

ORAL HISTORY OF ROBERT H. KAPP

This is the first interview session of Robert Kapp on behalf of the Oral History Project of the U.S. Circuit Court of the District of Columbia. The interviewer is Irv Nathan. The interview is being conducted at Mr. Kapp's apartment in Chevy Chase Maryland on Monday, March 13, 2017 at 3:00 p.m.

MR. NATHAN: Today I hope to cover your family roots, your childhood and schooling and your decision to go to law school. Subsequent interviews will cover the phases of your legal career.

So, Bob, could you please tell us about your family history?

Mr. KAPP: Yes. I was born in Chicago, Illinois on March 9, 1934. My mother was Gladys Harris and my father was Ben Kapp. My father was a graduate of Purdue University where he attended the Pharmacy School and he had a lifelong career as a pharmacist in Chicago. He worked there with his brother Sol who was his partner. My mother was a home maker. She worked for a short while after she graduated college as a secretary. But then, after her marriage, she confined herself to homemaking. She was a graduate of Northwestern University in 1923 which was something of an accomplishment because she was a Jewish woman in an era where Northwestern had a very strict Jewish quota. They also had a fairly limited number of women as students. My grandparents on both sides were born in Lithuania near the town of Vilnius and they immigrated to the United States toward the end of the 19th century. And I think, at least in my mother's father's case, he emigrated because he was subject to the

draft in Russia. Lithuania at various different times was part of Poland and part of Russia. Whenever, as a child, I asked my mother where her parents were from she always said Rush-Poland and that was a fairly accurate description. Her father Louis Harris was a haberdasher in Chicago and was reasonably prosperous at that. He, I think, purchased the first automobile in his neighborhood and he also got some of his children to university. My grandfather on my father's side was really never gainfully employed, at least during the period that I knew him. He basically spent his entire time in the synagogue in Chicago making up a minyan from day to day and his wife Sarah was also a homemaker.

MR. NATHAN: How did your father afford to go to Purdue?

MR. KAPP: My father worked for a number of years while he was in high school at the Chicago Public Library and his income was used principally to support his family. He at one time told me that in his first year at Purdue he lived in a room in the dormitories but never paid rent. He was sort of a . . .

MR. NATHAN: Squatter?

MR. KAPP: Exactly, a squatter. I think that is probably pretty accurate. And in those days, I think, university admission, tuition and so forth were pretty nominal.

MR. NATHAN: And given this background where there was some money on your

mother's side but not on your father's side, how would you describe your own upbringing? Was it a privileged one or one that was more modest?

MR. KAPP: It was clearly a modest upbringing, not privileged. We lived in what I would call a middle class neighborhood in Chicago. My father, although he had a reasonably successful pharmacy in Chicago, never made a great deal of money at it. We were always comfortable but I never felt myself very privileged. I worked much of the time that I was in Chicago. Although that may not have been absolutely necessary.

MR. NATHAN: Tell us a little bit about your schooling. Did you go to public schools?

MR. KAPP: I went entirely to public schools. There was an elementary school in my neighborhood in Chicago, the Stone School, which ran from kindergarten through eighth grade. I attended that public school my entire elementary school life. After I graduated, I went to a large public high school in Chicago, Senn High School, which was not a particularly good school. In fact, I would say it was a pretty poor school academically. And when I finished high school I attended the University of Pennsylvania in Philadelphia. I was in the Wharton School there where I majored in accounting but spent a fair amount of time in the College taking mostly classes in literature and history.

Then, following graduation from the University of Pennsylvania, I attended Michigan Law School. That's where I graduated from.

MR. NATHAN: All right. I want to go back to childhood. First of all, did you have siblings?

MR. KAPP: I have one sister, Lois, who followed the same pattern in terms of elementary and high school education, also in public schools. And then, when she graduated, she went to the University of Michigan where she spent about two and a half years. She met the man who was to become her husband at Michigan. He was moving back to Chicago to go to medical school at Northwestern and so Lois transferred to Northwestern University. She lives in New York in Manhattan. She, for a number of years, lived here in Washington and worked basically as a social worker. She has not been employed since moving to New York.

MR. NATHAN: Have you been close to her?

MR. KAPP: I would say we are reasonably close. We're in contact with one another on a regular basis but, except for the period in which she lived here in Washington, we have never lived in the same city. We have kept in contact. I wouldn't say we were exceptionally close.

MR. NATHAN: I wanted to ask you about your memories of childhood. Were there things that occurred that were memorable that maybe played a part in your later career?

MR. KAPP: It's interesting. I remember one experience that I had when I was in elementary school. We had a careers program and were asked to select three careers that you thought you might like to follow. My first choice was chemist. And then I think after that it was pharmacist and then finally, the third choice, was a lawyer. The teacher had representatives of these various professions visit our school to speak to our classroom. And I remember that I thought the lawyer was pretty much a bag of wind and that I was not at all interested in pursuing the legal profession. But, by the time I finished college my mind had changed.

MR. NATHAN: Were the chemist and pharmacist impressive?

MR. KAPP: They were more impressive than the lawyer. That was pretty sad. The other thing in childhood that I remember that affected the equation, always in somewhat surprising direction, was when I started to express an interest in law school my father was extremely discouraging. He had encouraged me to study accounting. His point of view was so much affected by his depression experience. He thought accounting was an extremely secure profession. And he always talked about lawyers as – he said, well during the Depression they ended up selling apples on the streets of Chicago. That was a bit of hyperbole but I think it did express his preferences. Those are two things I recall.

MR. NATHAN: And how about in school, what's your recollection of your school experience, both in high school and in elementary school?

MR. KAPP: My elementary school experience was quite positive. I had good teachers who encouraged the students. When I got to high school, the high school was academically quite poor. I think about my junior year when we were assigned a topic to select a biography and write an essay about the biography or a review of the biography. I didn't select Abraham Lincoln or Thomas Edison or Jefferson or Franklin Roosevelt, anybody of stature. I selected Wingy Manone, a one-arm trumpet player. The thing that I always think back on is why didn't that teacher try to move me in another direction. But she didn't and that I think reflected some on the academic quality of the high school. I enjoyed my high school years but academically, as I look back, they were pretty poor.

MR. NATHAN: Why did you choose the one-arm trumpet player?

MR. KAPP: I have no idea. I assumed that I saw it on the bookshelf somewhere and pulled it out. It was a biography.

MR. NATHAN: What kind of things did you read when you were a child in high school?

MR. KAPP: In the seventh or eighth grade of elementary school a young man, whose name was Jerry Dashe, moved into our neighborhood. His father had owned a book store in Chicago and then had gone into the

printing business. Jerry was a year older than I was and he was already a quite serious reader and he influenced and encouraged me. His interest was mostly in American literature and he introduced me to Hemmingway and Faulkner and John Dos Passos and a whole group of writers of that stature. The habit that was formed at that time has continued pretty much throughout my life. My father was a pretty serious reader but it was always non-fiction. He read frequently just directly out of the Encyclopedia Britannica but had a knowledge of fiction which I don't know exactly where he acquired it. He always had comments to make about my book selection and they were accurate but he never, at least in his later years, read fiction at all.

MR. NATHAN: You mean he had a view on whether you should read fiction?

MR. KAPP: No. He knew about the various authors and generally about what they had written.

MR. NATHAN: What activities did you pursue in high school? Did you play sports? Were you involved in drama?

MR. KAPP: I did play sports. I was not involved in drama. Surprisingly, I played freshman/sophomore football in high school where I was the kicker on the team. They would send me in typically on third down and I had the option either to kick, run, or pass. I was not very successful in any case. Then throughout my high school career I was on the

track team. My best event was the low hurdles and I was actually reasonably good at that. I also did the high jump and ran some relays.

MR. NATHAN: Did you participate in the debate team?

MR. KAPP: I did not.

MR. NATHAN: Did you travel at all when you were a child?

MR. KAPP: I did travel a fair amount. During part of the time, during the war, there was gas rationing and during that period we didn't travel all that much. But I do remember a number of trips that we took. We went from Chicago to Mammoth Cave Kentucky and visited it. We went to Detroit and visited the Ford plant there. My father and I took a train to Denver at one point and he rented a car and we drove up to Pike's Peak. It was, I think, the spring of the year, I was somewhat shocked to find that when we got two thirds of the way up the mountain it was snowing. During the summers we went to various places in Wisconsin. We went to a resort in Elkhart Lake, Wisconsin where my aunt and uncle and cousins also vacationed. We did that for a number of years. Then slightly later we went to Eagle River, Wisconsin, which was essentially a fishing area but had lakes in which you could swim. It was quite a nice place and still is today. Although I have not been back there in recent years.

MR. NATHAN: Did you have some jobs over the summers in high school?

MR. KAPP: I did.

MR. NATHAN: What did you do?

MR. KAPP: For a number of years, I worked in my father's pharmacy in Chicago. What I mostly did there was dust bottles that went from one end of the pharmacy to the other end. When I got to the last bottle I asked my father what I should do next and he said the bottles in the beginning are dusty again. So I would then start over and do that. So I worked there on Saturdays for a number of years. And then my uncle Herbert had a currency exchange also in Chicago. I worked with him for a number of years in essentially a bookkeeping kind of function. That was largely when I was in high school. Then I had a number of odd jobs at various different times.

MR. NATHAN: Do you think dusting bottles and bookkeeping are not odd jobs?

MR. KAPP: These were more odd jobs. I worked at a golf driving range where I shagged balls. The big thing was to be sure you didn't get hit because most of the golfers were aiming at you as far as we could tell. Then I set pins in a local bowling alley a number of times and delivered newspapers at various times while I was growing up. My father had a friend who owned a pharmacy in downtown Chicago, David Hillman. I worked for him for several years during the summer time. Then, when I was in college, the father of a friend of mine owned a paper box company in Chicago. As I was a student at the Wharton School, my friend encouraged me to come over to help

him develop a strategic plan which his father must have not taken all that seriously. Then I worked for an accounting firm during three different summers performing an audit function, also while I was in college. And I think maybe the first year of law school as well.

MR. NATHAN: Did you have hobbies as a kid?

MR. KAPP: I did.

MR. NATHAN: What were your hobbies?

MR. KAPP: My major hobby was stamp collecting. I was quite serious about that for quite some time. Then, as an adult, I gave that up and gave the stamps and albums to a nephew of mine. The other thing was as I was growing up in Chicago I never went to summer camp but I spent the entire summer at home in my neighborhood with neighborhood children. We played a number of games; Monopoly and various other board games. I had wanted to go to camp but I had an uncle who was physician and this was during the period of the polio epidemic. He believed that camps were a breeding ground for polio which probably was not true. But, he had an influence over my parents so I never did go to camp. But by the time my sister was ready to go to camp I think that either the polio epidemic had come to an end or my parents were no longer operating under the influence of my uncle. So she did go to camp.

MR. NATHAN: So I wanted to ask you about outside influences in your youth. When

you were growing up as I calculated between the time you were seven and twelve the World War II was going on. How were you influenced by either the war that was going on or the Depression which had just come to an end when you were young?

MR. KAPP: I certainly do remember the influence of the war, very much so. I remember, for example, that we had a victory garden which I worked on with my cousin in Chicago. We also had a civil defense corps and I remember periodic drills and having a white helmet marked civilian defense. Then the son of a very close neighbor of ours was killed in the war and that had a pretty significant impact. I don't know whether those things influenced my life's direction in any particular way. The Depression by then was pretty much a thing of the past.

MR. NATHAN: Did it influence your politics in any way?

MR. KAPP: My father was a lifelong Democrat and a great fan of Franklin Roosevelt. He liked Harry Truman as well. I'm sure that that had an influence on my politics. My father was quite articulate about all of that.

MR. NATHAN: What was your relationship with your dad?

MR. KAPP: My father was a very controlling figure, if you will. We had a good relationship. He was extremely interested in education and made it a point that both my sister and I take school seriously and were serious about college. In addition, he was terrific at involving himself with

my friends and talking to them about careers and education and the like. All of that was extremely positive. He was though a very, very domineering man. He had his own views about things and was not reluctant to press for them. So he certainly, in terms of some of the directions that I have taken, had a strong influence.

MR. NATHAN: I noticed that you did not travel to the East before you went to college. You didn't mention any place east of Kentucky.

MR. KAPP: We did go once to New York. When I was a junior in high school my high school made a trip to Washington. It was a week here. I was very impressed by that. The following year, my mother and father took me to Washington again for another week there. I remember visiting all the monuments and going to the FBI and to the Capitol and all that. That clearly had an influence on how I felt about coming to Washington when I graduated law school and how I felt about government service.

MR. NATHAN: How did you choose to go to Wharton?

MR. KAPP: I graduated with about 425 students in my high school class. About half of them did not go to college. Most of the other half, with maybe a dozen exceptions, went to either college in Chicago or to the University of Illinois at Champagne Urbana. But it was my father again who brought the Wharton School to my attention. I had never heard of the Wharton School or the University of Pennsylvania. My

father introduced me to that and encouraged me to send away for a catalogue. I got the catalogue and it was, I thought, quite an impressive document. I decided to apply and I was accepted and off I went. There were two other students in my class that went East to school. One girl by the name of Sue Glassman, who went to Wellesley, and ultimately married Saul Bellow and was divorced from him. The other was a woman who went to Colby College. Other than that most of the people, as I said, either didn't go to college or went locally.

MR. NATHAN: And when your dad suggested Wharton was that in connection with your becoming an accountant?

MR. KAPP: That was certainly part of his thinking. And the truth of the matter is that I did major in accounting. He thought going to a business school and studying accounting was the way to go to obtain a degree of security.

MR. NATHAN: What was your college experience like?

MR. KAPP: I had, I thought, a terrific experience at Pennsylvania. I became for the first time a quite serious student. I did work hard in academics. The other thing was that I was very active in fraternity life at college. I was the president of my college fraternity and I went to the national conventions. I was really quite seriously involved. Although I now look back at it in a very jaundiced way because I see how

undemocratic it really was back then. I certainly didn't realize that at the time.

MR. NATHAN: What fraternity were you in?

MR. KAPP: I was in Phi Epsilon Pi which was an all Jewish fraternity. In fact, the fraternities were divided into two groups. There was a group of eleven Jewish fraternities at Penn and then the rest had no Jewish members at all. There was a really clear cut division.

MR. NATHAN: Did you pledge or interview with any of the non-Jewish fraternities?

MR. KAPP: I did not.

MR. NATHAN: What activities did you pursue in college? Did you do sports again?

MR. KAPP: I played fraternity sports. I did work on the student newspaper for two years. Basically on the sports section. I had all this involvement in track in high school but I had gotten hurt in my senior year which finished off my track career. I did spend two years as the manager of the Penn track team.

MR. NATHAN: At Penn?

MR. KAPP: Yes.

MR. NATHAN: You went there as an accounting major, did you spend your whole college career as an accounting major or did you switch at some point?

MR. KAPP: I did spend my entire career there as an accounting major. But, what I found fairly soon was that the curriculum in the Wharton School at

that time was really an intense commerce and finance curriculum without a lot of room for studying other subjects. By late in my sophomore year or early junior year, I began to figure out ways of carving away from some of the commerce and finance requirements because I was increasingly interested at that point in some of the liberal arts programs at the College. I did take a number of literature courses and history courses. Although I did continue and finish off my major in accounting.

MR. NATHAN: You mentioned that your high school was not academically excellent and at Wharton I assume there were a lot of people who had been to private high schools earlier, did you think that you were prepared for it or did you have any concerns about that?

MR. KAPP: When I arrived at Penn I found that most of the students in my first year class were graduates of either boarding schools, prep schools, or private high schools of various kinds and I did feel that I was way behind. I had particular limitations in terms of writing ability. I remember getting my first English essay back and getting a D+ on it. I felt very much behind that first semester but as things started to evolve I found that by the time I got to my second semester there I thought I had pretty much caught up. In fact, I really started doing quite well.

MR. NATHAN: What was it in college that led you to think about law school?

Especially when you had that windy guy as your role model...

MR. KAPP: I think what happened to me, which I think is what happens to a lot of college graduates, was trying to figure out what to do and not knowing exactly what I was going to do. In some respects, as I look back, I think going to law school was something of a default direction. It seemed interesting and all to me but I didn't go into college thinking I was going to work hard and see if I could get into law school I just wasn't going in that direction at all at that time. But, as I say, I think in the end it was pretty much a default option.

MR. NATHAN: And how did you pick Michigan?

MR. KAPP: I had something of a feeling that I wanted to go back to the Midwest. I did not want to stay in the East.

MR. NATHAN: Why was that?

MR. KAPP: I think by that time I had soured a bit on Eastern life, if you will. There is a difference, I think, between the East and the Midwest in terms of elitism and so forth. I applied at the beginning only to Midwestern law schools Illinois, Wisconsin, Northwestern and Michigan.

MR. NATHAN: Was there something about Philadelphia, life in Philadelphia that did not please you?

MR. KAPP: I think there was a certain amount of elitism that I perceived.

MR. NATHAN: Was that in the faculty or in the community?

MR. KAPP: Among the student body, mostly. Ultimately, I was accepted at Harvard. I had been deferred and my father encouraged me to go at that point. But, I did have a scholarship at Michigan and I was interested in going back to the Midwest. That's sort of what happened.

MR. NATHAN: What made Michigan stand out from the other Midwest law schools?

MR. KAPP: Among the major law schools in the Midwest I think Michigan ranked among the highest, probably the highest. The other two law schools in the Midwest that had outstanding reputations were Northwestern and Chicago.

MR. NATHAN: Did you apply to those?

MR. KAPP: I applied to Northwestern. I was accepted at Northwestern but I went to Michigan.

MR. NATHAN: What were your experiences in law school?

MR. KAPP: Law school for me was an extremely positive experience. I really liked the curriculum. I worked very hard. I did quite well. I had first thought when I started that my major interest would be in tax because that was a normal outgrowth of accounting. But I got interested at that time in other things as well; constitutional law and so forth for one. That was a great experience for me. I met my lovely wife there. Michigan was a great change in one particular respect. Penn and the Wharton School was basically an all men's school. There was a

small college for women at that time at Pennsylvania. It was very hard to have a normal social life there. The whole social life was patterned on having three or four big weekends a year and importing dates in if you will. Then when I got to Michigan it was a wonderful place with a lot of lovely women. From a social standpoint, I was quite a bit happier.

MR. NATHAN: You're referring to the university not necessarily the law school?

MR. KAPP: No. The entire university

MR. NATHAN: I assume there weren't that many women in law school

MR. KAPP: No there weren't. In my law school class there were two women out of a class of 325.

MR. NATHAN: You mentioned Jean, your wonderful wife, what was she doing in Michigan?

MR. KAPP: Jean was in the liberal arts and science (LS&A) program at Michigan. When I got there Jean was a sophomore and we began seeing one another in her junior year which was my second year.

MR. NATHAN: Wait I thought you met her at Michigan?

MR. KAPP: Yes, my second year of law school. We dated throughout my second year there. Then we both went to Europe between my second and third year of law school and became engaged and were married after my senior year. Jean had stayed on for an additional semester to get an education certificate. That was it.

MR. NATHAN: How long have you guys been married?

MR. KAPP: We will have been married 59 years in June.

MR. NATHAN: That's amazing. How many children do you have?

MR. KAPP: We have four children. A son Steve who lives in Philadelphia and is a hedge fund manager. We have a daughter, Lisa, who lives in Brooklyn Heights. She's a high school and middle school teacher. I have a son Jon who is a lawyer and works in the general counsel's office of General Dynamics. I have a daughter Diana who's a freelance writer.

MR. NATHAN: How many grandchildren?

MR. KAPP: We have ten grandchildren.

MR. NATHAN: Let's talk about law school where you said you had a very good experience. Were there particular influences in law school that led to your later career?

MR. KAPP: There were. There were two professors particularly who had a major influence on me. L. Hart Wright who was a tax professor. I took three or four different courses from him and had a really strong relationship with him. He was an outstanding professor. He cemented my interest in tax law. The other was a professor S. Chesterfield Oppenheimer who was an antitrust professor and who had served in the Department of Justice and at various other government posts over the years. It was his ultimate influence that

led me to come to Washington and to work in the Department of Justice.

MR. NATHAN: Because of the antitrust connection?

MR. KAPP: I had to give two possible divisions of Justice as preferences after I was interviewed; one was the Tax Division and the other was the Antitrust Division. They assigned me to the Tax Division. I would have gone either way at that time.

MR. NATHAN: It could have made a big difference in your career

MR. KAPP: It might have made a big difference

MR. NATHAN: One of the professors was a tax professor who was an influence?

MR. KAPP: Yes.

MR. NATHAN: When you were at school were you on the Law Review?

MR. KAPP: I was on the Law Review. I was admitted to the law review after my first year. After my second year, I became part of the four or five people who were described as the upper staff of the Law Review.

MR. NATHAN: On the editorial board?

MR. KAPP: On the editorial board. I spent an enormous amount of time on the Law Review, particularly in my senior year. In my second year, mostly it was a matter of writing a law review note.

MR. NATHAN: What did you write your note on?

MR. KAPP: I wrote my note on – it was an antitrust note – I forget the details of it. It had something to do with defining the market I think. At that

time I was still interested to some extent in antitrust law.

MR. NATHAN: Before you graduated what was the policy back then, did you intern at a law firm during the time you were at the law school?

MR. KAPP: I did not. It generally was not the practice in the way it is today. Today, most law students between their second and third year intern at a law firm. Almost everyone goes to work in a law firm during that summer. That was not the case at all when I was in law school. In fact, as I mentioned before, in the summer between my second and third year of law school I traveled in Europe for 11 weeks. I never really thought at all about doing anything that was legally oriented during the summer.

MR. NATHAN: Did you have jobs when you were in college?

MR. KAPP: I did have a couple of jobs. At one point I ran a laundry service from my fraternity house. I collected the laundry of various people in my fraternity house, took it down to the laundry and then returned it to them. That was one thing. In undergraduate school, in two different years, I waited on tables in my fraternity house.

MR. NATHAN: What year did you graduate from Michigan?

MR. KAPP: I graduated from Michigan in 1958

MR. NATHAN: When you were thinking about a first job did you think of others besides the Department of Justice?

MR. KAPP: I did. I interviewed a number of law firms in New York and Chicago.

I pretty early on came to the conclusion that there was a real bar among the major firms for Jewish lawyers.

MR. NATHAN: A bar meaning a prohibition?

MR. KAPP: A prohibition, yes.

MR. NATHAN: Not a group of lawyers?

MR. KAPP: Not a group of lawyers, no. There just really was not very much open. There were law firms that you could go to but just not very many and most of the really prominent ones had a prohibition as you say. When I did interview, the Department of Justice sent the Assistant Attorney General for the Lands Division, to interview people at law school. I was very enthusiastic about it and that kind of played into the early interest that I had in Washington.

MR. NATHAN: When you were thinking about either a law firm or Justice did you have a long range goal in mind as to what you would do in the practice of law?

MR. KAPP: I really did not have a long range view. I certainly thought by the time I got into the Department of Justice that I would likely try to pursue a career as a tax lawyer. I didn't expect to stay in Washington. Jean and I both had some interest in San Francisco. I had some interest in Chicago. Jean did not share that. And certainly, as time went on, I thought if there was an opportunity in Washington that I'd very much like to pursue it.

MR. NATHAN: You mean in private practice in tax?

MR. KAPP: In private practice, yes. After about three years in Justice I did join what was then Hogan & Hartson.

MR. NATHAN: As you were growing up had the thought of public service been on your mind which maybe led to the Department of Justice?

MR. KAPP: I think not particularly. As I look back from college, I had not awakened yet to the broader social problems in the country and in the world. I had very conventional kinds of attitudes. I wasn't particularly interested at that time in politics or government. There were some things that happened later on that changed my direction very significantly. But certainly in my college years I was not yet awake I don't think.

MR. NATHAN: Why don't we leave it here and next time we'll take up starting at the Department of Justice and what your career was like at that point.

MR. KAPP: Ok.