gay and lesbian lawyers differently from
other lawyers, I don’t know. I certainly hope that it brought about some improvement in the
working life experience of such lawyers who had experienced discriminatory practices in their
employment.
Sinclair: This is the eighth session of the oral history of David Isbell that we’re doing for the Historical Society of the District of Columbia Circuit. We are going to pick up today where we left off at our last meeting. We’ll cover some of Mr. Isbell’s professional activities during the period 1979 to 1995. We’ve covered the D.C. Bar, so let’s talk about the American Bar Association and the House of Delegates in particular. Could you begin by explaining briefly what the ABA and its House of Delegates are?

Isbell: Well, the ABA is the preeminent professional organization of lawyers, whose membership includes more than half of the million or so lawyers in America. Its House of Delegates, with some five hundred members, is its principal policy-making body.

Sinclair: Were you a member of the House of Delegates?

Isbell: Yes, I became a member of the ABA House of Delegates, ex officio, when I became President-elect of the D.C. Bar, in 1982. I remained ex officio during my year as President, 1983-84 and, I think, my year as Immediate Past President, and then I ran for election as a Representative of the D.C. Bar in the House of Delegates. D.C. had three elected Representatives, in addition to several ex officio ones who served for two-year terms but could be reelected any number of times. I kept running and getting reelected to one of those slots until 1996, so I wound being a member of the House of Delegates, either ex officio or elected, for thirteen years altogether. When I became the Chair of the ABA Ethics Committee (more formally the Standing Committee on Ethics and Professional Responsibility), it was very helpful for me to still be a member of the House of Delegates because it seemed to me that every year of my committee chairmanship, we had something to propose, or there was a proposal from some
other source on which the committee’s views were sought, before the House of Delegates. I
would be responsible, as the committee’s Chair, for presenting and defending the committee’s
position on the matter.

Sinclair: What were your responsibilities as a Delegate?

Isbell: To attend meetings, which were held twice a year—a mid-year meeting and an
annual meeting—and, if you had something to say, to participate in the discussion, and, of
course when the House of Delegates voted on some matter, to cast your vote. Also, various ad
hoc committees were formed over the course of time. I served on one such committee, which
was concerned with “ancillary business”—that is, law firms engaging in related businesses that
were not themselves the practice of law.

Sinclair: Would that be a violation of professional conduct rules?

Isbell: The committee was appointed to consider whether a new Rule of Professional
Conduct should be adopted that would prohibit or regulate lawyers and law firms engaging either
directly or indirectly, through a subsidiary entity, in activities that, although not in themselves
constituting the practice of law, were nonetheless related to the law—for example, acting as a
realtor.

Sinclair: How long did that committee exist?

Isbell: At least a year. Perhaps a little more.

Sinclair: Were you tasked with a report?

Isbell: Yes. We issued a report and recommendations, which I must say, nobody paid
much attention to. But the ABA did wind up adopting a Rule governing ancillary business
activities. That’s Rule 5.7 of the Model Rules of Professional Conduct, now titled
Responsibilities Regarding Law-Related Services. There had been a real push on this subject
from the ABA Section on Litigation, whose leaders thought it was a frightful idea for lawyers to have any kind of business connections. They thought it was risky; they seemed to be afraid the practice of law would just be corrupted by lawyers combining practice with commercial activities. My view, and that of the special committee on which I served, was that no prohibition was called for, but that it might be worthwhile to have a Rule that limited such activities in ways that would avoid possible ethical problems, and the Rule that was ultimately adopted by the House of Delegates reflected that general viewpoint. So far as I know, it’s no longer a subject of controversy.

Sinclair: So, the Rule that was ultimately adopted was based on your recommendation? Or was at least in harmony with your recommendation?

Isbell: In harmony, yes. The Rule has since been amended in various minor ways, but its general thrust, of regulating rather than prohibiting such activities, has remained the same. I was not in fact deeply interested in the subject. I served on that special committee, and I was a member of the ABA Ethics Committee when the first version of the Rule was adopted, and I’d made up my mind about it, but I wasn’t interested enough to follow its subsequent course with close attention after I was no longer on the ABA. I thought there were just a few simple propositions that had to be recognized, and they were, and the rest was uninteresting detail. Anyhow, the battle eventually simmered down.

Sinclair: You were a member and Chair of the ABA’s Ethics Committee. Could you begin by explaining the role of that committee?

Isbell: I don’t recall any official statement about what the committee’s formal role was meant to be (although I’m sure there is one, somewhere), but as a practical matter, it did two principal things. One was to issue Opinions about ethics issues relating to the current ABA
model ethical code, which, when I was on the committee, was (and still is) the Model Rules of Professional Conduct. The Model Rules were first adopted in 1983 (superseding the Model Code of Professional Conduct, which in turn had superseded the original ABA Canons of Professional Ethics in 1969), but they have been substantially amended (and improved) since then. Every American jurisdiction but one now has an ethical code largely based on the ABA Model Rules, and California is slowly edging in that direction. Every jurisdiction also has at least one Ethics Committee that issues its own Opinions about those Rules, so there are a whole lot of Ethics Committee Opinions floating around out there on the internet. On the whole, though, the Opinions of the ABA Committee are considered to be more authoritative, and the committee certainly tries to make them so.

The other important function of the committee concerns proposed amendments to the current ABA Model Rules. Sometimes the committee will be the entity that proposes an amendment; other times, the initiative will be a proposal from another ABA entity (as was the case with the Rule regarding ancillary businesses); or it may be a court decision, as it was in one instance during my time as Chairman of the committee. In that case, a Supreme Court decision holding that a provision of a Nevada rule of professional conduct on trial publicity that was an exact copy of Model Rule 3.6 was constitutionally void for vagueness,¹⁸ which obviously required a revision of that Model Rule. I’ll discuss that case a little more fully later in this interview.

Sinclair: Were you a member of the Ethics Committee before you became Chair of the Ethics Committee?

Isbell: Yes. I was appointed to the Ethics Committee (more formally, the Standing Committee on Ethics and Professional Responsibility) by the then-incoming President of the

¹⁸ That case was the *Gentile* case, which is discussed at page 211, below
ABA, Stanley Chauvin, in 1989, and wound up serving on it for six years, three of them, 1991 to 1994, as Chair. What led to my appointment was a conversation with Zona Hostetler, a dear friend who was very active in Bar matters and many other good works. I told her I was getting tired of the House of Delegates, and she asked me whether there wasn’t anything I’d like to do in the ABA. After a little thought I realized that there was indeed something I’d be interested in getting involved in—the Ethics Committee. I had spent six years on the D.C. Bar’s Ethics Committee, and found that very interesting. Happily my interest came to the attention of Stan Chauvin, and he appointed me to the committee for the standard term of three years.

In my first two years on the committee there were two different Chairs, each in the last year of a three-year term as a member of the committee. The next year I was appointed as Chair by the then-incoming ABA President, Michael McWilliams. He didn’t know me, but I think I had strong support from the staff that served the committee, and he yielded to it, I thought, with some reluctance. He phoned me and said he would appoint me as Chair, but only if I promised that I would offer my resignation to his successor after I’d served a year as Chair, so that his successor would not feel bound to keep me on as Chair, or for that matter, as a member of the committee. By then, I wanted very much to be Chair of the committee, and I agreed to the condition he had attached to the appointment.

So after I’d served as Chair for a year, I duly tendered my resignation, as I was promised to do, to McWilliams’ successor, William Ide. He evidently thought I had been a good Chair, so he declined to accept my resignation. And then, the following year, I again tendered my resignation to the new President-elect, George Bushnell, whose attitude was that if someone’s doing a good job, he should be allowed to continue to do so. So, I wound up having three years as Chair, and then I served one more year, the final year of my second term as a member of the committee.
committee, for a total of six years. They were, altogether, fruitful years, and enormously enjoyable for me.

Sinclair: Why were they fruitful years?

Isbell: Well, a principal manifestation of fruitfulness was that, up through the first two years that I was on the committee, the average production rate of the committee in the form of published Opinions was one or two per year. I had been on the D.C. Bar’s Ethics Committee for six years, as I’ve previously said, and it had been considerably more productive than that in terms of numbers of Opinions issued. A contributing reason for the D.C. Bar Committee’s greater productivity was that it met more frequently than the ABA Committee. The D.C. Bar Committee met monthly, whereas the ABA Committee met only four times a year—two times in connection with the mid-year meeting and the annual meeting of the ABA, and the other two times, typically, at a resort of some kind. The practice had been, essentially, to devote the meetings to considering drafts of Opinions, but there was no reason for committee members to give serious attention to other committee members’ draft Opinions between meetings, so there was little progress between meetings on any drafts that were in the works.

When I became Chair of the ABA Committee, I got its members to agree, first of all, to have a monthly conference call. Initially the call was for just one hour, but it soon seemed to me that an hour wasn’t a long enough time for the conference calls to be really productive, so I got my colleagues to agree to extend it to two hours. The other innovation that I instituted was an expectation that each member would have a draft Opinion in the works at all times. Some members who got appointed to the committee joined it in the expectation that they would simply bring their expertise to enlighten our discussion, but not actually do any work in the way of producing draft Opinions, but it was soon made clear to such members that that was not the way
we were operating. When a draft was ready for consideration, it would be distributed and would be discussed whenever we next got together, which would generally be in one of the monthly phone conferences.

The result of the increased frequency of the committee’s meetings and the expectation that every member would have a draft in process was that the rate of production of committee Opinions went up. The first Opinion the committee issued during my time as Chair was Formal Opinion 92-362; the last one was Formal Opinion 94-387—a total of 26 Opinions, or an average of a little more than 8 per year. So I can claim at least part of the credit for that increased productivity of the committee. In fairness, though, I must also say that the major reason for the committee’s extraordinary productivity during that period was that I had the good fortune of having several members of the committee who were extraordinarily interested, able, and energetic. Indeed, with only one exception, all of the committee members during my time as Chair were very able.

An interesting thing about the number of Opinions issued during my time as Chair, I think, is that most of them—though not all—were on important points on which there was little or no authority, so that they became important precedents, some of them being reflected later in amendments to the Model Rules or the Comments thereto.

**Sinclair:** Do you have any examples?

**Isbell:** One that springs to mind is Formal Opinion 93-374, on Sharing of Court-Awarded Attorneys Fees with Sponsoring *Pro Bono* Organizations. I was personally responsible for that one. It responded to an inquiry that had been made to the ABA, but it was also a subject that I knew was of considerable importance to the ACLU and other cause organizations that engaged in litigation on behalf of persons who had claims under statutes under which attorneys
fees could be awarded to successful plaintiffs. The opinion held that fees so awarded could properly be shared with a sponsoring *pro bono* organization despite Model Rule 5.4(a)’s prohibition on a lawyer sharing a fee with a nonlawyer. I asked Tom Odom, then a relatively new associate at Covington with whom I’d had some other dealings, to draft that opinion, which, after some editing by me, the committee adopted, albeit with one member dissenting. (Tom was inspired by that project to take up legal ethics as a specialty, and wound up teaching the subject in several law schools). The holding of that opinion is now reflected in Model Rule 5(a)(4), as amended in 2002 pursuant to a recommendation of the Ethics 2000 Commission, which provides that “A lawyer may share court-awarded fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.”

Other Opinions issued by the committee when I was Chair that I think were ground-breaking included Formal Opinion 92-364, *Sexual Relations with Clients*, a subject that is now dealt with (somewhat differently than in that opinion) in Model Rule 1.8(g); Formal Opinion 92-367, *Lawyer Examining a Client as an Adverse Witness, or Conducting Third Party Discovery of a Client*, which is reflected in comment [6] to Rule 1.7, as amended, on the recommendation of the Ethics 2000 Commission in 2002; and Formal Opinion 93-377, *Positional Conflicts*, which is similarly reflected in comment [24] to Rule 1.7, also on the recommendation of the Ethics 2000 Commission.

Part of the reason for our producing Opinions that became important precedents was this: at every meeting we would be given a list of topics that had been subjects of inquiries by members of the ABA who had written to ETHICSearch, a service that was provided by the staff that also served the Ethics Committee. ABA members could write to that service with an ethical question and the service would respond, not with an answer to the particular problem but with
citations to such authority as the staff was able to find that had a bearing on the question. In other words, it provided research, but not explicit advice. At each meeting of the Ethics Committee, we would be furnished with a list of the questions that had been posed to ETHICSearch on which it had not found substantial authority. All or virtually all of the issues that the Ethics Committee chose to address with a Formal Opinion came from that list of topics. So, we were filling in blanks where there ought to be authority, but there wasn’t yet significant authority—filling them in by way of Formal Opinions. I think our procedure for picking the subjects that we’d try to address in a Formal Opinion was essentially the same as was followed by predecessor and successor committees; so I don’t count that as another innovation introduced during my chairmanship of the committee.

**Sinclair:** Now, you’ve described the committee’s role in issuing Opinions, but you also said it had a role with respect to proposed amendments to the Model Rules. Would you expand on that a little?

**Isbell:** Yes. Monitoring and weighing in on proposed Rule amendments was definitely a responsibility of the committee, and it was also an area in which I felt that the period in which I served as Chair was fruitful. There were two Model Rule amendments during my time as Chair that were particularly memorable. The first of these responded to the Supreme Court’s decision in *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991), which I have mentioned earlier, effectively holding that Model Rule 3.6, on *Trial Publicity*, addressing the problem of extrajudicial publicity that may affect the fairness of a trial, was unconstitutionally vague, so that amendment of the Rule was needed if it was to survive constitutional challenge. The Gentile in the case was a prominent Nevada criminal lawyer (whose name is pronounced as Genteel, not Gentile or Gentilly) who had held a press conference, some six months before the scheduled trial.
of his client, for the purpose of rebutting some of the adverse publicity that he felt might have a prejudicial effect on his client’s trial. After the trial, at which his client was acquitted, he was charged with having violated Nevada’s counterpart of Model Rule 3.6, which was virtually identical to the Model Rule as it then stood, and disciplined for having held that press conference. He responded by challenging the constitutionality, under the First Amendment, of the Rule he had been found to have violated. He took that challenge to the Nevada Supreme Court and then to the United States Supreme Court, which held that one of the key provisions of the Nevada rule—and, in consequence, the Model Rule—was void for vagueness.

The *Gentile* decision meant that at least the portion of the Rule that the Court had found unconstitutionally vague and therefore void must be amended; but my view, with which the committee was at least willing to go along, was that while we were at it, we should consider whether Model Rule 3.6 could be improved in other ways in addition to curing the problem of vagueness. I identified some nine issues that should be at least considered in connection with the one constitutionally necessary amendment, and drafted and got distributed to various interested parties a memorandum posing those issues and seeking comments on them.

The upshot was that the committee wound up proposing, and the House of Delegates adopting, substantial changes to Rule 3.6. I would have made even more changes than were ultimately adopted, but the new version of Rule was still a great improvement.

There was one other Model Rule amendment in which I played the initiating role: an amendment to Rule 8.5 to add a simple, easily applied formula to govern the resolution of choice of law problems when a lawyer’s conduct may be subject to the ethics rules of more than one jurisdiction, and those rules provide for conflicting results. Choice of law problems were becoming increasingly frequent, as lawyers and law firms increasingly dealt with matters
potentially involving the differing ethics rules of multiple jurisdictions. At that time, Model Rule 8.5, which was titled *Disciplinary Authority*, provided no more guidance for dealing with differing ethics rules applicable to the same transaction beyond the general observation that choice of law issues should be resolved by application of the pertinent doctrines of Conflict of Laws. That observation offered no practical guidance at all, and such decisional law as was available on the subject offered conflicting views.

So I asked my partner Arvid Roach, who shared my interest in legal ethics issues and was Vice-Chair of the firm’s Professional Responsibility Committee while I was its Chair, to draft an amendment to Rule 8.5 that would provide clear and easily applied rules for resolving at least most conflicts issues that arise in practice, along with Comments to go with those new provisions, and a draft Committee Report in support of the proposed changes to the Rule. Inveterate editor that I am, I probably made some minor changes in Arvid’s drafts, but he was a first-rate lawyer and writer, and his product didn’t offer much (if any) room for improvement by me. I secured the support of the Ethics Committee, and we then got the House of Delegates’ approval of our proposed amendment to Model Rule 8.5. The resulting Model Rule has since been revised somewhat, but I can claim some credit for having got this important subject dealt with in a useful fashion by the Model Rules.

There was a third subject on which the committee also proposed changes while I was Chair, namely, Model Rule 4.2, *Communication with Persons Represented by Counsel*, but nothing much came of that effort.

**Sinclair:** We’ve discussed the increased tempo in the issuance of Opinions that came about during your chairmanship of the Ethics Committee. Are there other changes that you made to the committee’s work?
Isbell: There were a couple of changes that I got made in matters of form, with the concurrence of the committee, though I’m not sure we took any formal vote on them. One change related to the committee’s longstanding practice of issuing two different kinds of Opinions—Formal Opinions and Informal ones. It seemed to me that there was not much point in having two different categories of Opinions. The Informal ones tended to be rather casually thought out and written, as if the authors didn’t think they dealt with anything of importance—as in fact was often the case. But if that was so, in a given instance, why should the committee spend any time at all on them?

Sinclair: What was the justification?

Isbell: I’m not sure I ever knew that. Presumably, either the issues dealt with were less important or else less time had been spent on them. But all the Opinions that the committee issued during the six years I was on the committee, were pretty long and substantive Opinions, and I saw no reason to try to make a meaningful distinction among the committee’s Opinions depending on whether a particular one was important enough or not important enough, or good enough or not good enough. If it was good enough for us to spend our time reaching a decision on an issue and providing an explanation of our reasoning, and deem it worthy of publication, what useful purpose would be served in labeling it as second-rate?

I don’t think the committee ever took a formal vote on the issue, but I do think the committee shared my skepticism about the utility of Informal Opinions, and during my six years on the committee no such Opinions were issued, and none have been issued since; indeed, the last Informal Opinion, number 1530, was issued in 1989.

Sinclair: You said there were a couple of changes in matters of form that you brought about; what was the other one?
Isbell: The other thing I got changed concerned the format of the Comments that followed each Model Rule. Originally, the Comment following a Rule would generally consist of several paragraphs—indeed, sometimes twenty or more paragraphs—each dealing with some aspect of the Black Letter Rule to which it pertained, but none of which was separately labeled by either a number or a letter. If you wanted to refer to a particular paragraph in the Comment following a Rule, there was no more convenient means of designating it than saying, “Rule __ Comment, sixth [or twentieth] paragraph.” My proposal, to which I’ve never heard any objection, was that the individual paragraphs under the title Comment after each Model Rule should be separately designated by a number, in brackets, so as to be conveniently cited as “Rule __, Comment [__].” The effect of that suggestion was that the next annual edition of the Model Rules showed bracketed numbers for each separate paragraph of a Comment. Similarly, we started referring to them in Committee Opinions as Comment [2] or [8] or whatever—or in abbreviated form as “cmt [2],” and so forth. This mode of reference was subsequently given the ultimate stamp of approval by being applied in the ALI’s *Restatement (Third) of the Law Governing Lawyers*.

Sinclair: It sounds as though you were more active with the Ethics Committee than with the House of Delegates. Is that correct?

Isbell: Absolutely. It was possible to do more as a member of that committee, and especially as Chair of that committee, than as an otherwise untitled member of the House of Delegates. It’s a very large body—more than five hundred delegates.

Sinclair: Did you vote? Was there a voting portion of being a Delegate?

Isbell: Yes indeed. In addition to addressing Rule changes, which we have discussed, the House of Delegates had the important function of deciding what the ABA’s policies should
be, particularly positions on issues of public policy that the ABA would lobby about. And
decisions by a deliberative body, of course, require votes by the members of that body,
preferably after appropriate debate. A major portion of the time at every meeting of the House
of Delegates, at least during the period I was in the House, was devoted to debating and voting
on the various Proposed Statements of ABA Policy. The ABA takes lots of positions on public
policy issues. It has a major lobbying operation in Washington.

A good many of the issues that it takes positions on are matters of national policy. For
instance, when I joined the House of Delegates, the ABA had long since adopted the position
that discrimination on various conventional grounds like race, creed, sex and national origin
should be prohibited, which is to say that it supported Civil Rights legislation.

There came a time, early in my tenure in the House of Delegates, when it was proposed
that the ABA’s policy favoring legislation prohibiting discrimination on the basis of race, religion, sex, national origin and the like be amended to include sexual orientation among the
grounds on which discrimination should be prohibited. That subject came up two more times
during my sixteen years in the House of Delegates. The first time, we were meeting in Nevada,
in Las Vegas, and I remember one of the speakers made the argument that we should not, in this
sinful State of Nevada, be giving our blessing to sodomy. I think that was the low point of my
time in the House of Delegates, although that speaker could be counted on for some pretty awful
statements whenever he spoke. The principal speaker in favor of the proposal, as I recall that
meeting, was Dan Bradley, who had been (and perhaps still was at that time) the first President
of the Legal Services Corporation, established during President Johnson’s War on Poverty, to
provide federal funding to organizations that provide legal representation to people who can’t
afford to hire a lawyer. If memory serves, Bradley was one of those men who had not
recognized their sexual orientation until relatively late in life. When he spoke to the House of Delegates, he knew, and told us, that he had contracted AIDS, and, since AIDS at that time was invariably a fatal disease, he would soon die of it. He made a moving address, but the proposal was overwhelmingly defeated.

A couple of years later, the proposal came up again before the House of Delegates. This time it failed of adoption again, but by a narrow margin. Then a few years after that, it came up a third time, while I was still in the House of Delegates, and this time it was adopted by an overwhelming margin. There had been an extraordinary change in the degree of enlightenment of essentially the same deliberative body. A fair number of people, of course, were on that body throughout that period, so my guess is that a good many of them changed their minds, reflecting a comparable change in the general population.

Sinclair: Were you an active participant in House of Delegates debates?

Isbell: I was certainly an active participant on anything having to do with the Model Rules, and particularly when I was Chair of the committee. And where proposed amendments to the Model Rules were to be voted on, I served in the debate in the House as spokesman for the Ethics Committee. I participated occasionally in debates on proposed ABA public policy positions, though I don’t recall any particular ones. I know I didn’t participate in the first debate on the question of discrimination on grounds of sexual orientation, because I hadn’t prepared my thoughts on the subject beforehand and the debate concluded and the vote was taken before I managed to put some together. I regretted that I hadn’t, but I think I did participate the two subsequent times the issue came up.

Sinclair: Good, well, that’s quite a bit about the ABA. Is there anything else missing?
Isbell: No. Shall we go on to the time when I was induced to become a member of the board of the new organization established by the Washington Lawyers’ Committee—the Disability Rights Council of Greater Washington? Or perhaps the Veterans Consortium Pro Bono Program, which came into being at about the same time, but in which my role was more significant?

Sinclair: Sure, let’s turn first to the Veterans Consortium Pro Bono Program. Please explain a little bit about what the Veterans Consortium Pro Bono Program is.

Isbell: Let me first recount some of the historical background of the Veterans Administration’s processing of claims by veterans or their survivors for benefits for service-connected disabilities. (Incidentally, the formal name of that agency is the Department of Veterans Affairs, but everyone still refers to it as the Veterans Administration, or the VA, as I will also do.) There were two longstanding statutes restricting the rights of veterans with respect to the VA’s handling of such claims, both of which were finally repealed and replaced in 1988. One of those had prohibited judicial review on the merits of decisions by the Veterans Administration about individual veterans’ disability benefits. The other was a provision that had been in effect in slightly varying forms since the Civil War, which prohibited, under criminal penalty, any person from charging more than ten dollars to represent a veteran in dealing with the Veterans Administration. I had encountered, and been astonished by, that remarkable statute when, as a young lawyer, I had represented a young man who had just been commissioned a second lieutenant in the Army, but who had had a psychotic episode. I represented him in a hearing before an Army discharge board, and in the course of that representation learned that there was that extraordinary statute that effectively barred me from helping that client to assert his possible benefits from the VA, though I could help him get benefits from the Army. A
Supreme Court decision in 1985, although recognizing that that ten dollar fee limitation effectively prevented any lawyer from representing a veteran before the VA other than on a pro bono basis, nonetheless upheld the statute against a constitutional challenge, on the ground that the VA’s paternalistic procedures sufficiently protected veterans’ rights without the need of any privately retained lawyers.\textsuperscript{19}

In addition, there was a VA Rule that prohibited anyone from taking any money for assisting a veteran before the Veterans Administration. In sum, lawyers simply weren’t available to provide such assistance, except for lawyers who were employed by one another of the veterans service organizations like the American Legion, who would provide free representation and get paid by the service organization.

\textbf{Sinclair:} Unbelievable!

\textbf{Isbell:} Indeed! Happily, those two extraordinary laws were repealed in 1988 and replaced by the Veterans Judicial Review Act,\textsuperscript{20} which not only allowed judicial review of the VA’s benefits decisions but established a special Article One court, now called the U.S. Court of Appeals for Veterans Claims (or, less formally, the Veterans Court), to which appeals could be taken. That statute also narrowed the prohibition on a lawyer being paid for representing someone before the VA to the period before the VA’s Board of Veterans Appeals had made a tentative final decision on the merits of the claim. Thus, it allowed veterans to hire lawyers to handle appeals to the Veterans Court.

That new Court was quickly staffed and went into operation, but it soon found that something close to eighty percent of the appellants before it were pro se; that is, unrepresented by counsel. That, of course, presented a terrible problem for the court in figuring out what a case

was about, and a terrible problem for appellants who had a good claim, but didn’t know how to present it. However, one of the judges on the Court had the good idea of asking Congress for permission to pass on some of the court’s appropriated funds to the Legal Services Corporation (LSC) for the purpose of having LSC issue a request for proposals (RFP) to establish a program that would train lawyers in veterans law, evaluate the cases of pro se appellants, and, with cases that presented an issue worth arguing, to assign such lawyers to represent those appellants without charge. In 1992 Congress agreed to the Court’s request and authorized some of the court’s appropriation to be transferred to LSC for that purpose.

LSC issued the RFP and got several responses, one of which was put together by four veterans’ services organizations (VSOs). The American Legion is probably the best-known of the four; the other three were Paralyzed Veterans of America, Disabled American Veterans and a public interest law firm called the National Veterans Legal Service Program. They put together a proposal that was awarded a grant from LSC. There was another organization, on the West Coast, that also got a grant at that time, but that organization’s grant was not renewed after the first year, so the project these four VSOs had put together, which was given the name Veterans Consortium Pro Bono Program (hereinafter the Program), wound up as the sole recipient of the funds that were channeled by the Court to LSC. So the Program started training volunteer lawyers in veterans law, evaluating the claims of pro se appellants and assigning trained volunteer lawyers to represent those appellants whose claims were deemed worth arguing before the Court. The set-up of the Program had an ad hoc, improvised quality to it. It was not, technically, even a legal entity. It was staffed by personnel who were actually employees of one or another of the constituent VSOs, which were in turn reimbursed for the employees’ time out
of the Program’s funds. Despite the jerry-built structure of the Program, it worked, and very effectively.

The four constituent VSOs were all rivals in various respects, and often disagreed with each other about matters of public policy affecting veterans. So, while they were all supporting this new Program, they did not want decisions made about the Program that they could not veto. They recognized that there would have to be some entity to make decisions for the Program, but they were hesitant to call it a board of directors, and instead named it the Advisory Committee. That committee was to consist of a representative from each of the four constituent VSOs, and a fifth member who was not connected to any of the constituents, and who they decided should be a representative of the private bar. I was asked if I would be willing to be that fifth member of the Advisory Committee. Since I was myself a veteran, I had a certain sense of identification with the Program. Moreover, I had just resigned from the National Board of Directors of the National ACLU, and was receptive to the idea of getting into some other sort of good works. So I agreed to join the Advisory Committee, without even thinking about the fact what when that committee had its first meeting, it would have to elect a chair, and I would inevitably be elected as such, since I had no connection with any of the four constituent organizations.

Sinclair: How did you get involved?

Isbell: Two of the people involved in designing the program and preparing the proposal that won the grant had known me in other good works connections; one of them through the ACLU, and the other through the Civil Rights Commission. I’d also been President of the D.C. Bar, and I’ve since been told that that was an important factor in their choosing me, I presume because it gave me some credentials as an appropriate representative of the private bar.
Sinclair: This was around 1995?

Isbell: No, it was in 1992.

At the first meeting of the Advisory Committee, I was, for the reason I’ve mentioned, elected as Chair. I found it quite easy to get the organization running smoothly. When I’m the chairman of a board or other organization—or just a member of such a board—I tend to be an active leader or participant. That is the way I played my role on the Consortium’s Advisory Committee, and one of the things I insisted on right from the start was that absent a compelling consideration to the contrary, the committee should meet every month. I don’t remember any other particular thing I did as Chair, but some outside observers, including at least the Chief Judge of the new Veterans Court, seemed to have been doubtful that the four constituent VSOs would be able to get along well enough for the Program to operate effectively, and in consequence were impressed by the fact that it was operating very well. As a result, after the Program had been operating for a mere two years, the Court presented me with an impressive plaque designated as a Distinguished Service Award, “In recognition of exemplary service to the veterans who served the country and to the United States Court of Veterans Appeals through his work as Chairman of the Advisory Committee to the Veterans Consortium Pro Bono Program.”

I was astonished by that award, though, of course, very pleased as well, for I didn’t feel—and, indeed, still don’t—that I’d done anything that remarkable in that short time. I did manage to get the Advisory Committee working smoothly together, but that wasn’t difficult at all. And, most importantly, the Program had a superb staff, which I had no role at all in choosing.

Anyhow, the Program was very successful; that is, we provided a lot of free representation to a lot of people who needed it. By the time I stepped down as Chair of what had
been renamed as the Program’s executive board, thirteen years later, we had trained more than 1,900 lawyers and provided free legal representation before the Veterans Court to some 2,400 veterans or their survivors, who would otherwise have been without representation.

Sinclair: You served as a member of the board for thirteen years?

Isbell: Yes, from 1992 to 2005, and all of that time as Chair of what I eventually got renamed the Executive Board (since it really functioned as a board, not just an advisory committee). I would gladly have continued in that position indefinitely, but my ever-worsening deafness got to a point where I was chairing meetings (typically attended by eight or ten people, including not merely the board members but key staff and observers from both the Court and LSC), and not hearing everything that was being said. I’d know what major decisions were made, but in order to get the details I’d have to wait to see the minutes of the meeting.

When I became Chair of the Advisory Committee, there was nothing written or even understood as to how long a term I was to serve, and no one ever suggested that there should be such a term, or even that there should be a periodic election of a Chair. After three or four years, however, I started thinking that there ought at least to be such a periodic election (only of the Chair, since the other members were selected by their respective constituent organizations), so I suggested, and it was agreed, that we’d have one every couple of years. Those elections came to have a certain hollow routine to them. I’d have announced in advance that we’d have an election at a particular meeting, and that I was willing to stand for re-election. At the end of that designated meeting, I would leave the room; in a couple of minutes someone would come to tell me that there’d been no other candidates and I’d been unanimously re-elected.

At a board meeting in 2004, however, I announced that, because of my ever-worsening hearing problem, there would be an election in 2005 at which I would not be a candidate. The
other board members didn’t welcome this news, so far as I could tell, but neither did they protest. They did, however, make clear that they looked to me to find a successor—which I told them I took to mean that I should find two or more suitable candidates, so that the board and not I would be choosing my successor. So I spent quite a lot of time thinking about and looking for a successor. I needed somebody who was a veteran himself or herself, and somebody who would have some degree of prominence, and who could spend the necessary time to do the job properly. (I estimated that I spent 5 to 10 hours a week on Program matters.)

I interviewed quite a few people who would have been very good, most of whom just told me they didn’t have the time. One of them would have been ideal—a practicing lawyer who had also been a major-general and the chief of the Army Judge Advocate Corps. He let me take him to lunch and I told him all about it. He was interested, but he had a very busy practice of law, and he concluded that he couldn’t add it to his schedule.

I ultimately wound up with two well-qualified candidates. One of these two candidates was Stuart Land, a former Marine JAG officer and an almost-retired partner at Arnold & Porter; the other was a somewhat younger guy, Jeff Stonerock, a partner in Baker Botts and a graduate of West Point who had been very active at getting lawyers at Baker Botts to volunteer for the program. I had each of these candidates, and one or two others who withdrew from consideration, to sit in on a meeting of the Program board, to get a sense of how we operated, and then had each of them come to a special meeting devoted to nothing but the opportunity for board members and staff to ask them questions, and for them to ask questions as well. The one the board ultimately chose was Stonerock.

**Sinclair:** Quickly, what were your responsibilities on the board? Was it to oversee where funds went? Was it to oversee training? Was it those plus other things?
Isbell: My responsibilities as Chair were really never specified. Since I was the first to hold that position, I improvised as I went.

Sinclair: And what were the board’s responsibilities? Simply overseeing the Program?

Isbell: Yes, the board did oversee the Program. At each meeting there would be a report from each of the staff persons who were in charge of one of the Program components; we discussed everything that the Program did. We set organizational policy on various subjects—recorded in a series of documents that we called Policy Papers. Every few years we were required to submit to LSC an elaborate justification for our continuing to receive the grants that LSC was distributing to us. We also underwent every few years an LSC-sponsored Peer Evaluation and provided a response to any suggestions made by the evaluators. And finally, we spent a lot of time on the preparation of budgets to support our annual requests for appropriated funds.

The budget process was one area in which I was able to make a substantial contribution, in the form of lobbying. We had to submit by February of each year a budget for the federal fiscal year that would start the following October. Initially, we submitted our budget to the Veterans Court and the Court would approve it and incorporate it in the Court’s proposed budget. There came a time, however, when the Court said it wasn’t going to take responsibility for approving our budget—it would simply pass on whatever we proposed to the Congressional committees that had to decide on appropriation matters, without comment or endorsement, and leave to us the burden of justifying our own budget.

The Court stopped taking responsibility for our budget in the mid-‘90s, during the Clinton administration, when the Republicans got control of Congress with a view to implementing the so-called Contract with America. There was a confrontation between
Congress and the Administration about the budget, and the government operated for quite a while on eighty percent of the money it needed. Everything was cut, including the Court’s appropriations for its operations.

The Chief Judge of the Court told me at that time that the Court was going to take that cut out of the money that would normally have gone to the Veterans Consortium Pro Bono Program. It also decided that it had a conflict of interest in having anything to do with providing funds for the Program; indeed, there was an effort by the Court to have the Program’s appropriation made part of LSC’s appropriation rather than the Court’s. I knew that the Program could not continue to exist if we didn’t have federal funding; and I knew that only those congressional subcommittees dealing with veterans affairs—not those dealing with LSC—would be interested in supporting appropriations for the Program’s operations. Had the Court succeeded in transferring responsibility for our funding to the subcommittees that oversaw LSC, I don’t think that we would have survived. As it happened, though, the cavalry arrived at the very last minute to rescue our stagecoach: somebody up on the Hill inserted language in the appropriation bill that funded the Court saying, in substance, that the cut in the Court’s appropriation was not going to be taken out of the Program’s funding. I can’t honestly claim that I engineered this outcome, and to this day I don’t know who our benefactor was.

Anyhow, the Court did not try after that to cut our funding, but they left it to us to justify it to Congress. So I learned to lobby, something that I’d never done before. Every year I’d go and talk to the key people on the Hill, which meant principally the key staff person of each of the Appropriations Subcommittees that dealt with funding for the VA and the Court.

Sinclair: So you were the pitchman?
Isbell: I hadn’t thought about it in just that way, but I guess I was the pitchman, yes; anyhow, certainly the spokesman. Lobbying was an activity I’d never before engaged in; it was a new and interesting experience.

Sinclair: Were there any other respects in which, during your Chairmanship, you helped the Program to become established?

Isbell: Toward the end of my time as Chair, we had to rent new office space for the heart of the Program, which was the staff that were evaluating cases involving pro se appellants and placing with them lawyers who’d been trained in veterans law. And at that time the Program was still not a legal entity—not a corporation, not a partnership, not a business trust—so it lacked the capacity to execute a lease. That meant that one of the constituent entities had to sign the lease, and be legally responsible as the lessee. NVLSP, one of the four VSO constituents of the Program, undertook to do that, but in return required veto power over the Program’s expenditures.

That was a necessary arrangement, but obviously not a desirable one, so I recommended and it was agreed that we should incorporate the Program, so that it would have its legal own identity and be able to sign things like leases in its own name. With the considerable assistance of Kevin Shortill, a colleague here at Covington who had the appropriate expertise for such a matter, I drafted the necessary documents to establish the Program as a nonprofit membership organization and get it recognized by the IRS as a §501(c)(3) organization. That was my parting contribution to the Program.

Sinclair: Okay, we’re going to switch gears here, then, to the Disability Rights Council. In particular we’re going to discuss the Cineplex Odeon lawsuit. First of all, what is the DisabilityRights Council?
Isbell: All right. In 1992, the Washington Lawyers’ Committee for Civil Rights and Urban Affairs, which had previously spun off a couple of other organizations to concentrate on particular areas of discrimination, such as in housing, established another organization, the Disability Rights Council (DRC), to combat discrimination against persons with disabilities. That meant enforcing the then-recently enacted Americans with Disabilities Act, as well as several other laws forbidding such discrimination. Rod Boggs, the able Director of the Washington Lawyers’ Committee, whose idea the DRC was, recruited a Board of Directors of a dozen or so members, most of whom had some sort of physical disability.

I was obviously chosen to be a representative of the deaf community, although I’d resisted thinking of myself as disabled—or, indeed, as deaf; just as increasingly hard-of-hearing. Rod had previously tried to get me involved with the Washington Lawyers’ Committee, and I had resisted those efforts because I found civil liberties and the ACLU more interesting than civil rights and the activities of the WLC (although my wife Florence had been a staff member of both organizations). So I was reluctant to join the board of the Disability Rights Council. However, Rod had a special inducement to tempt me: he had dreamed up a lawsuit in which Florence and I could be the plaintiffs, and had gotten a volunteer law firm, Cleary Gottlieb, to handle the lawsuit, against Cineplex Odeon, which at that time owned something like fourteen of the sixteen movie screens in the District of Columbia, and had not provided for persons with impaired hearing assistive listening devices, such as headphones that received sound by FM radio or infrared light. Cineplex Odeon, like most movie houses and chains of that time, seemed never to have heard of the Americans with Disabilities Act, and never to have thought of making assistive listening devices available to their customers, despite the fact that most legitimate
theatres (that is, live theatres) had been providing such devices to their patrons for many years, and obviously did so in order to attract older patrons, as in fact they did.

Rod proposed to have Florence (who’s also somewhat deaf) and me be plaintiffs in this suit. The Disability Rights Council was also to be a plaintiff, but we would be the lead plaintiffs. Both of us had pretty much given up going to movies by that time, and taken up renting movies (almost all of which had closed captioning) and viewing them at home instead. But we sufficiently missed the experience of seeing movies on a large screen in a darkened room where all one’s senses were focused on the drama before us, to be willing to lend our names to what seemed to be a meritorious and quite appealing case—and in my case, not only to be a plaintiff in the suit but also to join the board of the DRC.

Sinclair: Why do you say that?

Isbell: It was a suit that really ought to be brought and could become an important precedent, and it would be nice to lend our names to it, even though we weren’t going to do any of the legal work involved—a nice sort of free ride.

Sinclair: It interested you to be a plaintiff?

Isbell: Yes, and not only because it was a worthwhile suit, but also because it was seeking relief that might be advantageous to us personally.

Sinclair: So a lawsuit was actually filed?

Isbell: Yes indeed. Initially, our volunteer counsel, Matt Slater of the Cleary Gottlieb firm, contacted Cineplex Odeon and told them what he was prepared to sue about. Cineplex Odeon’s initial response was that the company was losing money—oh, yeah—and couldn’t afford to install the devices in their theatres, although the devices only cost around $150 per screen. Matt then went ahead and filed the complaint. The company’s response to that was to
request an extension of time to respond, which Matt, of course, routinely granted. When the extended time arrived for Cineplex Odeon’s response, it was a motion to dismiss on grounds of mootness, because the devices had been installed in all the company’s local theatres. Our lawyer replied, in substance, “Not so fast,” and pointed out that the complaint asked for an injunction, for appointment of a monitor to check on compliance with the injunction, and for an award of attorney’s fees (available, not under the Americans with Disabilities Act but under the D.C. Human Rights Law). No good answer to this was available to Cineplex Odeon; we simply had a lay-down case. So Cineplex Odeon yielded, and our respective lawyers had a wrap-up settlement conference in the chambers of the federal judge to whom this matter had been assigned.

Sinclair: That was Judge Sporkin?

Isbell: Yes, Stanley Sporkin. If you had an interesting or an oddball case, he was a judge you’d like to have on the bench for it. So, in this settlement conference in the judge’s chambers, after all the obvious terms had been disposed of, our counsel said, “And now the Isbells also have a damage claim,” and Judge Sporkin responded, “Oh, I know the Isbells. They don’t need any money.”

Sinclair: And you knew him?

Isbell: I knew Judge Sporkin because we’d overlapped at Yale Law School, and I had also had some dealings with him when he was the head of the Enforcement Division of the SEC. He and Florence knew each other for a different reason. As I’ve mentioned, she had worked for the Washington Lawyers’ Committee—indeed, she’d done that at two different times, during one of which she had participated in a mock housing discrimination trial before an audience of law school students for the purpose of interesting them in doing civil rights work. The trial was
held on a Saturday, and it was presided over by Judge Sporkin—a very nice thing for a sitting federal judge to do—and that’s how he and Florence had met. Florence’s role in that mock trial was to play the villainess—the rental agent who showed the available rental property differently to a black couple and to a white couple (both couples being testers). Do you know what I mean by testers in those circumstances?

Sinclair: I recently litigated a Fair Housing discrimination suit, so yes, I do.

Isbell: Well, the testimony of the testers was to the effect that Florence had showed the white tester couple different and better facilities of the properties that were being offered for rent, and Florence was challenged to explain why she had done this. Her testimony, to the effect that she had shown the two couples different aspects of the property because she thought they had different interests, was so persuasive that when, at the conclusion of the mock trial, the student audience were asked for their verdict on the case, to everyone’s surprise, and to the WCL staff’s dismay, their verdict was for the defendant. Indeed, Florence had been so persuasive as a witness that one of the students asked her how long she’d been in the real estate business.

Sinclair: So, did you ever collect damages in your case against Cineplex Odeon?

Isbell: No. Indeed, I was relieved to learn that we wouldn’t have to testify about our damages because we really hadn’t gone out to the movies for a long time and instead had watched whatever movies we wanted to see at home. And as it turned out, the assistive listening devices that our suit had gotten installed were not, in fact, good enough for us. So we couldn’t make out much of a case for our being deprived of the pleasure of watching movies because of the lack of assisted hearing devices.

Sinclair: They were, or were not, good enough?
Isbell:  

*Not* good enough—At least not good enough for me because my hearing loss was already pretty marked.

Sinclair:  Now did you have any further involvement with the Disability Rights Council?

Isbell:  Well, having agreed to join the board of the DRC, I volunteered to become its treasurer, and I also insisted that the board meet monthly, so that it would really be involved in making the organization work. And I stuck with it for some 13 years, during which the board became narrowed down to a relatively small working group of four or five faithful board members and one staff member, plus a staff lawyer of the Washington Lawyers Committee, Elaine Gardner, a very able lawyer who also had considerable expertise in the area. However, in 2004, at the same time as I told the board of the Veterans Consortium that I was going to have to step down as Chair, I told my colleagues on the Disability Rights Council that I was going to have to resign because my hearing was becoming so poor that I could not keep up with the discussions at our monthly meetings.

Sinclair:  So you actually were a member of the Disability Rights Council as well?

Isbell:  Yes, I was, and by coincidence, for the same period of thirteen years as with the board of the Veterans Consortium. So I tendered my resignation, but my DRC colleagues resisted accepting it. They recognized that they couldn’t very well allow a board member of the Disability Rights Council to resign because of a disability without making a “reasonable accommodation” for the disability, since that—a reasonable accommodation—is the standard enforced by the Americans with Disabilities Act, the principal legislation that the DRC was involved in enforcing. So they decided to have a simultaneous stenographer attend our board meetings. The simultaneous stenographer is technically termed a computer-assisted real-time (or CART) interpreter—a fancy name for what amounts to a stenographer who types out the words
that are being spoken so that they appear almost simultaneously on a little monitor where the person who’s hard of hearing can read them.

So I withdrew my resignation and went on with the DRC for a year. At the end of that year, however, I told my colleagues that I still was not really able to participate in the group’s discussions. I would know what had just been said, but I didn’t know it quickly enough to participate effectively in the discussion, because by the time I’d read what had just been said, the discussion would have gone on. This time, my colleagues couldn’t really give me a good answer to why I should stay on, when I wasn’t able to contribute meaningfully to their deliberations, so they finally let me resign.

**Sinclair:** What was the function of the Council?

**Isbell:** What we were doing as board members of the DRC, with the help of a salaried director for most of the DRC’s existence and the help of a staff lawyer of the Washington Lawyers Committee, was deciding what lawsuits to bring—generally to compel a business of some kind to conform to the legal standards of the Americans with Disabilities Act with respect to their treatment of persons with disabilities—and finding volunteer lawyers to handle them. I should add that before I finally quit, the DRC had merged into another spin-off of the Washington Lawyers’ Committee, the Equal Rights Center, so that we had been reduced to being an advisory committee of the Equal Rights Center.

**Sinclair:** Okay, let’s switch gears a little bit from good works to a possible inquiry—or an inquiry about a possible appointment, to the federal bench.

**Isbell:** All right. As I mentioned in an earlier session, when Carter became President in 1976, I briefly considered going back into government for another stint of public service. What prompted that was that one of the innovations Carter instituted was setting up a commission in
each jurisdiction—in each state, plus the District of Columbia—to recommend candidates for federal judicial appointments to the senator or senators for that state. The District didn’t have a senator, but Joseph Tydings, one of the senators from Maryland, served as the channel for suggested federal judicial candidates for the District of Columbia. The District of Columbia Committee sent out a mailing to hundreds, maybe thousands, of D.C. lawyers, asking if they would be interested in being considered for a federal judicial appointment, and I was one of the many who got one of those letters.

I suppose every lawyer at some point in his or her career thinks about the possibility of becoming a judge, since judges sit at the top of the legal pyramid. In my own case, I had first thought about being a judge when I was serving on the Legal Ethics Committee of the D.C. Bar and was writing a lot of the committee’s Opinions and came to the realization that resolving contested legal questions is even more enjoyable and fulfilling than contesting them. Moreover, I still had something of a yen to return to government service of some kind. So, when I got that letter asking if I was interested in being considered for a federal judgeship, I took the time to think about it. Before long, though, I considered the financial aspect of a judgeship, and realized that my fixed family financial commitments—having three children either in higher education or about to be; paying a modest alimony to my former wife; and, together with my sister, supporting our retired father—made it ridiculous even to consider getting by on the salary of a federal judge. And, of course, if I couldn’t afford to be a federal judge, I couldn’t afford to do anything else in the federal government, either.

Sinclair: Do you have any regret about not pursuing an appointment to the bench?  
Isbell: I do have some regret about not getting another chance to serve in the federal government. As I’ve already recounted, when I last left government employment, with the Civil
Rights Commission, I was greatly tempted to stay in government rather than return to the private sector, because so many interesting things were happening in government in those early days of the Kennedy Administration; but I’d figured that a better course of action from a long-term point of view would be to first get a base in private practice to which I could return after a stint in government. Having such a base seemed important because I’d already gotten to a level in government where the next step would be to a policy- and politically-sensitive position that would be subject to change with a change of Presidents. But then, after Kennedy and Johnson, the Democrats didn’t get back in until Carter, and I couldn’t do it then because of my financial responsibilities, so as it turned out I never did get back into government service. I’m a little sorry I didn’t, but I must say that I’ve been pleased with the amount of public service work that I’ve managed to do as a lawyer in the private sector. There have been a lot of opportunities and I’ve taken a lot of them. Moreover, I’ve also always enjoyed what I was doing in the revenue-producing practice of law.
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.
Oral History of David B. Isbell

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Statutes


Graduated from Yale Law School, where I had been Articles and Book Review Editor of the *Yale Law Journal*. (Also the leader of an informal singing group called the Oversextette, since regrettably defunct).

Did a three-month lecture tour of India for USIA.

Joined Covington & Burling as an associate.

Left Covington for what was meant to be a three-month leave of absence to do a pilot study for the U.S. Commission on Civil Rights. Before the three months elapsed, was promoted to Assistant Director, and remained in that position until September 1961, when the Commission's current term expired and the Commission issued a five-volume report on the status of Civil Rights in America – a report for which I served as editor-in-chief as well as one of its authors.

Returned to Covington.

Became active in the local affiliate of the ACLU, first as a volunteer lawyer and then as a board member. Served on that board until 1985.

Joined the board of directors of Southeast Neighborhood House, a settlement house in Anacostia which soon became an active participant in the Federal Poverty Program. Remained active on that Board until, six or seven years later, it was decided that all the members of the Board should be neighborhood residents.

Started teaching a seminar in civil liberties law at the University of Virginia School of Law. The seminar had been started by Charlie Horsky, on the Dean's invitation, in the mid-50's, but when Charlie went to the White House as President Kennedy's advisor on National Capital Area affairs, he suggested me as his successor, and the Law School, happily, accepted his suggestion. I have taught that seminar every year since then.

Elected as National Capital Area affiliate's representative on the National Board of the ACLU. Served on that Board, first as affiliate representative and thereafter as a member elected at large, until 1992.
1965 Became a partner in Covington & Burling.

1965 or '66 Drafted the Firm's first formal policy on public service, and was appointed the first chair of Firm's Public Service Committee. The policy rested on three stated premises, namely, (a) that public service is an integral part of the practice of law; (b) that every firm lawyer should have the opportunity to engage in whatever sort of public service project he or she found interesting; and (c) that the firm had the same interest and responsibility for the public service projects involving the practice of law in which its lawyers engaged as it had in their remunerative work (so that pro bono cases must be cleared for conflicts, the firm's name should appear on briefs filed in pro bono cases, and a partner should be in charge of every pro bono representation).

1972-73 Served as chairman of the ACLU affiliate.

1975-76 Served as chairman of the D.C. Bar Committee to Consider Possible Bar Support for Public Interest Activities.

1974-80 Served as a member of the D.C. Bar Legal Ethics Committee.

1978 Elected to the D.C. Bar Board of Governors.

1971 Elected to second term on D.C. Board of Governors

1982 Won election as President-Elect of D.C. Bar.

1983-84 Served as President of D.C. Bar. The accomplishments of that year that I'm proudest of were getting the IOLTA program adopted by the D.C. Court of Appeals; suggesting to the Court the adoption of the provision for licensing of Special Legal Consultants; supporting the CJA bar in its campaign to have CJA fees raised to the Federal level; and appointing the Committee, chaired by Bob Jordan, that studied the Model Rules of Professional recently adopted by the ABA and recommended the adoption of a modified version thereof to replace the D.C. Code of Professional Responsibility.

1982-96 Member of the ABA House of Delegates, initially ex-officio (as an officer of the D.C. Bar), and then as an elected delegate of the D.C. Bar.

1990-93 Member, D.C. Bar Foundation Board, 1990; Vice President 1992; President 1993.
1985-86 Served as a member of the D.C. Bar Committee on Referendum Impact.

1986(?) Member, Special ABA Committee on Ancillary Businesses (an issue about which the Litigation Section of the ABA was much agitated, and which ultimately resulted in what is now Model Rule 5.7).

1987-88 Chair, D.C. Bar Admission Rules Study Committee. This Committee's report received the Bar's Best Project Award for 1987-88.

1989-95 Member of the ABA Standing Committee on Ethics and Professional Responsibility, and from 1991 to 1994, Chair of same. During my time as chair, the committee issued some 26 Formal Opinions – a rate of production unequaled since or before, at least in recent years – including several Formal Opinions whose rulings have since been incorporated in the Model Rules. During that time, the Committee also proposed several changes to the Model Rules that were adopted by the House of Delegates.

1995 Undertook on behalf of the Firm to prepare a summary of the District of Columbia Law of Lawyering, to be included in the Cornell Legal Information Institute's newly established American Legal Ethics Library, on the Web. The first edition of the D.C. portion of this work was completed, under my direction, and posted on the Web as part of the American Legal Ethics Library, in February 1998. Thereafter, I updated the D.C. Summary and, at Cornell's request, added a summary of Federal and District of Columbia law regulations governing conflicts affecting government employees, future, current and former, and completed this update in December, 1999. In 2002 I persuaded the D.C. Bar to put on its website both a link to the D.C. Summary in the American Legal Ethics Library on the Web and in addition a winzip(?) copy of the whole work. I completed a second update of the D.C. Summary in May 2004, and this was also provided to the D.C. Bar for posting on its website. In 2003, the D.C. Bar presented me an award for "exceptional personal service to the membership," in recognition of this work.
1992-2005  Board member and treasurer of the Disability Rights Council, an offshoot of the Washington Lawyers Committee for Civil Rights and Urban Affairs. My wife Florence B. Isbell and I were the plaintiffs in the DRC’s first case, a lawsuit (quickly and satisfactorily settled) under the Americans with Disabilities Act requiring movie theatres to install assisted listening devices for the hearing-impaired. (The DRC was merged into the Equal Rights Center in 2005.)

1992-2005  Founding chair of the Executive Board of the Veterans Consortium Pro Bono Program, which, during these years, recruited more than 1,900 volunteer lawyers, gave them training in veterans law and placed with them more than 2,400 appellants before the U.S. Court of Appeals for Veterans Claims who would otherwise have been without counsel. In recognition of this service I was presented a Distinguished Service Award by that Court in 1994, and in 1999 the Harry A Schwelkert, Jr. Award by the Paralyzed Veterans of America, “in recognition of his successes in promoting a positive awareness of the needs and contributions of disabled individuals.” In 2007, the Pro Bono Program set up an internship in veterans law named after me and funded by contributions made to the Program of fees received under the Equal Access to Justice Act by lawyers and firms that had undertaken successful representations under the Program.

1995-98  Co-Chair, D.C. Bar Task Force on the Workplace Experience of Gay and Lesbian Lawyers. The Report of this Task Force was the recipient of the Bar’s 1999-2000 Frederick B. Abramson Award.

1996  Commenced teaching the required course in Professional Responsibility at Georgetown University Law Center. Still doing so, in the Spring semester, while also continuing to teach the Civil Liberties seminar at the University of Virginia in the Fall semester.

2006  Received from the District of Columbia Bar the Thurgood Marshall Award, “in recognition of his exemplary legal career dedicated to service in the public interest which has made a significant difference in the quality of American justice.”

Other Awards (Not necessarily deserved)

1988  ACLU-NCA Henry W. Edgerton Civil Liberties Award, for “Extraordinary leadership and devotion to civil liberties.”

1991  NLADA Award “For significant contributions to civil liberties, civil rights and advocacy for poor people.”
1995  Legal Aid Society of the District of Columbia Servant of Justice Award, "For unswerving dedication and achievement in providing access for all persons, regardless of income, to representation before the District of Columbia courts."

2001  Washington Lawyers Committee for Civil Rights and Urban Affairs, Wiley A. Branton Award (together with Florence B. Isbell, who did deserve it), "for their lifetime commitment to the cause of Civil Rights."

2009  Georgetown University Legal Center's Charles Fahy Distinguished Adjunct Professor Award.
William N. Sinclair

EDUCATION

University of Virginia School of Law, Charlottesville, VA
Juris Doctor, 2002

- Environmental Law Journal, Editor-in-Chief
- Omicron Delta Kappa
- North Grounds Softball League, Head Commissioner

University of California, San Diego, La Jolla, CA
Bachelor of Arts (History), magna cum laude, 1999

- Phi Beta Kappa
- High Distinction in History Honors Thesis
- Men's Varsity Volleyball Team, Captain
- Mountain Pacific Sports Federation, All-Academic Team

EXPERIENCE

University of Maryland School of Law
Adjunct Professor, Fall 2008 – Present, Baltimore, MD

Beveridge & Diamond, P.C.
Associate, June 2006 – Present, Baltimore, MD
Practice focuses primarily on complex civil litigation, white-collar criminal defense, and land use counseling; practice experience includes first-chairing trials, arguing motions and at hearings in federal and state court and before administrative agencies, taking and defending depositions, conducting witness interviews, and drafting dispositive motions and pleadings.

Alston & Bird LLP
Associate, September 2004 – May 2006, Atlanta, GA
Practice focused on complex civil litigation, white-collar criminal defense, government compliance, and internal investigations in the areas of health care and antitrust; practice experience included drafting pleadings and memoranda, arguing motions in state court, conducting witness interviews, and managing document productions.

Honorable C. Christopher Hagy
United States District Court for the Northern District of Georgia
Law Clerk, March 2003 – August 2004, Atlanta, GA
Drafted civil and criminal opinions; assisted with processing court filings; managed judge’s civil docket; attended court proceedings.

Sheppard Mullin Richter & Hampton LLP
Associate, October 2002 – February 2003, San Diego, CA
Practice focused on commercial litigation.

BAR ADMISSIONS
California, Georgia, Maryland and Washington D.C.
LIST OF PHOTOGRAPHS OF DAVID ISBELL
TO ACCOMPANY HIS ORAL HISTORY FOR
THE HISTORICAL SOCIETY OF THE
DISTRICT OF COLUMBIA CIRCUIT

Photo 1: In baby carriage at age of 5 months. (1929).

Photo 2: In cooking class in 4th grade at Lincoln School in New York City. Age 8. (1937). The photo is from an article in the New York Times several years later, on the subject of progressive education, as exemplified by Lincoln School.

Photo 3: Photo from the Greenwich High School Newspaper, accompanying an article about the two students from the school who had won Pepsi-Cola scholarships providing free tuition for four years of college. That school was the only one in the country whose students had won both of the scholarships in their state. (June, 1945). I'm the one on the left in this photo.

Photo 4: Formal photograph taken, I believe, upon graduation from Yale College. (1949).

Photo 5: Photo from a newspaper article showing the five honor graduates in my class at the Army Artillery Officer Candidate School in Fort Sill, Oklahoma. (May 1952). I'm the one in the middle.

Photo 6: Formal photograph taken, I think, when I first joined Covington & Burling. (February 1957).

Photo 7: Photo with Florence (and kitten and cigar), taken either shortly before or after our marriage. (July 1971).

Photo 8: Photo with sons Pascal and Nicholas. (Probably around 1980). Pascal, the elder, is on the right.

Photo 9: Formal photo with Florence, taken at a Firm outing at the Homestead. (Probably around 2000).

Photo 10: Photo with daughter Virginia. (Probably around 2009).