Oral History of Abe Krash
Fifth Interview
December 16, 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 December 16, 2013. This is the fifth interview.

Mr. Pierson: It is December 16, 2013 and we are at Arnold& Porter; Abe Krash is on the opposite side of the table, Stuart Pierson here. We've designed this as a final session with the D.C. Circuit Historical Society on the history of Abe Krash. We finished last time talking a little bit about personal things and as you have been directing the course of things throughout this, it's your ball now.

Mr. Krash: Well Stu, in our last session we discussed various things through the 1970s, and I thought that in our last session here today, we would talk about things in the 1980s up to my retirement from the firm in 1992, and then talk about what I've been doing in the years since I retired from Arnold & Porter.

Going back for one minute to something I realized that I had not mentioned in the late 1970s. I was involved in a fairly significant matter for the Ford Motor Company, who retained me to represent them in connection with an issue under the Auto Safety Act. The question presented related to the appropriate notice that had to be given with respect to a recall. This case was litigated in the D.C. Court of Appeals. The Court of Appeals ruled in Ford's favor. I did a number of matters for Ford in the late 1970s and during the early 1980s.

During the period of the 1980s, I continued to do a good deal of work on behalf of Philip Morris and Miller Beer. I also was retained to represent a number of other parties. I did a great deal of work for the Monsanto Chemical Company in various matters, in the 1970s and the 1980s. I was retained by United States Steel Company to represent them, and I was also engaged in representing the American Broadcasting Company on some issues. I remained very busy during that decade. One of the major clients with whom I was involved was Philip Morris. The company had begun process of diversification in the late 1960s when they acquired Miller Beer. They then acquired General Foods, and I became the counsel representing those entities as well. In the 1980s, Philip Morris made a very large acquisition when it bought the Kraft Company in Chicago and I was one of the lawyers representing Philip Morris.

Mr. Pierson: Was there litigation?

Mr. Krash: No, there was no litigation. There was some negotiations that went on. But in any event, Philip Morris did acquire Kraft Foods and we subsequently became counsel for Kraft in a number of matters. By this point Philip Morris had diversified quite a bit. Apart from the cigarette business, of course, which was its primary business, they had acquired Miller Beer in Milwaukee and then General Foods. Philip Morris also bought the 7-Up Company which I talked about in our last meeting. They were located in St. Louis, and we then became actively involved on matters on behalf of 7-Up. Arnold & Porter had a policy, instituted I believe in the 1970s, of allowing partners to take a sabbatical if you had been at the firm for a number of years. At any rate, you were allowed to take a 6-month sabbatical; I had postponed taking that for many years. Finally

around 1984, I did take that sabbatical with my wife. We went first to Paris where we lived for four months. We had an apartment on the Isle St. Louis in the midst of the city, and we traveled around France to various places, which was enormously enjoyable. Paris, I thought, was one of the most pleasant cities I have ever been in. There is a different experience for people when they come to visit Paris for just a few days or a week, but if you live there for a while, as we did, you really get to enjoy what an enormously, culturally, rich and interesting city it is. We traveled a great deal during the sabbatical. We went back of the Iron Curtain. We went to Budapest, Prague and then to Germany. We went to Berlin. We were visiting in Berlin at the time of the Iron Curtain and going from West Berlin to East Berlin was really quite an experience. During the second part of my sabbatical, I was a fellow at Wolfson College in Oxford. We lived in Oxford for several months during that fall semester there, and I had a chance to get to know a number of people at Oxford. We travelled extensively in England. We spent a lot of time in London; it is just a short train ride from Oxford. We did travel around the country side and saw a good bit of England, and we enjoyed that experience a great deal. Wolfson College is a graduate college. I regretted that I wasn't in one of the under graduate colleges. While I was there I met the master of Oriel College, and he told me that he regretted not knowing I was coming to Oxford. He said he would have arranged for me to be a fellow at Oriel, which was an undergraduate college. But at any rate, I enjoyed the experience at Oxford. I didn't have much to do there. I had hoped to do more than I did, but I did get to see a good bit of what the University was like. I talked to a number of people and traveled in England

a good deal and that was a very enjoyable experience.

I previously mentioned that I taught a seminar on litigation at the Yale Law School in the late 1970s for two years and then I was invited back in the early 1980s and I taught a seminar there again for two years. I would travel to New Haven one day of the week to teach that seminar. Sometime in the late 1980s, I became president of The Friends of the Law Library of Congress. The Law Library of the Congress has a great collection of books but it is largely inaccessible to the general public. You can go to the library physically and sit at the library and they'll bring a book to you while you are sitting in the library, but you can't take it out. The only people who can check books out are members of Congress and the Supreme Court. At any rate, the library is largely inaccessible to the public except in this very limited fashion. The Library had a practice of giving an annual award to a distinguished lawyer; it was called the Wickersham Award, named after a former Attorney General. I was engaged in the process of selecting individuals who would receive that award, and we would have an annual dinner. At first we had it at the Supreme Court, which lent us its facilities. The court room was opened for us. We did that for 6 or 7 years. We attracted a large attendance, and it was a lovely occasion. Justice O'Connor then told me that we couldn't have a fundraising event at the Court, even though it was for the benefit of the Law Library of Congress which the Court uses. I then arranged with the Congressional Library to have the Wickersham award dinner held there. We had a dinner once or twice and then they told me that we couldn't have the dinner there because this was a fund raising event. I said we're trying to raise money for you; it is for the benefit of

one of your divisions, the Law Library. But they told us we could not do it. At that point, I threw up my hands and gave up. One other thing which I tried to do was that I felt the Law Library should not be just a source or center of a great collection of books, which it is. It has a wonderful collection, but I felt it should also be a sponsor of law related activities, such as lectures and seminars. I tried to get that started, and we had one or two events. I experienced a good deal of difficulty in doing that. We never really got off the ground. I was President of this organization for about a decade, beginning in the late 1980s into the 1990s. I was disappointed that I wasn't able to do more, but the obstacles of doing more seemed to me to be insurmountable and I gave up. I don't know what's left of the Friends organization. I lost contact with the organization and therefore haven't heard much about it for quite a long time.

My wife and I in the late 1980s took a trip to China. We had previously gone to Japan and we wanted to go to China. It was a tourist trip. At the time there were a lot of demonstrations in China. We had known that these were going to be going on. We came up the Yangtze River on the last trip, I believe, on the river. We came to Chungking and we were put up in a hotel at the outskirts of the city, and I was very disappointed. I asked the concierge if we could go into the city, and with some reluctance, he got us a car and we went into the city. There we saw all these big demonstrations involving thousands of people. We were stopped by a plain clothes Chinese police officer because we were taking pictures, and he warned us to stop taking pictures. He didn't take our camera away. We were approached by many students and younger people who wanted to know what the reaction was to the demonstrations in America. This was not

just a demonstration of young people; this was a demonstration of both young people and old people.

Mr. Pierson: Was it the same time as Tiananmen Square?

Mr. Krash: Yes, we went to Beijing, where Tiananmen Square was occupied and we saw that. We were staying at a hotel about three blocks from the square. The streets were being monitored by young people who had arm bands. You could not get into the Forbidden City. We saw demonstrations there and we left Beijing about a week or ten days before the troops and tanks moved in about a few blocks from where we had been staying. It would have been extremely dangerous if we had remained there for another week. I found China to be one of the most fascinating places I have ever visited. It was just amazing. A lot of the country's great artifacts were looted or taken away by the Westerners, by the British, French, and the Americans, so they didn't have any great museums that you could go to, or very little, anyway. One of the most interesting things of all to do was to just walk the streets and to see what was going on in the streets in the various cities we were taken to.

Mr. Pierson: They were teeming with people?

Mr. Krash: They were teeming with people. You got a sense of the enormous potential capacity of the Chinese people. My wife went back a year or so later because she was very interested in Chinese medicine. She went back a second time and had the same impression that it is an exciting and interesting place. It also was rather a frightening place when you saw how tightly controlled it was. You could sense that it was a police state. It was an enormously rewarding and

exciting trip, and I enjoyed it immensely.

Mr. Pierson: When did your wife go back?

Mr. Krash: She went back a couple of years after we were there. We were there in 1989, and she went back I believe in 1991 and spent some time there. During the period of the 1980s I was busy with representing the various clients that I have mentioned in many different kinds of matters. It was the policy of Arnold & Porter that when you reached age 65, you retired from all management responsibilities. As I previously mentioned, I was a member of the Policy Committee of the firm; I was a member of the Compensation Committee; I was head of the Antitrust Practice Group. When I became 65 in 1992, under the terms of firm's partnership agreement, I stepped down from all of those responsibilities, and I ceased to be active in the management of the firm. The firm's policy was called a step down, that is to say between the ages of 65 and 70 your responsibilities and income were reduced every year, a certain percentage. It was called a phase down or step down, but you continued to have an office and be busy and do whatever you wanted so I remained quite busy in the firm doing various things. One of the major matters which I handled after I retired in the mid-1990s was that I represented Kraft Foods, which as I said, was a subsidiary of Philip Morris at that point, in connection with their acquisition of the Nabisco Cereals business. The Attorney General of the State of New York brought an antitrust suit in the Federal District Court in New York against Kraft with respect to the acquisition, claiming it would restrain competition in the cereals business.

Mr. Pierson: Had the Federal Government passed on it?

Mr. Krash: The Federal Government passed on it. They did not impose any objection.

Mr. Pierson: So this is now during the Clinton Administration?

Mr. Krash: Yes, this is during the Clinton Administration, and this action is brought by the State Attorney General of New York. We tried the case before Judge Kimba Wood in the Southern District of New York. We weren't able to resolve it before trial. We tried it for three weeks in New York. The cereal business was dominated by Kellogg's and by General Foods; Nabisco was a relatively minor factor, as was Kraft's existing cereal business. Judge Wood ruled in our favor after a three week trial. That was the last trial I had. It was the late 1990s. I had a large team of lawyers there and we were there day after day until midnight working each day to try this case, which was important to the Kraft folks, needless to say. Judge Wood is an excellent Judge. She is very patient and as I said, at the conclusion, she ruled in our favor. I concluded at the end of that trial that I should probably stop trying to do trial work. I found it to be a real challenge and wearing at that point. It was a lot of pressure and time-consuming. But in any event, the outcome was successful. The Kraft people were very pleased. At the same time, during the 1990s I was involved in a number of other things. I participated in the writing of an *amicus* brief in the Supreme Court in a case entitled *Glucksberg v. Washington*, which involved the question of the constitutionality of assisted suicide. Nearly all states have statutes prohibiting assisting suicide. When a physician gives a lethal drug to a terminally ill person, that is assisting suicide, and it is a criminal offense. A suit

was brought in Washington by some terminally ill patients and doctors arguing that there was a right under the due process clause of the Fourteenth Amendment to prescribe a lethal drug to adult, terminally ill patients with their consent. That is to say, the argument was that doctors should be immune from the statutory offense of assisting suicide if they prescribed a lethal drug to mentally competent, terminally ill patients in those circumstances. That was the argument.

Mr. Pierson: Did the statute require that the patient be conscious?

Mr. Krash: The Washington statute prohibited all assisted suicide. What we were arguing was that statute which prohibited assisted suicide in general terms should be inapplicable to doctors who prescribed it for mentally competent patients, terminally ill with their consent under various protective procedures. We argued that there should be a right under the due process clause for people to die with dignity. The *amicus* brief was written on behalf of a group of prominent American philosophers. The brief became known as the philosopher's brief. The principle author of the brief was Professor Ronald Dworkin. He was a prominent professor of Oxford and NYU and also a distinguished philosopher. He died a few months ago. I worked on our brief together with him and some other Arnold & Porter lawyers. I thought Dworkin was an exceptionally able and gifted person. He was very thoughtful. As I said, we wrote this brief on behalf of this group of prominent, half of a dozen, major American philosophers. Our principal argument was that doctors were permitted, I believe in almost all jurisdictions, to withdraw life support systems at the request of the family resulting in the death of the patient; we maintained

that there was no logical difference between doing that and giving a terminally ill patient at his/her request a lethal drug that would permit one to die with dignity. That was a major point we were making. You could argue that giving a patient a lethal drug is active and that terminating life support is passive, but that argument wouldn't wash because doctors are active in withdrawing life support systems and they are active in giving a drug. There is one difference. I think that one could say that in the case of a withdrawal of life support, such as oxygen or food support, that the patient dies from the underlying disease or illness, whereas when a doctor gives them the lethal drug, they die from the drug. But in either case the doctors are aware that the patient is going to die. They may be a few circumstances where a patient may not die if the life support system is withdrawn but it is very rare. The essential argument was that people in terminally ill conditions were suffering, and a doctor should not be prosecuted for giving them a lethal drug. Anyway, I collaborated in writing this brief. The Supreme Court decided against that position; it distinguished the situation of the withdrawal of a life support system, which the Court sanctioned, but the Court refused to recognize a constitutional right of doctors to prescribe lethal drugs for terminally ill patients. In its opinion, the court said the matter should be left to the states to further experiment and deal with. After the case was decided and after I continued to read a good deal of things about the subject, I changed my mind from the position we had taken in the brief. I concluded that the court was probably right not to constitutionalize, to freeze this right at this particular time. I came to that conclusion because I felt that there is no consensus in the United States about this situation. There is a great

diversity of opinions and views, and I thought for the court to have done what we were advocating would be to freeze, as a matter of constitutional law, that one is entitled to such a right. I concluded it was premature for the Court to do that at this point. I distinguish a decision by the Supreme Court on this point from action by a state legislature. If I were a legislator and the issue before me was do you support a law allowing terminally ill patients to obtain a lethal drug, under appropriate protective procedures, I think I would support such a statute. But that's different from saying the Supreme Court should do this as a matter of constitutional law which because then it would have been recognized as a right which a legislator couldn't alter. I changed my mind about it. I have followed the matter with interest as the years have gone by. There has not been as much experimentation as I would have thought. In the Northwest part of the country, in Washington and Oregon, I think there is now a statute permitting assisted suicide in limited circumstances. You have to have two doctors, a written consent, and a waiting period and there are various protections so it won't be abused. I understand that there is a very limited group of people who have this right. What really troubled me as I come to my conclusion was that there are people who are extremely sick, in pain, terminally ill and who want to die in a dignified way. I think Justice Stevens in his concurring opinion in the *Glucksberg* case expressed well my feelings and views when he observed that people want to be remembered after they die in a certain way. This issue of a doctor's prescribing a lethal drug for terminally ill persons is a problem with tremendous ethical and moral implications. It involves issues with respect to a doctor’s role and function. It is a very complex and difficult issue. As I said: I

subsequently came to the conclusion that it should not be recognized at this time as a constitutional right, but I distinguish that from doing it as a matter of legislation. I think basically my view still is that is a matter to be resolved between the physician and the family and what really goes on I think in practice is that people are terminally ill in this situation and they will receive morphine or other things and they will die that way. But the issue is as I say very subtle and complex. I still find it quite fascinating as to what is a proper resolution of this issue.

Mr. Pierson: My wife and I were struggling with this. She recently lost some close relatives and of course I've lost both of my parents. I think it is like anything else in the ultimate events of life. There are so many different kinds of situations. I would think only over time could society come to a consensus. I think really over time.

Mr. Krash: I agree with that. I think we are not there yet by any means. Technology and science has affected this issue a great deal. One other serious problem that was pointed out by Justice Souter is the slippery slope involved. Once you start to recognize a right for a doctor to dispense a lethal drug, whom do you recognize? Do you recognize it for people with Alzheimer's, for example, would you recognize it for children seriously deformed. I noticed that recently in Belgium, a law permits assistant suicide for children. I am really troubled by that. But the question is who would you permit it for? There are serious religious issues for many people, various people who have different beliefs about this. Another point is that you think of the doctor as a healer rather than somebody who is going to hasten death if he hands out a lethal drug that really

alters the role of what the physician's role is. So it is a very complex and difficult issue. But as I said, at the end of the day, I still couldn't get over thinking about the people like the petitioners in *Glucksberg* who were suffering from terrible, advanced illnesses and doctors who were, I think, extremely decent people, wanting to help them. The question is in a moral, just, decent society should we allow patients like that and doctors at their request under various safe-guards to give them a lethal drug? It is a very difficult issue, and I have spent many years thinking about it. I have read a lot of stuff about it. I still find it is a very complex issue.

Shifting to another event that happened in my life, I had previously mentioned that I had taught seminars on litigation in Yale. In the early 1990s, I was approached by my colleague, Bob Pitofsky, who was the Dean at the Georgetown Law School at that time. He asked if I would like to come down and teach a class at Georgetown. Georgetown has had a practice for many years of annually inviting a member of the bar in the District to come to the school and teach a course. They call the person involved a Distinguished Visitor from Practice. Every year they invite some member of the bar to do that. Bob Pitofsky was Of Counsel in our firm, and a very good friend of mine going back many years; he was also the Dean of Georgetown. He knew of my interest in legal education, and he I asked me if I would be willing to teach a course and be the visiting professor for one term at Georgetown. So I thought about it, and I said yes I would be willing to do that, and they asked me what I wanted to do. I said I wanted to teach first year law students and I'd like to teach constitutional law. They checked me out and came back and said fine. I

went there, and they were extremely cordial. I had a small first year class that I taught. At the end of my first year in teaching this constitutional law course, the Assistant Dean came to me and asked me if I would I be willing to come back for a second year. This was without compensation, and it involved my going down to the school a couple days each week and teaching this course. I said I'd be willing to do that. I came to the school the second year and I taught there. At the end of the second year, the responsible dean came and invited me to return again and told me in substance I could teach anything I wished. They welcomed me and made clear they'd like for me to come. I thought about that and then I said okay. I returned, and I taught a course there on litigation; I also taught a seminar on the legal profession, and then I taught what's called the Federal Courts Course. It's the course on federal jurisdiction, which is a very complex challenging course and a very important course.

Mr. Pierson: Jurisdiction vertically or horizontally?

Mr. Krash: Federal Court Jurisdiction of all kinds. I used the famous case book by Professors Hart and Wechsler. I did not have an appointment at the law school; I was a visitor. They gave me an office, and they invited me to all kinds of faculty events. I have not in any way participated in meetings relating to appointments to the faculty. First of all, I don't feel qualified to do that; it would take an enormous amount of time; and I also felt that would be inappropriate for someone who didn't have an appointment to do that. I have been invited to participate in graduation exercises. The folks at Georgetown have been very welcoming and invited me to participate in the life of the school, which I have enjoyed. Every year they've called me up, for almost 15

or 20 years, they call me every year and ask me if I'd be willing to come back and teach. I will be teaching starting in January 2014. I will be teach the advanced Constitutional Law course in Georgetown.

Mr. Pierson: This is not the first year students.

Mr. Krash: No. At Georgetown, I'll explain, the practice is that all of the first year students are divided into small sections and they are required to take what's called Constitutional Law I, which consists of cases relating to the separation of powers, federalism, and judicial review, and the basic structure of the government. That is the Constitutional Law I course. The Constitutional Law II course is an elective course in Georgetown for second and third year students and consists basically of decisions with respect to the Fourteenth Amendment, that is Due Process and Equal Protection issues, and First Amendment, that is with Freedom of Speech and Freedom of Religion issues. These are exciting, difficult and controversial issues, and it is an extremely interesting course to teach. While it is an elective, the vast majority of the students take the course. There are other professors who teach it. I teach one of the courses twice a week. What's been very nice for me is that it has been an opportunity for me to meet many of the Georgetown Faculty. There are a number of excellent people there; I have enjoyed meeting and talking with them and participating in the life of school. I've been doing that regularly for about 20 years now from the mid-1990s to now. As I said, I'll be doing it again in mid-January, 2014.

Mr. Pierson: You've watched the Supreme Court go through a number of stages or versions.

Mr. Krash: Oh yes indeed. Let me say this, that one of the best ways to learn anything is to

teach it. Although I have read a lot about Constitutional Law, still I find that there are all kinds of things I don't know. I continue to find things I don't know. I keep up with the Supreme Court decisions. I read nearly all of them as they come down. I read a lot of the oral arguments, and I read a lot of the literature in the law reviews. One of the things I came to realize was that teaching requires an enormous amount of effort. If you are going to be serious about, it, you have to prepare in a serious, conscientious way. I've done that and I try to do that even though I've taught it before, there are still new cases coming out, new articles being written, new issues that emerge. I have found it to be a rewarding and interesting experience. The students are very good. Georgetown, during the years I've been there, has evolved a great deal. There are many talented, gifted young professors that they have recruited and they have a really good student body. It is an intellectually exciting and good place, and I feel I've been privileged to have this opportunity to be there. This all occurred following my retirement in 1992. When you retire at Arnold & Porter, you have to give up your palatial partner's office, and you get an associate's office. You get secretarial support. It's really quite a wonderful perk to have an office and particularly all the support and facilities of a great law firm, which I fully enjoy. If I want something from the firm's law library, I just call up and they are wonderfully responsive and helpful. Since I've retired, I've been coming to the office nearly every day. That is really a matter of habit more than anything else. But also I've been spending a couple of days a week at Georgetown. I spend a good part of the day there. I pretty much ceased to practice after I reached the age of 70 in 1997. The policy at the firm is that when partners

reach retirement, they turn over their clients to younger men and women in the firm and as I mentioned earlier, you withdraw from all administrative responsibilities. I transferred my client responsibilities over a period of years to the younger men and women and I withdrew from my administrative duties.

Mr. Pierson: How did the clients take that?

Mr. Krash: I think, on the whole, pretty well. You have to remember that the general counsel with whom I dealt with were younger people. The problem was that if I continued and went to meetings with the younger men and women, the clients would look to me and the younger people wouldn't really have the first chair responsibility. I saw what was going on and I thought that wasn't a healthy thing. I thought that the younger folks should have their time in the sun, and so I stepped back. Most of the clients were able to see that exceptionally able attorneys were working with me. I was careful to cultivate the client's confidence in those people, and I was withdrawing slowly, but I did withdraw and so in my early 70s I was pretty much withdrawn from most of the client responsibilities. I found that at first the younger men and women would come and consult me and seek my advice on various issues, but as time went, that faded away pretty much, so I ceased to have clients with whom I had very close contact over many years. In the last decade or so, I have had virtually no contact with them at all.

In 2006, I decided to give a lecture at the Georgetown Law School on changes in the legal profession from the time that I had begun to practice in the 1950s. I revised the lecture and then published the article in the *D.C. Bar Journal*. The

article was entitled *The Changing Legal Profession*. As I said in the article, there are five or six major ways in which the profession has changed from the time when I entered the profession.

First of all, when I began practicing law in Washington, DC in the early 1950s, the firms were very small. The largest was Covington & Burling, which consisted of about 50 or 60 lawyers. The Hogan firm consisted of about 30 lawyers. One of the great changes that has occurred in the profession since the time I began to practice is the enormous growth in the size of the law firms. When I started at Arnold & Porter, it was a firm of twelve lawyers; it is presently a firm of about 800 lawyers. The Hogan firm now consists of a couple of thousand lawyers, and the Wilmer, Hale firm consists, I believe, of over 1200 or 1300 lawyers. A related development was the emergence of branch offices. That was almost non-existent in the 1950s. But it is now common place.

Second, another change is that the legal profession became very much more competitive than it was when I began. Law firms now compete for practice in a way that would have been unthinkable in the 1950s and 1960s.

The third thing that has changed is specialization. When I began to practice in the 1950s, and certainly it was true up until the 1970s and 1980s, we were generalists. We felt that we could handle anything that came in. As I previously mentioned, I represented clients in anti-trust matters, auto safety matters, SEC matters and I represented the cigarette industry in the FCC f*airness doctrine* case. I represented clients in all kinds of matters before different agencies. I

handled many legislative matters. I handled international matters. What has happened in the profession since the last quarter of a century, is this tremendous specialization so that clients now want to retain lawyers who they regard as experts. If a client has an environmental problem, it wants lawyers who have spent years practicing in the environmental area. If a client has a securities problem, they want people who have done that; if they have an antitrust problem, the same. Specialization very dramatically transformed the legal profession.

The fourth thing that has changed, I think, is the demographics. When I began, there was a great deal of discrimination against women, an enormous amount of discrimination against black lawyers, and there was discrimination against Jewish lawyers; Catholics were also subject to discrimination. One of the things that has happened over the years, is a development that I regard as very healthy, is the fact that a lot of the barriers have broken down. Not completely, but there are now much greater opportunities for women, much greater opportunities for black lawyers and for other minorities than there were a half century ago. The demographics of the firm are very different. In my firm, we have many women, we have many minority lawyers and that was not true in the 1950s and 1960s. There were a lot of barriers. I don't mean to suggest that all discrimination has been eliminated from the legal profession, but the situation has dramatically altered from what it was when I began.

The fifth thing that has changed involves developments in technology. In 1960, we copied documents in a very cumbersome way. I remember going to the law

firm of Sherman & Sterling in New York at that time and the lawyer there showed me a copy of a document they were copying and it was on typewriting paper. It was clear and you could easily write on it. I was told that the document was reproduced by a process developed by a small firm in Brooklyn called Haloid Xerox. I was astonished. We didn't have computers until the 1980s. I remember going to Sperry Univac. I represented Sperry as I mentioned earlier in the 1970s, and I saw the beginning of the computer industry. The computer has profoundly transformed the practice of law. For example, I don't see how you can have many branch offices without a computer because you couldn't communicate about conflicts and other things very rapidly. It would be very cumbersome and very difficult to do.

Mr. Pierson: When I was in the Justice Department in the late 1960s, early 1970s, they had just acquired something called magnetic card machines. These were magnetic cards which were the processor for CD and tape disks and there was one of the few times where the Government was actually a little bit ahead of the curve.

Mr. Krash: Well, it took quite a while for it, but those of us in my generation were largely computer illiterate. It was really hard to adjust. Not only the computer, but of course the iPad, the new sophisticated telephones and the internet have transformed the way law practice is conducted. Technology has had an enormous impact on the way the law profession is conducted.

One of the differences that has occurred is the way lawyers are viewed by the client. I think what has happened is that there has been a change in the relationship between lawyers and clients. I think that lawyers are now regarded

much more as technicians in the way that accountants might be. I don't mean to say that many lawyers don't enjoy very close relationships with their clients, but I think that has changed. When we sent out statements for legal services in the 1950s and 1960s, we always sent a statement to clients for legal services rendered in whatever the amount was (e.g., $22,000.00) and that was that. I was almost never questioned about a fee statement. Today, clients insist on very detailed computer breakdowns of the time spent on each matter for each of the lawyers in the firm. Part of the explanation for the change is that clients now have General Counsels who are very knowledgeable. When I began to practice, they weren't as experienced, but the General Counsels now are very sophisticated and supervise the work done by the law firm much more closely than was true when I practiced law. Some of the changes that have occurred, in my view, are good changes. The demographic and technology changes I think are good changes. Some of the other changes, I'm more skeptical about. I think what has happened with firms like Arnold & Porter is that we have gone from a partnership mode to a corporate mode. I think that is true in terms of the relationships among people within the firm and the relationships of people within the firm to clients. It would have been unthinkable for firms like ours who had partners who reached a certain age to reduce their status in some way, to pay them less income because they didn't have the same kind of practice we formerly had. We wouldn't have thought of doing that. Moreover, there was not the movement of lawyers from one firm to another. People came to a firm and regarded the firm as a place with which they remained throughout their career. The extensive movement of partners from one firm to another is a major,

dramatic change. It occurred very rarely in my day, whereas today it is commonplace. There is much more mobility, and people feel free to shift from firm to firm. I think that the pressure on younger people also is very different from when I was a young lawyer. What was then expected was that if one worked hard and did excellent work, you could anticipate rising within the firm and becoming a partner. Today that is not true. I think firms now want to know whether young associates are going to cultivate a practice for the firm before they are advanced to partner status.

Mr. Pierson: Abe, may I ask you how are all those changes of the profession have affected our courts?

Mr. Krash: Well, It is hard to say. I think judges have become more skeptical of lawyers perhaps. But that would be hard for me to demonstrate. What has also happened is that the enormous expense of litigation has caused people not to try to resolve matters by the litigation process. It is so expensive, unpredictable, cumbersome and burdensome. Many clients just want to avoid litigation if they can possibly do so. You have all these alternative resolution procedures now that have developed.

Mr. Pierson: And so there are fewer cases going to trial?

Mr. Krash: I think so. The other thing is when I began to practice half a century ago, the idea was that the practice of law was regarded as a learned profession. I think it has become a much more of a business than it was then. Of course, it was always a business, because it was a way of making a living, but if you have very large law firms, which is what we now have, they are under enormous

financial pressures. They have enormous expenses for overhead for staff and facilities, and there are much greater financial pressures, than existed when I began.

Another thing that happened was that beginning sometime around the early 1980s, particularly during the era of the great corporate takeover fights, what happened was that the lawyers who were involved in these matters saw that their counter-parts, people with whom they had gone to law school who were working in investment bankers firms, were making enormous incomes. These lawyers felt, well why shouldn't I be making an income of comparable level. The result was enormous pressure to make a lot of money. I have previously mentioned that there was no such thing as branch offices at the time when I began. You were a New York firm, or a Cleveland firm, or a Chicago firm, but today, of course, it is common for firms to have many branch offices. Once you do that, there are several implications that you have to appreciate. First of all, it is almost impossible to have a common firm culture, because you haven't grown up together. It is impossible to know your colleagues in the same way. How can you possibly know somebody well if your practice is in Washington and you have partners in Los Angeles or London? You just don't know them. That really changes the whole atmosphere of practice. I think that there are efficiencies of the practice that now accompany the things you can do, which you couldn't do previously. But it also alters the practice and the way we think of ourselves as lawyers and colleagues. So those were very profound changes during that time.

At the end of our last session, there were several things that you asked me to think about. You asked me to think of distinguished lawyers I've known and also judges. You have to bear in mind that during the period when I was a young lawyer and growing up as a lawyer, that Washington was a very small legal community. There was a division between so-called local lawyers and the people who had kind of a national practice, such as we did. But we still knew many lawyers all around town. It still was a relatively small town in many respects. Of the people I've known in my time, I would say, as I said previously, that Abe Fortas was one of the best lawyers I ever knew, measured by any standard. He was an extraordinary able man. There were many other lawyers in Washington of outstanding ability. I had a lot of respect for Lloyd Cutler, who I thought of as a person of a wide range of capabilities and talents. He was a very gifted person. I knew Edward Bent Williams slightly, and he was certainly one of the best trial lawyers of his generation. Hugh Cox, Howard Westwood and Charles Ho of Covington, whom I never really knew, were enormously respected lawyers in my time in Washington. There were a number of younger men in Washington, for whom I have great regard. One of them was Bob Wald, who was Patricia Wald's husband. We were very good friends. As I previously mentioned, I have the utmost regard for Patricia Wald; she recently received the Medal of Freedom from the President. I was also very good friends for many years with Fred Rowe, who was a partner in the Kirkland firm. He was the author of a book on the *Robinson-Patman Act*. He retired some years ago. He was a person with outstanding abilities. Dan Margolis and I were good friends; there have been many exceptionally able

people within my own firm, such as Dennis Lyons, who was the president of the Harvard Law Review and a law clerk to Justice Brennan, who was certainly a person of extraordinary ability. He was one of the most capable people I have ever met. There were many other outstanding lawyers here at Arnold & Porter over the years, I include such people as Stuart Land, Bud Vieth, Jerry Hawke (who served in the Government as head of Federal Deposit Insurance Company), Melvin Garbow, Paul Berger, Walter Rockler, Jim McAlee, Mike Curzan, Bill Rogers, Peter Bleakley, Murray Bring, David Kentoff, and Bruce Montgomery. I was privileged as I mentioned earlier to have exceptionally able younger people working with me, including among others, Daniel Rezneck, Jerome Chapman, Len Becker, Robert Weiner, and Merrick Garland, (who is now Chief Judge of the U.S. Court of Appeals). Robert Winter, Melvin Spaeth and Jerome Chapman worked together with me on many matters and I have high regard for each of them. There were other very gifted people who worked together with me, such as Brooksley Born, who has been a great champion of women in the law.

You asked me about judges that I've known. One of the outstanding judges I encountered was a judge in New York. His name is Edward Weinfeld. I thought he was a person of extraordinary thoughtfulness and ability. He was a superlative District Court Judge. I did argue in various courts of appeals throughout the country. I met briefly Judge Henry Friendly, but I never appeared before him. I regard him as probably the greatest federal appellate judge in the last 30-40 years. He was an extraordinary individual. I also have a lot of respect for Judge Richard Posner, whom I know slightly. There were

many fine judges in the District, for whom I have great regard. I thought very highly of Judge Harold Leventhal, who regrettably died at an early age, but he was a very gifted man and a very fine judge. I knew Judge Bazelon quite well. We were friends. I believe Judge Gerhard Gessel was excellent.

You asked me, reflecting on my own experience; what I would say was the virtue most prized among lawyers. I think most lawyers would agree that, good judgment is probably the most valuable quality. I've given a lot of thought over the years to how you teach good judgment. I don't know how you can teach good judgment. I don't think you can. I think you may be able to teach it to some extent by example. I learned it by being around people older than myself and watching them. Another virtue which I think is critical is what I call moral courage. It is the ability to stand up in court before a judge who is critical of your position and respectfully and firmly stand your ground. It is the capacity to reject a client's demand for an opinion which you know it is not wise or prudent or correct. It is the ability to stand up on behalf of someone who is being discriminated against. Again, I don't know how you teach people moral courage. I'm not sure that it can be taught. It is a quality that is maybe innate. To some extent, I think you learn it by seeing other people who encourage you to stick your neck out. Those two qualities, that is good judgment and moral courage, are two of the qualities which I believe distinguish the very best lawyers. The other thing I would say I have learned is that there is no substitute for preparation. I've never known anyone who was a first rate lawyer, in my judgment, who didn't have to work hard. There is just no way out. That is the nature of the beast. In terms of mastering the facts of the situation and getting

on top of it, it just requires enormous work. You really have to work very hard. Another thing that has struck me is that people who were, not necessarily the most gifted in terms of their ability to take a law school exam, turned out to be excellent lawyers, because they had virtues such as imagination, the capacity to persist, good judgment, and good inter-personal relations.

Mr. Pierson: I'm deeply impressed by your summing up. I have nothing to add.

Mr. Krash: I should conclude by noting that the past year, 2013, was the fiftieth anniversary of the Supreme Court's decision in the *Gideon* case. I am the only survivor in our firm among the four lawyers who were named in the brief we filed on behalf of Gideon. I was invited by many organizations who wanted to commemorate the decision to participate in seminars or panels, or to give a talk about my experience with the case. I participated in a very fine seminar on the representation of indigent defendants at the Yale Law School. I spoke at the Judicial College in Reno and to the Public Defenders in Charleston, South Carolina. I learned a good deal about the right to counsel. It was a very interesting and enjoyable experience.

I am sometimes asked if I would be a lawyer if I had a chance to start over again. Nobody in my family was a lawyer. When I went to law school, I never even thought about being a lawyer. I thought about being a newspaper man. I found that the practice in the period from 1950 to the 1980s was very challenging and I especially enjoyed that period. I think that there are presently exciting, challenging and worthwhile things for young people to do in the law. It is just tougher than when it was when I began.

Mr. Pierson: Thank you very much Abe, this has been a remarkable event for me and I hope for you too.