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From the Portal to the Path: Finding the “Me” in Mediator

By Marvin E. Johnson



The environment we start out in has a significant impact on us. Where we live, who else lives within our space, our personal experiences, our accomplishments, our failures, our extracurricular activities, and the opportunities that exist in our community influence who we are and who we become.

“No one is free until we all are free.”

— *Martin Luther King, Jr.*

I was born and lived the formative years of my life in Rochester, a mid-size city with a progressive history, locat-

Marvin E. Johnson is a nationally recognized mediator, arbitrator, and trainer with more than 27 years of dispute resolution experience. He has worked for the Department of Labor, the Federal Labor Relations Authority, the Federal Mediation and Conciliation Service, the National Treasury Employees Union, the National Football League Players’ Association, and the National Academy of Conciliators and was a professor of labor relations, law, and dispute resolution at Bowie State University. Johnson serves as a mediator, arbitrator, fact-finder, and facilitator in public and private disputes. He provides diversity and dispute resolution training and lectures extensively on the subject of conflict management. Johnson is the founder and editor of the journal *Practical Dispute Resolution* and has written widely on dispute resolution and diversity.

ed on the shores of Lake Ontario in the northwestern part of the state of New York. In the early 1800s, Rochester was one of the last stops on the Underground Railroad before Canada. The Rochester community was active in the women's suffrage movement as well as the abolition movement, and Susan B. Anthony spoke in the area a number of times. Because of the area's progressivism, the noted abolitionist and civil rights activist Frederick Douglass made Rochester his home in 1847.

As a conductor of the Underground Railroad, Douglass opened his home and utilized the Rochester African Methodist Episcopal (AME) Zion Church to help abolitionists such as Harriet Tubman transport slaves to Canada. He also used the church as a temporary office for his newspaper, *The North Star*. The AME Zion Church was and still is my family's church.

“The spiritual is stronger than any material force. . .”
— *Ralph Waldo Emerson*

My family played an important role in the church. Plaques on the walls honor members of my family, and church buildings bear family members' names. My mother, a very spiritual woman, was in the church every Sunday, singing in the choir during the service and performing her other duties thereafter. At least a couple of evenings during the week, she attended meetings and choir rehearsal. As the youngest child, I was not allowed to stay home alone, and I spent many an evening entertaining myself in the back of the church. I remember seeing the likenesses of Frederick Douglass, Susan B. Anthony, and Harriet Tubman etched in the stained-glass windows.

The important history of my church was also part of sermons from the pulpit, and even though I wasn't old enough to participate in family discussions when we gath-

ered for special events and holidays, I overheard the talk of the significant role our church had played in the abolitionist and women's rights movements and the impact it had on the Rochester community. Family members also talked about the impact that race had on the life of everyday Blacks in matters such as housing, employment, and health care and the extra effort Blacks had to apply to get ahead. Hearing these stories as a child helped me understand the history of my church, my community, and my people. It helped me understand my background—what I was a part of and how it shaped who I was.

Knowing who you are is very important in understanding others and the issues they have to deal with. You cannot help others unless you know yourself. The many lessons I learned in church helped me, as a person and as a mediator, to have faith in the human race and the individuals within. There is some goodness in each person and redemption for those who need it.

“Increased community participation enhances the benefits received by the entire community.”

— *Merlin*¹

African Americans settled on either the west or the northeast side of Rochester. Initially, my family lived in the Hanover Housing Projects on the northeast side of town, where I attended elementary school through third grade. After my family moved to the west side of town, I attended a different elementary school and graduated from Madison High School, also on the west side of town.

The Montgomery Neighborhood Center was a social and cultural community focal point for the African American residents of the west side of Rochester. There I received drama instruction and had roles in plays, took archery and gardening classes, and even won an award for my gardening

efforts. I learned how to ice skate, canoe, cook, and bake. I went on trips to museums, played basketball, attended day camp, joined the Cub Scouts, and participated in the glee club. These educational and cultural activities helped with my self-discovery and my self-expression and shaped my character and personality. The center also brought the larger neighborhood together, by allowing church groups and community organizations to use the building for fundraisers, gatherings, and galas. The center fulfilled a variety of needs and in doing so fostered both individual and community pride.

The center's staff, who were either attending or had graduated from college, got a lot of respect from community members, and there was little conflict at the center. When there were disagreements, they were resolved in the office of the director, a woman who was not a "mediator type" but had enough street smarts to keep the peace. I was never called into the director's office. I believe the ultimate threat of suspending access to the center may have been a major deterrent to misbehavior and a large settlement factor. My entire center experience was the foundation of my belief in community.

"A dream doesn't become a reality without sweat, determination, and hard work."

— *Colin Powell*

Along with the Montgomery Neighborhood Center, Black businesses were the anchors of the neighborhood. Clarissa Street, sometimes called Rochester's Broadway, was lined with Black-owned grocery stores, restaurants, benevolent and fraternal clubs such as the Elks, barbershops, doctors' offices, and, on adjacent streets, churches. In fact, a number of Black businesses on Clarissa Street were listed in the 1954 edition of the *Green Book*, the annual guidebook for

African American travelers that inspired the movie of the same name. Rochester's Black-owned businesses instilled pride in the community. They also inspired a transformational moment in my youth.

Looking and acting "cool" was and still is a big thing for young people. I remember peers teasing me about certain clothes I wore to school, and as soon as I was old enough to get a work permit, I became a newspaper carrier. I made enough money to buy my own clothing and most of the other things I wanted, from my first new bicycle to my first car. Clothes were never a problem again.

I delivered papers for the *Democrat & Chronicle*, Rochester's morning newspaper. School started at 8 a.m. and my route took two hours to complete, so I had to get up very early to deliver the papers. Because I played sports, I had to collect money from my customers after I got home from practice and before I did my homework. I maintained this routine for seven or eight years. There were thousands of carriers in the Rochester area, and near the end of my senior year, I was one of four carriers—and only the second Black carrier—to receive the \$12,000 Gannett Newspaper Boy College Scholarship, an award based on school record, ability as a carrier, and community activities.

"Keep track of your expenses or you'll end up losing money."

— *International organizational change consultant
Richard Moran*

For me, delivering papers was like being one of the Black business owners on Clarissa Street. I bought the newspapers from the D&C at a wholesale rate and sold them at a retail rate fixed by the company. Because I had no customer complaints and always paid for my papers on time, I was asked to take over the routes of other carriers, and

my route grew from 80 to well over 200, at which point my parents stepped in to curtail my expanded business because it was taking time away from my studies.

Delivering papers taught me the fundamentals of business at a very young age. I learned how to interact with and manage the expectations of existing customers while meeting and soliciting new ones. I learned about profits and losses, having a reserve fund, managing and saving money, customer service, record-keeping, and time management. It instilled confidence and a sense of independence and responsibility and prepared me for handling business responsibilities later in life.

Many people today want to be mediators and have their own practice. They see mediation as a noble profession, and they want to help people resolve disputes. Many do not think of mediation as a business. They think that after they receive their 40-hour mediation certificate, clients will beat down their door. But mediation is a business. If you are going to develop a mediation practice, you must understand the business side of the practice.

“Great relationships are about understanding similarities and respecting differences.”

— *Unknown*

James Madison High School included grades seven through 12. During the years I attended, Madison had a very diverse multicultural student body with a respected honor society and powerhouse teams in football, wrestling, and basketball. I followed in my brother's athletic footsteps, starting on the varsity basketball team and serving as its co-captain. Wanting to be my own person, though, I also started on the varsity football team and ran track in my senior year and received the All Sports Trophy for my efforts.

I did very well academically. From personal experience, I learned that scholars and accomplished athletes are rewarded for their accomplishments and receive certain implicit benefits, not only trophies, plaques, and student government leadership positions but access to influential people and opportunities unavailable to others.

But in high school I also experienced the disadvantages of being placed in certain categories. I had good friendships with all segments of my high school community, including students ranked in the top and lowest percentiles of my class (I was in the top 11 percent), a fact I was proud of. My inner circle of friends, though, all played sports and were above-average students. We all wanted to attend college.

That almost didn't happen. My 10th-grade high school counselor, who was White, discouraged me from going to college and told me that I should instead get a job "working with my hands." He said the same thing to most of the Black male students who were not ranked in the top 10 percent of the class.

If I had listened to him, I would not have gone to college. But in my junior year, Josh Lofton, the city's first Black high school counselor, came to my school. That year, more Black students than ever before applied to, were accepted by, and attended college. And at Lofton's urging, Rochester's Black community organizations and a few of the White foundations provided the much-needed scholarships that made college possible for me and my classmates.

My experiences as a child and young adult—at home, in the community, at work, and at school—enabled me to understand who I was as a person and how important community can be. These experiences also allowed me to develop an implicit skill set that ultimately helped me accept and connect with a wide variety of people and be a good mediator.

“Don’t fight forces, use them.”

— *R. Buckminster Fuller*

My father died the summer before my sophomore year in high school, and my mother, a domestic worker, could not afford to pay for my college education. The newspaper scholarship and the numerous other scholarships I received from community organizations enabled me to go to Bowling Green State University, where I was excited about trying out for a large university’s basketball team. Unfortunately, I was not selected. Disappointed and lacking a basketball scholarship to help pay my expenses, I decided not to return to BGSU the following fall.

Leaving BGSU turned out to be a difficult and significant decision point on my path to becoming a mediator. In my Rochester community and many working-class communities in this country, sports and academics often intersect. I had to decide to prioritize educational achievement over athletics, a lesson I have shared with other persons of color in my role as a mentor and diversity leader in the conflict resolution field. I didn’t give up sports, but they no longer provided my main identity.

“In the middle of difficulty lies opportunity.”

— *Albert Einstein*

After I accepted that basketball was not going to fulfill my hopes and dreams, I decided to enroll as a sophomore at Kent State University, where I quickly had to choose an academic major. My father was my inspiration. One of the first Black letter carriers in Rochester, he had been a member of the Letter Carrier’s Union. One of the days that my father took me to his job, I listened to him and other carriers as they were sorting the mail they were about to deliver. I heard the story of a fellow carrier’s termination,

grievance, and successful return to work with back pay. Still feeling the power of that story, I selected industrial relations as my major.

“If you are neutral in situations of injustice, you have chosen the side of the oppressor.”

— *Desmond Tutu*

I arrived at Kent State University in January 1969. Martin Luther King Jr. had been assassinated the year before, and protests against the Vietnam War were rampant. Campus racial tension at Kent State was high. Black students were concerned about many things: the lack of minority faculty, administrators, and student scholarships, the absence of a Black Studies Program, the failure to recruit minority student athletes to the university, the lack of on-campus entertainment that appealed to Black students, and the lack of funding for the Black United Students organization for Black History Month and homecoming. I ran for and won a seat on the Student Senate. I was appointed chair of the Major Events Committee, and we dramatically increased the number of campus events that appealed to Black as well as White students with performances and appearances by Sly and the Family Stone, Roberta Flack, the Fifth Dimension, Nancy Wilson, Smokey Robinson, and Julian Bond. That year, the Student Senate allocated the largest increase ever in funding to the Black United Students for minority activities.

At the same time, I was a member of the intramural Brothers Together Basketball Team. We went undefeated, winning the University Championship twice and the Ohio State Intramural Championship in 1970, a feat that in a time of great racial tension was a cause for celebration in the Black community—and a source of great pride for me. I still have the letter from the highest Black ranking member

of the administration emphasizing what the Championship meant to the University's entire Black community. Later, the wider university indirectly acknowledged this and my other achievements at Kent State by presenting me with awards for leadership and service to the students and the university.

After Kent State, I wanted to attend law school or get a master's degree in labor relations but could not afford to do either—until a scholarship from the Industrial and Labor Relations program at the University of Wisconsin allowed me to pursue the master's degree. I found out two years later that the UW fellowship had been established by someone from Rochester who learned of my financial straits. Once again, the Rochester community had come to my aid.

At UW, where my specialization was in unions and collective bargaining, I studied the dignity and the significance of work, the people who performed the work and the impact it had upon them, how the work and the workers were managed, and the tensions that flowed from these intersecting needs in the workplace. Collective bargaining between the union and the company, I learned, is the vehicle for managing these tensions. If the parties reach a bargaining impasse, they can call in a mediator to help them resolve the matter before turning to an adversarial process. I saw impasse and the need for mediation not as a failure but an interesting space to resolve the natural conflict between workers and management. I also continued to see a perfect connection between social justice and mediation, and after I graduated with a master's degree in 1974, this heightened my passion to be a mediator.

“The choices you make . . . affect what you will have, be, or do in the tomorrow of your life.”

— *American author and speaker Zig Ziglar*

After graduating from UW, I moved to Washington, DC, and began working as a federal labor relations specialist in the Office of Federal Labor Management Relations, which is now the Federal Labor Relations Authority, or FLRA, an independent agency that governs labor relations between the federal government and its employees. There I acquired a working knowledge of the legal process as it related to labor relations in the federal sector, including decision-writing, labor law research, oral case presentation, and reading and analyzing briefs, court transcripts, and exhibits. But I still wanted to attend law school.

In the fall of 1977, I finally realized this dream and started my first year at Catholic University Law School. My class included the smallest number of minority students in several years, a fact that greatly concerned second- and third-year Black law students. Wanting to take some action, in the second semester of my first year I volunteered to help the admissions office recruit more minority students, which helped the school admit almost three times as many minority students as the year before. This then led to leadership positions in the school's Black American Law Students Association (BALSA) chapter and the board of the CU Law School's student bar as well as graduation-day honors that included the Student of the Year award from BALSA and the Corpus Juris Secundum award from the law school for outstanding civic achievement among students.

After graduating, I took a job as assistant counsel for the National Treasury Employees Union (NTEU), providing legal counsel to the NTEU Pennsylvania and Delaware local chapters and representing them in all phases of labor relations. Being assistant counsel for a union was excellent training for becoming an employment or a labor management attorney, and I won most of my cases and received high praise for my work. However, I was miserable. My

passion to be a mediator, which had intensified during my studies in Wisconsin, was still strong. I knew there was another way to resolve differences, one that did not take such a destructive toll on the parties. Being a mediator, I believed, would be more satisfying and more consistent with what was important to me.

My personal and professional experience has confirmed that. Resolving disputes is a complicated process, one with many latent layers and barriers that are not the focus of the conflict. Mediators doing the work at the highest level know this—and know that they must deal with mutually exclusive elements, what each side sees as its own resolution of the dispute. I embrace the skill and creativity that are required to deal with this paradox and find the cooperative space between the parties' articulated resolutions. If the dispute cannot be resolved through mediation, litigation is always an option, and the attorneys can take over. But before they do, mediation provides a fair process and a safe place to explore other possible options.

Friends and acquaintances—and a chance meeting—helped me move into the mediation field. One afternoon, on a train from Philadelphia to Washington, I ran into Harold Davis, who was a mediator with the Federal Mediation and Conciliation Service, then the nation's largest public agency for labor/management dispute resolution and conflict management, and I told him about my disappointment with representing employees and my desire to be a mediator. With his blessing, the National Academy of Conciliators (NAC), a small nonprofit that used mediation techniques to resolve homeowner warranty disputes, hired me as director of legal programs. (This move required me to take a pay cut, but I figured it was a price worth paying.) At the NAC, I learned a lot about mediation but did more mediation training than mediating. Edna Johnson, whom I had met at the University of Wisconsin and who was then

chair of the business department at Bowie State University, was looking for someone to teach business law and help with other business courses, and I accepted the job in hopes it would move me closer to my goal of becoming a full-time mediator. Although I had to take another pay cut, in my non-teaching days I was able to write and speak about mediation and start to build a mediation practice.

“Stand up for what you believe in, even if it means standing alone.”

— *Singer Andy Biersack*

During this time, I became involved with several leading organizations that focused on what was then called alternative dispute resolution, or ADR. Typically, these organizations ascribe to the core values of the conflict resolution field, including transparency, fairness, inclusion, and collaboration. However, human beings run organizations, and they are concerned, as they should be, with their responsibility for the efficient and effective running of the entity. This overarching factor, and the fact that the leadership of conflict resolution organizations often changes after each annual election, foster continual blind spots regarding social justice issues within the conflict resolution community and profession. These blind spots militate against advancing and sustaining progressive social justice policies.

Ever since my days at Kent State and Catholic University Law School, I have been involved in leading social justice and diversity initiatives. In the 1980s, I was one of the people of color in the Society of Professionals in Dispute Resolution (SPIDR) who met secretly during the organization's conferences because of the lack of diversity in the membership and leadership and the lack of support for diversity policies. I later got involved in the collaboration

between the People of Color Caucus and the Environmental/Public Policy Section of SPIDR, which led to convening important dialogues about diversity at SPIDR Annual Conferences between 1994 and 1997. The recurring themes and issues raised during these dialogues pushed SPIDR's leaders to change the organization's policies and bylaws. These changes, which included a diversity policy statement; a diversity environmental impact statement requirement for conference proposals; a bylaw about appointing a person of color to the board; a diversity representative for each section, chapter, and task force; a diversity conference track; board diversity training; and adding youth as a membership category, were all adopted by the Association for Conflict Resolution (ACR), the organization into which SPIDR was merged. But because organizations' focuses change with their leaders, these historic commitments were not sustained. Designing and advocating for diversity initiatives weren't enough. I had to become involved in arguing for them all over again.

A similar dynamic occurred with the American Bar Association's (ABA) Section of Dispute Resolution. For some time, the ABA had a Standing Committee on Dispute Resolution, of which I was a member, and its diverse leaders were sensitive to diversity issues. In 1993, when the ABA created the Section of Dispute Resolution, the section reflected this sensitivity in its bylaws and policies. (I served as the chair or co-chair of the Diversity Committee for the first six years of the section's existence.) Working with the leadership at that time, the section received awards from the ABA's Commission on Racial and Ethnic Diversity for its various diversity initiatives, which included a Minority and Women Resource Bank, a requirement that a diversity impact statement be included in each conference workshop proposal, and a pre-conference Forum for Women and Minorities in Dispute Resolution before

the section's annual conference. These notable initiatives began to unravel around 2006, however, and the cycle of promoting diversity had to be started again.

I was asked to run for president or chair of SPIDR, ACR, and the International Academy of Mediators (IAM) several times, but I declined each request, believing that as the leader of a predominantly White organization, I could not continue to be a voice for social justice. Former IAM president Eric Galton, however, eventually convinced me that being president of the IAM would be an important platform for advocating for diversity in general and increasing the diversity of the IAM membership in particular. Making those changes was not easy, but with the assistance of a few close friends, we achieved more than a 500% increase in the number of people of color who became members of IAM during my time as president. When I stepped down, I left it up to the new members of color and the other IAM members to continue the work. The cycle continues, as I am now helping IAM with the development of its first Diversity and Inclusion Committee.

Throughout my life, I have received knowledge, strength, and support from communities of various kinds. I see the mediation field as a community. As a relatively new field, it consists of mediators from different professions of origin, people with varied backgrounds and dispute resolution exposure and experience. The portal through which mediators entered the field, the decade they joined the field, the training they received, and the venue in which they practice all form lenses through which they understand and practice mediation. Such demographic and professional diversity should be a good thing for the mediation community. Why is this so? Because diversity fosters many of the same positive features that mediation provides: increased creativity and problem-solving, better

understanding of others, appreciation and respect of different views, and efficient and productive decision-making.

But diversity also means differences in perspectives as well as disagreements about what constitutes good practice, which inadvertently has spawned dissension within and between some groups in the mediation community. These disagreements include, among other things, setting goals for the process and choosing tools appropriate for achieving those goals; determining who is qualified to be a mediator and to manage the process; deciding whether certification should be granted according to specialized subsections of the field; and determining which subsections of the field are better than others. This last challenge has caused practitioners from different subgroups to criticize each other—commercial mediation versus family mediation, environmental mediation versus community mediation, etc.—or one profession to argue superiority over another (law versus psychology). A 2011 ACR Diversity of Practice Report revealed this internal incivility and tribal mentality in one member's comment to a colleague from another subgroup. The member essentially said, if you don't agree with me, you're not a competent mediator.

Demographic differences are especially noteworthy because discussions of them are typically confounded by differences in power and access. Frequently, those with more power and access are not directly impacted by such differences and are less conscious of them. At the same time, many people with power are tired of hearing about demographic differences, a stance that helps undermine the efforts of demographic minorities to participate fully in the mediation community, to be leaders, and to be considered and selected for all sorts of cases.

“Those affected by the problem are the ones that can best solve it.”

— *Merlin*

As a Black man, I have found the obstacles to becoming a respected mediator with a successful private practice are numerous, varied, complicated, and often indescribable. When someone from a traditionally underrepresented group overcomes these barriers, that person develops many skills that are common among many successful mediators—patience, persistence, creativity, likeability, a willingness to voice unfavorable concerns, influence, emotional intelligence, truthfulness, trustworthiness, an ability to ask difficult questions, good listening skills, strong analysis, problem-solving skills, and many more.

To me, it feels as if those in power have turned a blind eye to the impact that demographic differences have upon many people’s ability to become full members of the mediation community. They do not want to address the problem. I have heard some say, “We’ve had numerous discussions about these issues. It is time to move on.” As with many important issues, however, putting our heads in the sand is not going to make the problem go away (e.g., see race, gender, sexual orientation, gun control). If disagreements about how to address demographic differences remain in the shadows of the mediation community, they will continue to reappear until they are finally addressed. If the mediation field is going to flourish as a community, we must resolve our internal disagreements.

The ACR Diversity of Practice Report found a need for more dialogue among the specialized mediator subgroups with different viewpoints. If the ADR field were a community similar to the one I was a part of in my youth and the one I believe I have embraced in my professional career, all stakeholders would come together and do for ourselves

what we do for others. As we know from our practices, dialogue can produce greater understanding and creative, unanticipated solutions that could enhance the field and benefit everyone involved—the practitioners, the parties, the representatives, and the public.

“You make a living from your work, but you make a life by what you give.”

— *Unknown*

All my work with conflict resolution organizations has involved giving back to the community, but my most important contribution has involved the Center for Alternative Dispute Resolution. As a professor at Bowie State University, a historically black university (HBCU), I recognized the lack of diversity in the ADR field and created the Center for Alternative Dispute Resolution, the first such organization in the University of Maryland system and the first at an HBCU. The center produced the first biweekly cable TV program that addressed dispute resolution issues and established the Mediators of Color Alliance, a website-based network to support and advance the interests of mediators of color in the dispute resolution field. In 2017, the center, recognized and respected nationally and internationally, celebrated 30 years of providing dispute resolution education and training to diverse audiences.

Writing this chapter has made me see strong threads and continuity, all connected to community and commitment. I realize that what was instilled in me by my family, in the AME Zion Church and at the Montgomery Neighborhood Center in Rochester became a force that fueled me to create the Center for Alternative Dispute Resolution. The social justice stories I heard at home and in church and the mentorship I received at the Montgomery Center, in high school from Josh Lofton, at Kent State from business

professor Tom Reuschling, at Wisconsin from labor economist Jack Barbash, and in the ADR field from arbitrator and mediator Jerry Ross and arbitrator Herb Fishgold all instilled in me the passion to pay it forward. I know that some experienced mediators see mentoring as training their competition. But for me, sharing my experience, providing information, and answering questions about joining the field are the least that I can do to help establish a pipeline of new mediators.

“If you are a part of a community, the community is a part of you.”

— *Merlin*

Who I am and my passion for conflict resolution and social justice derive from the education, understanding, and support I received from my community in Rochester. There are some who think that anyone who advocates for social justice issues should not be a mediator, but I strongly disagree. For me, being an advocate for social justice means standing up for what is fair regarding diversity, equality, inclusion, and human rights in general. After all, attorneys and other advocates, knowing that adversarial processes (litigation and arbitration) are not the only ways to create change, maintain their advocacy practices while also mediating disputes. Bringing diverse communities or subsections of a community together to create change using conflict resolution skills surely is a valuable contribution to society and the field of conflict resolution. So, why can't social justice advocates practice the same way that attorneys and other advocates do?

An advocate for social justice can also be a good mediator—as long as the mediator is not advocating for social justice while in the role of mediator. To do this, one has to: 1) have the knowledge, skills, and understanding to rec-

ognize when latent fairness issues are present in a mediation; 2) have the ability to allow the parties to discover such issues from their own perspectives; and 3) foster the parties' self-determination to resolve the issue based on their collective understanding of fairness. I practice and train others in this approach to social justice in mediation.

Several years ago, I was invited to return to Rochester for a community event honoring me and my conflict resolution work. In attendance were my family, my grade school and high school friends, my high school football coach, and a number of community leaders, including the former mayor. I received a proclamation from the new mayor establishing August 9, 2014, as Marvin E. Johnson Day in the city of Rochester. This recognition came from my hometown community, the one that taught me, supported me, and made me who I am today. I was overwhelmed with emotion when Toni Watkins Duhart, a childhood friend who envisioned the event, said "You are one of us and your success is our success—we are proud of you." Of all the honors I have ever received, including two US presidential appointments, this is the one I cherish the most.

Notes

¹ Merlin is the pen name that I have used for decades when writing poetry and inspiring quotations.

References

Merlin [Johnson, M. E.]. 1976. *Different Strokes for Different Folks*.