

ORAL HISTORY OF FREDERICK DOUGLAS COOKE JR.
Third Interview
July 2, 2009

This interview is being conducted on behalf of the Oral History Project of the District of Columbia Circuit. The interviewee is Frederick Douglas Cooke Jr. and the interviewer Bart Kempf. The interview took place on July 9, 2009.

[TAPE 6 - SIDE A]

Mr. Cooke: Okay. My name is Frederick D Cooke Jr. and today is July 2, 2009 and it's about 10:35am in my offices at 1155 Connecticut Avenue NW.

Mr. Kempf: Great, and this is Bart Kempf and I am interviewing part of this Oral History Project for the Historical Society of the D.C. Circuit. Fred, I wanted to first ask you about a few items, news items that were published in the late 80's and early 90's. The first one involves your representation of Jesse Jackson and The National Rainbow Coalition. According to a newspaper article in *The Washington Post*, October 1, 1994, The Rainbow Coalition was held in contempt of court. A federal judge concluded that The National Rainbow Coalition had failed to comply fully with Federal Elections Commission subpoena. You were representing The National Rainbow Coalition.

Mr. Cooke: Yes I was.

Mr. Kempf: And, I was wondering if you would take a second to talk about that incident?

Mr. Cooke: Sure. Yes, I had known Rev. Jackson for many, many years and when he moved to the District of Columbia, moved the headquarters of The National Rainbow Coalition from Chicago to the District of Columbia he asked me if I would represent him and The Rainbow Coalition as I had sort of from afar on a more

local basis, consistent basis and I was happy to that. This particular incident related to some political back and forth between the so called forces of the left and the right on the political spectrum. And, The Rainbow Coalition, in large part, was a pawn in a larger game of “gotcha” that was being played by the Democratic National Committee and the Republican National Committee and their various surrogates. And, The Rainbow Coalition was asked to provide documents to explain its participation in voter education, voter registration, get-out-the-vote type efforts in some of the states in the South in response to a request from the Federal Elections Commission about whether we had done anything improper, followed the necessary rules and what not. We provided the information, the documents we had pursuant to the subpoena, but the Federal Elections Commission didn’t believe that we had provided all of the documents that they had requested. Now, in one sense they were absolutely correct. They had requested a huge number of documents and a number of different categories of documents. We responded with, in my experience as a lawyer, a relatively small response in terms of quantity of documents. The FEC didn’t like that. They thought that we were holding back documents. But what they didn’t understand was we didn’t have any documents. Now, maybe we should’ve had documents. But we didn’t have any documents. (Laughs) So they took our non-response in a quantitative sense as contempt, as willful noncompliance. They really couldn’t get their minds around the fact that we had done all this stuff -- a lot of it in a very informal sort of way. Arguably not in compliance with FEC rules because we didn’t prepare forms that we should’ve prepared. But, that’s just

what we did. So we didn't have any more documents. Ultimately, the contempt citation was purged because we convinced Judge Richey that we had no more documents. (Laughter). Probably should have had more, but we didn't have anymore.

Mr. Kempf: The article states that simultaneously there was an FEC investigation of the Christian Coalition and their activities in 35 states. Do you remember circumstances surrounding that?

Mr. Cooke: Right. Well, that was all part and parcel to this sort of political pull and tug that I referred to. The more conservative elements of the political spectrum had urged the FEC to look into the behavior of The Rainbow Coalition, ACORN, and other organizations that were involved in the get-out-the-vote and registration kind of activities. As retaliation, if you will, the DNC and some of its forces suggested that they look into what the Christian Coalition was doing, and so these sort of things were going on simultaneously. It was more political theater than reality because each organization was doing basically what they were allowed to do under the laws. Nobody was really terribly outside the box, in my opinion. At least in this instance. There had been instances where people had gotten really outside the box, but these were not those.

Mr. Kempf. Alright. Well, the second news article that I found that I thought was interesting is from the *Washington Post*, December 16, 1988. The article is about the Rolarks. Am I pronouncing that correctly?

Mr. Cooke: Yes, "Rolarks." Calvin and Wilhelmina.

Kempf: And, there was a shooting incident.

Mr. Cooke: Yes.

Mr. Kempf: A doctor...tell us about that?

Mr. Cooke: Carl Rowan had been involved in an incident at his home in Upper Northwest Washington where some young people used, maybe late teens or early twenties, had trespassed in late evening or night rather and in an attempt to swim in his pool, in his back yard. He heard this, they may not have realized he was home. I don't know that for a fact. In any event, they were in his pool swimming and he went out to investigate, he had with him a firearm, a handgun. He confronted the young people, young men at some distance, requested that they leave. What's not necessarily clear, the dispute, the youths indicated they were trying to leave, Mr. Rowan that they were coming toward him (they may have been coming toward him to leave, they may have been coming toward him to assault him), but in any event he felt threatened, discharged his firearm. Fortunately, he did not strike any of the youths, but once the firearm went off they ran and got away and the police were called. I was confronted with the task of making a decision of whether or not there should be a prosecution. The issue really came down to whether or not, because the District's handgun laws that had gone into effect in 1972, and this was in 1988, Mr. Rowan had no license to have a firearm, he had no license to have the ammunition, and he was charged by my office with possession of an unregistered firearm and unregistered ammunition. Sort of typical offense when persons are, at least at that point in time, for people who are charged with possession of a firearm in the District without a license. Mr. Rowan was an iconic figure in much of the Black community. He was a reporter, a journalist,

former government official, and was widely respected and revered. My decision to prosecute him was not received well in all quarters of the city. Mr. Rolark was one of the people who felt particularly outraged (Laughs) that I was prosecuting Mr. Rowan when obviously there were other people in the city who committed more serious offenses, and they weren't being prosecuted or whatever. My view on it was that if Mr. Rowan had been some anonymous citizen living in SE Washington and had done the same thing, we would have charged him with the same crime. My view was that I can't make a distinction for Mr. Rowan because of who he is and what he's accomplished in his life, which I recognized were laudable things. Justice can't work that way. He did what he did, so we prosecuted him. For some reason, Mr. Rolark decided to call me a racist for prosecuting Mr. Rowan. I don't get that, except that he thought that I was being compelled to do this by some sinister forces in the city, and I wasn't.

Mr. Kempf: "As part of the plan."

Mr. Cooke: "As part of the plan." I was out to discredit another Black leader. I was a tool. I guess. He and I (Mr. Rolark and I) never actually talked directly about this. Although he and I had many conversations about many things, he was not a shy man. He would tell you what he thought. I don't know, I don't think he was avoiding me, I just think we never were in the same place at the same time when we could talk about this -- I guess. He was pretty bent out of shape. I knew he was bent out of shape. I just didn't realize that he had actually called me a racist. (Mr. Kempf Laughs) I knew from his newspaper, *The Informer*, and radio programs on which he had gone on -- because this was an issue of some

significant public discussions at the time -- so I knew he was in the camp of "you can't do this, don't do this Fred, you're not exercising good judgment." But I didn't know he had talked about it that strongly until now. (Laughs) That's kinda funny in retrospect.

Mr. Kempf: Is that toward the early of your tenure as Corporation Counsel or toward the latter part or sort of in between?

Mr. Cooke: Sort of in the middle. I was in, I was, probably had been in for about a year and a half or so. So I was like, you know, pretty comfortable thereabout making decisions and I knew it was controversial. The mayor asked me to think real hard about what I was doing. Marion Barry as a supervisor and as a client, he did not in this instance and in no other instance, ever told me that I had to make a particular decision. He asked me if I was sure about my decision. He asked me many times to explain my decision. He told me a number of times he didn't agree with my decision; but, he never told me I had to do something because he thought it was what should be as opposed to what I thought it should be. We had a discussion about it. He was getting a lot of political heat, and he wished that I would, take some of the pressure off of him by letting Mr. Rowan go. I chose not to do that.

Mr. Kempf: The boy, boys who they shot at were they White?

Mr. Cooke: Actually, I don't remember. Yes, I do. Because what happened, I believe (and my memory may not be perfect on this, I'm sorry it's been a while ago), Mr. Rowan's discharge of the firearm went into the deck or whatever and a chip nicked one of the kids and they got medical attention and that's how we figured

out who they were, when they went to the emergency room. It was sort of a flesh wound, it really wasn't anything very serious. As it turned out, it was probably just a ricochet kind of injury. They were doing what some kids in that part of the city used to do. It was in the summertime, and kids would find a pool at a house where the homeowner was away for the evening or away on vacation and the pool was full of water and just to go for a swim. It was, you know, something to do. They just happened to go to the wrong house. (Laughs)

Mr. Kempf: Sounds like it. Wow.

Mr. Cooke. Mr. Rowan's defense, in part, was that he had gotten the gun from his son who was a former FBI agent. Now his son, while an FBI agent, was totally authorized to have a firearm. His son argued to me that "Well, I gave the gun to my father when I was an FBI agent." The gun's okay for him to have because he was an FBI agent. He could not, however, authorize people to have firearms because he was with the FBI. By the way, he was no longer with the FBI at the time of the incident. He was upset with me because obviously he cared very much about his father. He was Carl Rowan Jr. I mean he didn't want his father's reputation sullied with some possible criminal conviction. At the end of the day, interestingly enough, Mr. Rowan was not convicted.

Mr. Kempf: He wasn't? What happened?

Mr. Cooke: He was not found guilty. I don't know. I was, I was going to prosecute the case myself because I didn't want any of my assistants to take the political heat for my decision. So, I was prepared to prosecute the case myself. To walk in the court and do what prosecutors do. I had done some so I knew how to do it -- I thought.

I was convinced by other people in the government that I really shouldn't do that. That that would turn it more into a circus because it was really looking personal, like me trying to, you know, bring down Mr. Rowan which was really kind of ridiculous I decided not to do it myself. I actually stayed away from the courtroom. I'm not sure why the case went sideways. What I know is that we used a pretty experienced, at the time, pretty experienced prosecutor who had tried those type of cases a number of times and who knew the facts and knew how to present them. I think at the end of the day this was a judge problem, the judge just refused to convict Mr. Rowan.

Mr. Kempf: Really.

Mr. Cooke: He was found not guilty. I was vilified again. (Cynics said) "You see it was bogus, you never should have prosecuted." My job was to put him in the dock and whatever happens, happens. From my perspective, you know, and this is something I learned early on as a lawyer/prosecutor, is that the task of a prosecutor really is to do justice, it's not necessarily to win. I mean, yeah, you want to try to win that's your job as a lawyer. If you prosecute a case that you believe in good faith should be prosecuted, and if the system works, and there's a not guilty verdict then you ought to be just as happy with that as if there were a guilty verdict because the process, the system worked. That's what you're supposed to try to do. I believe that he should have been found guilty, but the system doesn't allow me to make that decision and to the person that made that decision he was not guilty. I am absolutely happy to live with that, move on. I

don't think there was any legal error. I don't think the judge did anything legally wrong. The justice system worked, and that was enough.

Mr. Kempf: Was that one of the, I don't know how to ask the question. From a public relations standpoint, political standpoint, was that one of the most difficult decisions that you had to encounter?

Mr. Cooke: I don't know.

Mr. Kempf: Or did you even think about it that way?

Mr. Cooke: That's what I'm saying. I hardly ever looked at it that way. The mayor used to tell me all the time that I had no sense of politics. I took that as a compliment. (Mr. Kempf Laughs). Because it wasn't about politics for me. It wasn't about left, right, liberal, conservative. It wasn't about politics. It was about trying to do the job that I had been trained to do and that I had taken an oath to do. I tried to call them the way I saw them. There are a lot of cases that obviously as a human spoke to me on one level or another differently than others.

I remember a case where we were trying, the government was trying, to locate residential treatment facilities for children with severe physical handicaps. This woman left her house to the government to use for those purposes in Upper Northwest. The neighbors didn't want the home in their neighborhood. That was a tough case for me because there was a lot of lawyering from the other side about how we could it, why we could it, what were the regulations, were we in compliance process-wise, things like that. We go through that. But, at the end the day what it really was, it was about people of means trying to deny these kids with these very severe physical handicaps the opportunity to live comfortably in a

nice neighborhood and to have green trees and fresh air around them as they worked through their physical and mental challenges. These children were largely physically incapacitated so they weren't a threat to anybody physically. It just bothered, it annoyed me. It's one of the things I told my lawyers, I said, "We will not lose this case, we will litigate this to the Supreme Court, we are not going to lose this because it's wrong for these people to say that these kids can't live in their neighborhood. Who are they to say that? There are cases like that that I just sort of felt more strongly about than others. The Rowan case really wasn't one so much because to me it was a pretty vanilla case. It was like, you know, that's what you did. There's no dispute. Now we've got a lot of reasons as to why you did it. But, you did this. So, that one didn't really bother me.

We had a lot of violence with youth. Lots of cases and court challenges about how to deal with those things. I remember one time we had a big meeting of the elected officials in the city -- council and school board and some of the senior government officials -- to talk about what to do about youth violence. There had been a lot of shootings and killings. And one school board member spoke up at the meeting and said that what we should do would be to have some sort of proclamation and other kind of honoration of people whoever they were, drug dealers for example, who killed other drug dealers because they were doing the community a service by getting rid of the drug dealers. I wasn't an elected official and I was just sitting kind of in the peanut gallery. No, actually, I was sitting at the table with the police chiefs and other elected officials. It just struck me as such an inane comment. I said, "You are, that's just crazy, that's just

nonsense and if you people sit here and not shout him down you're complicit in this lunacy. This guy's a bigger asshole than anybody ever told me he was." This sent the room in to an uproar because I, a non-elected official was publicly chastising (in a not particularly good use of the English language) an elected official. My view was I wasn't going to be political. I just wasn't. I was not a political animal. I think that was one of the things that served me relatively well in the job was that I would not and did not get involved in that political thing. I had no political aspirations. You know people thought, "Well, he's taking the job because he wants to run for the council, he wants to be mayor." It was just totally untrue. I had no political aspirations. I enjoyed being around politics. I enjoyed being part of the political, the larger political process, but I had no personal interest in politics or being a politician.

Mr. Kempf: Well, I want to ask you about one more news item I found and this is from a *Business Week* article, April 23, 1990. The title of it is "Whose District Is It Anyway?" and in it you are quoted as saying that "In D.C. Blacks can elect anybody they want but the reality is they don't control anything. It frustrates people, they see how relatively impotent the 70% majority is." I was wonder if, almost 20 years later, if you have any comments or reflections on that comment and I'm also curious as to whether you think that that is still a true statement?

Mr. Cooke: I'm unclear, I don't know that it's true anymore because I think the demographic of the city have changed pretty dramatically since 1990 in the past 19 or so years. It's changed in a number of ways. It's changed racially in terms of demographics -- I don't think there's any longer a 70% certainly African-American majority in

the city. But, it's also changed in, and I think it is more important than that racial demographic change, is the old/new change. There are many more people who are new to the city than there were then. I think the people that are new to the city don't bring the history, the baggage if you will that people like me bring to it in terms of understanding where we were and where we are. The problems and solutions that are possible are viewed differently by people who have been here for a shorter period of time because they don't necessarily understand why a guy like me thinks the way I do -- because they haven't experienced it (similarly I guy like me doesn't understand the way they think because I haven't experienced them either). When I made that statement back in 1990 or so it really was, I think it was accurate and it was a culmination of a sort of lot of thinking I had done about it.

I grew up here and from the time of my earliest consciousness I viewed this as a predominantly Black city, in terms of numbers -- demographically. I think that census data and any other data you want to look at will bear that out. Roughly from the end of World War II (early '50s) until today, the numerical majority of citizens of the District of Columbia happen to be African-American. What also struck me as I got older in the city (I was in college in law school at Howard University y) was that unlike other cities in America where the majority population where the mayor, the council, the business people, the bankers -- it wasn't like that here. All the levers of power, that one associates with power in any other community -- real estate industry, banking, hospitals, communications, whatever -- Black people didn't control any of them. In a city where Black

people were the overwhelming numerical majority. (I thought) “Well, why is that?!”

Well, obviously the answer is pretty obvious to somebody like me who, you know, was born of people from the South and who grew up in pretty rigid segregation and who myself experienced some segregation and the after effects of it certainly. It was racism. It was the nature of, the fundamental nature of the American society in its racist position or capacity to minimize and marginalize minority people to the benefit of majority people. What began to frustrate me as a young person at Howard University being sort of caught up in the civil rights movement and the Black Power Movement and all the different kind of things that were going on was why couldn't Black people then seize the moment, take control of their lives, don't be controlled by anybody -- except who you want to control you. Make the decisions that are in your best, long-term interest as opposed to having them made for you. I grew up in a city when we saw as young people Congress' control over the District of Columbia. How people in significant and mundane jobs in this city were basically hired at the whim and caprice of members of Congress, who would hire their political cronies, sons and daughters to work in the District of Columbia government -- whether they were laborers or some senior person in government. They did it all. They did it with impunity. Where were we in that equation? Nobody seemed to really care about the local people being involved in their own government. We got the sort of bastardized form of home rule that we continue to have now in 1973 after a lot of drama, and I was certainly involved in some of the protests and the efforts to

educate people about that. Beyond that governmental control facade, there really wasn't control of the city by the people who lived here and should be controlling it -- as would be the case in Cleveland or Gary, Indiana or San Antonio, Texas. So, this article really was me speaking out a little bit about that as I had begun to do (I think that's why these guys came to me because I had said it at some speech I had given and they wanted to talk to this crazy guy). It really was bothersome to me in that nobody was really speaking to that. Well, not nobody, we just weren't speaking about it enough. It's part of the sort of dance that Black and White people in this city have done since the advent of home rule. It's very polite during the day. We work together because we have to. We eat at restaurants downtown at lunch because we have to. We deal with people in government. Black people control the government so we have to deal with them. But, after five o'clock, the world's different. The city becomes very segregated again. There are restaurants in this city to this day that basically don't want Black people in there because they don't want to be known as a Black restaurant, because then White people won't go there. There are clubs, nightclubs, entertainment places that are the same way where they don't want too many Black people in there because it will then be tagged as a 'Black club' and then White people won't go there. That affects their revenue and things. When you go to the so called 'cocktail parties circuit,' there is a universe of those that are Black and there is a universe that are White and the twain don't typically meet. There's always a sprinkling of one group or the other in these things but, fundamentally, you don't see people like yourself at the other one. I mean, it's just not the way it works.

Black people and White people aren't in church together. It's just different and we sort of travel in these different circles when we have the ability to make a choice without being criticized for it. Nobody is going to criticize you for going to the fundraiser to raise money for, you know, "Save the Whales." Nobody is going to criticize you for going to the fundraiser for Congressman X from whatever. When you go there, there are no Black people there or you go there and there's no White people there and nobody seems to think that that's odd. It's like, oh well that's what we do. I just think that we collectively have to stop playing a game and deal with that and try as best we can to be more inclusive in our interaction with each other, talk and communication with each other. I think that's ultimately the solution to all the problems of race and gender -- it's communication. You have to understand that when you think they're foreigners, when you think that they're odd people or different people then you're going to treat them differently. When you begin to understand that they're not different, then there's less reason to be defensive, to treat them differently. The hope is that my kids and their kids (and my kids have friends on both sides of the racial divides) aren't stuck with this baggage that I have and they are much more likely because of the forced opportunities that they have to interact with each other, take on voluntary interaction with each other because to them it's normal. It's (like) "Why can't I go to so and sos house, I mean, we go to school together, we take algebra together, I want to go talk to him about algebra, or her about algebra." That's the hope, that the next generation and the generation after that will lose this foolishness and just the practicalities of being with people and listening to the

same music and watching the same TV programs, wearing the same clothes, carrying around the same iPhone, we'll just sort of dissipate all the rigidity in interaction that is a product of, largely, a product of the 19th and 20th Century.

Mr. Kempf: What effect do you think President Obama will have? Eric Holder, him being the first African-American Attorney General? What difference those?

Mr. Cooke: I think that I'm pretty much like most people who may have spoken about this. I think it makes a big difference because I think for that 4 or 5 year old kid who sees President Obama who happens to be White or Hispanic and doesn't know any difference, doesn't know why there should not be one. It really creates, changes the idea of what's possible in your mind because that guy's president. He happens to be African-American. The next one may not be, and they'll go, "Well, okay." When they see a woman president, that will be normal to them as well. That's the change.

I was talking with one of my law partners the other day, who happens to be White, and his granddaughter was visiting him over the Father's Day weekend (and they live in New Jersey) and she's 5 or 6 years old. She had cutout dolls that little girls often play with. Her cutout dolls were Michelle Obama. She was absolutely happy and thrilled to be playing with a cutout doll of Michelle Obama. For her it didn't make any difference if Michelle Obama's skin color wasn't the same as hers, it was the First Lady of the United States. That was sort of cool. He thought back to his daughter that when she was 5 years old that that never would have happened. She never would have had a Black cutout doll. For no reason other than they just wouldn't be (first of all you probably wouldn't have

bought one), yeah it just wouldn't have happened. That's the hope. That it'll be so inconsequential to people that it really will be as Dr. King said, it'll be about the content of your character. It'll be about who you are as a person, whether you are a good person, or a person I can get along with or not. All it will be about is the person you are, whether you are African-American, Native American, Southeast Asian, I mean all that stuff will just blur and all that stuff will be, (people will say) "Okay, that's Bob. I don't care if Bob is Black or White, it's Bob and I hate Bob." (Laughs)

So anyway, that's the hope. We have a ways to go. But I am extremely happy, from my perspective, to see the progress from where things were to where they are today. I wish it were better, but I sure as hell am not about to argue that it is not better. It is certainly much, much better than it has ever been.

Mr. Kempf: What about, what role, in light of the recent New Haven Firefighters decision, Supreme Court (and a lot of people think that affirmative action as we know it is threatened by the conservative majority in the Supreme Court), what role do you think is left to play or what role does affirmative action have to play in a world where, you know, Barack Obama has become president and Eric Holder is attorney general, etc.?

Mr. Cooke: Sure.

Mr. Kempf: What do you think about that?

Mr. Cooke: Well, as I may have mentioned, I teach a course in local government at the law school at Howard University. These kinds of things are things I pay a bit more attention because they do affect local government's ability to function and the

rules of the road for hiring and those kinds of things. I think that that Barack Obama and Eric Holder are two stellar, highly qualified individuals, and it's hard to argue that either of them shouldn't be where they are, that they somehow are flukes -- the objective data just doesn't support that. I also think it's also easy to fall into the trap that because that has happened, you know, the panacea is here. That's just not true.

Mr. Kempf: Uh hum.

Mr. Cooke: I think there's still hard work to be done. I think that again there are people of my generation who are not over it yet and we have to wait for those people to get off the scene. Until that happens I think we need to make sure that some of the old habits that have certainly died hard have their proper death (Laughter), that we've killed them. I think that affirmative action is still critical. I think that people often times continue to misuse the term and make it something in their heads other than what it really is. What affirmative action really is, is about providing opportunities for qualified people to be considered, to have a conversation that would include people who would otherwise not be included in the conversation when you make a hiring decision. It doesn't mean that somebody who is totally unqualified, because he or she is Black or female, that they ought to be employed just because of their gender or their race. It means that, it is a recognition of part of what I was saying earlier -- we know who we know and if we don't know any Black people, no Black people will ever be part of the consideration. What we are saying to certain public entities where the money is supposed to be spent for everybody who pays taxes, you are obligated to make sure that you consider

qualified minority and female applicants for the positions, for employment.

That's really all it's about. Have we constructed, over time, tests that disproportionately discriminate against minority people and women? Yeah, we have. I mean it's impossible to argue that poll taxes and other tests to be allowed to vote weren't designed to eliminate minority people from voting. We know in fire departments, I mean look, in the fire departments in every major city in America where they have been sued for racial discrimination, as a matter of fact this goes back for a number of years, the plaintiff firefighters have won -- New York City, Detroit, Chicago, Washington DC, Dallas, TX, Los Angeles, CA. We know these things have happened.

When you say, those things didn't happen, it's not really racism, it's about the individual; it's not about gauging an individual and his or her worth because there's scads of cases that say it's just not the way it goes. So, what to do? I think the most recent decision by the Supreme Court last month is a lot of noise about a small matter because I think the reality is that most jurisdictions have moved beyond the kind of test that was used in the Ricci case. It's really not something that is going to happen again and again and again. In fact, I was talking to a guy yesterday who was explaining that his son who has dyslexia wanted to be a firefighter and he was allowed to take the test verbally as opposed to sitting for a written test. Now, when you make those kinds of adjustments because you understand that the written test in and of itself isn't necessarily a measure of your competence to be a firefighter. If you know what to do, but because you're dyslexic you can't sit and take that test in the time allowed to truly

test your knowledge, and you are willing to give that person the test verbally so he or she can respond.

Mr. Kempf: Uh hum.

Mr. Cooke: You know, well, (then) tests can be done in ways that disadvantage people. Tests are not necessarily absolute. A test is not pure. It doesn't mean that because I sat down and made a test that everybody ought to be able to take this test and perform well, and if you don't perform well it means that you're not competent. That's not what that means. We know from all from all kinds of psychometric studies that you can do testing all kinds of ways to test things and you don't always test it accurately. The Ricci case is a lot of noise about a relatively small matter. I still think that affirmative action is important to make sure that when the hiring decisions are made, we find a way to be as inclusive as possible of the total population of the community -- Black, White, Asian, female, Native American, whatever. We ought to give people the opportunity to be considered who might not otherwise be considered because we don't know them. Fire departments are legendary for being clannish. First, it was the Irish. Then, the whatever. You tell your friends and neighbors, your relatives and they wind up going down to the hall to be employed. That's fine. I would never tell somebody who is the grandson of a firefighter that they should not be allowed or be encouraged to participate in a family tradition if that's how they see it. But, you're not the only one who had the prerogative to start a family tradition. Maybe these Native Americans want to be firefighters and have firefighters run through their families for eighteen generations. I don't know. Put them in the room and find out if they

can meet the test (that hopefully is subjective enough to say this is what a firefighter should do as opposed to what a firefighter who is my nephew ought to be able to do). (Laughter) I just think we have a bad public narrative about affirmative action and it just makes it real difficult to get to what the essence of it is as opposed to what the political theater of it is. I mean there are people who are just totally disingenuous who have totally distorted what it is because it works for whatever political agenda they've got -- on both sides. I do not believe that the side that is pro-affirmative action is pure either. I think they have distorted it too.

Mr. Kempf: Well, I'm gonna turn the conversation in another direction at this point.

Mr. Cooke: Sure.

Mr. Kempf: I wanted to talk a little bit in order to close the circle in this oral history, to talk about your last 10 to 15 years in law practice. In previous sessions we've talked about your younger years and here in the transcripts it looks like we left off at around mid-90s. And, so I was wondering if, I'll just throw an open-ended question at you, if you could maybe first provide an outline of what you've done in the last 15 years or so? And, to talk about some of your, some of the interesting matters that you've worked on, some of the interesting clients you've had. I can think of one in particular that might be interesting to talk about (Mr. Cooke Laughs). So I'm just going to let you have the floor.

Mr. Cooke: I think that probably over the last 15 years or so I've been practicing here at Rubin, Winston, Diercks, Harris and Cooke and our practice has essentially been local which is what I wanted to do. I wanted to try to build a local practice and to work on things that affected the community in which I have lived my entire life

and about which I care very much. I really have tried to focus on things like that. There's somewhat of a fantasy I had of sort of bringing back the small practitioner days of the 60s or 70s which, of course, can't happen. What I did or have done and probably continue to do relates to maybe three or four different things fundamentally. A lot of it has to do with helping people with their interaction with the government of the District of Columbia. I have done a lot of work for people, clients, entities who have had to deal with the government, and I have tried to help them deal with the maze, as I said. I've done a fair amount of sort of business transactional work -- helping people in business, irrespective of whether they had to deal with the government or not. Just trying to help them in their business -- buying a business, selling a business, operating a business in some way (a lot of financing, some re-financing), lines of credit, stock purchases, employment agreements for senior employees, trying to help a senior employee exit a company successfully. I've done civil and criminal litigation. Usually in the Superior Court, but also in the District Court as well as the D.C. Court of Appeals and the U.S. Circuit Court of Appeals on a [SIDE B] bunch of different issues and that's been fun. I guess the other category would be sort of the board, commission sort of stuff -- serving on boards and working with boards and commissions or doing things here in the city that I think are constructive and I'd like to be a part of either as a lawyer or as a board member (may not be working as a lawyer but just working as a board member trying to make the organization more successful).

Mr. Kempf: What are some of the boards and commissions that you've worked with?

Mr. Cooke: Hmmm.

Mr. Kempf: Too many to name?

Mr. Cooke Well, it's not too many to name. You know, I sort of forget. I was on the Board of Governors of the Bar obviously. I was a Hearing Committee Member for the Board on Professional Responsibility. I serve on different boards, different committees appointed by the D.C. Board of Appeals, Superior Court to work on Bar and Bench kind of activities. I was on the Board of Unity Health Care which used to be health care for the homeless here in the city as well as a big health care provider here in the city. I was on the Board of Archbishop John Carroll High School. I was counsel to the Board of the Community Academy Public Charter School. I was on the board of I don't know I forget. There's more of them, I forget all these boards.

But anyway, on different boards that were all involved in education obviously, I think education is very important, you know the real reason I'm doing what I'm doing and have been able to do what I'm doing is education. Without it I would not be able to that. I think it is a real, real premium we should attach to education. It is a way out of difficult circumstances for many, many people. A lack of education traps people into very difficult circumstances. We've known for years that the average felon incarcerated in the District of Columbia has a 10th grade education in terms of numbers but has a functional 8th grade education. There's a reason that these people are in the situation they are. A lot of it has to do with the lack of education. An inability to appreciate possibilities and to make choices that are better than the choices they've made. So, I think education is important. I've

tried to be, in terms of clients I represent and in terms of some of my public service, I guess time commitment, to be involved with things that are associated with education trying to bring improvement to folks here in the District.

Obviously, at the Bar I think there's an obligation all of us as lawyers have to try to make the Bar more functional (Mr. Kempf Laughs) and not to be this sort of stiff non-involved entity that just kind of figures a way for lawyers to make more money. When you look at the Bar there's a huge under representation of minority lawyers, there's a huge under representation of lawyers from small firms. The small firm thing is neither Black nor white it's a question of time. Do you have the time to put the resources or the commitment that the Board of Governors of some Bar activity would require? A lot of times you just don't. I was fortunate that I did have the time and so I gave some time and I was happy to do it. I think you bring a perspective to that discussion that there isn't always there because the group is largely self-selected. It's usually a bunch of people who are very similar to each other and they sort of talk to themselves. That's fine except the Bar, 75-80,000 members large is more than that. It's more than the Covington & Burling and the Arent Fox and the Arnold and Porters of the world, which are great law firms. I'm not criticizing them at all, but they don't have the perspective that a guy like me has. They don't have the perspective that a small firm practitioner has. We need to help bring that perspective to the equation as well, to the discussion rather as well.

I've done those kind of things and that's sort of what I've been doing over the last 15 or so years. You know, with more or less success. I have some really weird adventures, some successes and some colossal failures too, I guess.

Mr. Kempf: Can you elaborate on the weird adventures at all? In particular, I'm wondering if you can talk about your work, to the extent that you can, the work that you've done for Marion Barry?

Mr. Cooke: Marion Barry, one of my more famous clients. Marion Barry hired me to be his Corporation Counsel in late 1986 and I took the job literally the 2nd or 3rd of January '87, one of those kind of crazy things.

Mr. Kempf: Did you know him beforehand, personally?

Mr. Cooke: Knew him but not that well. I knew him because of his involvement with SNCC and he'd appeared at a number of things that I had gone to over time so I knew who he was. He knows everybody. He remembered seeing me at these things, but we had no real relationship other than I knew he was a guy from the civil rights movement who had evolved to becoming the mayor.

We had a really good attorney-client relationship, in my opinion. He was a frustrating client in some ways, but an excellent client in many other ways because he was smart (he is smart). He understands the difference between lawyers and clients. He understands that you're giving advice and that he can take it or not, and he never blames the lawyers because when it was his decision he was willing to make the decision. He would take your advice and other advice as well and once he made a decision, if he decided to take the advice that you had given him and make that the base of his decision and if it didn't turn out well he

never blamed the lawyers. Because it was his decision. He said, “I made the decision, you didn’t. You gave me advice. I thought it made sense.” I said, ‘Yeah.’ “You didn’t make me do it.” He’d always tell me, “You can’t make me do anything. You’re just a lawyer and you tell me what you think, and if I like it I like it and if I don’t, I don’t.” So, in that sense he was a great client.

So we had a pretty good relationship. I did the best I could to represent the city. He had legal counsel as the mayor, Herbert Reid was his personal lawyer. Dr. Reid was a guy that I knew, one of my teachers in law school. I got along pretty well with Dr. Reid, although he and I didn’t always agree and that was fine. I think that what Mr. Barry appreciated about what I did for him and the government was that I really wasn’t political. I really was trying to do the best I could and there wasn’t any other agenda to that. It was if you asked me to do something and I believed I could do it, then I’m going to give you the best I have. He appreciated that and that I was pretty discreet. I didn’t run out and tell people all kinds of stuff that they shouldn’t know about.

Oftentimes people ask me, “Why do you do this stuff for Marion? He’s such a crazy man and he’s done all this bad stuff?” I tell people for the very simple reason that I refuse to allow this community or any significant piece of it to fail to appreciate what he’s done for us. Now, he has done stuff that I will not, cannot condone. I tell people all the time that I’m never going to defend the bullsh*t, just not going to do it. I tell him that. We have these very candid conversations. The reality, however, is that for a guy like me, if a guy like Marion Barry had not come along, I wouldn’t be doing this. He created the art of the possible. He took

the cap off the ceiling. He showed us that we could do things that we never thought we could do in this city. There had never been anybody that stood up to the power structure or whatever you want to call it. Stood up to the Congress and said, "Wait a minute, this is messed up and you guys have got to fix this." Marion is part of that narrative. He is not 'the' guy, he is 'part' of that narrative. When he became mayor the first time and he hired all these young Black people to be city administrator, to be director of finance and revenue, to be in charge of public works, it was like unbelievable. It was like people asking with amazement "You mean these people are out there, they can do these jobs?" I think everybody pretty much agrees that Marion's first term was just fantastically successful. It was a phenomenal thing. For me, he created that possibility, that the sky is the limit sort of mentality is very important to this city. He made it possible for the economic engine that the city is to have a benefit to people in this city -- Black and White. What I don't want people to do is to put him off, assign him to some trash bin of history without really appreciating him. I feel very appreciative of what he's done for me and for many people of this city. That's why I do what I do to represent him. I am oftentimes disappointed at the things he does, and I tell him that. Lawyers are not our clients, we represent our clients and so I'm representing him.

That is how I began this representation experience that I've had with Marion Barry through many, many, many interactions with the justice system, and (Laughter) in all of its permutations. He just won't stop. He's incredible. You know, we deal with it. We do stuff and I've wound up doing some pretty

interesting work for him in the Court of Appeals on issues; and in the trial court, obviously, on a couple of occasions; dealing with the Justice Department's Office of Professional Responsibility, we've filed complaints about treatment; negotiating, obviously, with the U.S. Attorneys Office and the Department of Justice; the Office of Campaign Finance; the Internal Revenue Service, the State Department when we take trips out of the country and we have some issues there from time to time. You know, so we do a lot of stuff. (Laughs) It's really interesting, professionally. It's really quite fascinating in a lot of ways, you know. We've done work for, negotiated film contracts, agreements or documents for agreements to do films about his life.

Mr. Kempf: Really?

Mr. Cooke: Yeah, and we do all kinds.

Mr. Kempf: Are there plans to make films or a film?

Mr. Cooke: Yes. There's a documentary that's out now that's going to be on HBO in August, that's going to be shown rather on HBO in August. Then there's another theatrical piece that's in the works.

Mr. Kempf: Is the HBO documentary only about him?

Mr. Cooke: Oh yes. It's all about him. It's called, *The Nine Lives of Marion Barry*. It was shown here at the AFI Film Theater up in Silver Spring in a documentary festival they had. It was one of the docs that was shown there. It's like I said it's going to be on HBO and all this stuff. I forget the day. Sometime in the middle of month. But, it's about him. It's about his life. It's *The Nine Lives of Marion Barry*.

Mr. Kempf: Are you interviewed?

Mr. Cooke: No. That was one of the deals. I was like, “Okay we can work on this, but there’s one condition -- I’m not in it.” (Laughs) So that was my fee. I was like “I’m not in this.”

Mr. Kempf: And the second, and the other is a theatrical production, you say?

Mr. Cooke: Yes.

Mr. Kempf: So, a real movie.

Mr. Cooke: Yeah, yeah, a real movie.

Mr. Kempf: Is it, you know, have they?

Mr. Cooke: No, we haven’t signed a deal. We have a handshake, but we haven’t signed a package. This is relatively new, relatively recent rather in terms of when we got to the handshake.

Mr. Kempf: I see. Wow. Who do you think should play Marion Barry? I’m curious about that.

Mr. Cooke: I don’t know. I don’t know if there’s anybody with quite enough range.

Mr. Kempf: This might be part of the contract. Barry may insist on someone.

Mr. Cooke: He may insist on being himself which is going to be a problem. (Laughter) Book deals, you know, we’ve never, he’s never written a book because he won’t do the book the way it needs to be done. We’ve negotiated book deals. I do all kinds of crazy stuff. It’s just bizarre sometimes. (Laughs) It’s funny. Part of what I like to think about when I do those things is that, you know, I think back to when I was a first year law student, sitting in civil procedure or contracts or whatever. No way I could’ve imagined doing this kind of crazy stuff.

Lots of conversations with people who call me and want to bend my ear about whatever they thought about Marion. Some of that's really, really interesting. There is a huge fan base for Marion, people who are just in almost an idolizing posture with this thing. That's really kind of interesting. That's a phenomenon. Then there are people who are more sanguine, who feel regret. Marion has feet of clay. He has imperfections, and they wish he wasn't quite so imperfect. They're okay with him mostly. Really, most of Marion's flaws are self-destructive.

The federal government spent five years and \$10 million dollars to get a conviction. They investigated Marion because they thought he was a thief. They thought he was corrupt and thought he was stealing money from the government and the citizens of the District of Columbia, in a literal sense. That could not be proven. What they proved was that that wasn't what he was about. He had obvious vices, no question about that. The investigation was not about, angel or devil, but he wasn't what they thought he was because that's not what motivates him. He's not motivated by money. Yes, he likes money like most people, but that is not the thing that he is really focused on. Yeah, you can talk about how the government was inefficient and therefore the public's money was wasted because things didn't happen the way they wanted to.

Philosophically, Marion was kind of simplistic. You can have all kinds of arguments about this but Marion's view in a lot of ways was, "I would rather pay somebody to work in the government (at an essentially made up job) than I would have them sit at home and get a check every month from the government as any form of welfare. The government is going to be spending money one way or the

other, and if I pay this person to work (even at a made up job), may be that will habituate them. Maybe that will get them into the workforce. Maybe that will get them into a work mindset. They're going to be paying taxes, those taxes can be used to help other people to do other things. That money that they get gives them a greater sense of self-worth than they would if they were sitting on their butt at home. You can argue that that's sort of too simplistic. That was really, for him, what it came down to in a lot ways. He got criticized for having bloated government, inefficient government, and a lot of that criticism is true. But for him the real question wasn't about do I have 5,000 employees or 2,500 employees. Instead the question was am I going to send this money in the form of a welfare check, or am I going to send this money out in the form of a paycheck? For him that's what the analysis was. Now, you can argue about the merits of that analysis, but it wasn't venal. It wasn't motivated in some sort of negative principle. It was like he thought this was the best way for him as the leader of the Government to provide the maximum good to the maximum level.

Mr. Kempf: Let me close the circle on Barry. Obviously, there's so much interest in him and his life with books, movies. I guess one thing I want to do is clarify your current and previous relationship with him. Then the second thing is to ask a question about what you think his legacy will be? So first of all, are you sort of his personal lawyer or what would you call yourself?

Mr. Cooke: Yes, I'm his personal lawyer. Yes.

Mr. Kempf: That'd be the best way to...and you've been that for?

Mr. Cooke: That's been since '91 or '92.

Mr. Kempf: And David Wilmot?

Mr. Cooke: Yea, I do more than David.

Mr. Kempf: And, Part 2 -- what do you think his legacy will be? There's going to be a lot written.

Mr. Cooke: Yes. He's 73 and he's had an incredible life. I think that time is going to be the best ally he has. I think the further you get away from incidents, the more objective the assessment will be. I think right now, unfortunately, to too many people he is largely a cartoon. Sort of caricature, a buffoonish, oversexed, drug-crazed politician. I think he is much more complex than that honestly. He is a very, very bright man. It sort of fascinates me that people who don't like Marion, who are prepared not to like Marion when they sit down and talk to him, they almost always come out with a different view of him than when they went in. One of the first things they realize is that he's really pretty smart. He's smarter than I am probably. I think that that's what time is going to do for him. People are going to begin to appreciate how good he was in life then and how complicated he was. I think, again, you know the public largely wants scandal. We're talking about Governor Sanford now because we like scandal. I can't imagine what Governor Sanford's life is like right now.

Mr. Kempf: He (Sanford) needs to be quiet.

Mr. Cooke: Yeah, that would be good.

Mr. Kempf: Stop talking to the press. (Laughs)

Mr. Cooke: But, we like scandal and we like to mock the people involved in the scandal. I think these scandals and this sort of 24 hour news thing is about to burn itself out

in the sense that people's fascination with it as being significant, I think what happens is we get desensitized to it. I think we see it so often, so much that we go, "Okay, get me a baseball game, something else on." They give you this coverage that's excessive and you just kind of go, "I don't really care that much anymore." (Laughs)

Mr. Kemp: Yeah. It's ridiculous.

Mr. Cooke: (Saying to yourself) "Let him and his wife work that out. Why am I watching this?" I think that that's what helps Marion. I think that people will have a different view. I think that we evolve on these issues and these things get to be more proportionate than they were at the time. When Marion's drug trial was going on it was the most insane mob scene I had ever seen -- camera crews, news crews from around the world were jammed in that little space in front of the courthouse watching him go in and out of it. It was just incredible.

Mr. Kemp: In what year was that trial?

Mr. Cooke: That was in 199...the trial was in '91. It was just unbelievable. I left the bureau in '90 and he got busted later on that year so the trial was in '91. I think his legacy will ultimately be that of probably up to this point "the best mayor the city has had." That's going to take some doing, a little bit, but I think that Walter Washington who I really think gets badly treated historically. I think he was a very good man given the facts and circumstances of when he got to be mayor, first mayor after home rule and totally dysfunctional municipal government, it didn't exist. There was no government. It was an agency of the government, a branch of government. It was not a government. He had to create one, and

Marion came after him. Then, Sharon (Pratt-Kelly), then we have Marion again, but then we have Tony (Williams), who gets a lot of credit that he doesn't deserve. (Inaudible phrase) This is not attacking Tony personally. Tony will tell you this, he is very self-effacing. He is not stuck on himself at all. Then you have Adrian (Fenty), who I think is not doing a good job

So I think that up through the first five mayors, he's (Marion) certainly the best one. The best mayor of the city. The best, the person who best understood the government and how to make it work, for good and bad. (Laughter) For good and bad, it's not like everything he did was right.

I think that ultimately his legacy will be a positive one. But, like I said, it's going to be tough because of his personal things, it's just so heavy, just large and heavy (Laughs). There're so many things that people know and assume, lots of stuff. There's lots of stuff that people hear which isn't true and lots of stuff people hear that's absolutely true but just hasn't gotten into the newspaper yet. One of my jobs is to keep stuff out of the newspaper.

Mr. Kempf: (Laughs) You can talk about it now.

Mr. Cooke: Keep the media from finding out about it. I joke about it with my friends in the media who call me up and I go, "Boy, you guys are late on this one." You know. "I thought I had gotten it past you." (Laughter) You try to minimize media exposure.

Mr. Kempf: Exactly. Fascinating. It's incredible that of all the scandals recently they've been White, male Republicans that have been, isn't that odd? What does that say?

Mr. Cooke: Isn't that odd, and what does that say?

Mr. Kempf: Well?

Mr. Cooke: If it says anything. I don't know that it does. It just strikes me, that uniformity.

(I ask) What's wrong with those guys? (Laughs)

Mr. Kempf: You wonder too if African-Americans when they are caught up in a scandal if they're judged with a certain set of...

Mr. Cooke: I think so but.... Bill Jefferson who's now (Congressman Jefferson), who's now on trial in his own scandal -- money, corruption -- is hard to explain. I know Jeff has an explanation, but I'm not quite comfortable with it. (Laughs) I'm sure that his lawyers are doing the best they can. I think the criticism of Bill in that regard is pretty fair. It's tough to justify what Bill's done. I feel bad for him and his family because I think fundamentally he's a pretty good guy. I wish he hadn't come to this.

Mr. Kempf: Right.

Mr. Cooke: But, there's others that you wonder what all the hubbub is about and at the end of the day the talking heads on TV keep talking about how the differentiation in the Democrat and the Republican sex scandal is that the Democrats ultimately have to resign and the Republicans try to keep their jobs. Why is that? I saw on Sunday, what's his name, the senator from South Carolina?

Mr. Kempf: DeMint? No. John McCain's buddy, I know exactly who you're talking about, it's....

Mr. Cooke: I can't think of his name. You're getting old when you can't recollect, this is terrible. But, anyway, I saw this senator on TV and he was explaining....

Mr. Kempf: (Interjects) Lindsey Graham.

Mr. Cooke: Lindsey Graham. They asked Senator Graham, “What do you think about your fellow South Carolinian, your governor?” He said, “Well, the governor’s a personal friend of mine. I’m the godfather of his youngest son. Obviously, this is not just business for me, this is personal.” I get that. And then, he says, “So I think the best, first thing he needs to do, the thing that ought to happen he ought to figure out if he can salvage his marriage to Jenny.” What struck me when he said that was, now here you are you’re a senator elected by the citizens of South Carolina and your response to the government, the governor issue is that ‘he ought to work it out with his wife’ (paraphrasing). Well, what about the people of South Carolina. I mean, aren’t you concerned about them. I get the personal thing. I have had bunches of friends who have gone down that crazy road and I’ve felt very badly for them, both the husband and the wife because I may have been friends with both. But, when you are a senator for South Carolina it seems to me that you ought to be concerned about what’s good for South Carolina as opposed to what works for your friend. Don’t you? It’s just, you can’t say that on national television. That’s a conversation you have with Governor Sanford. That’s a conversation you have with your wife. You don’t say that on national television because it makes you look like, (you’re really saying) we’ve gotta work this out with him and his wife and we’ll get back to the people. (Laughs)

Mr. Kempf: Yeah, when it’s your friend and your politically ally then it’s ‘oh, something he has to work out with his family.’ But when it’s somebody in the other party you would...

Mr. Cooke: (Interjects) “He’s got to leave?”

Mr. Kempf: I know. And when it's Barry, it's you know.

Mr. Cooke: I think that those kind of things are such a double standard, an inconsistency or an insincerity about it.

Mr. Kempf: It's politics.

Mr. Cooke: (Agrees) It's politics. Ever thus.

Mr. Kempf: I think I have fired away all my questions.

Mr. Cooke: Okay.

Mr. Kempf: Is there anything that you would like to add?

Mr. Cooke: Oh, lord.

Mr. Kempf: Particularly, about your last, if there's anything about the last few years.

Mr. Cooke: No. I don't know.

Mr. Kempf: You have a chance to do a letter after reviewing the transcript.

Mr. Cooke: I don't think so. I think that I've had a great time with this the thing. I probably should have been more purposed on making money, but that was never why I got into this and so it has never really been a high priority to the dismay of my wife and family from time to time. I have had a great time. I've done a lot of things that I wanted to do. A lot of things I never thought I'd get the opportunity to do. I've been involved in some good things with the city in terms of being a part of helping bring the Convention Center and the Verizon Center to fruition; the Hospitality High School (something I spent a lot of time on, with a lot of other people), trying to bring that to fruition to give some opportunities to kids to work in the hospitality industry, to get the academic and practical underpinning that they need to go forward in that area. I have had an opportunity to teach at the

Howard University School of Law, which has been a great, great experience to try to help shape some new, young legal minds (or maybe warp them).

So, it's been a lot of fun to do these things and hopefully at the end of the day to have a scorecard that says that I contributed more than I got. That's really sort of the ultimate objective, to be a contributor.

Mr. Kempf: Well, this transcript will be a part of the scorecard!

Mr. Cooke: Yeah, that's right. It will be in the vault of the Historical Society.

[END OF TAPE]