

Oral History of Abe Krash
Second Interview
August 13, 2013

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is Abe Krash, Esquire, and the interviewer is Stuart Pierson, Esquire. The interview took place on August 13, 2013. This is the second interview.

Mr. Pierson: It is August 13, 2013 and we are again in the conference room of Arnold & Porter, LLP. Abe Krash and Stuart Pierson continuing in the second interview about Abe's life in law, and Abe will describe four things he wants to address. You're on.

Mr. Krash: Yes, I thought Stu that that it might be worthwhile in going forward to talk first about my experience at the University of Chicago Law School; second, my experience as a graduate student at the Yale Law School; third, my two years in practice here in Washington, DC with Raoul Berger and then, fourth my coming to Arnold, Fortas & Porter in March of 1953.

In reflecting about our first interview, I should emphasize two things I feel greatly influenced my life. One was the depression. I was a young person growing up in Cheyenne, Wyoming during the Depression. It very significantly affected my life, no doubt about it, in terms of my father's struggle to make a living. It was a tough time.

Mr. Pierson: Was he a merchant?

Mr. Krash: He was a rabbi. It was a tough period economically. Second, the other event which greatly affected my life was World War II. When World War II broke out

in 1941, I was 14 years old. I lived during the War years in Cheyenne, Wyoming. As I discussed with you in our first interview, the war greatly affected a lot of things. Those two events really profoundly influenced my life. We stopped in our last interview at the point where I graduated from the University of Chicago College in June of 1946. Then I took the summer off, and I entered the University of Chicago Law School in the fall of 1946. I was 19 years old.

Mr. Pierson: You mentioned in our last interview that you were by comparison to many of the students, immature and not having much experience.

Mr. Krash: Very much so, and I realized it then, and I realize it in looking back and thinking about it now much more so. The entering class consisted of about 125 students. Nearly all of them were men. There were, I believe, half a dozen women in my class at the University of Chicago Law School. The law school admitted women decades before, so it was not unusual that women went there. There were only a few African American students in the class. In the class of 125, the vast majority were veterans. They were men who were returning from their service in World War II. They were four or five years older than I was. Many of them had gone to four year colleges, whereas I had only gone two years to college. A number of them were married. So they were much more mature than I was. They were very anxious to complete their education and go forward with their lives and careers. I was very much aware of the fact that many of them were older than I was. There were a few younger men, like me, who came from the college at Chicago but only a small number, a very small number. The University of Chicago Law School building at that time was on what are called the Quadrangles. It was right

in the heart of the University buildings. It was an old building. The law school curriculum was in large part mandatory. It was prescribed for us during the first two years. You pretty much had to take what you were assigned to take except that during the third year you had a little more freedom to do what you wanted. As I said earlier, I had gone to law school under the conception that it was a place to get an advanced liberal education. I had no idea of being a lawyer. The first class which I had remains vivid in my mind after more than 65 years. It was a course called Elements of the Law. It was taught by Edward Levi, who was one of most remarkable teachers I met during my lifetime. The Elements course was an introduction to law. It consisted of our reading papers by Plato, Aristotle and by other philosophers, on the nature of justice, and we also had various cases and materials relating to the relationship between a legislature and the judiciary dealing with the difference between making law and interpreting the law. I'll take a minute or two to talk about Levi, because as I said he was one of the most exceptional men I have known during my lifetime. When I knew him first as a young professor in 1946, he was about 35 years old. He subsequently became Dean of the University of Chicago Law School and thereafter the President of the University of Chicago. In the mid-1970's, he was appointed by the Ford Administration as Attorney General. He was a brilliant person. Apart from being very well educated, he was an absolutely marvelous Socratic Method teacher. He was very quick witted and incisive in the way that he taught the class. He was impatient with foolish or ridiculous answers. He was very much interested in teaching, and he taught extremely well. His classes crackled with intellectual excitement. People were on the edge of their seats, and I felt I

learned a lot. He also subsequently taught the antitrust course that I took in my third year. He had been an Assistant to Thurman Arnold in the antitrust division in the late 1930s and early 1940s. He later wrote that Arnold had a profound influence on him, Levi was one of the pioneers in teaching Law and Economics. He taught the antitrust course together with an economist, whose name was Aaron Director, a very well-known economist. Director would gently chide Levi and disagree with him about various things that Levi was saying. But they agreed on many things also, especially about cartels. There was an amusing episode involving Levi and me that I have always remembered. After we took our exams, it was the practice in the law school that our grades would be posted on a bulletin board near the Dean's office. As students each of us had a number, such as number 52, and you could tell what your grade was. They were publicly posted by number, not by name. At any rate, I ran into Levi one day in the lobby several weeks after the antitrust exam, and he said to me. "A terrible thing has happened, Mr. Krash. I have lost your exam, paper. I can't find it." For once, I had my wits about me and I said, "Oh that's too bad because, it is one of the best exam papers I have written since I have been in Law School." I remember that Levi didn't say a word, he just looked at me for a moment, smiled and walked off. A few days later the grades were posted, and I got a high grade. I must say, 65 years later, I am by no means confident that he found my paper, or whether he gave me a grade based on my reply to him at that moment standing in the lobby of the law school. He probably found it. I just don't know. Another person who influenced me was the Dean of the Law School, Wilbur Katz. He taught the course in corporations that we were all required to take in the second year of law

school. The corporations course began with a required introduction of about six weeks in accounting. We were expected to get an introduction to accounting, and I must say I kind of dreaded that idea. I didn't look forward to it all. I wasn't particularly interested in it. What I came to appreciate was what a marvelous teacher Katz was. He was just superlative in his clarity and analysis and in making accounting really interesting. I became very absorbed and interested in the subject when he gave his presentation. In my early years at Arnold, Fortas & Porter, we had a case where it was essential to cross examine an accountant. They wanted to know whether I could do that. I said, I've taken accounting and I think I can talk to accountants; I knew the lingo. I knew what a P and L statement was, and what a balance sheet was. And so I was asked to do the cross-examination of the other side's accountant. I did it mainly because I had learned enough of accounting from Katz's course. I'm very far from being an accountant, but I did have an understanding of the fundamentals of accounting.

Mr. Pierson: Was that in the court room that you did the cross-examination?

Mr. Krash: I did this in the court room, the cross-examination.

Mr. Pierson: Was it here in DC?

Mr. Krash: I think it was in New York, as I recall. That experience left me with a lifelong conviction that every student in law should be required to take accounting. Accounting should be an element of a law school education. Every law student should be required to take the fundamentals of accounting and know what a P and L statement is, and what a balance sheet is and be able to talk to accountants and understand the basic ideas of accounting. I think it is really invaluable. It is

the language of business, and it is essential to an understanding of corporation and taxation law. Another professor who influenced my life was Harry Kalven. In the first year of Law School, I was required to take a course in writing. Kalven was a young professor, and I was assigned to his group. He was a very nice and helpful person. I got to know him a little bit. He subsequently became an eminent authority on Freedom of Speech and the First Amendment. He wrote a book that was published after he died in the mid-1970s, regrettably very young. The book was entitled *A Worthy Tradition Freedom of Speech in America*. It is a classic in the literature of the First Amendment. Kalven was a professor who was very helpful to me. Another professor whom I had great regard for was Walter Blum. He taught taxation, bankruptcy and reorganization courses. He was a born teacher. He was a very gifted, Socratic- method teacher. His classes too were intellectually exciting. He was an excellent teacher. Another professor who influenced me was Professor Sheldon Tefft, who taught Property and Civil Procedure, and whom I liked. I thought he was a very good teacher. Apart from Edward Levi, who greatly influenced me, my lifelong thinking about law was influenced by Professor William Winslow Crosskey. He came to Chicago as a professor in the early 1930s. He was a student at the Yale Law School in the mid-20s where he was a student of legendary brilliance. He became the law clerk to Chief Justice Taft after graduating from Law School. He left the clerkship to join the Wall Street law firm of Davis Polk where he was a special assistant working with John W. Davis, who had been the Solicitor General and in 1924 the Democratic Party candidate for President. Davis reportedly said that Crosskey possessed the best legal mind he had ever

encountered. Around 1935, he left the Davis Polk firm to accept a position as Professor at the University of Chicago Law School. Crosskey was fascinated by the arguments that were being made against the Federal Government's power to regulate securities. Some people were saying Congress did not have the authority to do this. Crosskey began researching the original understanding of the Commerce clause, and to make a long story short, he spent twenty years in researching the original understanding of the Constitution. In 1953, he published a book. There were two volumes entitled *Politics and the Constitution*. Crosskey was both a historian and a lawyer. He was a genius in terms of his powers of analysis, originality, and his ability to assimilate enormous masses of material. The book he wrote, *Politics and the Constitution*, created a furor when it came out. Some persons said it was among the best books ever written in American Law, but others denounced the book. Crosskey in my time was regarded with awe by the students and faculty in Chicago. He was enormously respected. Crosskey sought to determine the original understanding of the constitution, that is, how it was understood by intelligent, informed persons at the time the document was written and ratified in 1787 and 1788. He felt it was essential to understand the word usage and language during the colonial period. For example, how did people understand the term "commerce?" In order to determine that understanding, he travelled to libraries throughout the country studying collections of colonial period documents such as newspapers, pamphlets, and correspondence. One of Crosskey's basic points was that the powers vested in Congress by the Constitution "to regulate commerce among the several states" was a power to regulate all gainful activity among the people

of the United States. That is to say, the word "states" was understood in a multitudinal sense. That usage is still common today as when we speak of the "state" of France we mean the people of France. The word "Commerce," he insisted, covered all gainful activities. Crosskey maintained that the founding fathers intended to establish a national government that was fully empowered to achieve all of the objectives recited in the preamble. The states were to occupy a subordinate role. The conventional view is that the various powers of Congress enumerated in Article I, Section 8 were designed to distinguish the powers of the national government from those of the state governments. Crosskey rejected that view. He explained that some of the powers were enumerated because they were executive powers exercised by the King of England, and the draftsmen of the constitution wanted to transfer those powers to the legislative branch, that is to Congress. Other powers were enumerated because they had been enumerated in the Articles of Constitution. Further powers were enumerated to express a limitation of Congressional power, for example the power to pass uniform laws of naturalization and uniform laws with respect to bankruptcies. Crosskey also thought that the Fourteenth Amendment was designed to make all of the limitations set out in the Bill of Rights which previously applied only to the National government, applicable to the states. That was also the view of Justice Hugo Black. His classes were absolutely fascinating to me. He was unlike Edward Levi, who was a Socratic-method teacher. Crosskey lectured, telling us about the research he was doing. I remember vividly the first day of his class in the summer of 1945, a course in American Legal History. He began by saying to the class, "You have all been brought up to believe that James Madison is the

father of the Constitution, that Oliver Wendell Holmes was a great jurist, and that Louis Brandeis knew a lot about Federal jurisdiction.” He said, "Before we finish, I will demonstrate to you that Madison forged some of his notes and rewrote them to conform with his political ideas." Crosskey went on to say that Holmes was a great figure but he was ignorant about a lot of things about American Constitutional law and that was equally true of Brandeis. Holmes and Brandeis were demigods to me. What was important, I think, for a young student was Crosskey's anti-authoritarianism. That is to say, he would challenge the ideas of people we accepted as axiomatic. You have to remember that in the 1940s when I went to law school, Holmes was a revered figure as was Brandeis. I must say, to this day, I have enormous regard for both of them. But Crosskey forced us to think through and challenge their arguments and question them. His book came out in 1952 and there were some people who said it was one of the great books of American Law. It was very harshly criticized by Henry Hart, who was a distinguished professor at Harvard and his colleague, Ernest Brown, and by a professor at Columbia named Julius Goebel, They denounced the book harshly. Crosskey's work was enormously controversial. It slipped into obscurity which is beyond the scope of what we're talking about. I think that occurred, in part, because he had no disciples who came along and carried on his work. He was a solo figure, and his work was radical and revolutionary and it startled people. By the 1950s, the Supreme Court indirectly had come pretty much to the same conclusion about the commerce power that Crosskey did. The timelines of his central theme had lost some of its force. Crosskey not only taught law but history as well. He was kind of a gruff person personally, however, I got to

know him a little bit. He was really a very kindly person, and I grew to like him a great deal. When his book came out, I wrote an article for *The University of Chicago Law Review* summarizing his ideas; that was one of the first law review articles I wrote. He died in the mid-60s, and after he died, a person who had been a student of his, put together a third volume of his work which described the events in the American Colonies beginning with agitation against Great Britain in the 1760s and continuing up to the Constitutional Convention in 1787. It is a history of the events in the colonies that led to the Constitutional Convention. When this volume came out in the 1980s, I wrote a long book review for *The Yale Law Journal* called *The Legacy of William Crosskey*, where I discussed what his ideas were and why his ideas were not accepted. I also wrote an article about Crosskey for the *Record*, an alumni magazine. I have retained a lifelong interest in his work. I teach Constitutional Law in Georgetown and I go back and reread some of the things he wrote. Some of his insights are still very significant and interesting. I've never gotten over it. I am afraid that I have spoken at too great a length about Crosskey. I was fascinated by his work, and he greatly influenced my thinking. He is one of the foremost figures in the law whom I ever encountered.

Mr. Pierson: Did you carry on a personal contact with him after you got out of law school?

Mr. Krash: Not very much. He came to Washington, and he taught at Howard for a semester, and at that time I did see him and talk with him. I regret that I didn't know a lot more. I just didn't know enough then. I wish I could have talked with him with what I now know about his ideas, because he was so interesting,

challenging and provocative. The answer is I did not really keep contact with him very much personally. No, I did not.

Mr. Pierson: Did you receive comments from him when you wrote your first article?

Mr. Krash: I don't recall that I did. I have the two volumes in wrote in 1953. He inscribed them to me, but I don't think he ever said anything to me. I got very nice comments later from various people about the *Yale Law Journal* review. Interestingly enough, some people who now write about the Commerce clause agree with him to some extent. They don't agree with his point that the power to regulate Commerce among the several states is a power to regulate all the gainful activity among the people of the United States, but they agree that his notion of the scope of the Commerce power was probably correct. He was cited once by Justice Thomas in an opinion, but he is rarely cited today. Justice Scalia, who is also an originalist, doesn't cite him, but Justice Scalia would not accept Crosskey's ideas. His ideas are antithetical to those of Justice Scalia. Someone who wanted to challenge the originalist ideas of Justice Scalia might rely on Crosskey as an alternative understanding.

Mr. Pierson An outsider.

Mr. Krash: Even at the University of Chicago, where he was such a pillar in his time, at present, they don't pay a great deal of attention to him. I know from talking to various Chicago professors they don't even know about him, or they know very little about him. His work takes a good deal of effort to read. You can't just skip over it. It is very tightly written, but it is enormously interesting. I would say that the two people at the Chicago Law School who mostly influenced me were

Levi and Crosskey, though I did learn a lot from a number of other people, such as Katz and Kalven and Blum. The faculty was relatively small. It is much bigger now than it was then. The University of Chicago had a great tradition of good teaching. Most of the classes were well taught. There was a great effort to organize classes effectively and to teach them well. At the end of the first year, persons at certain level of grades, were selected to be a candidate for the Law Review, and I was selected to participate with the idea that I would write notes on a case, and I did that. In my third, year I was one of the editors of the Law Review. The Editor in Chief of the Law Review in my time was a man by the name of Milton Shadur, who was the outstanding student in our class. Later he became and still is a judge on the United States District Court in Chicago. I count him as one of the most able lawyers I ever knew. He is an exceptionally capable person. We have remained friends though I rarely see him. As I explained in our first session, if you were a graduate from the University of Chicago College, as I was, graduating after two years, the University of Chicago Law School required that you go to law school for four years as opposed to three years. The veteran who came back and who had been a college student, for example, at the University of Michigan, or Tulane, or Stanford, only went to law school for three years, but I was obliged to go to law school for four years. I took courses in economics and other things. In the fourth year, I was running out of courses to take and I went to see one of the professors whose name was Max Rheinstein. He was a refugee from Germany and a very distinguished scholar. I asked him if he would give me a seminar on Roman Law. He was delighted by the idea because no one had come and approached like that. He gave me a book

by Jolowicz on Roman Law. I came to his office once a week, and we would talk. I had this seminar with him my last summer in Chicago. I know very little about Roman Law. It was a very nice experience with him because he was a European scholar and a very highly cultivated person. I made a number of friends with other students in the Law School, who have been friends for a life time, particularly during my time on the Law Review. I would say that the University of Chicago Law School during my years there was intellectually very rigorous; it had very high standards. I neglected to mention that another professor who greatly influenced me was Malcolm Sharp who taught contracts. He was a very cultured and highly- sophisticated person. I greatly enjoyed his course. The faculty was relatively small. It was probably about 20 people. One of the things at Chicago was that they were beginning to develop Economics and the law, and there was a lot of economics law ejected into our courses.

Mr. Pierson: Was there more emphasis to do that coming out of the Depression.

Mr. Krash: I think it really didn't come until after the war. The University of Chicago had a great Economics Department. Some of the people from the Economics Department were involved in the Law School, including a man by the name of Henry Simons and later Aaron Director. But there was a great openness to economics in the Law School. There was not as much interaction with the rest of the University and the Law School as I think there probably should have been. The University of Chicago had a great History Department, but none of the people in history taught in the law school. There was very little interest in my time about bringing psychiatry into criminal law. I don't know if that was done afterwards. I think the University of Chicago's attitude at that time was that that

are educating people to be practicing lawyers. At the Yale Law School, I think the emphasis was on teaching people for public service and to become law professors. The educational system of Chicago was characterized by very high standards, and it was rigorous. It was a tough place in a lot of ways.

Mr. Pierson: What were your social circumstances during the four years you were in law school?

Mr. Krash: Well, I was single and I was living in a residence hall, Burton-Judson dormitory, which is a University residence hall. I had long since given up my editorship of the Maroon. I was involved in other activities in the University; I was active in Hillel, the Jewish student organization. Many of my fellow students were married. At the end of the day they would depart, and I'd go back to the dorm where I stayed or work in the Law School's library.

Mr. Pierson: Ever go to the football, basketball games?

Mr. Krash: Yes. I was a sports writer for the Chicago Tribune, so I covered the basketball games at the University. The University of Chicago didn't have a football team at that point but they had a basketball team. I had some very close friends who were part of a fraternity. I saw a great deal of them. I also had friends in the residence hall. My social life centered around the dormitory and the residence hall. I was shy about women, and I didn't have any real girlfriends. I went out on dates with different women to various events at the University. My friends and I would go to the movies on 63rd Street. The south side of Chicago, Hyde Park, we're talking about the late 1940s, was still relatively a safe area to live in. It

became a troubled area in years subsequently. But at that time it was still a very pleasant area actually.

Mr. Pierson: So you've come to the end of the law school. What are you thinking about going into the work field?

Mr. Krash: I started Law School in 1946. I went to law school year round. I didn't take off during the summers. I went to law school continuously from 1946 to 1949 and completed the four years at Chicago in the summer of 1949.

Mr. Pierson: How did you pay your bills for law school?

Mr. Krash: Well, that's a good question, First of all, as I recall, the law school tuition was about a \$100 per quarter. There were three quarters. There was some additional small fees. I had ceased waiting tables at the residence hall. There was a synagogue in the neighborhood, where I worked at the Sunday school where I taught. I made some small money writing articles for *The Chicago Tribune*. I had a scholarship and my father was helping. I scrimped along. I didn't have to borrow money at that point. I was able to get along with my father helping me as best he could.

Mr. Pierson: So you are in the spring of 1949 and you've decided what you're going to do with your life.

Mr. Krash: During the winter of 1949, I started to think of what to do when I graduated. I had no intention of being a lawyer. I still had my eye on being a journalist. I was interested in antitrust and Eugene Rostow, a professor at the Yale, was a very distinguished antitrust guy. I was 22. I thought it would be desirable to spend a graduate year at the Yale Law School if could get in. I didn't want to practice

law in Chicago, which most of my classmates did. I began to think about what it would be like to spend another year at the university studying. I decided to apply to the Yale Law School as a graduate Fellow. I applied, and I was admitted to Yale for the term beginning in September of 1949. I went to New Haven to the Yale Law School for a year starting in September of 1949. I was at Yale for a year as a graduate student during the fall of 1949 and the winter and spring of 1950.

Mr. Pierson: What did it entail?

Mr. Krash: It didn't require anything. Some people tried to write a master's thesis or do something like that. I went to a number of classes. I was disappointed when I arrived and discovered that Eugene Rostow had taken a leave of absence for that academic year. You were invited to do whatever you wished. There were about 25 graduate fellows. Most of the graduate fellows were there with the expectation of acquiring some additional academic credentials which would be helpful to them in getting a teaching job. That's what they wanted to do. I had in my mind that I might also teach. I certainly didn't have the idea of practicing law. Many of the students lived in the Law School resident hall. That was a much nicer social atmosphere than at the University of Chicago Law School. There were some pre-fab houses at Chicago that they put up for veterans, but the law school students were scattered throughout the city, and very few of my classmates lived like I did in the residence hall. At Yale, the great majority of students lived in the residence hall. We had a dining hall where we all ate. It was a very pleasant and nice set up.

Mr. Pierson: So the professors lived there too?

Mr. Krash: Not the professors, No. The professors lived in the New Haven and in the surrounding area. Most of the students lived in the residence hall and that was an extremely nice thing. I tried to figure out what I wanted to do when and I discovered Rostow wasn't going to be there, I was kind of at a loss. I decided to go to various classes. There were two classes in particular that I found extremely rewarding. The Yale faculty was very distinguished. One professor I heard about was Harry Shulman. Shulman taught labor law at Yale. I had heard he was an interesting person and teacher, so I went to his classes. Unbeknown to me, he was the arbitrator/mediator for the Ford Motor Company and the United Auto Workers. He was a famous labor mediator. He was also an extremely thoughtful, wise teacher. He was exceptional. He gave a lecture on secondary boycotts which now after 65 years, I still remember. It was one of the best lectures I ever heard in law school from anyone. He was just an exceptionally thoughtful, judicious kind of person, and I greatly enjoyed his classes and went to listen to him. I didn't get to know him, but I was very interested in what he had to say. Another professor who I liked a great deal was the Dean, Wesley Alba Sturges. Sturges taught a course on Creditors Rights. My interest in that subject on a scale from 0-10, would be about a 2.

Mr. Pierson: Sounds like mine.

Mr. Krash: I had little interest in the subject matter. However, people told me that he was an exceptionally good teacher. I was interested in legal education and in teaching so I went and I sat in the back of the class. He was a marvel. Sturges was a

realist in the way he thought about the law. That is to say he thought much of the law was incoherent, irrational, inconsistent, illogical and ...

Mr. Pierson: And vague.

Mr. Krash: What?

Mr. Pierson: And vague

Mr. Krash: And vague, exactly. His teaching method reflected his philosophy of the law. He would assign the third year students who were in the class to read two cases in his case book. The cases were diametrically opposite. He was trying to get these third year students to reconcile them. They would bust their jaws in class trying to make reconcile them, and they couldn't. What Sturges was doing by his methods of teaching was reflecting his realist philosophy, the inconsistencies, the irrationalities in the law. I don't think Sturges covered more than a 100 pages in his case book during the entire course. All he did by a Socratic method was to get students to try and reconcile the cases he assigned. He was exemplifying how a realist would think about the law. I began to grow aware of what he was doing. He was trying to cultivate the notion or idea of how irrational and inconsistent and illogical the law was. I thought he was extraordinary. He was one of the most gifted teachers I ever encountered. I watched with great admiration his skills and insights as a teacher. There were some other very good teachers at Yale. There was one professor who was influential among the graduate fellows. His name was Myers McDougal, who was trying to inject ideas of social policy into law. He was working together with Harold Laswell, a famous political scientist. The two of them together taught a course. Laswell

subsequently wrote a book together with my uncle, Abraham Kaplan, regarding political theory. But I never got to know Laswell or McDougal very well. I went to their classes and listened with interest to what they had to say. There were several things about the Yale law school that I would emphasize. Yale provided a social setting which was special and different from University of Chicago Law School. It was meaningful to me. I had fellow students all around.

Mr. Pierson: Were there any African American students?

Mr. Krash: Very few. There were a small number of women in law school. One of the women at Yale was Patricia McGowan, who married Robert Wald.

Mr. Pierson: Ohhhhh

Mr. Krash: I knew her only slightly. One of the things was that this dormitory environment permitted me to become friends with a number of people. You saw them not just in class, but you saw them in the dining hall or you could go out and have a bite to eat, or socialize, or go to a dance. I made a number of very good friends. I became very friendly with a fellow by the name of Daniel Freed, who later became a professor at the Yale Law School and an expert on sentencing. Sadly, he died several years ago. Another person with whom I became friendly in the residence hall was a man by the name of Sherman Sass. He became a labor lawyer in Boston. I was also friendly with a fellow by the name Kurt Melchior, who became a prominent San Francisco lawyer. Apart from the social setting, there were several things about the Yale law school that I thought were special. First of all, there was no question that Yale was interested in encouraging people to think of a career in public service. That was less true of Chicago in my time.

Today, I suspect that Chicago is much like that too, but no question that at Yale, they were interested in encouraging people to think of a career in public service, to go into the Government or do other public service. Secondly, Yale was teaching also people to go out and teach law. A number of students left to teach law. I would also say that students at Yale were economically more secure than in Chicago. The fellows in Chicago were very anxious about their professional careers. Their uppermost thought was, "Will I get a job?" At Yale, there was a considerably more secure feeling that we'll get a job. Particularly, they felt they would get jobs in the Wall Street law firms. In other words, there wasn't the anxiety about future jobs that I think permeated the atmosphere in Chicago in my time. At Yale, that was less true. That's not to say there was no anxiety about jobs among Yale students. But there was a feeling they were going to Wall Street firms. So there was more economic security there. I had been going to a university continuously since 1944 and now it is the spring of 1950, and I realized that I'm going to have to get a job and do something. I wanted to teach. What you have to realize is that I was only 22, and it was very difficult for young Jewish guys to be hired to teach in law schools at that time. There were Jewish guys teaching in Chicago, at Yale, and at Harvard, but if you tried to go to other places, it was very difficult. The Dean of Minnesota came to Yale, and I had a long talk with him. It was obvious that he was interested in my possibly coming to the University of Minnesota Law School. I learned later he talked to Charles Clark, who was a judge on the Court of Appeals for the Second Circuit. He also had been the Dean at Yale. Clark recommended to the Minnesota dean that he hire his law clerk. He was hired under Clark's recommendation. Other

graduate fellows were getting offers, but I wasn't. One day in the spring of 1950, I decided I would go to Washington, DC to try to find a job in the government.

Mr. Pierson: Was there a process of interviewing?

Mr. Krash: Yes, Various deans of laws schools throughout the country would come to Yale and interview the graduate students.

Mr. Pierson: Was that for a lot of Wall Street firms as well?

Mr. Krash: I don't think that they came at that time. But the undergraduate students knew that they would get a job in Wall Street. There was just such an assumption. It was true. At any rate, one day one of the professors at Yale who I barely knew, Boris Bittker, who taught Taxation, spoke to me. He later became a major figure in taxation. He was then a young professor at Yale. Bittker said that he had heard through the grapevine that I hadn't gotten any offers to teach. He said he had heard that I was going to go to Washington, DC, and he would be happy to give me a letter of recommendation. He said he knew someone in Washington. This is out of the blue really.

Mr. Pierson: So you hadn't decided to go to Washington?

Mr. Krash: No, I had decided that I was going to go to Washington and try to get a job with the government. Bittker said I'll give you a reference letter. He said, I don't know how valuable it will be but I'll give you a letter of recommendation to this person I know in Washington, DC. His name is Raoul Berger. I was grateful, but I didn't pay much attention to the letter. It was an exceptionally thoughtful thing for Bittker to do. I remained forever grateful to him for that. Now, it is 1950 and I'm broke, and I have made up my mind to come to Washington, DC. I thought I

would try to find a job as a lawyer with the government. I finally made up my mind to try and be a lawyer, though I didn't have the foggiest idea what that meant. I left Yale in the spring of 1950. The war in Korea had just broken out. There was a freeze on jobs in the Government. I went to various places in the government to try and get a job. By this time, I had pretty good credentials. I was a University of Chicago college graduate, University of Chicago Law school Graduate, and a Graduate Fellow from Yale. I had been on the Law Review. The job market was extremely tight. I went to various places in the government to try and get a job. Clearly, some people were interested in me, but there was all kinds of constraints. Anyway, I had this letter from Boris Bittker to Raoul Berger, so I called and made an appointment with Berger. His office was in the Ring Building on 18th Street. I went to see him, not knowing anything about him or his practice. Berger at first was very businesslike and cool. I then said I have this letter from Boris Bittker and immediately that changed the whole atmosphere of the interview. He said that he thought the world of Bittker. Berger had been the General Counsel of the Office of Alien Property Custodian during the war and Bittker worked under him in that office. Berger had great affection and regard for Bittker, who Berger regarded as a superlative lawyer.

Mr. Pierson: Was Berger practicing long?

Mr. Krash: For only several years. He had been a partner with a man by the name of Donald Cook. The firm was Cook and Berger. After the war, Berger and Cook set up this law firm, the two of them together. Cook generated most of the business. He had been with the SEC. Berger was the lawyer, and Cook was the rain maker. By the time I arrived there, in the summer of 1950, Cook had gone back into the

government in some capacity. Berger was alone with a practice that he had developed with Cook. The head of the Office of Alien Property in the Department of Justice during the War was David Bazelon. In 1949, Bazelon was appointed to the U.S. Court of Appeals for the D.C. Circuit by President Truman. Bazelon called up Berger, who had been his General Counsel, and said I need some help in finding a law clerk, can you help me? A young fellow was working as an associate for Berger, his name was Abraham Goldstein; he was a recent law school graduate from Yale. Berger told Bazelon, "I will lend you my associate, Abraham Goldstein to be your law clerk." The expectation was that Goldstein would come back after his clerkship. I arrived shortly after Goldstein left to become a clerk for Judge Bazelon. Berger was looking for a young fellow to replace him. To make a long story short, Berger offered me a job for fifty dollars a week. At that point, I was broke. As I said, I was hired by Berger to take Abe Goldstein's place. Berger was a unique figure. He had been a professional musician, a violinist, and he had played with the Cincinnati Symphony and the Cleveland Symphony. He was a very good violinist, but he felt he would never be a soloist and that he would always just be a member of a symphony. He decided to give up music and become a lawyer. By the time I knew him, Berger was in his 50s. He had this practice representing clients who were seeking to recover assets that the government had seized as alien property during World War II. Prior to the war, Germans who owned assets in the United States had transferred those assets to U.S. citizens because they were concerned that their property would be seized in the event of the war. Some of these transfers were *bona fide*; some were a sham. People who claimed they were

bona fide buyers were now trying get their property back, but the Government claimed these were sham deals and had seized the property during the war. Berger represented these people. That was the core of his practice. He asked me if I would draft some briefs and do some research. He was extremely an exacting task master. He had very high standards of craftsmanship and if the work product wasn't any good he would reject it. I learned a great deal from him because I was working directly with the person who had these very exacting and demanding standards of craftsmanship. Because there was just the two of us, we would frequently go to lunch together. He also took me to concerts at the Library of Congress where the Budapest Quartet was playing. He knew those guys. I think they would play together at his home. When I was going to college, I'd listen to music on the radio. However, I didn't know much about music. But Berger took me to these concerts. He would talk to me about the music, about the quartets or trios that were being played. I owe a lot to him about my musical education and enhancing my great love of music which is a very important part of my life. When I drive my car, I usually do so with a CD playing classical music. One day, Berger summoned me to his office. He had three violins on his couch, and he said sit down, I want you to listen to something. He picked up the first violin, and he played a little excerpt from the Tchaikovsky violin concerto. He said do you hear that? I listened, and he said that violin is called a Guarneri. He picked up the second violin, and he played the same passage. Let me tell you, my ear wasn't sophisticated, so I didn't recognize much of a difference, but I listened very intently. He said do you hear that? He said that's Guadagnini. I didn't know much about it, but later I learned that that was really something. He

said, now I want you to listen to the third violin. He played the same excerpt from the concerto, and he asked me were the violins the same or could I tell the difference? Well I could see there was a difference. The third one he said, you see how velvety it is? It is a Stradivarius. He liked that one, and he bought it. As I said, he cultivated my interest in music. I learned a great deal from him, particularly how to write a memorandum and to draft a brief and how to organize things. He showed me the craft of being a lawyer.

Mr. Pierson: Didn't you learn something about writing in Chicago, I presume?

Mr. Krash: Well, not much. You didn't learn to write, carefully either at Chicago or Yale. Apart from the Law Review, there wasn't much writing really either in the Chicago Law School or at Yale. But here I learned to work carefully. Berger and I wrote a couple of law review articles together, and I began to learn the craft of being a lawyer. In November of 1952, there was a presidential election, and Eisenhower was elected. Berger had been counting on Donald Cook returning to practice with him. Cook essentially was the business generator there. However, Cook decided not to come back to practice in Washington, DC, but instead to go to New York as a corporate executive. At that point, I think, Berger concluded that there was no future for him in practicing any further. He didn't confide in me, but he made clear that he didn't see a future in his practice.

Mr. Pierson: Closing up shop.

Mr. Krash: He closed up the shop. He told me in November, 1952, that I'll be closing up shop at the end of the year. He went to the West Coast to the University of California where he thought he would do some writing. He ultimately went to

the Harvard Law School where he became the Charles Warren Senior Fellow in American Legal History. He spent the period beginning around 1960s at Harvard until he died in the late 1990s. He wrote a number of books pertaining to issues of constitutional law. He was the total opposite of Crosskey. He believed in states right; he felt the powers of the National government were limited. He also felt that the scope of the Fourteenth Amendment was much more narrow than Crosskey did.

Mr. Pierson: Did you have a debate with him about some of these things?

Mr. Krash: No, but I disagreed with him. He was very conservative. I didn't agree with him. I saw very little of him after he left Washington in 1952. After his first book came out, there was a reception for him at the Cosmos Club. He was very cordial when I saw him there. At the end of December, 1952, when Berger closed his office, I was without a job. It was a very tough time to be a lawyer in Washington without a job because what was happening at the time was that the administration changed, and many of the lawyers who worked in the Democratic administration were leaving the government. The supply of lawyers was very high but the demand was not. It was tough, and I was scrambling around to try to find something to do.

Mr. Pierson: Where were you living?

Mr. Krash: At this time I was living in an efficiency apartment at McLean Gardens on Wisconsin Avenue. But I was almost broke. I didn't have anything to do. I was running around trying to find a job after 2 1/2 years out of law school. One day, I received a call from Patricia Wald I had known her in Yale as Patricia

McGowan. She had married Bob Wald. After she left Yale, she clerked for Judge Jerome Frank on the Court of Appeals for the Second Circuit. She was hired by Arnold, Fortas & Porter as an associate. I got this call from her one afternoon. I hadn't seen much of her at all since leaving Yale. This was out of the blue. She said to me that I am an associate at Arnold, Fortas & Porter; I am going to have a baby, and I'm going to take a leave of absence. She then asked me whether I would be willing to come over and substitute for her for six months on a temporary basis. If she had called and asked me if I would come and sweep the floors, I would have come because I was broke. She said, I'll pass your name on. When I arrived at the office, Abe Fortas wanted to see me. I saw him for 5 or 10 minutes. He told me he wanted me to come to the firm with the understanding that I was a temporary associate. I would get a considerably higher salary that I had received previously when working with Berger.

Mr. Pierson: How many lawyers were there on staff?

Mr. Krash: There were then eleven lawyers in the firm. The firm was composed of the three senior partners, Thurman Arnold, Abe Fortas, Paul Porter, and in addition, Walton Hamilton, who had been a professor at Yale. Hamilton wasn't a lawyer, he was an economist. The other four partners were Milton Freeman who had been with the SEC; Norman Diamond who had been in various government positions; Harry Plotkin who was a communications lawyer; and Bill McGovern, who had been a lawyer in the Antitrust Division. There were three associates. There was a fellow by the name of Reed Miller, who was a communications lawyer; an associate by the name of George Bunn, who later became Dean of the University of Wisconsin Law School; and one other

associate, Duane (Bud) Vieth. I was the twelfth lawyer. All of the persons I have mentioned are now deceased, with the exception of Bud Vieth, who later became the Chairman of the firm. He is now 90 years old. He is an exceptionally fine person. He is the only person now surviving who was at the firm when I came. I was given an office on the 4th floor of the town house on 19th Street that the firm occupied. The firm was representing Lever Brothers in an antitrust suit brought by the Department of Justice against Procter & Gamble, Colgate and Lever charging them with a conspiracy to monopolize the soap and detergent business in violation of the Sherman Act. This was the major case in the firm. Fortas was lawyer in charge of the Lever Brothers matters; he was assisted in this case by McGovern whose office was on the 4th floor next to the office I was given. I was supposed to work with McGovern as his associate helping him. When I arrived, I was immediately put to work on this antitrust case. I was the youngest associate, but I quickly made friends. I became good friends with McGovern, who was about a decade older than I was. He was a Yale Law School graduate who had been in World War II in the Far East. I also became very friendly with Norman Diamond and Bud Vieth and with the other younger men. The firm had a weekly luncheon downstairs in the basement, and we would sit around talking about our cases. Somebody would talk about the case they had. It was called the Garden Room. In any event, I was working on this antitrust case. McGovern supervised me.

Mr. Pierson: Was there anything in your educational experience that particularly helped you on that first case?

Mr. Krash: Well, first I had some antitrust background. That was number one. I went to Levi's course. Two, the training with Berger was very important because I was being asked to write memos and briefs. Berger had taught me how to write a memo; how to organize one. He really taught me that. I want to go back before I forget. I mentioned that that Berger had an associate, Abe Goldstein. As I said, he sent Goldstein to clerk for Judge Bazelon. Goldstein never came back after the clerkship. He joined Jiggs Donohue, who was kind of a mayor of Washington, for a period of time. He had a small law firm in Washington, and Goldstein practiced there for several years. Then he was invited by Eugene Rostow to join the Yale faculty. He spent the rest of his career there, and he became the Dean at Yale. To make a long story short, Goldstein and I became lifelong friends. He died about five years ago. We remained friends for a lifetime. Later in the 1970s, he invited me to come to Yale and teach seminars. He was an exceptionally fine and able person. At any rate, here I am, at Arnold, Fortas & Porter in the spring of 1953 working basically with Bill McGovern and Fortas on this government monopoly case against Lever Brothers. That is what I was doing pretty much exclusively. Then, in the summer of 1953, the U.S. Court of Appeals for the Columbia Circuit appointed Fortas as counsel for an indigent petitioner in a case called *Durham v. United States*. The *Durham* case raised the question of how to define the standard of criminal responsibility. That is, how do you define the insanity defense? Judge Bazelon was enormously interested in the relationship between psychiatry and law, and I believe he was instrumental in having Fortas selected as the counsel for this indigent petitioner, Durham. Fortas was very friendly with a number of psychoanalysts and psychiatrists in

Washington. So I think that probably had something to do why he was asked. I'm not sure. Fortas called me to his office and he said I have been appointed as counsel for the petitioner in this case, *Durham v. United States*. The case raises the question, how should the Court define the insanity defense; what must a defendant who pleads insanity show? He said he wanted to take a fresh look at this and to see if we could change the existing standard to make it compatible with modern psychiatry. I knew zilch about the insanity defense. In 1953, there was very little literature about it. There had been a Royal Commission in England that had issued a report, but there were very few cases. The standard in 1953 in the District of Columbia was whether the accused knew the difference between right and wrong. It was a test formulated in England in the middle of the 19th Century known as the M'Naghten test. The psychiatrist called to testify as an expert witness in a criminal case was required to give his opinion whether the defendant knew the difference between right and wrong. He was very restricted in his testimony by this test. The question of whether the accused knew the differences between right from wrong was an irrelevant question for most psychiatrists. Anyway, Fortas said, I want you to write me a draft of a brief, and this was my first assignment directly from him.

Mr. Pierson: So when he asked you to do the brief, had you and he discussed what the standard should be?

Mr. Krash I don't recall that he suggested a particular new test. I think he knew what the existing standard was. He knew the psychiatrist were very critical of it. He said we have to see if there is a better approach. It took me several weeks to read the

literature there was on it. There wasn't very much on it. I wrote a draft brief, and I really worked hard on it because I wanted to impress him.

Mr. Pierson: How much of what you used was psychiatric and how much was law?

Mr. Krash: Well most of it was law, but I was beginning to sift through the psychiatric literature, but it wasn't a lot. I wrote a brief urging that a different test be adopted. I gave him the draft of the brief.

Mr. Pierson: Which test did you propose?

Mr. Krash: I can't recall which test I proposed. I think I followed the English suggestion at that time. Anyway, I gave Fortas the draft and about 2-3 days later he called me to his office and said to me the draft looks pretty good. He said this is about what I would have expected from a good young man at Covington & Burling. C&B was the big law firm in Washington, DC at that time. He then said that he wanted me to take the draft back and put some poetry into it. He said I want you to broaden your scope. I went back, and I revised it. I incorporated some of the things he suggested. Then he took my draft and revised it extensively. Fortas argued the case in the Court of Appeals. The Court issued an opinion in *Durham v. The United States* announcing a new test, that is, whether the offense was the product of mental disease or defect. The opinion was widely discussed. It was a sensation. In the fall of 1953, my six months' period as a substitute for Pat Wald was up. I had become very friendly with McGovern and some of the other men in the firm. I felt I would need to look around for a job, and I asked McGovern if he would give me a reference letter. He said no, don't look around. A few days later, he came back and said that they would like to offer me a permanent

position with the firm. This would have been in the fall of 1953. I began as a temporary employee and remained with the firm for 65 years. Patricia Wald, later Judge Wald. She and I have remained friends for life. She has had a very distinguished career. I have great regard for her. Just last week, she was awarded the Medal of Freedom by President Obama. Her husband, Bob and I became friends as well; sadly, he died a couple of years ago. Pat Wald never came back to the firm after having her first child. She had a daughter, Sarah, and then she had other children later. Her son, Douglas Wald, is a partner in our firm. So here I am in 1953, the 12th lawyer at the firm. It is a small firm. I'm getting to get to know the various people better. First, let me speak of Judge Arnold; he grew up in Laramie, Wyoming. I grew up in Cheyenne. He was born a half a century before me. He was practicing law in the 1920s in Laramie and teaching at the University of Wyoming Law School. A friend of his heard there was a position as Dean open at the University of West Virginia Law School and urged him to take it. Arnold moved there as Dean. Charles Clark, who was then Dean of the Yale Law School, saw articles that Arnold was writing on procedure. Clark liked them and invited Arnold to come to Yale. This was around 1930-31. Arnold became a wonderful teacher at Yale. It was there that he wrote two books. One was *The Symbols of Capitalism* and the other was *The Folklore of Capitalism*, which was his most famous book and is still read today. He then came to Washington, DC to work in the New Deal. He was nominated to be head of the Antitrust Division around 1938, as I recall. The New Deal, which had been in favor of government regulation now shifted to being in favor of competition. Arnold was a hell-raiser. He sued everybody in sight. He

revolutionized antitrust law enforcement. When the World War II broke out, it became clear that the antitrust practice had to be shelved because you couldn't go after these people making war materials. Arnold was nominated to be a judge on the Court of Appeals for the D.C. Circuit. He was on the Court around three years. By temperament, he wasn't cut out to be a judge. He didn't really enjoy it because he was an active type of guy. Judging was much too passive for him. He resigned as a judge in 1945, and for the rest of his life he was called Judge Arnold. He then started a law firm with another man by the name of Wiprud. That relationship broke up in about a year. Then Fortas came out of the government, and he and Arnold teamed up. Fortas had been one of Arnold's students at Yale. Of all the hundreds of people at Arnold & Porter, and I've been here for 65 years, I regard Arnold as the greatest person in the firm. He was extraordinarily generous. He was very funny. He had a Mark Twain originality about him. He was enormously well educated. I would come into his office and he'd ask if I read this book or that book. When we went to New York together to try a case, he would pick out a good restaurant. He loved to go to the theatre and get a front row seat. After that, he would like to go to our hotel for a drink and talk for a while. He was very creative and imaginative. During the 1950s he was asked to act as a lawyer for the poet, Ezra Pound. During the War, Pound was in Italy, and he made radio speeches supportive of the Fascists that were anti-Roosevelt and anti-Semitic. Near the end of the war, the U.S. troops picked Pound up in Italy and brought him back to the U.S. where he was indicted for treason. He was found mentally incompetent to stand trial, and was confined to St. Elizabeth's Hospital. Robert Frost and others came to Arnold to help get

Pound released. He had been confined in the hospital for several years. Some of the young Turks in the office who heard about this were aghast. Arnold learned about this, and he summoned me to his office. He said he had heard that I was among those raising questions about our representing Pound on a *pro bono* basis. He said to me, "Look sonny boy, you like to think of yourself as being a civil liberties lawyer, don't you? It is very easy to be a civil liberties lawyer if you are representing people with whom you agree and whom you like. The real test is whether you stand up for people who you don't like and whose opinion you detest." He told me, "You have to learn to stand up as a lawyer for such people." He taught me a very important lesson. I worked a lot with him on many matters until his death in 1969. A number of us would come down after work to our Garden Room for a cocktail and he would say to the persons there: "You should see the brief that Abe has written. It is the best since the firm was started." I would go home walking on air. Two weeks later, he'd be saying the same thing about something Bud Vieth or Stuart Land had written. He had the capacity to make people feel good, which is a great gift. I admired and liked him enormously. I learned a great deal from him.