ORAL HISTORY OF IRVIN B. NATHAN

This interview was conducted on behalf of the Oral History Project of the District of Columbia Circuit. The interviewer is Sheldon Krantz and the interviewee is Irv Nathan. The interview took place at the D.C. office of DLA Piper on Saturday, January 30, 2016. This is the second interview.

MR. KRANTZ: The first interview, which took place on January 9, covered Irv's roots, the stages of his life prior to his becoming lawyer. Today we will begin covering the various aspects of his very distinguished legal career.

In the first interview you did discuss with great fondness your first position after graduating from Columbia Law School which was clerking for Judge Simon Sobeloff. You also said that you then joined the Washington, D.C. office of Arnold & Porter. When did you begin working there?

MR. NATHAN: I started working at Arnold & Porter in the fall of 1968. I had finished the clerkship with Judge Sobeloff, which was, as you said, a great experience. He was a terrific mentor, and I felt confident that I would be able to do litigation after having been trained by him. Actually, when I was clerking for the judge in Baltimore, my first choice for a law firm in Washington was Williams & Connolly. I applied to both Williams & Connolly and to Arnold & Porter. At Williams & Connolly I was scheduled for an interview sometime in the winter while I clerked in Baltimore. On the day of the scheduled interview, it snowed. I took the Greyhound bus from Baltimore to Washington and got out at the Greyhound station in DC at 11th and New York Avenue. There were no cabs because of the snow so I walked to their offices which were then at Connecticut and L. When I got there, I was told that the office was closed,

that the interview was therefore cancelled and the two lawyers I was scheduled to meet had not come in that day. I then had to walk back to the Greyhound station and return by bus to Baltimore. Needless to say, I was not a happy camper. So I went to my second choice, Arnold & Porter. At the time I didn't know a lot about Washington law firms but I had read in a precursor of the *Washingtonian* magazine a squib on all the firms and there was a statement that Arnold & Porter had more talent and lawyers with more idiosyncrasies per square inch than any other firm in the city. I didn't focus on the fact that the space of the firm was very small and that is why they had so many talented people per square inch. But I was hired and I thoroughly enjoyed my experiences as an associate at Arnold & Porter. It turned out to be a very lucky choice for me.

MR. KRANTZ: Well I think you worked there for many years. Was it over 20?

MR. NATHAN: Well in all I have worked over 35 years at Arnold & Porter.

MR. KRANTZ: Thirty-five years!

MR. NATHAN: That is not all in a row. I have left several times for government service. I have come and gone so many times through the revolving door that I am quite dizzy. When I joined in '68 I was an associate. After the first seven years, I was elected to the partnership in 1974 or 1975. I left the firm to go into the Department of Justice in 1979. That was my first stint in government. When I was at the firm as an associate, I had some very good experiences and some great training. There were terrific lawyers at the firm, who were good mentors. They included Abe Krash, Norman Diamond and Milt Freeman.

Two other partners with whom I worked extensively were Stuart Land and Mel Spaeth, both of whom have remained friends of mine through the years. I worked on a great variety of litigation in that period. At the firm at that time, one was encouraged to be a generalist. They did not have departments or specialties and so I did a lot of litigation, as well as contract work and some Congressional lobbying. But principally it was litigation and it was some extremely interesting litigation.

MR. KRANTZ: And Irv to the extent you can talk about your most memorable cases and clients consistent with whatever obligations you have on confidentiality it would be good to talk about what some of them were.

MR. NATHAN: Well a principal case I worked on as an associate was a case where we represented a group of American steamship companies, including American Export Isbrandtsen Lines and Lykes Brothers Steamship Lines, in an antitrust case that was brought against them by the owners of Sapphire Steamship Lines. Its principal owner was Marshall Safire, who was the brother of *The New York Times* columnist William Safire. This was a very complex case, and from the beginning I got a lot of responsibility. It had come in to the firm through Thurmond Arnold who was still practicing at the firm at the time. Of course, he had been an antitrust assistant attorney general in the Department of Justice in the distant past and had done a lot of work in the antitrust defense world. I briefly worked for him although the main lawyer on that case, the main partner, was Stuart Land. The case involved some complex issues of antitrust law but also a lot of discovery and damage analysis. Right from the

start, I got to take a number of depositions. One of the first was the owner of Sapphire Steamship Lines, Marshall Safire. I prepared extensively for it and was eager to do it. I was particularly pleased to get praise for my efforts by Dan Margolis, a well-respected antitrust litigator, who was representing another one of the defendants. He was not at our firm. He was at a separate firm, with whom we were in a joint defense. His encouragement meant a lot to me. It was very meaningful and suggested that I could perform at a high level in litigation. In that case, I learned a lot watching other prominent lawyers in town who represented other defendants in motions and hearings before the District Court judge here in D.C.

I also got to meet, in connection with this case, Joe Alioto, who was a prominent plaintiff's lawyer in San Francisco and at that time back in the late 1960's and early 1970's was the mayor of San Francisco. I had a very amusing and interesting experience with him. His firm represented the plaintiff, a trustee in bankruptcy for Sapphire Steamship Lines, and we reached a settlement with the Alioto law firm. But the settlement was not going to satisfy either the owner of the company or the principal creditor of the steamship line which was the U.S. Government. Because the company was in bankruptcy the settlement had to be approved by the Bankruptcy Court in the Southern District of New York. The lawyers who handled the case for the Alioto law firm were the very able Max Bleecher and Harold Collins. The mayor had had virtually nothing to do with the case. On the day the matter was to be argued before the Bankruptcy Judge, Mayor Alioto happened to be

in New York on some mayoral business (or he had arranged it so he would be there) and he was going to make the argument in favor of the settlement on behalf of the trustee. Since I had done the lion's share of the work on the case and knew the details. I was assigned to go and brief Mayor Alioto about the matter.

We met at a restaurant in Chinatown an hour or so before the argument in the Bankruptcy Court, where he was going to present the argument as to why the settlement should be approved. He had had virtually nothing to do with the case and did not seem to know much about it. So we sat down at a table at this restaurant in Chinatown, and he said tell me everything that is bad about my case and why is this a good settlement. He asked, "Why is my case so weak?" He didn't seem to have a clue what the case was about. So I described all the weaknesses of the case and he was writing down these points on a napkin at the restaurant. Then an hour or so later we all went into the courtroom and before the Bankruptcy Court Alioto made a spectacular argument as to all the weaknesses of his case explaining how he was an expert in this field and had done so well for so many years and was confident that this was the best settlement they were going to receive.

It was quite a lesson in advocacy and lawyering. Alan Morrison was an Assistant U.S. Attorney and argued in opposition, and also did an excellent job. We did have to sweeten the deal a bit, but we did ultimately get that settlement approved. As a result, the firm got some other cases for Lykes

Brothers Steamship Lines and I worked again with Stuart Land on those and we prevailed in those litigations as well.

Another great experience of preparing a lawyer that I recall was working with Stuart at the Timberline Lodge in Oregon, preparing for a Ninth Circuit argument. Everything came together and Stuart Land made a great argument, and the court affirmed the dismissal of an antitrust case. I remember celebrating with Stuart after the argument in a great restaurant in San Francisco.

MR. KRANTZ: Let me ask you this. You were talking about the fact that you got praise from Dan Margolis and others for how you handled certain aspects of this case. I take it you did not derive the expertise or experience from law school so how were you able, as a very young lawyer, to handle complex antitrust litigation?

MR. NATHAN: Well in the first place I did get some training in law school because I had taken a trial advocacy course at the law school with two superb practitioners, Sheldon Elson and John Martin. Both of them had been assistant U.S. attorneys in the Southern District of New York and were adjuncts who came in to teach from private practice. John Martin ended up both as the U.S. Attorney in the Southern District and later as a federal district court judge. And as I think I mentioned last time, when I was at Columbia Law School I participated in and won the Jerome Michael moot jury trial competition. In addition, of course, at Arnold & Porter I got to see some very good lawyering and some good training from some of those lawyers that I mentioned

previously. And this effort that I was talking about with Dan came after a couple of years into practice.

MR. KRANTZ: Alright. Let's continue to talk about some of the other experiences and cases at Arnold & Porter beginning as an associate and working your way up to the time when you became partner.

MR. NATHAN: A couple of others stand out in my mind. We represented the importers of tomatoes from Mexico and we were seeking some relief from the Department of Agriculture. We had an extensive hearing down in Florida and we got a sense of being the villain in the piece because there was a fight between the Florida tomato growers and the tomatoes that were being imported from Mexico. So we were booed when we walked into the hearing room down in Orlando and we litigated that case quite extensively. It was a case that taught me a lot because we had to deal in the court of public opinion in that matter as well as in the agency and then in getting the record developed in the Court of Appeals. Our goal was to establish that our clients could import these tomatoes and they could be sold on the same basis as the domestic tomatoes grown by the Florida growers. This was during the Nixon administration. Earl Butz was the Secretary of Agriculture and the Department was trying to skew the regulations so as to exclude and penalize tomatoes coming from Mexico to the benefit of the domestic growers.

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MR. KRANTZ: Now as I mentioned this is a continuation of our second interview in which Irv was talking about the various cases he was involved in in his first stint with Arnold & Porter and that is where we are going to pick up. During the last interview we had, you were talking about a case relating to the Department of Agriculture. Why don't you pick up there and continue to talk about that experience.

MR. NATHAN: Thanks Sheldon. In that case, we represented the importers of tomatoes grown in Mexico against the Department of Agriculture which was run then by Earl Butz. This was in the Nixon administration which was trying to favor the growers in Florida. We had an administrative hearing to challenge the regulations that agriculture had imposed. It was important then to get public opinion on our side as well as to develop a record for the Court of Appeals. And there are some lessons I learned about Washington in doing this. First, of course, we tried to round up consumer advocates to support our notion that tomatoes grown from Mexico were at least the equal if not better than tomatoes from Florida and we called ours vine-ripened tomatoes from Mexico. One of the people we got involved was Bess Meyerson who was then the consumer champion of New York City and her lawyer at the time who was Si Lazarus and that worked out quite well. In addition, we went to

Capitol Hill and we met with Mike Pertschuk who was then counsel to the Senate Commerce Committee. We were asking that the committee hold a hearing on this issue so we could demonstrate the unfairness to our clients who were being prejudiced by the Department of Agriculture to the detriment of the American consumers. We wanted a hearing but Pertschuk had a better idea. He said to us you go back and write a memo that is marked "strictly confidential/private and confidential" from me, Mike Pertschuk, to my boss who was then the Chairman of the Commerce Committee, Senator Magnuson. And in that memo we laid out all of the inappropriate actions taken by the Department of Agriculture and the terrible effects on consumers. I thought this was going to lead to a hearing. Instead, a few days after we delivered this confidential memo, it appeared in a column by Jack Anderson who breathlessly said, "I have obtained through great investigative work a confidential and private memo," and the column laid out all the issues. It set forth all of our arguments and it turned out to be a lot more effective than if we had a hearing. So it taught me something about the ways of Washington, including that memos were written solely to be leaked to the press. By the way, we lost of course before the Department of Agriculture, but we did prevail in the Court of Appeals on the issue and we got regulations changed.

MR. KRANTZ: Well that certainly is a reflection that as a young lawyer you got involved in some significant things pretty early on.

MR. NATHAN: Exactly.

MR. KRANTZ: What are some other examples or early cases you worked on?

MR. NATHAN: Well I wanted to mention my involvement in criminal matters when I was an associate which I did primarily through pro bono work which was of course a very important part of Arnold & Porter's practice at that time and continues to be so. In the late 1960's and early 1970's, I represented people who were faced with Selective Service problems, people who had been drafted that did not want to go in. I also, by the way, in the commercial world represented companies that were facing anti-trust grand juries so I dealt with grand jury representations but the only real criminal matters were pro bono matters.

One case in particular that taught me a lot of lessons was representing an individual named Michael Harvey. Harvey was the son of an employee of one of our clients. His mother came into my office one day and said that her son, who was then living in Costa Rica, had just received a draft notice to report to the draft board in Virginia and he was not going to do that, he was not going to come back for this. He claimed to be a conscientious objector. So I spoke by phone with Michael in Costa Rica and urged him to prepare his application for conscientious objector status and worked with him to change the place of his induction from Virginia to the nearest American base which was in the Panama Canal Zone. They did transfer the place of induction, which bought us some time. Now at the time it was required if you were going to be claiming any defense of the draft, you had to exhaust your remedies and that meant you had to go to the place of induction and there refuse to take the step forward. So I explained to him to go Panama at the date of his induction, to appear there and to decline to take a step forward. So he did that and then

when he returned to Virginia he was arrested and charged with Selective Service offenses and the prosecutors moved to remove him from Virginia to Panama to stand trial for these criminal offenses. At that point, we made motions to avoid the removal principally on the ground that the judge in the Panama Canal Zone was an Article I judge whose term had expired and that meant that he was sitting at the pleasure of the President who of course was the prosecutor. So we said this is an unfair place to remove him to. We also argued that all the American residents in the Canal Zone were somehow connected to the military and thus we couldn't get a fair trial there. The judge in federal court in Virginia agreed with us that he couldn't be tried in the Canal Zone. So the prosecutors in Virginia dismissed the removal proceeding and promptly indicted Harvey under the statute that provided that when a person returns to the United States for a U.S. crime committed elsewhere that person could be tried in the first place that the person entered the U.S., which in this case was Virginia. So at that point we filed motions to dismiss claiming that he had to be tried in the Canal Zone because that is where the crime had taken place. We also claimed that the government had violated the Speedy Trial Act even though, of course, we had caused most of the delay.

We also relied on a statute that had been passed at that time because a lot of the young assistant U.S. Attorneys were declining to bring these cases. The conservatives in Congress passed a law providing that if there was an inordinate delay between the referral for prosecution and the filing of charges, the U.S. Attorney had to write a letter to explain to Congress the reason for

the delay. We argued that the prosecutors had not written such a letter, and we had another hearing before the Judge who was Albert Bryan, Jr. in the Eastern District of Virginia. On the basis of the failure to provide the letter, the judge dismissed that indictment and Michael Harvey has gone on to a nice productive life. The case drove home to me that with imagination and persistence, you can do pretty well in litigation and in criminal litigation in particular.

MR. KRANTZ: Well I think that is a good example of the creative lawyering you have done all of your life.

MR. NATHAN: Thank you [laugher]. But the most significant case that I had when I was at Arnold & Porter was the case of Charlie Finley against Bowie Kuhn. Arnold & Porter had represented Major League Baseball for a long time. Paul Porter came from Kentucky and "Happy" Chandler, one of the early Commissioners of Baseball, was the former Governor of Kentucky. He retained Porter and it was a staple of Arnold & Porter's practice at that time to represent Major League Baseball. In this case, Commissioner Bowie Kuhn had blocked the sale of three players of the Oakland A's, which was owned at that time by Charlie Finley. The three players were Vida Blue, Rollie Fingers, and Joe Rudi. Their contracts had been purchased by the Yankees and the Red Sox for a million dollars apiece and Kuhn had blocked the sales, saying they were not in the best interests of baseball. So Finley sued, claiming that this was his property and the Commissioner had no right to deprive him of it. The question for trial was did the Commissioner have the power to do this. It

was a fantastic experience. The trial which took six weeks in Chicago before Judge Frank McGarr who opened the trial by saying "play ball", involved the entire history of major league baseball since the creation of the Commissioner and the first Commissioner, Judge Kenesaw Mountain Landis. I was the second chair. Peter Bleakley was the main lawyer at Arnold & Porter for Commissioner Kuhn.

One of my most significant accomplishments in this case was finding the transcripts of the original meeting between the club owners and Judge Kenesaw Mountain Landis when they offered him the position of Commissioner of baseball. I looked all over for any records relating to that, including in New York at the Commissioner's office in Cooperstown at the Hall of Fame, in Chicago where Landis had his office, and even in Arizona where his granddaughter, who was then in her 90s, had some of his records. No luck. One day I was in San Francisco and I had lunch with "Chub" Feeney who at that time was the president of the National League. He said that when he took over that job, he got a whole passel of boxes from the former president of the National League, Warren Giles from Cincinnati, and he sent those boxes out to a warehouse district in San Francisco. So I went out to this warehouse district and went through these cobweb-covered files, bankers boxes of files, and in one of those boxes I found the actual transcripts of the meeting in 1921 where the owners met Landis. The owners, whose names I knew from baseball stadiums like Comiskey and Forbes and Crosley, were represented by George Wharton Pepper, one of the leading lawyers at

the time in the United States. This was in 1921 following the Black Sox scandal. The owners invited into the room Judge Kenesaw Mountain Landis and they had a proposed written contract that they presented to him and on the record Landis, who noted that he had lifetime tenure as a federal job, says that he was not going to take this job, unless it said in the agreement that he could do whatever he thought was in the best interest of baseball. They agreed, they changed the contract and put that into the agreement.

So here I was sitting there with these transcripts which had not been known before – and now, by the way are in the Hall of Fame in Cooperstown. At the time, Jimmy the Greek was quoting 8-to-1 odds that Finley was going to win this case because these were his properties. I'm sitting here looking at the transcripts. I thought I could make a fortune if I could make that bet, but I did not put any money down on it. But I did write a pretrial brief that described all of this. One of my proudest accomplishments is that brief appeared in the *Fireside Encyclopedia of Baseball*.

We then went to trial and the trial was just a spectacular trial. We had as a witness a guy named Fred Lieb who had been a sports reporter in 1919. This was in the early 1970's. Lieb had covered the Black Sox World Series and he covered the effort by the major league owners to come up with a new commissioner to oversee the game. We also had Joe Cronin as a witness who had been an all-star player and was in the Hall of Fame and then had been a manager and then an executive of the Red Sox and a president of the American League and a lot of other dignitaries from the sport. One of the

most interesting things was that we put on the record that in 1947 when the Dodgers brought up Jackie Robinson there were 16 major league teams and twelve of them voted against having Robinson play and "Happy" Chandler the former governor of Kentucky overruled the twelve owners and said it is in the best interest of baseball to integrate the sport and allow Jackie Robinson to play. We brought that in as an indication of what the powers of the Commissioner were and what the owners intended those powers to be. Another amusing episode of that case was that after I cross-examined Gabe Paul, the general manager of the Indians, Jerome Holtzman, a sports writer in Chicago, described me in his column as a "bulldog in the courtroom." The next day Finley left on the desk in front of my chair a can of Alpo dog food. We won that case and I was fortunate enough to argue in the Court of Appeals where we sustained that decision. That decision has led to increased powers not only of the baseball commissioner but of the commissioners of other organized sports. So that was a great experience and a great litigation to have.

MR. KRANTZ: And also I think a very good example of the importance of diligent fact finding.

MR. NATHAN: Absolutely. After that case most other civil litigation seemed boring and not too interesting and as a result, this was now in 1977, and a new President was in office, I applied to the Department of Justice for a position there. My application was promptly ignored for several months, and then one day out of the blue I got a call from Ben Civiletti who at that point was moving up from being Assistant Attorney General for the Criminal Division to being Deputy

Attorney General. He told me he was sitting there with the person who was going to replace him as the head of the Criminal Division Phil Heymann, a Professor from Harvard Law School. I had never met either of them before. Civiletti asked whether I could come for an interview to be a Deputy in the Criminal Division. And I said, sure I can make it next week and he said "No I mean right now." So fortunately at the time you dressed with a suit and tie to the office, so I had my suit on, I agreed and without any preparation I went for this interview. The interview went well and the following day I was offered this position.

MR. KRANTZ: Now how many years had you spent at Arnold & Porter as an associate before this time?

MR. NATHAN: Well, by this time I had been made partner. I had been at Arnold & Porter a little over six years as an associate and then I made partner, I think by the end of 1974. The interview was in 1978 so I had been a partner maybe three years I think something like that before being offered this position. It was interesting to me that a number of the partners at the firm recommended that I not take this position. They weren't focused so much on the salary disparity, the loss of income, but they said as a partner at Arnold & Porter, you should get a presidential appointment and this was not one. They said you should be the Assistant Attorney General and not a Deputy Assistant. They thought it was beneath the dignity of me and the partnership. I'm really glad that I rejected that advice. It turned out to be a seminal experience. First of all, the job itself was a terrific job and working with Phil Heymann was a great

learning experience. He has always been a great mentor from that time forward and the experiences that I got there were themselves educational and enjoyable. It also provided the basis for being able to do other things in private practice and then later in further government service. So I was very glad I rejected that advice.

MR. KRANTZ: Well there are certainly a number of interesting matters that you worked on that I'm aware of and maybe the one that most people know about is ABSCAM. Maybe you ought to start with that experience.

MR. NATHAN: Alright. To explain, when I went in as a Deputy Assistant Attorney General my responsibilities were to supervise the Organized Crime and Racketeering section of the Criminal Division, the Narcotics section, and the Appellate section. Each of them was extremely interesting and involved supervising lawyers. I reviewed proposed indictments, particularly if they were charging RICO violations that had to be approved at the Assistant Attorney level. I also handled reviews of proposed wire taps and immunity orders. So it was quite a change from what I had done. It was highly challenging. I supervised several hundred lawyers, and I was very impressed by the competence of the lawyers and their dedication to the public interest. I continue to have that view with respect to government service and government lawyers. So we had a number of undercover operations that were ongoing that we had dealt with and one of them, as you mentioned, was ABSCAM.

This began basically as a routine undercover operation to recover stolen property, securities and art work. There was a con artist who had been

convicted, a guy named Mel Weinberg, who was basically working with the government to reduce his sentence. The FBI agents developed an operation where the agents portrayed themselves as very wealthy Arab sheikhs or their representatives who had a lot of money to spend and would spend it on these stolen arts works or securities and people would come in and basically try to fence those things and then they would be arrested and prosecuted. That operation morphed into public corruption by the suggestion of one of the middle men. New Jersey had just legalized gambling in Atlantic City and the middlemen claimed that these Arabs or their agents could get a license for gambling for a casino if they paid off the right people, the casino commissioners. As it moved into the public corruption area, it got a little dicey, and Phil Heymann asked me to come in and try to coordinate the efforts. Then as we got into it, it turned out that some of these middle men said these rich Arabs are going to need the help of Congress, and so a scenario was developed where the claim was that these rich Arabs might need some day to come into the United States, when there were coups or other unrest in their native countries, and they might need legislation to authorize them being here with green cards and they were willing to pay big bucks to members of Congress for private legislation. There was a parallel scheme that involved Senator Harrison Williams who already had a hidden interest in a titanium mine, and the issue was that if they could finance the development of the titanium mine, the Senator would be able to get the product sold to the Federal Government based on his connections. So there were a whole series of

videotaped undercover operations – this was in a house in Georgetown that the FBI rented – and needless to say this was a pretty high risk operation dealing with very prominent people. There were also multiple jurisdictions involved, and my job was to make sure that we could get prosecutable cases from this, have them in the right jurisdictions, parceled out among various U.S. attorneys.

One facet of it that is interesting is originally the New Jersey U.S. Attorney's office, which was then led by Bob Del Tufo, was very supportive. We were involved with a number of Congressmen in that area, Philadelphia and New Jersey. But as the operation developed and it got deeper into Senator Harrison Williams, who had been a sponsor of Del Tufo, it got much more sensitive. At that point, the New Jersey U.S. Attorney's office started sending memos to main Justice claiming that we were engaged in entrapment and due process violations and raising all kinds of questions about this middle man Mel Weinberg. There were also allegations about another prosecutor from Brooklyn, Tom Puccio, who had very close relations with the FBI agents and concerns that the FBI agents were steering meetings into the Brooklyn U.S. attorney's jurisdiction so that they could be prosecuted in the Eastern District by the Strike Force there. I tried to keep these people separated and make sure that we could have winnable and prosecutable cases. I got memos from the New Jersey office on a couple of occasions that were very pro defense and very much against the Department that obviously would come out and be damaging to the government in the litigation. The line attorneys that

were handling the matter were fine people but I didn't think they could write memos of this caliber and I looked more closely at the memos and I saw that the bottom signature, which often represents the real writer, was a guy I had never heard of. His name was Samuel Alito [laughter]. I don't know whatever happened to him, but I suspect given his very pro prosecution views on the Supreme Court these days that he might be chagrined to see the very pro defense memos he wrote when he was in the U.S. Attorney's office when he was a young man before he became the U.S. Attorney there. Anyway, the ABSCAM was a set of public corruption cases. There were seven separate prosecutions. They were controversial at the time when the matter became public but we persevered. We got a lot of criticism, including from the courts and the commentators and certainly from the Hill, but we did secure convictions in every one of the cases and they were all affirmed on appeal. There were some interesting interactions with the Congress as a result of all this. When the story broke, one of the committees on the Senate, the Senate Ethics Committee, called Phil Heymann and me before them and demanded the production of all the information we had on these matters before the trial. Phil Heymann to his credit said we are not going to turn over these materials, including the tapes, until after this trial is over. We got a lot of grief but we persisted. It was pretty clear to us that they were looking for this information to help the defendants in the case and not really to do an investigation. We waited and after the convictions we did provide the materials to both the

House and Senate Ethics Committees. Everyone that we charged was convicted.

As Phil Heymann had told me when I first started, you will be as proud of the cases where you did not return an indictment, cases that you decline, as you are of the cases you brought. We were proud of the decisions we made not to indict certain people. We insisted as a standard, first of all, that it was clear that the people understood what was going on and they weren't mystified, that they understood in advance exactly what they were coming into and that they appeared on the record, on the videotapes to understand it, and that they actually accepted money on tape. So there were some who agreed to the proposition but didn't want to take the money at that time, and we did not bring charges against them even though they had agreed to participate. When we turned over all the materials, the ones who were convicted were expelled from Congress. We also turned over to those Committees the ones we didn't charge but explained what the background was and showed the tapes. None of them was sanctioned by the Ethics Committees of either House. Following ABSCAM, both Houses of Congress conducted an investigation of us and what we had done there. These resulted in reports in which we were exonerated and we came out looking pretty good. Legislation was introduced to reduce the use of undercover operations as they affected public officials, but none of that legislation was passed and obviously it continues to be the case that the same kinds of undercover operations that are used in organized and other kinds of crimes are available to be used in

corruption matters. The experience taught me a lot about the relations between the justice system and the Hill. Also, a lot about the defense approaches that were used in the case and about the diligence of the agents and prosecutors who pursued it.

MR. KRANTZ: There is a movie in recent years that related back to ABSCAM. Were aspects of that movie an accurate reflection of what happened there? That's my first question, my second was who played Irv Nathan?

MR. NATHAN: Yeah, that's interesting. Well there are a couple of things. The movie is called *American Hustle*, starring Bradley Cooper, Amy Adams and Jennifer Lawrence. The first thing I would say is that nobody in ABSCAM looked like either Amy Adams or Jennifer Lawrence.

MR. KRANTZ: [Laughter]. Second, the opening line of the movie is that "Some of the following is true," and that is true. Some of it was true and a lot of it was made up and exaggerated. The third thing that is interesting is Mel Weinberg, the con artist that I mentioned who was key to this, is about 90 years old and was a consultant on the movie. His role, played by Christian Bale, was a Jewish con artist who was engaged in a lot of skullduggery including taking some kickbacks. A lot of that was true. In real life, I often chastised Weinberg and demanded he cut out these shenanigans, like signing a book deal in the middle of the operation, and he did not particularly like me. In the movie, the name of the con artist was Irving, and I took it personally and I thought that that was his revenge against me in the movie. And the further revenge was that there wasn't a character who played the behind-the-scenes

prosecutor which is what I was doing at the Department. The one prosecutor who does appear in the movie who was supposedly Tom Puccio does not come off very well in the movie, so I did not think that was a fair representation of what happened from the prosecutorial perspective. Still, it was a fun movie.

MR. KRANTZ: Well it's going to be hard to top your experiences with ABSCAM but I'm sure there were other experiences you had while you were serving in this position at the Department if you want to briefly talk about them.

MR. NATHAN: Another undercover operation that I think was very important was called Operation Graylord which was in Chicago. It involved corrupt Chicago trial judges particularly in the criminal courts in Chicago who were amenable to taking bribes to dismiss cases or give very light sentences. We set up an undercover operation because we had the cooperation of a lawyer who had participated in it and had gotten into trouble. He was wired up and we created some bogus cases and the lawyer recorded on tape providing money to judges in return for dismissing the cases. We got a lot of convictions in federal courts of the corrupt state trial judges but we also got a lot of grief from the Illinois Supreme Court that was very upset that we had done this without informing the court or an appellate court about what we were doing. They even threatened to take away the law license of the U.S. Attorney Tom Sullivan in Chicago who was a great trial lawyer and was a very dedicated public servant. We had to go out and explain and promise not to do those kinds of things again without giving advance notice to the appellate courts but

it was another important experience and I think we served justice. There were other undercover operations dealing with corruption in labor unions.

We also brought a number of cases against organized crime figures and succeeded in breaking up some of those families in New York, Boston, New Orleans and elsewhere. So it was quite a full docket. In addition, I think we left some lasting items there. We were involved in drafting the Federal Principles of Prosecution. It was the first time that that had been done. It was done under Civiletti's charge. We also established the guidelines for the use of the Foreign Corrupt Practices Act which had been enacted in that time period. We drafted and published regulations dealing with searches of newspapers that came from a case out in California, and also we revised the undercover guidelines for the FBI as a result of concerns during ABSCAM and others. So there was a good legacy left from that time in that period. It was a great learning period. I also during that time, because there was a back log of cases in Miami in the U.S. Attorney's office, went down and tried a couple of criminal cases there to help them and also to get the sense of what it was like to be on the front line of criminal cases. And that was a great learning experience for me as well.

MR. KRANTZ: How many years did you serve as the Deputy Assistant Attorney General?

MR. NATHAN: I think it was about three years. I went in 1978 and stayed until there was a national mandate that I leave office with the election of Ronald Reagan.

MR. KRANTZ: [Laughter] among others. You then returned to Arnold & Porter?

MR. NATHAN: I did. I returned to Arnold & Porter after that service and began developing a white collar criminal defense practice. One of the things that I did while in the government was review all of proposed RICO prosecutions and as a result I had a pretty good knowledge of RICO. And because before I had gone in to the government, I had done a lot of private anti-trust work I knew about treble damage actions. So I developed a bit of a practice dealing with treble damage civil RICO matters. I published articles and spoke at conferences on that subject. I also at that point became the chair of the White Collar Crime subcommittee of the Criminal Justice section of the ABA and got involved in the independent counsel statute. Because another thing that had happened while I was in the Criminal Division was dealing with that statute. This was obviously just post-Watergate, and the independent counsel statute was first enacted to regularize what had been done ad hoc in Watergate. When I was at Justice, we had the very first case that was brought under that statute. It involved the Studio 54 matter with Hamilton Jordan who was accused of using cocaine there. So we were involved in the selection of the first independent counsel who was a former U.S. Attorney in the Southern District of New York – Arthur Christie – and the first issues that came up under the independent counsel statute. I thought the matter worked pretty well. He did a thorough investigation and declined to bring a prosecution and made a report to the court on what he had done and I believe the court had kept that report confidential. Because I had seen how the independent counsel statute worked, I was a proponent of it. When I was with the ABA, I was asked to draft the

amicus brief on behalf of the ABA in support of the constitutionality of the statute when it was challenged in the courts. Ultimately the Supreme Court upheld it. That was another experience that I had in the government that led to interesting experiences in private practice.

Another thing happened as a result of being in the government as it related to private practice. When I was in the government and we were dealing with ABSCAM and questions on the Hill, I met Senator Moynihan and actually debated him on the propriety of ABSCAM. He was troubled by it and the questions of entrapment. A short time later, after I had returned to Arnold & Porter, when Senator Moynihan was the Vice Chair of the Intelligence Committee, an issue came up relating to the CIA director, William Casey. There were allegations that related to him and to one of his political appointees at the CIA, and the Senate Intelligence Committee which was chaired by Barry Goldwater was going to conduct an investigation about the propriety of Casey continuing to serve as the head of the CIA. Senator Moynihan asked me to become counsel to the minority on the Senate Intelligence Committee which I did and it was another very interesting assignment. Fred Thompson was then in private practice and he was the lawyer for the Republican majority and we investigated and reached differing conclusions on William Casey. The majority prevailed and Casey remained in that position, but as a result I got to work with two young Senators on that committee. One was a new Senator from Delaware named Joe Biden. I don't know what happened to him, either. The other was Patrick Leahy who later

became Chairman of the Judiciary Committee, and they were courageous proponents of facts dealing with Casey and joined in a minority report. So that was a good experience. I did that while I was in private practice. It was another way to see the relationship between the Executive Branch and the Congress and the private bar because some of the people were represented by private individuals..

Another thing that developed because I had done the RICO matters. I was also retained by the City of New York to bring civil RICO actions against people who were violating the tax laws of New York City, failing to remit taxes on the sales of beverages, including beer and sodas. I worked to be sure that some of those companies paid damages, three times the damages they caused to the city of New York. So my government service led to a series of interesting assignments.

Another one that I had in the early days of returning to Arnold & Porter was to represent an individual named Tom Viola who was the CEO of a public company that basically removed waste. The company was accused of midnight dumping of toxic substances into the waterways of New Jersey. This wasn't a criminal case but it was a congressional matter. There was a hearing of the House Oversight Committee which was chaired by John Dingell. The main witness who was against my client, had a bag over his head and his voice was garbled so that you couldn't identify who it was. He made these charges and we were supposed to defend Tom. I met with Chairman Dingell and said when this happens under your rules you are

supposed to give this person an opportunity to come in and defend himself. Dingell complied with the rules of the committee and he gave us that opportunity and he was very fair with us. We utilized a public speaking coach, and my client did very well in defending those charges. There weren't any criminal charges that resulted, but unfortunately, as a result of those allegations, Tom lost his job. The board of directors fired him, and we represented him with connection to that matter as well. And we negotiated a very good severance package for him. So there were a lot of interesting matters in that timeframe.

MR. KRANTZ: Well I would say, Irv. A lot of people feel that being a partner in a big law firm can be tedious and boring work, but what you were doing during this time period was certainly far from that.

MR. NATHAN: Yes, I was very lucky. There is no question about that. I had a good run at Arnold & Porter from the early 1980s until about 1993. Another case that I handled in that time that did get some publicity and was interesting and revealing to me. I represented a partner in a law firm that was heavily involved in a savings and loan in Florida. The lawyer was a partner and then he became the inside counsel at the savings and loan which had gone belly up. The prosecutor in the Miami Strike Force brought charges. First he brought charges against the executives of the savings and loan and in that case he claimed that the executives had gotten good legal advice but they had rejected that legal advice and engaged in improprieties causing depositors to lose money. So they prosecuted the executives and in that trial the prosecutors

claimed the lawyers were good guys who had given good legal advice. After the convictions of the executives, in order to reduce their sentences, the executives, one in particular, claimed that the lawyers were in cahoots and they changed their story. The same prosecutor now proposed criminal charges against the lawyers. My client was one of them and was the main lawyer involved. This lawyer had been granted immunity in connection with the first trial but now he was being prosecuted even though he was essentially saying the same things now that he had said earlier. I urged Justice not to allow the charges to go forward, but my request was turned down and they brought charges. The first thing I did – and this was all reported in a book called *Main Justice* by Jim McGee and co-author Brian Duffy – was to fly to Miami where he was going to be charged and sued to enjoin the indictment on the ground that it was a breach of contract, a breach of the immunity agreement. I argued that he had lived up to his agreement but the government had not. The judge took it under advisement but rejected our claim. We had a lengthy hearing and then the court allowed the indictment to go forward. In the middle of that proceeding, by the way, when President Clinton was elected and Phil Heymann was asked to be the Deputy Attorney General, he called me and asked if I would come back and be his top assistant. I said this was an inopportune time because I was now handling a case against the government and making arguments that the Department of Justice had improperly handled this matter. I said I would get back to him when the proceeding was over. I went back into the courtroom and advised the court that I had had this call

from the DOJ, and the prosecutor said that I should be recused, that I should be taken off this case, because now I wasn't going to be a diligent lawyer for my client because I was going to seek favor with the DOJ for a job. I made it clear that I had not initiated this call and it was the DOJ that was conflicted and I suggested that this prosecutor should be recused and the case should be tried by another department like the Department of Agriculture. Anyway, the judge calmed things down and asked my client if he was satisfied with his representation and he was and we went forward.

After the hearing I went back in to the Department of Justice, but that stint only lasted a little over a year, and when I returned to private practice, I resumed my representation of this lawyer and got back in time to try the case. At the trial, there were 14 counts and my client was convicted on 1 count, acquitted on 13 counts and convicted on the 1 count. We then filed a post-trial motion to renew our previous claim that there had been a breach of the immunity agreement because the trial had proved exactly what my client had said when he was immunized. This time the court agreed and threw out the one conviction on the ground that the government had violated the immunity agreement by bringing this case and he continued as a practicing lawyer in Miami. My client was a religious Christian and a deacon in his church, which supported him throughout. After his acquittal, they threw a celebration party in Florida, claiming that God had sent a Jewish lawyer done from D.C. to save their deacon.

MR. KRANTZ: Well clearly you had a good second stint at Arnold & Porter. You mentioned that you did go to work again for the Department of Justice. Tell us about that.

MR. NATHAN: I did.

MR. KRANTZ: What year was that?

MR. NATHAN: It was 1993-94. It was near the beginning of the Clinton administration, I went in with Phil Heymann to be his principal associate when he was Deputy Attorney General. I was called the Principal Associate Deputy Attorney General or PADAG.

MR. KRANTZ: Okay. I think at this point we are going to stop what has been an interesting session. We'll resume with your experiences in your second stint at Justice next time.